TE ROHE POTAE RESEARCH PROGRAMME

PUBLIC WORKS AND OTHER TAKINGS IN TE ROHE POTAE DISTRICT

David Alexander

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1 INTRODUCTION

1.1 The Author

My name is DAVID JAMES ALEXANDER. I am an environmental and planning consultant, and historical researcher, of Auckland. I hold a BA (Honours) degree in Geography, and a MSc degree in Conservation. For 30 years (1979-2009) I have been a full Member of the New Zealand Planning Institute.

From 1975 to 1987 I was a planner in the Department of Lands and Survey. This enabled me to gain a thorough understanding of land status matters. In 1987, after a short period working for the Department of Conservation, I established my own consultancy. The following year, I prepared my first brief of evidence for the Waitangi Tribunal, which was hearing the Ngai Tahu claim. Since then I have prepared a number of other reports for claim hearings. I have prepared reports (and presented them as evidence in most cases) on the Ngati Rangiteaorere, Pouakani, Te Roroa, Ngati Awa, Ika Whenua, Turangi Township, Ngati Pahauwera, Hauraki, Muriwhenua, Southern Kaipara, Rongowhakaata, Te Tau Ihu, Tuhoe, Central North Island, Tauranga, Northland, East Coast and Whanganui claims. The majority of these reports have addressed, to some degree, takings of Maori-owned land under the Public Works Acts.

1.2 The Project Brief

This report was commissioned by the Crown Forestry Rental Trust as one of a series of historical research reports into events occurring in the Waitangi Tribunal's Te Rohe Potae Inquiry District[1]. The project brief required an examination of the nature and extent of public works takings, and other compulsory acquisitions of Maori land in Te Rohe Potae District. This would involve a review of the public works legislation, an assessment of how much Maori-owned land was compulsorily acquired from Maori in Te Rohe Potae District under the Public Works Acts, and the presentation of case studies examining particular Te Rohe Potae District public works takings and other compulsory acquisitions for specific public purposes.

[1] The Inquiry District has different boundaries to the Rohe Potae area defined in the nineteenth century by the Aotea Agreement. To distinguish between the two, this report uses the term 'Te Rohe Potae District' to describe the Tribunal's Te Rohe Potae Inquiry District, and 'Maori in Te Rohe Potae District' to describe claimants and their forebears covered by in this particular Tribunal inquiry.

The assessment of how much land has been compulsorily acquired was to be presented in the form of a database. Details to be included in this database were block name, the quantity of land taken, when it was acquired, the legislative provisions used, the amount of compensation offered and/or paid, the reference in the *New Zealand Gazette*, and the relevant survey plan number (if available). The records associated with takings that are held in Crown records are scattered through several sources and have never been conveniently collated. Developing the database has therefore been time-consuming, and its production, in the form of an Excel digital spreadsheet, represents a large proportion of the effort put into research for this project.

More particularly, the project brief required that some specific matters be addressed in this report. These matters were expressed in a series of 37 sets of questions requiring answers. In summary the questions covered the following issues:

- How public works takings were initially introduced, and how the manner and style of taking land might have changed during the twentieth century.
- The impact that public works takings had on relations between Maori in Te Rohe Potae District and the Crown, and between Maori and Maori.
- The degree of understanding by Maori in Te Rohe Potae District about the public works legislation.
- The consideration given by the Crown for specifically Maori features of land ownership, such as cultural connection with the land, multiple ownership, Native Land Court title, sufficiency of land, role of the Maori Land Board, role of the Maori Trustee, urupa and wahi tapu.
- The extent to which, and the manner in which, Maori in Te Rohe Potae District were consulted, negotiated with, and compensated.
- Whether more land than necessary was taken for public works.
- The relationship between the Crown and local authorities in the application and use of the public works legislation.
- The circumstances of the disposal of lands compulsorily acquired for public works when the purpose of those acquisitions was unfulfilled or expired.

- Whether lands were donated by Maori in Te Rohe Potae District for public works and Native Schools, and if so, the circumstances of such donations, and the nature of the Crown's fulfilment of obligations to return the donated land when no longer required.

There are two significant exclusions from this report. These are:

- **Railways-related takings**. Both the North Island Main Trunk Railway, and a small part of the Okahukura – Stratford line, pass through Te Rohe Potae Inquiry District. The Main Trunk Railway has a particular place in the opening up of Te Rohe Potae to Government influence and European settlement, and generally occurred at a slightly earlier period to any other public works takings. Within the Casebook Research Programme for the Inquiry District[2], a separate report has been prepared on railways-related takings[3]. This covers not only takings for the railway line itself, but also related takings such as for ballast quarries, water supply, and staff housing.
- **Extensions to the Inquiry District**. The Tribunal has defined the area of a core Inquiry District that does not overlap with any other previously established Inquiry Districts, and within which all claimant groups can bring all their claims. It has also agreed to hear certain specified claims in defined extension areas that overlap the previously established Inquiry District for the Taranaki claims, and the Waikato-Tainui raupatu area[4]. Many of the specified claims in the extension areas are nineteenth century raupatu claims, which are not concerned with the type of public works matters referred to in the project brief for this report. This report and its associated database examines only public works and related takings in the core Inquiry District, and does not address public works and related claims in the extension areas.

It follows from the project brief that this report has to be concerned with "public works" in a broad sense, certainly broader than just those works for which lands were taken by the Crown under the various Public Works Acts. The scope of the brief has required a reappraisal and

[2] *Casebook Research Programme for Te Rohe Potae District Inquiry (Final)*. Waitangi Tribunal Unit, January 2008. WAI-898 #6.2.4(c).
[3] P Cleaver and J Sarich, *Turongo: The North Island Main Trunk Railway and the Rohe Potae, 1870-2008*. Report commissioned by the Waitangi Tribunal, November 2009.
[4] Directions of Presiding Officer, 21 November 2007. WAI-898 #2.5.24.
Te Rohe Potae District Inquiry Revised Boundary Description and Maps. Waitangi Tribunal Unit, May 2008.

slight change of emphasis, with the result that the report is about Crown acquisitions of land for specific public purposes.

The use of the concept of 'acquisition for specific public purposes' is intended to distinguish the lands that were acquired in this way from the lands the Crown acquired for general settlement. These latter were the large blocks, where during the nineteenth and early twentieth centuries the Government established Government departments responsible for Native land purchase, and appointed land purchase officers whose task was to acquire large areas of land. These areas, which were referred to during the nineteenth century as Waste Lands of the Crown, and in the twentieth century as Crown Land, were not acquired with a particular purpose in mind. It was intended, in general terms, that they would be used for settlement purposes, that is, for the placing of European settlers on the land, but the detail of that process, such as where service settlements would be located, how the farm sections would be laid out, and what roads would be provided, was not decided until after the lands had been acquired. That such acquisitions were handled indiscriminately is attested to by the large extent of the Department of Conservation estate today, which mainly evolved from those lands acquired by the Crown that did not become used for farm settlement, because they were not well suited to that purpose.

Besides the large general acquisitions, at the same time the Crown also ran a separate system of acquiring particular parcels of land for particular public purposes. It is these targeted acquisitions of Maori-owned land that this report is focussed upon. For convenience they can be grouped, for the purposes of this report, into three categories, based on the nature of the acquisition and the statutory process that was followed in their acquisition:

- **Lands taken specifically for road under a statutory mechanism that allowed for compulsory acquisition with no prior consultation, and with no payment of compensation**. Originally established in order to prevent the development of gaps in a network of roads that would enable colonisation of the country, this mechanism came to be viewed by the Crown as a right that could be used as a first resort to take land for road, before it became necessary to use an alternative taking procedure under which compensation had to be paid.
- **Lands acquired by consent, but also with no payment of compensation**. These giftings of land were for a particular purpose; primarily they were lands to be used for

the establishment of schools for Maori communities, although they could also be for other community facilities. In the case of sites for Native schools, the Crown's policy of "no gift of land, no school" meant that there was a large element of coercion involved.

- **Lands taken using the procedures established under the Public Works Acts**. Although initially the takings were usually compulsory, with no consent given by the owners, from the early 1960s Crown policy changed and obtaining prior consent became the norm. The Acts intended that compensation would be paid, although in some instances the Native Land Court ordered nil compensation awards, thereby effectively turning those takings into giftings.

1.3 Structure of the Report

The nature and sequencing of the Crown's acquisitions in Te Rohe Potae District, as displayed in the database, has been used to guide the content of this written report. For instance, the first public works legislation relied on for a taking in Te Rohe Potae District was the Public Works Act 1894. This has meant that earlier public works legislation is not the focus of this project; it is referred to in this report, although only in an introductory manner to explain the evolution of the Crown's policy and legislation during the first fifty years of the Crown's governance of New Zealand.

The statutory basis for the Crown's various acquisitions is examined first, in Part I of this report, in order to demonstrate the framework and national policy within which the Crown operated, and within which the Crown allowed local authorities to operate. There were (and still are) certain constitutional safeguards, derived from the British experience, that apply to the circumstances and manner in which the needs of the State can outweigh the private property rights of its citizens. These safeguards include that the Crown has been given specific statutory authority for the actions it takes, that landowners are made aware of what the Crown is doing, that landowners are entitled to compensation for their loss, and that throughout the taking process the principles of natural justice will apply. It follows that what the law allowed the Crown to do is fundamental to an understanding of how it went about acquiring the land that it considered it needed.

Besides the operation of the constitutional safeguards, the Crown's actions have also been examined in the context of Treaty jurisprudence, with various Waitangi Tribunal reports and recommendations, and with certain acknowledgements by the Crown that in some respects it has in the past breached its obligations under Te Tiriti, the Treaty of Waitangi. These are examined briefly, in order to provide a national perspective against which the Crown's actions in Te Rohe Potae District can be examined today.

Parts II and III look at what happened in Te Rohe Potae District. They identify the scale and breadth of the Crown's acquisition of Maori-owned land for a wide range of specific public purposes, and examine how the Crown (and local authorities) went about acquiring the land. Parts II and III also look at what has happened to the taken lands when the public purpose for which they were originally needed ceases to exist, in particular whether they have been offered back to their former owners. While the large number of takings has been identified and recorded in the database, it was not possible, nor is it necessary in order to satisfy the project brief, to explore the detailed circumstances of each and every taking. Choices were made about which of the takings would be followed up by a more detailed examination of their circumstances than the bare outlines recorded in the database could provide. Some of the takings and giftings that were specifically researched are recorded in Part II. Others, where more information was obtained, are recorded in more in-depth case studies in Part III. The case studies often cover more than one taking or gifting, and demonstrate some inter-relationships between and among various Crown actions. They also demonstrate that the impact of the Crown's actions on Maori in a particular locality could be a cumulative one.

The choice of takings to be commented upon, and case studies to be examined in more detail, in this report, developed out of both the project brief initially provided by Crown Forestry Rental Trust, and discussions with representatives of Te Rohe Potae District claimants. A further determinant of what takings would be examined in more detail was the availability of historical records. This report relies almost exclusively on the records of the Crown to identify the actions that it took in acquiring land for specific public purposes. Over the years many of the Crown's records have been destroyed in one way or another. Historical research relies on those records that have survived, and those that can be readily accessed. For example, in the case of the topics covered by this report, comprehensive records still exist about the gifting of land for most Native Schools, but there are large gaps in the surviving records about the original takings for roads. The research, and consequently what gets

written up, can potentially become skewed in a particular direction by the availability of only some of the sources. However, every effort has been made to avoid this happening, so that the examples that are written about in some detail are representative of the all the different types of takings.

The potential problem of information overload in the case of some takings, and sparseness of information in other cases, is dealt with by dividing the reporting about Te Rohe Potae District takings into two parts. Part II is concerned with ensuring a district-wide view of Crown activity, while Part III examines as case studies particular takings where a greater amount of information has been obtained. The aim of this approach to the report's structure has been to avoid a few takings swamping an understanding of what went on in Te Rohe Potae District generally. That the whole is known, as recorded in the database, also enables the representativeness of the case studies to be assessed in a transparent manner.

Each acquisition of land involved two parties. Only part of the Maori perspective on takings and giftings can be gleaned from Crown records, usually when Maori lodged objections to a proposed taking of their land, or when they made their views known when offering to gift land. The Maori owners who lost their lands as a result of the Crown's acquisitions, and their descendants, will have additional information contained in their own records, and in their own oral history, about the various takings and giftings. They are in a better position to present that perspective themselves, either to the Waitangi Tribunal, or as part of negotiations with the Crown.

1.4 Summary of Findings

The Crown owes certain duties to its citizens when it chooses to use compulsion to acquire privately-owned land for public purposes. Maori, given the same rights as British subjects under Article 3 of the Treaty of Waitangi, are as equally entitled as non-Maori citizens to fair treatment by the Crown in terms of those duties. However, Maori are also entitled to additional protections, as a consequence of the guarantees the Crown gave to Maori under Article 2 of the Treaty. The Crown is obliged to avoid the taking of Maori-owned land, to require it only after other options have been examined and found to be unsuitable or impracticable, and to then negotiate with the owners to seek agreement to its acquisition.

The history of the use of compulsory taking powers in New Zealand, however, shows that these standards were not observed. Some legislative powers to take roads through Maori-owned land discriminated against Maori, because there was no similar impost on Pakeha landowners. As no notice was given, no consent was obtained and no compensation was payable, these powers were also confiscatory. Such rights to take roads were used extensively, and were exhausted before takings for which compensation needed to be paid were used. It is probable, though never ruled upon by a court, that some takings for road under the Native lands legislation went beyond the authority of that legislation.

Under the Public Works Acts the standards expected of the Crown were, in certain aspects, lower in the case of Maori-owned land, so that protections for Maori landowners were actually less than they were for non-Maori landowners. The Crown's compulsory taking powers have been governed by statute, and the legislation has been particular about what matters are to be considered. Because the legislation does not impose obligations on the Crown to give any priority to avoiding Maori-owned land, or to consider the impact of a taking on Maori, other than in a financial sense, the Crown never considered such matters. Because no formal assessment of alternatives was required, use of the taking powers became a first resort rather than a last resort.

Administrative convenience for the Crown drove some of the actions that discriminated against Maori. It was more convenient for the Crown to take the complete freehold interest in land, and thereby have no ongoing dealings with another party (the former owner), than it was to take only a partial interest in the land such as a leasehold or easement, which would ensure that Maori would continue to hold their land. It was more convenient for the Crown not to be required to notify owners when there would be difficulties in contacting those owners, either because they were not known in a legal sense (when the land was still customary land) or because their addresses were not known, or because there were thought to be too many of them for contact to be a practical proposition. It was more convenient for the Crown (except in the case of small-scale road realignments) to view compensation only in monetary terms, rather than be prepared to offer alternative land in exchange for land that was taken.

To a certain degree, the Crown's reliance on takings with no prior agreement with the landowners was a reflection of a wider issue surrounding Maori land title. With multiple

ownership of land by people who had scattered across the country, there were very real practical difficulties faced by the Crown if it wished to obtain prior agreement. With the exception of incorporations and vesting in District Maori Land Boards, there were few administrative structures provided by the legislation prior to 1953 by which the owners could appoint just a few individuals to represent them, and the structures that were available had their own problems. The Crown had little in the way of a point of contact by which the owners could be approached, and a response quickly and easily obtained. Although purchasing by the Crown at meetings of owners did take place throughout the twentieth century (not researched for or covered in this report), this was more often seen as a cumbersome and slow procedure, making the more streamlined and minimal-interaction processes of the public works legislation more attractive. After 1953 the opportunity provided by Section 438 Maori Affairs Act to appoint trustees, who became the legal owners of the land and could negotiate on behalf of the beneficial owners, made it easier to take land with prior consent.

Because the legislation was administered within the Public Works Department / Ministry of Works, that Department used it as a first resort whenever requiring land for its own public works development needs. When other departments needed land for their purposes, the advice of the Public Works Department was invariably to suggest that the powers under the Public Works Act be used. Even officials in the Native Department viewed the Public Works Act as the most convenient method by which the Crown could acquire the land it needed.

The climate of thinking within government that the public works legislation could be freely used encouraged excessive use. Having post offices on land leased from Maori was deemed to be less satisfactory than having post offices on Crown-owned land, so the Public Works Act was used to acquire the freehold title. Larger areas of land were sought than were absolutely necessary. A provision requiring the Governor to give his consent to a taking if the land to be taken contained improvements such as buildings, or places of special interest (such as burial grounds), which was meant to be a safeguard against the Crown's actions impacting too heavily on landowners, became an empty shell as it was treated as just one additional step among all the administrative procedures of a taking.

It was only when affected landowners challenged the Crown's ambitions that such excesses were exposed. But the ability of landowners, particularly Maori landowners, to make such

challenges was severely constrained. In the first instance, Maori had to be aware of the Crown's intentions. The legislation provided a window of only 40 days after a Notice of Intention to Take had been issued for objections to be made. The Notice was published in the *New Zealand Gazette* and the Maori language version, the *Kahiti*, but neither was day-to-day reading for rural Maori. Indeed the *Kahiti* was eventually deemed so ineffective at communicating with Maori that it was abandoned. The Notice was also published in a local newspaper, and posted at a local post office for the 40-day period, requiring a particular type of vigilance to be aware of it. It also had to be served on any owner whose name appeared on a registered title for the land, and whose address was known, however since most Maori land did not have a title registered in the Land Registry Office that method was no guarantee that owners would become aware of the Crown's intentions. The Public Works Department sent a copy of the Notice of Intention to Take to the Native/Maori Land Court, but Registrars were not expected to inform owners unless it was easy for them to do so. Sometimes the Public Works Department served notices on individuals it had identified as leading owners in a block, although not always in a timely fashion given the 40-day objection period. Even if these difficulties in being informed were overcome, it was then a matter for rural Maori, generally unskilled in bureaucratic matters, to send in an objection to the Minister of Public Works. The Minister and his officials, or the local authority, who had promoted the intention to take the land in the first instance, then decided whether or not to proceed. This was hardly an impartial review process. It was not until 1973 that an independent judicial body considered and commented on objections.

This change in 1973 was just one of a number of changes to the public works legislation that occurred between the early 1960s and the early 1980s. It is possible, from a starting-point of these changes, to reflect on the inequities of the earlier procedures that they replaced. Changes in 1962 that encouraged negotiation of prior agreement to a taking demonstrated how frequently earlier takings had been without notice and without consultation. Changes in 1973 ended the practice of the Minister of Public Works and his officials being in a position of being both prosecutor and jury on proposed takings. Changes in 1974 ended the manner in which the treatment of takings from Maori-owned land differed from the manner in which takings from European-owned land occurred. Changes in 1981 encouraged the legislation to be used more restrictively, in requiring that takings only proceed where alternatives had been explored and rejected, and only for what were termed "essential works". The 1981 changes also resurrected an earlier principle that land be offered back when no longer required for the

purpose for which it had been taken, thus giving a public works taking a temporary status for only as long as the public need for it existed, and imposing on the Crown and local authorities an expectation that they would constantly review their landholdings.

In separate evidence prepared in 1999 for the Tribunal's Hauraki inquiry, I catalogued some of the inequities associated with the public works legislation, drawing on findings of the Waitangi Tribunal and my own researches in other parts of New Zealand[5]. The Tribunal summarised what it described as "a number of key deficiencies" that I had identified.

> He argues that consultation was lacking prior to many takings; that there was no requirement to notify all owners of a proposed taking; that there was no independent body to judge any objections Maori might make; that provisions allowing a mutual agreement were very rarely used for Maori land, though more commonly so for European-owned land; that there was a lack of provision for Maori to object to takings for road realignments until the taking was already a fact; and that there was a lack of protection by the Crown for Maori ownership of land in general; …. that the Crown preferred financial compensation over other forms, such as an exchange of land; that the Crown rarely considered taking less than the freehold title (e.g. a lease or easement); that due to the involvement of the Maori Trustee, the Maori owners were effectively disenfranchised from their land; that the amount of compensation could be offset against any perceived benefit under 'the betterment principle'; that compensation was often not paid till some time after the taking; and that offer-back procedures for surplus land were not rigorously carried out.[6]

In addition to these problems with the public works legislation were the inequities associated with the Native land legislation allowing Maori-owned land (but not European-owned land in the same manner or to the same degree) to be taken for road without consultation, consent or compensation.

The inequities and deficiencies referred to above were all apparent in the Crown's actions to take land in Te Rohe Potae District. This demonstrates that most of the problems with the Crown's use of the legislation were not isolated instances of administrative failure, but were an in-built part of the structure of public works takings constructed by the Crown and applied across the country.

Te Rohe Potae District was heavily affected by takings for road under the "no consultation and no compensation" provisions of the Native land legislation during the nineteenth century

[5] D Alexander, *Public Works Takings*. Evidence to Waitangi Tribunal hearing the Hauraki Inquiry District Claims, WAI-686, 1999, Document #F4.
[6] Waitangi Tribunal, *The Hauraki Report*, Wellington, 2006, Volume III, page 1094.

and into the first two decades of the twentieth century. Takings for road without compensation have continued beyond that time under the direction of the Native/Maori Land Court, either when approving the use of Maori Roadways as public roads, or when determining that routes in use as roads should become public roads. Maori contributed the bulk of the public roading network throughout Te Rohe Potae. They might have agreed to this if they had been asked, but that never happened, so their opinion cannot now be known. Instead, the takings were involuntary, and were forced upon them.

In addition to roads, Maori usually involuntarily provided the land basis for many other public services. Commencing in about 1910, when there was a large increase in the resort by the Crown and local authorities to the use of the Public Works Act, and continuing for two decades, land was taken from its Maori owners for a wide range of purposes. This was not coincidental. There had been large-scale Crown purchasing of blocks of land from Maori, plus awards of land to the Crown in lieu of payment of survey liens, during the 1890s and up to about 1908. There was then a period while the Crown sent its surveyors onto its newly acquired land to cut them up into farm holdings for settlement by Europeans. The influx of Europeans created a demand for public services, which the Crown and local authorities then had to accommodate. That they did so by taking Maori-owned land was effectively the second part of a double imposition on Maori, who provided the land for settlement, and then provided yet more land to cater for the needs of settlement.

Extensive taking continued after the Second World War, as new reasons for compulsory acquisition (such as housing) emerged, or as further improvements to the roading network were made, though this occurred to a lesser degree than earlier. A greater emphasis by the Crown on re-using its own landholdings for other public purposes did not necessarily reduce the impact on Maori, because in a number of cases the land had already been taken earlier from Maori owners under the Public Works Act, and a new use prevented consideration of its return to its former owners.

From the work undertaken for this report, the statistical evidence shows that Maori in Te Rohe Potae District were more severely affected by the public works legislation than Maori in some other parts of New Zealand. My knowledge of this and other districts leads me to the conclusion that, if there can be an average level of impact on Maori of the public works taking legislation, then Maori in Te Rohe Potae District suffered more than this average.

Besides public works and associated takings, this report has also looked at instances where Maori in Te Rohe Potae District gifted land to the Crown for specific public purposes. Instances have been identified where Native school sites, and a recreation reserve were gifted by the consent of their owners. School sites were gifted under a "no land, no school" policy, so that the Crown used a strong element of coercion to obtain land for that purpose. There were fewer giftings for community purposes in Te Rohe Potae District than have been identified in some other districts (e.g. the East Coast). That this was so is probably an indication of a different relationship between Maori in Te Rohe Potae District and the European immigrants into the district.

Much of the hurt suffered by Maori in Te Rohe Potae District as a result of public works and associated takings is because the Crown, in the legislation it wrote and in the manner in which it administered the legislation, lost sight of the constitutional foundations upon which compulsory acquisition by the State rests. Safeguards for private landowners that had been developed early in the history of public works taking legislation were substantially reduced during the late nineteenth and early to mid twentieth century. While all private landowners had their rights reduced, Maori were even more adversely affected, because the legislation offered them fewer protections. Rather than actively protecting Maori, the Crown actively expropriated their land.

1.5 Responses to Questions Posed in the Project Brief

The project brief poses 37 sets of questions that this report is expected to address. Rather than leave the reader to search for the answers as they arise in the various parts of this report, it seems better to actively address them in this introductory section, and tailor the answers towards acting as a bridge between the possibly too general summary of findings, and the possibly too specific catalogue of Crown actions in relation to individual takings or giftings. Where a specific taking or Crown activity in Te Rohe Potae District is referred to in these answers, further details can be found in Part II or Part III of the report.

It is primarily these 37 sets of questions that indicate, in the opinion of the developers of the casebook research programme, how the matters discussed in this research report can knit

together with the matters being discussed in all the other research reports to present a coherent and comprehensive whole package of historical and contemporary research.

When, and in what circumstances, were Public Works first introduced into Te Rohe Potae Inquiry District? What was the nature of this initial implementation?

Active Crown involvement in Te Rohe Potae District depends on what part of the District is being referred to. Around Raglan, Kawhia and Mokau there were Crown purchases of land from Maori in the 1850s, but elsewhere the Crown was not able to exert its authority until after the compacts in the 1880s that enabled the Main Trunk Railway to be constructed. Crown purchasing of lands alongside the railway did not begin until the 1890s.

Because this report is primarily concerned with twentieth century public works activity by the Crown, no research has been undertaken for this report into what public works were undertaken on the lands purchased at Raglan, Kawhia and Mokau in the mid nineteenth century. That would require a search of a completely different set of Crown records, and is better left to those historians writing reports about that specific era. In general terms, the main public works activity at that time, besides the townships at Raglan and Kawhia, was the laying out and development of roads to service the Crown lands. To call them 'roads' as known and understood today may be an exaggeration; they were probably little more than rough tracks that were fashioned to the minimum level required to make them usable to get to and from the landing places that were the centre of servicing activity for the European communities. Elsewhere in the country, Maori were often engaged on contract to make the roads. Whether this is what happened in Te Rohe Potae, or whether the work was given to the new settlers as a form of social security to help them get established, is not known.

At Raglan, reserves were provided for Maori within the boundary of the Crown's purchases. The Ohiapopoko block is an example of these reserves. Although it refers to a later period, the 1880s, an unnamed Maori-owned reserve at Raglan was at the centre of local moves to have a road made through it. A petition to Parliament in 1883, when asking for the road, stated that "the Natives are willing to permit a road to be made upon receiving compensation"[7]. This indicates that it was one of the first areas of Maori-owned land in Te

[7] Report of Native Affairs Committee on Petition 1883/308, 2 August 1883. *Appendices to the Journals of the House of Representatives (AJHR)*, 1883, I-2, page 9. Supporting Papers #3869.

Rohe Potae District to be affected by the ambitions of settlers and the Crown for particular public works. The background and details to this petition are not known.

Apart from these reserves provided for Maori and located within the Crown's purchases, there would have been little or no impact on Maori-owned land from Crown public works. Roads would not have been developed by the Crown beyond the purchase boundaries into the rest of Te Rohe Potae District, and the telegraph line between Auckland and Wellington by-passed the District.

The construction of the Main Trunk Railway was the first and biggest public work elsewhere in Te Rohe Potae District. Its impact is discussed in another research report[8]. Beyond the railway line, it was again roads that were the main item of Crown interest. Initially this interest was focused on just three roads, a dray road to move tourists and visitors between Hangatiki Railway Station and Waitomo Caves, a road from Mokau to Te Kuiti, and a road from Kawhia to Alexandra (Pirongia)[9]. The Survey Department was responsible for the construction work parties, while at the same time it was engaged in a public works activity that was more destructive for Maori landowners, when it surveyed lines of road through the district. The compacts with the Crown about the Main Trunk Railway had opened the doors to the work of the Native Land Court commencing in the District, and many land blocks were 'put through' the Court by having their title investigated and ownership orders issued. Once title was issued, the Native lands legislation (in general terms) imposed a 15-year deadline on the Crown to identify and lay out (on a survey plan, not by forming the road on the ground) any public roads it wanted to see running across these blocks. If it completed this survey work within the deadline, then the Crown did not have to pay any compensation for the land it took for road. Nor was there any need to notify the Maori landowners, or negotiate the

[8] P Cleaver and J Sarich, *Turongo: The North Island Main Trunk Railway and the Rohe Potae, 1870-2008*, Report Commissioned by the Waitangi Tribunal, November 2009.

[9] These roads are discussed in various reports by the Chief Surveyor Auckland on roading activity within the Auckland Land District. *Appendices to the Journals of the House of Representatives (AJHR)*, C-2 of various years during the 1880s and 1890s. These are not discussed in this report.
The roads are also discussed in C Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block), Part 2, 1900-1960*, Waitangi Tribunal, Rangahaua Whanui Series, District 8, 1999, pages 83-90 of which are concerned with public works takings.
The road from Kawhia to Alexandra was the subject of an Order in Council in February 1886 authorising construction on and through Maori-owned land, but not specifically authorising the taking or acquisition of land for the road (despite the heading used when notifying the Order). *New Zealand Gazette* 1886 page 123. Not included in Supporting Papers.

matter with them. The arrival of a surveyor with instructions to survey a road would be the first knowledge that the owners would have of the Crown's intentions.

The deadline to complete these confiscatory surveys of roads had a big impact on the Crown's survey priorities. Surveying was already a major employment and business enterprise in Te Rohe Potae District during the 1890s and the first 1900s decade, both for the identification of Maori-owned blocks to be passed though the Native Land Court, and for the cutting up of Crown purchases into family farm holdings. The survey definition of the roads that, in large part, form the network that is still in use today would have added significantly to that workload.

Did the process of Public Works takings change over time? How did takings from the early, pre-war period compare with takings in the twentieth century?

The takings of lands for roads under the 'no consultation and no compensation' provisions of the Native lands legislation continued into the early 1920s. This was the overhang from the work earlier in the century by the Native Land Court to issue title to the various blocks. That type of public works taking eventually dried up, but long before then it had been replaced by takings for other purposes.

The influx of European settlers once the Crown lands were cut up into farm holdings, and once the passing of the Native Land Act 1909 loosened the restrictions governing purchase of Maori land by private individuals, gave rise to a number of requirements for public works takings. These can be described as purposes incidental to settlement. The roads that had been laid out by the surveyors had to be constructed, so quarries were required to supply road metal. Central government services such as police stations and post offices, and local government facilities such as public schools, office buildings, depots and rubbish dumps, were needed.

It might be thought that the Crown could have met these needs of settlement from the Crown-owned lands that it was itself developing for settlement. While this is indeed what often happened, with townships being laid out on the Crown blocks and reserves established, there was also a spillover on to Maori-owned land; where that occurred the Public Works Act was the mechanism used to obtain the land. This spillover was particularly applicable in

Otorohanga and Te Kuiti, which had been established as Native Townships on Maori-owned land.

There were three particular types of takings during the first two decades of the twentieth century that deserve a mention in this summary of the evolution of takings activity over the century, because they tend not to be repeated in later years.

- **Native schools**. These takings were a standard mechanism by the Crown to obtain title to a school site from Maori. They are the only takings at this time where there had been a policy of consultation with and consent given by the Maori owners to the land passing to the Crown. That consent was in the form of an agreement to gift the land to the Crown, achieved by asking the Native Land Court after the taking under the Public Works Act to make a nil award of compensation.
- **Scenery preservation**. This was an effort by the Crown to graft an additional land use on to an evolving usage pattern that had already developed a strong momentum focused around clearing forest and sowing grassland. Again, the Crown set aside some scenic reserves on its own land, and there was a spillover on to Maori-owned land. That spillover effect in Te Rohe Potae District, however, was so much greater than the efforts made by the Crown in using its own land at the time that it is hard to avoid the conclusion that Maori-owned lands were unreasonably targeted for taking.
- '**Footloose' activities**. These are takings that happened to end up being sited in Te Rohe Potae District. The primary examples of this type are the takings for mental hospital and reformatory farm at Tokanui. While Crown-owned land was used in part for these purposes, a far greater area of Maori-owned land was taken, and this was clearly discriminatory.

There were fewer new takings during the 1930s and 1940s. Lands taken for roads were usually not for completely new roads, but to improve existing roads that had been laid out in the packhorse and horse-and-buggy days, in order to make them suitable for motor traffic. This meant realignments at bridging points across waterways, and widening and realignments around bends.

There have been a series of further roading improvements from the 1950s onwards, to allow for faster speeds and safer travel. During the years up to 1988, when the Ministry of Works

and Development was disestablished, this developed into a virtual industry, as every single adjustment of the roading network had to be accompanied by associated land title and ownership changes. The result was numerous surveys, and numerous takings of small, often miniscule, areas of land. However, the pattern of ownership of the land that was taken changed over time. A greater proportion of takings for road were from land owned by Europeans, and proportionally less Maori-owned land was taken. This illustrates one of the consequences of the Crown's public works activity, that the development of roads through Maori-owned land has made more attractive to European purchasers the land alongside those roads. Maori owners with easily accessible land came under greater pressure to sell.

What impact did Public Works takings in Te Rohe Potae District have on the relations between Rohe Potae Iwi and the Crown?

This question is hard to answer from the perspective of this report, where most of the research has relied on what is written down in Crown records. In these records the greatest opportunity for Maori viewpoints to come through is when a proposed taking is notified and objections are invited.

Obstruction of the work of surveyors in the late nineteenth century was a known tactic used by Maori. No instances of obstruction in relation to public works surveys for early roads in Te Rohe Potae District have been identified during research for this report, although this has not been a focus of the research and surveyors' activity on the ground is poorly recorded in the Crown records. The paucity of these historical records is unfortunate, as almost every public works taking, whether for roads or other purposes, was preceded by survey work to define the boundaries of the land to be taken, and draw those boundaries on a survey plan. The arrival of the surveyor on site would sometimes be the first that Maori landowners knew of a Crown proposal, and could be the trigger that started a correspondence between Maori owners and the Crown. One more recent instance of obstruction of surveyors has been identified by Marr, on the Taharoa block in about 1943[10]. The details of that dispute are not known; it may have been in relation to land development roading rather than public roading.

Once the surveyor had done his work, the Crown in its taking procedures was a distant entity far removed from Maori. The administration of all takings was centralised in Wellington,

[10] C Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block), Part 2, 1900-1960*, Waitangi Tribunal, Rangahaua Whanui Series, District 8, 1999, page 87.

and communication was conducted with Maori by means of public notices in most cases. Before the 1960s, a Maori landowner would receive an individual notification about a taking only occasionally.

At that point it was up to rural Maori in isolated papakainga to decide whether to take on a distant Crown behemoth. It was an unequal contest, with all the advantage lying with the Crown, because of the variety and depth of the resources that the Crown could bring to bear, and because of the weighting of the legislation in favour of the taker. Some owners did object, and were successful in their efforts, as when boundaries of scenic reserves around Kawhia Harbour were changed. Other efforts, however, were spectacularly unsuccessful, such as the failed efforts by the Tokanui landowners to prevent the landholdings of their hapu being decimated.

To specifically answer the question, with respect to public works takings there was no relationship between the Crown and Te Rohe Potae Maori at the iwi level. The Crown was not interested in establishing and maintaining a relationship at the iwi level. Because of the individualisation of title, it was only interested in dealing with the title holders as defined by the Native / Maori Land Court. And it was only interested in dealing with those title holders in circumstances of its own choosing, at the formal objection stage and at the compensation hearing before the Native / Maori Land Court. There was no place for Maori to discuss or negotiate.

<u>What impact did Te Ohaki Tapu have on the ways that public works takings were viewed by Maori in Te Rohe Potae Inquiry District?</u>

The compact arranged between the Crown and Te Rohe Potae Maori in the early 1880s was in connection with allowing the Main Trunk Railway to pass through the District. This question is probably more directed towards the manner in which the railway line was constructed, which is the subject of a separate report[11].

With the exception of the acquiring of land for roads under the native lands legislation, there was generally a time lag between the railway construction and the use of the Public Works Act to take land from Maori. During that intervening period Maori in Te Rohe Potae District

[11] P Cleaver and J Sarich, *Turongo: The North Island Main Trunk Railway and the Rohe Potae*, 1870-2008, Report Commissioned by the Waitangi Tribunal, November 2009.

were subjected to many other Crown influences, including the introduction of the Native Land Court, large-scale land purchase, the establishment of the Native Townships, and the Crown-sponsored influx of European settlers, all of which would have tended to overshadow the compact made in the early 1880s. In all the Crown records for the twentieth century takings examined for this evidence, no mention of Te Ohaki Tapu has been located.

What impact did public works takings have on inter-iwi relationships in Te Rohe Potae, particularly with regard to Te Rohe Potae compact?

It is hard to discern from Crown records what the relationships between iwi were, let alone any change in those relationships. The only records where relationships between iwi are discussed are in connection with the siting of Native Schools. The site chosen by Maori at Otorohanga, and one of the possible sites identified for the Makomako school, were on the boundary line between lands awarded to different hapu, presumably in an attempt to rise above hapu divisions and encourage a wider attendance of children. The first attempt at establishing a school at Kawhia failed when there was conflict between iwi because the ownership of the proposed site had not been fully argued before and investigated by the Native Land Court. However, these are isolated examples that do not allow any general comments about inter-iwi relationships in Te Rohe Potae District to be made.

To what extent were Maori in Te Rohe Potae Inquiry District aware of the legislation under which their lands were being taken? Were they made aware of the provisions for taking and their entitlements to compensation?

The provision allowing land to be taken for road through Maori-owned blocks that had been passed through the Native Land Court, without need for consultation or compensation, had its origins in the Native Land Acts of 1862 and 1865. There was no discussion with Maori in Te Rohe Potae District at that time, nor with Maori generally throughout the country; this was a period when Maori in Te Rohe Potae District were viewed as being allied to Waikato 'rebels'.

Even when surveyors pegged out the line of these roads with the knowledge of the Maori owners and occupiers of the blocks, it cannot be said that Maori were necessarily aware of the legal implications of what the surveyors were doing, or the practical consequences of a transfer of legal ownership.

Maori in Te Rohe Potae District had no input into the form that the Public Works Acts took. The model that was developed with the passing of the Public Works Act 1894 lasted with only minor amendments through to 1981, and even since then many features of the legislation have remained the same. Those amendments attracted hardly any debate in Parliament, and that probably suggests there was also little debate outside Parliament as well. What is likely is that Maori in Te Rohe Potae District became familiar with the legislation because of its constant use by the Crown. As the procedures for taking land required strict adherence to the steps laid down in legislation, there was a repetitive pattern to the manner in which the taking power was used. Taking land, as a type of raupatu, was a concept that Maori could readily understand, and the arguments used against the takings at Tokanui in 1910 demonstrate that there was a reasonably sophisticated appreciation of what the legislation meant from a relatively early stage. When owners whose land had been taken wrote in asking for their compensation moneys to be paid to them, this demonstrated that they knew at least some of their entitlements in legislation.

While having a generalised understanding of the legislation, they were probably unfamiliar with some of the specifics. Maori landowners expected to be notified in advance of the intention to take some of their land, and would not have understood the highly legalistic notification rules that required notification in some circumstances but not in others. If they had been aware that takings affecting cultivations, buildings and urupa required additional consent from the Governor, they might have been more active in seeking to negotiate with the Crown about these matters.

As to understanding the details of the taking legislation, the Maori level of understanding has probably been little different to that of the Pakeha population.

How were Harbours and early roads takings agreed on and managed?

The main point to be made about the early years is that there was a lesser emphasis on legal takings, and a greater emphasis on shared use that developed organically rather than being mandated by the Crown. Where Maori had used a site as a landing place, the place's natural attributes made it a logical and natural development that Europeans would also use it. Where a track had been developed by Maori in the pre-contact days, it too would be used by Europeans, and perhaps progressively developed to accommodate changing types of use. The concept of taking land for public works arose and became more prominent as the Crown

developed its own rangatiratanga, or ability to apply its own governance in a district, and as legislation became more complex and prescriptive. That the first compulsory taking of Maori-owned land identified in the database, other than the right to lay off and take roads under the Native land legislation, was not until 1903 indicates that takings did not become a feature in Te Rohe Potae District until the Crown's authority had become established in the District.

Were there delays in granting titles through the Native Land Court? If so, what impact did these delays have on public works takings in Te Rohe Potae?

What legal title land had was not an impediment to takings, as the Public Works Act allowed land in customary ownership to be taken as well as land held under Native Land Court title. In practice only a few examples of takings from customary land (referred to as Native Land in the database) have been identified in Te Rohe Potae. Where this happened in the case of land taken for the Mokau River Scenic Reserve, compensation was awarded in the normal way by the Native Land Court, and ordered to be held by the Public Trustee until the owners of the taken land had been determined.

The greatest difficulty the Crown experienced with respect to titles to Maori Land was with respect to partitioning of the land. The Court would first order a partition, and then request that it be surveyed. With takings, on the other hand, the land to be taken was surveyed first, and then was taken. This could mean that land that was taken was shown on a survey plan, and therefore in the taking Proclamation, as coming out of a particular block, when Court records showed that it came not from that block but from a subsequent partition block. An opposite situation could also develop, where a partition was surveyed but later cancelled by the Court. Difficulties arising from this would become apparent at the compensation hearing stage. However, they were difficulties concerned with the machinery details of a taking, and could be overcome; they did not prevent takings. Indeed, the public works legislation contained provisions to ensure that minor errors made in the process of carrying out a taking would not invalidate the taking itself.

Was the sufficiency of land remaining in Maori ownership considered during the taking of Maori land for public works purposes?

'Sufficiency of land' is a concept found in Native lands legislation, particularly from 1905 onwards, and refers to the owners of land who had agreed to alienate (sell, lease or mortgage)

some of their land still being left with sufficient land for the life-supporting needs of themselves and their descendants. In the largely rural economy for Maori during the early part of the twentieth century, this was usually assessed in the context of having sufficient land for farming. It was one of the tasks of the District Maori Land Boards, in deciding whether or not to consent to an alienation, to satisfy themselves that owners would still have sufficient land.

Sufficiency of land remaining for the owners of land taken under the Public Works Acts was not a matter referred to in that legislation, which as stated earlier had been largely developed and settled during the nineteenth century. It was therefore not a factor taken into account by the Crown. Indeed its consideration in deciding whether or not land should be taken was actively argued against by the Crown representative at the inquiry into the proposed taking at Tokanui. In all cases it was the need for the public work, rather than the impact on the private landowner, that was the paramount consideration for the Crown. That need tended to view the chosen site for the public work as the only site, because the legislation was framed to advantage the taker and made consideration of alternatives largely superfluous.

Did the Crown acquire more land than was necessary for public works?

The advantages in the legislation for the taker also resulted in a lack of critical analysis about how much land it was necessary to take. At Tokanui Cabinet approval when the site was first chosen allowed up to 5000 acres to be taken. Crown officials worked to that brief, and stuck to it even when there were objections from the Maori owners. Subsequent use of the taken land, or rather its lack of use, showed that this was an excessive amount. A taking for scenery preservation on the Mokau River compulsorily took all 2950 acres of the Mangoira block, but only 12% was actually set aside as a scenic reserve; the other 88% had gone into the general pool of Crown Land available for settlement within three years of the taking.

These are dramatic and, because of the large area of the takings, perhaps extreme examples where more land was taken than necessary. Their impact on Maori landowners was, however, as huge as the areas involved. Other takings were of lesser areas, meaning that the likelihood of more land being taken than necessary was much reduced. With most other takings for scenery preservation, the existence of a policy that land fit for settlement should not be taken provided a counterweight so that necessity for the public work became a factor in the Crown's consideration of the extent of the taken lands.

A change in Crown practice has meant that road takings over the last fifty years have more closely matched their necessity. Road realignments and upgradings were constructed first, and the roadside fences were re-erected, before the additional land to be taken was surveyed. The Crown relied on its rights set out in public works legislation allowing entry on to private land, and on agreements with the landowners, for its legal ability to undertake the construction works, while the legal title changes to bring public ownership of the new road into line with what was actually on the ground were completed later.

What role did the Maori Land Board and Maori Trustee play in later public works takings? Did the system disadvantage Maori owners?

The Waikato-Maniapoto District Maori Land Board operated up until 1952, when it was disestablished and its functions were distributed between the Maori Land Court and the Maori Trustee. The Maori Land Board played no part in the process of public works takings. All dealings with public works prior to 1952 were with the Native / Maori Land Court, rather than the Board.

There were alternative provisions in legislation that allowed a District Maori Land Board to lay out lines of road through Maori-owned blocks that were vested in it. Those lines of road could then be declared to be public roads. This mechanism was occasionally used in Te Rohe Potae District.

The Maori Trustee became involved with public works takings from the 1960s onwards, in two main ways. A law change in 1962 ended the Maori Land Court's involvement in determining compensation to be paid for takings of Maori-owned land. Instead, all negotiations over compensations were to be with the Maori owners themselves, except where the land was owned by more than four owners. In that event the law required that compensation would be negotiated by the Maori Trustee, acting on behalf of the owners.

The Maori Trustee's involvement in negotiating for the owners benefited the owners to the extent that they had an organisation more substantial then themselves to take on the institutional might of the Ministry of Works. The Maori Trustee was willing to obtain valuation and legal advice to back up his negotiating position. The major disadvantage for the owners was that they were disenfranchised by the legislation. They had no right of

involvement in the negotiations, and were marginalised into being merely the recipients of whatever compensation was agreed upon. The Maori Trustee tended to view the negotiations as too technical for the owners to become involved with in assisting him, and kept them at arms' length.

The second role played by the Maori Trustee was as a Section 438 trustee. The same amending act in 1962 placed a greater emphasis on the Crown obtaining prior agreement to a taking than previously. The Crown always felt it was disadvantaged when asked to deal with multiple owners. The Maori Affairs Act 1953 introduced Section 438 allowing the Court to establish a trust, and appoint trustees, to manage and administer multiply-owned land. Although not much used in the 1950s, this section was used often from the 1960s onwards, and the Maori Trustee was often appointed as the trustee. This was of great benefit to the Crown, as it gave it a single point of contact for reaching agreements in advance of public works being carried out.

The Maori Trustee was the head of the Department of Maori Affairs, and the staff of the Maori Trustee were Government officials. This relationship made for potential conflicts of interest when dealing with other Crown agencies, such as the Ministry of Works in the case of public works takings. There was a perception among Maoridom that the involvement of the Maori Trustee in public works takings and compensation negotiations was a case of the Crown talking to the Crown, while they as landowners looked on powerlessly from the outside, and had little understanding of what was taking place and being done on their behalf.

<u>What were the legal provisions and practices providing for notification, objection and compensation for Public Works and related takings?</u>

The provisions for issuing a Notice of Intention to Take land were different for Maori from those for European landowners. Europeans, who had to have a title in their name registered in the Land Registry, were readily identifiable and required to be personally notified. Maori did not have to have a registered title, and even when they did there might be multiple owners. The notification process for Maori-owned land was both different and less stringent. The principal form of notification was to be a published Notice of Intention that land was to be taken, supplemented by personal notification of individual owners (where a title had been registered in the Land Registry) if their addresses were known.

Following notification there was a forty-day period during which objections in writing could be sent to the Minister of Public Works. The Minister had the option to appoint someone to hear the objections and provide him with a report and recommendations about the objections. Any objections were then accepted or rejected by the Minister, who was the titular promoter of the taking, in that the taking action was being carried out by his Department (and often for public works to be constructed by his Department). In the case of proposed takings being promoted by local authorities, any objection had to be to the local authority, which would determine whether any objection was valid, and if not deemed valid would pass its request for the land to be taken on to the Minister of Public Works. Validity or otherwise of an objection was restricted by the legislation, which referred to matters that could not be financially compensated for. The rights of objection, and the making of decisions on objections, were the same for Maori and European landowners.

Once land was taken, compensation arrangements varied depending on whether the land was Maori or European owned. If European-owned, compensation was negotiated by agreement, with provision for recourse to the Land Valuation Tribunal if agreement could not be reached. If Maori-owned, there was no provision for negotiation. Instead, all takings were to be referred to the Native / Maori Land Court (until 1962), and it was for the Court to decide how much compensation the Crown, or a local authority responsible for the taking, should pay. If the Crown had promoted the taking, then the application to the Court was to be made and prosecuted by the Public Works Department / Ministry of Works; if a local authority had promoted the taking, the application was to be made and prosecuted by the local authority.

<u>Were these provisions and practices adequate, and did they ensure that Maori were not disadvantaged regarding their rights to object and to be compensated?</u>

The shortcuts in notification allowed by the legislation when Maori-owned land was involved seriously disadvantaged Maori. Publication of the Notice of Intention to Take was in the *New Zealand Gazette*, its Maori version the *Kahiti*, and in a local newspaper. The notice also had to be displayed on the notice board at a local post office. This meant that Maori would become aware of a proposed taking only by chance, rather than by being personally notified. Even where they were personally notified, the Crown was only interested in advising registered owners, and not the wider Maori community. As land was partitioned into progressively smaller blocks, the ownership became more focused on to a single whanau, or a

part only of a whanau, so that the ability for the hapu to become aware and involved was reduced.

Maori were disenfranchised by the compensation process as well, in that they were not allowed to negotiate their own compensation prior to 1962. While the process may have been different for Maori, as compared to the process for European landowners, the involvement of the Native Land Court served as bulwark to some extent against the power of the Crown. However, there was no right of appeal against the Court's decision. The requirement that the Court was the only body allowed to determine compensation meant that the Crown refused to consider negotiations for compensation prior to a taking. In addition the delays in holding a Court hearing and obtaining a decision from the Court meant that payments of compensation were also delayed.

Sometimes a bigger disadvantage for Maori was that only the Crown, or the local authority responsible for the taking, was entitled to make the application to the Court for it to determine compensation. Maori could not make the application, nor could the Court of its own volition commence the application process. While the Crown followed standardised procedures that seemed to guarantee that an application was made, local authorities, using the taking procedures less frequently and hence being less familiar with the legislation, sometimes failed to send in an application. No application meant there could be no award of compensation.

<u>How were affected Maori landowners and other parties consulted during the taking of land for public works purposes? Was there a consent and negotiation process? How was this process implemented?</u>

Because the legislation did not provide for it (i.e. did not require it), there was no consultation or negotiation with Maori landowners. They were restricted to the narrow framework of objecting and having their objections considered.

Only with the provision of Native school sites was there a standard policy of obtaining consent in advance. This was as part of a policy of obtaining the site as a gift to the Crown, such gifting being seen as a sign of good faith by the Maori community of their interest in and support for the school that would be built on the site.

The Minister of Public Works could appoint someone to hear objections on his behalf, and this was a potential opportunity for some discussion. With Maori land, the Minister's first choice as his representative was a Judge of the Native Land Court. The judges tended to adopt the usual adversarial court procedures as the framework within which their inquiries were made, rather than allowing a conversation between Maori and the Crown to develop. In any event their ability to recommend radical or different alternatives was constrained by the terms of reference of their inquiries, because objections had to be considered in the context of what was allowable under the legislation. The question posed in the legislation, and to be answered when considering objections, was whether, in the Minister's opinion, "it is expedient that the proposed work should be executed, and that no private injury will be done thereby for which due compensation is not provided by this Act". This same question also had to be addressed by local authorities when they considered objections.

What was the extent of consultation and negotiation and agreement with respect to Public Works concepts such as use or underlying transfer of land?

The public works legislation was relied upon by the Crown to take Maori-owned land because it was so easy to use, and so much more certain in its result, compared to other alternatives. If the land was not compulsorily taken, it had to be acquired on a willing buyer willing seller basis. With multiply-owned land, the Crown would have had to obtain the signature of every owner on a deed of sale and purchase, or get the consent of a meeting of owners. Where owners were scattered and their addresses not known, or where owners were deceased (and not succeeded to), the chances of success in obtaining all or enough signatures on a transfer deed were slim. Meetings of owners also relied on discovering the location of owners and alerting them that the meeting would be held; the meeting could then very easily reject a Crown proposal to acquire the land.

There are instances where Native / Maori Affairs Department officials, or Court staff, who were familiar with the difficulties surrounding the willing sale of land, would recommend that the public works legislation be used instead.

Many of the same difficulties applying to the purchase of land would also apply to the lease of land. Owners had to be located and their consent obtained, if a lease was to be willingly entered into. The public works legislation did allow a leasehold interest in land to be compulsorily acquired. However, this provision was used only rarely and, although an

explicit reason for this has not been located, it appears to have been the Crown's preference to acquire the freehold (i.e. all rights to the land) rather than acquisition of the leasehold. This is probably because of the certainty, and the ease of future administration of the land, that this gave to the Crown.

Were Maori in Te Rohe Potae Inquiry District realistically able to participate in the objection process? Where objections were made, were these seriously considered?

Going on to the marae to explain a proposal and find out if there were any objections was probably the best course of action the Crown could have taken. Where that happened in the case of Raglan Aerodrome, it produced a result that was aimed (albeit imperfectly) at maintaining the cohesion of the local community. That case, however, was the exception, and was triggered by a desire on the Crown's part to immediately enter the land to start construction, rather than being part of the objections-to-taking process. Instead, objections had to be made in a format that was most convenient for ease of administration by the Crown. Once past the difficulties in the process of a landowner becoming aware of a proposed taking, a written objection to the Minister of Public Works in Wellington was required. Sufficient objections from Te Rohe Potae Maori have been located to suggest that having to put their objections down on paper was not a significant hurdle for them to have to surmount.

It rather depended what the objection was about as to whether or not it was seriously considered. Not wanting their land to be disturbed by a taking, as a matter of general principle, was not regarded as something to be taken seriously, if the objections received in relation to the proposed Tokanui takings are relied upon as a guide. This is despite this reason going to the heart of Article 2 of the Treaty. Other reasons that did not fit into the framework established in the public works legislation, such as being left with insufficient land, were also given short shrift, because the Crown view was that a monetary payment could compensate for a straight-out loss of land.

Did provisions for compensation place Maori in Te Rohe Potae Inquiry District at a disadvantage compared with other landowners?

The reason that objections that could be remedied by the payment of monetary compensation were not seriously considered was because the Crown regarded landowners as being footloose. If they were compensated for leaving one piece of land, they were believed to be perfectly capable of using the money to buy another piece. The legislation treated land as a

commodity. However Maori, with their traditional and cultural links to their homeland, will always be at a disadvantage compared to other landowners, because they are unable to walk away from their land in the same manner as Europeans, and other replacement land can never fully substitute for the land that is lost.

Was fair compensation determined, and was it paid to those entitled to it?

Because the decider of the amount of compensation to be paid was the Native / Maori Land Court (up to 1962) in the case of Maori-owned land, rather than the landowner and the Crown reaching agreement on the amount, there is a built-in potential for the compensation process to reach a different conclusion about how much is to be paid, as compared to any conclusion reached by direct negotiation between the Crown and the landowners. Fairness, however, is a concept that covers a range from only just being fair to being overwhelmingly fair, and therefore has the potential to include different compensation amounts.

The issue about compensation is the parameters used for determining it. With public works takings, the main parameter used was land value. This was determined very much in terms of the land's productive potential for the main uses to which it could be put, most specifically grassland farming. Flat land was more valuable than steep land. Well-drained land was more valuable than swamp land. Cleared land was more valuable than forested land.

Valuation of land is more of a best estimate than an exact science, and some Native Land Court hearings into compensation were characterised by vigorous debate from valuation witnesses variously representing the Crown and the Maori landowners. At one extreme, the hearings into the compensation for the taking of Mangoira block took a whole week, because of the number of valuation witnesses. At the other extreme, only one Crown witness may have appeared, with the owners offering no competing expert testimony, resulting in the hearing being quickly completed. The Court, with no specialist qualifications in land valuation, was left to make a decision that, not surprisingly, was often an amount in the middle of the various estimates offered to it.

Another matter of fundamental interest to the Crown was that compensation amounts had to be fair to the taxpayer. This resulted in a tendency for the Crown to want to pay a low amount of compensation, to argue over the valuations, and to hide matters that were unhelpful to its interests.

When compensation was awarded, the Public Works Department was rigorous about paying out the money. It was part of their procedures, and making the payment was part of the straight line set down in those procedures. In the case of multiply-owned land, a common requirement of the Native / Maori Land Court was that it be paid to the District Maori Land Board or the Maori Trustee, who would then be responsible for its distribution to individual owners. As far as the Crown was concerned, when the payment was made, its obligations ceased.

The various Maori Land Boards and the Maori Trustee had developed a system of beneficiary cards on which the amounts of monies due to any individual from any source (including takings compensation) were recorded, and it could be determined what amount to write a cheque out for. Under this system compensation payments could get lost within a wider series of monies owed, so that landowners might receive a cheque and be unaware how the amount had been arrived at.

Compensation owed to owners who were deceased had to wait until successors had been appointed before it could be distributed. Large amounts of money owed to Maori landowners still remain undistributed in the Maori Trustee's account today. Thus it cannot be said whether or not owners received the compensation they were entitled to. It was also a tactic used by some Maori to refuse to receive payment of compensation, as that would imply their acceptance of a Crown action they strongly disagreed with.

To the extent that compensation amounts for Maori land and European land were both determined within a framework of land values and a Crown bias towards lower rather than higher amounts, the amounts paid to Maori and Europeans were probably comparable, even though arrived at through a different process. They were probably within the range of fair in terms of that comparison. A greater issue, though, is whether the parameters used to determine compensation were fair to Maori.

<u>Did the compensation process recognise non-commercial use or whakapapa connections with the land?</u>

Because the parameters used were concerned with the economic productive potential of the land, compensation was all about the land's worth if farmed. Yet this was only one way in

which Maori viewed their land. In its natural state, rather than converted to grassland, it still provided Maori with foods and materials for buildings and implements. Its streams and swamps provided freshwater foods. Of even greater significance to Maori were the traditional and ancestral connections they had to the land. The land was their source of standing within the Maori world, and was special to them as their homeland. The loss of these features was never compensated for when land was taken. Crown officials were incapable of fully understanding or providing for it, and rather dismissively bundled it up into a single word, 'sentiment'.

Were proposed alternatives to compensation, such as reduced survey costs, adequately considered by the Crown?

Sometimes when objections were lodged against a proposed taking, the landowner might ask for alternative land to be granted in exchange. The response to this request was usually that this was a matter of compensation, to be decided after the taking, and could not be used to forestall the taking itself. However, when it came to the compensation hearing, the Court had no authority to require that land be exchanged. It could only include an exchange if the Crown as applicant was willing to offer it. This did happen on rare occasions, such as with the taking for Mangaokewa Gorge Scenic Reserve. The Crown agency responsible for the Crown's unallocated land holdings, the Department of Lands and Survey, was generally unhelpful in identifying lands that it was prepared to release for exchanges. In any event, the Crown structure of having various Government Departments, where agreement between departments, and possibly financial transfers, might be required, worked against the will being found to pursue an exchange through to a positive conclusion.

There was, however, one instance where exchange of lands was acceptable and treated as the norm. If a road was realigned, then the old line of road that was no longer being used might be handed over to the landowner in exchange for the land required for the new alignment. These exchanges could apply to both Maori and European lands. When Maori land was involved, the taking would still have to go to the Native Land Court for it to decide how much compensation to award, but the Court would order a nil award if the exchange was considered to be an equal one. The old line of road would then have to be revested into the title of the Maori land by the Court at a further hearing.

To have reduced survey costs incurred by a landowner rather than hand over monetary compensation would have been an imaginative possibility. However, it implies a whole-of-Government solution, when that was not the way that Government Departments worked. Survey debt was recorded within the Department of Lands and Survey, yet that Department placed few demands on the use of the Public Works Act, with the exception of the takings for scenery preservation. For other departments taking land, it was more convenient to pay the monetary compensation in the normal way direct to the landowner (or their agent), rather than involve another party to the transaction in the form of another department.

Were urupa and other sites of significance destroyed or damaged as a result of public works, and if so under what circumstances?

Urupa and other sites of special significance to Maori were not necessarily exempted by the legislation from being taken for public works. Some protections had, however, been developed during the nineteenth century. When surveying a line of road to be taken under the confiscatory provisions of the Native lands legislation, the surveyor was required to state on his plan that no pa, cultivations or urupa were on the line of the road. A measure with similar intent, but not expressed in such absolute terms, was included in the public works legislation. Before each taking it was necessary that the Governor was satisfied that no buildings, cultivations or urupa were affected. If they were, he was obliged to issue a specific consent allowing the taking to proceed.

While this requirement to consent to a taking might be considered to be a protection, in practice it became just another part of the paperwork that had to be processed. The presence of buildings, cultivations and urupa did not appear to encourage the Crown to have second thoughts or investigate how to avoid them, instead the taking proceeded with the extra administrative step included.

When the land for the Raglan aerodrome was taken, the Crown was aware of burials on the land, and agreed that they would not be disturbed. Thirty years later that obligation had been forgotten, and permission was given for a golf course to be built on top of them. At Tokanui the Crown promised to protect two burial places, but 15 years later could find only one of them. It is very likely that other urupa elsewhere have also been damaged by public works, either because the Crown was never aware of the burials in the first place, or it forgot about

them, or it felt it was necessary to push ahead with the public work regardless. The building of stopbanks at Otorohanga is an example of the latter.

What considerations were applied to wahi tapu in the process of identifying potential lands to be taken? Were objections lodged by Maori over the taking of such sites adequately investigated by the Crown?

The availability of a mechanism that made it possible to take wahi tapu meant that the Crown had little incentive to avoid such areas. The needs of settlement and economic development were deemed of high importance, and sometimes it was considered inevitable that things that got in the way would be destroyed. In the European world almost everything (graves, cultivations, meeting houses) could be relocated, and that was considered to solve the problem. The intangible connection that Maori have with a particular place was viewed as 'sentiment', which might have to give way to the greater good.

While the Crown was not particularly proactive about protecting wahi tapu, it was prepared to do more when reacting to objections. The promise to protect the burial places at Tokanui was made after they were drawn to the Crown's attention during the objections process. A promise to allow continued access to an urupa was made when land on the Awaroa block was being considered for taking for scenic purposes in 1912.

Was it appropriate for the Crown to delegate to local authorities the power to take Maori land within Te Rohe Potae Inquiry District compulsorily?

The Crown has never delegated the power to compulsorily take any land under the public works legislation. It has, however, delegated certain preliminary and follow-up parts of the taking process.

Every single taking under the public works legislation has been an act of the Governor (or Governor General), or a Minister of the Crown, or an official acting under a delegation issued by a Minister. Whenever a local authority wanted land in order to perform its own duties, it had to request the Crown to take the land. This request, in the form of a written Memorial document, was accompanied by a statutory declaration from the local authority (signed by the chairman and two councillors in the case of County Councils) stating that the land was necessary for a public work, and all preliminary stages for a taking had been carried out.

The preliminary steps that were delegated to a local authority were the responsibility to survey the land, issue the Notice of Intention to Take the land, receive objections, and decide on those objections. Only if the objections were not upheld would the local authority then approach the Crown and ask it to proceed with a taking. After the taking the Crown delegated to the local authority the responsibility to publicly advertise that the land had been taken, apply to the Native Land Court for compensation to be determined, and pay the compensation awarded by the Court.

It therefore follows that each and every taking under the public works legislation is indisputably the responsibility of the Crown.

Did the Crown sufficiently monitor and address any problems that arose from this delegation?

As a matter of policy, the Crown never monitored the actions of local authorities. Having received a statutory declaration that it was necessary to take the land, that all objections had been considered, and none had been upheld, the Crown never looked behind the façade of the declaration to investigate whether those matters were correct or not. This was the case even when objections were received after a taking. That the statutory declaration had been provided meant that the requirements of the legislation had been satisfied, and the taking was not legally invalid.

Local authorities were less scrupulous than the Crown itself about completing the follow-up requirements after land had been taken. They sometimes did not apply to the Native Land Court for compensation to be awarded, something that prevented compensation being awarded and paid out as they were the only body allowed to be an applicant. For authorities that obtained land compulsorily only rarely, this neglect might be due to administrative oversight or simple failure to understand their obligations. The lack of monitoring by the Crown meant that such situations could arise and not be remedied. Even when Maori complained to the Crown that they had not received any compensation, the Crown would not insist that a local authority fulfil its obligations, instead merely observing that compensation was a local authority rather than central government responsibility. Nor was a petition to Parliament any guarantee that a complaint would be taken more seriously.

What obligations did the Crown have toward Maori in Te Rohe Potae Inquiry District in acquiring land compulsorily for scenic reserve purposes? To what extent were these obligations fulfilled?

The ability for the Crown to compulsorily acquire lands for scenic or scenery preservation purposes was included in the Scenery Preservation Act 1903 and the Public Works Amendment Act 1903. This legislative provision, adding another purpose to the list of purposes which came within the definition of a 'public work', allowed land to be taken under the Public Works Act. The obligations towards Maori were therefore the same as they were for all public works takings.

To what extent were Maori consulted over the taking of lands for scenic reserves and scenery preservation?

There was no consultation initiated by the Crown, although there might be consultation after Maori had become aware of the Crown's ambitions for their land through contact with the surveyor marking out the boundaries of the land to be taken, and they then might write in to the Crown with their concerns. Sometimes their concern was outright opposition to the taking, while at other times it was to ensure that the boundaries suited them as well as the Crown. Where a change of boundaries was sought, the Crown showed a willingness to consider the matter; boundaries were adjusted on a number of occasions, but not on every occasion.

By the time that the Notice of Intention to Take the land was issued, there were hardly any objections received. This lack of objection from Maori cannot be considered to amount to support for the proposed reserves, because owners may not have known what the Crown was proposing since the intention advertising process was so flawed.

A number of the Maori lands sought by the Crown for scenery preservation had been leased by their owners to European farmers, who of course first needed to clear the forest. The Crown tended to develop a closer relationship with the lessees than with the Maori lessors, because the lessees were the people who had the practical power to support or frustrate the Crown's ambitions. When this happened, the Maori owners were generally ignored, and treated only as recipients of compensation monies.

Were alternatives to takings [for scenic reserves and scenery preservation], such as voluntary sales, exchanges and leasing adequately considered?

Because there were no significant challenges to the Crown's taking intentions, there was no incentive for it to consider alternatives. It had chosen a process (compulsory taking), it was not frustrated in its use of that process, and so the process was seen through to a conclusion.

There were some exchanges of land in connection with Mangaokewa Gorge Scenic Reserve; these, however, were arranged after the taking as part of the compensation process, with the land being provided in lieu of a monetary payment.

Leasing was never considered, possibly because a scenic reserve was seen as a permanent type of land use.

In the Rotorua District some scenic reserves were established under a more cooperative arrangement with the Crown. The lands were ceded (i.e. gifted) by Maori to the Crown, and the Crown appointed a management board with Maori representation on it to administer the reserves. This approach was never adopted by the Crown in Te Rohe Potae District.

For how long was the Crown able to compulsorily acquire Maori land for scenic reserves? Why was this practice discontinued?

The ability under the public works legislation to compulsorily acquire Maori land for scenic reserves has never been lost and remains today in the Public Works Act 1981. The database has identified some instances where land in the Mokau and Mohakatino areas has been taken for conservation purposes in recent years. However, it also identifies that the last taking of Maori-owned land was in 1924. In between then and the last ten years, there was only one other taking, in 1940 to create Waipuna Scenic Reserve, when the public works legislation was used to transfer into Crown ownership a gift of the land by an insurance company.

Why the public works legislation was used between 1906 and 1924 to compulsorily take Maori-owned land, but not since then, has not been identified during research for this report. However, there is one common theme to nearly all the takings, which may explain it. This is that all the areas taken had been identified, in either general or specific terms, by the Scenery Preservation Commission. This body operated for less than three years, between 1904 and 1906, making recommendations for areas to be acquired by the Crown. It was the only

national stocktake of privately-owned lands suitable for scenic protection. Because the legislation establishing the Commission was also the same legislation allowing land to be compulsorily taken, the two seem to have gone hand-in-hand in the Crown's thinking at the time.

The development of the scenic reserves network in New Zealand has otherwise been a haphazard process, relying primarily on giftings, or the identification of Crown Land for which no other use could be found. That is why so many reserves are in upland areas, and the lowland reserves are so small. Nationally, when reserves have been acquired from Maori landowners since the 1950s, this has been by voluntary purchase using meetings of owners under the Maori Affairs Act. No examples of this have been searched for or identified in Te Rohe Potae District, as that is beyond the brief for this report.

<u>On what basis did Maori in Te Rohe Potae Inquiry District object to land takings for scenic purposes? How did the Crown respond to such objections?</u>

As explained above, objections were sometimes absolute, on the grounds that Maori did not have the land to spare to allow it to be lost to them, while at other times Maori sought an accommodation over boundaries. Boundary changes were often accepted.

An objection at Awaroa on Kawhia Harbour that the land proposed to be taken included a family urupa was not upheld, on the grounds that the reserve was intended to avoid disturbance, and the legislation specifically allowed burials to continue. Another objection at Puti on Kawhia Harbour, that the Maori owners relied on the forest for building and fencing materials, and would be left virtually landless, was upheld, more because the owners obtained political support from Maui Pomare MP than because the Crown officials did not want the land.

<u>By what means was compensation [for takings for scenic reserves and scenery preservation] assessed? Was compensation paid adequate, and did it take into account the value of land for Maori in Te Rohe Potae Inquiry District? Are there examples where compensation was not paid?</u>

Compensation for scenic takings was determined in the same way as for other public works takings, by basing it on land values. In only one instance did this take into account a value of

the timber as well as the land. As with other takings, the assessment was purely on economic productive potential, and ignored other values important to Maori.

In all cases of takings for scenery preservation in Te Rohe Potae, compensation was paid by the Crown as soon as it was ordered by the Native Land Court. As with other public takings, where the Court ordered the payment to be made to the District Maori Land Board, whether the money actually got into the hands of Maori owners has not been investigated.

What were the circumstances of the disposal of lands compulsorily acquired for public works when the purpose for those acquisitions was unfulfilled or expired?

With the exception of giftings, and small areas of old road no longer required as a result of realignments, the Crown did not feel any sense of obligation to return land no longer required for its taken purpose until about the 1970s. Its view was that once it had paid for the land, it had become its own to deal with as it wished. The legislation only allowed a taking Proclamation to be revoked so long as no compensation money had been paid.

Dealing with the land as it wished meant that the Crown considered it could use the land for another public purpose. If no other purpose could be identified, it felt that it was entitled to dispose of the land by selling it. It applied the same principles to land taken at the request of local authorities; once compulsorily acquired, the land was vested in a local authority, so that the local authority obtained absolute title to the land and was able to sell the land if it wished.

Once taken the land became the responsibility of a government department; which department was determined by its taking purpose. Many departments were quite casual about what happened to the land when they stopped using it. Often it remained on their books, and a decision was only made whether or not to release it when an external influence encouraged them to do so. Sometimes that external influence was another department that sought the land for its own use, in which case the land would be transferred by means of a setting apart for another public purpose. This was more likely to happen in urban situations, where the Crown might be short of land and be more willing to reuse its own property than to acquire privately-owned land.

In about 1960 the Cabinet appointed the Ministry of Works as a central disposal agency. It would be notified by a department that land was surplus to its requirements, and would then

circulate all other departments asking if there was a need for it for another public purpose. Only if no other need was identified would it be considered for disposal.

The process for dealing with lands no longer required for a public work was set out in the legislation. If land was formally declared to be no longer required, it became Crown Land under the Land Act 1948, and responsibility for it transferred as a result from whatever government department was administering it to the Department of Lands and Survey. This Department was able to treat the land in the same way as any other Crown Land; it could sell it on the open market, or could lease it out, or could allow it to become a reserve.

Only in the 1970s was the concept of offer back developed. It became a requirement in the first instance (although there could be exceptions) in the Public Works Act 1981, which remains in force today. Land was to be offered back to the descendants of those from whom it had been taken. In relation to Maori-owned land, this was achieved by the use of Section 436 Maori Affairs Act 1953, which allowed the Crown to apply to the Maori Land Court to have Crown-owned land revested in whomever the Court decided were the appropriate people to hold the land. This provision had first been inserted into predecessor legislation in 1943.

Were lands no longer required for the purpose for which they were taken returned to the former owners in the years before the Public Works Act 1981? If they were retained, for what purpose were they subsequently used?

Return of land prior to the Public Works Act 1981 was a rarity. It applied only to a few lands immediately after taking (often because an objection had arisen and no compensation had been paid), to giftings, and to some lands during the 1970s.

The Raglan golf course was one of the lands offered back in the 1970s, because it was no longer being used for its aerodrome purpose. That its return was so chaotic and long-winded, taking eleven years to achieve, was a reflection of the previous lack of Crown policy, and poorly thought through new policy.

As explained above, retained lands could be set apart for any other public purpose, or could be treated as ordinary Crown Land (in which case they could be used in any way allowed by the Land Act).

What was the condition of returned land, if there was any, and were there any conditions of return?

Land could be in whatever condition it was when abandoned by the government department that had been administering it for its taken purpose or another public purpose. This could mean that land that had been taken when it was bare land might have buildings on it.

The Raglan golf course return took so long because there were conditions attached to the offer back. It was the negotiations and disputes over the conditions that was responsible for the delays in the return of the land. Tainui Awhiro eventually got their land offered back and returned to them without any conditions attached, but that was only achieved by not having the land returned more speedily.

The main condition set in offers back by the Crown has been that the Crown expects to be paid. As a matter of general policy it considers that if monetary compensation was paid at the time of taking, then it should receive some monetary recompense when returning the land. That Maori had to grieve over the loss of their land while it was in Crown ownership, and were unable to use their land for lengthy periods, has not been looked upon as a reason for a return free of charge. In addition to paying for the return of the land, additional payment is required for the value of any buildings or other improvements that have occurred on the land while it has been in the Crown's ownership. It is often this latter condition that has made many offers back so problematic for Maori, because such large monetary amounts are involved.

To what extent did Maori in Te Rohe Potae Inquiry District gift lands for the purposes of Native Schools and other sites?

Nine instances where land was gifted for a Native school site have been identified in Te Rohe Potae District. Although the Crown had been involved in Maori education since the 1870s, the closed nature of Te Rohe Potae meant that Native schools did not gain much currency and become a feature of the district until near the beginning of the twentieth century. The spread of Native schools during the early years of the twentieth century was paralleled by a spread of public schools for the rapidly-increasing European population, so that the establishment of Native schools was limited to localities where there was no public school. A number of the

Native schools later became public schools as the composition of their pupils changed over time and more European children were enrolled.

Native schools were the main purpose for which land was gifted by Te Rohe Potae Maori. Only two other giftings have been identified. The first, of land alongside the new Main Trunk Railway in the nineteenth century, has not been researched as it was closely associated with the railway takings that are not included in the brief for this report[12]. The second was of land for a recreation reserve on the spit opposite Raglan township, gifted in 1923.

How were gifted lands processed? Was public works legislation used?

The public works legislation was amended in 1900 to make Native schools one of the purposes for which land could be taken. This meant that most giftings of Native school sites after then were achieved using the public works legislation. Before then, in the nineteenth century, there had been a variety of mechanisms adopted by the Crown to acquire sites, including special legislation (Native Schools Sites Act 1880), and voluntary transfers (working in league with the Native Land Court so that a site would be partitioned out of a larger block and awarded to only one or two owners to facilitate the transfer process). The procedure for a gifting under the public works legislation involved consultation and agreement to the taking beforehand, and a request to the Native Land Court to order a nil compensation award afterwards.

Were these lands used for their intended purpose, and were sites such as Native Schools established in a timely manner?

After an initial approach from Maori, there were delays as the Crown sought sufficiently detailed information about numbers of children available to be taught, and an offer of a school site. Until these details were received, an application was not deemed to have been properly made. An overcommitted Native Schools inspectorate then had to visit and vet every application. There were therefore delays of some years between receiving an initial application and opening a school. In one case, at Mangaorongo, most of the people had already moved elsewhere by the time the school was opened, and it closed shortly afterwards. In another case, at Te Kopua (Raglan), the school was never built after the gifting of the site had been completed, because the people had already moved away.

[12] P Cleaver and J Sarich, *Turongo: The North Island Main Trunk Railway and the Rohe Potae*, 1870-2008, Report Commissioned by the Waitangi Tribunal, November 2009, pages 151-152.

Once established, the Native School could be closed down and a public school opened in its place. As far as the Crown was concerned, this was still consistent with the intended purposes of the gifting, though Maori took great pride in having a Native School and would beg to differ. The Crown, however, invariably got its way. More significant in this context is whether the unwritten contract that the Crown had made with Maori allowed a change of purpose of land that had been taken for one purpose (Native school) to another purpose (public school). Given that compensation was paid whenever Maori-owned land was taken directly for a public school, even when some of the pupils might be Maori, the change to a public school could be viewed as an underhand method of obtaining a public school site without paying compensation. This matter was never discussed with the Maori community that had contributed the site for the Native school.

Rural depopulation meant that many country public schools had small rolls after World War Two, and Native schools suffered the same fate. A number of Native schools, however, struggled on until the late 1960s, when the Native School system was amalgamated with the public school system. Some of these have since been closed.

Were these [gifted] lands offered back when no longer required?

The Crown has generally accepted and honoured its obligation to return land in Te Rohe Potae District that has been gifted for Native Schools and is no longer required for education. Sometimes, however, as in the case of Mangaorongo and Te Kopua (Raglan) schools, the return took place a great many years after any reasonable assessment of the education requirement for the site had ceased.

PART I - THE NATIONAL PICTURE

2 THE LEGISLATIVE FRAMEWORK

2.1 Introduction

The Crown's acquisition of land, whether compulsory or otherwise, is tied up with land title issues. Property matters in New Zealand have always been governed by strict codes set out in legislation, aimed at setting out the rights and responsibilities of both parties in any land transaction, and this was particularly the case with compulsory acquisitions. From the Crown's point of view, it was absolutely necessary, given the often confiscatory nature of a compulsory acquisition, that the law was followed to the letter. The result is that all takings of land follow repetitive patterns, and a similar series of administrative steps, on their journey through to completion.

While the law was followed, the legislation itself was biased in favour of the Crown. That should come as no surprise, given that it was the Crown that drew up the legislation and arranged for it to be passed through Parliament. The Crown considered that it was acting in the national interest, and compulsory acquisition had as a foundation the concept that national or community interest should be able to override local and private individual interests, for the common good. Although certain checks and balances were built into the legislation to ensure that those local and private individual interests were not totally lost sight of, the preponderance of the legislation was there to enable a compulsory acquisition to be successfully completed.

The law with respect to the taking of land from Maori was, in a number of ways, different from that relating to the taking of land from Europeans (i.e. General Land). That is not, of itself, necessarily inconsistent with the Treaty of Waitangi. Indeed, it could be argued that the very existence of the Treaty obligated the Crown to act towards Maori in a more rigorous and more protective manner than it did towards Europeans, and that differences in statute should therefore be expected. However, the reality was that the differences in the legislation were such that the safeguards provided to Maori landowners were of a lower order than those provided to other landowners, rather than the other way around. This discrimination against Maori is apparent from an examination of the legislation itself. This chapter examines the legislation that the Crown relied upon for its compulsory acquisitions, while later chapters (in Part II) examine how the legislation was used and applied in Te Rohe Potae Inquiry District.

The compulsory acquisition legislation affecting Maori-owned land was of three types. The first, in terms of both the timing and extent of its impact on Maori-owned land, was a series of provisions under the Native land legislation allowing roads to be laid off through Native land and taken into public ownership, so that they became public roads. The second thread of legislation was the public works legislation, which was also used for the taking of land for roads (though primarily during the twentieth rather than the nineteenth century), as well as being used for takings for a variety of other public purposes. A separate third strand was provided by nineteenth century legislation that enabled giftings of land to the Crown for Native schools.

Other researchers have carried out historical reviews of the public works and associated legislation[13]. The review in this chapter relies heavily on their analyses, and should be regarded almost exclusively as a summary of the work of those earlier reviews. Except where referred to in footnotes, no new research of Crown records about national policy or legislation has been carried out for this report. At the commencement of this project it was considered more appropriate that the emphasis of the research should be put into the application of the legislation in Te Rohe Potae District, rather than into how compulsory acquisition policy was developed at the national level. This chapter is similar to one prepared for a report by the author on public works and other takings on the East Coast[14].

This review of the legislation is to a certain extent a partial one, dictated by the circumstances of this report and the history of takings in Te Rohe Potae District. Because takings for railway do not form part of the brief for this report, the separate and specific statutory provisions about takings for railway have not been examined. The legislation also made separate and specific provision for takings for defence purposes. As only three takings for defence purposes in Te Rohe Potae District have been identified, of the Raglan Aerodrome in

[13] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release).
A Ward, *National Overview*, Waitangi Tribunal, Rangahaua Whanui Series, 1997.
P Cleaver, *The Taking of Maori Land for Public Works in the Whanganui Inquiry District, 1850-2000*, Waitangi Tribunal, 2004.
P McBurney, *Northland: Public Works and Other Takings, c1871-1993*, Report commissioned by Crown Forestry Rental Trust for the Northland Inquiry Districts, 2006.
[14] D Alexander, *Public Works and Other Takings: The Crown's Acquisition of Maori-Owned Land on the East Coast for Specified Public Purposes*, Report commissioned by Crown Forestry Rental Trust for the East Coast Research Programme, 2007.

1941 and 1955, and of the site for a drill hall in Te Kuiti in 1951, the discussion in this chapter is focused solely on the legislation governing defence takings in force at those dates.

2.2 The Need for 'Public Works'

To explore why so-called 'public works' are required may seem an unnecessary first step; however that would imply an unquestioning acceptance of the type of society that has developed in New Zealand since 1840. New Zealand society evolved based upon the attitudes, prejudices and biases introduced by European settlers, and by British-based governments and governmental thinking. It was the stage that the evolution of civics had achieved in Great Britain and in other British colonies (notably in Australia) by 1840, which dictated the approaches that would be adopted in New Zealand.

In Britain the Industrial Revolution of the eighteenth century had led to the development of toll roads (turnpikes), canals and railways, in order to support the growth of the towns, and to transport raw materials from port to factory, and finished goods from factory to market. This infrastructure had to be constructed as an additional layer spread over an essentially medieval rural land status and usage pattern. This represented a major upheaval to what had gone before, as wider needs had to override local sensitivities and livelihoods. The ability to impose a new transport route on an established community was achieved by Parliament passing privately-sponsored legislation to empower private companies to construct their roads, canals and railways. It was this private legislation, a separate act for each individual enterprise, which was the forerunner of all public works legislation.

After a period of time, the passage of numerous pieces of private legislation through the British Parliament, each statute authorising a particular transport route, became viewed as a cumbersome method for achieving the overall purpose sought. In 1845 the manner in which longstanding local rights could be subordinated to wider public interests became codified in the first piece of general public works legislation in Britain (the Land Clauses Consolidation Act 1845), which applied the experience learned when developing legislation for individual projects into a set of common standards for all projects. Marr has described how the British Parliament, the forum for the landowning class because they were the people with voting rights, made sure that the legislation provided a series of constitutional safeguards for landowners who would be affected. These included the right to receive notice, the right to

object, the right to an independent arbitration of disputes, and the right to compensation. Compensation, however, was seen in strictly limited terms as being monetary compensation, because the British landowners tended to view land as an investment commodity, and its loss solely in economic terms[15].

While Britain may have provided the precedent for legislative authority to override local interests, it was the manner of colonial development that made 'public works' such a large feature of New Zealand life. When the British colonised a new territory, there was no pre-existing structure that could meet the needs of the colonisers. All their requirements for seats of government, military barracks, ports and other infrastructure had to be provided by the new colonial government. Where private enterprise might have provided the 'public works' in England, this pattern was not repeated in the colonies. Colonial governments became all-pervasive enterprises and were expected to provide the 'public works'. This was especially so in Australia, where many of the governments (including New South Wales, which was the colony most involved in the establishment of government in New Zealand) were established to serve a distinctly government purpose as penal settlements.

By 1840 these various strands had become well-established in British colonial government thinking. Only the government was seen as being capable of constructing and operating 'public works'. An expectation developed among the new settlers, and among the politicians that the settlers elected, that a major purpose of government was to be there in a physical capacity on a day-to-day level with the provision of public services. Government was expected to have a central role in providing infrastructure and smoothing the way for settlement. These expectations were then translated into requirements for land for the various public services. It was at that stage that Maori landowners in New Zealand found themselves facing the acquisition ambitions of a land-requiring Crown.

2.3 Laying Off and Taking Public Roads

2.3.1 Introduction

It is today a tenet of New Zealand life so entrenched in people's minds as not to be thought about or questioned, that roads are public roads, and located on publicly-owned lands. But this was not always so. For about the first twenty years of colonial government, tracks

[15] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), pages 19-20.

generally followed the routes created by Maori, and there was a 'live and let live' attitude towards their use. Maori did not think about such tracks in terms of tolling their users. They might object to people coming on to their land, but this was about access to the tribal rohe in general terms, rather than specifically about the strip of land occupied by the track.

However, from the early 1860s it became taken for granted in government that roads had to be laid out as strips of Crown-owned land, generally one chain (20 metres) in width, in order to guarantee free and unfettered public access. The Crown chose to focus on becoming owner of the underlying title, rather than contemplate and develop a less invasive right of public access that overlaid and did not disturb the underlying title[16]. The more relaxed practices of the earlier years, which might be said to be closer to the principles of partnership that were supposed to be fostered under the Treaty of Waitangi, gave way to a more rigid and separatist approach that distinguished between public roads and adjoining private lands. These distinctions have today developed into a virtual industry, where each minor realignment of a road has to be accompanied by a survey and adjustments to the underlying land ownership pattern.

2.3.2 The Genesis of a Public Roads Policy

Marr has shown that, while there might have been a 'live and let live' approach adopted in the early years, this generally applied to those lands not owned by the Crown[17]. On the Crown lands, roads were laid out as part of the settlement pattern of defining farm and town sections. This was easy to do, as the underlying title to the land was already in public ownership.

The Government's need for roads through private property (in particular Maori property) to be formally defined and become public property had its origins in the legislative push in the late 1850s and early 1860s to establish a mechanism to enable Maori-owned land to be purchased by Europeans in a simple and clean fashion. Under the Native Lands Act 1862, the Crown gave up its right of pre-emption (sole right of purchase) guaranteed to it under the Treaty of Waitangi, in favour of allowing private individuals and enterprises to deal directly

[16] Just how such a right of public access, or public right of free passage, might have developed and operated has not been examined. However, the reality remains that many countries in the world survive and prosper without requiring the type of statist freehold ownership of public roads practised in New Zealand.
[17] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), pages 29 et seq.

with Maori owners. In turn, for private purchasing to be placed on a stable foundation, those purchasers needed certainty about who the rightful owners were. Both settlers and the Crown perceived that there was always the risk that after it was thought that a purchase had been completed, other Maori might then also claim to be owners. The Crown sought to overcome such difficulties by establishing the Native Land Court. The Court's task was to define who were the acknowledged owners under custom and tradition, so that European purchasers would know with whom they were to deal. Along with requiring Maori owners to go through the Court to establish their rights to a parcel of land, Europeans were forbidden from purchasing Maori-owned land unless it had already been investigated and ownership decided upon by the Court. A purchase by Europeans under these circumstances would be recognised by the Crown as an absolute right of freehold, and a Crown grant could be issued for it.

It was imagined, when drawing up the legislation establishing this system governing the sale and purchase of Maori-owned land, that many purchases would be of large blocks of land, traversed by tracks already in use by the community, both Maori and European. It was considered inappropriate that Europeans should obtain freehold rights to such tracks, and thereby be capable of preventing others from using the tracks. The legislation establishing the Native Land Court therefore gave the Crown, as partial quid pro quo for its obligation to acknowledge the freehold rights of a European owner by the issue of a Crown grant, the right to lay off public roads through such European-owned lands, and take the strips of land occupied or intended for such roads out of private and into public ownership.

The Native Lands Act 1862 included Section 27, which stated:

> From and out of any Lands which may be purchased from the Native proprietors thereof under the provisions of this Act, it shall be lawful for the Governor at any time thereafter to take and lay off for public purposes one or more line or lines of Road through the said Lands. Provided that the total quantity of Land which may be taken for such line or lines of Road shall not be more than after the rate of five acres in every one hundred acres.

It is the proviso to this section that has led to the right being known as the right to take land for roads under the 5% provision.

However, the authority of the Native Lands Act 1862 was hardly used at all anywhere in New Zealand, and certainly not in Te Rohe Potae District, before it was revoked and replaced by new legislation in 1865. This new legislation considerably expanded the statutory power to

lay off roads over lands that had been investigated by the Native Land Court, by deleting the requirement that such lands had to have passed into European ownership. This broadening of the power to include Maori-owned as well as European-owned land almost certainly had its origins in a military conflict that caused the Second Taranaki War. The Crown had acquired two blocks of land, at New Plymouth and at Tataraimaka, separated by Maori-owned land between them. A wagon road between New Plymouth and Tataraimaka, to cater for the needs of the settlers and the garrison of a military redoubt at Tataraimaka, crossed this Maori-owned land. In mid 1863, Maori refused Europeans and the military a right of passage along this road, and a train of supply wagons was fired upon, with loss of life to several members of its military escort.

Besides seeing this act as a challenge to Government authority, the Crown also realised that greater security of tenure was required for roads that had previously been thought of as available to all. From the point of view of the settlers, whose political representatives were during this period gaining ascendancy over the Government officials appointed by the 'Home' Government in England, it was necessary to compulsorily take a right of road access and use across Maori-owned land into public ownership, and out of the control of the Maori owners.

How and whether this could be done in constitutional and legal terms, given the existence of the Treaty of Waitangi guaranteeing Maori their continued tino rangatiratanga over their own lands unless they chose to part with them, was the subject of some debate at the time. Marr has shown that three differing legal opinions were obtained[18]. Attorney General Henry Sewell argued that a right of passage through the country was part (he referred to it as "an essential condition") of the Crown's rights of sovereignty obtained under the Treaty, limited only by an obligation to compensate owners if property, such as improvements on the land, was damaged by the road. Assistant Law Officer Francis Fenton, however, felt that New Zealand legislation such as the Constitution Act 1852 had absolutely acknowledged the private property rights of Maori so that, as in Britain, parliamentary authority was needed first before lands could be compulsorily taken from Maori. Finally, Frederick Whitaker, a successor to Sewell as Attorney General, believed that the Crown's sovereignty over New Zealand allowed it to establish a right of road through any lands, including Maori-owned

[18] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), pages 49-52.

lands, and that a law passed by the New Zealand Parliament to that effect would in effect override any obligations and rights under the Treaty.

At this time (1863), the 'Home' Government in Britain still retained overall control over the actions of the Colonial Government in New Zealand, though the bonds were in the process of being broken as the 'Home' Government was withdrawing Imperial troops and insisting that the Colonial Government pick up the cost of any military operations. During this interim period the intentions of the Colonial Government had to be sent to the Governor, who would forward them to the Colonial Office in Britain for approval, the answer being returned many months later, sometimes in the form of advice and sometimes in the form of a refusal to give consent. While all three legal opinions were sent to London, the 'Home' Government responded only to the first opinion, that given by Sewell. Presumably it felt that what it said about Sewell's opinion represented all that it had to say on the subject. Its response was that compulsory appropriation from any British subject (including Maori, who had been assured that they would have the same rights as British subjects under Article 3 of the Treaty) could not be allowed unless approved by legislation. It then offered its advice that to compulsorily take roads through Maori-owned lands would be an unwise step at that time, given that Maoridom was in a ferment over Crown confiscation of Maori land, and that it had been necessary to import large numbers of Imperial troops to wage war in support of the Crown's interests. It felt that both policy and justice demanded that the Colonial Government should not at that time do anything that would be contrary to Maori expectations based on the Treaty.

Settler politicians of the Colonial Government did not take kindly to this advice. As they saw it, the loss of life on the road to Tataraimaka could not be disregarded, and a right of road over Maori-owned land needed to be established in statute, otherwise Maori could exercise a tyranny of obstruction over the European settlement of the country. The Colonial Government passed a raft of legislation (including the Provincial Councils Powers Extension Act 1963, the Land Clauses Consolidation Act 1863 and the Provincial Compulsory Land Taking Act 1863), which allowed lands to be compulsorily taken for roads and other public works, subject to the payment of compensation.

As it turned out, those settler politicians had included a constitutional gaffe in the legislation, in that much of it was based upon passing the compulsory taking powers down to Provincial

Government level. The 'Home' Government felt that the taking powers over Maori customary land should be retained at the level of the Colonial Government in Wellington, where the appropriateness of the use of such powers would be considered in the wider political and military context of the colony as a whole. It was anxious to avoid any further outbreaks of 'rebellion' arising from unwise use of the powers at a more local level. Indeed, it felt so strongly about this that the 'Home' Government declined to recommend the Provincial Compulsory Land Taking Act for Royal assent, while adding that it had no objection to the legislation if Maori customary lands were excluded from its coverage.

In response, the Public Works Lands Act 1864 was passed, whereby the Colonial Government, rather than provincial governments, could take land for roads through Maori customary land. While consistent with the predominant attitude at the time, the extent to which it was used in practice is less clear. For the purposes of this Te Rohe Potae District report, its effect was nil, in large part because of the isolated location of the district from both the Colonial Government headquarters in Wellington and the Provincial Government headquarters in Auckland, and because of the absence of Crown influence within the district. Of far more significance was a change to the Native land legislation that was passed one year later.

2.3.3 Taking Roads under the 5% Provisions of the Native Lands Legislation

The development of legislative authority to take roads during 1863 and 1864 had an impact on the drafting of the new Native Lands Act in 1865. By then, of course, the European population of New Zealand felt that it had emerged victorious from the 'Maori Wars', and was unwilling to countenance further obstructions to settlement. The Native Lands Act 1862, although used only sparsely from 1864 onwards, had been found to have defects in its formulation, which required correcting and, indeed, strengthening in order to enable Europeans (and the Crown) to readily purchase Maori-owned land.

Section 76 of the Native Lands Act 1865 authorised the taking of up to 5% for roads "out of any land which may be granted under the provisions of this Act". This meant that the power was given not just over lands purchased by Europeans, but also over lands that remained in Maori ownership, once the Native Land Court had issued a title. Besides the maximum amount of 5%, there were three additional provisos in the 1865 Act. The first allowed the Governor to forego the actioning of the right if he chose to do so; this opportunity was hardly

ever, if ever at all, used, so is not particularly relevant to the history of this right. The other two provisos were more significant to the operation of the 5% provision.

> Provided also that nothing herein contained shall authorise the taking of any lands which shall be occupied by any buildings, gardens, orchards, plantations or ornamental grounds.
>
> Provided always that this power shall cease and determine at the expiration of ten years from the day of the Crown Grant.

The small change in wording between the 1862 and 1865 Native Lands Acts would have huge consequences for Maori. The legislative power affecting roads over blocks remaining in Maori ownership was used as a matter of course for the next 60 years. No block that passed through the Native Land Court and had its title investigated was immune, unless it happened to be a small block that was either isolated or inconsequential enough to be avoided as the national roading network we know today first had its main routes developed, and then became infilled with secondary feeder routes. There had been no consultation with Maori in the drawing up of the legislation. There was to be no consultation with Maori (except at the practical working-surveyor level in relation to the avoidance of sites showing evidence of occupation and land development) about the use of the powers that the Crown gave itself, and there was to be no compensation paid for the taking of the lands for roads under this statute.

Although it might be argued that the provision of public roads would enhance the Maori land through which the roads passed, better enabling Maori to engage in commerce with the wider community, and thereby being of benefit to the Maori landowners, such an argument is a weak one. Maori almost never asked for their land to be taken for public roads. The routes of many roads were often defined because of their ability to reach and service adjoining privately-owned and Crown-owned lands, rather than to establish a pattern for the benefit of use of the Maori-owned land. On constrained sites, such as in narrow valleys, newly developed roads could be quite destructive of, or in competition with, existing occupation patterns. Because Maori had no access to government land development funds, unlike the many indirect subsidies available to European settlers, there were limited opportunities for Maori to take advantage of the improved access provided by the roads. If anything, the most significant ‘benefit’ provided by public roads to the Maori-owned land through which they passed was to make that adjoining Maori-owned land more attractive to European purchasers. Certainly, given the overwhelming support for purchase and development by Europeans of Maori-owned land that was provided by the totality of the legislation passed during the

nineteenth and early twentieth centuries, the loss for Maori of the ownership of lands adjoining public roads turned out to be the most significant outcome of the powers that the Crown gave to itself in 1865.

In preliminary remarks made in its *Ngati Rangiteaorere Report* in 1992, the Waitangi Tribunal has characterised the 5% provision as a form of confiscation. Sufficient additional historical research has been done in the 17 years since that report to show that it is a true characterisation. This report will demonstrate that the Crown applied the power it gave itself in a confiscatory manner in Te Rohe Potae District. Before looking at the impact of the legislation on the district, however, it is necessary to examine the legislative changes that marked the evolution of the Crown's power over the years.

As each revision of the Native Lands Act was passed through Parliament, it continued to contain the provision allowing up to 5% of a block to be laid off and taken for roads. It was included in the Native Land Act 1873 (Section 106)[19], the Native Land Court Act 1886 (Sections 93-95), the Native Land Court Act 1894 (Sections 70-71), and the Native Land Act 1909 (Sections 388-391).

In addition, in a move promoted by and favouring the Crown, the period within which the right could be exercised was extended from 10 to 15 years in the Native Land Act Amendment Act (No.2) 1878 (Section 14). Although a decision of the Court of Appeal in 1886 established that the extension was not retrospective, and was only relevant to Crown Grants issued after 1878[20], this was overturned by another Court of Appeal decision in 1891[21].

The 1873 legislation added that a road could not be laid out over any "pahs, Native villages or cultivations", or any burial grounds, as well as those types of occupation listed in the 1865 Act, though it did allow such intrusions into occupied areas if they were authorised by the provisions of the Land Clauses Consolidation Act 1863 (a forerunner to the Public Works Acts).

[19] The provision was not included in the Native Land Court Act 1880, but this Act repealed only those parts of the Native Land Act 1873 as were "repugnant" to the operation of the 1880 Act, meaning that Section 106 Native Land Act 1873 remained in force until 1886.
[20] *Walker v Wellington and Manawatu Railway Company*, 4 NZLR 127-134.
[21] *Fabian v The Borough of Greytown North*, 10 NZLR 505-514.

An 1882 amendment to the Native lands legislation (instituted by Section 23 Public Works Act 1882) broadened the Crown's powers further. Instead of applying only to Native lands the title and ownership of which had been recognised by the issue of a Crown Grant, it extended the Crown's right to the taking of roads over any land that had passed through the Native Land Court and had been issued with a Native Land Court certificate of title or memorial of ownership. Granting of land was a further step after the issue of a Court title or memorial of ownership, but there were occasions when it had not followed as a matter of course. This was because the issue of a Crown Grant involved some cost, and Maori owners might not necessarily feel that the cost was justified. From 1882 it was no longer necessary to wait for the Crown Grant to be issued before the 15-year time period commenced, and roads could be taken as soon as a Native Land Court certificate of title or memorial of ownership had been issued. The 1882 amendment was incorporated into the Native Land Court Act 1886.

The Native Land Court Act 1894 introduced some changes of wording, and these were further complicated by a duplication of the legislation, in that a similar (although slightly different) power was also included in the Public Works Act 1894 (Sections 91-94). One effect of the differences between the two statutes was identified by the Solicitor General in 1915. He pointed out that the Public Works Act 1894 (and its 1905 and 1908 successors) had referred to the Native Land Court title being a certificate of title or a memorial of ownership, but this was not the terminology used in the titles issued under the Native Land Court Act 1886 and the Native Land Court Act 1894, which referred to orders on investigation of title. By contrast the Native Land Court Act 1894 had referred to the Court title being a certificate of title, a memorial of ownership, or "other instrument conferring title". The Solicitor General therefore concluded that takings of road between 1894 and 1909 from lands the title for which had been issued under the 1886 or 1894 Acts, citing the Native Land Court Act as authority, were lawful, but takings between those years citing the Public Works Act as authority would not be.[22]

The Solicitor General was Sir John Salmond, who had been the architect of the Native Land Act 1909, and who was regarded at the time as the person, more than any other, who had

[22] Solicitor General to Under Secretary for Lands, 16 December 1915. Lands and Survey Head Office file 16/258. Supporting Papers #788-791.

grappled with and been able to comprehend the multiple complexities of the nineteenth century Native land legislation. His experience meant that his opinion, even without taking into account his official position, therefore carried considerable weight.

Although Salmond, looking forward, regarded this distinction as "not one of much practical importance", there was consternation about the opinion within the Department of Lands and Survey, as it contemplated the status of all the roads that had been taken over the previous thirty years.

> In the light of the opinion now given in connection with the matter, there is no doubt that the taking of many of these roads would be considered invalid. On the other hand, however, it is not likely that the question will be raised, as the Proclamations have been registered, and the roads recorded on titles, etc. Some of the roads would of course be legal by right of user, formation, etc.[23]

The Under Secretary for Lands agreed that it was best to do nothing, and tell no one outside his Department. He minuted, "no action to be taken in regard to roads previously taken"[24].

Lest it be thought that the Native Land Act 1909, which was a major tidying-up of the earlier legislation, had removed all complexity, it is instructive to consider the Solicitor General's opinion about what rights did exist under the Native Land Act 1909 to take land for roads from titles issued under the 1886 and 1894 Native Land Court Acts.

> When the original title to land is an order on investigation of title under the Native Land Court Act 1886 or the Native Land Court Act 1894, a road may be taken through that land under section 389 of the Native Land Act 1909 without compensation, subject only to the following limitations:
>
> 1) When the land has not become the subject of a land transfer title by the registration either of the original order or of a subsequent partition order, the right must be exercised within fifteen years from the date of the order.
> 2) When the land has become the subject of a land transfer title, the right must be exercised within fifteen years from the date of registration.
> 3) When the land has been alienated, the right must be exercised within fifteen years from the date when the title to the land was ascertained by the Native Land Court. The title is ascertained when the order on investigation has been made and the time for notice of appeal has expired. See Native Land Court Act 1894, Section 3; Native Land Amendment Act 1913, Section 12.[25]

[23] RJ Gambrill to Under Secretary for Lands, 21 December 1915. Lands and Survey Head Office file 16/258. Supporting Papers #792.
[24] File note by Under Secretary for Lands, on RJ Gambrill to Under Secretary for Lands, 21 December 1915. Lands and Survey Head Office file 16/258. Supporting Papers #792.
[25] Solicitor General to Under Secretary for Lands, 16 December 1915. Lands and Survey Head Office file 16/258. Supporting Papers #788-791.

The 5% provision was a draconian imposition on Maori landowners. It was also discriminatory. There was legislation affecting some (but not all) settler-owned land that shared some parallels with that for Maori-owned land, but it was nowhere near as harsh. The 5% provision, with its associated time limitations, applied to European settlers who had purchased their land from Maori owners within the time period, meaning that potentially they could lose some of their land without being compensated. Crown Land leased to settlers under the Land Act was also bound by some general provisions of that Act[26]. One of these (Section 13 Land Act 1892, replaced by Section 11 Land Act 1908, in turn replaced by Section 12 Land Act 1924) gave the Crown the right to take roads through leased land. Because it was a power retained by the Crown when leasing out its own land, there was no provision for compensation. However, the significant difference, when compared with the Maori land legislation, was the requirement to obtain the approval of the lessee. There was also the ability, under the same legislation, for privately-owned freehold land to become public road, although again this required the consent of the owner. This mechanism to obtain land for roads without compensation under the Land Acts lasted from 1892 through to 1948, when it was transferred into the public works legislation as Section 29 Public Works Amendment Act 1948, and remained on the statute book until 1981.

From 1924 the Crown had an additional power under the Land Act. Any land that was rendered unsuitable, or was not able to be conveniently occupied[27], as a result of the taking of a road under that Act, could also be taken. As with the taking of roads under the Act, these additional lands could also be taken only by consent of the owner or lessee.

2.3.4 Taking Roads without Compensation under Other Legislative Provisions

Section 96 Native Land Court Act 1886 introduced another mechanism whereby the Crown could acquire Maori-owned land for public roads without paying compensation. It read:

> Whenever any lines of road are surveyed and laid off on or over any Native lands, under the direction of the Surveyor General, the site of such road shall be deemed to be a road dedicated to the public, and shall vest in Her Majesty.

This was a more sweeping provision than the 5% provision. For a start, it made no mention that a maximum of 5% could be taken. Another proviso in the 5% legislation, preventing

[26] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), page 65.
[27] Such lands, in Public Works Act parlance, would be those taken for the use, convenience or enjoyment of a road, or as a severance.

roads being taken over occupation sites, was also not included. And, in referring to the Surveyor General rather than the Governor, the powers under the section were being passed down to a lower level of government, from the Crown's representative in New Zealand to a public official.

In referring to 'any Native lands', Section 96 enabled the Crown to avoid waiting for land to be passed through the Native Land Court before laying off and taking roads. Its most frequent use was to be on land that was still customary land, where the 5% provision did not yet apply. The section was repeated, unchanged, in the Native Land Court Act 1894 (as Section 72), and was also included in the Public Works Act 1894 (Section 95(1)). However, it was called into question during the period 1902 to 1905.

In 1902 the Minister of Lands asked the Solicitor General for a legal opinion about the power to take roads under Section 95 Public Works Act 1894[28]. The Solicitor General replied:

> I may observe that it is merely a vesting section, and does not in itself give any power to lay off roads.[29]

In July 1904 the Chief Engineer of Roads drew attention to this legal opinion when forwarding a copy of a Proclamation laying off a road to the Surveyor General for his signature.

> It must however be understood that this Department [the Department of Roads] takes no responsibility for the legality or otherwise of the road in view of an opinion expressed by the Solicitor General….
>
> I am aware that roads have been laid off from time to time under the assumed legality of a Warrant issued by yourself as in this case, and I would suggest that you should sign the attached notice for what it is worth, leaving the Native owners to take any further action; as, if they do not, the road will no doubt become public road by right of user.
>
> It seems however that it would be advisable to obtain an amendment to the Act making it clear that roads taken in pursuance of your warrant are legal roads, and that they shall thereupon vest in the Crown.[30]

In 1905 the Surveyor General decided that he would no longer issue authorities for the laying off of roads under either of the two sections[31].

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[28] Minister of Lands to Solicitor General, 17 December 1902. Lands and Survey Head Office file 16/258. Supporting Papers #782.
[29] Opinion of Solicitor General, undated (December 1902). Lands and Survey Head Office file 16/258. Supporting Papers #783.
[30] Chief Engineer of Roads to Surveyor General, 19 July 1904. Lands and Survey Head Office file 16/258. Supporting Papers #784.

The doubt over the authority to take roads under Section 72 Native Land Act 1894 (or Section 95 Public Works Act 1894) appears to have resulted in a rewriting of the provision when it was included in the Native Land Act 1909 (Section 387). This latter section, while upgrading the responsible officer from the Surveyor General to the Governor, was also quite explicit about the lack of any requirement to consult, the lack of any need to obtain the consent of the Maori landowners, and the lack of any obligation to pay compensation.

> The Governor may at any time by Proclamation, without the consent of any person, and without liability to pay compensation to any person, lay out and set apart such roads as he thinks fit upon any customary land; and thereupon the roads so set apart shall become public highways, and shall be vested in the Crown free from the Native customary title.

This statement, perhaps more than any other, indicates the extent to which New Zealand law, in its application to Maori-owned land, had departed from the constitutional principles established in Britain to govern the limits of the Crown's powers of compulsory acquisition. It had probably been necessary to make the statement precisely because of the departure from the normally-accepted legal conventions governing takings of privately-owned land.

While the Native Land Act 1909 clarified New Zealand law for all future cases of takings of road from customary land, it was not retrospective. All similar previous takings under the 1886 or 1894 Acts were not affected, meaning that their legality remains questionable today. As the Chief Engineer of Roads had suggested in 1904, rather than acting in good faith and offering some protection to Maori, the Crown has left it up to Maori landowners to decide if they wanted to challenge the legality of the Crown's actions in court. How they were expected to be aware that the Crown might be acting outside its legal authority is another matter, since the Crown was not drawing this to the attention of Maori. Given the cost, and the resources the Crown could bring to bear, the likelihood that Maori would be in a position to challenge the Crown was slim, with the result that no such challenge has been raised.

The power to take land for public roads without either consultation or compensation was not repealed until 1927, by Section 30 Native Land Amendment and Native Land Claims Adjustment Act 1927. By then it had largely run its course, as few new blocks had been brought forward during the previous fifteen years to be investigated by the Native Land Court

[31] Surveyor General to All Chief Surveyors, 20 March 1905. Lands and Survey Head Office file 16/258. Supporting Papers #785.

for the first time. It was therefore no great loss to the Crown's arsenal of statutory powers that the 5% provision should be abandoned.

However, lest it be thought that the repeal of the 5% provision in 1927 ended the Crown's ability to obtain Maori-owned land for road without needing to pay any monetary compensation for such land, another power had been legislated for fourteen years earlier, and was becoming more rather than less significant. Sections 48-52 Native Land Amendment Act 1913 allowed the Native Land Court to lay out roadlines upon Maori-owned land. These would remain Maori-owned, unless the Governor proclaimed such a roadline as a public road. The Court had a duty imposed on it to notify the Minister of Lands of the existence of a roadline that it thought should, in the public interest, be proclaimed as a public road. This provision was an advance on the 5% rule, in that the defining of a roadline suitable for proclamation as a public road was a public act of the Court in open hearing, where the Court would call for and listen to objections to the proposal from anyone attending its hearing. The Court's decision was thus, nominally at least, a decision made after consultation, and with a right of appeal to the Native Appellate Court. However, there was still no compensation paid.

One year after the repeal of the 5% provision, Section 13 Native Land Amendment and Native Land Claims Adjustment Act 1928 increased the powers of the Native Land Court by providing that, where a road across Maori-owned land was being used by the public as if it was a public road, or had had public monies spent on it, then the Court could order that it would become a public road. The Court was given the option of directing that compensation be paid by the Crown or a local authority, or of not requiring that any monetary compensation be paid. This provision seems to have been directed at road realignments, where a formed road had strayed from the legal road, because Section 14 of the same Act gave a power to the Court to stop a legal road that was not being used as a road, and was no longer required as a public road, and to revest it in Maori ownership. In making the award of monetary compensation optional, Parliament was presumably envisaging that in some cases the revesting of stopped road was sufficient compensation for the taking of other land for road.

Both powers to take Maori-owned land for road that were granted by the 1913 and 1928 Acts have been continued through to the present day, in the Native Land Act 1931 (Sections 487

and 484 respectively), the Maori Affairs Act 1953 (Sections 421 and 422), and Te Ture Whenua Maori Act 1993 (Sections 320 and 321).

In addition to all of the mechanisms listed above to allow the Crown to obtain Maori-owned land for public roads, the Crown also gave itself a couple of backstops, to ensure that there could hardly ever be any doubt about its ability to declare that publicly-used roads were legally deemed to be publicly-owned roads. These backstops applied to both Maori-owned and European-owned land.

Section 100 Public Works Act 1894 was a long-winded definition of what constituted a public road. Two subsections of the definition enabled lands in use as roads to be formally declared to be public roads.

> (4) Lands over which a road has been or is in use by the public, which has been formed or improved out of the public funds, or out of the funds of any former province, or out of the District Fund of any local authority, for the width formed, used, agreed upon, or fenced, not being more than fifty links on either side of the middle line thereof, and a sufficient plan whereof, approved by the Chief Surveyor of the land district wherein such road is situate, has been or shall be registered by the District Land Registrar or Registrar of Deeds of the district against the properties affected by it; and the said Registrars, or either of them, are hereby authorised and required to register any such plans accordingly, anything contained in any other Act notwithstanding, when presented for registration by or on behalf of such Chief Surveyor, together with a certificate under the hand of such Chief Surveyor to the effect that such road has been used and formed as aforesaid.
> (5) Lands over which any road, notwithstanding any legal or technical informality in the taking or construction thereof, has been taken, constructed, or used under the authority of the Government of any province, or of any local authority, and a sufficient plan whereof is registered in manner provided in the last-preceding subsection.

This provision was repeated in the Public Works Act 1905 (Section 101), the Public Works Act 1908 (Section 101), and the Public Works Act 1928 (Section 110).

Another provision, which obscured rather than clarified the status of roads, was to be found in the Counties Act 1886. Section 245 stated:

> The County Council shall have the care and management of all county roads within the meaning of the Public Works Act 1882.
>
> The said Council shall and may exercise such control over all the said roads, although the same may not have been formed or made.

> All lines of roads or tracks passing through or over any Crown lands or Native lands, and generally used without obstruction as roads, shall, for the purposes of this section, be deemed to be public roads, not exceeding sixty-six feet in width, and under the control of the Council aforesaid, notwithstanding such lines of roads have not been surveyed, laid off, or dedicated in any special manner to public use.

The provision was repeated in the Counties Act 1908 (Section 153) and the Counties Act 1920 (Section 155). While this provision was concerned with the operation and control of the roads, rather than the status and ownership of the land beneath them, it added to the formidable thicket of legislation that Maori would have faced if they sought to challenge claims by the Crown that the public had rights of access through their lands.

All of these methods by which the Crown was able to obtain Maori-owned land for public roads reflect a determination on the part of the Crown to achieve its goals. Whenever a gap in its statutory arsenal emerged, or it failed for some reason to achieve its objective, it would pass another piece of legislation. The net result has been that, if ever any doubt emerged about the validity of the Crown's title to a road in public use, it was almost certain to be able to call upon a legislative mechanism to assert its rights and thereby overcome such doubt.

All the remarks above about roads refer to the legal status of roads. Whether or not formed roads were constructed along the legal roads is another matter. Although not the subject of research, almost certainly some of the legal roads will not have had formed or metalled or sealed roads constructed on them, and will still be what are commonly known as 'paper roads'. Such roads, may however, be the only means of legal access to separately defined sections of land. Given that legal access to parcels of land is an important issue in land law today, an unformed road may still be serving a function even when it has never been developed for vehicle use. Lack of formation is not necessarily sufficient to say that a road is no longer required.

2.4 Public Works Acts

2.4.1 Prior to the 1894 Act

The Crown's first use in Te Rohe Potae District of the powers provided by the Public Works legislation was in 1897. All legislation leading up to the Public Works Act 1894 is therefore not particularly relevant to the experience of Maori in Te Rohe Potae District, except in providing some background about the Crown's attitudes and practice.

The attempts by the Colonial Government in Wellington to establish a public works taking regime during the early 1860s have already been described in connection with road taking powers under the Native lands legislation. It was not particularly successful, mainly because of the efforts of the politicians to involve the provincial governments in the process. The provincial governments had little interest in providing services to Maori-owned lands, and were almost fully occupied in catering for the needs of European settlers on their own freehold land, and on the lands that were being opened up by the provincial governments (on behalf of the Crown) for general settlement purposes. This became even more of a focus for the provincial governments during the early 1870s, when they had to respond to the consequences of Julius Vogel's large-scale plans to encourage immigration while borrowing heavily to pay for the infrastructure necessary to cater for the newly arriving settlers. Where the new roading infrastructure impinged on Maori-owned land, the older policy of 'live and let live' still applied. Contracts were issued to Maori for the construction of publicly-available roads over their land, with the contracts themselves being generally considered to be sufficient compensation for the use of the land. There was little or no thought given to the status of the land underlying the road, except perhaps that the ability to take this land under the 5% provision would eventually catch up with the already-commenced road-building programme.

The Immigration and Public Works Act 1870 had provided the statutory authority for Vogel's expansion programme. It established in law a number of principles which had derived from the English experience of infrastructure building, and which have survived through to the present day. The land to be taken had to be defined by survey, so that all parties had the certainty of knowing what was to be taken. Any proposed taking had to be publicly notified, and there had to be an opportunity for objections to be made, and to be given proper consideration. If land was then taken, compensation had to be paid; in the event of dispute, an independent assessor or assessing body would decide how much compensation should be paid. Occupied and improved land (i.e. orchard, vineyard, garden, yard, park, nursery) could not be taken without the owner's consent.

After the provincial tier of government was abolished in 1876, the land-taking powers were brought together and consolidated in the Public Works Act 1876. The main principles found in the 1870 Act were repeated. Marr, in her analysis of the 1876 Act, considered that the requirements to be followed, while eurocentric in outlook (e.g. finite time periods for

objection, objections to be in writing), did not overtly distinguish between European-owned and Maori-owned land[32].

While Marr saw the Public Works Act 1876 as relatively benign for Maori (from a discrimination point of view), she saw an 1882 rewriting of the legislation as more aggressive and hardline in its approach towards Maori landowners. She attributed this to the political climate following the campaign of passive resistance at Parihaka[33], which was itself a product of economic pressures that had resulted from the influx of European migrants during the 1870s. This was portrayed by contemporary politicians as an attempt to prevent European settlement, and thereby as a direct attack on the future wellbeing of the nation. The solution, as reflected in the Public Works Act 1882, was to define different sets of rules to apply to European-owned land held under title from the Crown, Maori-owned land held under Native Land Court title, and Maori customary land. Both categories of Maori-owned land received fewer, or more watered-down, protections than the European-owned land. While Maori-owned land could still be taken under procedures that also applied to European-owned land (Sections 10 and 11), there was also an alternative taking mechanism specifically for public works being developed by central government (i.e. this alternative was not available to local authorities). Under Sections 24 and 25, Maori-owned land could be deemed to have been taken two months after the issue of an Order in Council by the Governor. The land to be taken did not need to be surveyed, it only had to be "defined in general terms". Objections were not called for, and there was no provision for consideration of objections.

The Treaty of Waitangi had set out guarantees provided by the Crown to ensure protections for Maori landowners. Yet here was the Crown doing the exact opposite, providing fewer protections than other British subjects received.

Regardless of whether Maori-owned land was taken in the same manner as European-owned land, or under the alternative mechanism, there was a difference in the determination of compensation to be paid. European owners went to a Compensation Court to have the amount of compensation to which they were entitled decided for them. Maori owners, on the other hand, had their compensation determined by the Native Land Court. European owners

[32] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), pages 88-89.
[33] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), pages 109-110.

made the application to the Compensation Court, while the Minister of Public Works made the application to the Native Land Court.

Subsequently Sections 24 and 25 were repealed by an amending act in 1887, and replaced by a power limiting the alternative mechanism to customary land only.

2.4.2 Public Works Acts 1894, 1905, 1908 and 1928

The next rewriting of the Public Works Act, in 1894, provided the template that was adopted in later consolidations of the legislation in 1905, 1908 and 1928, with the latter legislation lasting through to 1981. It therefore established how public works takings would proceed for nearly 90 years. Marr has also noted that, in addition to the static framework of the legislation, attitudes among politicians and Crown officials became entrenched around the differing treatment of European-owned and Maori-owned land[34].

The 1894 Act provided a clearer distinction between Maori-owned and European-owned land. In a separate Part IV, it set out two avenues for the taking of Native Land. If title to the Native Land had been derived from the Crown, then the taking procedures would be the same as for European-owned land. This included advertising of a Notice of Intention to Take, and the receipt of objections. If title was not derived from the Crown, then it was merely necessary to prepare a survey plan in advance, before the Governor signed an Order in Council taking the land. It was not legally necessary to issue a Notice of Intention to Take the land, and there was no opportunity for objections, or for objections to be considered. In both instances, however, compensation would be considered in the same manner by the Native Land Court.

The provisions of the 1894 Act concerning the taking of Native Land were repeated without amendment in the Public Works Act 1905 (Sections 88-91) and the Public Works Act 1908 (Sections 89-91). What did change, however, was the definition of what constituted 'Native Land'. A Supreme Court decision in 1901 found that land ceased to be Native Land as soon as ownership had been determined by the Native Land Court[35]. The definition adopted by the Crown, and which continued to be adopted up until 1909, had been broader than this,

[34] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), page 130.
[35] *In re Rotomahana and Taheke Blocks*, (1901) 29 NZLR 203-212.

regarding as Native Land those lands that had been through the Native Land Court, but had not had a title registered or granted. It was necessary to pass the Rotoiti Validation Act 1909 to retrospectively validate takings of supposedly 'Native Land' that had not fitted the judicially-defined interpretation of that term. The Public Works Amendment Act 1909 then inserted into the principal Act the narrower definition of Native land as being what is today known as Maori customary land[36].

While the definition of 'Native Land' was being narrowed, there was progressively less land fitting that definition, as the work of the Native Land Court in investigating title to blocks continued across the country. This meant that more land would be subject to the same procedures for taking as European-owned land, if land was taken from it. Yet even here there were some subtle distinctions that had a large impact in practice. If Maori-owned land had not had its title registered in the Lands and Deeds Registry, then it was not necessary to personally serve the Notice of Intention to Take on the owners (although the Notice would still be published in the *New Zealand Gazette* and the *Kahiti*, and still displayed at a local post office). Maori landowners would thus have often been unaware of the Crown's interest in their land, which would in turn have impacted on the number of objections that were lodged.

Another feature of the early half of the twentieth century was the broadening range of reasons or purposes for which land could be taken, as reflected in the definition of what constituted a 'public work' set out in the Acts. The 1894 Act had set out that lands could be taken for, among other things of a similar nature, roads, railways, defence, gravel pit, quarry, bridge, drain, harbour, rifle range, lighthouse, public school, and any building required for public purpose or use. Amendments to the legislation added to the list of purposes for which land could be taken; hospitals and Native schools (both in 1900), forest plantations, recreation grounds and scenery preservation (all in 1903), irrigation schemes (in 1910), aerodromes (in 1935), river erosion and soil control works (in 1941), and housing (in 1945), among others.

The power allowing takings for scenery preservation in 1903 was unusual in that it was accompanied by a similar taking power in another piece of legislation passed that year, the Scenery Preservation Act 1903. The taking powers in both Acts were used jointly until 1906,

[36] C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), pages 114-115.

when an amendment to the legislation in 1906 effectively cancelled the authority in the Scenery Preservation Act to take lands for that purpose from Maori-owned land, allowing takings only of Crown or privately-owned land. The power to take Maori-owned land was restored in 1910, with the passing of another amendment to the Scenery Preservation Act. While the Crown argued that the removal of the taking power in 1906 was for procedural reasons, because the legislation had not been translated into Maori[37], the Waitangi Tribunal in its Central North Island report has pointed to the substantial opposition to the Scenery Preservation Commission's activities from Maori in the Rotorua district and from Apirana Ngata as a more significant reason for the change in 1906[38]. However, because the power to take land for scenery preservation purposes was not removed from the Public Works Act by the amending legislation of 1906, this meant that a mechanism still existed to take Maori-owned land for that purpose during the 1906-1910 period.

Other additional purposes for which land could be taken were included in legislation governing the activities of local authorities. By various changes to the Counties Acts, local authorities could request the Crown to take land for workers dwellings (in 1913), paddocking driven cattle, and recreation grounds (in 1928).

As opportunities to use the Public Works Act expanded, and as New Zealand life became more complex and generated greater demands for public works to be built, the number of takings increased. This would have had a progressively disproportionate impact on Maori, as the amount of land available in their ownership for their sustenance was declining rapidly. Yet, unlike sales of Maori-owned land governed by the Native Land Acts, the retention of sufficient land by Maori owners for their needs has never been a relevant consideration required by the Public Works Acts.

2.4.3 Changes to the Public Works Act 1928 since 1952

In general the Crown had it virtually all its own way up until the 1960s. There were numerous legislative amendments to the main acts, sometimes every year, which were usually intended to assist the Crown where an impediment to taking had been detected. In

[37] Attorney General recorded in *New Zealand Parliamentary Debates*, Volume 153 (1910), pages 890-891, referred to in C Marr, *Public Works Takings of Maori Land, 1840-1981*, Waitangi Tribunal, Rangahaua Whanui Series, National Theme G, 1997 (First Release), page 122.
[38] Waitangi Tribunal, *He Maunga Rongo; Report on Central North Island Claims, Stage One*, Wellington, 2008, Volume 2, pages 834 and 842-843.

assisting the Crown's objectives, such amendments had the effect of narrowing and limiting the rights of landowners whose lands were taken.

Since 1952 there have been a number of amendments that have helped restore, in part, the balance between the power of the State and private property rights. These have coincidentally occurred every ten years or so. The Public Works Amendment Act 1952 set a time limit on the validity of a Notice of Intention to Take land, requiring that the intention be renotified if it had not been followed up by a taking within twelve months. However, that did little to curb the extensive rights enjoyed by the Crown and local authorities, since the same legislation also provided a procedure whereby local authorities could change the purpose for which land was taken to another purpose. While the proposed change would be notified to the public at large for their comments, there was no requirement to discuss the change with the former owners of the taken land.

The Public Works Amendment Act 1962, however, instituted a number of significant changes. While there had always been legislative provision for intended takings to be agreed upon in advance by the land owners and occupiers, in which case a Notice of Intention to Take land need not be issued and objections need not be called for (Section 32 Public Works Act 1928), the 1962 amendment gave greater weight to this option. It did this by an amendment to Section 32, making it possible for Crown officials to avoid having to go to the Governor General to get a Proclamation issued taking the land. Instead, they could arrange for the Minister of Public Works to issue a declaration that, "an agreement to that effect having been entered into, the land, or the estate or interest in land, is thereby taken for the public work". The Minister's declaration was deemed to have the same practical effect as if it were a Proclamation. Only if it were not possible to obtain prior agreement to a taking, would the notification, objection and Governor General's Proclamation procedures be followed. The effect of this was dramatic, as the Crown adopted the streamlined declaration provisions wholeheartedly.

The 1962 legislation also introduced changes to how compensation would be determined. Recourse to the Maori Land Court was abandoned, and instead compensation for Maori-owned land would be negotiated between the Crown (or local authority) and the landowners. If agreement could not be reached, and arbitration was required, then a claim for compensation would be heard by a Land Valuation Tribunal (with appeal to a Land Valuation

Court), in the same manner as for European-owned land. In an associated change it was made more convenient for agreements to be reached outside a court hearing on the amount of compensation to be paid, when the Maori Trustee was automatically made the representative of the Maori owners for the negotiation of compensation, where there were four or more owners. While the Maori Trustee's expertise probably on balance benefited Maori owners, this provision of the law disenfranchised the owners, and made the process of determining compensation less transparent to the owners. It also raised suspicions among Maori that the Maori Trust Office, part of the Maori Affairs Department and staffed by Crown officials, might be willing to collude with other Crown officials promoting takings of Maori land, rather than act unreservedly to benefit the Maori owners.

The benefits or otherwise of compensation for Maori-owned land being determined by the Maori Land Court had been debated in Government circles for a number of years prior to 1962. One school of thought was that there was no need for a distinction between Maori-owned and European-owned land, especially as both Courts were bound to follow the same methodology in deciding the amount of compensation (laid down in Section 29(1) Finance Act (No.3) 1944). Another school of thought was that judges of the Maori Land Court had a better understanding of Maori sensibilities and that Maori would be suspicious of becoming involved with another court jurisdiction. Eventually, however, it was a third school of thought that prevailed, when it was noted that most claims for compensation for European-owned land were settled by agreement, without the need for a protracted and argumentative hearing. By contrast the Maori Land Court was required to hold a hearing and hear from both parties, even if they had agreed in advance. Compensation assessment was considered to be a time-consuming, costly, and inessential function of the Maori Land Court. It was therefore administrative efficiency and convenience that was behind the change to the law in 1962[39].

The 1962 amendments changed the whole character of most public works takings. The Ministry of Works became more focussed on negotiating with Maori owners, so that the amount of compensation to be paid was often agreed upon as an integral part of the prior agreement to allow a taking. The emphasis on negotiation was assisted by the increased uptake of Section 438 vestings, whereby multiple owners could be represented by appointed trustees (including the Maori Trustee as Section 438 trustee). Although the ability for Maori

[39] The various arguments are discussed in Maori Affairs Head Office file 38/1/1.

owners to be taken by surprise, or for antagonisms to develop, did not disappear, the likelihood of this happening was substantially reduced.

In 1973 another amendment established an independent appeal mechanism, whereby objections to a proposed taking would no longer be considered by the Minister of Works, but instead would be heard and decided upon by the Town and Country Planning Appeal Board.

In 1974, all distinctions between Maori-owned land and other types of land were abolished in the Maori Affairs Amendment Act 1974. For multiply-owned Maori land, a Notice of Intention to Take would be served on the Registrar of the Maori Land Court, who was then required to call a meeting of owners to allow them to consider the Crown's proposals[40].

These changes, all of which were consistent with principles of natural justice for Maori landowners, serve to highlight the inequities of the earlier system for taking their lands for public works.

Apart from the so-called protections provided to Maori landowners in the Public Works Act itself, there was little other assistance provided by the Crown to Maori. In 1947 the Maori Affairs Department came to an arrangement with the Ministry of Works, whereby all Notices of Intention to Take Maori-owned land would be sent to local Registrars of the Maori Land Court. They were asked to identify whether there were "any reasons of policy or expediency why the land should not be taken". What this meant was spelt out in instructions to the Registrars.

> It is possible that blocks required may be in the nature of burial-grounds, or other recognised places of historical, scenic, or religious interest, which it would be unwise to touch. There may also be some blocks which are regarded as Native reservations or papakaingas, but which have not been the subject of an Order in Council under Section 5 of the Native Purposes Act 1937. In isolated cases you may be aware of reasons of expediency peculiar to the block or its owners, why the land should remain inviolate. Generally speaking, however, it will not be necessary to consult the owners of the land, as they will have the statutory forty days after the notice of intention issues in which to lodge any personal objections they may have, but where the leading owners can be readily reached it would be just as well to confer with them before advising me of your opinion.

[40] The legislation fixing quorum and voting proportions at meetings of assembled owners have varied from 1974 to the present day. These changes have not been examined to determine their impact on meetings considering public works Notices of Intention to Take land.

> The enclosed form of memorandum will be used from now on when requesting your views on individual cases.[41]

That this effort was rather half-hearted is demonstrated by a total failure to discover, on either Maori Affairs or Ministry of Works files, any of the pre-printed forms filled in with respect to any of the takings in Te Rohe Potae District researched for this report.

2.4.4 Public Works Act 1981

The Public Works Act 1928 remained in place for over fifty years, until in 1981 it was replaced by new legislation, which remains on the statute book today. The Public Works Act 1981 introduced three additional measures. First, the range of uses for which land could be taken, which had progressively expanded during the twentieth century, was reduced. Land could only be taken for an "essential work". Second, there was a clearer definition of the need to negotiate acquisition in the first instance, and resort to compulsory acquisition only if all else had failed. Third, there was an obligation (with some qualifications) to offer taken land that was no longer required back to its former owners or their descendants. These changes in policy direction represent an improvement for Maori over previous policy regimes, again highlighting the inequity of those earlier regimes.

Some imperfections that still remain have been identified in Waitangi Tribunal reports; if resolving these were legislated for, they would more clearly align the Act to the Crown's Treaty obligations. The deficiencies in the current legislation are not covered in this report; they have been addressed in submissions to the Crown by Maori organisations in connection with a review of the Public Works Act 1981, and are more appropriately the subject of legal submissions by counsel.

The return of land when no longer required was provided for in only limited circumstances in the public works legislation prior to 1981. It was possible to revoke or cancel a taking Proclamation, but only if no compensation had been paid. This had allowed for the return of some Native school sites taken under the Public Works Act, because they had been gifted and nil compensation awards had been made (discussed in the next section of this chapter). Another possibility was to formally declare land to be no longer required for the public purpose for which it had been taken. This declaration took the land out of the continued

[41] Under Secretary for Maori Affairs to All Registrars Maori Land Court, 11 September 1947. Maori Affairs Head Office file 38/2. Supporting Papers #1009-1010.

jurisdiction of the Public Works Act, and made it Crown Land subject to the Land Act, thereby allowing the Crown to dispose of it. After 1943, with the passing of Section 7 Native Purposes Act 1943 (subsequently Section 436 Maori Affairs Act 1953), application could be made to the Native/Maori Land Court to have Crown-owned land revested in Maori owners. Prior to 1943, it would have been necessary to pass special legislation to give the Court the authority to investigate and issue a Maori freehold title to a particular piece of Crown-owned land.

2.5 Gifting Sites of Native Schools

2.5.1 Native Schools Act 1867 and Native Schools Code 1880

Crown interest in establishing Native schools began with the passing of the Native Schools Act 1867. Prior to then Native education had been exclusively in the hands of the missionaries. The 1867 legislation established the partnership model upon which Native/Maori schooling would be based for the next hundred years. Gillingham and Woodley relate how this model developed from the thinking of Hugh Carleton in 1862 and William Rolleston in 1865, both of whom proposed that Government funding should go only to those communities that were prepared to help themselves by showing their commitment to making the school a success in the form of setting aside land for the school[42].

The Native Schools Act 1867 set out how a Native school could be established. Section 8 specified that Maori ("the inhabitants of the district") were to provide a site of one acre or more, which was to be vested in two or more trustees nominated by the Governor. The site was to be held "in trust for ever for the purposes of a Native school under this Act". The degree of generosity in gifting land affected the level of financial contribution for which the Crown would accept responsibility; the cost of buildings was to be shared equally between the Crown and Maori where one acre was provided, but if more than one acre was gifted, the Crown would pay a larger proportion of the building costs. There were some changes to the financial provisions in an amendment in 1871, but otherwise the Crown's approach to Native schools lasted through until 1879, when responsibility for Native schooling was passed from the Native Department to the Education Department.

[42] M Gillingham and S Woodley, *Northland: Gifting of Lands*, Crown Forestry Rental Trust, December 2006, page 29.

The philosophy of Maori communities providing the Crown with the sites for the schools also passed across to the Education Department, and became enshrined in the Native Schools Code 1880.

> The Establishment of Native Schools.
>
> (1) If at least ten Maoris, actually residing in any locality, petition the Minister of Education for a Native School, and if they, or any of them, offer to give at least two acres of land suitable for a school site, and promise, further, to make such contribution in money or in kind towards the cost of school buildings as the Minister may require, the Government may establish a school in that locality; provided that (1) the Organising Inspector of Native Schools reports favourably on the site offered; (2) that the Natives give the Government proper title to the site; and (3) that they satisfy the Government that the district will keep up an average attendance of thirty at the school.
>
> (2) When the preliminaries have been satisfactorily settled, the Government will provide a schoolhouse and a teacher's residence suited to the wants of the district. The whole of the land will be properly fenced in, and a plot of ground about one quarter of an acre in extent will be enclosed with a neat picket fence for a garden. The teacher will be expected to keep this constantly in good order, and to make it, if possible, the model garden of the village.[43]

Once embedded in Education Department thinking, the philosophy remained in force as the Crown's first resort for the next 80 years. When Maori communities asked for a school, the Crown responded that a site had to be offered first, without even a suggestion that there might be an alternative. Throughout the rest of the nineteenth century, and during the first decades of the twentieth century, the Crown would not countenance any deviation from its requirement that the site had to be provided at no financial cost to the Crown. The only change was that, over time, the amount of land the Crown sought from Maori communities crept up, from one acre in the 1867 Act, to three, then four, then five acres. Only from about the late 1930s, when partitioning and individualisation of title meant that the provision of a site might impose hardship on just a small number of members of a community, was the Crown willing to consider that it might have to compensate owners who gave a site for a school or for an extension to a school.

Maori communities were conditioned by the Crown's unwavering insistence on the gifting of a school site to think that this was normal and acceptable. However, it was discriminatory. Until 1969 the Native school system ran in parallel with a public school system administered by Education Boards. Whenever a new public school was contemplated, there would be a

[43] Native Schools Code 1880. *Appendices to the Journals of the House of Representatives*, 1880, H-1F, page 1. Supporting Papers #3868.

check to see whether the Crown already owned land that could be used, and when that option was not available, a site would be purchased from private landowners. Sometimes those private landowners would be Maori. The Education Boards showed no reluctance about paying compensation for the lands they required. This meant that Europeans were not expected to provide sites for schools for their children as gifts to the Crown, but Maori were. The voluntary nature of Maori education compared to the compulsory nature of European education is another issue, which is beyond the scope of this report.

2.5.2 Native Schools Sites Act 1880

Under normal procedures, it would be necessary for the Crown to wait until the title to Maori-owned land had been investigated by the Native Land Court, after which it could negotiate with the owners for the conveyance or transfer of the site into Crown ownership. However, this was cumbersome and, in terms of the time it might take for a block's ownership to be determined by the Court, uncertain. The Crown's response was the Native Schools Sites Act 1880. This provided a simpler alternative, so that both the Crown and Maori could more speedily achieve the objective of establishing Native schools.

Under the Act, wherever a Maori community had agreed that a school site would be gifted, but the title to that site had not already been determined by the Native Land Court (i.e. it was still customary land), the Governor could appoint someone to hold an inquiry to discover who the owners of the land were, and whether they consented to the gifting. If the inquirer's report was adopted by the Governor, and was published in the *New Zealand Gazette*, then that was sufficient evidence that the gift had been made and the title to the site had passed to the Crown, to be held, in the words of the Act, "for the purpose of a site for the school referred to in the report, and for no other purpose whatsoever".

The use of a public inquiry mechanism was well suited to the days before the Native Land Court blanketed the country with individual titles, as it recognised and allowed a voice for the hapu and community structures in operation at that time. However, it was a mechanism working within a strictly limited and shrinking environment. It was therefore a response of its time to the circumstances faced at that time, and its impact was confined to just a few school sites gifted during the nineteenth century.

2.5.3 Public Works Acts

In 1900 an amendment to the Public Works Act 1894 declared that Native Schools were one of the public works defined in the legislation for which land could be taken under the Public Works Act. Thereafter new Native schools were established on land that had been taken under the Public Works Act. Most of these takings were in fact giftings, because an agreement to provide the site at no cost to the Crown had been negotiated by the Education Department before that Department asked the Public Works Department to arrange the taking. After the taking, when the Native Land Court heard an application for compensation, it was told of the agreement, and made an order that no monetary compensation was to be paid by the Crown.

2.6 Concluding Remarks

The net result of the public works and associated legislation over a 140-year period has been a number of consistent principles. Central government has always retained the power to take lands. It has allowed local government to identify what lands need to be taken, to be responsible for public notification of a proposal and consideration of objections, to pay compensation, and to manage lands that are taken, but the action of actually taking the land has never been delegated. Instead, a request that the land be taken, in the form of a formally signed and sealed Memorial, with accompanying statutory declaration, has to be made to central government. This means that, in terms of Treaty jurisprudence, the responsibility for compulsorily taking land out of Maori ownership has rested indisputably with the Crown.

While this is a matter for legal debate, it would appear to follow that the Crown's approach means that the Crown should also be considered to be responsible for ensuring that both it and local government abide by the procedures for compulsory takings. In this respect the Crown has a patchy record. The Crown has been fastidious about ensuring that local government abides by some of its responsibilities. These have tended to be the matters where a taking might be questioned by the District Land Registrar when a Proclamation was presented for registration. District Land Registrars have traditionally been seen as the gatekeepers vetting the legal correctness and validity of land transactions, and every effort was made to avoid a registration being rejected for any reason.

In other respects, however, there have been enormous gaps in the Crown's performance, and in the policy that directed its performance. Many of these gaps have affected both Europeans and Maori. The Crown has not adopted, let along policed, any concept of necessity in the compulsory acquisition of land. If a government department or a local authority felt that a taking was necessary, that decision was not questioned or measured against any principles or parameters, but instead was acted upon. Knowing this has encouraged those Crown departments and local authorities to be generous rather than sparing in their use of the Public Works Acts.

In delegating to local authorities the responsibility to consider objections to takings for those local authorities' benefit, the Crown has not sought to know and understand the nature of objections made to local authorities. It has not attempted to look behind a statement that the objection is one that can be overcome by the payment of monetary compensation. Nor, when dealing with local authorities, has the Crown attempted to assure itself that compensation has been paid. Another lack of policing of its own and local bodies' activities has been in its failure to ensure that land no longer required for its taken purpose was returned.

These large gaps in its policy and performance mean the Crown has compounded the initial harm of choosing to compulsorily take land. There has been a marked reluctance to implement even the few safeguards that the Crown insisted upon when drawing up legislation that was, from the outset, always designed to benefit its own position.

3 WAITANGI TRIBUNAL FINDINGS ON PUBLIC WORKS, AND THE CROWN'S RESPONSE

3.1 Introduction

The impact of the public works and other legislation that allowed the compulsory taking of land and resources by the Crown has been described by the Waitangi Tribunal as "an enduring and powerful grievance" held by Maori throughout the country[44]. It is an issue that recurs in every district inquiry conducted by the Tribunal. The following of nationally standardised procedures in the compulsory taking of Maori-owned land for specific public purposes means that findings of the Waitangi Tribunal about such procedures in other districts around New Zealand may be directly applicable to Te Rohe Potae District as well. This has also been recognised by the Crown in its approach to negotiations for settlement of Treaty claims.

This chapter examines a number of the findings made by the Waitangi Tribunal about the public works legislation, and the Crown's use of it. It also refers to the summary analysis provided to the Tribunal in Alan Ward's National Overview report.

3.2 Waitangi Tribunal Findings

The Tribunal reports that discuss the Crown's use of the Public Works Act, and other compulsory taking legislation, in some detail are:

- *Orakei Report*
- *Ngati Rangiteaorere Report*
- *Te Maunga Railways Land Report*
- *Turangi Township Report*
- *Te Tau Ihu o Te Ika a Maui (Northern South Island) Report*
- *He Maunga Rongo (Central North Island) Report*
- *Wairarapa ki Tararua Report (Pre-Publication Chapter on Public Works)*

The core issue identified by the Tribunal has been the relationship between the Crown's kawanatanga powers (including the power to take land for public purposes) and its

[44] Waitangi Tribunal, *He Maunga Rongo; Report on Central North Island Claims, Stage One*, Wellington, 2008, Volume 2, page 819.

acknowledgement and promise to protect Maori rangatiratanga over their own lands. As the Tribunal asked in the *Te Maunga Railways Land Report*:

> Under what circumstances can the Crown right to govern in the public interest over-ride the Crown obligation to protect the Maori interests guaranteed in the Treaty? And even when an over-riding public interest can be identified, if that public purpose for which the land was taken is no longer relevant, then what fiduciary obligation remains with the Crown to ensure that land compulsorily taken from unwilling sellers is returned to the original owners?[45]

Use of the term "over-ride" has some unfortunate connotations, suggesting that there can be some type of hierarchy between Article 1 and Article 2, when the two Articles are supposed to co-exist. However, putting that matter to one side, the Tribunal has answered its own questions quite resoundingly. As British subjects, along with European residents of New Zealand, Maori can be expected to be called upon to provide some of their land for public purposes. But that should not be by the medium of compulsory taking, unless no other alternative option (including methods with less impact on Maori than the Crown's acquisition of the freehold) is available. It should be for the Crown to argue why the general principle of no compulsory taking can be abandoned in any particular circumstance. When land is no longer required for its taken purpose, the Crown has an obligation to approach what it then does with the land in a manner that positively and pro-actively advances its fiduciary duty of active protection of Maori interests. Indeed, any policy or legislative regime based upon compulsory acquisition, especially when introduced without consent, is "fundamentally inconsistent with Treaty principles". In commenting on the Crown's use of the legislation in policy and practice, it referred to "systemic problems" underlying the Crown's approach, which have allowed "sustained and systematic Treaty breaches over a long period"[46].

A general veto in the first instance on compulsory taking affects both land taken for roads under the Native land legislation, and lands taken under the Public Works Acts. In the *Ngati Rangiteaorere Report*, the Tribunal looked at the taking of lands under the Native lands legislation for roads. Although it declined to make any finding, because of a lack of legal argument presented to it, it was prepared to make some observations. It noted that rangatiratanga included rights and control over access to lands within the rohe of a hapu. While kawanatanga might include a right of free passage for all British subjects, the exercise

[45] Waitangi Tribunal, *Te Maunga Railways Land Report*, Wellington, 1994, page 4.
[46] Waitangi Tribunal, *He Maunga Rongo; Report on Central North Island Claims, Stage One*, Wellington, 2008, Volume 2, page 839.

of such a Crown right had to be capable of coexisting with the exclusive and undisturbed possession of their lands by Maori. Only proper consultation between Maori and the Crown might hope to arrive at some form of agreed coexistence. Because consultation is viewed as one of the principal Treaty obligations of the Crown, and this has never happened with respect to the 5% provisions, the Tribunal had doubts whether the Crown ever fulfilled its Treaty obligations when undertaking this type of compulsory acquisition. It further observed that compulsorily taking land without payment of compensation "turned an acquisition into a confiscation". It could not envisage any circumstances where compensation should not be paid, if the Crown's obligations were to be upheld[47].

While the *Ngati Rangiteaorere Report* had looked at the Native land legislation, the *Te Maunga Railways Land Report* examined compulsory takings under the Public Works Act. It looked at the Crown's activities through a lens of fiduciary obligation, interpreting this to mean that when the Crown made decisions it was required to have regard for the effects on the relationship between Maori and the Crown provided by the Treaty, including such requirements as consultation, active protection, and acting reasonably and in good faith. In this context it was apparent that, when wishing to acquire Maori-owned land for public purposes, the Crown had choices. Compulsory purchase was just one choice; others were to negotiate purchase, to agree to alternative arrangements such as leases, occupation licences or easements, or to look at equally suitable alternative sites not on Maori-owned land. Of these, compulsory acquisition was the most harmful of the options open to the Crown because, more than any other choice, it cut right across the guarantees of tino rangatiratanga. The impact on Maori, and on the Crown / Maori relationship, called for compulsory acquisition to be considered only as a last resort if getting agreement on all other alternatives could be clearly shown to have failed.

> While it is conceded that there may be circumstances when the compulsory taking of land for a public purpose (kawanatanga) constitutes a more significant public interest for both Maori and Pakeha than the guarantee to Maori of tino rangatiratanga, it is usually possible to negotiate a mutually agreeable solution. The fiduciary obligation of the Crown, the active protection of Maori rangatiratanga, and duty of reasonableness on both sides, suggest a more consultative approach to negotiation is appropriate. The maintenance of the principle of kawanatanga in Article 1 includes a Crown right to acquire the use of land for a public purpose which is of benefit to all. A negotiated approach to the use of Maori land for public purposes, which acknowledges Maori rangatiratanga, and does not extinguish Maori title, is the way forward to reconciliation of the apparent conflict between the principles of

[47] Waitangi Tribunal, *Ngati Rangiteaorere Report*, Wellington, 1990, pages 46-48.

> kawanatanga and rangatiratanga in Articles 1 and 2 of the Treaty of Waitangi. And when the public use of land is no longer required, the return of the land to Maori use can be so much more easily negotiated.[48]

A similar unwillingness to state an absolute veto on the compulsory acquisition of Maori-owned land was also apparent in the *Orakei Report*. There the Tribunal commented, in an observation rather than a finding, on a taking for defence purposes:

> It is arguable that the sovereign act of the Crown in taking land for defence purposes with a view to securing peace and good order is acting for the benefit of all citizens, Maori and European alike, and is not inconsistent with the principles of the Treaty.

In making a distinction for defence takings, the Tribunal was possibly alluding to the additional justifications for a taking that the Crown could rely upon, such as site-specific requirements to counter an invasion threat, and the urgent and emergency nature of the need to acquire land. The Tribunal went on to speculate, however, that even for national defence purposes, the Crown might choose to lease rather than acquire ownership, "having regard to the Maori sensibilities to the involuntary loss of their land" [49].

The *Turangi Township Report* was equally restrictive about the Crown's use of compulsory acquisition powers.

> If the Crown is ever to be justified in exercising its power to govern in a manner which is inconsistent with and overrides the fundamental rights guaranteed to Maori in Article 2, it should be only in exceptional circumstances and as a last resort in the national interest.

This was because Article 2 "necessarily qualifies or limits the authority of the Crown to govern"[50]. The finding of the Tribunal in the Turangi context was that the Public Works Act 1928 and the Turangi Township Act 1964, acting in concert, were not merely inconsistent with the Treaty, but were

> tantamount to a unilateral abrogation of Article 2, in that they deprive the Maori owners of any protection of their Treaty rights under Article 2. Far from actively protecting the Maori owners' right not to be deprived of their land without their consent and at an agreed price, they have been denied such protection by the powers vested in the Crown in [these two statutes]. [51]

[48] Waitangi Tribunal, *Te Maunga Railways Land Report*, Wellington, 1994, pages 67-71 and 81.
[49] Waitangi Tribunal, *Orakei Report*, Wellington, 1987, page 166.
[50] Waitangi Tribunal, *Turangi Township Report*, Wellington, 1995, pages 299 and 300.
[51] Waitangi Tribunal, *Turangi Township Report*, Wellington, 1995, page 302.

The *He Maunga Rongo (Central North Island) Report* envisaged only four circumstances where public works legislation would respect the Crown's Treaty obligations, or mitigate the effects of Crown actions.

- First, one saving grace was the contingency identified by the Ngai Tahu and Turangi Township Tribunals – that is, that the Crown might sometimes have to take land compulsorily, as a last resort in the national interest. This would be the final step in an exhaustive process, not the first one. In such rare cases, consent could be waived consistently with Treaty principles.
- Secondly, the Crown could have negotiated individual takings and acquired full and free consent for them. Even in those two circumstances, any taking without compensation would still have been in breach, with a prima facie consequence of economic prejudice.
- Thirdly, the Crown had alternative tenure options (such as leasehold, written into the public works legislation from at least 1928) that could have mitigated or removed some of the prejudice.
- Fourthly it had mechanisms that could allow for some continued exercise of tino rangatiratanga after alienation, such as site-specific scenic reserve boards or the attachment of special conditions to a taking, which also could have mitigated or removed the prejudice.[52]

Besides finding the Crown in breach of Article 2 of the Treaty, the Tribunal has also found the Crown in breach of Article 3, because the taking procedures have been discriminatory and provided lesser protection, and fewer legal rights, to owners of Maori-owned land than to owners of General (European) land[53].

In commenting on the Crown's use of the legislation in policy and practice, the *He Maunga Rongo (Central North Island) Report* referred to "systemic problems" underlying the Crown's approach, which have allowed "sustained and systematic Treaty breaches over a long period"[54].

Although not a finding of the Tribunal, or a document with which the Tribunal necessarily agrees, it did commission a *National Overview* at the completion of its Rangahaua Whanui districts and themes project in the mid 1990s. The *Overview*, written by Alan Ward, an eminent historian, included a discussion about the Crown's policy and practice towards compulsorily taking lands for specific public purposes:

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[52] Waitangi Tribunal, *He Maunga Rongo; Report on Central North Island Claims, Stage One*, Wellington, 2008, Volume 2, page 839.
[53] Waitangi Tribunal, *He Maunga Rongo; Report on Central North Island Claims, Stage One*, Wellington, 2008, Volume 2, pages 819 and 873.
[54] Waitangi Tribunal, *He Maunga Rongo; Report on Central North Island Claims, Stage One*, Wellington, 2008, Volume 2, page 820.

> It must be accepted that, from time to time, the Crown has obligations under Article 1 of the Treaty to acquire land compulsorily in the public interest. On the other hand, as the Tribunal has pointed out, it has a duty to do so only when there is no other recourse, only after appropriate consultation with the persons affected has been conducted, and only after other possible approaches have been exhausted. This is as true for Pakeha land and waters as it is for Maori land and waters, but Article 2 of the Treaty presents the Crown with the obligation of special regard for Maori rights. Yet, far from the authorities being more careful about consulting and compensating Maori than Pakeha, the reverse was commonly the case. There were (and are) no doubt circumstances in which sheer urgency makes full consultation and discussion of alternative approaches difficult; wartime exigencies, for example, or the excessive cost of delaying projects (although this should be genuinely serious, not a matter of common convenience, overriding normal consent). The Treaty obligation to give active protection to a people who had little experience with bureaucratic and legal processes compared with Pakeha, and who had all the added difficulties stemming from complexity of title and lack of access to credit, should have made the Crown especially careful of Maori rights. There were signs that more care was taken in the early days; Maori were militarily strong on the ground then and the Colonial Office kept an eye on the activities of settler politicians. But from 1865 on, the colonial Legislature's attitude towards Maori became somewhat vengeful, and Maori land and water were intruded upon with less care than Pakeha land, apparently on the basis that somehow Maori 'owed' something to the colony's development, especially because they could not or would not pay local body rates in the same way as Pakeha did. From 1865 to 1981, especially, despite occasional concessions in the law to the special circumstances and disadvantages of Maori, it proved all too expedient for central and local government to take Maori land and pay compensation grudgingly, if at all.[55]

A further issue the Tribunal has commented on is the extent of land loss suffered by Maori landowners as a result of the public works and other legislation allowing compulsory taking of land. This is because, in terms of numbers of acres or hectares, the amount of land loss from public works and other takings is a relatively small proportion of the land loss caused by Crown purchase of blocks of Maori-owned land. The *Wairarapa ki Tararua Report* remarked:

> Thousands of acres must be reckoned as a substantial loss to Maori. Even so, the number of acres of Maori land taken for public works is not in itself a reliable indicator of the level of grievance felt by the claimants: 'ahakoa te nui, te mamae' (irrespective of the size, the pain caused). Sometimes distress relates as much to the way in which the land was taken. This may be the case when land is taken in the face of owners' opposition, or without proper (or in some cases any) consultation or compensation, or with obvious indifference to the cultural significance of the land.[56]

[55] A Ward, *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, Wellington, 1997, Volume 1, Appendix V, pages 173-174.
[56] Waitangi Tribunal, *Wairarapa ki Tararua Report* (Pre-Publication Chapter on Public Works), Wellington, 2009, page 2.

A similar point was made in the *He Maunga Rongo (Central North Island) Report*.

> In our view, a measure of quantity is not the right one to apply to compulsory takings. The compulsory taking of a single acre of Maori land, especially without compensation, is automatically in breach of Treaty principles.[57]

3.3 The Crown's Response

The Crown has set out its view on public works and other takings, which it says will guide it during negotiations for settlement of Treaty of Waitangi claims. In general terms, it accepts that breaches of the Treaty have occurred, although it still wants to examine the detail on a claim-by-claim basis, so as to be able to get some idea of the degree of harm which the claimants for each claim (or in each settlement negotiations district) have suffered.

The extended length of time that claims about public works takings have been argued before the Waitangi Tribunal has resulted in an equally extended period of policy development by the Crown. In 1995 it published a discussion paper, "*The Crown's Policy Proposals on Treaty Claims involving Public Works Acquisitions*". This commenced with the statement, "the Crown does not accept that public works takings … are Treaty breaches per se", but then went on to accept that in individual instances the Crown may not have paid adequate (or any) compensation, and may not have consulted Maori to the same degree as it consulted non-Maori. It put some constraints on when fiscal redress was appropriate, specifying that it would be paid in certain carefully-defined circumstances.

> Where the Crown acquired land for a public work without adequately consulting Maori landowners, and as a result:
>
> I. left Maori landless or without sufficient endowment when there was not a high level of need for the public work and the negative impact of the acquisition was excessive or there was a reasonably practicable alternative which would have had substantially less negative impact; and/or,
> II. removed, or significantly reduced, an iwi, hapu or whanau's land of special historical, cultural or spiritual significance when there was not a high level of need for the public work and the negative impact of the acquisition was excessive or there was a reasonably practicable alternative which would have had substantially less negative impact; and/or,
> III. compulsorily acquired more land than was reasonably necessary for the intended public work; and/or,
> IV. never used the land for the original purpose for which it was acquired, nor for another legitimate public purpose, and did not offer it back to the former Maori owners after a reasonable time; and/or,

[57] Waitangi Tribunal, *He Maunga Rongo; Report on Central North Island Claims, Stage One*, Wellington, 2008, Volume 2, page 819.

V. discriminately acquired Maori land in preference to non-Maori land because it was more expedient to so in terms of either cost or convenience.[58]

[Underlining added to draw attention to the requirement for an accumulation of circumstances to exist before any need for redress was being conceded.]

With respect to offering back land no longer required for public works purposes, the Crown did not accept that a Treaty breach existed if it had failed to offer the land back before the passing of the Public Works Act 1981. It was prepared to examine the circumstances of any failure to offer back under the 1981 Act. In the Crown's opinion any offer back made under the 1981 Act was inherently incapable of being in breach of the Treaty, though there was some doubt about whether an offer had to be at current market value, which could be examined in a wider ongoing review of the Act.

Williams has described the Crown's policy, in terms of how much the Crown was prepared to concede, as "a very cautious policy"[59]. That is readily apparent when the policy, with its emphasis on the process of public works takings, is compared against the statements in the Tribunal reports about the principles underpinning compulsory takings. There is still a substantial gap between Crown thinking and Tribunal thinking.

More recently, the Crown view has been set out, in a more summarised form than in 1995, in two editions of a booklet it has published about the approach it takes to negotiations, entitled "*Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations*". These two editions were published in 1999 and 2002, and are usually referred to by the colour of their covers, as the 'Green Book' and the 'Red Book' respectively. In both editions, the Crown distinguished between claims about the Native lands legislation and claims about the Public Works Act.

In commenting on the Native lands legislation, under which roads were compulsorily taken without compensation, the 1999 'Green Book' stated:

> The Crown acknowledges that the operation and impact of the Native Land laws had a widespread and enduring impact upon Maori society. In cases where the claimants can demonstrate a prejudicial impact in their own rohe, the Crown will acknowledge,

[58] Minister in Charge of Treaty of Waitangi Negotiations, *The Crown's Policy Proposals on Treaty Claims involving Public Works Acquisitions*, Wellington, 1995, pages 2-3.
[59] DV Williams, 'Public Works Takings and Treaty Settlements', *New Zealand Law Journal*, July 1999, pages 262-263.

> in the context of an agreed settlement, that it breached its responsibilities under the Treaty of Waitangi.[60]

This acknowledgement was repeated almost word for word in the 2002 'Red Book'[61].

With respect to gifting of lands and the use of the Public Works Act, the 1999 'Green Book' stated:

> Grievances have also arisen in connection with the gifting of land by Maori to the Crown for specific purposes, such as schools. Often the Crown has not returned such gifted land to the rightful owners once the purpose has been fulfilled, but used it for other purposes or disposed of it. The Crown also accepts that the application of the Public Works Act, particularly in the nineteenth century, sometimes disadvantaged Maori interests. For instance, breaches of Treaty principles may arise in relation to inadequate consultation or compensation, particularly where the group concerned was left substantially landless, or a wahi tapu or site of cultural significance was lost.[62]

There was an amendment in the 2002 'Red Book', with a shift of emphasis from the nineteenth to the twentieth century.

> Grievances have also arisen in connection with the gifting of land by Maori to the Crown for specific purposes, such as schools. Often the Crown has not returned such gifted land to the rightful owners once the purpose has been fulfilled, but used it for other purposes or disposed of it. The Crown also accepts that the application of the Public Works Acts, particularly in the twentieth century, sometimes disadvantaged Maori interests. For instance, there may have been inadequate consultation or compensation, or a wahi tapu or site of cultural significance may have been lost.[63]

These statements from 1999 and 2002 show that, while during that period the Crown has continued to examine the viability and correctness of its policies about public works takings, it did not choose to amend them much.

3.4 Tribunal Comment on the Crown's Response

In its *Petroleum Report*, the Tribunal commented:

> We are somewhat surprised by the Crown's unwillingness to accept that compulsory acquisition of land for public works in most cases has been, and will be, in breach of the Treaty guarantee of te tino rangatiratanga. Given the extent of Maori land lost to public works even in the twentieth century, when Maori land holdings had fallen to

[60] Office of Treaty Settlements, *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 1st Edition, Wellington, 1999 ('the Green Book'), page 12.
[61] Office of Treaty Settlements, *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 2nd Edition, Wellington, 2002 ('the Red Book'), page 15.
[62] Office of Treaty Settlements, *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 1st Edition, Wellington, 1999 ('the Green Book'), page 15.
[63] Office of Treaty Settlements, *Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 2nd Edition, Wellington, 2002 ('the Red Book'), page 15.

> very low levels, and given the strength of Maori feeling on the issue, the Crown's approach seems ungenerous.[64]

The Tribunal in its *Wairarapa ki Tararua Report* also felt the Crown's position was misdirected.

> The Crown's submissions move quickly past the difficult matters of principle, upon which the Crown takes issue with Tribunal jurisprudence, and on to the procedural requirements of the legislation and compliance with them. It is probably true that in most cases the letter of the law was broadly followed, although evidence is sparse for the earlier period, and it is not clear in a number of cases whether compensation was paid. However, this is not the real point at issue. If the compulsory taking of land from Maori was wrong in principle – as we believe the arguments discussed above establish – then compliance with statutory requirements does not retrieve the position for the Crown. It only prevents it from getting worse.[65]

In fact, far from avoiding further harm, the extent to which Treaty principles were breached by the Crown was compounded by the discrimination suffered by Maori landowners in the legislation that was enacted to allow compulsory taking of land.

[64] Waitangi Tribunal, *Petroleum Report*, Wellington, 2003, pages 54-55, quoted in Waitangi Tribunal, *He Maunga Rongo; Report on Central North Island Claims, Stage One*, Wellington, 2008, Volume 2, page 867.
[65] Waitangi Tribunal, *Wairarapa ki Tararua Report* (Pre-Publication Chapter on Public Works), Wellington, 2009, page 47.

PART II - THE IMPACT IN TE ROHE POTAE DISTRICT

4 TE ROHE POTAE INQUIRY DISTRICT TAKINGS DATABASE

4.1 Introduction

As part of the research for this project, the various takings in Te Rohe Potae Inquiry District (not including the extensions) were identified. The Crown does not appear to have maintained any type of register of such takings, either nationally or regionally; certainly not a record of takings in any readily-available or easy-to-analyse form. The takings in Te Rohe Potae District have been identified by checking survey plans produced for the Crown's purposes (Survey Office plans), because Department of Lands and Survey drafting staff regularly recorded details of *New Zealand Gazette* taking Proclamations and other notices on those plans up until 1972. For the period after 1972 a card index held by Land Information New Zealand Hamilton Processing Centre and known as the 'legalisation cards' was examined for references to takings.

The results of the research are presented in the form of an Excel spreadsheet, which accompanies this written report. The standardised nature of takings under the Public Works Act made the use of a spreadsheet the most appropriate mechanism, because for each taking a similar range of references and other factual information could be identified. The purpose of this chapter is to describe what information can be viewed when looking at the spreadsheet.

A taking under the Public Works Act or related legislation refers to the taking of all or part of a particular piece of land that has already been defined and given an appellation (i.e. a legal description). In many instances, the Crown took land from a number of such parcels of land at the same time (i.e. in the same Proclamation notice). Where that is the case, each discrete parcel of land (with a different legal description) that is affected is treated as a separate taking, and appears as a separate row in the spreadsheet.

4.2 The Structure of the Database

For each taking, the following information has been collected:

Column A – Gazette Reference

Each Proclamation taking land was published in the *New Zealand Gazette*. The year and page number of the *Gazette* is recorded.

Column B – Date of Taking

Each taking took effect on a specific date, which is usually referred to in the Proclamation notice. This effective date is often different from the date the Proclamation was signed by the Governor, or the date the notice of taking was signed by or on behalf of the Minister of Works. It is also different from the date of publication of the Proclamation or notice in the *Gazette*. However, where the Proclamation or notice does not refer to a particular date from which the taking becomes effective, the date of signing of the Proclamation or notice is used as the date of taking.

Column C – Legislative Authority

Each Proclamation or notice relied upon a particular statute as its authority, and this is referred to in the Proclamation or notice. In order to be as comprehensive as possible, the setting apart of public roads under the various Land Acts (plus their successor Section 29 Public Works Amendment Act 1948) are included in the database, even though these usually involved Crown-owned rather than Maori-owned land.

Column D – Section of Legislation

Some Proclamations and notices also refer to a particular section of the legislation that is relied upon as authority.

Column E – Purpose

Each taking was for a particular specified purpose, set out in the Proclamation or notice of taking.

Columns F & G – Survey District and Block

Most Proclamations and notices refer to the land being taken from lands in a numbered block of a named survey district. The block number is invariably given in Roman numerals. The block and survey district system was developed by the Crown's Survey Department to define the part of the country that was being referred to. The whole of New Zealand was divided, generally on a grid square basis, into a series of survey districts. Each survey district was in turn divided into a series of blocks. In a standard survey district there were sixteen blocks. The effect of the block and survey district system provides an ability to uniquely identify an area of New Zealand of approximately 6250 acres (2500 hectares). The system was not

completely homogeneous, as some blocks and survey districts did not have absolutely square boundaries, but it is a quick ready reference to the part of the country that is being referred to. The modern computerised survey system has moved away from use of the block and survey district system, and recent notices of taking in the last few years no longer refer to them. However, for the purposes of the database the old block and survey district has been identified and added to the database. Manipulation by sorting of the database to highlight all takings from a particular block of a particular survey district remains the most convenient method of identifying all takings in a particular locality.

Map 1 Te Rohe Potae Blocks and Survey Districts

Column H – Source Land (Land Taken From)

The legal description of the land from which the Crown is taking all or part for a public purpose is set out in the Proclamation or notice. In the case of Maori-owned land, the legal description is of the land as it appears in the Crown's records. If a partition has been ordered but not surveyed, the new partition block will not be referred to in the Proclamation or notice; instead the parent block name with surveyed boundaries will be used.

Column I – Area

This is the amount of land taken by the Crown. It is set out in the spreadsheet in the format "acres – roods – perches" or (after the early 1970s) "hectares . square metres". 40 perches make 1 rood, and 4 roods make 1 acre. Where a number of parcels are taken in the same Proclamation or notice from land with the same appellation, the areas of the parcels have been aggregated together into a total area that was taken from that appellation.

Column J – Vested In

Most lands were taken by the Crown for the Crown's own needs. Although not stated, they were in effect vested in the Crown. Local authorities (including county councils, education boards, hospital boards, etc) could also arrange for land to be taken by the Crown for their own requirements, in which case the Crown would, in the same Proclamation or notice, declare that the taken land was vested in that local authority.

Column K – Ownership

The database records all takings of land in Te Rohe Potae District regardless of ownership of the land prior to its taking. The ownership was identified from notations on survey plans identifying the land to be taken, and categorised under the following types:

- Crown
- Crown (leased to a European)
- Crown (leased to a local authority)
- Crown (Reserve)
- European
- Incorporated Society
- Public Trustee
- Public Trustee (leased to a European)

- Local Authority
- Maori
- Maori & European (i.e. still Maori Land, but known that some, usually a high percentage, of the shares are owned by a European)
- Maori, now held as General (European) Land
- Maori (vested in Waikato-Maniapoto District Maori Land Board)
- Maori (vested in Waikato-Maniapoto District Maori Land Board and leased to a European)
- Maori (leased to a European)
- Maori (Incorporation)
- Maori (vested in the Maori Trustee)
- Maori (vested in the Maori Trustee and leased to a European)

Since not all survey plans recorded the ownership of taken land at the time of taking, the ownership of some taken lands has not been identified.

Column L – South Auckland Plan Number

This is the number of the survey plan under which it is held today in Land Information New Zealand records. Te Rohe Potae District is split between the South Auckland and Taranaki Land Districts. The boundary between the Land Districts generally follows up the Mokau River, crosses the watershed, and then follows down the Ongarue River.

Column M – Taranaki Plan Number

This is the number of the survey plan under which it is held today in Land Information New Zealand records.

Column N – PWD Plan Number

When a request from a local authority or from a Government department for land to be taken was received in the Public Works Department (and its successors[66]), it could not be actioned unless it was accompanied by a survey plan. When the head office of the Public Works Department received that plan it was immediately allocated a departmental plan number,

[66] The Public Works Department has also been known as the Ministry of Works and the Ministry of Works and Development. The Ministry was disestablished in 1988, and the public works taking function has since been carried out within the Department of Lands, the Department of Survey and Land Information, and (currently) Land Information New Zealand.

which was additional to its Lands and Survey plan number. The departmental plan number is then referred to in the Proclamation or notice.

Column O – Head Office File Reference

This is the reference to the file in the Public Works Department (and its successors) on which the public works taking has been actioned. For as long as the Governor, or the Governor-General, or the Minister of Works issued the Proclamation or notice, the action was handled administratively in the head office, and there was a head office file. The head office file reference is recorded at the foot of the Proclamation or notice.

Column P – District Office File Reference

From 1951 onwards, the Ministry of Works was reorganised, and district offices proposed takings to the head office for action. The district office file reference is recorded at the foot of the Proclamation or notice.

Column Q – Other File Reference

Some takings have been dealt with by other government departments, specifically the Department of Lands and Survey, the Railways Department (Land Office), and the Department of Conservation. This column records references for files held in the head offices of those departments.

Column R – Intention to Take

A number of takings were preceded by a notice, published in the *New Zealand Gazette* and in a newspaper circulating in the district, of the Crown or local authority's intention to take the land for a specified public purpose, and inviting anyone with an objection to the taking to lodge that objection in writing to the Minister of Works or to the local authority. This column records the *Gazette* year and page number.

Column S – Consent to Take

Where land that was proposed to be taken was known to contain evidence of occupation and improvement, such as a building, garden, vineyard, park, or burial ground, it was not able to be taken unless the Governor (later the Governor General) had given his consent that it was appropriate in the circumstances that the taking should be allowed. The Order in Council

signed by the Governor (or Governor General) would be published in the *New Zealand Gazette*. This column records the *Gazette* year and page number.

Column T – Revocation

The term 'revocation' is used in the database to describe a number of *Gazette* notices where the land ceases to be allocated to its taken purpose. In the terminology used in the legislation, revocation has a narrow meaning, for the cancellation of a taking Proclamation when the land was no longer required and no compensation had been paid. A different notice was published when a direction was issued authorising the sale of taken land. Another statutory procedure applied when taken land ceased to be used for the public purpose for which it was taken. The proper next step (though this was not always followed) would be for it to be declared to be no longer required for its taken purpose. This column records the *Gazette* year and page number of the revocation, direction or declaration notice. The effect of a declaration that land was no longer required was to declare the taken land to be ordinary Crown Land, subject to the Land Act, and to transfer administrative responsibility for the land from the government department that had been responsible for it to the Department of Lands and Survey.

Column U – Compensation

This column has been filled in only with respect to Maori-owned land, and has concentrated on identifying compensation ordered by the Native/Maori Land Court (i.e. during the period up to 1962). The column records the amount awarded, the date of the Court's award, and the Court minute book reference, where that information has been discovered during the research for this project. There are still a number of gaps where land was taken from Maori ownership, but no record of a compensation award has been discovered. In at least some instances, that is because no compensation was ever paid. However, where no compensation information is recorded in the database, it cannot be concluded from that that no compensation was ordered or paid; the Maori Land Court records do contain gaps, and it could be that an awarding of compensation has been missed.

Column V – Comments

This column records any additional information about a taking that could not be allocated to any of the other columns. It primarily identifies whether the taking was of land that had previously already been taken, and whether a taking for road was part of a road realignment for which there was an associated notice of road stopping or closing.

4.3 What the Database Does Not Cover

The structure of the database is formulated around Proclamations, Orders in Council and notices published in the *New Zealand Gazette*; every entry has been referenced to the *Gazette*. While every effort has been made to make the database as complete as possible, it is possible that a very small number of gazetted takings have been missed.

Because of the method used to construct the database, it will miss those occasions when land is compulsorily acquired under other procedures that do not require a *Gazette* entry. These other procedures include:

- The backstop procedures such as Section 110 Public Works Act 1928 referred to in the chapter on the framework for taking roads under the Native lands legislation.
- Acquisitions and takings of foreshore and harbour lands achieved by special legislation.
- Takings under special legislation, which was deemed by that legislation to be a taking under the Public Works Act.
- Some takings for road under the 5% provisions that were authorised by the Governor under the Native lands legislation and were surveyed, but were not the subject of *Gazette* notices.
- Declarations by Order of the Native/Maori Land Court that roadways, or Maori-owned land used as roads, would become public roads.

Since all of these additional taking mechanisms affect Maori-owned land in particular, the database will under-represent the impact of compulsory and non-compensated takings on Maori landowners.

4.4 Results Obtained from the Database

The database records 5634 compulsory takings in Te Rohe Potae District by the Crown between 1888 and 2009 (a period of 121 years). This total is made up of:

- 461 takings for roads under the 5% and associated provisions of the native land legislation, and the 5% provisions of the Public Works Acts
- 4124 other takings under the Public Works Acts
- 283 takings for public road of roadlines and roadways laid out by the Native/Maori Land Court

- 766 settings apart for road under powers set out in the Land Acts and successor provisions

Of the 4124 other takings under the Public Works Acts, the ownership of the land prior to it being taken was as follows:

- 810 (20%) were takings of Maori-owned land
- 2129 (52%) were takings of European-owned land
- 851 (20%) were takings of Crown-owned and local authority owned land
- 334 (8%) were takings where prior ownership has not been identified

Of the total of takings under the Public Works Acts from privately-owned (i.e. Maori-owned plus European-owned) land in Te Rohe Potae District, 27% were takings from Maori landowners.

The next chapters discuss the various Te Rohe Potae District takings from Maori-owned land, as categorised by the purpose for which the land was taken.

4.5 Comparison with Other Parts of New Zealand

The impact of public works and other takings on Maori in Te Rohe Potae District, as compared with the impact on Maori in other districts, is hard to gauge in any definitive sense. This is because most other districts have not had the advantage of a complete (or near-complete) catalogue of takings similar to the database prepared for this report. Only two other comparable databases have been prepared in other districts. These are the Land History and Alienation Database prepared for the combined Central North Island Inquiry Districts, and a database on public works and other takings prepared for the East Coast Inquiry District. The Land History and Alienation Database for the Central North Island was developed in a different manner to the database for Te Rohe Potae District. Because it was focused solely on records of land in Maori ownership, it records only takings from Maori-owned land[67].

[67] The dataset derived from the Land History and Alienation Database for the Central North Island Inquiry Districts was developed by editing the Excel spreadsheet accompanying *Appendix 2 to the Brief of Evidence of David James Alexander on Te Matua Whenua (the Land History and Alienation Database): Alienation of Land out of Maori Ownership by Type and Decade*, February 2005. The spreadsheet was edited by selecting only those entries where Column C "Amended Event Category" records a "Public Works Taking (Compensated)" and a "Road Taking (Not Compensated)". The sequence of columns has been rearranged, and surplus columns deleted, to more closely bring the layout of the resulting database into symmetry with the layout for Te Rohe Potae District database. The dataset is the same as that used for comparison purposes in D Alexander, *Public Works and Other Takings: The Crown's Acquisition of Maori-Owned Land on the East Coast for Specified Public Purposes*, November 2007.

The East Coast database has a similar structure to that for Te Rohe Potae District, in that both record takings of land regardless of ownership, so the results are directly comparable[68].

A comparison of Te Rohe Potae District database results with results from the Central North Island and East Coast databases[69] shows the following:

[68] The database is an Excel spreadsheet accompanying D Alexander, *Public Works and Other Takings: The Crown's Acquisition of Maori-Owned Land on the East Coast for Specified Public Purposes*, November 2007.
[69] The figures extracted from the two databases are those included in D Alexander, *Public Works and Other Takings: The Crown's Acquisition of Maori-Owned Land on the East Coast for Specified Public Purposes*, November 2007, at pages 73-74.

Table 4.1 Comparison of Te Rohe Potae District Takings with Takings in Central North Island and East Coast Districts

Characteristic[70]	Te Rohe Potae District (Maori-owned)	Te Rohe Potae District (Not Maori-owned)	Te Rohe Potae District (Ownership Unknown)	Central North Island (Maori-owned)	East Coast (Maori-owned)
Year of First Use of PW Act	1897			1901	1884
Use of PW Act 1882	0	0	0	0	10
Use of PW Act 1894	29	38	4	2	28
Use of PW Act 1905	46	2	1	0	19
Use of PW Act 1908	413	114	71	25	289
Use of PW Act 1928	451	1686	72	294[71]	431
Use of PW Act 1981	89	1144	186	8	69
Use of NLC Act 1880	0	0	0	0	13
Use of NLC Act 1886	3	0	0	1	107
Use of NLC Act 1894	4	0	0	18	0
Use of NL Act 1909	230	1	0	8	18
Use of NL Amdmt Act 1913	202	6	0	77	2
Use of NL/ML Act 1931	51	0	0	72	86
Use of MA Act 1953	21	0	0	138	40
Use of TTWM Act 1993	3	0	0	4	1
Use of Other Legislation	25	641	101	7	39
Total Number of Takings Recorded	1567	3632	435	654[72]	1152
Takings for Road[73] as % of Total Gazetted Takings	81%			54%	82%

Source: Te Rohe Potae District Database, Land History and Alienation Database for Central North Island, and East Coast Database.

[70] 'PW Act' = Public Works Act; 'NLC Act' = Native Land Court Act; 'NL Act' = Native Land Act; 'NL Amdmt Act' = Native Land Amendment Act; 'MA Act' = Maori Affairs Act; 'TTWMA Act' = Te Ture Whenua Maori Act.

[71] The authority for 44 of these takings was Turangi Township Act 1964 and Public Works Act 1928.

[72] The total number of takings in the dataset is 767, but this includes 113 takings where the taking was other than by *Gazette* taking (i.e. "Gazette Ref" column is blank). As Te Rohe Potae and East Coast are predicated on a taking having a *Gazette* reference, the comparable figure from the Central North Island database is 654.

[73] Includes takings for Access to Native School, Limited Access Road, Purposes of a Road, Road, Service Lane and Street.

The results show that Maori in Te Rohe Potae District were affected slightly later than East Coast Maori, in terms of time period, but before Central North Island Maori. This is apparent with both the Public Works Act takings and the takings for road under the native land legislation.

It is with the takings for road under the native land legislation that a severe impact on Maori in Te Rohe Potae District is particularly apparent. They were affected far more frequently, and earlier (before 1931), than Central North Island or East Coast Maori. A possible reason for this, which will need to await other results from the research programme before it can be tested, is that the fragmented nature of the Crown estate in Te Rohe Potae District (the result of a series of purchases for general settlement purposes, each to a certain extent in isolation from the other purchases) encouraged a demand for connections between the Crown blocks across the land remaining in Maori ownership.

The numbers of takings need to be considered in the context of the areal extent of each of the three districts[74]. Overall, in terms of impact, Maori in Te Rohe Potae District were less affected than East Coast Maori, but considerably more affected than Central North Island Maori, by public works and other associated takings.

Although no analysis has been carried out, the degree of impact of public works and associated takings can probably be correlated to the extent of Crown purchasing activity. The more Crown purchasing of blocks, especially during the nineteenth century before the use of the public works legislation became more prevalent, the less Maori-owned land remained to be affected by takings, and the more likelihood there was that the Crown would locate community uses on its own lands. This was the experience of Maori in other districts, such as the whole of the South Island, Hawke's Bay, Taranaki, Hauraki, and southern Kaipara. In these districts takings from Maori-owned land were a much smaller proportion of total takings from all ownerships.

[74] The area of the East Coast Inquiry District is 350,300 hectares. The combined area of the three Central North Island Inquiry Districts is 1,202,600 hectares. The area of Te Rohe Potae Inquiry District is ???

The results show that Maori-owned land in Te Rohe Potae District has been under sustained threat from the 1890s to the present day, in that at any time parts could be identified for taking by the Crown and local authorities because of an apparent public need. This threat was insidious and constant, like the dripping of a tap lowering the water level in a storage tank. While each taking on its own might not appear to involve very much land, the effect of many takings was cumulative, and damaging to the Maori land estate. The threat could also appear from many directions. Some reasons for taking, such as for road widening, might be readily apparent to the Maori owners, but others could appear virtually from nowhere and be sprung upon them, with no obvious explanation why or how their land was chosen as the site for the public work. Coupled with a lack of prior consultation, and with a rural people unaccustomed to legalistic procedures and bureaucratic ways, the suddenness of the appearance of the threat to their land would invariably have been overwhelming.

Maori were as aware of local community needs as any central or local government official. They understood that the Treaty of Waitangi envisaged a relationship where both parties dealt with each other for the good of all. It is very possible that if they had been asked, Maori in Te Rohe Potae District would have supported the development of a network of roads, and the provision of public services for their own and their community's health and welfare. However, the Crown's approach was often counter-productive to gaining a sympathetic response, and was at odds with the principle of one partner acting in good faith in its dealings with the other partner. Its attitudes and reliance on compulsory taking powers meant that Maori were never properly invited to contribute. Instead, the taking regime placed Maori in the role of objectors, forced to challenge the Crown's already well-formed intentions. It also placed them in the subordinate role of supplicants, dependent on a compensation regime that was based around adversarial argument and European concepts of land value. The whole regime encouraged antagonism, rather than the two parties working together.

There is little doubt that Maori in Te Rohe Potae District were significantly affected by the Crown's compulsory taking actions, to a higher degree than the average across New Zealand.

5 ROADS TAKEN WITHOUT PAYING COMPENSATION

5.1 Introduction

The Legislative Framework chapter of this report has identified and discussed the multiple methods that the Crown inserted into legislation to enable it to take lines of road without paying compensation. In summary these were:

- Laying off a road under a Governor's warrant issued in respect of the 5% provisions of the Native lands legislation (applicable from 1865 to 1927)
- Laying off a road under a Surveyor General's warrant, as provided in Native lands legislation (applicable from 1886 to 1910)
- Laying off a road through customary land by Proclamation issued by the Governor (applicable from 1910 to 1927)
- Declaring a formed road to be a public road upon presentation of a plan by the Minister of Public Works (applicable from 1894 to 1981)
- Declaring a formed road to be a public road upon presentation of a certificate and plan by the Chief Surveyor (applicable from 1894 to 1981)
- Declaring a roadline/roadway laid out over Maori Land by the Native/Maori Land Court to be a public road (applicable from 1913 to the present day)
- Laying off a road on subdivision and vesting in the local authority
- Laying off a road, with or without the consent of the owner/occupier, under provisions in successive Land Acts and in the Public Works Amendment Act 1948 (applicable from 1892 to 1981)

All these methods were used by the Crown in Te Rohe Potae. When surveyed, these lines of road were almost invariably a minimum of one chain (20 metres) wide.

The takings database identifies those takings for road without compensation that were proclaimed or notified in the *New Zealand Gazette*. This was a requirement in only some of the methods itemised above. In the case of warrants issued by the Governor or the Surveyor General prior to the passing of the Native Land Act 1909, it was the warrant itself, and its subsequent follow-through in the form of an approved survey plan showing the road, which determined the legality of the road taking. Some of

these warranted takings were notified in the *New Zealand Gazette*, while others were not. Why there was this distinction is not known.

In the case of roads that relied on presentation of a plan for their legality, the presentation was made to the District Land Registrar, and it was the acceptance and registration of the plan in the Land Registry that legalised the road.

The use of the various methods in Te Rohe Potae is discussed in this chapter. The discussion does not include one further method for laying off roads, which did not involve use of Maori-owned land. This was the laying off of roads over the Crown's own estate. The 1850s in the Raglan district, and the 1890s and 1900s decades in particular in the rest of Te Rohe Potae District, were characterised by multiple purchases of large blocks of land from Maori by the Crown. Once part of the Crown's estate, these land blocks were cut up into sections for settlement. The sections, which were given an appellation or legal description expressed as a section of a block of a survey district[75], were serviced by the laying off of public roads as an integral part of the cutting up process. Such roads are known as Crown Grant roads, as they were laid out to provide legal access to the sections that the Crown was granting to European settlers. While not directly affecting Maori, they did have an indirect effect, because of the Crown's desire to link these Crown Grant roads together into a roading network. This required that linking roads be laid out and taken over Maori-owned land under the various no-compensation provisions.

5.2 Laying off and Taking Roads under the 5% Provisions[76]

The ability to take roads under the 5% provisions relied, in the first instance, on a block of Maori-owned land having been investigated by the Native Land Court and orders having been made defining its boundaries and its ownership. In Te Rohe Potae this occurred later than in many other parts of the North Island. As a consequence the research for this report has not identified any takings for road where the Governor

[75] Or allotments of a parish in respect of lands acquired by the Crown in the Raglan and Whaingaroa districts in the 1850s, and in the raupatu lands to the north of Te Rohe Potae District.
[76] These are road takings identified in the accompanying database, for which the taking authority is recorded as Section 93 Native Land Court Act 1886, Section 70 Native Land Court Act 1894, Section 92 Public Works Act 1894, Section 93 Public Works Act 1905, Section 93 Public Works Act 1908, or Sections 388 and 389 Native Land Act 1909.

issued a warrant pursuant to powers provided in the Native Lands Act 1865 or the Native Land Act 1873 (i.e. prior to 1886).

The first known issue by the Governor of a warrant for a block in Te Rohe Potae District was in April 1888, in connection with Mohakatino-Parininihi 2 block. This warrant was issued earlier than others in Te Rohe Potae District because Te Rohe Potae Maori, in furtherance of their boycott of the Native Land Court, had not applied for the title to Mohakatino-Parininihi to be investigated, thereby providing an opportunity for Taranaki Maori to lodge and prosecute their own application. The Governor issued a Proclamation in the *New Zealand Gazette* in August 1888 that the road had been "duly taken and laid off"[77].

With the opening up of Te Rohe Potae agreed in the late 1880s, blocks began to be investigated by the Native Land Court. Once the Court had issued its orders on investigation of title for each block, the Crown then had fifteen years to arrange for the issue of warrants by the Governor.

The pattern that had already been established elsewhere in the North Island for the issue of the warrants was also applied to the applications for blocks in Te Rohe Potae District. The Assistant Surveyor General in the Auckland district office of the Department of Lands and Survey[78], and subsequently the Chief Surveyor in the Auckland district office, identified a block for which a warrant was required, and established the year that the title had been ordered in order to demonstrate that it was within the fifteen-year allowable period. Application was made to the head office of the Department. Given the fast turnaround in the issue of the warrants in Wellington, there seems to have been little questioning at the head office level of the district office recommendation, and it was quickly forwarded to the Governor for his signature on the warrant. The warrant was then returned to Auckland district office, which forwarded it to the surveyor named in the warrant.

[77] *New Zealand Gazette* 1888 page 845. Not included in Supporting Papers.
[78] This was the Survey Department up to 1892, and the Department of Lands and Survey from that year.

An example of a Warrant under the 1886 Act was one issued for roads through the Taharoa block in 1892. It stated:

> In exercise and pursuance of the powers and authorities conferred upon me by the Native Land Court Act 1886, and every Act amending or affecting the said Act, and in exercise of all other powers enabling me in this behalf, I, James Prendergast, Administrator of the Government of the Colony of New Zealand, do hereby authorise Lawrence Cussen to enter upon the lands described in the schedule hereto, or any part of the said lands, in my name and on my behalf, and to take and lay off such line or lines of road from and out of such lands as may be lawfully taken and laid off under the powers conferred upon me by the said Acts or any of them.[79]

When sending the warrant to the Chief Surveyor in Auckland, the Surveyor General said in a covering letter:

> The attached warrant in favour of Mr L Cussen to take roads through Taharoa No.6206 (in red) Block is forwarded for you to instruct the surveyor accordingly. You will be good enough to direct Mr Cussen to inform the owners or occupiers of the land of what he is about to do, and to invite their inspection of the Road as it is laid out, producing the Governor's warrant, if desired. On the finished plan he will place a certificate that he has taken the roads delineated thereon under the warrant (quoting date), and hand the plan to you for transmission to this office for the Governor's signature. When the Governor has approved of the Roads, the plans will be recorded by you, so that dealings under the Land Transfer or deeds Registry Acts may shew the Roads taken. A description will also be prepared and sent to this Office for insertion in the Gazette. As complaints have been received from the Natives that the Roads taken through their lands are not only injurious to their properties, but in some cases unnecessary, before approving of the plans you will please ascertain, not only their technical accuracy, but also that the position of the Road as affecting the block it intersects, is so far as you know the best.[80]

The letter as set out in this quotation was a standard format used when sending all Governor's warrants. In the case of this Taharoa covering letter, the Surveyor General added an additional handwritten paragraph:

> Mr Cussen will have to act very circumspectly in this case, and should take the advice of Mr Wilkinson, Government Native agent, before going on the ground. He must be careful not to place the Government in an awkward

[79] Road Warrant dated 20 May 1892. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 108. Supporting Papers #2319-2321.
[80] Surveyor General to Chief Surveyor Auckland, 25 May 1892. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 108. Supporting Papers #2319-2321.

> position therein, and if he finds there will be very serious opposition to report the matter so that the Government may decide first, before he is stopped.[81]

It would appear that, at this early stage (1892) in the Crown extending its influence into Te Rohe Potae, there was no guarantee that Maori would accept the Crown's authority and allow the surveyor to lay off the road.

When making its recommendation and request for a warrant, the Assistant Surveyor General and the Chief Surveyor provided little information about the need for the road warrant. Where any reason was stated, the most common explanation was that the road would link to Crown Grant roads already laid out or about to be laid out on Crown-owned lands. This was the reason quoted when applying for the warrant for the road through the Taharoa Block.

> The object of the road [to be] taken is to give access to Run No. 11 S.G. [Small Grazing] lease. At present the lessee cannot take goods or … over the Taharoa Block to the Run, … having to pay … to the Native owners.[82]
> [Letter illegible in parts]

The covering letter sent to the surveyor with the warrant instructed him in the same terms as referred to by the Surveyor General when forwarding a Governor's warrant to the Chief Surveyor in Auckland.

The issue of these warrants was not without the potential for controversy. The arrival of the surveyor was usually the first that Maori knew about the Crown's powers to lay off and take public roads. Maori might not take kindly to the notion of a public road being surveyed through their lands, especially when that was accompanied by apparent confiscation of the land required for the road. The work of the surveyors could be obstructed by demonstrations, the pulling out of survey pegs, and the dismantling of trigonometrical stations.

The research for this report has identified Governor's warrants issued for the following blocks during the 1890s:

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[81] Surveyor General to Chief Surveyor Auckland, 25 May 1892. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 108. Supporting Papers #2319-2321.

[82] Chief Surveyor Auckland to Surveyor General, 10 May 1892. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 108. Supporting Papers #2319-2321.

Table 5.1 Governor's Warrants issued in the 1890s

Year	Date of Warrant	Block	Reference[83]
1890	4 July	Mangauika	NZG 1891/582
1892	20 May	Taharoa	Road Warrant 108 NZG 1895/1253
1894	18 July	Mohakatino-Parininihi 2	NZG 1899/390
1896	21 October	Mohakatino-Parininihi 1	NZG 1897/2088
1898	12 September	Pokuru	Road Warrant 40
1898	19 September	Tokanui	Road Warrant 41
1899	20 January	Pukeroa-Hangatiki & Hauturu East	Road Warrant 39

Source: *New Zealand Gazette* and South Auckland Land District Road Warrants Book.

This list is unlikely to be a complete record of Te Rohe Potae warrants for the period, as not all roads taken by warrant were gazetted, and the lists of warrants held today by Land Information New Zealand are incomplete.

The takings for road from Mohakatino-Parininihi 2 in 1888 and 1894 are an indication that the Crown could take land more than once, provided that it was still within the fifteen year time period, and provided that the combined total area of all takings for road from a block did not breach the 5% maximum.

As already discussed in the Legislative Framework section, the Native Land Court Act 1894 and the Public Works Act 1894 both contained a statutory authority allowing the Governor to issue warrants for the taking of roads over Maori-owned land. In almost all cases the Public Works Act appears to have been the legislation chosen when issuing a warrant, and when notifying a laying off and taking for road in the *New Zealand Gazette*; all the warrants issued between 1900 and 1904 were issued under Section 92 Public Works Act 1894. The Public Works Acts (1894, 1905 and 1908) were used until April 1910, when the Native Land Act 1909 came into force.

[83] References to 'NZG' are to *New Zealand Gazette*, with year and page number.
References to 'Road Warrant' are to a book of Road Warrants in South Auckland Land District held by Land Information New Zealand Hamilton Processing Centre, being copies of folios held on Lands and Survey Auckland file 2068 (held at Archives New Zealand Auckland – reference BAAZ 1108/66c); the number following 'Road Warrant' refers to the number of the Warrant in this book. Supporting Papers #2257-2322.

The heavy workload for the Native Land Court in the 1890s, as Te Rohe Potae blocks were brought before it for investigation of title, resulted in a heavy workload for the surveyors during the first decade of the 1900s in defining roads through the blocks. Examples of warrants issued by the Governor for Te Rohe Potae during the period 1900-1910[84], taken from the takings database and from Lands and Survey Department records, are:

Table 5.2 Governor's Warrants issued 1900 -1910

Year	Date of Warrant	Block	Reference[85]
1900	1 May	Pirongia West	Road Warrant 35 NZG 1902/247
1902	3 July	Taurangi	NZG 1904/2660
1902	5 September	Mangaroa, Taurangi	NZG 1903/43 & 1904/2660
1902	23 September	Pukenui, Aorangi, Karu-o-te-Whenua, Kinohaku East	Road Warrant 27 NZG 1908/106 & 1912/2617
1902	31 October	Ratatomokia	NZG 1904/2378
1902	31 December	Kinohaku West, Taharoa, Hauturu West	Road Warrant 23
1903	1 April	Mangaroa	NZG 1904/2379
1903	1 July	Umukaimata, Aorangi, Mahoenui, Pukeuha	NZG 1904/2270, 1906/31, 1906/2187, 1907/3304 & 1908/279
1903	5 September	Raupara, Kakepuku, Pokuru, Mangamahoe, Ouruwhero	Road Warrant 11
1903	26 August	Awaroa, Te Kauri	Road Warrant 12 NZG 1913/3589
1903	24 September	Hauturu East, Otorohanga, Orahiri, Pukeroa-Hangatiki	Road Warrant 9 NZG 1906/1201 & 1909/3042

[84] The authority to issue road warrants under the Native Land Court Act 1894 and Section 93 of the Public Works Act 1908 was revoked in the Native Land Act 1909, which came into effect on 1 April 1910. However Section 434 of that Act allowed warrants already issued prior to that date to continue to be relied upon and used, provided there was notification in the *New Zealand Gazette* of the takings where survey plans were still being prepared in fulfilment of the warrants.

[85] References to 'NZG' are to *New Zealand Gazette*, with year and page number.
References to 'Road Warrant' are to a book of Road Warrants in South Auckland Land District held by Land Information New Zealand Hamilton Processing Centre, being copies of folios held on Lands and Survey Auckland file 2068 (held at Archives New Zealand Auckland – reference BAAZ 1108/66c); the number following 'Road Warrant' refers to the number of the Warrant in this book. Supporting Papers #2257-2322.

Year	Date of Warrant	Block	Reference
1903	7 October	Kinohaku East, Puketiti	Road Warrant 8 NZG 1905/149
1903	17 November	Hauturu West, Taumatatotara	Road Warrant 5
1903	17 November	Orahiri, Otorohanga, Turoto	Road Warrant 4
1904	4 March	Kinohaku West	Road Warrant 1
1904	13 August	Kinohaku East	NZG 1905/149
1904	12 October	Mahoenui, Mangaawakino	NZG 1906/1017
1904	14 October	Mangaroa	NZG 1905/149
1904	14 October	Waiwhakaata	NZG 1905/789
1904	7 November	Pukenui, Rangitoto B, Te Kuiti, Rangitoto-Tuhua 66	NZG 1907/1149 & 1912/198
1905	3 January	Mahoenui, Mangaawakino	NZG 1906/1017
1905	4 March	Hauturu East, Kinohaku East, Pehitawa	NZG 1912/922
1905	15 October	Karu-o-te-Whenua	NZG 1906/31
1905	26 October	Taurangi, Mangaroa	NZG 1908/1187, 1908/1604, 1909/1672, 1909/2920 & 1909/3042
1905	27 November	Kinohaku East	NZG 1908/1256 & 1917/264
1905	7 December	Kinohaku East, Hauturu East, Orahiri, Otorohanga, Piha, Pukenui, Pukeroa-Hangatiki, Te Kumi	NZG 1910/25
1906	18 October	Orahiri, Otorohanga, Puketarata, Takotokoraha, Turoto	NZG 1909/3068 & 1910/1160
1906	22 December	Mohakatino-Parininihi	NZG 1909/2169
1907	16 March	Maraetaua, Karu-o-te-Whenua, Kaingapipi	NZG 1909/689
1907	3 December	Rangitoto-Tuhua 77	NZG 1909/2169
1907	26 December	Hauturu East	NZG 1912/837
1908	6 March	Te Kuiti, Pirongia West, Te Awaroa, Te Kauri	NZG 1910/1804 & 1914/4177
1908	23 June	Mahoenui	NZG 1909/3042
1908	4 July	Orahiri	NZG 1909/78
1908	24 August	Rangitoto-Tuhua 77	NZG 1909/3042 & 1910/4302
1908	12 September	Kakepuku, Mangamahoe, Pokuru	NZG 1911/899 & 1911/1224

Year	Date of Warrant	Block	Reference
1908	28 October	Mangaroa	NZG 1909/1672
1908	13 November	Kinohaku West	NZG 1909/1613
1908	20 November	Orahiri	NZG 1909/755
1908	15 December	Orahiri	NZG 1910/3243
1909	26 February	Takotokoraha, Waiwhakaata,	NZG 1912/1841
1909	9 July	Maraetaua	NZG 1910/3962
1909	22 July	Mangaroa	NZG 1909/2407
1909	22 July	Rangitoto-Tuhua 64, Te Kuiti	NZG 1920/1447
1909	23 July	Kawhia, Pakarikari	NZG 1922/2337
1909	26 August	Puketarata, Rangitoto A, Rangitoto-Tuhua 29, Tokanui	NZG 1911/2918
1909	26 October	Mangaroa	NZG 1909/2920
1909	4 December	Rangitoto A, Rangitoto-Tuhua 27, 29 & 31	NZG 1911/2259
1909	6 December	Hauturu East, Orahiri, Mangawhero, Rangitoto-Tuhua 26, 35, 68 & 69, Te Kuiti	NZG 1910/1805, 1912/838, 1912/1160, 1912/2059 & 1912/2489
1910	18 January	Karu-o-te-Whenua, Maraetaua	NZG 1910/3363
1910	18 January	Hauturu East, Pukeroa-Hangatiki, Kakepuku, Tokanui	NZG 1910/1436, 1910/1437 & 1910/1869
1910	29 January	Kinohaku West	NZG 1911/835
1910	19 February	Rangitoto A, Korakonui	NZG 1912/837 & 1912/1421

Source: *New Zealand Gazette* and South Auckland Land District Road Warrants Book.

As with the list of warrants for the 1890s, this list for the first decade of the twentieth century is unlikely to be a complete list of all warrants issued, because of gaps in the Crown's records. The length of the list, however, demonstrates how much land was being passed through the Native Land Court and having its title investigated, and to what extent that process had an ongoing effect for Maori. It also demonstrates how long was the 'tail' associated with the warranted takings; the Proclamations of the takings in the *New Zealand Gazette* continue right up until 1922.

It is apparent that the parallel cutting up for settlement of the Crown's own purchased lands was also a strong driver for the survey and taking activity, as the Crown sought to lay off roads within the 15-year time deadline. In March 1899, according to a

summary in an inwards correspondence register book, the Minister of Lands telegraphed to the Surveyor General:

> Hope you are pushing on survey of King Country. Hope you will take immediate action to carry out my instructions to send two surveyors and get road made through, so that country will be opened not later than November or December next.[86]

The following reasons are recorded in the applications made by Lands and Survey officials for the issue of particular warrants:

- For the warrant issued on 31 December 1902:

  > The warrant is required for the purpose of taking a portion of the proposed road from Parawai Native Township to the Kawhia - Pirongia Road at Oparau, and to give access to the Kawhia Harbour from the Crown Land disposed of in Block I Kawhia South SD.[87]

- For the warrant issued on 26 August 1903:

  > The proposed road is part of the road from Te Maika [another name for Parawai] Native Township to the Pirongia – Kawhia Road.[88]

- For the warrant issued on 5 September 1903:

  > These roads are required to give access to Crown Land.[89]

- For the warrant issued on 24 September 1903:

  > These roads are required to give access to Crown Lands now under survey.[90]

- For the warrant issued on 7 October 1903:

  > The roads are required to give Crown tenants access to Te Kuiti.[91]

- For the Hauturu West warrant issued on 17 November 1903:

  > The roads are required to complete the connection between roads already surveyed through Crown Land.[92]

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[86] Telegram Minister of Lands to Surveyor General, 22 March 1899. Inwards Correspondence Register Book record for Lands and Survey Head Office file 39538. Supporting Papers #85-86.
[87] Assistant Surveyor General to Surveyor General, 3 December 1902. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 23. Supporting Papers #2287-2293.
[88] Assistant Surveyor General to Surveyor General, 13 August 1903. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 12. Supporting Papers #2283-2286.
[89] Assistant Surveyor General to Surveyor General, 19 August 1903. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 11. Supporting Papers #2279-2282.
[90] Assistant Surveyor General to Surveyor General, 10 September 1903. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 9. Supporting Papers #2274-2278.
[91] Assistant Surveyor General to Surveyor General, 22 September 1903. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 8. Supporting Papers #2270-2273.

- For the Orahiri warrant issued on 17 November 1903:

  > The roads have been formed but not proclaimed.[93]

- For the warrant issued on 4 March 1904:

  > These roads are required to open up Crown Land which is shortly to be put on the market.[94]

The foregoing shows that the roads taken without consultation or compensation through Maori-owned land were primarily about benefiting the Crown in making its own sections more attractive to individual settlers, and were only secondarily about assisting development of the district generally.

The correspondence associated with the issuing of the warrants shows that the same standard covering letter from the Surveyor General as had been used for the Taharoa warrant in 1892 (see above) was still in use ten years later.

There are also some records about contact with the Maori owners.

- In connection with the warrant for Pirongia West issued in May 1900, the surveyor provided a statutory declaration that on 21 May 1900 at Oparau that:

  > I gave notice to the Owners and Occupiers … of my intention to enter upon, and to take and lay off a Road or Roads through the said land, and that I invited their inspection of the proposed Road or Roads as about to be laid out.[95]

- For the road through Aorangi block authorised by the warrant of July 1903, a notation on the survey plan reads:

  > That notice of the intention to take the land has been served on the owners, and the meaning thereof explained to them, and the line pointed out to them on the ground on the thirty first day of October [1903].[96]

  This is one of a number of survey plans with similar notations.

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[92] Assistant Surveyor General to Surveyor General, 26 October 1903. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 5. Supporting Papers #2266-2269.
[93] Assistant Surveyor General to Surveyor General, 26 October 1903. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 4. Supporting Papers #2263-2265.
[94] Assistant Surveyor General to Surveyor General, 16 February 1904. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 1. Supporting Papers #2257-2262.
[95] Statutory Declaration by AG Allom, 31 August 1900. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 35. Supporting Papers #2298-2302.
[96] Taranaki plan SO 2418. Supporting Papers #2441.

- However, a meeting could not always be arranged. In one example, with respect to the warrant issued in September 1902 for the Mangaroa Block, a notation on the survey plan records:

  > That notice of the intention to take the road has been served on the owners, but they did not appear on the ground on the day appointed, viz. the 29th day of November 1902.[97]

  The meetings would have been called by the surveyor to suit the surveyor's timetable, rather than to fit in with the day-to-day and seasonal lives and activities of the owners.

The warrants in the table above include some significant roads within Te Rohe Potae. For instance, the warrant dated 7 December 1905 is for what is now State Highway 3 between Otorohanga and Te Kuiti.

After April 1910, with the coming into force of the Native Land Act 1909, a number of takings without compensation under the 5% provisions were proclaimed under that Act, rather than under the Public Works Act 1908. Unlike the earlier Native lands and the public works legislation, it was no longer necessary under the Native Land Act 1909 for the Governor to issue a warrant in advance of the taking. Instead the right to take up to 5% of a block existed, the Chief Surveyor could instruct a surveyor to survey a road in accordance with that right, and the Governor only became involved at the final stage of issuing a Proclamation to complete and legalise the taking.

The database identifies the following Proclamation takings under Sections 388 and 389 Native Land Act 1909:

[97] Taranaki plan SO 1929. Supporting Papers #2440.

Table 5.3 Takings under Sections 388 and 389 Native Land Act 1909

Year	Date of Taking	Block	Reference[98]
1910	22 November	Otorohanga	NZG 1910/4060
1910	12 December	Maraetaua	NZG 1910/4206 & 1911/3745
1911	24 February	Puketarata	NZG 1911/803
1911	13 April	Kinohaku West	NZG 1911/1334
1911	31 May	Rangitoto-Tuhua 68	NZG 1911/1873
1911	21 June	Moerangi	NZG 1911/2041
1911	11 November	Moerangi	NZG 1911/3393
1912	12 March	Te Kuiti	NZG 1912/1024
1912	11 May	Puketiti	NZG 1912/1611
1912	25 May	Pirongia West 1	NZG 1912/1777
1912	29 May	Kawhia P	NZG 1912/1829
1912	7 June	Rangitoto A35, Rangitoto-Tuhua 34, 35 & 61	NZG 1912/1889
1912	21 June	Rangitoto-Tuhua 61	NZG 1912/2033
1912	21 June	Takotokoraha, Turoto, Waiwhakaata	NZG 1912/2034
1912	19 July	Rangitoto-Tuhua 68	NZG 1912/2277
1912	25 July	Awaroa	NZG 1912/2378
1912	12 August	Kinohaku West	NZG 1912/2501
1912	26 August	Rangitoto-Tuhua 60	NZG 1912/2594
1912	2 September	Pirongia West	NZG 1912/2649
1912	2 September	Wharepuhunga	NZG 1912/2649
1912	5 September	Orahiri	NZG 1912/2693
1912	13 December	Puketarata	NZG 1912/3619
1912	13 December	Rangitoto-Tuhua 77	NZG 1912/3619
1913	4 March	Kawhia P	NZG 1913/753
1913	4 March	Rangitoto-Tuhua 77	NZG 1913/754
1913	8 May	Kinohaku West, Hauturu West	NZG 1913/1589
1913	19 June	Awaroa	NZG 1913/1983
1913	25 July	Rangitoto-Tuhua 61	NZG 1913/2299
1913	1 August	Rangitoto A37 & A43, Rangitoto-Tuhua 33	NZG 1913/2362
1913	15 September	Rangitoto-Tuhua 72	NZG 1913/2822
1913	16 October	Rangitoto-Tuhua 68	NZG 1913/3202

[98] References to 'NZG' are to *New Zealand Gazette*, with year and page number.

Year	Date of Taking	Block	Reference
1913	18 November	Taumatatotara	NZG 1913/3458
1913	24 November	Rangitoto-Tuhua 69, 70	NZG 1913/3527
1913	5 December	Rangitoto-Tuhua 78	NZG 1913/3626
1913	15 December	Rangitoto-Tuhua 26, 68, 79	NZG 1913/3721
1914	21 February	Rangitoto-Tuhua 68	NZG 1914/642
1914	24 February	Rangitoto-Tuhua 60	NZG 1914/641
1914	27 August	Rangitoto-Tuhua 68	NZG 1914/3420
1914	21 September	Rangitoto-Tuhua 68	NZG 1914/3604
1914	17 November	Rangitoto-Tuhua 61	NZG 1914/4074
1914	1 December	Rangitoto-Tuhua 61	NZG 1914/4218
1915	16 January	Rangitoto-Tuhua 60	NZG 1915/268
1915	29 March	Rangitoto-Tuhua 57, 61	NZG 1915/1004
1915	7 April	Rangitoto-Tuhua 72	NZG 1915/1108
1915	27 October	Rangitoto-Tuhua 77, 79	NZG 1915/3684
1915	20 November	Rangitoto-Tuhua 68	NZG 1915/3893
1915	23 November	Rangitoto-Tuhua 26, 60, 68, 77, 79	NZG 1915/3900
1916	22 February	Rangitoto-Tuhua 61	NZG 1916/546
1918	23 October	Rangitoto-Tuhua 52, 55	NZG 1918/3651
1918	6 November	Karu-o-te-Whenua	NZG 1918/3796
1919	17 January	Kinohaku West	NZG 1919/138
1919	1 March	Awaroa	NZG 1919/634
1919	22 May	Kinohaku West	NZG 1919/1555
1919	16 September	Moerangi	NZG 1919/2880
1919	24 September	Kaipiha	NZG 1919/3037
1920	17 February	Hauturu West	NZG 1920/539
1920	23 July	Rangitoto-Tuhua 78	NZG 1920/2255
1920	17 August	Moerangi	NZG 1920/2480
1920	12 October	Rangitoto-Tuhua 57	NZG 1920/2850
1921	12 November	Kawhia	NZG 1921/2741
1922	11 January	Rangitoto-Tuhua 78	NZG 1922/5
1923	6 January	Rangitoto-Tuhua 68	NZG 1923/7
1923	6 September	Rangitoto-Tuhua 29	NZG 1923/2386
1924	18 November	Manuaitu, Tahere	NZG 1924/2763
1927	11 March	Rangitoto-Tuhua 68	NZG 1927/643
1927	4 May	Kinohaku West, Marokopa	NZG 1927/1370
1927	7 June	Rangitoto-Tuhua 77	NZG 1927/1963

Source: *New Zealand Gazette*.

Unlike the earlier legislation, Sections 388 and 389 Native Land Act 1909 required the issue of a Proclamation by the Governor (i.e. publication in the *New Zealand Gazette*) in order to complete and legalise the taking of any road under the 5% provisions. This means, therefore, that the table above of takings since 1910 is likely to be a complete record of the use of the statutory power in Te Rohe Potae District.

The post-1910 takings progressively assume a different character to the earlier takings. They are of local roads, frequently promoted by the local authority, which tended to get looked at by Crown officials to see whether there was still a residual opportunity to take without paying compensation, or whether, if that opportunity no longer existed, they would have to be taken under the Public Works Act, with compensation payable. Using the opportunity to take without paying compensation was the Crown's first recourse.

The use of the power to take roads under the 5% provisions had an additional consequence for Maori owners. There was no obligation written into the legislation requiring that the roads be fenced (unless the road cut through a fence that existed at the time of construction)[99]. This matter was the subject of a petition to Parliament in 1929. It was in connection with the taking dated 7 June 1927, of land from Rangitoto-Tuhua 77 Block for the Waimiha - Ongarue Road.

> The road has now been formed and is in use.
>
> We have been advised by the Public Works Department that the land for the said road was taken under the provisions of Section 389 of the Native Land Act 1909, and that there is no liability on the Crown to fence a road which has been taken under the Native Land Act in pursuance of statutory rights vested in the Crown, which rights were still in existence in respect of the said lands, and that the Native Land Court has no jurisdiction in the matter.
>
> As the result of the opening of the road for traffic and the removal of fences, the stock (sheep) on the said land has had to be sold, and the greater part of the said lands cannot now be used, and ragwort is now becoming a menace.
>
> The cost of fencing (one side of road only) necessitated by the taking of the road through the said land is estimated at £60 to £70.

[99] Under Secretary for Lands to Solicitor General, 18 May 1912, and Solicitor General to Under Secretary for Lands, 30 May 1912. Lands and Survey Head Office Crown Law Opinions Book, Volume 4, pages 344 and 346. Supporting Papers #90 and 91.

> That since the taking of the land for the said road, your Honourable House has recognised the injustice of taking land without compensation, and in consequence the right to take roads upon Native Land without liability to pay compensation to any person has been abolished by Section 30 of the Native Land Amendment and Native Land Claims Adjustment Act 1927.
>
> Your petitioners say that they are suffering under an injustice and hardship on account of loss of full use of the lands mentioned and expense entailed in fencing, and they pray that your Honourable House may grant such relief as the circumstances of the case warrant.[100]

The response of the Government to this petition avoided discussion of any obligation to assist the Maori owners, advising Parliament only that the taking under the Native Land Act complied with the circumstances set out in the legislation.

> The law as construed by the Supreme Court was that the time in which the Crown was entitled to take land for roads without payment ran from the date of the registration under the Land Transfer Act, and not 15 years from 28th November 1900 when the title was investigated.[101]

An attached report from the Registrar of the Native Land Court showed that there had been no registration of any of the titles to the Rangitoto-Tuhua 77 partition blocks affected by the road taking[102]. The Native Affairs Committee, as a consequence, was unable to address the failings of the legislation, and reported that it had no recommendation to make[103].

5.2.1 Otewa and Puketawai Roads

This sub-section refers to all the various takings for road that followed from the issue of just two of the warrants listed in Table 5.2. These are the warrants dated 4 December 1909 and 6 December 1909. It also discusses other takings by the Crown to fill gaps not covered by the 1909 warrants. It demonstrates how the various legal mechanisms available to the Crown were marshalled to achieve the Crown's ends.

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[100] Petition 197/1929 of Pee Paretekorae and 2 Others. Legislative Head Office Papers of Native Affairs Committee for 1929. Te Rohe Potae Petitions Database Supporting Papers, Document 116.
[101] Under Secretary Native Department to Chairman Native Affairs Committee, 13 September 1929. Legislative Head Office Papers of Native Affairs Committee for 1929. Te Rohe Potae Petitions Database Supporting Papers, Document 116.
[102] Registrar Native Land Court Auckland to Under Secretary Native Department, 6 September 1929, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 13 September 1929. Legislative Head Office Papers of Native Affairs Committee for 1929. Te Rohe Potae Petitions Database Supporting Papers, Document 116.
[103] Report of Native Affairs Committee on Petition 197/1929, 2 October 1929. *Appendices to the Journals of the House of Representatives* (AJHR), 1929, I-3, pages 8-9. Supporting Papers #3907-3908.

A series of roads were laid off by the Crown in the country to the east of Otorohanga and Te Kuiti, in order to meet the needs of its own land settlement programme. When it had purchased lands from Maori in the 1890s, and in 1907-1908, or had been awarded land in lieu of survey liens, the Crown had ended up with a series of scattered holdings interspersed among lands that it had not purchased and were still Maori-owned. For convenience, when dividing up these scattered holdings into sections to offer to European settlers, it referred to the holdings to the east of Otorohanga and Te Kuiti as the Rangitoto Improved Farm Settlements[104]. The settlement sections required road access to them, laid out across the Maori-owned blocks, and warrants to lay off and take these roads under the 5% provisions were applied for.

The first batch of sections, Rangitoto No.1 Improved Farm Settlement, were advertised and balloted in October 1909[105]. The following month the surveyor working on the Improved Farm Settlement lands wrote to the Chief Surveyor:

> Nearly all the successful applicants are anxious to know when the road works will be commenced, several express a desire to get on their sections almost immediately….
>
> I am about ready for the road warrants so I can legally go on the land.[106]

The Chief Surveyor then sent his recommendation to the Surveyor General that a warrant was required in favour of Henry Francis Edgecumbe authorising him to lay off roads through Maori-owned lands "to give access to the Rangitoto Improved Farm Settlements at present under survey, and to Crown lands"[107]. The schedule attached to this request listed all the Maori-owned blocks through which the road would pass, and detailed when title had been ordered by the Native Land Court, in order to demonstrate that the roads would be taken within the fifteen-year time limit. Another

[104] These were put on the market to settlers as Rangitoto No.1 Improved Farm Settlement, and Rangitoto Improved Farm Settlement No.2. Plans of Settlements. Lands and Survey Auckland file 5757. Supporting Papers #2454 and 2455.
[105] Public notice, undated. Copy on Lands and Survey Auckland file 5757. Supporting Papers #2456.
[106] District Surveyor Edgecumbe, Otewa, to Chief Surveyor Auckland, 10 November 1909. Lands and Survey Auckland file 5757. Supporting Papers #2457.
[107] Chief Surveyor Auckland to Surveyor General, 22 November 1909. Lands and Survey Auckland file 5757. Supporting Papers #2458-2463.

warrant in favour of Alexander Davis Newton was also requested[108]. Both warrants were issued in early December 1909[109].

The file in the head office of the Department of Lands and Survey concerning the issue of the warrants has not been located during research for this report, but an opinion of the Solicitor General in connection with that and another file has been located[110]. The Surveyor General asked the Solicitor General:

> The Chief Surveyor Auckland has recently applied for a number of Governor's warrants under Section 93 of the Public Works Act 1908 to take and lay off roads through certain blocks of Native land. The original titles to the Blocks are all Orders-on-Investigation of Titles under the Native Land Court Act 1886, issued during the years 1888, 1889 and 1890. The lands have all subsequently been partitioned, and residue and partition orders of the Native Land Court have been issued from time to time. No Crown Grants or Land Transfer certificates of title have issued for any of the land. Will you please advise whether the Governor has power to issue the warrants as desired.[111]

The Solicitor General replied:

> No Crown Grants or Land Transfer Certificates of Title have been issued, and the lands are held under Native Land Court orders issued under Section 20 of the Native Land Court Act 1886. Such orders are not specifically mentioned in Section 93 of the Public Works Act 1908, but having regard to the decision in *Re the Pirau Block* (10 N.Z.L.R. 125), I am of the opinion that they are equivalent to Native Land Court Certificates of Title, and consequently that the land comes under Section 93(1) as being owned by Natives under Native Land Court Certificate of Title. Hence the right to take roads exists without payment of compensation, unless the limit of time fixed by Section 95(a) applies or has expired. Section 95(a) says that the power to take shall cease in the case of land the subject of a "grant or certificate issued under the Native Land Court Act 1886" or any Act passed in amendment or substitution "at the end of 15 years from the date of such grant or certificate". No grant has been issued and the question is whether the Order under Section 20 of the Native Land Court Act 1886 is a "certificate" within the meaning of Section 95(a). In my opinion it is not. I think "certificate" means a Land Transfer Certificate issued pursuant to the order under Section 20, and does not include the Order

[108] Chief Surveyor Auckland to Surveyor General, 22 November 1909. Lands and Survey Auckland file 5757. Supporting Papers #2464-2465.
[109] Under Secretary for Lands to Chief Surveyor Auckland, 6 December 1909 and 7 December 1909. Lands and Survey Auckland file 5757. Supporting Papers #2466 and 2467.
[110] The file numbers on the opinion memorandum (Lands and Survey Head Office files 1909/881 and 1909/1480) indicate that the opinion was deemed to be relevant to the 4 December 1909, 6 December 1909 and 18 January 1910 (Tokanui and Kakepuku) warrants listed in Table 5.2.
[111] Surveyor General to Solicitor General, 20 December 1909. Lands and Survey Head Office Crown Law Opinions Book Volume 4. Supporting Papers #89.

itself. This is clearly so in the Act of 1886, the language of which is practically the same as that of Section 95.

For these reasons I am of opinion that the Governor has power to issue the warrants. The roads may be taken without compensation as the limit of 15 years will not commence to run until the Land Transfer Certificates of Title are issued.

See Cook County Council v. Rawiri Hinaka (1893) N.Z.L.R. 11.[112]

A copy of the 6 December 1909 warrant has been located in Crown records. It states:

> In exercise and pursuance of the powers and authorities conferred upon me by Section 93 of the Public Works Act 1908, and every other Act amending or affecting the said Act, and in exercise of all other powers enabling me in this behalf, I, William Lee, Baron Plunket, the Governor of the Dominion of New Zealand, do hereby authorise Henry Francis Edgecumbe Esq to enter upon the lands described in the Schedule hereto, or any part of the said lands, in my name and on my behalf, and to take and lay off such line or lines of road from and out of such lands as may be lawfully taken and laid off under the powers conferred upon me by the said Acts or any of them.
> [Inserted here is the Schedule setting out a list of 49 blocks of land, their area, and the nature and date of their present title]
> Given under the hand of His Excellency the Governor of His Majesty's Dominion of New Zealand, this sixth day of December in the year of our Lord one thousand nine hundred and nine.[113]

The 4 December 1909 warrant used a similar format and language, referring to six Maori-owned blocks[114].

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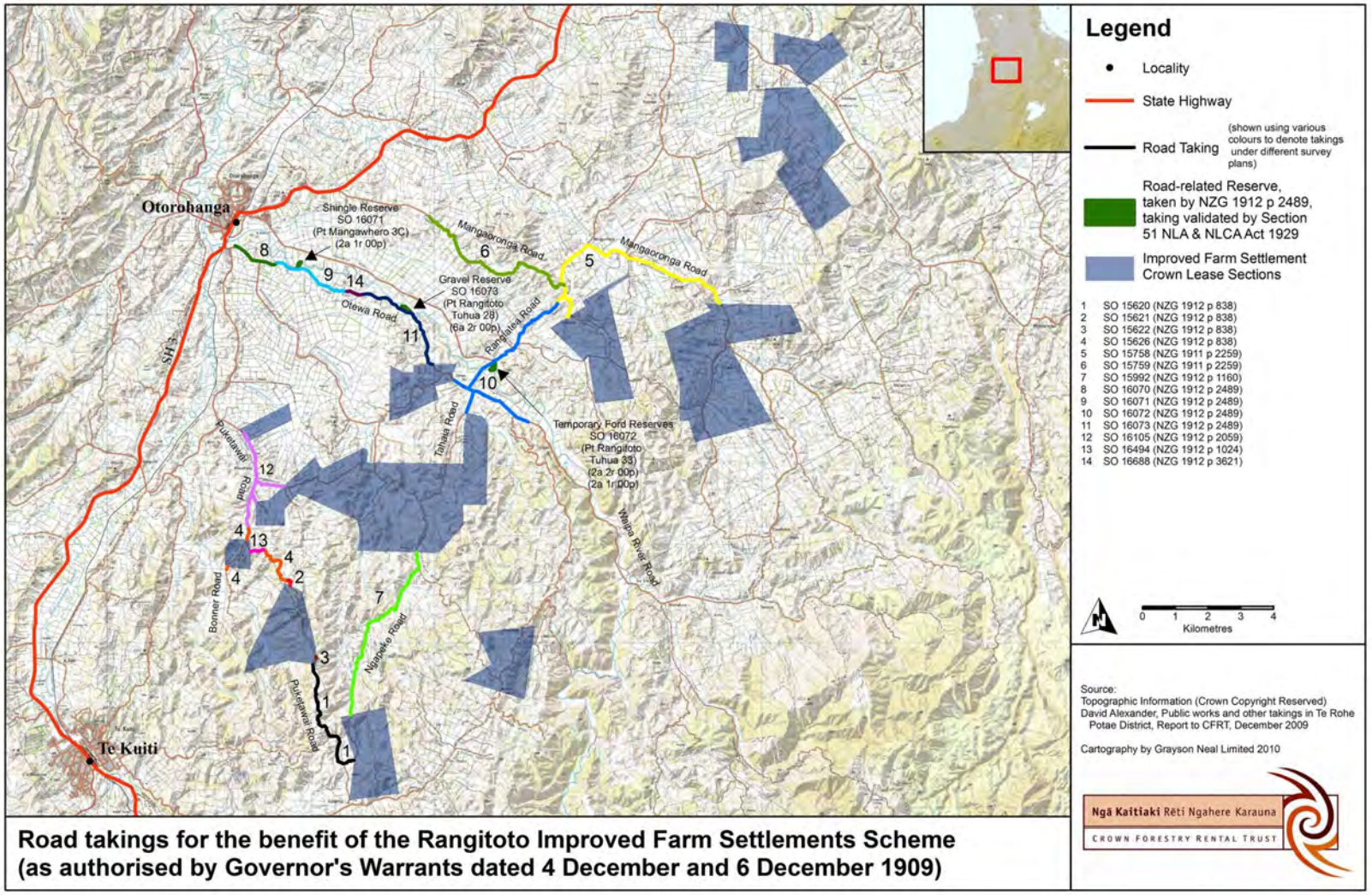
[112] Opinion of Solicitor General, 10 January 1910. Lands and Survey Head Office Crown Law Opinions Book, Volume 4. Supporting Papers #89.
This opinion was given on the same day as a similar opinion in response to a query about a taking for road through Kinohaku East 2 block, in which he stated: "The Department has always been advised that [certificate in Section 95(a)] means Land Transfer Certificate of Title, and does not include orders under Section 20". Lands and Survey Head Office Crown Law Opinions Book, Volume 4, page 158. Supporting Papers #87-88.

[113] Governor's Warrant dated 6 December 1909, attached to Chief Surveyor Auckland to Under Secretary for Lands, 1 May 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #288-291.

[114] Governor's Warrant dated 4 December 1909. Lands and Survey Auckland file 5757. Supporting Papers #2479.



Road takings for the benefit of the Rangitoto Improved Farm Settlements Scheme (as authorised by Governor's Warrants dated 4 December and 6 December 1909)

Map 2 Road takings for the benefit of the Rangitoto Improved Farm Settlements Scheme

When forwarding the 4 December 1909 and 6 December 1909 warrants to the surveyors, the Chief Surveyor told them:

> Will you please inform the owners or occupiers of the land of your intention to make the survey, and invite inspection of the road as laid out. Should your authority be challenged you may produce the warrant.
>
> When making your plan, please state clearly in the title, inter alia, that it is a plan of roads taken under Section 93 of the Public Works Act 1908, and give the roads distinguishing colours for the different blocks, in no case using burnt sienna for a warrant road. If you prefer to do so, you may make separate plans and tracings for the warrant roads, but this is not necessary.
>
> The certificate directed by Survey Regulation 94 is to be written on the plan and signed, and the warrant indorsed to the effect that it was only exercised on the date mentioned in the certificate and returned to this office.[115]

Newton completed his survey work in connection with the 4 December 1909 warrant first. He showed the lines of road to the Maori owners in January 1910, and completed his survey plans in July 1910[116]. The Chief Surveyor approved the plans in June 1911, and the roads were taken under Section 93 Public Works Act in July 1911[117].

In December 1911, four of Edgecumbe's survey plans, for roads laid off under the 6 December 1909 warrant through Rangitoto-Tuhua 26, 68 and 69, and Te Kuiti 2B15, 2B16, 2B17 and 2B26, were forwarded to Wellington.

> The roads shown were surveyed under warrant in connection with the Rangitoto Improved Farm Settlements.
>
> The land taken for road, together with roads already taken, does not exceed the five per cent allowed by the Act.[118]

Each of the four plans had on it a certificate by the surveyor to whom the warrant had been issued.

> I hereby certify:

---

[115] Chief Surveyor Auckland to District Surveyor Edgecumbe, Otorohanga, and Assistant Surveyor Newton, Otorohanga, 14 December 1909. Lands and Survey Auckland file 5757. Supporting Papers #2468.
[116] South Auckland plans SO 15758 and SO 15759. Supporting Papers #2361 and 2362.
[117] *New Zealand Gazette* 1911 page 2259. Supporting Papers #3954.
[118] Chief Surveyor Auckland to Under Secretary for Lands, 9 December 1911. Lands and Survey Head Office file 1912/109. Supporting Papers #248.
South Auckland plans SO 15620, SO 15621, SO 15622 and SO 15626. Supporting Papers #2357, 2358, 2359 and 2360.

1. That the road-line shown on this plan was surveyed under authority of a warrant signed by His Excellency the Governor dated December 6th 1909.
2. That notice of the intention to take the road has been served on the owners, and the meaning thereof explained to them, and the line pointed out to them on the ground on the 10th day of January 1910.
3. That no pa, village, Native cultivation or burial ground has been included in the road shown on this plan.

HF Edgecumbe
District Surveyor
8/4/1911

The plans also had a second certificate signed by another District Surveyor (Andrew Wilson) and dated March 1910, that he had made the survey and complied with all Native lands surveying requirements. When the Chief Surveyor was asked for an explanation as to why there were two certificates from two different surveyors[119], he replied that "the survey was made by Mr Wilson, but the warrant legalising the road was exercised by Mr Edgecumbe"[120]. This was treated as a perfectly acceptable explanation, and the plans were forwarded to the Public Works Department for notification of the taking under Section 93 Public Works Act 1908[121]. The roads on the four plans were taken in February 1912[122].

One of the four plans showed a road taken through Te Kuiti 2B16, a block that had not been mentioned in the warrant issued in December 1909. The Under Secretary for Lands explained that "the only way to legalise this portion will be by a Proclamation under Section 389 of the Native Land Act 1909"[123], this being a section not requiring a Governor's warrant to be issued before the survey was undertaken, but instead requiring a Proclamation taking the road to be issued by the Governor after the survey had been completed. A notation was placed on the plan that "Road to be taken under the N.L. Act 1909"[124]. A further survey plan was then prepared showing the proposed

[119] Under Secretary for Lands to Chief Surveyor Auckland, 29 December 1911. Lands and Survey Head Office file 1912/109. Supporting Papers #249.
[120] Chief Surveyor Auckland to Under Secretary for Lands, 11 January 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #250.
[121] Under Secretary for Lands to Under Secretary for Public Works, 15 January 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #251.
[122] *New Zealand Gazette* 1912 page 838. Supporting Papers #3965.
[123] Under Secretary for Lands to Chief Surveyor Auckland, 29 December 1911. Lands and Survey Head Office file 1912/109. Supporting Papers #249.
[124] South Auckland plan SO 15626. Supporting Papers #2360.

road through Te Kuiti 2B16B[125], and forwarded to Wellington in February 1912, with an explanation as to why the road could be taken under the 5% provisions.

> The title to Te Kuiti 2B No.16B is a Residue Order dated the 9th of April 1908, area 90 acres 2 roods 36 perches. Te Kuiti 2B No.16 is a Partition Order dated 8/7/02. Te Kuiti No.2 is a residue Order dated 23/3/99, all under the Native Land Court Act 1894. The original block is Te Kuiti, the title to which is an Order on Investigation under the Native Land Court Act 1886 dated 5/11/89, area 7080 acres. No Land Transfer title has been issued, and no previous road rights have been exercised.[126]

All was considered to be in order, and the road was taken the following month[127].

In March 1912, another survey plan relying on the 6 December 1909 warrant for its authority was sent to Wellington. Yet again "the road was surveyed to give access to the Rangitoto Improved Farm Settlements"[128]. The plan showed a road through Rangitoto-Tuhua 26 and 35 blocks[129]. This time Edgecumbe had done all the work, and his certificate was similar to the one he had prepared on the four earlier plans[130], with the addition that he certified that he had undertaken the survey himself. No errors were identified in either the Lands and Survey Head Office or the Public Works Head Office, and the road was taken the same month[131].

The next plan relying on the 6 December 1909 warrant was sent to Wellington in May 1912, and showed a road "surveyed to provide access to Crown sections". The blocks through which the road passed were Te Kuiti 2B18B, 2B19, 2B20 and 2B21B[132]. The derivation of title for these partition blocks back to the initial Te Kuiti block of 7080 acres was set out in the Chief Surveyor's memorandum, and he continued:

> No Land Transfer titles have issued for any of the blocks mentioned, and the area taken out of the entire block for road, in exercise of the Governor's right, is 27 acres. If the right to take accrued to the Crown in respect of the original

[125] South Auckland plan SO 16494. Supporting Papers #2373.
[126] Chief Surveyor Auckland to Under Secretary for Lands, 13 February 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #252.
[127] *New Zealand Gazette* 1912 page 1024. Supporting Papers #3966.
[128] Chief Surveyor Auckland to Under Secretary for Lands, 2 March 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #253.
[129] South Auckland plan SO 15992. Supporting Papers #2363.
[130] The only difference was that the date on which the proposed road was discussed with the Maori owners was 1 February 1910.
[131] *New Zealand Gazette* 1912 page 1160. Supporting Papers #3969.
[132] South Auckland plan SO 16105. Supporting Papers #2368.

> block, and is still in existence, as appears to be the case, there is still an area of over 300 acres available for taking.[133]

The Assistant Under Secretary commented:

> This appears to be a case where the 5% would be based on the parent title for the Te Kuiti Block of 7,080 acres, and the Crown is not restricted to 5% in each subsequent subdivision (see in reference to this the opinion of the Solicitor General on the Rangitoto A12B Block …).
>
> It is presumed that the land now taken for road out of the Te Kuiti subdivisions has not been covered by any Crown Grant.[134]

This last point was confirmed by the Chief Surveyor, who also gave it as his opinion that "it seems quite clear from the details of the title … that this is a case in which the right dates back to the parent title"[135]. The plan was then sent on to the Public Works Department, and the road was taken in June 1912[136].

The Solicitor General's opinion with respect to Rangitoto A12B stated:

> I am of opinion that the right of the Crown to take without compensation roads through Native land in cases where that right accrued before the coming into operation of the Native Land Act 1909, is not affected by any subsequent partition of the land. Notwithstanding any such partition, the Crown retains its right to take as roads 5 per cent of the total original area, and is not bound to limit the taking to 5 per cent of each subdivision.
>
> The law is different in the case of Native land which has not passed the Native Land Court until after the commencement of the Native Land Act 1909. By Section 388 of that Act it is expressly provided that, where land is partitioned into parcels, no greater proportion should be taken in any parcel than 5 per cent thereof. No such provision, however, exists in the Public Works Act or the Native Land Act 1894.[137]

In May 1912 four more survey plans showing Otewa Road laid out in terms of the 6 December 1909 warrant were submitted by Edgecumbe to the Chief Surveyor[138]. The road passed through Orahiri 1 Sections 17, 27, 28, 29, 13, 14, 15 and 21,

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[133] Chief Surveyor Auckland to Under Secretary for Lands, 9 May 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #254-255.
[134] Assistant Under Secretary for Lands to Chief Surveyor Auckland, 17 May 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #256.
[135] Chief Surveyor Auckland to Under Secretary for Lands, 25 May 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #257.
[136] *New Zealand Gazette* 1912 page 2059. Supporting Papers #3971.
[137] Solicitor General to Under Secretary for Lands, 21 February 1912. Lands and Survey Head Office Crown Law Opinions Book, Volume 6, page 298. Supporting Papers #92.
[138] South Auckland plans SO 16070, SO 16071, SO 16072 and SO 16073. Supporting Papers #2364, 2365, 2366 and 2367.

Terengohengohe, Mangawhero 1E, 2C, 3B, 3C, 3D2, 3D3, and 3D4, and Rangitoto-Tuhua 24B, 28, 29, and 33. Although Edgecumbe certified that he had showed the lines of road to the Maori owners in January and March 1910, his notification to them may not have been very thorough as there was a complaint made in December 1910.

> We are informed by Mr T Burt of the Public Works Department Hamilton that the survey of the [Otorohanga to Otewa] road was made under your directions, and since we received no notice of such surveys we beg to ask you either to furnish us with date of such warrant, or with a copy of the Order in Council authorising that survey.[139]

They were told in reply that the 6 December 1909 was being relied on for the road taking[140].

When sending in the plans, Edgecumbe must have indicated that the roads passed through cultivated land, as the Chief Surveyor wrote back to him.

> Will you be so kind as to give me some indication of what portions of the roads taken pass through Native cultivations.
>
> The fact that Natives consent to land being taken through a cultivation does not affect the matter – the Crown still cannot take the land under Section 93. If, however, the road passes through land which has been used for a cultivation, but which you are quite satisfied the Natives have agreed may be taken for road, such land need not be held to be cultivation within the meaning of the Act, and there is no occasion to amend the declaration by crossing out the word.[141]

Edgecumbe replied:

> Plan 16070 – Road between pages I and V goes through cultivations, a narrow strip on each side of the present tram line, the natives gave permission to take a road along this tram line several years ago. Mr Worthington of the Public Works Department informs me that the Natives agreed that the tram line should be on a 30 link traverse instead of a 50 link traverse, as I then took it, you could get fuller details from the Public Works Department, the balance was uncultivated [from pegs] V to IX.
>
> Plan 16071 – No cultivations except a small patch, say ½ acre between XVIII and XIX, where potatoes were grown in 1910, then left in fallow.

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[139] Te Para Komanga and Pareaute Komanga and Others, Otorohanga, to Chief Surveyor Auckland, 16 December 1910. Lands and Survey Auckland file 5757. Supporting Papers #2477.
[140] Chief Surveyor Auckland to Te Para Komanga and Pareaute Komanga, Otorohanga, 19 January 1911. Lands and Survey Auckland file 5757. Supporting Papers #2478.
[141] Chief Surveyor Auckland to District Surveyor Edgecumbe, Otorohanga, 7 May 1912. Lands and Survey Auckland file 5757. Supporting Papers #2469.

> Plan 16072 – When surveyed there were no cultivations except a few blighted fruit trees near peg CVII, which I had permission to go through, parts of this road were in rough feed evidently established by nature.
>
> Plan 16073 – Pegs XXXI to XXXVIII ploughed and cultivated by W Emery, a half or three-quarter caste native. That road was protested against in a gentlemanly manner. XLI to XLIV land grassed, rather poor take, fern plentiful. XLVI to XLIX manuka felled and burnt, not ploughed when surveyed. Rest of road in state of nature.[142]

The four plans were sent to Wellington the following month. The road had been surveyed "to provide access to Crown Settlements", and the Chief Surveyor stated:

> No Land Transfer certificates have issued for any of the blocks mentioned, and in no case does the area to be taken, together with what has already been taken, exceed the five per cent allowed by the Act.[143]

He added:

> Mr Edgecumbe reports that in two or three places the road passes through small portions of cultivated ground, but not apparently of any special value or importance. On this account it will be necessary to obtain the consent of the Governor in Council under Section 94 of the Act.

The Chief Surveyor was told that Section 94 of the Public Works Act 1908 did not apply, as an Order in Council allowing the taking of road though cultivated land had to have been issued prior to the surveyor laying off and taking the roads. In any event, that section had been repealed by Section 390 Native Land Act 1909.

> The only course now open appears to be for Mr Edgecumbe to exclude from his plans those portions of the road which do so encroach, and then amend his certificates, in order that the balance of the road may be duly approved by the Governor.
>
> The portions excluded will have to be legalised by other process.[144]

The Chief Surveyor then wrote to Edgecumbe:

> It does not appear to me that there are any cultivations within the meaning of the Act on the road shewn on the above plans, except from peg I to V on plan 16070 and from the western boundary of the Mangawhero 1E block on plan

[142] District Surveyor Edgecumbe, Otorohanga, to Chief Surveyor Auckland, 17 May 1912. Lands and Survey Auckland file 5757. Supporting Papers #2470.
[143] Chief Surveyor Auckland to Under Secretary for Lands, 4 June 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #258-259.
[144] Under Secretary for Lands to Chief Surveyor Auckland, 18 June 1912. Lands and Survey Head office file 1912/109. Supporting Papers #260.

> 16073 to peg XXXVIII. On plan 16071 the bush is shewn up to the boundary line. I would therefore suggest that you reconsider the matter and if you feel that you are justified in taking this view kindly amend the certificates accordingly in order that the portions of the road not covered by cultivations may be taken.
>
> Special plans will probably have to be prepared for taking the portions of the road excluded from the proclamation.[145]

He also replied to the Under Secretary for Lands on the same day.

> Failing [legislative amendment] the only course I can suggest is that special plans be prepared for taking the portions covered by cultivations under Section 19 of the Public Works Act.[146]

This was a section that provided for compensation to be paid for land taken for road. The Assistant Under Secretary for Lands agreed, noting that the intention of Parliament in repealing Section 94 had been for the specific purpose of preventing cultivated land being taken without the payment of compensation. However, he hoped that "the road will benefit native land so that compensation awarded should not be heavy"[147].

In response to the Chief Surveyor's letter, Edgecumbe made a slight but significant variation to the standard certificate on two of his plans. In order for the road to be taken in terms of the warrant, it was not allowed to pass through "any pa, village, native cultivation or burial ground". The surveyor certified to this effect, but only for "the road shown on this plan between pegs V and XI" on plan SO 16070, and "except [for the road] between pegs XXXII and XXXVIII" on plan SO 16073. By qualifying his certificates in this manner, he was effectively certifying that a taking under the 5% provisions was not possible through parts of Orahiri 1, and part of Mangawhero 1E.

While these communications were passing between the surveyor, the Chief Surveyor, and officials in Wellington, Hari Wahanui wrote to the Chief Surveyor about the road through Orahiri 1.

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[145] Chief Surveyor Auckland to District Surveyor Edgecumbe, Pukekohe, 25 June 1912. Lands and Survey Auckland file 5757. Supporting Papers #2475.
[146] Chief Surveyor Auckland to Under Secretary for Lands, 25 June 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #261.
[147] Assistant Under Secretary for Lands to Chief Surveyor Auckland, 9 July 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #262.

> This is a request to you about the road laid down by Mr Edgecumbe – from Otorohanga to Otewa Road – and the piece running through Orahiri No 1 Sec 27, that that road should be laid down in accordance with the Order of the Court which adjudicated on Orahiri No 1 block on subdivision in the Native Land Court minute book. We all assisted at the Court in the laying off of that road at the time. Let Mr Edgecumbe's line over Orahiri No 1 Sec 27 be cancelled so that the lines or subdivisions formerly existing may be reconstituted. Let the road not go north of the fence but outside the fence. Please send to Worthington, Road Engineer at Otorohanga, and he will adjust the matter.[148]

Wahanui had also made the same complaint in December 1911[149], but had been ignored.

Another survey plan was prepared by compilation in the survey office from Edgecumbe's survey to show the two lengths of Otewa Road that passed through cultivated land[150]. The length through Mangawhero 1E had an area of 2 acres 1 rood 14.1 perches. The other length of road through Orahiri 1 subdivisions was not adopted as the proposed road, because of the complaint from Wahanui. Instead it was reported that the Assistant Road Engineer of the Public Works Department discussed the line of the road with the Maori owners, and between them they reached agreement on a different line that avoided the cultivated land, "and will save fairly heavy claims for compensation"[151]. Edgecumbe was instructed to survey the alteration[152].

In July 1912 the Public Works Department was asked to take the rest of Otewa Road, being the portions that did not pass through cultivated land and could be taken under the 5% provisions of Section 93 Public Works Act 1908[153]. The lands were taken the following month[154], the same month that a plan showing the amended line of road through Orahiri 1 was forwarded to Wellington. This plan had endorsed on it a

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[148] HH Wahanui, Otorohanga to Chief Surveyor Auckland, 17 June 1912. Lands and Survey Auckland file 5757. Supporting Papers #2471-2474.
[149] HH Wahanui, Otorohanga to Chief Surveyor Auckland, 12 December 1911. Lands and Survey Auckland file 5757. Supporting Papers #2480-2482.
[150] South Auckland plan SO 16688. Supporting Papers #2381.
[151] Chief Surveyor Auckland to Under Secretary for Lands, 12 July 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #265.
[152] Chief Surveyor Auckland to District Surveyor Edgecumbe, Te Awamutu, 15 July 1912. Lands and Survey Auckland file 5757. Supporting Papers #2476.
[153] Chief Surveyor Auckland to Under Secretary for Lands, 10 July 1912, and Assistant Under Secretary for Lands to Under Secretary for Public Works, 15 July 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #263 and 266.
[154] *New Zealand Gazette* 1912 page 2489. Supporting Papers #3972.

certificate from the surveyor that "no building, garden, orchard, plantation or burial ground is included in the road". The Chief Surveyor explained:

> The road through Orahiri No.1 may be taken without compensation under Section 389 of the Native Land Act 1909, the title being an Order on Investigation under the Native Land Court Act 1886 dated the 9th of September 1889, area 933 acres. No Land Transfer title has issued, and the five per cent limit will not be exceeded. The subdivisions shown on the plan are laid off up to the road, which is a portion of the original block.[155]

The road was taken in September 1912[156].

This just left the road through the cultivated area of Mangawhero 1E. A plan showing the road through this block was sent to Wellington[157], and the Public Works Department was asked to arrange the taking under Section 19 Public Works Act 1908.

> This is being done to afford the owners of some cultivation through which the road passes an opportunity of making a claim for compensation.[158]

Under this section, it was first necessary to issue a Notice of Intention to Take the land[159]. So far as is known, no objections were received, and the land was taken in December 1912[160].

The result of all these various takings, based on the two December 1909 warrants issued by the Governor (an action that was done without consultation with the affected owners), was that the Crown was able to take Otewa and other roads with only minimal notification to the owners by the surveyor when he arrived on the site, and with no payment of compensation. The sole exception to this might have been the area of 2 acres 1 rood 14.1 perches passing through cultivations on Mangawhero 1E, for which compensation was payable. However, with this area the Crown successfully got its own way, when the Native Land Court decided in April 1913 that no compensation would be awarded[161].

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[155] Chief Surveyor Auckland to Under Secretary for Lands, 16 August 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #267.
South Auckland plan SO 16745. Supporting Papers #2382.
[156] *New Zealand Gazette* 1912 pages 2693-2694. Supporting Papers #3973-3974.
[157] Chief Surveyor Auckland to Under Secretary for Lands, 10 July 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #264.
[158] Assistant Under Secretary for Lands to Under Secretary for Public Works, 21 August 1912. Lands and Survey Head Office file 1912/109. Supporting Papers #268.
[159] *New Zealand Gazette* 1912 page 3003. Supporting Papers #3975.
[160] *New Zealand Gazette* 1912 pages 3621-3622. Supporting Papers #3976-3977.
[161] Maori Land Court minute book 55 OT 214-215. Supporting Papers #3661-3662.

Other roads were also laid off and taken under the 5% provisions to provide access to the Crown's Rangitoto Improved Farm Settlement lands. The road authorised by the warrant issued on 19 February 1910 is known to be one instance of these other roads. The other road takings have not been researched for this report.

Unbeknown to both the Crown and the Maori owners at the time, the taking of Otewa Road under the 5% provisions in August 1912 included additional land that should not have been taken under those provisions. The campaign to obtain compensation for this additional land is discussed in a later chapter (see sub-section on Otewa Road Gravel Reserves in the chapter on Takings for Roads and Road-Related Purposes, with Payment of Compensation).

5.2.2 Roads Through Hauturu East 1B3A

Another example of the Crown's practice of relying as a first recourse on the provisions that allowed land to be taken without the payment of compensation was in connection with one of the Hauturu East partition blocks. A survey of a series of roads through Hauturu East 1B3A was prepared in 1907. This showed that the Crown wanted to take three lines of road through the block, with areas of 2 acres 0 roods 24 perches, 1 acre 1 rood 21 perches, and 2 acres 1 rood 08 perches respectively[162]. Most of the latter road was subsequently abandoned, but this still left the other two lines of road, plus part of the third, with a combined area of 4 acres 0 roods 14 perches. Since the area of Hauturu East 1B3A was 48 acres, this meant that the 5% upper limit would be breached. The Crown's response was to split each of the two roads into two thin strips. One strip, with an area of 2 acres 2 roods 36 perches, was taken under the 5% legislation (Section 93 Public Works Act 1908)[163], while the other strip, with an area of 1 acre 1 rood 18 perches, was taken under the provisions that required that compensation be paid[164]. In response to a subsequent query from the Public Works Department, the Chief Surveyor advised:

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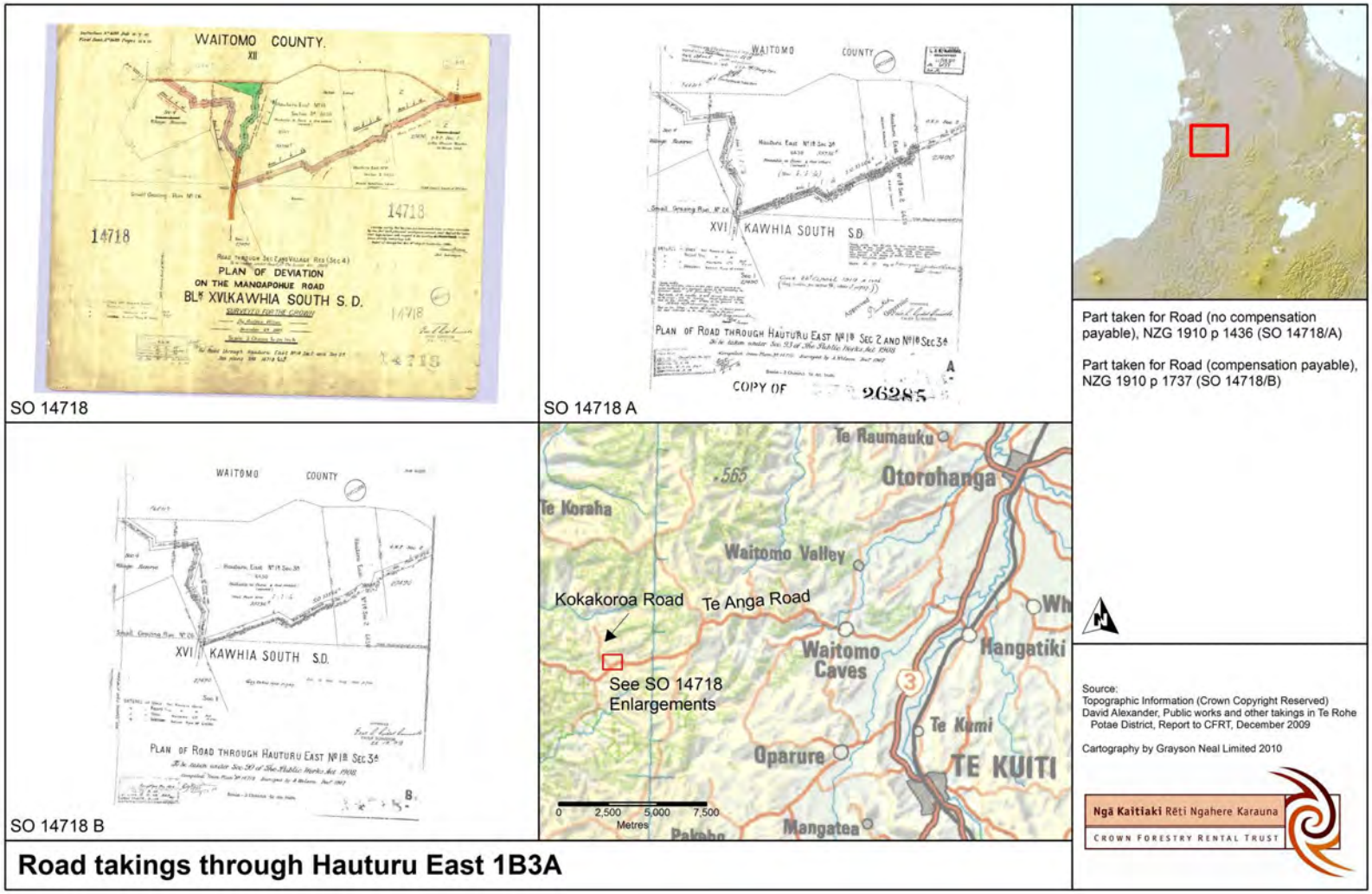
[162] South Auckland plan SO 14718. Supporting Papers #2350.
[163] *New Zealand Gazette* 1910 page 1436. Supporting Papers #3943.
South Auckland plan SO 14718/A. Supporting Papers #2351.
5% of 48 acres is 2 acres 1 rood 24 perches. The difference between 5% and the area taken under 5% provisions cannot be explained.
[164] Intention to Take – *New Zealand Gazette* 1910 page 794. Supporting Papers #3942.
Taken - *New Zealand Gazette* 1910 page 1737. Supporting Papers #3946.
South Auckland plan SO 14718/B. Supporting Papers #2352.

> The area of the road taken by proclamation [under the 5% provisions], together with the area of land previously taken for roads through the Hauturu East No.1 Block, will not exceed the five per cent limit as provided by Section 389 of the Native Land Act 1909.[165]

For the road taken under the provisions requiring compensation to be determined, the Court ordered nil compensation[166].

[165] Chief Surveyor Auckland to Under Secretary for Public Works, 4 April 1913. Te Rohe Potae Block History Narratives Document Bank page 1152.
[166] Maori Land Court minute book 55 OT 214. Supporting Papers #3661.



Map 2 Road takings through Hauturu East 1B3A

5.2.3 Extent of Road Takings under the 5% Provisions – A Rough Estimate

A few rough calculations can assist in gaining some perspective on the impact of the 5% road takings in Te Rohe Potae District. One kilometre of road with a standard width of 20 metres requires a land area of 2 hectares, which converts to just under 5 acres. The takings in the database which represent roads taken under the 5% provisions have a combined area as follows:

Table 5.4 Extent of Road Takings under the 5% Provisions

Taken Under	Acres
Native Land Court Act 1886	24
Native Land Court Act 1894	106
Public Works Act 1894	277
Public Works Act 1905	345
Public Works Act 1908	1150
Native Land Act 1909	1303
TOTAL	3205

Source: Te Rohe Potae District Takings Database

The 3205 acres converts to 648 kilometres of standard-width road. That conversion rate would be an over-estimate if roads had been surveyed with a width greater than 20 metres, as can occur in hilly terrain with many bends. However, the acreage and therefore the length of road, is also an under-estimate, because a number of takings under the 5% provisions were not gazetted, and therefore do not appear in the database. Overall the figure is probably an under-estimate of the total length of road in Te Rohe Potae District involuntarily provided by Maori under the 5% provisions.

5.3 Laying off Roads under Surveyor General's Warrants prior to 1910[167]

Section 96 Native Land Court Act 1894 was in use by the Surveyor General between 1894 and 1905. This power provided the Surveyor General with the authority to issue a warrant for a surveyor to survey a road through Maori-owned land. Its use was

[167] These are road takings identified in the accompanying database, for which the taking authority is recorded as Section 96 Native Land Court Act 1886 or Section 72 Native Land Court Act 1894.

generally confined to those circumstances where a Governor's warrant could not be issued, and this meant it was used for lands that had not yet been investigated and ordered by the Native Land Court.

A warrant covering the whole of the Rangitoto-Tuhua Block was issued by the Surveyor General in favour of a surveyor named Wright in January 1891[168]. It is not known to what extent this warrant was relied upon. Another warrant issued in 1887 authorised the surveying and laying off of a road thorough Te Kopua and Papahua blocks at Raglan[169]. This was the road subsequently taken as part of the Raglan Aerodrome in 1955 (see case study on Raglan Aerodrome and Golf Course).

Another example was Kawa Road, Puketarata Road, and State Highway 3 through what became Otorohanga, Ouruwhero, Puketarata and Tokanui blocks. A warrant was issued by the Surveyor General in July 1898[170]. Being land on the northern edge of Te Rohe Potae, and lying between Te Awamutu and Otorohanga, it appears that the absence of completed Court orders was considered by the Crown to be an impediment to European settlement that required intervention by the issue of a Surveyor General's warrant. Similar thinking probably applied to a warrant for a road on the western side of the Waipa River between Alexandra (now Pirongia) and Otorohanga, issued just two months later[171]. This line of road traversed Parihoro, Waiwhakaata, Takotokoraha, Puketarata, Otorohanga and Orahiri blocks.

In 1897 roads were laid out over Native customary land on the northern side of Aotea Harbour[172], and on the north side of the Mokau River road bridge at Mokau[173].

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[168] Surveyor General to Chief Surveyor Auckland, 27 January 1891. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 111. Supporting Papers #2322.
[169] Surveyor General to HDM Hazard, Auckland, 31 October 1887. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 77. Supporting Papers #2318.
[170] Surveyor General to WCC Spencer, Otorohanga, 28 July 1898. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 42. Supporting Papers #2313-2314.
This warrant is referred to on plans attached to Proclamation (Certificate of Chief Surveyor) 6589, and Warrant 9356. Supporting Papers #2236-2240 and 2245-2247.
[171] Surveyor General to Chief Surveyor Auckland, 26 September 1898. Land Information New Zealand Hamilton Processing Centre Road Warrants Book for South Auckland Land District, Warrant 43. Supporting Papers #2315-2317.
[172] *New Zealand Gazette* 1897 page 2228. Not included in Supporting Papers.
[173] *New Zealand Gazette* 1897 page 2125. Not included in Supporting Papers.

In November 1906 the Surveyor General issued a warrant for the taking of roads through customary land that later became the Moerangi Block. Although a survey was made, the taking was later completed under the 5% provisions after the Native Land Court had issued a freehold order defining the boundaries and ownership of the block[174].

Although this has not been confirmed during the research for this report, it is believed that the first road through the Whaanga block near Raglan was authorised by a Surveyor General's warrant. This may be the road referred to in a petition to Parliament in 1889 from Whanga Wetini and 62 others, who asked that compensation be paid for "land taken to make a road for the use of Europeans between Raglan and Ruapuke"[175]. The circumstances of this petition are not known. Title to the Whaanga block was not investigated by the Native Land Court until 1896, which would have meant that it was still customary land in 1889. If the road had been laid out and taken under a Surveyor General's warrant, then no compensation would have been payable.

5.4 Laying off Roads through Customary Land after 1910[176]

As more land was investigated by the Native Land Court, the need to find a mechanism to take roads through customary land progressively declined. During the time that the Native Land Act 1909 was in operation, between 1910 and 1927, only three instances are recorded of the use of Section 387 Native Land Act 1909 in Te Rohe Potae District.

[174] *New Zealand Gazette* 1911 page 2041. Not included in Supporting Papers.
South Auckland plan SO 15500. Not included in Supporting Papers.
[175] Report of Native Affairs Committee on Petition 179/1889. *Appendices to the Journals of the House of Representatives (AJHR)*, 1891, I-3, page 4. Supporting Papers #3870.
[176] These are road takings identified in the accompanying database, for which the taking authority is recorded as Section 387 Native Land Act 1909.

Table 5.5 Roads Taken through Customary Lands

Year	Date of Taking	Block	Reference[177]
1912	15 January	Section 117 Karioi Parish	NZG 1912/171
1919	31 January	Onaueke	NZG 1919/333
1921	30 April	Section 3 Block VII Awakino North SD	NZG 1921/1083

Source: Te Rohe Potae District Takings Database

5.5 Road Legalisation by Minister of Public Works' Certificate

Section 101(d) Public Works Act 1908 allowed for a plan of a road to be presented to the District Land Registrar, for registration against titles to land that the road passed through. The key pre-conditions to this action were that the road had been formed using public funds, and it was in use by the public. When the plan was registered on the title, it had the effect of transferring the status of the strip shown as road from privately-owned land to publicly-owned road.

The two Crown office-holders who could present the plans to the District Land Registrar were the Minister of Public Works and the Chief Surveyor. It is not clear what parameters were used to decide which of these two persons should present the plan.

The power in the 1908 Act had originally been included in the Public Works Act 1894, and was continued in its 1905 successor. No use of the provisions in the 1894 and 1905 Acts have been identified in Te Rohe Potae. The following uses by the Minister of Public Works of the power in the 1908 Act, and in its 1928 successor, affecting Maori blocks in Te Rohe Potae, have been identified:

[177] References to 'NZG' are to *New Zealand Gazette*, with year and page number.

Table 5.6 Roads Taken under Minister of Public Works' Certificate

Year	Block Affected	Present-day Road Name	Reference
1921	Otorohanga	Mangaorongo Road	Warrant 5265[178]
1923	Kakepuku	Candy Road	Proclamation 5809[179]
1923	Otorohanga	Ouruwhero Road	Proclamation 5834[180]
1926	Rangitoto A45B	Waipa River Road	Warrant 6464[181]
1929	Waikowhitiwhiti H		Warrant 7121[182]

Source: South Auckland Land Registry Instruments.

It is probable that this list is not complete, because there is no index of such certificates, and the ones referred to have been identified by chance.

5.6 Road Legalisation by Chief Surveyor's Certificate

Two instances where the Chief Surveyor presented the plan to the District Land Registrar have been identified:

Table 5.7 Roads Taken under Chief Surveyor's Certificate

Year	Block affected	Present-day Road Name	Reference
1926	Ouruwhero	Kawa Road	Proclamation 6589[183]
1929 or 1930	Taharoa	Maika Road and along shoreline of Kawhia Harbour to Totara Point	Proclamation 7421[184] SO 12506/1 & /2[185]

Source: South Auckland Land Registry Instruments.

5.7 Declaring a Roadline / Roadway to become a Public Road[186]

Since 1915 there has been a steady trickle of Maori-owned roadlines and roadways becoming public roads. Sometimes these were already in public use, and had had

[178] South Auckland Land Registry Warrant 5265. Supporting Papers #2221-2224.
[179] South Auckland Land Registry Proclamation 5809. Supporting Papers #2225-2229.
[180] South Auckland Land Registry Proclamation 5834. Supporting Papers #2230-2232.
[181] South Auckland Land Registry Warrant 6464. Supporting Papers #2233-2235.
[182] South Auckland Land Registry Warrant 7121. Supporting Papers #2241-2242.
[183] South Auckland Land Registry Proclamation 6589. Supporting Papers #2236-2240.
[184] South Auckland Land Registry Proclamation 7421. "Not in Place" in records of Land Information New Zealand Hamilton Processing Centre. Not included in Supporting Papers.
[185] South Auckland plans SO 12506/1 and SO 12506/2. Not included in Supporting Papers.
[186] These are road declarations identified in the accompanying database, for which the statutory authority is recorded as Sections 48-52 Native Land Amendment Act 1913, Section 487 Native Land Act 1931, Section 487 Maori Land Act 1931, Section 421 Maori Affairs Act 1953, and Section 320 Te Ture Whenua Maori Act 1993.

public monies spent on them, before the Native/Maori Land Court declared them to be roadways. The trickle has reduced since 1970, with just seven roadways involving quite small areas becoming public roads in the last 40 years. This is perhaps to be expected as the amount of Maori-owned land remaining in Maori ownership diminished.

Which roads in use today became public through this avenue, and the circumstances behind the Court's actions, have not been researched for this report. In theory, although probably not always in practice, Maori owners were given a chance to have a say about this loss of ownership of their land, because the Court conducted its business in open sittings. As partitioning continued over the years, however, any particular Court hearing became a matter of interest to a progressively smaller grouping within a hapu, and wider implications or consequences of the Court's actions might then be less well appreciated by the hapu generally.

5.8 Roads Created on Subdivision

For the sake of completeness, it is worth noting that since 1967, as a result of Section 23 Maori Affairs Amendment Act 1967, the Maori Land Court in partitioning Maori-owned land has been required to abide by the subdivision provisions of the Counties Amendment Act 1961 (and subsequently various Local Government Acts). Where a number of sections are created on subdivision, and require legal road access which is not already available, the subdivision might include the setting aside of land for road, and as a condition of subdivision the local authority can require that the road is vested in it. The vesting amounts to a transfer for road purposes, without the payment of compensation, from Maori to local authority ownership.

No instances of this category of loss of Maori Land have been identified in Te Rohe Potae District during the research for this report.

5.9 Roads Laid Off by the District Maori Land Board

For the sake of completeness, the research for this report also identified some roads proclaimed by the Governor under Section 240 Native Land Act 1909. This section is concerned with lands made subject to Part I of the Native Land Settlement Act 1907,

and vested in a District Maori Land Board. The Part I lands were those Maori lands identified and recommended by the Stout-Ngata Commission to be developed for sale for European settlement. Section 240 provided that the Maori Land Board was to arrange that land into a suitable state for settlement, by subdividing and roading it, and made it possible for any of the roads so laid out to become public roads by Proclamation. No compensation was paid by the Crown for the land that became public road, any compensation to Maori being in the form of improved value of the farm sections being made fit for sale.

The database identifies roads laid out over the following blocks becoming public roads by this mechanism:

- Rangitoto-Tuhua 60
- Rangitoto-Tuhua 74
- Mohakatino-Parininihi 1C West
- Hauturu West G2 Section 2B2
- Wharepuhunga 14
- Wharepuhunga 7C3

The background to these proclamations, and the Waikato-Maniapoto District Maori Land Board's management of these lands, has not been investigated in the research for this report.

These roads were nominally provided by Maori for the economic benefit of Maori as part of a property development exercise involving Maori-owned land. The reality, however, was that the Native Land Settlement Act 1907 and its implementation was an exercise in depriving Maori of management control of their own lands[187], and transferring that control to European judges and Crown officials (who comprised the membership of the District Maori Land Boards). The absence of accountability provisions owed by the Boards to Maori landowners meant that all decisions and actions were carried out by the Boards for Maori rather than with Maori.

[187] A vesting in a District Maori Land Board also transferred legal title to land to the Board.

5.10 Roads laid off under the Crown's own Land Legislation[188]

While the initial cutting up of land for settlement by the Crown involved the laying out of roads separate from the sections made available to settler farmers, the Crown's own Land Acts made provision for it to obtain extra land for roads from the sections even after they had been occupied by settlers. The key feature of this statutory power, however, which distinguishes it from the Native lands legislation, is that any Proclamations creating roads under Land Acts from private lands or from Crown leases required the prior consent of the owner or lessee.

The majority of road creations under the Land Acts were from Crown Land or land leased by the Crown to European settlers. In many, perhaps most, instances they were of small areas for road realignments rather than the creation of completely new roads. It was, however, possible for Maori to be owners of land granted by the Crown, and for these Maori owners to be approached by the Crown for their consent to the creation of a road through their land. One instance of this is a road proclaimed in 1937 through land that had been granted to Maori the previous year as part of an exchange of Tokanui Mental Hospital land (see case study on Tokanui Mental Hospital). Nearly four acres of the land they received in exchange was almost immediately lost to provide for the road[189].

5.11 Concluding Remarks

The tables included in this chapter have been included in order to demonstrate the widespread extent to which Maori-owned land was the subject of Crown procedures to obtain land for public roads. Crown Grant roads created by the Crown on its own land were also extensive, but were localised to the portion of land in Crown ownership. These Crown lands could not be connected together unless roads were also laid out over land in Maori ownership.

Instead of getting the agreement of Maori owners for roads with a public right of use over their land, the Crown instead adopted a confiscatory method of imposing its will

[188] These are road takings identified in the accompanying database, for which the taking authority is recorded as Section 13 Land Act 1892, Section 11 Land Act 1908, Section 12 Land Act 1924, and Section 29 Public Works Amendment Act 1948.
[189] *New Zealand Gazette* 1937 page 1030. Supporting Papers #4047.
South Auckland plan SO 28122. Supporting Papers #2408.

on those owners. They were told, when the surveyor appeared on their land, that they had no choice but to accept that a public road would be laid out. The extent to which they understood at that time that this laying out of a road represented a loss of a portion of title and ownership of their lands is not known. Given that these lands were being taken from Maori without them receiving any compensation in return, while at the same time other roads were being taken and compensated for (see later section of this report), must have been hard to understand.

Maori involuntarily contributed in large measure to the network of roads in Te Rohe Potae District that exists today. For that they have received no recognition, no acknowledgement, and no recompense.

6 TAKINGS FOR ROADS AND ROAD-RELATED PURPOSES, WITH COMPENSATION PAYABLE

6.1 Introduction

The previous chapter has discussed takings for road where no compensation was payable. This chapter looks at takings for road where the taking had to be compensated for; all these takings relied on the authority of the Public Works Acts. Two categories of such takings are identified, the first for extensions to the initial network of roads, and the second for road realignments.

All takings for road prior to the passing of the Public Works Act 1981 were vested in the Crown and made no mention of vesting the taken land in a local authority, even though a number of these takings had been initiated by a local authority. Roads were seen as land to be vested in the Crown, and it was the operation and maintenance of the road constructed on the Crown-owned land, as an overlay on the land title, that was treated as the responsibility of the local authority.

A number of takings in the database are identifiable as being for road-related purposes. These include quarries and shingle pits, highway depots, and "use, convenience or enjoyment of a road".

6.2 Extensions to the Initial Network of Roads

The first public roads in Te Rohe Potae were legalised by the ability to take land for road under the 5% and other provisions of the Native lands legislation. Because this affected every part of Te Rohe Potae, and because the Crown's uptake and use of the power it gave itself was so extensive, the taking of land for roads without having to pay compensation served the initial settler needs of the district well. The roads taken without compensation not only established the main through routes, but also many local side roads required to provide access to the farm sections being provided by the Crown to the first Pakeha settlers.

The extent to which the Crown relied on the 5% and other provisions of the Native lands legislation is most readily apparent from an examination of how infrequently,

during the early years of the twentieth century, it needed to make use of the provisions in the legislation that enabled it to take land for road and required that it pay compensation. Putting to one side a series of takings in 1899, 1901 and 1902 of lands in Karioi and Whaingaroa Parishes (essentially road realignments through European-owned lands on roads initially laid out in the 1850s), there were only four takings for road before 1910 where compensation was payable to Maori landowners.

The first was at Kawhia in 1902, to provide access to the wharf through Kawhia P block[190]. The taking Proclamation notes that agreement had been reached with the owners of the block to allow the land to be taken. The second was of land in the Karu-o-te-Whenua B5A block near Wairere Falls, taken in 1904, which is discussed below. The third was at Awakino in 1908, apparently in connection with the Mokau to Te Kuiti Road[191]. The fourth taking was for Hauturu East 1B3A in 1910[192], which has already been discussed in the chapter on roads taken without compensation.

The taking for road through Karu-o-te-Whenua B5A in 1904[193] apparently required the payment of compensation because it was a taking of a larger area for road than the standard 20 metre wide strip. Karu-o-te-Whenua B5A block of 30 acres is located on the north (true right) bank of the Mokau River at Wairere Falls. The shape of the taken land is of a standard width road entering the block from the north, and widening as it approaches the riverbank, where is splays out along a substantial length of the bank. Although Government records about the taking have not been located during the research for this report, some other records from the year 1922 do shed some light on why the larger area was taken.

> [Karu-o-te-Whenua B5A] was set aside by Kaahu Huatare for the Maori Pah and for the two eel weirs which are on the block. Kaahu Huatare arranged with the Native Land Court that he alone be put into the title for this area, so that no one could interfere with the sacred place and the three pahs upon this block.[194]

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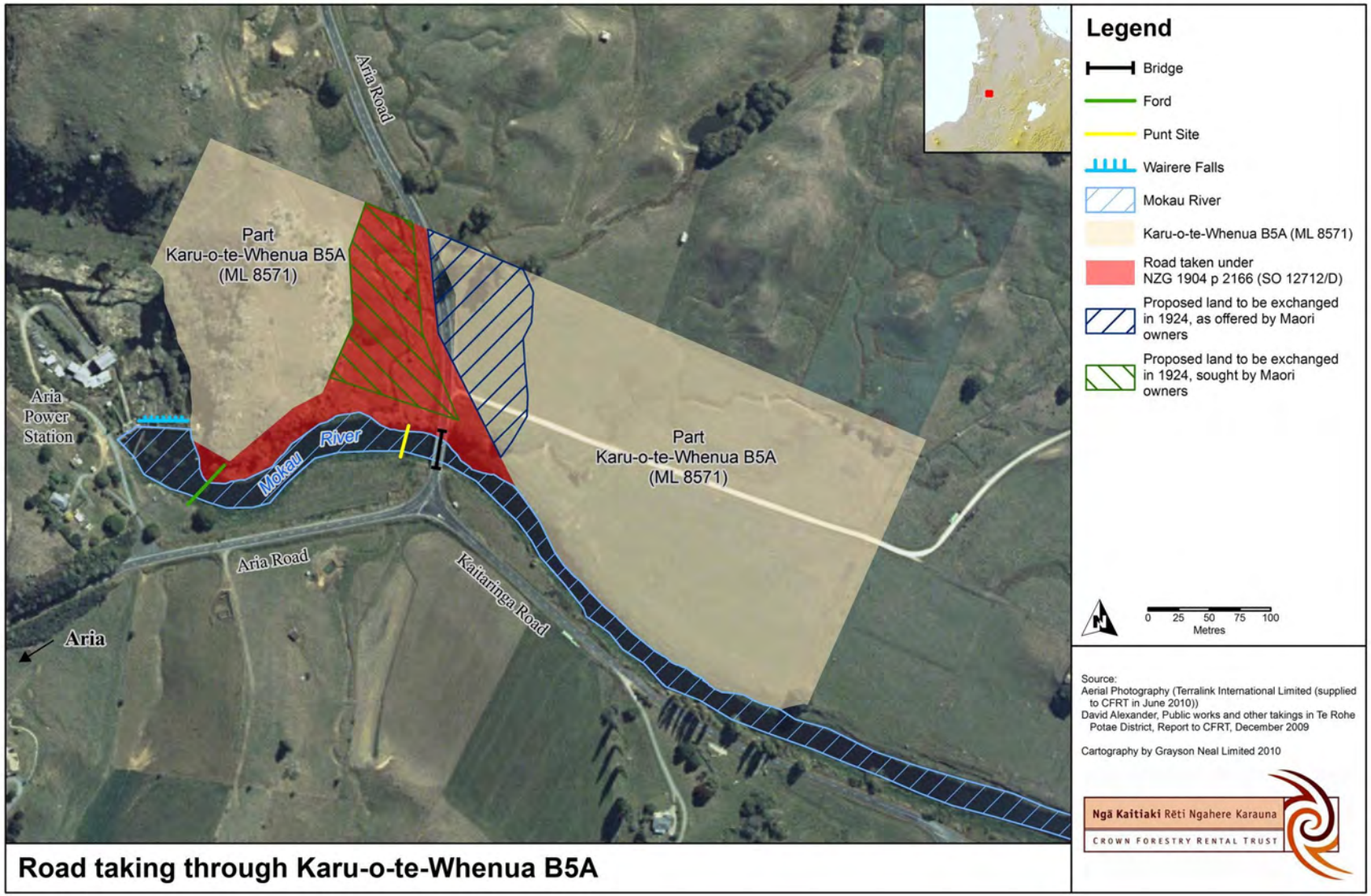
[190] *New Zealand Gazette* 1902 page 773. Supporting Papers #3916.
South Auckland plan SO 12119. Supporting Papers #2339.
[191] *New Zealand Gazette* 1908 page 1169. Supporting Papers #3935.
[192] *New Zealand Gazette* 1910 page 1737. Supporting Papers #3946.
South Auckland plan SO 14718/B. Supporting Papers #2352.
[193] *New Zealand Gazette* 1904 page 2166. Supporting Papers #3924.
South Auckland plan SO 12712/D. Supporting Papers #2340.
[194] Te Aue Kaahu and 2 Others to Native Minister, undated (received 20 September 1922). Works and Development Head Office file 54/76. Supporting Papers #1636.

This statement was made in the context of a petition to the Native Minister admitting that Kahu Huatare had allowed a road to be put through the block to a bridge across the Mokau River, but denying that the four acres taken for road had been sold[195].

[195] Te Aue Kaahu and 2 Others to Native Minister, undated (received 20 September 1922). Works and Development Head Office file 54/76. Supporting Papers #1636.



Map 3 Road taking through Karu-o-te-Whenua B5A

The Public Works Department was asked for an explanation as to why so much land had been taken, and the Resident Engineer at Taumarunui replied:

> The western side of the area taken for a road gave access to the old ford over the Mokau River above Wairere Falls. The eastern side of the area leads to the bridge which is the present crossing, and middle portion gave access to the punt which was used for crossing prior to the erection of the bridge.[196]

Departmental records showed that compensation of £15 had been paid to Kaahu Huatare[197].

That such a small number of compensatable takings were required during this early period indicates how overwhelming was the Crown's assault on Maori-owned land using the legal provisions that did not require compensation to be paid.

Over the rest of the twentieth century, there were some additional roads created by takings under the Public Works Acts. The most significant of these, from the perspective of the number of acres taken, were:

Table 6.1 Additional Roads Taken with Payment of Compensation

Road	Blocks Affected	*NZ Gazette* Reference	Survey Plan Reference
Mangaorongo Road extension	Pukenui 2A & 3B	1912/2699	SO 16465 (SA)
Toe Road	Section 1 Blocks XIV & XV Kawhia North SD	1914/3425	SO 16444 (SA)
Piopio-Waitangaru Road	Kinohaku East 5E2B	1915/3365	SO 18331 (SA)
Pukenui Road	Pukenui 2W	1916/1777	SO 17507 (SA)
Tahaia Bush Road	Rangitoto-Tuhua 34B	1916/2191	SO 18360 (SA)
Paekaka Road	Karu-o-te-Whenua B2B	1916/2342	SO 18521 (SA)
Awakino Valley Road	Mahoenui A2B	1916/3298	SO 18364 (SA)
Ahoroa Tapairu Road	Rangitoto-Tuhua 26F & 35G	1917/2987	SO 17413 (SA)
Tapairu Road	Rangitoto-Tuhua 35E	1917/3282	SO 18652 (SA)

[196] Resident Engineer Taumarunui to Under Secretary for Public Works, 27 April 1923. Works and Development Head Office file 54/76. Supporting Papers #1638.
[197] Under Secretary for Public Works to Native Minister, 26 May 1923. Works and Development Head Office file 54/76. Supporting Papers #1639-1640.

Road	Blocks Affected	*NZ Gazette* Reference	Survey Plan Reference
Rangiatea Road	Mangawhero & Rangitoto-Tuhua 29	1917/3785	SO 18649 & SO 18650 (SA)
State Highway 3	Pukenui 1B	1917/4231	SO 16462 (SA)
Morgan Road	Kakepuku 9B	1918/389-390	SO 18185 (SA)
Ongarue River Road (east bank)	Rangitoto-Tuhua 55B2	1919/336	SO 18476 (SA)
Taumarunui-Te Kuiti Road south of Mangapehi	Rangitoto-Tuhua 68I	1920/1545	SO 5514 (TN)
Boddies Road	Kinohaku East 1B4B	1920/2127-28	SO 17241 (SA)
Candy Road (northern end)	Kakepuku 4D	1920/2259	SO 19537 (SA)
Waitepipi Road	Kinohaku East 2 Section 20	1921/1180	SO 21448 (SA)
Mangapehi Road side road	Rangitoto-Tuhua 72B3C	1921/1579	SO 5698 (TN)
Mokau Valley Road (north side of river)	Mangaawakino 4	1922/2270	SO 22034 (SA)
Thompson Road	Rangitoto-Tuhua 35E	1926/2622	SO 23950 (SA)
State Highway 4 south of Mangapehi Road	Rangitoto-Tuhua 72B3	1930/982	SO 6796 (TN)
Ahoroa Road side road	Rangitoto-Tuhua 25 Section 5B3	1931/3094	SO 26292 (SA)
State Highway 30 east of Benneydale	Rangitoto-Tuhua 36 & Maraeroa	1936/1679	SO 28156 (SA)
Road from Makomako to Tikitiki Point	Moerangi 3	1960/490	SO 39984 (SA)
Totoro Road	Mahoenui 2 Section 8B2	1961/1442	SO 17660 (SA)
Mangakahu Road & Ngakonui-Ongarue Road	Rangitoto-Tuhua 66A3B	1962/878-9	SO 39732 (SA)
Morrison Road	Aotea South 3C1	1965/2225-26	SO 41806 (SA)
Te Raumauku Road & Honikiwi Road	Otorohanga	1968/1343	SO 44074 (SA)
State Highway 4 south of Eight-Mile Junction	Maraetaua 7B	1969/1606	SO 9921 (TN)
State Highway 4 north of Ongarue turnoff	Rangitoto-Tuhua 77E3A	1973/2719	SO 10430 (TN)

Source: South Auckland and Taranaki SO Plans.

The Totoro Road taking in 1961 was of a portion of that road surveyed in 1913 but not taken then, even though it had been in use since that time. This portion involved about one mile of road at the western end closest to the junction with State Highway 3. The failure to arrange its legalisation was drawn to the attention of Waitomo County Council by solicitors for the Maori owners, and the Council then wrote to the Ministry of Works.

> The Totoro Road was handed over to the Council for maintenance after it was formed by your Department, on the understanding that it was a legalised road. It is quite apparent that the survey was completed, but the necessary proclamation covering this Maori land section was not issued.[198]

This was not the only part of the road that had not been legalised in the normal manner. The portion to the east of the untaken portion had been deemed to be legal road under the provisions of Section 101 Public Works Act 1908[199]. By contrast, on the other side of the river in the Taranaki Land District, Totoro Road (where it passed through Mahoenui 2 and 3B Blocks) had been taken without payment of compensation under the 5% provisions in 1906[200]. Claimants have advised that this road follows a traditional track, used for travel between the Mokau River and the interior, and as such would have had numerous culturally significant sites alongside it that might have been damaged or destroyed during road construction. The Crown files have been searched, but do not contain anything that might provide confirmation, or awareness by the Crown, of this.

6.3 Road Realignments

While the vast majority of takings recorded in the database are for road, most of these road takings involved small areas. Many of these small-area takings are noted in the comments column as being part of a road realignment, because the survey plan showing the land to be taken also showed road to be stopped or closed.

Realignments of roads were inevitable as the technical requirements for the roads changed over time. The roads were initially laid out by surveyors in the days of the horse and cart. These surveyors were acutely conscious of the gradients (or

[198] County Clerk to Resident Engineer Hamilton, 9 September 1960. Works and Development Hamilton file 22/0/7. Supporting Papers #3197.
[199] County Clerk to Resident Engineer Hamilton, 9 September 1960. Works and Development Hamilton file 22/0/7. Supporting Papers #3197.
[200] *New Zealand Gazette* 1906 pages 31 and 2187. Supporting Papers #3926 and 3927.

steepness) of the roads they defined, and would be prepared to lengthen a road in order to avoid steep grades, so that horses would still be able to pull wagons up hills. Roads hugged hillsides, with many corners reflecting the shape of the land, and crossed rivers and streams at suitable fording points.

More direct hill climbs, gentler curves to allow higher speeds, and the bridging of rivers and streams, have all required realignments of the roads. Each of these changes has been undertaken to improve the roads for travellers, and in the process the effect on local landowners becomes subordinated. This was especially the case with Maori land, where the difficulties of Maori ownership prevented Maori landowners having a strong voice to counteract the strength of the Ministry of Works and the local authorities.

Local authorities, such as Road Boards and County Councils, were responsible for roads prior to 1922. The Main Highways Act of that year established a Main Highways Board to be responsible for the main national network of roads. The roads in this main highway network were declared to be government roads and became a central government responsibility. The present-day State Highway 3 through Te Rohe Potae District, via Otorohanga, Te Kuiti and Mokau, was declared to be a main highway in 1925[201]. Other main highways were added later.

One of the more substantial road realignments was for State Highway 3 between Otorohanga and Hangatiki. The old highway is now Spicer Road, while the new highway was taken for road in 1930[202]. There were other substantial deviations on the same highway south of Te Kuiti, one through Pukenui block[203], another just east of 8-Mile Junction through the Maraetaua Block[204], and a third on the south side of the Mokau River arranged in connection with a new bridge over the river[205].

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[201] *New Zealand Gazette* 1925 pages 1415-1416. Not included in Supporting Papers.
[202] *New Zealand Gazette* 1930 page 1125. Not included in Supporting Papers.
South Auckland plan SO 25180. Not included in Supporting Papers.
[203] *New Zealand Gazette* 1941 page 2012. Not included in Supporting Papers.
South Auckland plan SO 31236. Not included in Supporting Papers.
[204] *New Zealand Gazette* 1941/1470. Not included in Supporting Papers.
South Auckland plan SO 30682. Not included in Supporting Papers.
[205] *New Zealand Gazette* 1951 page 1724. Not included in Supporting Papers.
Taranaki plans SO 8428 and SO 8429. Not included in Supporting Papers.

Away from the main highway network, takings for road purposes were viewed as the responsibility, in the first instance, of the local authority. This meant that it was the local authority that identified the need for a taking, arranged the survey, advertised the intention to take the land, and heard any objections that it received. When all those steps were completed, and the local authority felt that a taking was still required, it would approach central government with a request that the land be taken. This request (known as a Memorial addressed to the Governor) had to be accompanied by a statutory declaration, which confirmed that all the initial steps for the taking had been properly completed, there were no objections received that could not be overcome by the payment of monetary compensation, and it was necessary that the land be taken. The Public Works Department received a continuous flow of these Memorials and Declarations from local authorities, which it processed in a standard manner.

In addition, the large number of takings for road demonstrates that there was an ever-present threat hanging over Maori communities that at any time they could be required to give up some of their land for the benefit of a wider group of New Zealanders than their community alone.

When a road realignment was contemplated by either the Ministry of Works or a local authority, there was a further particular impact for the affected landowner or landowners. In the second half of the twentieth century, a pattern developed whereby the roadworks were carried out first, and then the changes to the legal status of the underlying land were attended to second. How and when this pattern developed is not known, but there is little reason to doubt that it had been of a longstanding nature. This was because, in the interests of keeping costs down, the least amount of land should be acquired, and it made sense that only the land actually used for a new line of road should be taken. The roading authority would therefore rely on its power of entry on to privately-owned land, another power it had been given by the public works legislation, to enter the land and construct the new line of road. A surveyor would then come along after the new road had been built to identify what portions of land had to be legally acquired, and what portions were no longer being used as road. Under these circumstances, the Notice of Intention to Take, with its opportunity to lodge objections, after the survey had been completed, were effectively a nullity,

since the road had already been constructed and the privately-owned land was already in public use. The only possible saving grace was that the date of entry would be treated as the date of taking, and any award of interest on the compensation amount eventually ordered would be backdated to commence on the date the property was entered.

No exhaustive study of the many road realignment takings has been undertaken for this report. Most are small, with compensation assessments being equally small, or in a number of cases no compensation at all being awarded; this was especially the case where closed road could be revested back into Maori ownership. However, each taking had a consequence for the owners who were affected. Besides the disruption caused to lifestyles and the use of the land, there might also be residual feelings of hurt and inequity.

6.4 Quarries and Gravel Pits

Road builders were always on the lookout for sources of metal. The metal needed to be hard-wearing, and the site needed to be located as close as possible to where the metal would be used, in order to keep transport costs to a minimum. This requirement favoured a series of small local quarries rather than a large central operation.

The roads laid out under the 5% Native lands legislation were often not constructed at the time they were surveyed. Even when they were formed, they might not be metalled immediately. There is therefore a time lag before quarries and gravel pits start appearing in the database.

Takings from Maori-owned land for quarries and shingle pits were as follows:

Table 6.2 Takings for Quarries and Shingle Pits

Year	Purpose	Block	Plan Number[206]
1912	Quarry	Te Kuiti 2B	SO 16689
1913	Quarry	Te Kumi 3	SO 16484
1913	Quarry & Gravel-pit	Orahiri 2	SO 16488 & SO 16489
1913	Stores-site	Kaingapipi 9	SO 16490
1913	Gravel-pit	Otorohanga Q	SO 16487
1913	Quarry	Te Kumi 3	SO 17638
1914	Quarry	Aorangi B2 & B4	SO 4684 & SO 4685
1914	Quarry	Karu-o-te-Whenua B5	SO 17830
1915	Quarry	Kinohaku East 4 & 5	SO 16518
1916	Quarry	Te Kuiti 2B	SO 18849
1917	Gravel-pit	Orahiri 1 & Otorohanga 1F4	SO 17914
1917	Gravel-pit	Rangitoto-Tuhua 26	SO 17413
1919	Quarry	Rangitoto-Tuhua 64O	SO 18716
1920	Quarry	Hauturu East 1E	SO 20804
1920	Quarry	Hauturu East 2 Section 2	SO 20876
1920	Quarry	Rangitoto A21	SO 20758
1921	Gravel-pit	Rangitoto-Tuhua 52 & 55	SO 19529 & SO 21266
1923	Shingle-quarry	Oparau	SO 22234
1924	Gravel-pit	Mahoenui 4 Block	SO 23272
1925	Gravel-pit	Otorohanga Q	SO 21322
1925	Quarry	Pirongia West 3B	SO 23458
1925	Quarry	Aorangi B2	SO 6412
1925	Quarry	Rangitoto-Tuhua 26	SO 23780
1948	Quarry	Rangitoto-Tuhua 36	SO 33612
1948	Quarry	Puketiti 2	SO 33344
1949	Quarry	Rangitoto-Tuhua 78	SO 8315
1949	Quarry	Kinohaku East 2	SO 33982
1950	Quarry	Puketarata & Waiwhakaata	SO 34126
1955	Shingle-pit	Pirongia	SO 35002
1967	Quarry	Karu-o-te-Whenua B5	SO 43859

Source: Te Rohe Potae District Takings Database

[206] All Plan Numbers are for South Auckland Land District plans, except for the 1914 takings from Aorangi B2 and B4, the 1925 taking from Aorangi B2, and the 1949 taking from Rangitoto-Tuhua 78, which are for Taranaki Land District plans.

All areas taken were less than 8 acres, except for the takings from Te Kuiti 2B in 1912 (23 acres), Rangitoto-Tuhua 78 in 1949 (45 acres), and Puketarata & Waiwhakaata in 1950 (9½ acres). Many were less than 3 acres. This suggests that most quarries were designed to meet relatively small-scale local needs.

The large number of takings for quarry and shingle pit precludes an examination of each one. Instead only some of the takings are examined in the following sub-sections. Each taking that is examined had some problems associated with it, which indicates the contentious nature for Maori of many of the takings for these purposes. This is largely because any takings for quarry purposes are not just about land per se, but are also about the ownership and control of economic resources such as stone and shingle. Local authorities in particular were able to make use of the Public Works Act to shift the balance between themselves and Maori landowners in their favour. Instead of Maori owners receiving a continuing income stream in the form of royalty payments for stone and shingle extraction, the Councils could make a one-time land acquisition payment (which covered the transfer of ownership of the stone and shingle).

6.4.1 Quarries and Wahi Tapu

Takings for quarries could be where hard rock (including limestone) outcropped on the surface of the land. These might be places of particular interest to Maori, as places traditionally used for burials. For instance, one of the quarry sites on Te Kumi 3 block taken in 1913 was, according to the survey plan, right beside an urupa[207].

Another instance was at a quarry site just east of Aria, on Mokauiti Road close to where the road crossed Mokauiti Stream. The site was surveyed by Waitomo County Council, and taken by the Crown on the Council's behalf in November 1914[208]. Although the area taken, being the whole of Aorangi B4 of 2 acres, had been specifically partitioned out by the Native Land Court as an urupa, this was either ignored or not appreciated by the County Council. The Public Works Department file

[207] South Auckland plan SO 16484. Supporting Papers #2372.
[208] *New Zealand Gazette* 1914 page 3940. Supporting Papers #3991.
Taranaki plan SO 4685. Supporting Papers #2450.

on the taking has not been located during research for this report, but a later letter from the Minister of Public Works states that the Crown was not told by the Council and was not aware that the block was an urupa[209]. If it had been told, it would have been obliged to obtain the consent of the Governor to the taking, as an additional step in the taking process. This did not happen. That it was not picked up by the Crown when processing the Council's application is also a failure of the Crown's processes, as it was its custom to obtain a report from a local Crown official as to whether any burial ground would be affected, and whether there were any known reasons why the land should not be taken.

As far as can be determined, the Crown was not made aware that Aorangi B4 was an urupa until about May 1915. It was also told that another quarry taking at the same time, of part of Aorangi B2, was also a burial ground. The Minister of Public Works and the Public Works Department took the complaint seriously. The Native Department was asked for information about the titles "as the Minister is anxious to know whether any burial ground was actually reserved"[210]. A reply was requested by telegram, indicating the urgency with which the Public Works Department was addressing the matter. Just one day after sending this letter, however, the Department chose a different course of action, and the Assistant Under Secretary for Public Works travelled from Wellington to Auckland to view the Native Land Court records for himself[211]. Those records would have confirmed that Aorangi B4 was an urupa, while Aorangi B2 was not defined as such, with the area taken being part of a large block. He also visited the quarry site, and then provided a report in June 1915, which has not been located. This report was apparently concerned "purely with the question of the advisability or otherwise of revoking portion of the Proclamation"[212].

Having obtained the title information, and on the basis of the Assistant Under Secretary's report, the Crown agreed that the taking of Aorangi B4 should be revoked.

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[209] Minister of Public Works to JC Rolleston MP, 21 May 1925. Works and Development Head Office file 54/76. Supporting Papers #1649.
[210] Under Secretary for Public Works to Under Secretary Native Department, 24 May 1915. Maori Affairs Head Office file 1915/1437. Supporting Papers #902.
[211] Registrar Native Land Court Auckland to Under Secretary Native Department, 27 May 1915, on Telegram Under Secretary Native Department to Registrar Native Land Court Auckland, 25 May 1915. Maori Affairs Head Office file 1915/1437. Supporting Papers #903.
[212] Minister of Public Works to JC Rolleston MP, 21 May 1925. Works and Development Head Office file 54/76. Supporting Papers #1649.

It is possible that it obtained a request from Waitomo County Council for this action to be taken, in the form of a memorial and affidavit, in the same manner that the Council would have provided the initial request in 1914 that the land should be taken, as that was the procedure adopted when other Proclamations were revoked (see Revocations section in Land No Longer Required chapter). Rather than issue another Proclamation revoking the 1914 Proclamation, the revocation was achieved by the passing of Section 44 Reserves and Other Lands Disposal and Public Bodies Empowering Act 1915. Although the reason for passing special legislation is not known, it is likely to have been based on a legal opinion.

That, however, was not the end of the County Council's interest in that particular rock outcrop. In May 1922 solicitors for the Maori owners of either Aorangi B2 or Aorangi B4 wrote to the Public Works Department asking for information about the taking of land in Aorangi B2 block where it surrounded Aorangi B4. In their letter they referred to a taking of nearly six acres alongside the Mokauiti Stream. Their purpose in writing was that "the County Council is alleged to have encroached whilst quarrying, and the Natives concerned intend taking proceedings for damages"[213]. The Department had no information about any taking in this locality. However, three years later there was a taking for quarry purposes in the location identified by the solicitors, when nearly four acres was taken from Aorangi B2B2 block, in a long thin strip that skirted around the two-acre urupa[214]. Before initiating the taking, the Council had confirmed that the Assistant Under Secretary's June 1915 report did not preclude further land being taking in the locality[215]. This taking was also of concern to the Maori owners, because of its proximity to the urupa. They expressed their concern at a conference with the County Council in June 1925 (i.e. before the taking), and they expressed their concern about access to the urupa, and the need to take an access route to the quarry site, at the Court hearing for the assessment of compensation in January 1926[216].

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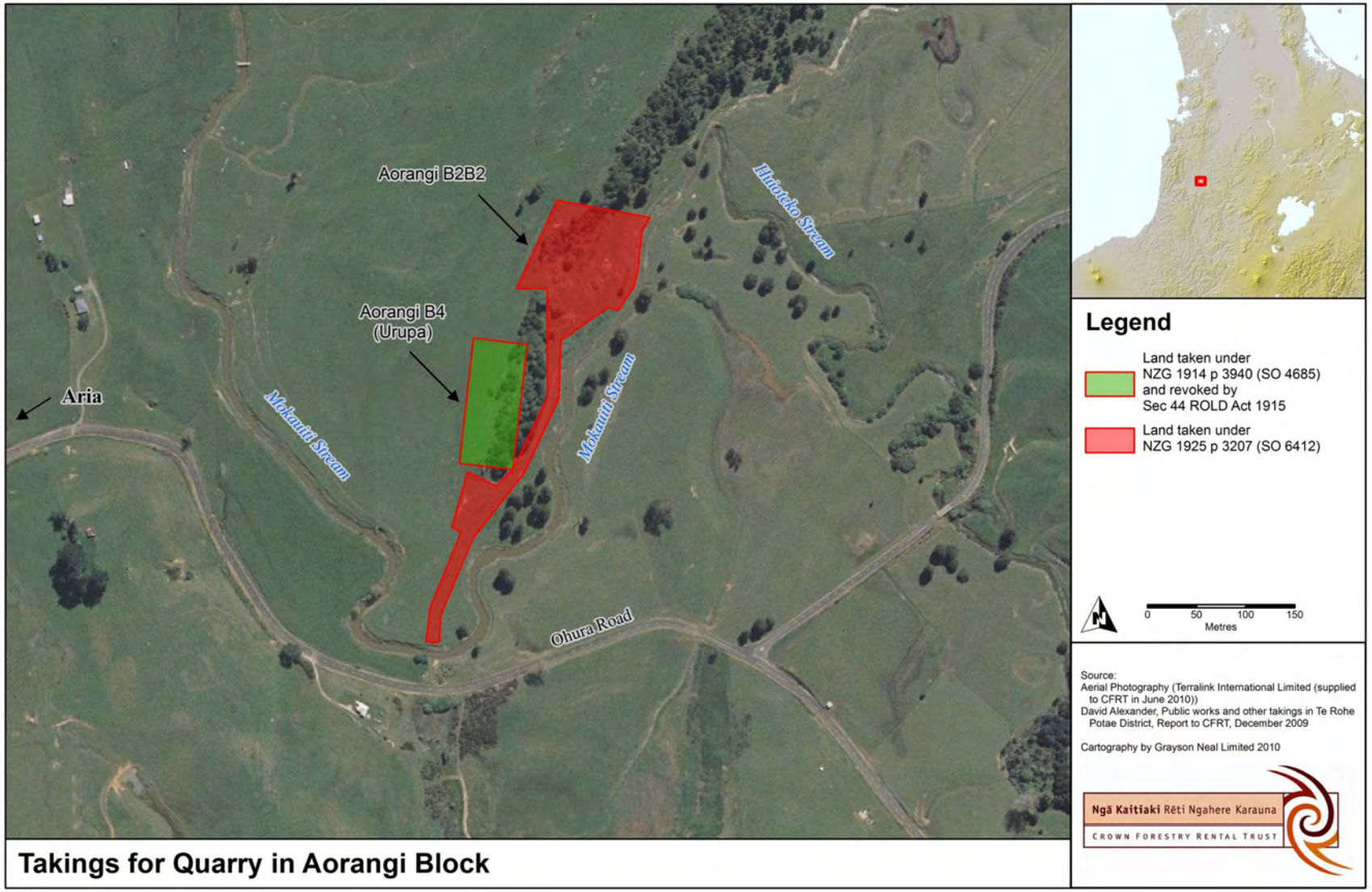
[213] Broadfoot & Finlay, Barristers, Solicitors and Notaries Public, Te Kuiti, to Assistant Under Secretary for Public Works, 26 May 1922. Works and Development Head Office file 54/76. Supporting Papers #1632-1634.
[214] *New Zealand Gazette* 1925 pages 3207-3208. Supporting Papers #4034-4035. Taranaki plan SO 6412. Supporting Papers #2451.
[215] JC Rolleston MP to Minister for Internal Affairs, 5 April 1925, and Minister of Public Works to JC Rolleston MP, 21 May 1925. Works and Development Head Office file 54/76. Supporting Papers #1647-1648 and 1649.
[216] Maori Land Court minute book 66 OT 90-92. Supporting Papers #3690-3692.



Map 5 Takings for Quarry in Aorangi Block

6.4.2 Mangaokewa Gorge Quarries

The takings for quarry purposes from Te Kuiti 2B in 1912 and Rangitoto-Tuhua 64O in 1919 were both in the lower Mangaokewa Gorge. This was a particularly attractive site for quarrying because the Railways Department had already taken land for ballast pits, and had built railway sidings into the valley[217]. In addition to these takings directly from Maori-owned land, the 1919 taking was associated with the setting apart of an already-acquired block of adjoining land, when a portion of land taken for scenic purposes in 1912 was set apart under the Public Works Act for quarry purposes[218].

The change of purpose from scenic to quarry had its origins in August 1912, just four months after the taking for scenic purposes, when Waitomo County Council sought the ability to quarry part of the scenic reserve[219]. The Inspector of Scenic Reserves was willing to accommodate the Council's request.

> It is a high limestone cliff, and is certainly very picturesque; however I recommend that it be made over to the County Council for the following reasons; firstly, there is no other good metal deposit conveniently located as regards railway carriage; secondly, after the loss of this part of the gorge, there will still remain about two miles of similar formation higher up the river; thirdly, the Railway Department having already obtained the cliff on the opposite side of the river will soon be starting quarrying operations and will thus spoil the harmony of the scene; and fourthly, I do not think it wise to withhold consent when doing so would retard the advancement of the whole county by putting the county to very material extra expense in obtaining metal for their roads.[220]

The Minister in charge of Scenery Preservation agreed to allow Waitomo County Council to obtain 15¾ acres of the scenic reserve for quarry purposes[221].

Another part of the Mangaokewa Gorge Scenic Reserve immediately upstream of the 1919 quarry was the subject of special legislation in 1924, part of which was because

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[217] P Cleaver and J Sarich, *Turongo: The North Island Main Trunk Railway and the Rohe Potae, 1870-2008*. Report commissioned by Waitangi Tribunal, November 2009, pages 111, 161, 165 and 168-171.
[218] *New Zealand Gazette* 1919 pages 2011-2012. Supporting Papers #4013-4014.
South Auckland plan SO 18707. Supporting Papers #2398.
[219] Telegram Under Secretary for Lands to Inspector of Scenic Reserves, 26 August 1912. Lands and Survey Head Office file 4/302. Supporting Papers #574.
[220] Inspector of Scenic Reserves to Under Secretary for Lands, 19 September 1912. Lands and Survey Head Office file 4/302. Supporting Papers #575-576.
[221] Under Secretary for Lands to Minister in Charge of Scenery Preservation, 18 October 1912, approved by Minister 21 October 1912, and Under Secretary for Lands to Broadfoot and Finlay, Solicitors, Te Kuiti, 22 October 1912. Lands and Survey Head Office file 4/302. Supporting Papers #577-578 and 579.

of a desire to quarry the limestone[222]. The legislation resulted from a request by Te Kuiti Borough Council to be granted the whole of the remainder of the scenic reserve as an area of endowment land. The request was then refined into a proposal approved by the Crown for the sale of 37 acres of the scenic reserve to the Council for a quarry, and the change of purpose of the reservation (and vesting in the Council) of a further 38 acres, the new purpose being a reserve for reservoir and water-supply purposes[223].

There was no consultation with the former Maori owners about either the 1919 or the 1924 changes of purpose of the scenic reserve; both changes were treated as matters solely between the Crown and the local authority. The effect of the accumulation of takings and special legislation was that the whole lower gorge, upon which the scenic reserve proposal had been initially based (see the chapter in Part III on takings for scenery preservation), was given over to quarrying, and the scenic reserve had become confined to an upper part of the gorge that did not form part of the initial scenic takings proposal. Because their views were never sought, it is not known whether the former owners (who did not object to the initial taking for scenic reserve) would have supported or opposed the changes both to the legal status of the reserve and the natural character of the gorge.

6.4.3 Gravel Pit on Orahiri 1 and Otorohanga 1F4A (Taken in 1917)

Other quarries were not associated with rock outcrops, but with shingle supplies in riverbeds and on riverbanks. Such takings involved the taking of land on the riverbank in order to ensure that the Crown compulsorily acquired riparian rights to the resources of the riverbed (to the centre line – the ad medium filum aquae presumption). The sites in the Orahiri and Otorohanga blocks were in this category.

One of the takings in these blocks was of parts of Orahiri 1, Otorohanga 1F4A and Otorohanga 1F4B, taken for gravel pit in 1917 and vested in Waitomo County Council[224]. The taking was of a long strip of land fronting on to the true right bank of

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[222] Section 76 Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924.
[223] Town Clerk Te Kuiti Borough Council to Minister of Lands, 29 September 1924, Under Secretary for Lands to Minister in charge of Scenery Preservation, 1 October 1924, and Under Secretary for Lands to Minister of Lands, 16 October 1924. Lands and Survey Head Office file 4/302. Supporting Papers #581-582, 583-584 and 585-587.
[224] *New Zealand Gazette* 1917 page 180-181. Supporting Papers #4005-4006.
South Auckland plan SO 17914. Supporting Papers #2396.

the Waipa River, and effectively cut the remainder of the Maori-owned blocks off from the river. There were procedural and compensation difficulties with the taking. In May 1918, seventeen months after the taking, the Council's solicitors advised:

> We … find that a Notice of Proclamation was not advertised. We are, however, notifying it in the next issue of the local paper. With respect to the compensation, we find that the interested parties were compensated by the Local Authority a considerable time ago through Mr Arrowsmith, then a solicitor in practice at Otorohanga but now on Active Service.[225]

This payment had been direct to parties with an interest in the taken land (whether it was to all the interested parties is not known), and there had been no application to the Native Land Court to assess compensation. If there had been an application, the Court, in deciding how much should be paid, had the power to confirm a previously-made local arrangement and adopt it as its own, or amend and increase the amount that should have been paid.

In 1924 the owners of Orahiri 1 took legal advice about the taking of their land. In March that year, a solicitor acting for them wrote to the Public Works Department:

> The Native owners of Orahiri No.1 inform us that they had no notice of the intended action of the Waitomo County Council in taking their land. The plan shows that the Council has taken the whole of the river frontage of the Orahiri No.1 Block. This is the pleasure ground of the Natives, where they indulge in fishing and eeling and bathing. It also deprives the Natives of their water frontage and of their supply of water for their stock. There is a Meeting House and cottages on the block, and the Natives are in residence on the land, and farming and cultivating the Block.
>
> They wish us to take action to quash the Proclamation. It seems to us that the provisions of Section 15 of the Public Works Act have been disregarded by the Council.
>
> In any event the local authority have not applied under Section 91 of the Public Works Act for the assessment of compensation by the Native Land Court….[226]

The Department's response was that both cancellation of the Proclamation and payment of compensation were matters to be addressed to the County Council.

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[225] Broadfoot and Finlay, Barrister, Solicitors and Notaries Public, Te Kuiti, to Under Secretary for Public Works, 3 May 1918. Works and Development Head Office file 54/100. Supporting Papers #1650.

[226] Hosking, Corbett and Mossman, Solicitors, Otorohanga, to Under Secretary for Public Works, 12 March 1924. Works and Development Head Office file 54/100. Supporting Papers #1651-1652.

Because the owners' solicitor had not received any satisfactory response from his request, a petition was presented to Parliament. Ngamihi Te Huia and Tereme Te Huia, owners of the land, complained that they had received no notice in advance of the proposed taking, and that the taking had had a number of consequences for them.

> We have been deprived of our riparian rights. That the whole of our river frontage has been taken under the said Proclamation, and access for our stock to water has been cut off. That there is a splendid eel pah in the River to which we have now no access.
>
> That the said Council [Waitomo County Council] or its assignees are trading in the gravel, which has been confiscated and portion of the area taken adjacent to our land is being worked by a private company under contract with the Otorohanga County Council and have now taken over the gravel reserve from the Waitomo County Council.
>
> That we have been using our land as a Dairy and Agricultural farm, and by our frontage being so cut off the stock have no water during the dry season. That our kainga is situated on the land a portion of which has been taken under the said Proclamation, and the area taken by the Council is also our pleasure ground.
>
> That we are informed and believe that both the Waitomo County Council and the Otorohanga County Council have other gravel reserves without having to resort to our property.
>
> That the area taken by the said Council comprises valuable shingle deposits of which it is impossible to adequately assess the value and so compensate us.

They also complained that the County Council had not applied to the Native Land Court for assessment of compensation, and so they had been unable to receive any compensation[227]. The Crown's response to this latter matter is discussed in the chapter on compensation.

The Public Works Department, which had been responsible for arranging the taking Proclamation, sheltered behind the absolute letter of the law and considered that there had been nothing amiss.

> The Department has no knowledge that the taking of this land by Proclamation … was irregular. The land was taken by the Waitomo County Council and the Department was not required to ascertain whether all the steps required by the Act had been complied with. As far as the Department knows the provisions of the Act prior to the taking were complied with. A statutory declaration to that effect by the Chairman of the Waitomo County Council was received.

[227] Petition 105/1924 of Ngamihi Te Huia and Tereme Te Huia. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2274-2276.

> The declaration also stated that Notices of Intention to take the land had been served on the owners and others having an interest in the land held under Certificate of Title.
>
> If you will refer to Section 4 of the Public Works Amendment Act 1909, you will notice that it is not necessary to serve notices under Section 18 of the Public Works Act 1908 on any Native who is an owner or occupier of the land, or has an interest therein, unless his title to the land is registered under the Land Transfer Act. Where any Native is an owner or occupier of land, or has an interest therein, and his title is not so registered under the Land Transfer Act, the Notice of Intention requires to be published in the Kahiti. I presume that this action was taken by the Council, but in any case the Act provides that no proceedings for the taking of land shall be invalidated by any failure to conform to such requirements.[228]

By its response the Crown avoided addressing the substance of the petition, which was that the owners had not wanted their land to be taken, and now wanted it returned to them. The Native Affairs Committee also failed to comment, instead resolving to refer the petition to the Native Minister[229]. The Minister, however, showed no interest in getting involved, directing "no action for the present"[230].

That was not the end of the matter. Compensation was eventually ordered by the Native Land Court in 1929 (see chapter on Compensation), but failed to prevent another approach to the Crown by the owners of the taken land in 1937. Their complaint was that they had thought the compensation award was about payment of royalty for shingle, rather than a single payment for the land.

> We strongly object to the fencing off of our shingle bed by the Otorohanga County Council by erecting a fence from the top to the bottom boundary of our land, thus giving them the whole of the Waipa River bank portion of our land. There had been an old grievance against the Council on account of the non-payment of royalties. For this reason we block the access to this shingle bed. In fact we petitioned Parliament in connection with this matter. Mr G. Elliot acted as our counsel. The matter was referred to the Waikato Maniapoto Native Land Court for enquiry, and was decided, as we thought, in our favour. Today we find that the position in regard to this matter is totally different from what we had thought. We find that the amount which we had accepted, and

[228] Assistant Under Secretary for Public Works to Under Secretary Native Department, 13 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 23 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2277-2279.
[229] Report of Native Affairs Committee on Petition 105/1924, 10 October 1924. *Appendices to the Journals of the House of Representatives* (AJHR), 1924, I-3, pages 28-29. Supporting Papers #3904-3905.
[230] Native Minister to Under Secretary Native Department, 29 October 1924, on cover sheet to Maori Affairs Head Office file 1924/372. Supporting Papers #922.

which we thought was a royalty payment by the County Council, was not royalty money but purchase money for the river bank within the boundaries of our land. Not only was the whole river bank taken, but also an area of approximately two or three acres adjacent thereto.

We strongly protest against this position of the matter. Our stock are now unable to take water at the river. We are now debarred from obtaining metal from the shingle bed. We no longer receive any revenue for the metal from the shingle bed. The European who once paid us 6d per yard now pays that money to the County Council, and now the Council pays us only 3d per yard for its lorries to pass over our land. This amount is not for royalty.

We therefore respectfully request you, o Minister, to cause peace to reign between us and the Council, by obtaining for us equal rights with the Council to the shingle bed. We had already made representations to the Council that the matter should be settled amicably, but it would not agree to our proposal.

Because of this attitude of the Council, we closed up the right of way over our land. Now we hear that the Council intends to acquire a road over our property under the Public Works Act. If this is the intention of the Council, we shall oppose it, and will keep closed the right of way over land.[231]

The County Council was asked to explain, and replied:

The land in question was taken by the Waitomo County Council under the Public Works Act, and subsequently vested in the Otorohanga County Council in the adjustment that was made upon the constitution of Otorohanga County Council.

The question of compensation for the land was dealt with by the Native Land Court at Te Kuiti a few years ago, and was paid by Waitomo County Council. The resident owners, Ngahina Ani and Te Rami Te Huia, were well aware that the payment was compensation for the land taken, but the present trouble is being made by a young son of a non-resident owner who has lately come on the scene. The land was acquired by the Council for the purpose of access to the Waipa River to get shingle for the roads. Owing to the alteration of the course of the Waipa River, the Council's access was cut off, leaving the land on the point where the shingle was located only accessible by crossing Native Land owned by the above-mentioned people.

This difficulty was got over by the Council paying the natives threepence per cubic yard for permission to cart over their land. This arrangement worked for years, until the young gentleman mentioned made a deal with the firm of Hilder and Sons whereby gravel was to be taken from the river fronting the Council's land upon payment of sixpence per cubic yard.

[231] Ngahina Ani and 4 Others, Otorohanga, to Native Minister, undated (received 9 September 1937). Maori Affairs Head Office file 1924/372. Supporting Papers #912-914.

> The Council notified Hilder not to trespass, but he decided to defy the Council, and the Council erected a fence on its boundary.
>
> The natives have retaliated by refusing to allow the Council to cart over their land, and no shingle is now being got from this part of the Waipa River, and the two old native women, who are residing on the land, miss the payments that they have been receiving in the past.[232]

Because of this explanation, the Native Minister decided that, "under the circumstances there does not seem to be anything that I can do".[233]

6.4.4 Quarry on Hauturu East 1E (Taken in 1920)

The second petition to Parliament in 1924 was by Rangiwhakarewa Paraone, sole owner of the Hauturu East 1E land taken for quarry in 1920. He too complained that "no notice whatsoever was given to me" of the Waitomo County Council's intention to compulsorily acquire the land. The land had been "taken against my wishes" and "without my consent". He also complained that, while compensation had been applied for and awarded, he had not been told about the Native Land Court hearing and so had not attended[234]. This last aspect of the petition is discussed in the chapter on compensation.

As with the other petition, the Public Works Department responded that it had no reason to doubt the validity of the taking, because the statutory declaration from the County Council had stated that all the preliminaries had been properly carried out. Furthermore, "the Department is not required by the Act to make any further enquiry". As to giving prior notice, that depended on whether the title to the land was registered or not. If not, the Department presumed that Notice of Intention had been published in the Kahiti[235].

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[232] County Clerk Otorohanga County Council to Under Secretary Native Department, 13 October 1937. Maori Affairs Head Office file 1924/372. Supporting Papers #915-916.
[233] Native Minister to Ngahina Ani, Otorohanga, 28 January 1938. Maori Affairs Head Office file 1924/372. Supporting Papers #919-921.
[234] Petition 108/1924 of Rangiwhakarewa Paraone. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2299-2301.
[235] Assistant Under Secretary for Public Works to Under Secretary Native Department, 13 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 22 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2293-2297.

The Native Affairs Committee resolved to refer the petition to the Native Minister[236]. The Minister, in following up the petition, dealt only with the failure to uphold natural justice for the owner at the compensation hearing (see chapter on compensation).

6.4.5 Gravel-Pits along Otewa Road

Not included in the table of takings for quarries and gravel pits are some lands taken for gravel extraction purpose alongside Otewa Road, which were taken for road in 1912[237]. The taking was in terms of a Governor's warrant under the 5% provisions that did not require the Crown to pay compensation (see sub-section on Otewa Road in the chapter on Roads Taken without paying Compensation). These 5% provisions only allowed land to be taken for road, and any land alongside a road required for road-related purposes could not be taken in that way. Yet the 1912 taking had included land in Mangawhero 3C, Rangitoto-Tuhua 29 and Rangitoto-Tuhua 33 alongside Otewa Road.

It was not until 1927 that this was drawn to the Crown's attention. A solicitor acting for the owners of Mangawhero 3C wrote to the Under Secretary for Public Works that the survey plan on which the taking was based showed that the land taken from Mangawhero 3C comprised 2 acres 0 roods 36 perches marked as road, and 2 acres 1 rood marked as shingle reserve[238], yet the whole 4 acres 1 rood 36 perches had been taken for road. He argued that the shingle reserve had never been used for its taken purpose of road and had therefore being wrongly taken; the Maori owners should have received compensation for the land marked as shingle reserve[239].

The Chief Surveyor's reaction was that the notation on the plan of shingle reserve lost its significance as soon as the land was taken for road. He postulated that the shingle reserve could have been provided as a means of gaining road access to the Waipa River to obtain shingle from out of the river. As far as he was concerned, the title to the land had gone out of Maori ownership as a result of the taking, and the Crown and

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[236] Report of Native Affairs Committee on Petition 108/1924, 10 October 1924. *Appendices to the Journals of the House of Representatives* (AJHR), 1924, I-3, page 29. Supporting Papers #3905.
[237] *New Zealand Gazette* 1912 page 2489. Supporting Papers #3972.
[238] South Auckland plan SO 16071. Supporting Papers #2365.
[239] F Phillips, Barrister and Solicitor, Otorohanga, to Under Secretary for Public Works, 29 November 1927, attached to F Phillips, Barrister and Solicitor, Otorohanga, to Under Secretary for Lands, 9 December 1927. Lands and Survey Head Office file 1912/109. Supporting Papers #269-271.

local authorities could "use it presumably for any ordinary purpose in connection with roads"[240]. The Under Secretary for Public Works shared this view, considering that the status as road meant that "the Natives are apparently not entitled to compensation, even if it were advisable to bring the matter up at this later date". He noted, however, that the taking under the Public Works Act relied on the Governor's warrant as the basis for its authority, and that was a matter for the Lands and Survey Department[241].

The Under Secretary for Lands was more cautious.

> Mr Edgecumbe [the surveyor] was acting under Governor-General's Warrant, and it is open to question as to whether the road-line shown on the plan includes the area in dispute, viz 2¼ acres. This last-mentioned area is shown in a distinctive colour and is marked 'Shingle Reserve'.
>
> The fact that this area was included in the notice of the taking and laying off of road, as published in the Gazette, does not appear to affect the legal position, as it is merely for the purposes of record.
>
> It will probably be necessary to refer the matter to the Crown Law Office for consideration and advice.

Before doing so, he sought more information about the surveyor's intentions (if explained in his field books and report on his survey), and how the Shingle Reserve had been used[242]. The only additional information the Chief Surveyor was able to provide was that the surveyor's field book referred to the area as 'Gravel Reserve'[243].

A difference of attitude is apparent between the reactions of the Department of Lands and Survey and the Public Works Department. The Assistant Under Secretary for Public Works was far more determined to protect the Crown's interest when he wrote:

> The points raised by you may be correct, but I am at a loss to understand why the Crown should raise these points. Apart from the legal question, it seems to me that the land was required to give access to the river for the purpose of obtaining shingle, and therefore it was quite in order to take it for road. As pointed out to the solicitor by this Department, the Crown is quite entitled to take any land required for the use, convenience or enjoyment of a public work, and therefore it is clear that land required to give access to a shingle bed may

[240] Chief Surveyor Auckland to Under Secretary for Lands, 18 January 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #272.
[241] Assistant Under Secretary for Public Works to Under Secretary for Lands, 16 February 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #273-274.
[242] Assistant Under Secretary for Lands to Chief Surveyor Auckland, 21 February 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #275.
[243] Chief Surveyor Auckland to Under Secretary for Lands, 3 March 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #276.

> be taken for road. It is nearly 20 years since the land was taken, and therefore I think Mr Phillips [the solicitor for the Maori owners] should be told that although land may have been shown on the plan as a shingle reserve, it was required as a road giving access to a shingle bed, and that the notice taking it for road was quite in order.
>
> From a policy point of view, it is very inadvisable to give any encouragement to the making of claims of this nature years after the land was taken. Had any hardship been created at the time, the then owners would certainly have objected, and I do not think it fair to the local body, after eighteen years control, to make it now take and pay compensation on present day values, when at the time of taking it was, no doubt, of practically no value.
>
> It is not the practice of this Department to raise doubts as to the validity of any Proclamation or other document issued by the Department, nor to refer such questions to the Crown Law Office, unless and until it is contended by private solicitors or individuals that such Proclamation of document is invalid, and full reasons in support of such contention submitted.[244]

The Under Secretary for Lands in reply stated:

> Mr Phillips … draws attention to the vital point, viz. that the area on the plan is marked as a shingle reserve and not as a road. It therefore seems to me to be the duty of the Department to have the matter carefully investigated to determine whether there is any merit in the solicitor's contention. With all due respect to the opinions expressed in your memorandum, I consider that a Government Department should be quite sure of its legal and equitable position before writing to solicitors on the lines you suggest.
>
> I quite agree with you that from a policy point of view it is not advisable to give any encouragement to the making of claims against the State, but when the actions of this Department are questioned (as in this particular case) it is the policy of this Department to look carefully into the points at issue, and confer if necessary with the Crown Law Office before taking up a position of rebuttal.[245]

The District Engineer provided a report about how the Shingle Reserve had been used. It was required to provide access to shingle deposits in the riverbed, but shingle could also be taken from the Reserve, so "there is a difficulty in defining where access ends and the gravel pit commences". No road had been formed over the Shingle

[244] Assistant Under Secretary for Public Works to Under Secretary for Lands, 14 March 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #277.
[245] Under Secretary for Lands to Under Secretary for Public Works, 16 March 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #278.

Reserve, and he was of the opinion that the land "was actually taken for the purpose of a shingle reserve and not as a road"[246].

The matter was put to the Solicitor General in May 1928[247]. A Crown Solicitor in reply traversed what he regarded as the salient facts. His opinion was that the laying off of the Shingle Reserve was unauthorised. The warrant and the legislation only allowed roads to be laid off and taken, and the only indication that the Shingle Reserve was a road was the 1912 gazettal, which was only "a statement by the Minister of what has in some other manner already been done", because it was not required to legalise the road, and was only issued "for public convenience as a matter of departmental routine". The gazettal he regarded as "a misstatement, it can have no legal effect". Continuing this line of thought, the Shingle Reserve had never been taken, and remained Maori-owned land. Because of this, "nothing has been done for which the native owners are now entitled to compensation".

> I think the way to put it in reply to [the solicitor for the Maori owners] is to say that according to [the survey plan] only 2 acres and 36 perches was taken and laid off for a road. It is true that the surveyor at the same time marked off and plotted a further two and a quarter acres which he described as a shingle reserve, probably with a view to possible future public requirements. By inadvertence the latter area was described as road in the Gazette notice of 1912 to which he refers, but this notice cannot be treated as in itself an act of taking and laying off land, and the inclusion in that notice of the parcel in question is not considered to have any legal effect. The title of the owners to the parcel is not considered to be in any way affected by either the map or the notice, and while the Department regrets any inconvenience to which they may have been put by the insertion of this parcel in the Schedule to the Gazette notice of 1912, seeing that no effect was produced thereby, no claim to compensation can be recognised.[248]

The Crown Solicitor also drew attention to two other similar instances of land alongside Otewa Road being included in the 1912 gazette notice but never having been legally taken. These were 6½ acres of Rangitoto-Tuhua 28 marked on the

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[246] District Engineer Auckland to Under Secretary for Public Works, 14 April 1928, attached to Assistant Under Secretary for Public Works to Under Secretary for Lands, 20 April 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #279-280.
[247] Assistant Under Secretary for Lands to Solicitor General, 7 May 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #281.
[248] Crown Solicitor to Under Secretary for Lands, 11 May 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #282-287.

survey plan as 'gravel reserve'[249], and 4¾ acres of Rangitoto-Tuhua 33 marked on the plan as 'temporary ford reserve'[250].

The solicitor for the Maori owners was written to along the lines recommended by the Crown Solicitor[251]. He replied that the 1912 gazettal had the effect of depriving the Maori owners of the use of the land since then. The gazettal had been registered with the District Land Registrar, and the taken land had been excluded from the title to Mangawhero 3C. The Crown needed to take steps to revoke the Proclamation as it affected the Shingle Reserve, or ensure the Shingle Reserve was legally vested back into Maori ownership. The County Council had taken shingle from the reserve, and would probably want the reserve to be taken under the Public Works Act. The Maori owners would probably agree to this if compensation was paid. The solicitor asked:

> Is your Department prepared to have the land revested in the natives or, if adequate compensation can be agreed upon, in the County Council?[252]

This prompted an approach to the District Land Registrar, who ruled that, in order to restore the Shingle Reserve to Maori-owned title, he would need an instrument revoking the taking of the Shingle Reserve[253]. The Crown Solicitor confirmed this ruling, although suggesting a substitute notice for the 1912 notice, which was deemed to be withdrawn, rather than a revocation of the 1912 notice[254].

As predicted by the solicitor for the Maori owners, the Otorohanga County Council wrote opposing any revocation or loss of the three areas alongside Otewa Road. Each of them provided access to indispensable deposits of shingle in the bed of the Waipa River; the shingle was needed in large quantities each year for road construction and maintenance[255]. The view taken by the Minister of Lands and his Department, however, was that the error in the 1912 notice needed to be corrected first, and if the

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[249] South Auckland plan SO 16073. Supporting Papers #2367.
[250] South Auckland plan SO 16072. Supporting Papers #2366.
[251] Under Secretary for Lands to F Phillips, Barrister and Solicitor, Otorohanga, 15 June 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #292.
[252] F Phillips, Barrister and Solicitor, Otorohanga, to Under Secretary for Lands, 27 June 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #293-294.
[253] Chief Surveyor Auckland to Under Secretary for Lands, 4 July 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #295.
[254] Crown Solicitor to Under Secretary for Lands, 12 July 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #296.
[255] County Engineer Otorohanga County Council to JC Rolleston MP, 9 July 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #297.

Council wanted the three areas it could take them in the normal manner under the Public Works Act[256]. When this was communicated to the County Council, the County Engineer asked for time to obtain legal advice[257]. This was agreed to[258], and the Public Works Department, which had earlier been sent a proposed substitute notice[259], was asked to hold off any action[260].

The solicitor who acted for the County Council was the same solicitor who had been acting for the Maori owners of Mangawhero 3C. He wrote on behalf of the Council to the Public Works Department in August 1928, and the letter was passed on to the Department of Lands and Survey. The solicitor outlined the use to which the three areas alongside Otewa Road had been put during the sixteen years since they had been included in the 1912 notice, as an argument for allowing the areas to be retained in public ownership.

> The [Mangawhero 3C and Rangitoto-Tuhua 28] areas have been used as access roads to the river and to fords. Before the laying off of the Otorohanga – Otewa Road and the building of the bridge over the Mangawhero Stream, the [Mangawhero 3C] land was used for access to the ford across the Waipa River by all people travelling from Otewa to Otorohanga. It was also necessary to ford the river again near the [Rangitoto-Tuhua 28] land, and to ford the River again on the [Rangitoto-Tuhua 33] land. The [Rangitoto-Tuhua 33] land is still used as a road, and the [Mangawhero 3C] land is frequently used for persons driving stock from north of the river to the saleyards on the Otorohanga – Otewa Road.
>
> Owing to the fact that these fords were used by settlers to the north of the river, some of the land to the north of the river was included in the Special Rating Area for the Otorohanga – Otewa Road. These fords provide the sole means of access for the northern settlers to the Road over which they still pay Special Rates. The County also uses each of these Blocks for obtaining shingle.
>
> As it had been assumed for the last sixteen years that the lands have been properly laid off as roadlines, and the County still requires them, it is

[256] Minister of Lands to JC Rolleston MP, 8 August 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #301-302.
[257] County Engineer Otorohanga County Council to JC Rolleston MP, 10 August 1928, attached to JC Rolleston MP to Under Secretary for Lands, 11 August 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #303-304.
[258] Under Secretary for Lands to County Engineer Otorohanga County Council, 13 August 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #305.
[259] Chief Surveyor Auckland to Under Secretary for Lands, 20 July 1928, and Under Secretary for Lands to Under Secretary for Public Works, 30 July 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #298-299 and 300.
[260] Under Secretary for Lands to Under Secretary for Public Works, 14 August 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #306.

> suggested that if the laying off is considered illegal, that it now be validated. If it is considered that compensation should have been paid, the County would pay the compensation which the owners would have been entitled to had the lands been properly taken in 1909.[261]

The solicitor's letter was referred for comment to the Crown Solicitor, who replied that, while the three areas may have been extensively used by the public and the local authority, that did not alter the initial error in including them in the 1912 notice. He did, however, have some sympathy for the validation of the taking and the payment of compensation.

> Judging by the use that proves to have been made of them, these parcels might properly have been taken as roads when the adjoining through road was taken in 1910-11. The natives have for nearly twenty years accepted that position, and the Otorohanga County Council has relied upon it. Both parties may well have been misled by the Gazette notice of 1912. Were the land now desired for public roads only, it might be reasonable to legalise such roads without any provision for compensation. It is evident however that this would not be regarded as satisfactory. There would nevertheless appear to be good reason in fairness to the Council, and no substantial injustice to the native owners, in acceding to the desire of the County Council that compensation payable should be based on the 1909 values.[262]

In September 1928 the County Chairman and the Council's solicitor met the Minister of Lands to press their case that special legislation should be passed taking the three roadside areas and providing for compensation to be assessed at 1909 values. The Minister agreed to refer the matter to the Attorney General for his advice[263]. However, the Attorney General was not so willing to assist the County Council in its efforts to have compensation assessed at 1909 values.

> It appears that the Native owners have a claim against the Otorohanga County Council for compensation, and they are entitled to have that claim settled in accordance with whatever legal rights they may have. I do not think that the Government should intervene by legislation to take away any right which the Natives may have.[264]

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[261] F Phillips, Barrister and Solicitor, Otorohanga, to Under Secretary for Public Works, 16 August 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #307-308.
[262] Crown Solicitor to Under Secretary for Lands, 30 August 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #309-310.
[263] Assistant Under Secretary for Public Works to Under Secretary for Lands, 7 September 1928, Under Secretary for Lands to Under Secretary for Public Works, 7 September 1928, Assistant Under Secretary for Public Works to Under Secretary for Lands, 8 September 1928, and Under Secretary for Lands to Minister of Lands, 10 September 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #311, 312, 313 and 314.
[264] Attorney General to Minister of Lands, 14 September 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #315.

The Minister of Lands then wondered if there was any other way whereby the Maori owners could be properly compensated, but not at great expense to the County Council.

> In view great concessions being made Natives at present by way writing off liens by Crown and outstanding rates by Counties, is there any possibility reasonable adjustment being made as to amount to be paid by County, either through Native Land Court or Sir Aprirana Ngata's Committee.[265]

This required the involvement of the Native Department in the matter, and it was asked for its views and recommendations[266]. The Under Secretary to the Native Department replied that compensation could only be assessed by the Native Land Court after land had been taken under the Public Works Act. He also commented about problems experienced by Maori owners when Otorohanga County Council and other local authorities took gravel without consent or payment, remarking that "it would not have been judicious to give power to the Crown to take land for other purposes than roads"[267].

The Under Secretary for Lands concluded that the most convenient solution was for the County Council to arrange for the taking of the three roadside areas under the Public Works Act, and then pay whatever compensation was assessed by the Native Land Court[268]. The Minister decided to have further discussions with his ministerial colleagues[269]. He had still not made any decision when a deputation from the County Council met him in January 1929, and again urged validating legislation[270].

It was not until March 1929 that the Minister of Lands approached his colleague the Native Minister, setting out the history of the case. The Native Minister replied:

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[265] Minister of Lands to Under Secretary for Lands, 15 September 1928, on Attorney General to Minister of Lands, 14 September 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #315.
[266] Under Secretary for Lands to Under Secretary Native Department, 19 September 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #316.
[267] Under Secretary Native Department to Under Secretary for Lands, 16 October 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #317.
[268] Under Secretary for Lands to Minister of Lands, 18 October 1928, on Under Secretary Native Department to Under Secretary for Lands, 16 October 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #317.
[269] Minister of Lands to Under Secretary for Lands, 25 October 1928, on Under Secretary Native Department to Under Secretary for Lands, 16 October 1928. Lands and Survey Head Office file 1912/109. Supporting Papers #317.
[270] Minister of Lands to Under Secretary for Lands, 21 January 1929. Lands and Survey Head Office file 1912/109. Supporting Papers #318-321.

I am of opinion:

1. That validating legislation should be introduced.
2. That the quantum of compensation should be left to the decision of the Court.[271]

After some discussion at departmental level between the Lands and Survey and the Native Departments[272], the Minister of Lands was advised that the preferred course of action was that "Otorohanga County Council should approach the Native Department for the inclusion of a clause in the Native Land Amendment and Native Land Claims Adjustment Bill"[273]. The Minister agreed[274].

In June 1929 the County Council's solicitor drew up a draft clause for inclusion in the Bill. This validated the taking for road of the three roadside areas, vested them in Otorohanga County Council, and authorised the Native Land Court to assess the amount of compensation that the Council should pay[275]. The Minister of Lands, when forwarding the draft clause to the Native Minister, commented that in his opinion the vesting in the Council should be deleted, "as the land comprised in public roads vests in the Crown"[276]. This advice was not accepted, nor was the Council solicitor's advice that the taking should be for road. The legislation, when passed as Section 51 Native Land Amendment and Native Land Claims Adjustment Act 1929, set out that the three roadside areas were deemed to have been taken for the purpose of gravel-pits, and to have been vested in the Council. The Court, on the application of the Council or a beneficial claimant to the compensation, was to assess the compensation to be paid by the Council as if the lands had been taken in 1912.

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[271] Native Minister to Minister of Lands, 27 March 1929, on Minister of Lands to Native Minister, 12 March 1929. Lands and Survey Head Office file 1912/109. Supporting Papers #322-324.
[272] Under Secretary for Lands to Under Secretary Native Department, 9 April 1929, and Under Secretary Native Department to Under Secretary for Lands, 16 April 1929. Lands and Survey Head Office file 1912/109. Supporting Papers #325 and 326.
[273] Under Secretary for Lands to Minister of Lands, 17 April 1929, on Under Secretary Native Department to Under Secretary for Lands, 16 April 1929. Lands and Survey Head Office file 1912/109. Supporting Papers #326.
[274] Minister of Lands to WJ Broadfoot MP, 2 May 1929. Lands and Survey Head Office file 1912/109. Supporting Papers #327-328.
[275] F Phillips, Barrister and Solicitor, Otorohanga, to Minister of Lands, 29 June 1929. Lands and Survey Head Office file 1912/109. Supporting Papers #329-330.
[276] Minister of Lands to Native Minister, undated (July 1929). Lands and Survey Head Office file 1912/109. Supporting Papers #331.

The compensation hearing was held in September 1930, and compensation was ordered as follows[277]:

- Mangawhero 3C 2¼ acres £20
- Rangitoto-Tuhua 28B2 6½ acres £25
- Rangitoto-Tuhua 33 4¾ acres £15

6.4.6 Quarry on Kinohaku East 2 Section 17B (Taken in 1949)

The land at the northern junction of Troopers Road taken for quarry in 1949 from Kinohaku East 2 block had been quarried before that date. The Public Works Department had started extracting limestone on the road reserve, but as the operation expanded it was challenged by the Maori owners, and a survey showed that the quarrying had encroached on to Maori land. Approximately 2000 cubic yards of limestone had been removed from private property. At that stage, in November and December 1946, the Public Works Department used powers contained in the Public Works Act 1928 to serve notice of its intention to enter the land to take limestone, in order to carry on a public work of maintaining the State Highway between Otorohanga and Te Kuiti. This represented an acceptance by the Crown that it would have to pay for the right to extract limestone from private property.

At the end of December 1946 the Maori owners demanded a royalty payment of sixpence per cubic yard, and insisted on compensation for previous trespass on their land. The Department's response was that quarrying had only been on an occasional basis, and was not a commercial enterprise where royalty payments would be justified. In April 1947 the state of affairs was that:

> Notwithstanding the discussions and correspondence to which reference has been made, the Natives have not taken any other steps to prevent the continuance of our quarrying operations, but it is considered that further steps are desirable and necessary to forestall any possible trouble which might react to our disadvantage in the procurement of this stone.

The further steps that were recommended were the taking under the Public Works Act of about 2¾ acres of Maori-owned land for quarry purposes. Taking was considered

[277] Maori Land Court minute book 68 OT 268-273 and 325. Supporting Papers #3695-3700 and 3701.

more suitable than payment for use and then restoration of the land; the cost of taking would not be high because the land was "of little value"[278].

The Native Department was asked for its "cooperation" in the taking of the land[279], and replied that it was "not aware of any reason of policy or expediency why the required [land] should not be taken"[280]. This was interpreted as a stance of "no objection" by the Native Department when approval was given to issue a Notice of Intention to Take the land[281]. The Notice was served on four of the owners; the fifth was deceased and had not been succeeded to[282].

A solicitor for the owners objected to the proposed taking.

> I have been instructed by the native owners of the above block to object to the taking of the above land, upon the grounds that it is inequitable that such land should now be so taken without provision having been previously made to compensate the owners for limestone already wrongfully taken by or on behalf of the Public Works Department over a lengthy period of years, despite repeated objections by the native owners to the Department's trespass, and repeated requests that proper payment be made for the stone and the right to take it.
>
> The matter is clearly one that should have been placed on a proper basis many years ago, and I trust that the Department is prepared to meet the position fairly now by accepting liability to pay on a proper basis for the stone already removed, and for the disturbance to the property rights of the owners, and applying upon determination of that sum to have compensation assessed in the usual way by the Native Land Court, or confirmed by such Court if a reasonable settlement can be reached.[283].

The Minister's response was that the objection was "not considered to be well-grounded within the meaning of the Public Works Act 1928", and would not prevent the Crown proceeding with the taking. This was because it was capable of being

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[278] District Chief Clerk Hamilton to Under Secretary for Public Works, 24 April 1947. Works and Development Head Office file 54/290. Supporting Papers #1659-1660.
[279] Under Secretary for Public Works to Under Secretary Native Department, 30 June 1947. Works and Development Head Office file 54/290. Supporting Papers #1661.
[280] Under Secretary Native Department to Under Secretary for Public Works, 12 September 1947. Works and Development Head Office file 54/290. Supporting Papers #1662.
[281] Under Secretary for Public Works to Minister of Works, 16 November 1947. Works and Development Head Office file 54/290. Supporting Papers #1663.
New Zealand Gazette 1947 page 1768. Supporting Papers #4057.
[282] District Chief Clerk Hamilton to Under Secretary for Public Works, 12 January 1948. Works and Development Head Office file 54/290. Supporting Papers #1664.
[283] JM Hine, Barrister and Solicitor, Te Kuiti, to Minister of Works, 17 December 1947. Works and Development Head Office file 54/290. Supporting Papers #1665.

settled by the payment of compensation, which would be assessed by the Native Land Court[284].

The survey plan showing the proposed taking was not completed and approved until March 1949[285], and was not forwarded to the Public Works Department until two months later[286]. Only then could the land be taken[287]. The assessment of compensation is discussed in the chapter on Compensation.

6.5 Use, Convenience or Enjoyment of a Road

This term has been adopted in the public works legislation since at least 1894. It is a catch-all phrase describing a number of road-related purposes that do not involve the line of the road itself.

In other districts the term has been used for land taken for works, such as tree planting, on land adjoining the road that might be prone to slipping on to the road. It is not known if this reason was used for any of the takings in Te Rohe Potae.

The most frequent use of the term is in connection with road realignments, where the new line of road cuts off a small portion of a land block from the remainder of the land, and makes it uneconomic or impossible for the owner to make use of the cut-off land. The Crown then accepts that it has to acquire the small cut-off portion. Other terms used in Proclamations for this circumstance are 'severance' and 'better utilisation'. Under the Public Works Act 1981, additional terms used are 'functioning indirectly of a road' and 'purposes of Section 119 Public Works Act 1981'.

[284] Minister of Works to JM Hine, Barrister and Solicitor, Te Kuiti, 23 January 1948. Works and Development Head Office file 54/290. Supporting Papers #1666.
[285] South Auckland plan SO 33982. Supporting Papers #2419.
[286] Chief Surveyor Auckland to Under Secretary for Public Works, 27 May 1949. Works and Development Head Office file 54/290. Supporting Papers #1667.
[287] *New Zealand Gazette* 1949 page 1391. Supporting Papers #4058.

7 EDUCATION-RELATED TAKINGS

7.1 Introduction

Education-related takings have been divided into three categories, each of which is discussed below:

- Native schools
- Public schools
- Teacher housing

The provision made by the Crown and local authorities for education in Te Rohe Potae District is discussed only in the context of the land required for school sites; other schooling matters are beyond the brief of this report.

7.2 Native Schools

As explained in the legislative framework chapter, the Crown had since the 1860s had a policy of expecting that a Maori community would contribute (i.e. gift to the Crown) the site of a Native school out of the community's own land, before it would agree to establish and run the school. A variety of methods was used by which the transfer of the site from Maori to the Crown was achieved, with the most common method being the taking of the site under the Public Works Act[288], followed by the Native Land Court awarding nil compensation, so that the taking was effectively a gifting.

The circumstances surrounding the gifting of the sites meant that each gifting by Maori was never initiated by Maori of their own free will. While the Crown always waited for a Maori community to request a Native school, its initial response to each request was that it expected the community to offer a site before it would formally investigate and consider the request. The Crown policy, set out in the Native Schools Code and applied nationwide, of 'no land, no school' meant that there was a strong element of coercion associated with the Crown's acquisition of Native school sites.

[288] The Public Works Amendment Act 1900 added Native schools to the list of types of public work for which land could be taken under the Public Works Act 1894.

Fourteen Native school sites (including a second site for one of the schools that had to be relocated) have been identified in Te Rohe Potae District. The Crown acquired the sites as follows:

- 2 were leased from church missions
- 3 were transferred to the Crown by transfers or conveyances, where the Maori owner signed a document transferring ownership, in exchange for a nominal payment
- 2 were established on Crown-owned land
- 1 was acquired as part of a block purchase and award of the Court, when 15 acres was awarded to the Crown but shares equivalent to only 12 acres had been purchased by the Crown, with the remaining 3 acres being the gifted school site
- 1 was already a public school site on land purchased from a European, before it became a Native school site
- 5 were Maori-owned land taken under the Public Works Act, with no compensation awarded

Each of these takings and acquisitions is discussed in detail in a separate chapter in Part III of this report on Native school sites.

7.3 Public Schools

Native schools were a separate system to the public schooling system, and were established where no public school existed, and where the local community for which the school was provided was overwhelmingly Maori and therefore justified a school with its own particularly Maori character. These circumstances meant that there were more public schools than Native schools.

Public schools tended to be established where European settlers had petitioned the Auckland Education Board or the Taranaki Education Board. While European children would usually be in the majority in public schools, and the curriculum was oriented towards the needs of the European children, Maori children would also be enrolled. This report, however, is not concerned with what went on in the classroom, but with the sites on which the schools were established.

Map 7 Native Schools, and Public School sites involving Maori-owned Land

In catering primarily for the needs of the European settler population, most public schools were established on the Crown's own land, with the school site being reserved under the Land Act as an integral part of the cutting up of the land and its settlement. This method of obtaining a school site tended to serve for the first generation of public schools. It was only later, when further schools were considered necessary, that Maori-owned land might be chosen for the site. The database identifies a number of takings of Maori-owned land for public schools, or for further extensions to school sites. The particular schools, and the years during which lands were taken for them, were:

- Hangatiki 1907, 1925, 1942
- Oparau 1918, 1942, 1960
- Piopio 1921, 1958
- Rangitoto 1924
- Ngutunui 1930
- Kopaki 1930
- Kawhia 1931
- Te Kuiti 1955
- Te Kawa 1956
- Otorohanga 1953, 1956, 1960, 1962, 1966

Compensation was paid for these takings. The Crown's acceptance of an obligation to pay monetary compensation is one of the features that distinguishes public school sites from Native school sites.

The distinction between the two categories of school gets blurred, however, when a school established as a Native school, and on a site gifted by Maori, is transferred from the Native schooling system to the public schooling system. This happened at Te Kuiti, Otorohanga and Oparure Native schools, when the European pupils became the majority. The decision was made by the education authorities, and the Maori community was told afterwards. Although Maori objected in the cases of the Te Kuiti and Oparure Native Schools, the decision had already been made and their objections were ignored. Both the Crown and Maori were concerned with the impact on schooling in the classroom when a Native school became a public school; neither

directly addressed at the time the status of the school site as a result of the transfer. The effect of the transfer was that a site for a public school was effectively acquired by the Crown without paying compensation, when compensation would normally be paid if a site had been acquired direct from Maori landowners for public school purposes.

At the very least the Crown should have appreciated that the change of schooling type altered the bargain that had been reached between itself and Maori when the Native school was established. It should have consulted with Maori not just about the change of schooling system, but also about the impact of the change on the gifting of the site. It could be argued that the Crown should have been prepared to go further, and offered to compensate the Maori community when the site transferred into the public school system. Instead, the lack of any concern expressed by the Crown suggests that it considered that, because the site was still being used for education purposes, there had been no substantive change to the reason for the gifting.

7.3.1 Piopio Public School Site

Particular sites chosen by the Education Board could be considered by Maori to have problems associated with them. One instance of this was a new site for the Piopio public school. Eight acres was taken from Kinohaku East 4B1 block in 1921[289]. Whether any objections were lodged in advance of the taking is not known, because the Crown did not require a local authority to draw any objections to its notice, requiring only to know whether the local authority considered that the taking should proceed. However, after the taking, objections from local Maori were made known to the Crown, when the owner of the taken land, Nui Ratamera[290], visited Wellington in company with a Native Agent (Gabriel Elliott), and they were introduced by Maui Pomare to the Minister of Education.

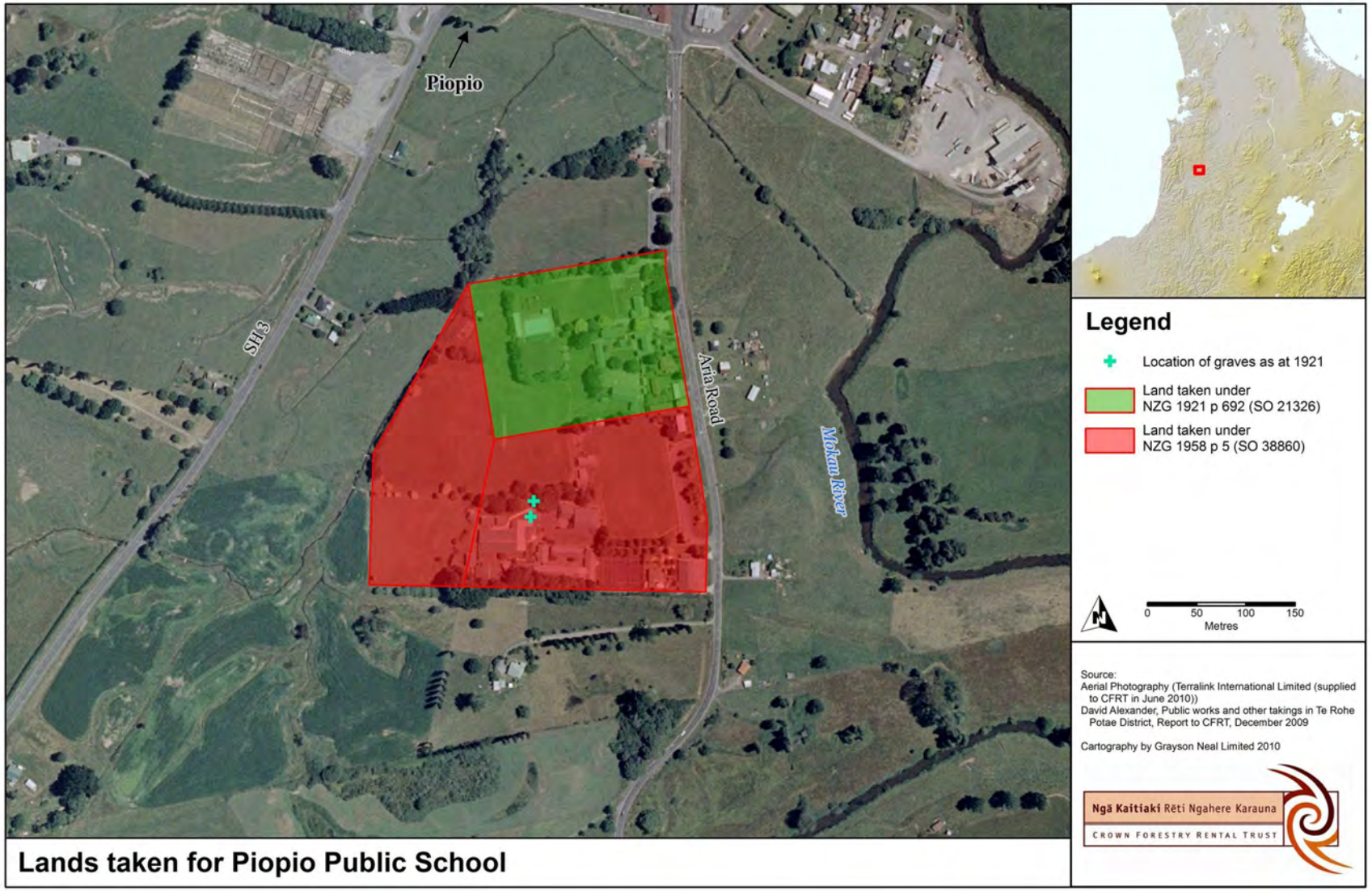
> Mr Elliott explained that the present school ground at Piopio was rather small for the purpose required, and the Auckland Education Board had decided to secure another site in the vicinity. The Natives heard of this and spoke to him about it, and he accordingly mentioned the matter to Mr Dunlop, the Senior

[289] *New Zealand Gazette* 1921 page 692. Supporting Papers #4020.
[290] Nui Ratamera claimed to be the owner of the block, but later it was discovered that Native Land Court records showed the owner to be Putuputu Tuhora of Oparure, who was still alive and whose will provided that the block would be bequeathed Nui Ratamera on her death. Resident Engineer Taumarunui to Assistant Under Secretary for Public Works, 20 October 1921. Works and Development Head Office file 31/293. Supporting Papers #1430-1434.

> Inspector [of Schools]. He stated it was his opinion that it would be unwise to take the land under the Public Works Act, and that it would be better to approach the Natives privately. This was before the land was taken. He had heard no more about the matter until Nui Ratamera came to him about a week ago and told him that the police had threatened to arrest him because he had prevented the men employed by the Education Board from ploughing the land up…. [Later], on returning to Piopio, [he] found the ploughing was still going on. He resisted…. Nui Ratamera has two children buried in the ground, and that was his objection to parting with the land. The portion taken was also his kainga…. [After] the Native's side of the case explained, the workmen would not proceed with ploughing operations, but the schoolmaster put the horses in again. Nui Ratamera still persisted in putting them off the land, and if the police had not shown discretion in the matter he would have been in gaol by now…. The eight acres the Board had taken under the Public Works Act was portion of a block of 112 acres which was leased to Europeans. In granting the lease, the Maori had distinctly stated that ten acres were to be reserved for his kainga.

Nui Ratamera confirmed his agent's statement.

> When [his two children] died, he had buried them in the piece of land now under discussion. Later he had entered into negotiations for the leasing of this land. He leased it with a reservation of ten acres as a home for himself. That was the portion which was now being taken by the Education Board. He had resisted by putting off the men who came to plough. Three times he had done this, and eventually they said they would put him in gaol. The matter was reported to the police, who came out with an interpreter. On their questioning him he had asked to whom did the land belong. The police had thereupon peacefully returned, and by their action he had come to the conclusion the police were of opinion that the pakehas were somewhat foolish. He referred to the action of the schoolmaster in starting the teams again, and his resistance. The schoolmaster said he would report the matter to the police by telegram. He had done so, but the police did not come out again. Nui Ratamera had thereupon said to the schoolmaster that if he (the schoolmaster) came back on the land something very serious might happen to him. These were his grievances and wrongs, which he wished the Minister to rectify…. He did not want his children's graves desecrated, and he did not want his land taken.



Map 8 Lands taken for Piopio Public School

In reply the Minister of Education explained that he had been able to make some inquiries of the Auckland Education Board. These showed that the land had been leased for ten years, and a kainga area had not been set aside as part of the leasing arrangement. The lessee had been allowed to plough up the portion now taken for the school site, and which was now claimed to be tapu. He felt that Nui Ratamera's case was not a strong one, and he should really be taking it up with the Education Board rather than with the Government in Wellington. He was unable to make any promises about the return of the land, but would go into the matter further[291].

The next day Pomare took Nui Ratamera and his agent to meet the Native Minister, who was also the Minister of Public Works. The Minister was unavailable, but his Private Secretary recorded the grievance, noting that "Nui Ratamera threatened extreme action if anyone persisted in doing anything to desecrate the graves of his children". The Private Secretary advised his Minister:

> If I may be permitted to make a suggestion, I think it would be wise to instruct an officer of the Native Department and an officer of the Public Works Department to go at once to Piopio and report as to the position and the true facts of the matter, before this Native is goaded into committing some harsh act, and to endeavour to find a solution of the difficulty as will appease this Native. Legally this Native may not have a leg to stand on, but there is no saying what he may do if the graves of his children were desecrated.[292]

The Minister agreed, and instructions were issued for officials from the two Departments to visit Piopio[293].

The on-site meeting was held later in October 1921. The Crown officials were shown the site of the two graves, and identified that they were not on the land that had been taken, but instead were about 6 chains (180 metres) away. Because the graves were not on the Education Board's land, and neither the Government nor the Education Board had any intention to desecrate the graves, the two officials "felt that we had removed the principal objection to the taking of the land". Nui Ratamera and his agent, however, considered that any encroachment on to the kainga area amounted to

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[291] Notes of Interview, 4 October 1921. Works and Development Head Office file 31/293. Supporting Papers #1421-1423.
[292] Private Secretary to Native Minister, 5 October 1921. Works and Development Head Office file 31/293. Supporting Papers #1424-1425.
[293] Under Secretary Native Department to Registrar Native Land Court Auckland, 12 October 1921, and Assistant Under Secretary for Public Works to Resident Engineer Taumarunui, 12 October 1921. Works and Development Head Office file 31/293. Supporting Papers #1426-1427 and 1428-1429.

desecration of the graves. The officials then pointed out that neither the lease, nor the Native Land Court records about it, made any mention of the kainga area, the lease instead being of the whole of the block. With respect to the kainga, the officials noted that Nui Ratamera in fact had two kainga areas, one on the eastern side of the stream that included the taken land, and another on the western side of the stream. Nui and local Maori claimed that the eastern kainga was his principal site, while local Europeans claimed that the western site was Nui's favourite and contained some fruit trees. The officials tried to identify an alternative ten-acre kainga area that included the site of the graves, but this was not acceptable to Nui Ratamera. Next they suggested that the Education Board's eight acres might be shifted 125 links (25 metres) to the north to take the school site further away from the graves. Nui Ratamera was agreeable to this, while the Education Board representative at the meeting agreed to put this suggestion before the Board at its next meeting. With the on-site meeting ending on this note, the Crown officials felt that any further trouble was unlikely to arise[294].

The report by one of the Crown officials about this on-site meeting clearly expressed the officials' belief that, on the facts, the claims were exaggerated, even specious, and of no merit. However, it acknowledged that other local Maori supported Nui Ratamera in his objections, suggesting that they saw some substance in what Ratamera was saying. After finding that the graves were not located on the taken land, the report noted:

> As, however, several of the Natives present appeared to sympathise very keenly with him, we went on to deal with the reservation [kainga] question.

The report also concluded, in reference to the proposal to shift the site further away from the graves:

> As already mentioned, had the other Natives not been so sympathetic towards him, we might have been reluctant to concede any concessions whatsoever.[295]

The local Maori community either had some more deep-seated cultural concern about the site that could not be expressed to the officials, or greatly resented the compulsory taking of the land by the Education Board without the consent of the owner, or both.

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[294] Resident Engineer Taumarunui to Assistant Under Secretary for Public Works, 20 October 1921. Works and Development Head Office file 31/293. Supporting Papers #1430-1434.
[295] Resident Engineer Taumarunui to Assistant Under Secretary for Public Works, 20 October 1921. Works and Development Head Office file 31/293. Supporting Papers #1430-1434.

However, rather than agree to an alteration of the school site, the Education Board decided that the grievances of Nui Ratamera had no foundation, and the expense of a re-survey of the site could not be justified. The Board decided instead to take the same piece of land de novo. This meant re-notifying its intention to take the land, allowing again for any objections to be made, and then seeking from the Crown a simultaneous revocation of the existing taking Proclamation, and issue of a new taking Proclamation[296].

When the Notice of Intention to Take the land was published[297], Putuputu Tuhora and Nui Ratamera (signing as Nui Tone) sent in a joint objection to the Education Board, arguing that the site was "too adjacent to a burial ground belonging to our family", and that the proposed school site was a kainga area[298]. Before the objection could be heard, however, Nui Ratamera died, and no one appeared at the hearing in support of the objection. The Board then decided that the objection was not a valid one, because of the distance of the graves from the school site, because the site was not the kainga of Nui Ratamera, and because Nui Ratamera had no ownership interest in the land. It asked the Crown to take the land on its behalf[299].

Crown officials concurred with the Education Board. They considered that the objection:

> was not a well-grounded one within the meaning of the Act, and moreover was not lodged within the time laid down by the Act…. It seems therefore that the Board should be permitted to proceed with the acquisition of this site as desired, and the Proclamations (1) revoking the previous Proclamation, and (2) re-taking the land, have been prepared for the Minister's signature.[300]

The Minister agreed, and in March 1922 the 1921 Proclamation was revoked, and the same eight acres of Kinohaku East 4B1 was re-taken[301].

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[296] Reed, Towle, Hellaby and Cooper, Barristers and Solicitors, Auckland, to Under Secretary for Public Works, 1 November 1921, 7 February 1922 and 25 February 1922. Works and Development Head Office file 31/293. Supporting Papers #1435, 1436-1437 and 1438-1440.
[297] *New Zealand Gazette* 1921 page 2790. Supporting Papers #4024.
[298] Objection of Putuputu Tuhora and Nui Tone, 21 December 1921, attached to Reed, Towle, Hellaby and Cooper, Barristers and Solicitors, Auckland, to Under Secretary for Public Works, 25 February 1922. Works and Development Head Office file 31/293. Supporting Papers #1438-1440.
[299] Reed, Towle, Hellaby and Cooper, Barristers and Solicitors, Auckland, to Under Secretary for Public Works, 25 February 1922. Works and Development Head Office file 31/293. Supporting Papers #1438-1440.
[300] FS Read to Under Secretary for Public Works, 1 March 1922. Works and Development Head Office file 31/293. Supporting Papers #1441.
[301] *New Zealand Gazette* 1922 page 665 (two Proclamations). Supporting Papers #4025.

The graves were still in existence in the mid-1950s when the Crown decided that Piopio school should become a District High School, and the site needed to be enlarged. The extension of the site, involving a further 15 acres, was to the south, and encompassed the location of the graves[302]. This was well known to the Crown at the time, as it had been drawn to the attention of officials by an owner of part of the land to be acquired.

> Mr Kurakura mentioned that there are two human bodies buried in the southern portion of the 10 acres [of Piopio A1B block], but there is not likely to be any difficulty in the [South Auckland Education] Board arranging for the remains to be removed to an official burial ground, provided all the necessary formalities are observed.[303]

Because it was thought that the presence of the graves could be overcome, the Crown was not deflected from its course, and continued with its efforts to acquire the land for the school, with a Notice of Intention to Take the land published in April 1957[304].

The following month the Minister of Works received a telegram from Harry Raupatu.

> Within grounds, burial place. While not objecting to alienation, would like discuss reserve for removal.[305]

The Minister replied that removal of the remains would be the Education Board's responsibility, and he should contact that organisation[306]. Six months later, when it was time to take the land, the Governor General's consent was required, primarily because of a dwellinghouse on the land that had to be relocated, but also because of the graves. During the intervening period, "a search was made for the bodies thought to have been buried on the land, but no trace of the remains could be found"; the burials therefore became referred to as "the suspected presence of two bodies which were thought to have been buried there". The Maori Affairs Department had been

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[302] South Auckland plan SO 38860. Supporting Papers #2425.
[303] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 6 September 1956, and District Commissioner of Works Hamilton to Commissioner of Works, 21 March 1957. Works and Development Head Office file 31/293. Supporting Papers #1442-1444 and 1445.
[304] *New Zealand Gazette* 1957 page 590. Supporting Papers #4076.
[305] Telegram H Raupatu, Piopio, to Minister of Works, date not known (approximately 23 May 1957), referred to in Commissioner of Works to District Commissioner of Works Hamilton, 10 June 1957. Works and Development Head Office file 31/293. Supporting Papers #1446.
[306] Minister of Works to H Raupatu, Piopio, 10 June 1957. Works and Development Head Office file 31/293. Supporting Papers #1446.

informed, and "has raised no objection"[307]. On the basis of this information, the consent was obtained[308], and the land was taken[309].

7.3.2 Oparau Public School Site

In October 1916 the Auckland Education Board published a Notice of Intention to Take land at Oparau for a public school[310]. The proposal was to take 3 acres 1 rood 07 perches of Pirongia West 1 Section 2F1B, this area including half an acre that was already occupied by a schoolhouse and cottage[311]. In response Pahi Moke sent in a written objection.

> We the owners of this block emphatically protest against the acquirement by the Chairman of the Board of Education for a school site or for any other purpose [of] this our land, for the following reasons:
>
> 1. Protests against the prospect had been lodged, but no reply received, and that Hone Keeti is the only owner who is anxious that this particular portion be acquired for a school site, and we are of the opinion that Hone Keeti used undue influence with the Chairman of the School Committee who was very active in acquiring this piece. The portion of Oparau upon which the present school is standing belonged to us. We were persuaded by Hone Keeti to lease same for a school site. We have only been paid one year's rent. It is about 7 or 8 years ago since we were paid rent. Hone Keeti explained to us that it was because the Education Board had acquired we could not get any rent.
> 2. The area of this block is about 100 acres. The hinterland is broad, but the frontage is very narrow and the proposed school site is on the frontage. We consider this a hardship.
> 3. Hone Keeti and some of the members of the Committee and owners have portions located on the frontage, and why didn't they offer their portions for a school site.
> 4. Half an acre of our land was acquired for wharfage purposes[312], and we have not yet been paid for it.
> 5. Three different valuers have valued this block at £50 per ¼ acre, and the particular portion required for a school site at £100 per ¼ acre.
>
> We would recommend a full enquiry, so that your Department would be more conversant with the hardships that would be incurred by us the owners if the land be taken for a school site.[313]

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[307] District Commissioner of Works Hamilton to Commissioner of Works, 9 December 1957. Works and Development Head Office file 31/293. Supporting Papers #1447.
[308] *New Zealand Gazette* 1958 page 17. Supporting Papers #4080.
[309] *New Zealand Gazette* 1958 page 5. Supporting Papers #4079.
[310] *New Zealand Gazette* 1916 page 3118. Supporting Papers #4003.
[311] South Auckland plan SO 19106. Supporting Papers #2399.
[312] This is a reference to a taking for Landing Place in 1908 (*New Zealand Gazette* 1908 pages 2660-2661 – not included in Supporting Papers). The relevant file (Works and Development Head Office file 34/1405/1) is listed in Archives NZ records (ABKK 889 W4357 76), but is missing/not-in-place.
[313] P Moke and Others, Kawhia, to Minister of Public Works, 23 October 1916, attached to District Engineer Auckland to Under Secretary for Public Works, 8 November 1916. Works and Development Head Office file 31/149. Supporting Papers #1363-1369.

Because it was the Education Board that had published the Notice of Intention, this objection was the first the Public Works Department knew of the taking proposal. The Board was asked for information about its proposal[314], and its solicitors replied with an explanation of the procedures it had followed. With respect to the objection, they noted that it had been made to the Minister, rather than to the Board as required by the legislation, and that by the time the Board received it from the Public Works Department it was outside the statutory forty days limit for objections. Of the substance of the objection, the Board's solicitors acknowledged that it had a lease of the existing school site for 21 years at £4 per year, but argued that paying the rent was a matter for the School Committee.

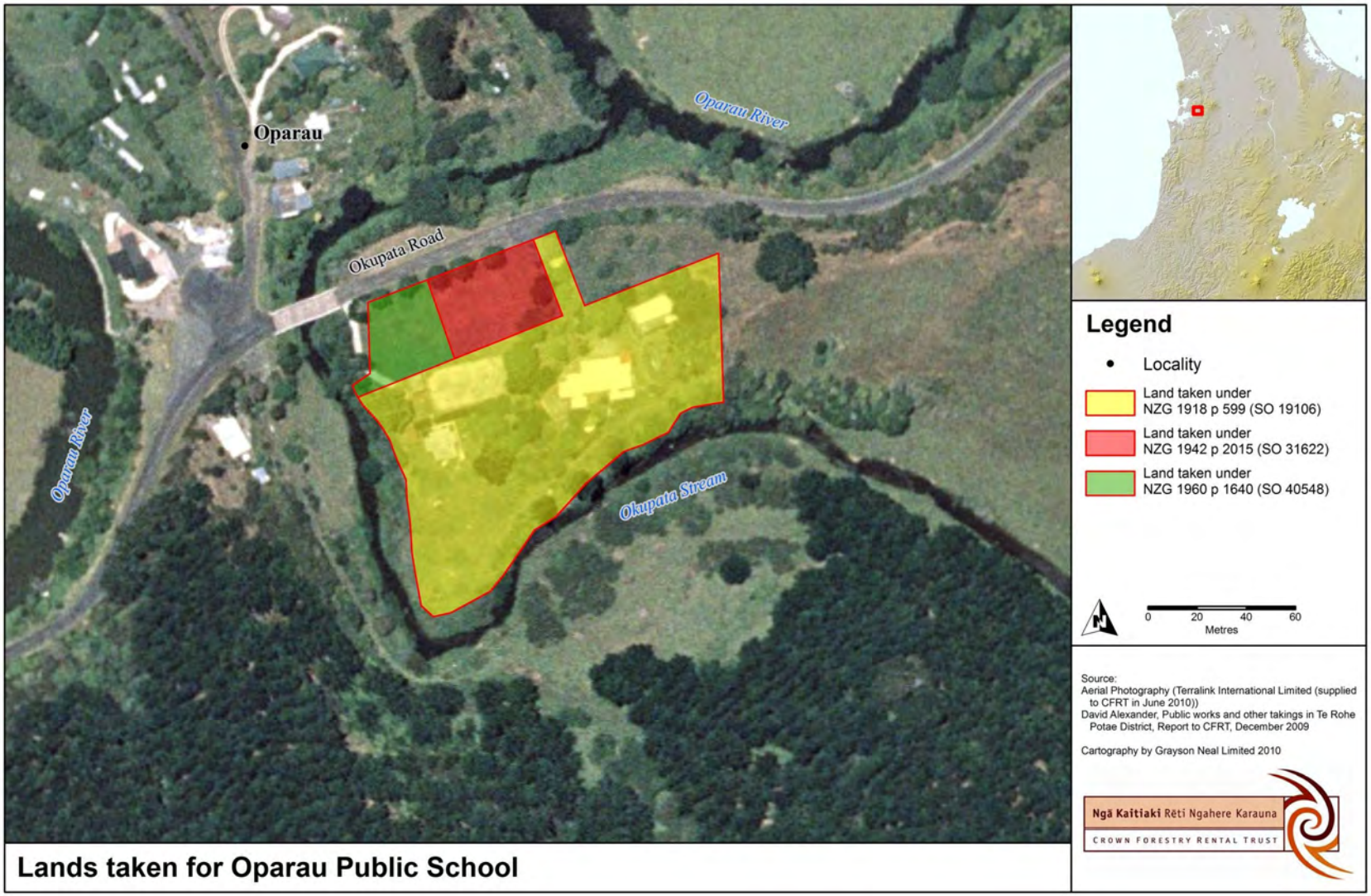
> There is a small temporary school building apparently erected in April 1902, and which was reported in July 1916 to be unfit for occupation, and the plan enclosed also shows a teacher's cottage.
>
> The school manager reported to the Board in February 1912 that the teacher's residence was built by the teacher and himself at their own cost, and the school by the settlers.
>
> Moki Pumipi, another owner, objected that 0a 1r 24p shown on the print herewith north of the now proposed site[315], should not be taken, and that piece was accordingly excluded.
>
> The matter has been under discussion for several years, and the objections referred to by the Natives in their letter to you are probably contained in letters to the Board of a considerable time ago.
>
> We would submit that:
>
> 1. The recent objections to the Under Secretary and the Education Board are not in accordance with the Act as mentioned above.
> 2. The question of whether any rent may be due to the Natives is a matter outside the acquisition of the land under the Public Works Act, and such rent, if any, can be recovered from the party responsible.
> 3. The buildings were not erected by the Natives. The owners have not raised, as a reason why the land should not be taken, the fact that there are buildings on it, which is perhaps an admission that they have no right to them, but you may possibly consider it necessary that the sanction of the Governor in Council should be given to the taking on that account, and a new Memorial prepared after such sanction, in lieu of the one already made and which we hold.
>
> We shall esteem it a favour if you will let us have your ruling as soon as possible as to whether there is any power or necessity for the Board to fix a

[314] Under Secretary for Public Works to Secretary Auckland Education Board, 15 November 1916. Works and Development Head Office file 31/149. Supporting Papers #1370.
[315] This is the rectangular area on South Auckland plan SO 19106 labelled "31622S – Native Owners". Supporting Papers #2399.

> time and place for the owners to appear personally before the Board in support of their objections, seeing that the objections are presently out of order; and also whether a Proclamation of the Governor in Council authorising the taking (on account of the buildings) is considered necessary. If so we would ask that the sanction be given at an early date.
>
> As the buildings are reported unfit for use, the Board is anxious to proceed with another building as early as possible.[316]

Because it was clear that there was a "long-standing dispute between the Education Board and the Natives", the Minister of Public Works decided that an enquiry should be held[317]. Judge MacCormick of the Native Land Court was appointed as the Commissioner to hold the Commission of Inquiry[318].

[316] Reed, Bailey & Towle, Barristers and Solicitors, Auckland, to Under Secretary for Public Works, 26 December 1916. Works and Development Head Office file 31/149. Supporting Papers #1371-1373.
[317] Under Secretary for Public Works to Minister of Public Works, 5 January 1917, approved by Minister 9 January 1917. Works and Development Head Office file 31/149. Supporting Papers #1374.
[318] Commission appointing a Commissioner, 5 February 1917. Works and Development Head Office file 31/149. Supporting Papers #1375-1376.



Map 10 Lands taken for Oparau Public School

The inquiry was held at Kawhia over two days in February 1917, the first day being taken up by hearings, and the second day by a site inspection. The Education Board, and all but one of the seven Maori owners of the land were present. Pahi Moke was the spokesperson for the owners. To the Judge's disappointment, Hone Keeti (John Gage), who had clearly occupied a central role in earlier negotiations, was not present and so did not give evidence. In addition to loss of frontage and loss of convenient access to the public road, the main objection, as the Judge described it in the report he provided the following month, was "a general unwillingness to part with the land". He thought this was in part based on a belief that compulsory purchase by the Education Board would not net the owners as much as a sale of the land on the open market. Referring to the Oparau settlement, he noted:

> The native owners do not live at Oparau, but at Kawhia. I saw no cultivations. The land was in grass. The proposed site is not too large. A country school attended by children from a distance must have paddocking.

The Judge was shown two alternative sites; one he regarded as unsuitable, while the other was located near the landing ¾ mile away from the township, and so was not as conveniently located.

The Judge was asked to report on four questions set out in his commission. The answers he gave in his report include the phrasing of the questions.

> It is desirable to take either the proposed piece of land or some other piece in the locality for school purposes.
>
> It is possible for the Auckland Education Board to acquire or take the alternative site which I have referred to. There would be no objection by the Native owners, or at any rate there could be no valid objection…. In my opinion it would answer the purpose of a school site for the locality, but it cannot be said to be equally convenient at present for the majority of the school children. The difference in price must be weighed against the difference in present convenience.
>
> It does not appear to me that any private injury will be done by the taking of the proposed site for which due compensation is not provided by the Public Works Act 1908. The address of the natives' representative goes to show this. Their real objection is based on the fear that they will not get enough for the land, as I have already explained.
>
> I am not aware what provision, if any, has been made by the Auckland Education Board for the payment of any compensation. The Secretary to the

> Board informed me that the Education Department would be in a position to provide for payment. I thought it unnecessary to press this point further.[319]

As the Public Works Department saw it, the matter came down to a choice between two sites, as there seemed to be no valid objections to the taking of either. It sent the Judge's report to the Education Department, and asked it which site it preferred[320]. The Department considered that the Education Board should proceed with the acquisition of the site it had commenced taking, as the alternative site was not "sufficiently central", and would require public funds to construct a road to it. It added:

> It has been suggested to the Auckland Education Board, however, that the portion of the area upon which the present school-buildings stand should be excluded from the Proclamation unless there are good reasons to the contrary. This will tend to conserve as far as possible the owners' interests in the land.[321]

This advice was accepted by the Education Board[322]and the proposed taking was reduced in area to 2 acres 3 roods 06.84 perches[323]. The Public Works Department had advised that, as the land to be taken was still part of that referred to in the 1916 Notice of Intention to Take, "it will be unnecessary for you to again take the preliminary steps required by the Public Works Act, insofar as such steps have already been complied with"[324]. This was queried by the Board's solicitors, because it would remove an opportunity for landowners to object, and the Board was aware that "natives have complained of proposal to exclude buildings"[325]. A legal opinion was sought from the Solicitor General[326], and a Crown Solicitor replied:

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[319] Report of Judge CE MacCormick, 14 March 1917, attached to Judge CE MacCormick to Under Secretary for Public Works, 14 March 1917. Works and Development Head Office file 31/149. Supporting Papers #1377-1388.
[320] Under Secretary for Public Works to Secretary for Education, 29 March 1917. Works and Development Head Office file 31/149. Supporting Papers #1389.
[321] Director of Education to Under Secretary for Public Works, 12 June 1917. Works and Development Head Office file 31/149. Supporting Papers #1390.
[322] Secretary Auckland Education Board to Under Secretary for Public Works, 4 July 1917. Works and Development Head Office file 31/149. Supporting Papers #1391.
[323] South Auckland plan SO 19106. Supporting Papers #2399.
[324] Under Secretary for Public Works to Reed, Bailey & Towle, Barristers and Solicitors, Auckland, 2 August 1917. Works and Development Head Office file 31/149. Supporting Papers #1392.
[325] Telegram Reed, Bailey & Towle, Barristers and Solicitors, Auckland, to Under Secretary for Public Works, 3 September 1917. Works and Development Head Office file 31/149. Supporting Papers #1393.
[326] Under Secretary for Public Works to Solicitor General, 14 September 1917. Works and Development Head Office file 31/149. Supporting Papers #1394-1395.

> I am of opinion that in any case where notice has been given under Section 18 of the Public Works Act 1908 of intention to take certain land for a public work, and it is afterwards decided to take part only of that land, then the preliminary steps required by Sections 18 and 19 of the Act should again be taken in respect of the actual area proposed to be taken. The provisions of Sections 18 and 19 are mandatory, and require the steps therein set forth to be taken in respect of the actual area to be acquired for the public work.[327]

As a result a fresh Notice of Intention to Take this area was published in December 1917[328]. No objections were received, although Pahi Moke had earlier advised the Education Board that the owners preferred that the larger area originally proposed was taken. The Board then applied to the Public Works Department to have the smaller area taken in January 1918[329]. The Department satisfied itself that the land was not occupied by buildings, cultivations or burial grounds, and that "there appears to be no objection to the taking of the land for the purpose of this school site"[330]. The 2¾ acres was taken for public school in March 1918[331]. Compensation of £110 was assessed by the Native Land Court in April 1919[332].

One generation later, more land was sought for the school site. The extra land chosen was the block referred to in the letter from the Board's solicitors in December 1916, when it noted that Moki Pumipi's land had been excluded from the proposed taking at the owner's request. By 1941 circumstances had changed, and that block was now sought. It was surveyed and found to have an area of 1 rood 23.1 perches[333]. A Notice of Intention to Take the block, which was still Maori-owned, was published in February 1942[334]. The Education Board later told the Public Works Department:

> That the Education Board of the District of Auckland received two objections to the taking of the said land.
>
> That the Education Board of the District of Auckland appointed a time and a place, to wit, Wednesday the 15th day of April 1942 at 11 am at its office,

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[327] Crown Solicitor to Under Secretary for Public Works, 19 September 1917. Works and Development Head Office file 31/149. Supporting Papers #1396.
[328] *New Zealand Gazette* 1917 pages 4535-4536. Supporting Papers #4007-4008.
[329] Reed, Bailey & Towle, Barristers and Solicitors, Auckland, to Under Secretary for Public Works, 29 January 1918. Works and Development Head Office file 31/149. Supporting Papers #1397-1401.
[330] District Engineer Auckland to Under Secretary for Public Works, 14 February 1918. Works and Development Head Office file 31/149. Supporting Papers #1402.
[331] *New Zealand Gazette* 1918 pages 599-600. Supporting Papers #4009-4010.
[332] Maori Land Court minute book 21 M 318-321. Supporting Papers #3628-3631.
[333] South Auckland plan SO 31622. Supporting Papers #2415.
[334] *New Zealand Gazette* 1942 page 523. Supporting Papers #4054.

> Wellesley Street East, Auckland, for the hearing of the said objections, and notified the two objectors accordingly.
>
> That there was no appearance of the said two objectors at the time and place mentioned in the last preceding paragraph.
>
> That the said Board duly considered the said objections, and was then and is of the opinion that it is expedient that the proposed work should be executed, and that no private injury will be done thereby for which due compensation is not provided by the said Act.[335]

The Public Works Department made no effort to find out what the two objections had been about. Nor did it consider the unfairness of expecting the objectors to travel from Oparau to Auckland to present their objections at a hearing that had clearly been arranged solely to suit the convenience of the Education Board. That the objections had been considered and rejected by the Board in accordance with statutory requirements was sufficient for it to continue with processing the request.

The only checking by the Crown of the Board's request, beyond establishing that it complied with the law, was to visit the site and establish that there were no buildings, cultivations or burial grounds on it[336]. When the Minister of Public Works was asked to approve the taking, he was told only that "a memorial and statutory declaration has been submitted by the Education Board, and there appears to be no objection to the issue of a Proclamation"[337]. The block was taken for public school in August 1942[338]. Compensation of £65 was assessed by the Native Land Court in February 1944[339].

The nature of the objections only became apparent to the Crown after the land had been taken, when Pahi Moke and other owners wrote in February 1943 to PK Paikea, a Member of Parliament and the Minister in charge of the Maori War Effort.

> We the undersigned ask you to ask the Minister of Public Works to withdraw his Proclamation to utilise our land for the purposes of enlarging the Oparau School….

---

[335] Declaration of Auckland Education Board Chairman, 20 May 1942, attached to Towle & Cooper, Barristers, Solicitors and Notary Public, Auckland, to Under Secretary for Public Works, 25 May 1942. Works and Development Head Office file 31/149. Supporting Papers #1403-1406.
[336] District Engineer Taumarunui to Under Secretary for Public Works, 10 July 1942. Works and Development Head Office file 31/149. Supporting Papers #1407.
[337] Assistant Under Secretary for Public Works to Minister of Public Works, 24 July 1942. Works and Development Head Office file 31/149. Supporting Papers #1408.
[338] *New Zealand Gazette* 1942 page 2015. Supporting Papers #4055.
[339] Maori Land Court minute book 29 M 182-185 and 199A. Supporting Papers #3639-3642 and 3643.

We want a fair deal in this. Perhaps a discussion between ourselves and the Education Board would be an ideal thing. After all, this land used to belong to our revered forebears.

The reasons they sought revocation of the Proclamation were:

(a) This place that is claimed by the Education [Board] is part of land called Pirongia West Section 1 2F1B2B.
(b) Although we have 153 acres of land, this specified strip touches on to the township of Oparau.
(c) Some years past a strip of our land was acquired for building a wharf, next 2 acres were taken on which to build a school, now they want another strip to enlarge the school.
(d) This place is a home site of our forebears. The original house has collapsed and the one next to it caught fire, but we have already made arrangements to have a new house built on the same site….
(e) Heti Moke, who has 8 children, has already started transferring his home from another district to this place, so that his children could be nearer school, himself nearer the factory for his cream-cartage contract, and also his carrying goods between Oparau and Hamilton.
(f) All requisites for the house are ready, but when the carpenter was ready to start we received the order from the Education Department in Auckland not to start building.

We do not want to cause any eruptions, and to satisfy them we have offered a strip of land on the eastern side of the school. We would very greatly love to retain this home site of our forebears.

If, however, the Education Board persists in their scheme of taking our land, we would rather give it than sell it. If only they could understand what it means to us, and the trouble of getting the timber on to the place.[340]

As it had with the earlier taking in 1917, the Public Works Department turned to the Education Department to find out its views[341]. The Education Department consulted with the Auckland Education Board and with the Oparau School Committee, and then concluded that "this Department does not consider that any further action should be taken in respect of the request made by the owners"[342]. The School Committee had commented:

On (a), (b) and (c) we have no comments to make.
(d) If this site is the home of their forebears, they are apparently going back a very long way, as we can find no old resident who remembers this family living on the site. The house that caught fire was on a

[340] Pahi Moke and 5 Others, Kawhia, to PK Paikea MP, 22 February 1943. Works and Development Head Office file 31/149. Supporting Papers #1409-1410.
[341] Assistant Under Secretary for Public Works to Director of Education, 25 May 1943. Works and Development Head Office file 31/149. Supporting Papers #1411.
[342] Director of Education to Under Secretary for Public Works, 27 August 1943. Works and Development Head Office file 31/149. Supporting Papers #1412.

section on the east side of the school drive, and their arrangement to build a new house was on this side, which, by the way, they had cleared of scrub and placed one load of materials on before this matter came up.

(e) Heti Moke, whose house is being transferred, lives approximately one mile from the school, and his present site has been condemned by the Health Department, and it is this Department that has advised them to build on high ground, viz. the eastern side of the school ground. At present this man had no children attending this school, and as for carrying contracts he but drives for a carrier.

(f) As already stated, requisites for the house are on two sites – the first load on the eastern side of the school drive and the rest on the site under discussion. The carpenter Mr D Hitchcock informs me that that the house was to have been built on the eastern side of the drive.[343]

The Education Board had advised that "in the circumstances, the Board does not consider that any action should be taken on the request of the petitioners"[344].

The Minister of Works was more expansive in his conclusions. Writing to Paikea's successor as Minister in charge of the Maori War Effort, he stated:

> As the extension to the school site is considered to be a useful Public Work, and one which will prove of great advantage to the local community, I see no good reason why the taking of the land should not be proceeded with.[345]

In reaching this conclusion, he was declining to revoke the previous year's taking Proclamation.

The owners of Pirongia West 1 Section 2F1B2B had been significantly affected by the extent to which their land at Oparau township had been used for the site of the public school, and the extension to the school site. However, they found themselves approached yet again in about 1960 to provide even more land for the school. This time the approach was by the Crown rather than the Education Board. The nature of the approach and negotiations is not known; what is known is that the area the Crown was interested in was the remaining land close to the bridge over the Okupata Stream. Compounding the impact on the owners, this land, a quarter acre section, had a house

[343] Honorary Secretary Oparau School Committee to Secretary Auckland Education Board, 24 July 1943, attached to Director of Education to Under Secretary for Public Works, 8 September 1943. Works and Development Head Office file 31/149. Supporting Papers #1413-1415.

[344] Secretary Auckland Education Board to Director of Education, 5 August 1943, attached to Director of Education to Under Secretary for Public Works, 8 September 1943. Works and Development Head Office file 31/149. Supporting Papers #1413-1415.

[345] Minister of Works to Minister in charge of Maori War Effort, 29 September 1943. Works and Development Head Office file 31/149. Supporting Papers #1416.

on it, which was occupied by one of the owners. In March 1960 the solicitors for the owners advised what their clients had agreed to.

> Heti Moke, who lives on the site you wish to acquire, is negotiating through Maori Affairs Department for the purchase of another house in the Oparau settlement.
>
> We understand that Moke's sister, brother and deceased sister's children own varying shares in the present site. We have, by negotiation with the brother, Pahi Moke (who is also trustee for the deceased sister's children) and the sister, Mrs Turnbull, obtained their consents to the selling of the site to the Crown, and to the payment of compensation moneys to the Maori Trustee to aid Heti Moke in financing his new house. The latter has also consented to the sale.
>
> We can now authorise you to proceed to acquire the site at the price of £350, subject:
>
> (a) To Heti Moke obtaining his new house and delivering up vacant possession of the present property.
> (b) To the Maori Land Court's confirmation of the price.
> (c) To your assurance that a special Government Valuation does not exceed £350.
> (d) To Heti Moke having the right to remove all the buildings from the site within six weeks from date of Court hearing, or 3 months after Proclamation gazetted.
> (e) To the payment of all compensation money to the Maori Trustee.[346]

When forwarding this information to Wellington, the District Commissioner of Works in Hamilton explained that:

> The land required fits into the frontage by the new bridge, and is equivalent to an ordinary residential site. The old house on the site is practically on the road, and was once no doubt a shop. This site is divorced from the main part of the Maori holding, and is occupied by Heti Moke, one of the main Maori owners. He is now in the process of shifting to a property he is acquiring in the village nearby, and will vacate soon. The whole delay in obtaining this land has been due to the necessity of Heti Moke being accommodated elsewhere.
>
> The land is flat and is a valuable addition to the school site, and will enable a rather untidy frontage to be incorporated in the school site, which will add a lot to the appearance of the increase and increase the flat area of land available.

[346] Hesketh & Richmond, Barristers and Solicitors, Auckland, to District Commissioner of Works Hamilton, 18 March 1960, attached to District Commissioner of Works Hamilton to Commissioner of Works, 1 April 1960. Works and Development Head Office file 31/149. Supporting Papers #1417-1420.

> Although the price to be paid seems high for such a small area of land at a place like Oparau, it is nevertheless worthwhile from the Crown's point of view….
>
> It has been a difficult matter to bring the acquisition of the land to this stage, owing to the part-owner's attitude and position.[347]

The Crown official's comments indicate the degree to which the Maori owners had to retreat still further from being able to use and enjoy their traditional land. They appear to have been losing a flat residential section and a house, and gaining in its place another house elsewhere, presumably on another residential-sized section. The Crown's attitude was that this change could be compensated for by the payment of money; if it was a difficult change that the owners were experiencing, then that just suggested the payment of a larger than usual amount of money.

After the agreement was reached, the site was surveyed[348]; it was then taken in October 1960[349]. The negotiated price for the section (£350) was agreed to by the Court and confirmed as its award at a hearing in January 1961[350].

7.4 Teachers' Residences

In the case of most rural one-teacher primary schools, the teacher's residence tended to be located on the school site itself. With the secondary school system, however, this was not usually the case. As the secondary school system developed, the Crown attracted teachers to the country areas by offering them housing. A number of takings for teacher's residence are identified in the database from 1956 onwards. The majority of the takings appear to be grouped around Otorohanga, Te Kuiti, Raglan, Kawhia and Ohura. Only two sites, both the size of residential sections, have been identified as being Maori-owned.

[347] District Commissioner of Works Hamilton to Commissioner of Works, 1 April 1960. Works and Development Head Office file 31/149. Supporting Papers #1417-1420.
[348] South Auckland plan SO 40548. Supporting Papers #2428.
[349] *New Zealand Gazette* 1960 page 1640. Supporting Papers #4085.
[350] Maori Land Court minute book 39 M 323-324. Supporting Papers #3645-3646.

8 OTHER CENTRAL GOVERNMENT TAKINGS

8.1 Introduction

Roading and education have already been discussed. This chapter examines the range of other purposes for which land was taken to meet the requirements of central government. The takings reflect not just the expanding range of services provided by government over the years, but also the broadening of the types of purpose that came within the scope of the term 'public work'. Amendments to the public works legislation during the twentieth century added additional purposes to the basic list set out in the precursor 1894 legislation.

With the spread of European settlement into Te Rohe Potae, many Crown services were established on the Crown's own lands, the mechanism used being the setting apart of reserves for particular public services under the Land Acts. However, the Crown did not always find this sufficient, and looked to privately-owned land for additional sites. In the case of the Native Townships at Otorohanga, Te Kuiti and Kawhia, the legislation allowed it to set aside sections in the townships as public reserves. These reserves, on Maori-owned land, were a confiscation of that land; they are not discussed in this report, as a separate report on Native Townships is being prepared as part of Te Rohe Potae Research Programme. This report looks only at the takings from Maori landowners using the Public Works Acts.

8.2 Police

The very first takings in Te Rohe Potae District for purposes other than roads were for police stations, at Ongarue and Otorohanga in 1902 and 1903 respectively. The takings reflected the Crown's desire to extend its influence into Te Rohe Potae, to maintain law and order among the railway construction workforce, and to oversee the liquor ban that had been agreed when construction of the Main Trunk Railway was allowed through the District.

The taking at Ongarue involved a substantial area of 27 acres[351]. Even allowing for the needs of the policeman to be self-sustaining by having land for grazing for his

[351] *New Zealand Gazette* 1902 page 1344. Supporting Papers #3917.

horse and his house cow, the area taken was greater than was necessary. Given that the full purpose of the taking was for 'police station and other public buildings', it would appear that the Crown had plans for Ongarue to become a service centre for the southern part of Te Rohe Potae. If so, these plans were never realised, with the exception of the establishment of a public school[352]. However, the Crown never relinquished any of the land it had acquired, and instead the unused portion of the site was reserved as a domain.

The half-acre site in Otorohanga was taken for 'public buildings'[353]. The taking was despite the Crown having obtained sections in the Native Township as public reserves for government-related purposes.

Other takings for police stations and for police housing later in the twentieth century all appear to be settings apart of Crown land, or takings of European-owned land.

8.3 Post Office

Post offices, and the arrival of telegraph lines, were seen by the Crown as a practical manifestation of the spread of colonial settlement and government services across New Zealand. Initially, in the nineteenth century, rural post offices tended to be set up in someone's front parlour, but as time went on purpose-built buildings were deemed necessary. The Crown considered that this was only possible if it acquired and owned the land on which such buildings stood.

A site for a post office was taken in Te Kuiti Native Township in 1908. Other sites were taken in Piopio and Marokopa in 1913 and 1916 respectively.

More controversial, for Maori claimants, is the site of the post office at Raglan. When the land, on the corner of Bow Street and Wi Neera Street, was taken under the Public Works Act 1908 in 1912[354], the Crown took the view that it had originally purchased

[352] A survey plan prepared in 1921 (Taranaki plan SO 5759) shows school buildings on the taken land, but it was not until 1932 that just under 5½ acres was declared to be Crown Land (*New Zealand Gazette* 1932 page 570), and then set apart as a public school (*New Zealand Gazette* 1932 page 757, Taranaki plan SO 6829). Not included in Supporting Papers.
[353] *New Zealand Gazette* 1903 page 788. Supporting Papers #3918.
[354] *New Zealand Gazette* 1912 page 3621. Supporting Papers #3976.

the land from Maori in 1851. In the 1860s the post office site was part of a larger block occupied by Maori with the Crown's permission, and with the intention that it would be granted to Maori, although there is apparently no record of any formal title being issued at that time. Instead, a title was issued to the Auckland Provincial Superintendent, and subsequently (for part) to the Raglan County Council. These circumstances are beyond the scope of this report.

The survey plan prepared for the taking in 1912 showed, however, that a Maori influence dating from the occupation period subsequent to the Crown purchase still remained. On one part of the land to be taken was "Nero's Monument", Nero being the European transliteration for Wiremu Neera Te Awaitaia, the chief to whom the land had been promised[355].

The survey plan disclosed that the area proposed to be taken was in two separate titles. The majority was in Section 3 Block XI Town of Raglan, the title for which was held by Raglan County Council[356]. A small portion, however, was in Section 2 Block XI Town of Raglan, the title for which was still in the name of the Auckland Provincial Superintendent[357]. With the abolition of the provinces in 1876, the successor in title would have been the Crown. An additional survey plan had to be drawn up to more accurately define the boundary between the two sections[358].

At the time that the survey plans were being prepared, it was decided that only part of the intended site would be taken for post office, with the remainder (including the monument) taken for road. Both takings appeared in the same Proclamation. Because of the titles situation, the Crown did not consider that it had to notify or consult with Maori about the taking. This was despite the monument on the site as clear physical evidence of a Maori interest in the land. Instead the requirement for the land was treated as a non-controversial taking, because the Crown and local authority owners of the site had given their consent.

[355] South Auckland plan SO 16887. Supporting Papers #2390.
[356] South Auckland Certificate of Title SA71/278. Supporting Papers #2192-2200.
[357] South Auckland Certificate of Title SA6/115. Supporting Papers #2190-2191.
[358] South Auckland plan SO 16934. Supporting Papers #2393.

Other post office takings in Te Rohe Potae later in the twentieth century, which involved the taking of Maori-owned land, were at Otorohanga, Te Kuiti, Mangapehi, and an additional site on the outskirts of Raglan. This latter site appears not to have been for a post office, but for other functions carried out by the New Zealand Post Office organisation. Although there were other takings in Te Rohe Potae for these wider functions, including a line depot, a line store and staff housing, these did not involve the taking of Maori-owned land.

8.4 Scenery Preservation

Takings of Maori-owned land for scenery preservation and scenic purposes were the largest number of takings for a particular central government purpose, after takings for road. The takings took place over the period 1906 to 1924.

All the takings are discussed in a separate chapter in Part III of this report. The lands that were taken form the basis for the following scenic reserves that are still in existence today: Waitomo Caves, Hangatiki, Kawhia Harbour, Ngahuinga Bluffs, Marokopa Natural Tunnel, Mangapohue Natural Bridge, Mokau River, Mangaokewa Gorge.

The key feature of the takings was that all (apart from the Kawhia Harbour takings) were identified as suitable for protection by the Scenery Preservation Commission, a body established by legislation in 1903. Although the Commission was wound up in 1906, during its short life it made a series of recommendations throughout the country about reserves that should be established. The Crown's clear intention when creating the Commission was that it should look for suitable lands on Maori-owned and other privately-owned land, as well as on the Crown's own estate. In a companion move in 1903, the Public Works Act 1894 was specially amended to make scenery preservation a public work for which land could be compulsorily taken.

That it took until 1920 before all the Commission's recommendations in Te Rohe Potae District had been addressed, either by taking or by deciding not to pursue them further, is an indication of the Crown's perseverance in this matter.

While quite dogged in its pursuit of these Maori-owned lands, the Crown was nevertheless willing to negotiate on the matter of the boundaries of the lands to be taken. Where European owners and lessees were involved, the negotiations that took place were quite sophisticated, and extended over a period of years (e.g. Mokau River south bank). Where Maori-owners were involved, however, they were less so. Rather than approach the landowners to seek their consent, the first notice the owners had was when a Crown surveyor arrived to survey the land to be taken. Having seen what was being proposed, some owners who were in occupation of the lands, and who would be directly affected by the Crown's intentions, objected. Because the government department responsible for scenic reserves, the Department of Lands and Survey, was also responsible for cutting up land for settlement and placing settlers on those lands, it took the view that the reserves should not include lands fit for settlement. It was therefore responsive to some of the requests for changes of boundaries.

The takings for scenery preservation and scenic purposes were a heavy imposition on Maori landowners, particularly so in the case of the Mangoira block on the north bank of the Mokau River. The Crown reached an agreement with the European lessee of the block that, rather than wait for the portions of the block required for scenic purposes to be surveyed, it would instead take the whole of the block. There was no consultation with the Maori owners about their complete loss of the block, apart from a Notice of Intention to Take the land. Once the land had been taken the Crown went ahead with defining the scenic reserves, and then held on to the remainder of the block, treating it as ordinary Crown Land available for settlement. Of the 2950 acres taken for scenic purposes, 88% was not actually set apart as scenic reserve, and was instead declared to be Crown Land. The scenery preservation legislation passed by the Crown had made possible this 'land grab' from the Mangoira owners.

8.5 Defence

Requiring land for defence needs was one of the original purposes defined in the term 'public work' in the Public Works Act 1894. This purpose has been used only once for the taking of Maori-owned land in Te Rohe Potae District, with the taking of the site of the Raglan aerodrome in 1941.

The taking of the aerodrome site, and the return of part of the land (the Raglan golf course) are discussed in a separate chapter in Part III. The taking is notable, not just for the use of the special provisions governing defence takings in the public works legislation, but also for the failure of the Crown to take appropriate steps to ensure the survival of the Maori community that was displaced to make way for the aerodrome.

With takings for defence purposes, the Crown's obligations towards the owners of the taken land were reduced, because there was no requirement to issue a Notice of Intention to Take the land, and no opportunity provided in the legislation for the owners to object; the Crown was also able to circumvent the normal provision that the Governor's consent was needed if the land was occupied by buildings, cultivations and burial places. The site had been actively investigated as an emergency landing ground for three years before the taking, so that the genesis of the proposal was a civilian aviation matter. Only when the Air Force, training pilots at Whenuapai for service in the war in Europe (the war in the Pacific not having started at this stage of 1941), wanted to allow their planes to land at Raglan as part of cross-country flying training, did the need for the aerodrome become a defence matter. If defence authorities had not stated there was a defence need, the site might have been taken for aerodrome purposes at a more leisurely pace, and in so doing allowed the local Maori community to have a say on whether it should have been taken.

The defence need was considered to be a very urgent one, with the contract for the construction of the runways offered for tender even before the land had been taken. There were two hurried meetings with the local Te Kopua community, at which the Crown stated the land would be taken and offered no alternatives. The difficulty for the Crown was that the proposed aerodrome was the site of a living community. On the site was a meeting house, a number of occupied houses, burial places, and cultivations. It proposed that the buildings and the community be relocated to land outside the area to be taken, while the burial places would not be disturbed by the aerodrome constructions. The Maori landowners were given no choice in the matter, all discussions at the first meeting were on a 'take it or leave it' basis. When some of the siting arrangements made at the first meeting could not be achieved, a second meeting was held to make alternative arrangements. In a particularly fast turnaround

time, the Maori Land Court rubber-stamped the arrangements that had been made within three weeks of the Proclamation taking the land.

The arrangements might have achieved their purpose of ensuring the survival of the community on the alternative site, if they had been speedily undertaken. However, having achieved its objective of acquiring the aerodrome site, the pressure on the Crown receded, while the wartime circumstances made any achieving of civilian-based goals that much harder. The legal definition of the alternative site was held up, the dismantled building materials deteriorated, and the community, which had become scattered when the housing had been removed in 1941, lost its cohesion. Over the next eight years the Crown ended up paying monetary compensation instead of providing the practical rebuilding help it had promised. The Native Land Court gave its stamp of approval to this destruction of a community.

8.6 Aerodrome

An emergency landing ground that was taken for aerodrome purposes was the Te Kuiti Aerodrome. This taking is discussed in greater detail in a separate chapter in Part III. The local Aero Club already owned 80% of the site, but the remaining 20% was held under lease from a local Maori landowner. The lease had been drawn up with farming in mind, and included conditions about fencing and compensating for improvements which were inappropriate for an airfield. The Aero Club and the Public Works Department encouraged each other into forming a joint view that it would be better if the lease was done away with, with the Crown compulsorily acquiring the land, and then issuing the Aero Club with a lease specifically tailored to airfield conditions. The land was taken in 1936.

The Maori owner seems to have become aware of the taking only after it had occurred. His reaction was to ask to be given alternative land in exchange, rather than monetary compensation. The Public Works Department made no attempt to address this request, instead regarding it as too hard to achieve, and not something that the Native Land Court, responsible for assessing compensation, had any legal authority to require. At the compensation hearing, the Court was obliged to agree.

8.7 Health

The most substantial taking from Maori-owned land in Te Rohe Potae District was for the Tokanui Mental Hospital in 1910. This is discussed in a separate chapter in Part III. The 2950 acres that were taken, while similar in size to the taking of the Mangoira Block for scenery preservation, was significant because of its location, its land quality, and the associated taking at the same time of a further 540 acres adjoining the hospital site.

The Tokanui and Pokuru Blocks did not need to be chosen by the Crown as the site for a mental hospital. Why they were chosen is not clearly expressed in Crown records, but is probably a combination of the availability of undeveloped Crown-owned land in the locality (nearly 2000 acres of which was also taken for the mental hospital site in 1910), and the relatively cheap price of undeveloped Maori-owned land, in close proximity to the Main Trunk Railway line. Having fixed on Tokanui as the site, the Crown was then unmoved by the arguments advanced by the Maori owners about the deep harm they would suffer by losing so much land in one location. Investigating how much land they would be left with after the taking was not a factor to be taken into consideration, according to the Public Works Act, and so was disregarded by the Crown. Apart from a reduction of 21 acres in the amount of Maori-owned land to be taken, and a promise to protect two burial places, the Crown made no concessions to the objections of Maori.

The tragedy for the Maori owners was that they were punished for not using the land. That they were not cultivating their land was used as an argument for the Crown wanting to use it instead, and as a reason why they would not be badly affected if it was taken. Yet when the Crown did take the land, it did not use all of it itself. The ambitions of the Mental Hospitals Department for a major complex of institutional buildings surrounded by a large working farm, to create a self-sustaining community, came to nothing. Fifteen years later, with more than half the Crown property still unused, and with political agitation from local farmers for the land to be opened up and released for settlement, the Mental Hospitals Department was obliged to transfer some 2750 acres out of its control and into the hands of the Prisons Department (see next section below).

8.8 Prison

At the same time that nearly 3000 acres was taken for Tokanui Mental Hospital, a further 540 acres of Maori-owned land next door was taken for Waikeria Reformatory Farm. This was later renamed Waikeria Borstal and then Waikeria Prison. Because the taking of the land in 1910 occurred at the same time as the taking for the hospital, the same remarks apply, and it is discussed in more detail in the same chapter in Part III. It was the Prisons Department that took up the surplus hospital land in the 1920s.

8.9 Waitomo Caves Accommodation-house

In countries that began their modern existence as colonies of European metropolitan powers, the Government is often the largest enterprise in the country, because of the large resources at its disposal. It can then find itself getting involved in a wider-than-expected range of businesses and activities. One of these in Te Rohe Potae District was the tourist industry at Waitomo Caves. When a Department of Tourist and Health Resorts was established at the beginning of the twentieth century, it was made responsible for developing the tourism infrastructure of the country. One of its early developments was the purchase of a privately-owned accommodation house at Waitomo Caves in November 1905.

The Crown involvement in the accommodation business at Waitomo was foreshadowed in the Department's annual report for 1904-1905.

> These fine caves are attracting the attention of tourists in considerable numbers, but there are difficulties in the way of accommodation and transit which do not operate beneficially. During the year the area containing the old caves has been acquired under the Scenery Preservation Act[359], and a further reservation taking in the newly discovered Ruatoki caves is now in hand…. I do not think the Government should stop at the reservation of the caves, but should also control the accommodation-house, by which means the Department will be able to insure the preservation of these natural wonders which, if prompt steps are not taken, will soon cease to have their present value.[360]

[359] The so-called acquisition of the cave was actually a reservation of management control rather than a taking of freehold title (see chapter on scenery preservation in Part III). The reservation of Ruatoki cave was a reservation of Crown-owned land under the Land Act 1892.

[360] Annual Report of Department of Tourist and Health Resorts for the year ended 31 March 1905. *Appendices to the Journals of the House of Representatives* (AJHR), 1905, H-2, page 9. Supporting Papers #3873.

The purchase of the accommodation house business also included the acquisition of a lease to the accommodation-house owner of the whole of Hauturu East 1A5C from its sole Maori owner, plus the lessors' interest in a sub-lease of the block to a local settler who ran a coaching and stables business[361]. The lease was for 21 years from 31 March 1904, at an annual rental of 8 shillings an acre (i.e. about £27-16-0d), and had been consented by the Maniapoto-Tuwharetoa District Maori Land Council in March 1904. The purchase price paid by the Crown was £500[362].

Having acquired the lease, the Crown for some unknown reason felt that this was not enough. One possible reason is that the lease was not considered a sufficiently secure long-term basis for the construction of a hotel, given that it was only for 21 years, with no right of renewal, and any buildings were to become the property of the Maori lessor (with no compensation to be paid by the lessor) at the end of that period. In May 1906 Cabinet decided that the Maori-owned freehold interest in the leased area would be acquired, and the Public Works Department was asked to arrangement the taking under the Public Works Act[363]. The intention to take the land was notified in August 1906[364], no objections were received, and the whole of Hauturu East 1A5C was taken for the purposes of Waitomo Caves Accommodation-house in December 1906[365].

There is no indication on the Public Works Department's file that the sole owner of the block, Tanetinorau Opataia, was advised of the Crown's intentions at the time of notifying the intention to take the block. If he was not personally notified, the only way for him and other local Maori to have been made aware that the land would be

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[361] South Auckland Land Registry Lease 2937, and Sub-Lease 3006. Copies on Works and Development Head Office file 24/1414/4. Supporting Papers #1343-1346 and 1347-1349.
Location of Sub-Lease 3006 shown on District Land Registrar Auckland to Under Secretary for Public Works, 5 January 1907. Works and Development Head Office file 24/1414/4. Supporting Papers #1341.
Arrell states that Kirk, the sub-lessee, ran coaches transporting tourists between Hangatiki and Waitomo. R Arrell, *Waitomo Caves: A Century of Tourism*, Waitomo Caves Museum Society, 1984, page 34.
[362] Memorandum of Agreement, 10 November 1905, attached to Acting Superintendent for Tourist and Health Resorts to Under Secretary for Public Works, 16 May 1906. Works and Development Head Office file 24/1414/4. Supporting Papers #1339-1340.
[363] Acting Superintendent for Tourist and Health Resorts to Under Secretary for Public Works, 16 May 1906. Works and Development Head Office file 24/1414/4. Supporting Papers #1339-1340.
[364] *New Zealand Gazette* 1906 page 2308. Supporting Papers #3928.
[365] *New Zealand Gazette* 1906 page 3218. Supporting Papers #3931.
South Auckland plan ML 7201. Supporting Papers #2330.

taken would have been if they had noticed a copy of the Notice of Intention to Take posted on a board at the Hangatiki Post Office. The sole correspondence written by the Crown to the owner of the block was in July 1907, seven months after the taking, when he was formally notified that the land had been taken, and compensation would be paid after the amount had been assessed by the Native Land Court[366]. Compensation was determined in November 1907[367].

Some insight into the views of Tanetinorau and other local Maori can be gained from a report by a locally-based Government surveyor in August or September 1906. Unaware that the Tourist and Health Resorts Department had already started the steps to take the 67-acre block, he wrote in support of the land being taken.

> As the Tourist Department intend to establish an accommodation-house there, they will require the whole of the Block for grazing purposes. They will have to keep cows and horses, and possibly a few killing sheep if the traffic becomes extensive. 67 acres under these circumstances would not be too much, especially when it is only grazing land, and the southern portion of the block is broken. If the northern half of the Block, which is undulating and is the best half, was only acquired, it would leave the broken end in the hands of the present owners, to their disadvantage.
>
> I know for a fact that the Native land owners and others concerned are very dissatisfied with the Tourist Department over the way they are acquiring land there, and being so indefinite about what they intend to do and pay. They threaten to chop down and grass the next piece of Bush the Tourist Department take a fancy to.[368]

Further land adjoining the block taken in 1906 was taken in 1911[369]. It was originally proposed to be taken for scenic purposes, but was eventually taken "for the Use and Enjoyment of the Waitomo Caves House" because the Department of Tourist and Health Resorts had taken administrative control of the scenic reserves associated with Waitomo Cave. How and why this additional land was acquired fits more closely

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[366] Under Secretary for Public Works to Tane Tinorau, Hangatiki, 3 July 1907. Works and Development Head Office file 24/1414/4. Supporting Papers #1342.

[367] Maori Land Court minute book 47 OT 128-129. Supporting Papers #3652-3653.
Order of the Court, 30 November 1907. Copy attached to Registrar Native Land Court Auckland to Under Secretary for public Works, 11 February 1908. Works and Development Head Office file 24/1414/4. Supporting Papers #1352-1354.
Land Purchase Officer Bold to Under Secretary for Public Works, 4 December 1907. Works and Development Head Office file 24/1414/4. Supporting Papers #1350-1351.

[368] Assistant Surveyor Wilson to Chief Surveyor Auckland, undated, attached to Commissioner of Crown Lands Auckland to Under Secretary for Lands, 7 September 1906. Lands and Survey Head Office file 4/155. Supporting Papers #380-383.

[369] *New Zealand Gazette* 1911 page 1274. Supporting Papers #3952.

with the history of the acquisition of scenic reserves at Waitomo Caves, and it is therefore discussed in the case study chapter in Part III on Takings for Scenery Preservation.

8.10 Maori Housing

Provision for housing for Maori, particularly in towns, became an additional function of the Crown during the 1960s. Already subdivided sections were taken, usually with prior consent, from Maori owners in Te Kuiti, Otorohanga and Piopio.

8.11 Coal Mining

Benneydale, Mangapehi and Ohura were coal mining townships during the middle part of the twentieth century. The mines were operated by State Coal Mines, a branch of the Mines Department, and the Crown showed a willingness to use the Public Works Act in order to meet that Department's land needs. Most of the takings for coal mining purposes were of Crown or European-owned land, but one taking was of Maori-owned land.

In 1955 State Coal Mines wanted to develop a coal-screening plant alongside the railway line at Mangapehi. The land it identified as suitable was Maori-owned and subject to a lease to Ellis and Burnand Limited, the timber company, which covered a wider area. Ellis and Burnand had sub-leased the proposed screening plant site to the Crown for the purposes of the Coal Mines Act 1925. However, Ellis and Burnand's lease was due to expire in 1964, and contained no right of renewal and no right to compensation for improvements; the sub-lease accordingly only ran until 1964 as well. State Coal Mines decided that the sub-leasing arrangement was unsatisfactory and explored the possibility of obtaining a better title for the site, subsequently explaining to Ministry of Works what had happened.

> The Registrar of the Maori Land Court advises that the Maori owners are prepared to sell the 3 acres 1 rood 32 perches to the Crown for a consideration of £100 per acre. There are ten owners, including one deceased, so that taking into account a succession, there are a number of owners involved in the transaction. The price of £100 per acre was considered to be high, but the owners have pointed out a sale in Mangapehi of 3 acres 18 perches for use as a

> football ground for the price of £667-10-0d in 1951[370]…. The Hon Minister of Mines approves of the purchase….
>
> The Crown Law Office has suggested that, having regard to the number of Maori owners involved, it would be advisable to have the title to the land taken by way of Proclamation.
>
> The assembled owners at a meeting in Te Kuiti on the 19th January 1955 passed a resolution that the area be sold to the Crown for a consideration of £100 per acre, but I understand that the resolution has not yet been confirmed by the Court.
>
> Will you please arrange to take title to this property for the purposes of Part III of the Coal Mines Act 1925 in the manner suggested.[371]

The Under Secretary for Mines confirmed three months later that he wanted to "have the area of Maori land subject to the lease taken by proclamation as a convenient method, having regard to the number of Maori owners involved"[372]. What was not explained in either letter was why the resolution passed by the meeting of owners was not a satisfactory basis for the Crown to acquire the land with the willing agreement of the Maori owners[373], and the Public Works Act needed to be used to turn the acquisition into a compulsory purchase.

The Registrar of the Maori Land Court was asked if he knew of any objections to the site being taken under he Public Works Act[374]. He replied that he was not aware of any objections, although "you will appreciate that the Department has no control over it, and it is a question for the Maori owners themselves to decide"[375].

By October 1955 the matter had become urgent for State Coal Mines. The District Manager explained that earthworks needed to be carried out during the 1955-56

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[370] This was compensation for the recreation ground at Mangapehi, discussed in the next chapter.
[371] Under Secretary for Mines to Commissioner of Works, 17 June 1955, attached to Commissioner of Works to District Commissioner of Works, 30 June 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3177-3180.
[372] Under Secretary for Mines to Commissioner of Works, 14 September 1955, attached to Commissioner of Works to District Commissioner of Works, 20 September 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3182-3183.
[373] If the resolution was confirmed by the Maori Land Court, it could have been arranged for the Maori Trustee, acting on behalf of the owners, to sign and execute a transfer of the land to the Crown.
[374] District Commissioner of Works Hamilton to Registrar Maori Land Court Auckland, 12 September 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3181.
[375] Registrar Maori Land Court Auckland to District Commissioner of Works Hamilton, 21 September 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3184.

summer, and a contract had been arranged with an intended start in December. Because both the head lessee and the Maori owners had agreed to the Crown purchase, he did not "anticipate that objections will arise to the taking of the land when the Proclamation is issued"[376]. He was told in reply that neither the lease from the Maori owners, nor the sub-lease from Ellis and Burnand, permitted the earthworks proposed, and he would be well advised to obtain the agreement of the Maori owners before commencing work[377]. The District Manager then approached the owners through an Agent in Te Kuiti, and was advised that they had no objection to work commencing during the Christmas holidays[378]. The Agent confirmed this in writing:

> The owners are quite reconciled to the taking of land in above by your Department, the only point now at issue being the amount of compensation to be paid.[379]

A Notice of Intention to Take the 3½ acres was issued in November 1955[380]. A copy was sent to the owners' Agent[381]. The Resident Engineer in Te Kuiti visited the site, could not see any objection to the taking, and advised that there were no buildings, cultivations or burial places on the land[382]. After no objections had been received, the land was taken in March 1956[383].

Meanwhile the confirmation of the resolution of the meeting of owners to sell the site to the Crown had been listed in the panui for the Maori Land Court's February 1956 hearing[384]. Ministry of Works asked that action be deferred, as the taking would shortly proceed and be followed by an application for assessment of compensation[385].

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[376] District Manager State Coal Mines Benneydale to District Commissioner of Works Hamilton, 28 October 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3185.
[377] District Commissioner of Works Hamilton to District Manager State Coal Mines Benneydale, 18 November 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3186-3187.
[378] District Manager State Coal Mines Benneydale to District Commissioner of Works Hamilton, 23 November 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3188.
[379] TM Hetet, Te Kuiti, to District Manager State Coal Mines Benneydale, 25 November 1955, attached to District Manager State Coal Mines Benneydale to District Commissioner of Works Hamilton, 19 December 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3190-3191.
[380] *New Zealand Gazette* 1955 page 1847. Supporting Papers #4071.
[381] District Commissioner of Works Hamilton to TM Hetet, Te Kuiti, 15 December 1955. Works and Development Hamilton file 15/12/0. Supporting Papers #3189.
[382] Resident Engineer Te Kuiti to Resident Engineer Hamilton, 5 February 1956. Works and Development Hamilton file 15/12/0. Supporting Papers #3192.
[383] *New Zealand Gazette* 1956 page 371. Supporting Papers #4072.
[384] District Manager State Coal Mines Benneydale to District Commissioner of Works Hamilton, 7 February 1956. Works and Development Hamilton file 15/12/0. Supporting Papers #3194.
[385] Telegram District Commissioner of Works Hamilton to Clerk Maori Land Court Te Kuiti, 8 February 1956. Works and Development Hamilton file 15/12/0. Supporting Papers #3193.

The application for confirmation of the resolution was struck out, with the agreement of the applicant, at the compensation hearing in May 1956. At that hearing compensation of £325 was awarded, to be split between the Maori owners (£250) and the timber company lessee (£75)[386].

8.12 Natural Gas Pipeline

The database records two instances of a taking of Maori-owned land for the purposes of the Natural Gas Corporation Act 1967. These two takings were for a single site on the Mokau-Mohakatino Block alongside State Highway 3 south of the Mohakatino River.

This taking, and four other takings from European-owned land elsewhere in Te Rohe Potae District, are just the tip of a larger iceberg that affected many other owners, both Maori and European, when the Crown constructed the Kapuni and Maui natural gas pipelines through Te Rohe Potae District. The lands that were taken were the sites of valve stations along the route. The pipelines themselves did not require the acquisition of land, instead being protected by a series of easements. These easements were compulsorily acquired under provisions in the Petroleum Act 1937. An amendment to the Act in 1962 gave the Crown the authority to enter privately-owned land, lay the pipelines, and then protect its investment by preventing the pipelines being disturbed.

The Natural Gas Corporation had been formed by legislation in 1967 to purchase, transport and market natural gas from the Kapuni gas field. The Crown issued it with an authorisation under Part II of the Petroleum Act 1937 (as amended in 1962) to construct and maintain a gas pipeline. The legislation provided that pipeline easement certificates could be issued to allow the authorisation to be implemented.

The pipeline to carry Kapuni gas to Auckland was laid in the late 1960s. The whole exercise was preceded by negotiations at a national level between the Crown and Federated Farmers. These negotiations, and all subsequent dealings with individual landowners, were on the basis that the decision to build the pipeline, and the general

[386] Maori Land Court minute book 80 OT 345-346. Copy on Works and Development Hamilton file 15/12/0. Supporting Papers #3195-3196.

route that it would take, could not be questioned. Landowners might be able to have some influence at a strictly local level in commenting on the route, but building the pipeline was a policy decision that had already been made nationally, and the choice of route would be decided on engineering grounds with little or no social, cultural or community consideration. The first notice that was sent to landowners described the limited choices that landowners would have, and emphasised the power that the Ministry of Works (as construction agent for the Natural Gas Corporation) would hold over the whole construction exercise.

> Representatives of the Ministry of Works and the Senior Vice-President, the Junior Vice-president and the General Secretary of Federated Farmers met in Wellington on August 10 [1967] to discuss arrangements for the installation of natural gas pipelines. The Federation raised some thirty four points, many of which were satisfactorily disposed of. Others remain for settlement and will be discussed at future meetings. Among these is a basis for compensation and arriving at a formula as a starting point for payment.
>
> Meantime, this letter is being written to let you know the nature of the work being done by the Ministry of Works preliminary to constructing the pipeline, and to describe briefly how your interests are protected.
>
> Field work is at present confined to survey and investigation teams. Their job is to acquire information from which the most suitable route for the pipeline may be determined.
>
> Team leaders have been instructed that they must, where practicable, inform each farmer and landowner of their intention to go on a property. They will, if requested, produce their written survey authorities to enter upon land to investigate the pipeline location. These authorities are issued under the Petroleum Amendment Act 1962….
>
> The pipeline will be laid below field drains or other drainage systems and away from areas subject to slips and subsidence. Here the farmer can be of great help to survey teams – to his own advantage and that of departmental engineers – with information about the drainage system of his property, land movements and unstable soils.
>
> If damage is caused by a survey party, the land occupier is entitled to restoration and/or full compensation from the Ministry of Works….
>
> When the route of the pipeline has been approved, owners and occupiers affected will be notified as soon as possible. After that they will be advised of proposed dates for entry on land for construction purposes. These advance notices will assist farmers in making temporary re-arrangements of farming programmes which may be affected by the construction work.

> The pipeline will be placed underground with a cover of at least two feet six inches, enabling resumption, after the pipe is installed, of normal use of the land affected. The surface of the land will be restored to its former state by the Ministry of Works.
>
> Landowners and occupiers whose properties are crossed by the pipeline are entitled under the provisions of the Petroleum Act and the Public Works Act to receive full compensation for all loss, injury, or damage suffered by them as a consequence of the pipeline easement and that arising from the construction of the pipeline.[387]

The manner in which the legislation advantaged the Crown (and the Natural Gas Corporation), and disadvantaged landowners, was raised by a solicitor acting for five of the landowners in the district, two of whom (Mr Nikora and Mrs Wahanui) were Maori. He wrote to the local Member of Parliament in December 1968, who passed his concerns on to the Minister of Works. In his letter he compared the prior notification requirements of the Public Works Act with those of the Petroleum Act.

> The established procedure for the erection of a public work was either:
>
> a. That consent of property owners was obtained, or
> b. They were formally notified of the proposal and given forty days within which to object.
>
> By an amendment made in 1962, the Petroleum Act gives power to grant licences to pipeline authorities for the construction of pipelines, and provides that the Governor General may assist the licensee by taking property under the Public Works Act if the Minister is satisfied that the licensee is not able to purchase or otherwise acquire the land at a reasonable price.
>
> Section 70 of the Amendment permits the Minister to issue a pipeline certificate creating a legal easement over private land if satisfied that the licensee after making reasonable attempts to do so has not been able to reach agreement with the land owner to purchase or acquire the easement by negotiation.
>
> Up to this time the private land owner still has the benefit of prior notice, and the right to express his objection, although the rights conferred by the Public Works Act 1928 to have his objection formally considered have been lost, and he has apparently no right to express an opinion as to the 'reasonableness' of the attempts made by the licensee to negotiate. It is obvious that the licensee is 'negotiating' from a position of considerable strength.
>
> In 1967 the Natural Gas Corporation Act amended the Petroleum Act to permit the issue of an easement certificate without any obligation on the part

[387] Notice to Landowners and Occupiers, undated, attached to Kapuni Pipeline Project Manager to District Commissioner of Works Hamilton, 18 August 1967. Works and Development Hamilton file 97/1/0. Supporting Papers #3539-3540.

> of the licensee or the Ministry of Works to negotiate with or give prior notice to the land owner concerned. The right of a private land owner to object formally or through negotiation has thus been completely denied him, and private land owners are presented with 'un fait accompli'.
>
> One explanation given as the reason for the 1967 Amendment was that time did not permit of negotiation, but this appears quite unwarranted in view of the time which has elapsed since the pipeline was first decided upon.[388]

The response from the Ministry of Works largely confirmed this weakening of landowner rights.

> The application for the Pipeline Authorisation was, as required by law, advertised twice in daily newspapers servicing the pipeline route, and copies of the application deposited in the various Ministry of Works offices along that route.
>
> Every interested person was thus given the right to inspect the plans of the route and to lodge objections. Several landowners did inspect the plans, and some queries were answered, but no objections to the route were received. Accordingly in January 1968 the Minister of Mines issued the Pipeline Authorisation. The procedure followed by the Department for the Authorisation was fully in accord with the legislation….
>
> For the reasons of which you are aware, it was not possible or practicable in the time available between the issue of the Pipeline Authorisation and the start of construction (6 months) to negotiate an agreement with something over 1,000 owners, lessees, etc, as required by Section 70 of the Petroleum Act. Consequently, the Government agreed to introduce into the Natural Gas Corporation Act powers (under Section 17) enabling the Minister of Mines to issue statutory easement certificates to obviate the prior necessity of reaching individual agreements on details etc of those easements.[389]

In his complaint the solicitor provided the example of the Crown's dealings with Mrs Wahanui (Kahui Rea Huihi).

> One land owner who became aware that the pipeline was to be laid over her property, because she discovered pegs there, wrote to the Ministry of Works on 27th February 1968 enquiring whether this was the intention. No reply was made to this or subsequent letters, but a compensation certificate was issued

[388] Phillips & Powell, Barristers and Solicitors, Otorohanga, to DC Seath MP, undated, attached to Kapuni Pipeline Project Manager to Commissioner of Works, 3 February 1969. Works and Development Hamilton file 97/1/0. Supporting Papers #3556-3564 at 3561-3564.
[389] Kapuni Pipeline Project Manager to Commissioner of Works, 3 February 1969. Works and Development Hamilton file 97/1/0. Supporting Papers #3556-3564.

> dated 30th September 1968 and received on 18th October. Surely there was time for negotiation in this instance.[390]

The Ministry's response put all the onus on Mrs Wahanui to have objected when the route was publicly notified, even though she had not been personally notified at that time.

> If what is alleged …, that correspondence from the landowner in question was not acknowledged, is correct, then this is regrettable. Nevertheless, that owner had been given the opportunity to inspect the plans of the route and to lodge an objection.[391]

Although not mentioned in the correspondence, it seems clear that the various amendments were placing all landowners, both European and Maori, in a similar weak position to that faced by Maori owners of multiply-owned land up until 1962 under the Public Works Act, whereby they did not need to be directly notified, but could be notified indirectly by means of public notices and public displays of a Notice of Intention to Take. After 1962, with the change of policy in administration of the Public Works Act requiring every effort to be made to obtain prior consent, that earlier policy had been largely abandoned (although still retained as a back-stop), yet it was reintroduced as the standard policy under the Natural Gas Corporation Act 1967 to assist the Crown's ability to push natural gas pipelines through a district.

An easement certificate for the portion passing through Tapuiwahine, Kinohaku East and Karu-o-te-Whenua Blocks states:

> Pursuant to the provisions of the Petroleum Act 1937 … the Minister of Mines hereby certifies that a pipeline … is authorised to pass on, over or through the land described in the First Schedule hereto … upon the following terms and conditions:
>
> 1. The owner of the pipeline is the Natural Gas Corporation of New Zealand.
> 2. ….
> 3. ….
> 4. Upon the issue of this certificate, the owner of the pipeline shall have the right of entry on the said land pursuant to subsection (6) of Section 70 of the Act, for the purpose of exercising the rights conferred on him by the Act and any regulations made thereunder and by this pipeline authorisation.

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[390] Phillips & Powell, Barristers and Solicitors, Otorohanga, to DC Seath MP, undated, attached to Kapuni Pipeline Project Manager to Commissioner of Works, 3 February 1969. Works and Development Hamilton file 97/1/0. Supporting Papers #3556-3564 at 3561-3564.

[391] Kapuni Pipeline Project Manager to Commissioner of Works, 3 February 1969. Works and Development Hamilton file 97/1/0. Supporting Papers #3556-3564.

5. … this certificate shall apply to the land extending for 20 ft (being not more than 30 ft) on either side of the pipeline …, and the owner of the pipeline shall have the right at any time after the issue hereof to remove from the said strip all cultivated natural vegetation including trees and shrubs.
6. The owner or occupier of the land shall have the right to use the same (except for such use as may be reasonably held to interfere with the enjoyment of the rights of the owner of the pipeline …), but shall not erect any building, construction, fence or plant any tree or shrub on the said strip, disturb the soil of the said strip below a depth of 15in from the surface or do anything which would or could damage or endanger the pipeline without the consent of the owner of the pipeline being first obtained. Any such consent shall not be unreasonably withheld.
7. Where the pipeline is below the surface of the ground, the owner of the pipeline shall bury it so that it will not interfere with the ordinary cultivation of the said land, and in so doing or in maintaining, repairing, renewing, changing or removing the pipeline he shall cause as little damage as possible to the surface of the land.
8. The owner of the pipeline will restore or pay to the owner or occupier of the said land the cost of restoring the surface of the said land as nearly as possible to its former condition or state.
9. Such rights, easements or obligations hereinbefore recited or referred to, which place a burden on the said land or on the owner or occupier of the said land, shall be binding on him the said owner or occupier, his successors, executors, administrators and assigns, and such of them as place a burden on the owner of the pipeline shall be binding on him, his successors, executors, administrators and assigns.[392]

The effect of the easement was therefore to place limitations on the legal rights of the owner of the land as to what they could do with their land.

The pipeline carrying Maui gas to Auckland was laid through Te Rohe Potae District in the 1970s. Once the route had been decided upon, the Crown protected it in the first instance by issuing a Middle Line Proclamation[393]. This Proclamation defined the route between the Mokau River and the Puniu River.

The Middle Line Proclamation identified 191 different properties in Te Rohe Potae District through which the pipeline would pass. Examination of the plans accompanying the Proclamation, which detail the ownership of each property, show that 33 (17%) of the properties were Maori-owned. In crossing the district it provides

[392] Pipeline Easement Certificate, 12 July 1968. South Auckland Land Registry Easement S.412466. Supporting Papers #2250-2252.
[393] *New Zealand Gazette* 1975 pages 1791-1792. Supporting Papers #4116-4117.
South Auckland Land Registry Proclamation H.049500. Not included in Supporting Papers.

a single snapshot (and rough gauge) of the extent to which land had passed out of Maori ownership by 1975.

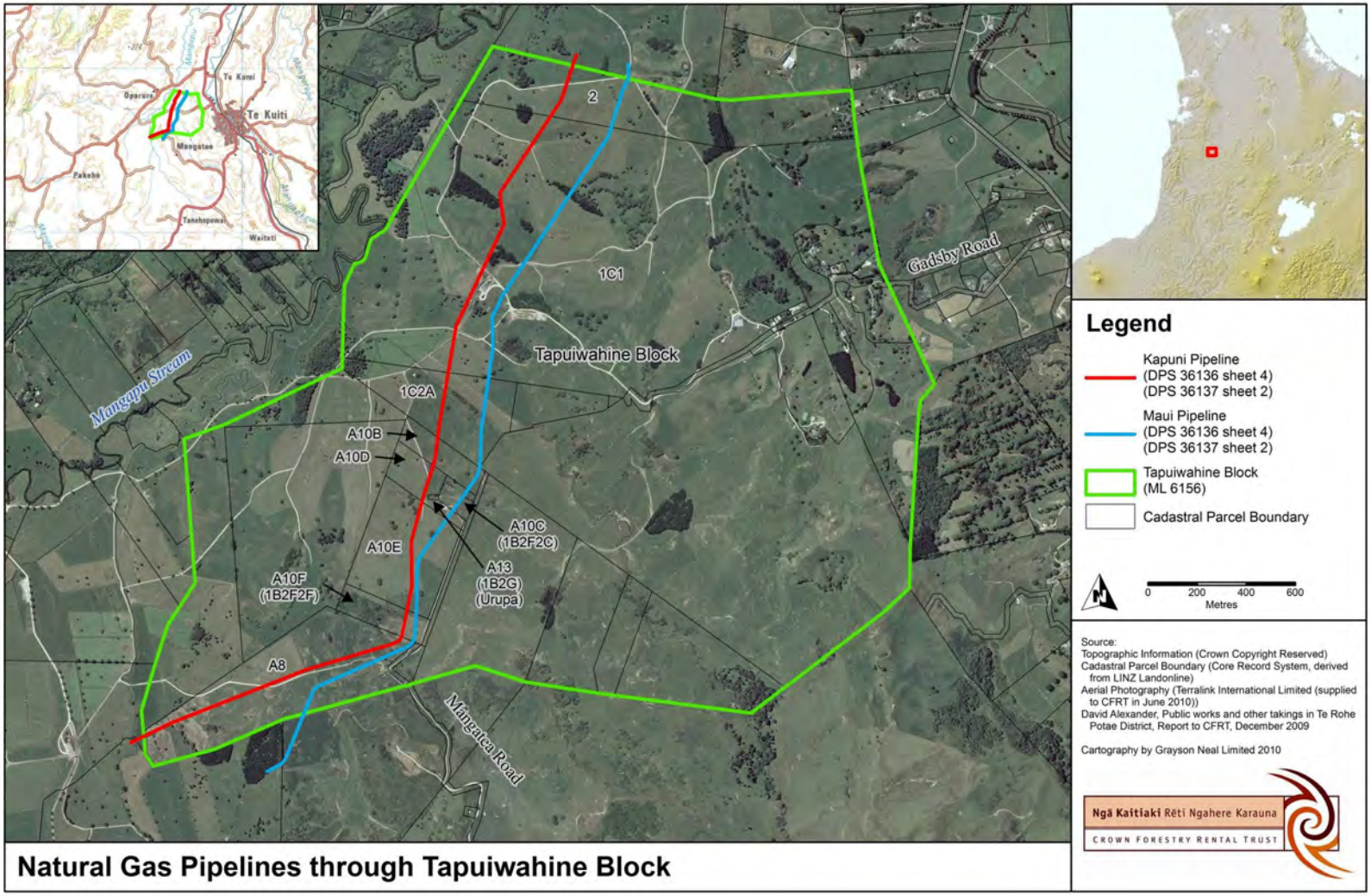
The Tapuiwahine Block has been chosen as an example of the impact of the pipeline because of the interest shown by claimants in its effect on that block. From the Crown's general files about the pipeline examined for this report, there is no reason to doubt its representativeness. A check of the pipeline through the Tapuiwahine Block shows that the following partitions (running from north to south) were (and continue to be) affected:

Table 8.1 Natural Gas Pipelines through the Tapuiwahine Block

Kapuni Pipeline[394]	Maui Pipeline[395]
Tapuiwahine 1C1	Tapuiwahine 1C1
Tapuiwahine 1C2A	Tapuiwahine 1C2A
	Tapuiwahine 1C2A Lot 2 DPS 8011
Tapuiwahine A10B	Tapuiwahine A10B
Tapuiwahine A10D	Tapuiwahine A10D
	Tapuiwahine 1B2F2C
Tapuiwahine A10E	Tapuiwahine A10E
Tapuiwahine 1B2F2F	Tapuiwahine 1B2F2F
Tapuiwahine A8	Tapuiwahine A8

Source: South Auckland Land Registry Easements S.412466 and H.259986.1, and South Auckland plan DPS 36136.

[394] South Auckland Land Registry Easement S.412466. Supporting Papers #2250-2252. South Auckland plan DPS 36136. Supporting Papers #2325-2328.
[395] South Auckland Land Registry Easement H.259986.1. Supporting Papers #2253-2256. South Auckland plan DPS 36136 (Sheet 4). Supporting Papers #2328.



Map 11 Natural Gas Pipelines through Tapuiwahine Block

The Kapuni pipeline route passes close to an urupa, defined as Tapuiwahine A13 block, and which before consolidation was known as Tapuiwahine 1B2G. This was drawn to the Crown's attention at the time, with a Land Purchase Officer recording in July 1968:

> While speaking with the manager of a Te Kuiti farm property owned by the Bryant Trust, the Land Purchase Officer was advised that the pipeline would pass through or very near an old Maori cemetery nearby.[396]

He was told in reply:

> Our advice is that old burial ground overgrown with scrub lies approx 75 feet east of pipeline, and east of this is a deserted meeting house. However, I should be grateful of confirmation from Resident Engineer to enable me to alert Chief Inspector through Land Liaison Officer.[397]

The Resident Engineer at Te Kuiti then reported that "the burial ground is shown as Urupa A.13, and the clearance is approximately 100 feet"[398]. As far as the Ministry of Works was concerned, a clearance of 75 to 100 feet from the centre line of the proposed pipeline route was sufficient clearance, when the easement was intended to cover any disturbance for 20 feet on either side of the centre line. However, this meant that the Crown was placing absolute trust in the survey definition of the urupa accurately recording the extent of the area within which there had been burials. It also assumed that those with cultural responsibility for the urupa shared the surveyor's view of where the burial ground stopped and started. A hard-edged definitive line is rarely a good indication of the sphere of influence surrounding an urupa. The urupa (referred to as Tapuiwahine 1B2G) is shown on the survey plan of the as-built pipeline route as being very close to the pipeline easement, but the distance of the edge of the easement from the edge of the urupa block boundary is not stated[399].

So far as compensation was concerned, a standard approach was taken by the Crown.

> The Natural Gas Corporation intends to offer landowners a payment for the permanent easement assessed at 50 per cent of a special Government valuation of the paddock value of the land contained in the easement.

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[396] Telex District Land Purchase Officer Hamilton, to Kapuni Project official Macdonald, 24 July 1968. Works and Development Hamilton file 97/1/0. Supporting Papers #3546.
[397] Telex Kapuni Project official Macdonald to District Land Purchase Officer Hamilton, 25 July 1968. Works and Development Hamilton file 97/1/0. Supporting Papers #3547.
[398] Resident Engineer Te Kuiti to District Commissioner of Works Hamilton, 5 August 1968. Works and Development Hamilton file 97/1/0. Supporting Papers #3548.
[399] South Auckland plan DPS 36136 (Sheet 3). Supporting Papers #2327.

> The term 'paddock value' in this sense is understood to be the freehold value of the strip of land including the unimproved value plus improvements up to and including the grass or pasture on the land at the date of valuation. In reverted country for instance the figure is expected to be no more than the unimproved value. Growing crops and other improvements above ground will not be included in the figure. These represent items which will be dealt with separately by actual restoration or by payment as a separate loss or disturbance in the final compensation settlement.[400]

This approach to compensation was negotiated with and agreed to by Federated Farmers. It set the pattern for individual negotiations with each landowner. In addition to compensation for the easement, there could also be compensation paid for disturbance and damage during construction, and for loss of use.

The Petroleum Act prescribed that compensation would normally be negotiated in the same manner as under the Public Works Act. This meant, for Maori land, that where the land was owned by fewer than four persons, then those owners would negotiate direct with the Ministry of Works. Where there were four or more Maori landowners, however, the responsibility for negotiating compensation on behalf of the landowners rested with the Maori Trustee. In December 1967 he declared:

> The Maori Trustee will not necessarily be bound by any agreement which may be made by the Ministry of Works with Federated Farmers, or any other body for that matter. Exactly how the negotiations will be handled is not at the moment very clear, but what does appear clear is that an inspection will have to be made in every case where the Maori Trustee is involved, whether as owner or as agent. In rural areas, the difficulties will not be very great, but in the case where the land takes on another character, the assessment of compensation might well be a matter requiring the close attention of the experts.
>
> … Our present idea, depending on the extent to which the Maori Trustee is involved in the various districts, is that we should see about putting the business into the hands of certain selected valuers.[401]

During the second half of 1968, the Ministry of Works office in Hamilton and the Maori Trustee office in Hamilton held discussions to identify which properties the Maori Trustee would be responsible for with respect to negotiating compensation on

[400] Commissioner of Works to Valuer General, 24 November 1967. Works and Development Hamilton file 97/1/0. Supporting Papers #3541-3542.
[401] File note by Maori Trustee, 20 December 1967. Works and Development Hamilton file 97/1/0. Supporting Papers #3543-3545.

behalf of the owners[402]. At the end of the year, the Maori Trustee explained further that he would only be acting for the Maori owners of any property that had been leased, so that it was for the Ministry of Works to obtain from the Valuation Department its opinion of the apportionment of the land value between the freehold interest and the leasehold interest, and then negotiate compensation direct with the lessee[403]. Twelve of the Maori-owned properties in Te Rohe Potae District north of the Mokau River had been leased[404].

Although it has not been confirmed in every case, it appears that the Maori Trustee accepted offers made by the Ministry of Works, based on the 50% of paddock value formula. These offers, for what was referred to as an "easement fee", or compensation for the registration of an easement on the title, were not large, ranging from $2.50 when less than one acre was affected by the 40 feet wide corridor, to $340 when nearly nine acres was affected[405]. Payments for both Tapuiwahine blocks involving the Maori Trustee were made in accordance with the 50% paddock value formula as follows, and discussed further below:

- Tapuiwahine A10D & A10F Area of easement 3 roods 13.7 perches
  Easement Fee $22.50
- Tapuiwahine A8 Area of easement 3 acres 0 roods 38.92 perches
  Easement Fee $122.50

The Tapuiwahine A10D & A10F easement fee, agreed to by the Maori Trustee in December 1969[406], and approved for payment by the Ministry of Works and Development in February 1970, is known to have been for 50% of the paddock value[407].

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[402] District Commissioner of Works Hamilton to District Officer Hamilton, 19 August 1968 and 4 December 1968, and Maori Trustee Hamilton to District Commissioner of Works Hamilton, 3 September 1968. Works and Development Hamilton file 97/1/0. Supporting Papers #3549 and 3552.
[403] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 17 December 1968. Works and Development Hamilton file 97/1/0. Supporting Papers #3553.
[404] District Commissioner of Works Hamilton to Branch Manager Valuation Department Hamilton, 29 January 1969. Works and Development Hamilton file 97/1/0. Supporting Papers #3554-3555.
[405] Schedule of Maori Land, undated. Works and Development Hamilton file 97/1/0. Supporting Papers #3567-3568.
[406] Memorandum of Agreement, signed by Maori Trustee 19 December 1969. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3576.
[407] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 10 February 1970. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3577-3579.

The Tapuiwahine A8 easement fee was initially agreed to by the European lessee in December 1968[408]. When the Maori Trustee was written to about this, he was not asked to agree to this fee or given any chance to negotiate over it, but instead was asked only how the fee should be apportioned between the lessor and the lessee[409]. This matter of apportionment is discussed below.

Tapuiwahine A10B and Tapuiwahine A10E were both owned solely by Ngatai Ngatai. For the 1 rood 16.23 perches of Tapuiwahine A10B and the 1 acre 1 rood 14.28 perches of Tapuiwahine A10E affected by the pipeline easement, he agreed in August 1968 to accept compensation of $62.50[410].

In addition to the easement fee, additional compensation could be paid for disruption during construction. Ngatai Ngatai received $325 for loss of use of five acres for two years, disturbance ("mustering due to gates being left open"), manure and weed spray[411]. Of the combined amount of $387.50, he was paid cash of $175, and received $150 worth of metalling and grading work on an access track[412].

The lessee of Tapuiwahine A8 negotiated directly with Crown officials for the disturbance to his leasehold rights caused by the construction work on the pipeline, and agreed to accept $730[413]. This was for loss of use of ten acres for two years, loss of condition of stock, manure and weed spray. There may also have been some permanent changes to the land, as it was stated that within the ten acres there was "a considerable amount of terracing and access through and around two swampy

[408] Memorandum of Agreement, signed by Owen Morgan Houchen 11 December 1968, and District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 23 July 1969. Works and Development Hamilton file 97/1/0/154. Supporting Papers #3600 and 3601.
[409] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 23 July 1969. Works and Development Hamilton file 97/1/0/154. Supporting Papers #3601.
[410] Memorandum of Agreement, signed by Ngatai Ngatai 28 August 1968, and District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, undated (approved 16 October 1968). Works and Development Hamilton file 97/1/0/145. Supporting Papers #3593 and 3594.
[411] Memorandum of Agreement, signed by Ngatai Ngatai 4 May 1970, and District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 19 May 1970. Works and Development Hamilton file 97/1/0/145. Supporting Papers #3595 and 3596.
[412] Voucher 099 13 dated 21 May 1970, District Commissioner of Works Hamilton to Resident Engineer Te Kuiti, 9 July 1970, and Resident Engineer Te Kuiti to District Commissioner of Works Hamilton, 16 July 1970. Works and Development Hamilton file 97/1/0/145. Supporting Papers #3597, 3598 and 3599.
[413] Memorandum of Agreement, signed by Owen Morgan Houchen, 4 May 1970. Works and Development Hamilton file 97/1/0/154. Supporting Papers #3602.

areas"[414]. The Maori Trustee was asked if it was in order to pay the $730 "compensation arising from loss of grazing and damage" to the lessee[415], and agreed on the grounds that it was "not concerned with arrangements made with the lessee"[416].

With respect to construction disturbance on Tapuiwahine A10D and A10F, the Maori Trustee inquired what further compensation could be paid in July 1970[417]. The Ministry's response was to argue that no additional compensation was justified, except in a few instances, such as where lands were leased, where "a claim for casual grazing could be considered if lodged through your Department"[418]. Tapuiwahine A10D and A10E were listed in the Maori Trustee's records as not being leased, although the Crown was aware that they were occupied by Ngatai Ngatai, whose own lands sandwiched on either side the block about which the Maori Trustee had inquired[419]. In September 1970 the Crown offered $50 for loss of grazing of one acre for two years[420], and this was accepted by the Maori Trustee the following month[421]

The issue of apportionment of the easement fee between lessor and lessee, where the Maori Trustee was acting for the Maori lessors, resulted in an inequitable outcome for the Maori owners. Following the decision by the Maori Trustee referred to above, that in the first instance the Valuation Department should give its opinion on a suitable apportionment, that Department was approached and advised that there had been no loss of value of the Maori lessor's interest as a result of the laying of the pipeline through the property, thus in its opinion making the lessee the beneficiary of

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[414] District Land Purchase Officer Hamilton to District Commissioner of Works, 27 May 1970. Works and Development Hamilton file 97/1/0/154. Supporting Papers #3605-3606.
[415] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 12 May 1970. Works and Development Hamilton file 97/1/0/154. Supporting Papers #3603.
[416] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 18 May 1970. Works and Development Hamilton file 97/1/0/154. Supporting Papers #3604.
[417] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 24 July 1970. Works and Development Hamilton file 97/1/0. Supporting Papers #3569-3570.
[418] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 4 August 1970. Works and Development Hamilton file 97/1/0. Supporting Papers #3571-3572.
[419] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, undated (approved 16 October 1968). Works and Development Hamilton file 97/1/0/145. Supporting Papers #3594.
[420] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 17 September 1970. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3580.
[421] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 5 October 1970, and District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 5 October 1970. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3581-3582 and 3583.

all the easement fee compensation that would be paid[422]. This opinion, when adopted by the Ministry of Works[423], was not immediately challenged by the Maori Trustee, despite the pipeline becoming a permanent feature of the property, which would still be there whenever a lease expired. In fact the Maori Trustee failed to respond at all.

In March 1971 the easement fee for a number of leased blocks, including Tapuiwahine A8, had still not been paid out, and a reminder was sent to the Maori Trustee, this time with a different opinion from the Ministry of Works.

> As regards the easement fees on Maori-owned land with registered lessees, the position is generally that this department has been waiting for advice from you on the apportionment of the easement fee due to the owners of the blocks. It is suggested that under the circumstances the easement fees be paid to you on behalf of the owners in their entirety. Generally my discussions with the lessees would indicated that they were not concerned at all with the easement fee, but rather in the compensation that would be due to them for damage etc. If you wish it, I will arrange for the easement fees to be paid to you….[424]

The Maori Trustee replied:

> We have put your argument on this subject to our Head Office from time to time, and have indicated also that the lessees do not appear to be concerned at all about the easement fee. The Maori Trustee, however, has made it clear that he does not accept that the whole of the easement fee should be paid to the owners in those cases where the land is leased. He has talked about it with the Head Office of the Valuation Department, and the decision stays that the fee is apportionable between the lessor and the lessee.
>
> The apportionment is to be done by the Valuation Department on the basis of the lessor's and lessee's respective interests in the land, which are calculated by the Valuation Department in accordance with the usual formula. We can only suggest, therefore, that you provide the Valuation Department with a list of the leased blocks and the easement fee payable in respect of each of these blocks, and ask them to make the apportionment accordingly. You would then be in a position to pay to us the lessor's proportion of the easement fee, and to pay the lessee's proportion direct to each of the lessees. We suggest this on the basis of the instructions we have received from our Head Office….[425]

The Valuation Department repeated its earlier advice.

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[422] District Valuer (Rural) Hamilton to District Commissioner of Works Hamilton, 21 February 1969. Works and Development Hamilton file 97/1/0. Supporting Papers #3565.
[423] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 27 March 1969. Works and Development Hamilton file 97/1/0. Supporting Papers #3566.
[424] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 5 March 1971. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3584-3585.
[425] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 26 March 1971. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3586.

> I have checked each valuation assessment listed, and in each case there has been no permanent loss of value to the lessor's interest, and therefore the easement fees should be payable to the lessees.[426]

This was then agreed to by the Maori Trustee[427], and the easement fee was sent to each lessee of Maori-owned land. The lessee of Tapuiwahine A8 was paid his windfall of $122.50 in August 1971[428].

How the Maori Trustee could have agreed to such a basic error is unclear. The pipeline was a permanent feature of the land, and the pipeline easement certificate would be registered forever on the title to the land that was issued in the name of the Maori owners. The lessees were temporary occupants with no stake in the land beyond the lifetime of their leases. The solicitor referred to at the beginning of this section, who had inquired about easements on behalf of Mr Nikora and Mrs Wahanui, saw this quite plainly. When Kahui Rea Huihi (Mrs Wahanui) agreed to accept $165 as easement fee for her land (Parihoro 2B2), and her signed agreement was witnessed by her solicitor, the agreement specifically stated in the margin that "the payment is assessed on the basis of a freehold, and is not subject to apportionment between Lessee and Lessor"[429]. The compensation for construction disturbance on Parihoro 2B2 was then paid wholly to the lessee, with it being stated that "the lessor has agreed to the lessee receiving compensation arising from the construction"[430].

The Maori Trustee realised his error in 1972, and wrote to the Ministry of Works.

> Recent researches into this subject have disclosed that our memorandum of 6 August 1971 was based on an inadequate examination of the papers we have in this connection…. We should have informed you that we were not interested in the valuer's opinion on the extent of the loss, but required his apportionment of the easement fee on the basis of the lessors' and lessees' interests., in terms of the usual formula and within the framework of a policy already decided upon at a Head Office level.

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[426] District Valuer Te Kuiti to District Commissioner of Works Hamilton, 22 July 1971. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3587.
[427] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 6 August 1971. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3588.
[428] Voucher 256 8 dated 24 August 1971. Works and Development Head Office file 97/1/0/154. Supporting Papers #3607.
[429] Memorandum of Agreement, signed by Kahui Rea Huihi 24 June 1969. Works and Development Hamilton file 97/1/0/2. Supporting Papers #3573-3574.
[430] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, approved 8 May 1970. Works and Development Hamilton file 97/1/0/2. Supporting Papers #3575.

> In these circumstances we could do little less than ask you whether the whole or a portion of the payments could be recovered from the lessees.[431]

However, the Ministry of Works replied that it was unable to help, as all the easement fees had been paid out[432], and it did not consider it would be "practicable to endeavour to obtain refunds"[433]. The Maori owners therefore remain deprived of compensation by the errors made by the Crown officials who staffed the Maori Trustee's office.

[431] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 20 January 1972. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3589.
[432] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 4 February 1972 and 22 August 1973. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3590 and 3591.
[433] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 30 August 1973. Works and Development Hamilton file 97/1/0/39. Supporting Papers #3592.

9 OTHER TAKINGS INITIATED BY LOCAL GOVERNMENT

9.1 Introduction

Local authorities were active initiators of takings of land for purposes that they were responsible for. Their proposals for road, and for public schools, have already been discussed. This chapter examines other takings in which they were involved.

As already stated, while a local authority initiated and undertook the preliminary steps for a taking, the taking itself was carried out by the Crown, when it was proclaimed by the Governor (or Governor-General), when a notice was issued by the Minister of Works, or when a notice was signed by an official acting under delegated authority from the Minister.

9.2 Recreation Ground

Takings for this purpose in four localities (Te Kuiti, Raglan, Otorohanga and Mangapehi) are discussed below. The taking at Mangapehi was actually initiated by a central government agency, but is grouped with the other recreation-related takings in this chapter on local government takings for ease of reference.

9.2.1 Te Kuiti

Te Kuiti Native Township was laid out alongside one bank of the Mangaokewa River. All the meanders of the riverbed were plotted, and streets and town sections laid out down to the riverbank[434]. On the other side of the stream, Maori-owned portions of Pukenui 2D3A and Te Kuiti 2B1B partition blocks also extended down to the river's edge. There had been insufficient understanding by the surveyors and the Native Land Court about the potential for the river to flood, and for it to shift its course. This had become apparent by 1915, when proposals were put forward for a realignment of the river's course to better reflect the natural changes that had taken place. This required additional land to be taken for street, and also included an effort to set back the Native Township (and urban development on the opposite side of the river from the Native Township) away from the edge of the river by interposing some open space. The

[434] South Auckland plans ML 8323/1 and DP 19501. Not included in Supporting Papers.

open space was designated recreation ground. Privately-owned land was taken for river diversion, road and recreation ground[435]. Nearly four acres was taken for recreation ground.

9.2.2 Raglan (Gifting)

The site of the Raglan camping ground was gifted to the Raglan Town Board for the purposes of a public reserve in 1923. This is the only gifting by Maori in Te Rohe Potae District, other than for Native schools, that has been identified during research for this report[436].

Papahua 2 Block had been awarded to Ngati Mahanga. It is located at the tip of the sand spit opposite Raglan township, and in 1923 was described as being "purely a sand bank"[437]. A title search that year showed 28 owners holding a total of 34 shares[438].

The first mention of the proposed gifting is in January 1923, when Remana Nutana, who had applied in 1920 to purchase the block, but whose application had become stalled when a meeting of owners held then had failed to reach a quorum, advised that he had "relinquished all interest in the land, and request you to substitute the name of the Raglan Town Board in lieu of mine in the application"[439]. However, the Waikato-Maniapoto District Maori Land Board Registrar replied that it was necessary to make

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[435] *New Zealand Gazette* 1915 page 4102. Supporting Papers #4001.
South Auckland plan SO 18676. Supporting Papers #2397.

[436] Giftings to church missions in the middle of the nineteenth century are outside the scope of this report. An attempted gifting adjacent to Te Kumi railway station, which was associated with the construction of the Main Trunk Railway, has been covered in the railway takings report, and has not been researched for this report. P Cleaver and J Sarich, *Turongo, the North Island Main Trunk Railway and the Rohe Potae 1870-2008*. Report commissioned by the Waitangi Tribunal, November 2009, pages 151-152.

[437] Maori Land Court minute book 17 ALWM 373. Supporting Papers #3624.

[438] Title Search, attached to Application to Summon Meeting of Owners, 23 February 1923. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3613-3616.

[439] R Nutana, Auckland, to President Waikato-Maniapoto District Maori Land Board, 31 January 1923, attached to Earl, Kent, Massey and Northcroft, Barristers and Solicitors, Auckland to Registrar Waikato-Maniapoto District Maori Land Board, 6 February 1923. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3608-3609.

a fresh application for the calling of a meeting of owners to consider a new resolution[440].

At some stage during the period prior to 1923, a meeting was organised by a Raglan-based official of Raglan County Council official. That official, writing in 1938, stated:

> I started the movement to get this reserve for the town, and was associated with it until the property was transferred to the town as a reserve. At the first the Maoris interested, though they came to the Town Hall from various places to discuss the matter, would hear nothing of it. In fact they had apparently attended mainly for the purpose of airing their grievances against the Pakeha in connection with other land transactions. I therefore closed the meeting and let the matter drop.[441]

However, the proposed gifting must have been revived subsequently, as a fresh application was made to the District Maori Land Board in February 1923, asking that a meeting of owners be called to consider the resolution: "That a gift of the said block be made to the Raglan Town Board"[442]. It was lodged by solicitors for the Town Board. Three days later Rore Erueti of Whatawhata, one of the owners, made a similar application, using similar wording for the resolution[443], suggesting that he too had signed an application prepared by the Town Board or its solicitors. The District Maori Land Board consented to the meeting being called.

The meeting was held at Raglan in June 1923. Although it was attended by just one of the owners, Awarutu Teawaitaia, he had also been appointed to vote as a proxy on behalf of five other owners. In their proxy forms, all five owners declared themselves in favour of the resolution; however, notes on the forms indicate that at the meeting Awarutu Teawaitaia stated that three of them were actually opposed to the resolution. The minutes of the meeting note that, of the 34.00000 shares in the block, 7.33333

[440] Registrar Waikato-Maniapoto District Maori Land Board to Earl, Kent and Massey, Solicitors, Auckland, 19 February 1923. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3610.
[441] County Agent Raglan to County Clerk, 8 December 1938, attached to County Clerk Raglan County Council to Controller of Civil Aviation, 14 December 1938. Transport Head Office file 76/50/251. Supporting Papers #1050-1051.
[442] Application to Summon Meeting of Owners, 20 February 1923. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3611-3612.
[443] Application to Summon Meeting of Owners, 23 February 1923. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3613-3616.

shares were in favour of gifting and 3.20000 shares were against. However, no resolution to gift the land was put to the vote, the minutes instead recording:

> In view of the fact that the great majority of the owners reside at Whatawhata, and that the proxies are informal, Chairman suggested meeting be adjourned to Whatawhata. Awarutu agrees to this. Adjourned accordingly.[444]

The adjourned meeting was reopened at Whatawhata in October 1923. This time three owners were present, Awarutu Teawaitaia, Rore Erueti and Ahiahi Koniria. Awarutu held proxies from six owners, all of whom were in favour of the resolution. The proxy forms had all been signed the day before the meeting and witnessed by the same person, a licensed interpreter.

The meeting was addressed by the Chairman of the Raglan Town Board. Speaking through an interpreter, the same person who had witnessed the proxies, he explained:

> The Board was anxious to obtain the Block as a Public Reserve. They would derive no benefit from it. It was their intention to connect the Block with the mainland by a bridge.
>
> There is a burying-ground on the Block, and this would be reserved to the native owners, and the monument now in the Main Street would also be transferred by the Board to the Reserve. The land would be vested in the Crown as a Public Domain, and would never be sold.
>
> Both pakeha and native would have equal right over the land.[445]

The monument being referred to is the monument to Wi Neera discussed in the previous chapter in connection with the taking of the Raglan Post Office site.

All three owners present intimated that they "were quite agreeable to the gift". The resolution was put and carried unanimously. The owners present and those who had sent in proxy forms held a combined total of 15.03333 shares (44%) of the 34.00000 shares in the block, if the list of owners at the time the block was ordered in 1919 was still unchanged in 1923[446].

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[444] Minutes of Meeting of Owners, 8 June 1923. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3617.
[445] Minutes of Meeting of Owners, 18 October 1923. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3618-3619.
[446] Minutes of Meeting of Owners, 18 October 1923. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3618-3619.

For the District Maori Land Board, it was not so much the percentage of shares that were in favour that was important, as there was at that time no minimum percentage required to allow an alienation of Maori Land to proceed. Rather, it was the unanimity with which the owners spoke at the meeting that was regarded as the significant factor. When the resolution came before the Maori Land Board in November 1923 for confirmation, the Town Board was represented, but no owners were present. The minutes record:

> There was a representative meeting of owners; no dissentients. Board knows the land. It is purely a sand bank having no commercial value whatever.
>
> Board will confirm.[447]

How much of these remarks are a record of what the Town Board's solicitors told the Maori Land Board, and how much of them are the views of the President of the Maori Land Board, is not clear from a reading of the minutes.

It was only after the gifting of the block had been agreed and confirmed that it was surveyed. This meant that the Maori owners were absolved from paying for the survey, as the Town Board paid those costs[448].

On behalf of the owners, the Maori Land Board executed a transfer of Papahua 2 to the Raglan Town Board "as a public reserve"[449]. Raglan Town Board amalgamated into Raglan County Council in about 1940.

After part of the block (5 acres 2 roods 30 perches) was taken for aerodrome in September 1941 (see case study on Raglan Aerodrome and Golf Course in Part III), a balance area of 28 acres 1 rood 10 perches remained. This balance area was transferred to the Crown "for recreation purposes" under the provisions of the Public Reserves, Domains and National Parks Act 1928 in March 1950[450]. It was then brought under the Public Reserves, Domains and National Parks Act 1928 as Kopua

[447] Maori Land Court minute book 17 ALWM 373. Supporting Papers #3624.
[448] Earl, Kent, Massey and Northcroft, Barristers and Solicitors, Auckland, to Registrar Waikato-Maniapoto District Maori Land Board, 14 August 1924. Maori Land Court Hamilton Applications file 12603 (copied on Maori Land Court Hamilton Correspondence file KW73). Supporting Papers #3620.
[449] South Auckland Land Registry Transfer 182007. Supporting Papers #2205-2207.
[450] South Auckland Land Registry Transfer 468930. Supporting Papers #2216-2220.

Domain later that year[451]. Raglan Domain Board was appointed to control and manage the reserve. In 1980 the domain was classified under the Reserves Act 1977 as a recreation reserve[452].

It was not until 1987 that there was a meeting between Ngati Mahanga (some 60 members of the hapu attending), Raglan Domain Board and the Department of Lands and Survey, at which the subject of the burial ground and the monument was raised. The retention of the burial ground by the owners gifting the block, and the relocation of the monument, were accepted by the Department of Lands and Survey as being conditions attached to the gifting of the land, although there had been no conditions specified in the confirmation by the District Maori Land Board nor in the transfer document. However, neither condition had been met[453].

Following the meeting the burial ground was surveyed[454], the monument was relocated, and the Crown applied to the Maori Land Court to have the burial ground revested in the original owners of Papahua 2. The Court at a hearing in June 1990 ordered the revesting[455]. The burial ground was given the appellation Papahua 3.

At the same hearing the Court recommended that the burial ground be set apart as a Maori Reservation, "as an urupa for historical and cultural purposes". The recommendation was accepted and the site was set apart in September 1990[456].

9.2.3 Otorohanga

In July 1923 the whole of Orahiri Y3 block, with an area of just over 14 acres, was taken for a recreation ground and vested in Otorohanga Town Board[457]. This block is located on the inside of the former bed of the Waipa River that is followed by the horseshoe of Orahiri Terrace. The river by this time took a new course that avoided the horseshoe bend.

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[451] *New Zealand Gazette* 1950 page 322. Supporting Papers #4062.
[452] *New Zealand Gazette* 1980 page 2705. Supporting Papers #4125.
[453] Manager Lands Hamilton to Registrar Maori Land Court Hamilton, 24 August 1987. Maori Land Court Hamilton Correspondence file KW73. Supporting Papers #3621-3623.
[454] South Auckland plan ML 21878. Supporting Papers #2336.
[455] Maori Land Court minute book 68 W 274-278. Supporting Papers #3845-3847.
[456] *New Zealand Gazette* 1990 page 3434. Supporting Papers #4129.
[457] *New Zealand Gazette* 1923 page 1724. Supporting Papers #4027.
South Auckland plan SO 21726. Supporting Papers #2400.

For the taking, the Town Board had sought the prior consent of the Native Minister in March 1923, as required by an amendment to the legislation inserted by Section 13 and the Second Schedule to the Public Works Amendment Act 1910. In its application, the solicitor for the Board stated:

> The land is not occupied or used, and two of the native owners – Ngohi Taera and Te Rerehau Haupokia – have already accepted deposits of compensation moneys, based on the amount of the Government Valuation [of £248]….
>
> Our Board is of the opinion that the land is of no use for any other purpose than that mentioned [i.e. recreation ground], and considers that the provisions of the Public Works Act provide for the natives receiving adequate compensation for the land taken.
>
> Should permission be granted, it is the intention of our Board as soon as the land is taken to make the necessary application to the Native Land Court to assess the amount of compensation….
>
> We may further state that we have received no objections from any of the native owners.[458]

Separately the Chairman of the Town Board also wrote to the Native Minister, providing the following reasons for the Minister's consent:

1. The land contains no cultivations, houses or urupas.
2. Several of the native owners are consenting parties.
3. No injury will be done for which adequate compensation is not provided by the Act.
4. The land is unsuitable for any other purpose.
5. Other Natives who are interested in the township will indirectly benefit.[459]

The Native Land Court was asked for its comments on the application, and the Judge advised that an application for amendment of partition was before the Court, and it would be best to wait for that to be resolved first[460]. Just over one week later, however, the application had been withdrawn[461]. The Under Secretary recommended to his Minister that he consent to the taking of the land, and the Minister gave his

[458] Phillips and Patterson, Barristers and Solicitors, Otorohanga, to Under Secretary Native Department, 21 March 1923. Maori Affairs Head Office file 1924/445. Supporting Papers #923-924.
[459] Chairman Otorohanga Town Board to Native Minister, 28 March 1923. Maori Affairs Head Office file 1924/445. Supporting Papers #925-926.
[460] Registrar Native Land Court Auckland to Under Secretary Native Department, 30 April 1923. Maori Affairs Head Office file 1924/445. Supporting Papers #927.
[461] Registrar Native Land Court Auckland to Under Secretary Native Department, 8 May 1923. Maori Affairs Head Office file 1924/445. Supporting Papers #928.

consent[462]. The consent was added to the copy of the survey plan showing the land to be taken that was lodged with the Public Works Department:

> The Native Minister hereby consents to that part of Orahiri Y3 Block shown on the plan being taken under the Public Works Act 1908 for the purpose of a Recreation Ground.
> Dated the 26th day of May 1923.
> JG Coates
> Native Minister[463]

There is nothing on the Native Department file to explain what consideration was given to the application, and what matters were assessed, before the consent was given. The Minister was not given any background or advice, merely the recommendation that consent should be given. The apparent lack of any serious or in-depth consideration that went into the consent has the appearance of making it an empty gesture. In this respect it was similar to the requirement to obtain the Governor's consent for the taking of any land that was occupied, cultivated or contained burial grounds. Both were additional procedural steps required by legislation that turned out to be of little or no purpose because of the indifferent manner in which they were handled administratively.

Afterwards the taking for recreation ground was the subject of a petition to Parliament in 1924. Parekaihua Tuhoro, describing himself as the principal owner of the block, explained in the petition:

> That no notices whatsoever were given to us of the said Board's intention to take this land, such notice being required to be given us under Section 15 and 18 of the Public Works Act 1908.
>
> That the land so taken has been the home of myself and my ancestors for centuries past, where we have continuously cultivated our foods up. That area taken also comprises our Pleasure Grounds on the banks of the Waipa Stream, where we indulge in fishing, eeling and bathing.
>
> That the land was the old home of our ancestors, containing the peach and cherry groves planted by our fathers, and the two famous eel pahs known to them as Te Mutumutu and Te Ararimu….

[462] Under Secretary Native Department to Native Minister, undated, approved by Minister 11 May 1923, on Registrar Native Land Court Auckland to Under Secretary Native Department, 8 May 1923. Maori Affairs Head Office file 1924/445. Supporting Papers #928.
[463] Consent of Native Minister, 26 May 1923. Maori Affairs Head Office file 1924/445. Supporting Papers #929.

> That the Otorohanga Town Board already has a suitable domain and recreation ground in a better position awaiting development, with ample facilities for all present and future requirements for Town and district. For these and other reasons that the land has been taken in an irregular manner, we respectfully urge that the Proclamation be revoked, and our land returned to us.[464]

The petition also complained about the circumstances of the award of compensation, which is discussed in the chapter on compensation.

The Public Works Department's response was that, so far as it knew, the taking had been lawfully carried out. As the taking had been initiated by the Town Board, any revocation would also have to be initiated by the Town Board.

> As far as the Department knows the Board duly complied with the Public Works Act. A statutory declaration to that effect was received from the Chairman of the Town Board before the Proclamation was issued. The Board published the Notice in the *Kahiti*[465], presumably because the land was not held by the Natives under title registered under the Land Transfer Act. As the land was owned by Natives, the consent of the Native Minister was obtained, and this was dated 26th May 1923…. If no compensation has been paid or awarded, and the Town Board does not require the land, there is power to revoke the Proclamation if the Board so desires.[466]

The Department's response indicates that it was not prepared to look behind the façade of the Town Board Chairman's statutory declaration, to investigate the necessity for taking the land, nor was it prepared to intervene by asking the Town Board to reconsider its decision that the land should be taken. The Native Affairs Committee, however, must have felt that there were still some unanswered matters, as it resolved to refer the petition to the Government for consideration[467].

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[464] Petition 107/1924 of Parekaihua Tuhoro. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2288-2289.
[465] Publication in the *Kahiti* has not been researched, but the Notice of Intention to Take was published in the *New Zealand Gazette* (*New Zealand Gazette* 1922 page 1304 - Supporting Papers #4026).
[466] Assistant Under Secretary for Public Works to Under Secretary Native Department, 13 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 22 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2283-2286.
[467] Report of Native Affairs Committee on Petition 107/1924, 3 November 1924. *Appendices to the Journals of the House of Representatives* (AJHR), 1924, I-3, page 45. Supporting Papers #3906.

The Government's response was nonexistent. The Under Secretary to the Native Department referred it to his Minister "for your information", and the Minister marked the file "seen"[468].

9.2.4 Mangapehi

Mangapehi was a coal-mining and timber town, with the coal mines operated by a Government department, State Coal Mines; this is why the taking was initiated by central government. Four acres was taken for recreation ground in 1951[469].

The Maori-owned land had been used for local sporting events for some years, with the owners' permission. One part of the site was occupied by the local bowling club, which held a lease from the owners. The first reference to land for recreation purposes becoming publicly-owned was in 1946, when a representative of the Physical Welfare Branch of Internal Affairs Department visited Mangapehi, and reported on his discussions with the bowling club.

> Altogether there is an area of 5-6 acres of flat land they would like to acquire as Domain. I suggested to them they should endeavour to obtain the consent of the native owners, but promised that this Department would take the matter up with Lands Department [to see if] the land could be taken over as a Domain. There is no Domain [at present] in the vicinity.

His report recommended:

> Approach the Minister of Lands in regard to taking over the recreation areas at present held part under lease from the Maori owners and part without any title, consent or security, as a Public Domain.[470]

An inspection by a Department of Lands and Survey official identified four acres that was suitable for a domain and should be purchased from the Maori owners. However, he considered that purchase would not be a straightforward matter.

> As far as can be ascertained there are seven owners concerned, viz: Mrs Wairoa [of] Te Koura, Mrs Davies, Mrs Ormsby and Mrs Crown [of] Mangapehi; Mrs Parawihi [of] Marton, [and] Mrs Mahure and Mr J Wihi [of] Te Kuiti. Mrs Wairoa, who is reputed to be one of the hardest to deal with, has intimated that she is not anxious to sell, but would consider leasing.

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[468] Under Secretary Native Department to Native Minister, 8 November 1924, and Native Minister to Under Secretary Native Department, 10 November 1924, both on cover sheet to Maori Affairs Head Office file 1924/445. Supporting Papers #930.

[469] *New Zealand Gazette* 1951 page 454. Supporting Papers #4064.
Taranaki plan SO 8408. Supporting Papers #2452.

[470] LW Woods to Secretary for Internal Affairs, 30 September 1946. Lands and Survey Head Office file 1/1174. Supporting Papers #332-333.

> Apparently some of these Natives will not cooperate with local residents, and will only allow the use of their land at an exorbitant rental. In fact they have forced some sports clubs out of existence.[471]

The Native Department was asked for its comments on the acquisition of land for a domain[472], and a Maori Welfare Officer interviewed all but two of the owners; they were all willing to lease the area required, but purchase seemed unlikely[473]. While one of the owners did indicate a willingness to gift the area to the Crown for a domain if she could obtain a partition order vesting the proposed area solely in her name, there appeared to be little chance that the other owners would agree to this course of action. The Under Secretary for Maori Affairs therefore advised:

> I shall endeavour to see the principal owner personally as soon as possible, and endeavour to obtain her consent, and through her the consent of the other owners, to the taking of the land under the Public Works Act 1928. I have found her very cooperative when I have approached her personally in matters of this nature on previous occasions.[474]

In May 1948, independently of this proposed Crown approach, a Maori Agent advised that the owners were prepared to gift six acres (including the land leased to the bowling club) for recreation purposes.

> The Maori owners agreed to a suggestion made by the writer that an area of approximately six acres be made as a gift to the Public of Mangapehi by the Ringitanga Family for recreation purposes for both races, to be designated 'Ringitanga Park'.
>
> The area is to be a free gift to be vested in a Domain Board on which the Maori people will have a representative.[475]

However, four months later the local Maori Welfare Officer advised that his contact with the owners showed that none of them was aware of the gifting offer, and none of them was prepared to consent to the gifting[476].

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[471] Field Inspector Harrigan to Commissioner of Crown Lands New Plymouth, 14 February 1947. Lands and Survey Head Office file 1/1174. Supporting Papers #334-336.
[472] Under Secretary for Lands to Under Secretary Native Department, 14 April 1947. Lands and Survey Head Office file 1/1174. Supporting Papers #337.
[473] Report by Maori Welfare Officer Te Kuiti, 16 July 1947, attached to Under Secretary Native Department to Under Secretary for Lands, 15 August 1947. Lands and Survey Head Office file 1/1174. Supporting Papers #338-339.
[474] Under Secretary for Maori Affairs to Under Secretary for Lands, 18 December 1947. Lands and Survey Head Office file 1/1174. Supporting Papers #340.
[475] G Elliott to Chairman Mangapehi Domain Board and General Manager Ellis and Burnand Ltd, Mangapehi, 18 May 1948, attached to Under Secretary for Maori Affairs to Under Secretary for Lands, 2 July 1948. Lands and Survey Head Office file 1/1174. Supporting Papers #341-345.

The Under Secretary for Lands wanted to persevere with acquisition of the Maori-owned land. He asked the Maori Affairs Department to continue its efforts to purchase or lease land for a domain, adding: "Do you think there would be any possibility of acquiring their interests under the Public Works Act 1928?"[477]. The Under Secretary for Maori Affairs, on his own initiative, then appears to have recommended to his Minister that the land be taken for domain under the Public Works Act[478]. Before the Minister (who was also the Prime Minister) would give his approval, he asked his Maori Liaison Officer (MR Jones of Ngati Maniapoto) to go to Mangapehi and speak to the owners. This meant that the owners would have been approached three times in seventeen months, with this latest approach having the threat of a Public Works Act taking hanging over it in the background if the owners did not agree to the Crown's proposals. The Liaison Officer reported back on his meeting with "the principal owners" of Rangitoto-Tuhua 68G2D2B2B7, the result of the meeting showing that the Crown's persistent pressure (and the involvement on its behalf of a Maniapoto kaumatua) had paid off.

> The owners were reluctant to discuss the proposal. They pointed out that although the block contains 806 acres, the only part of any real value is the limited flat land at Mangapehi, the greater part of the land being steep hills and gullies of no value even as farm lands.
>
> Over the years the family has donated an area for the school grounds, areas have been taken for public amenities, and lastly the present proposal to take four more acres, which have had the effect of steadily reducing what little real value they have in the block.
>
> They fully appreciate the lack of recreational grounds for the growing population of Mangapehi, and for that reason they are agreeable to give favourable consideration to the creation of the Domain, subject to the following conditions which are submitted for your favourable consideration:
>
> 1. That a special valuation of the four acres be made, taking into consideration the limited flat area remaining to the owners and the rental payable for the Bowling Green and for other adjacent sections.
> 2. That on the valuation being available the owners be given an opportunity to consider such valuation.

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[476] Maori Welfare Officer Te Kuiti to Registrar Maori Land Court Auckland, 1 September 1948, attached to Under Secretary for Maori Affairs to Under Secretary for Lands, 22 September 1948. Lands and Survey Head Office file 1/1174. Supporting Papers #346-347.

[477] Under Secretary for Lands to Under Secretary for Maori Affairs, 27 October 1948. Lands and Survey Head Office file 1/1174. Supporting Papers #348.

[478] Under Secretary for Maori Affairs to Under Secretary for Lands, 22 December 1948. Lands and Survey Head Office file 1/1174. Supporting Papers #350-352.

3. That if valuation is acceptable, land to be taken by Proclamation.
4. That consideration be paid to the Waikato-Maniapoto Maori Land Board for immediate distribution to the owners.
5. That one representative on the Domain Board be appointed on the recommendation of the descendants of Waikohika Kereti, the original owner of the land.

He concluded by recommending to the Minister that he withhold his consent to the taking until the valuation had been approved by the owners, and that he should be allowed to continue to be involved in the negotiations with the owners[479].

There was some confusion about whether the domain would have an area of four acres or six acres, with the Under Secretary for Maori Affairs urging that only four acres be taken as "the acquisition even now is likely to be a matter of some delicacy", and had more chance of success if "the area required is kept down as far as is compatible with the settlement's requirements"[480]. Despite this the valuation, when it became available in March 1949, was for an area of 6½ acres[481]. When this was presented to the Minister for Maori Affairs, he responded by asking "that the matter be reconsidered and the Domain project recast on the basis of a total of four acres"[482].

After local discussion with members of the so-called Domain Board at Mangapehi[483], a 4½-acre recreation area was agreed to, whose value could be arrived at by a pro rata reduction on the 6½-acre valuation[484]. This would have given an unimproved value of £90 and Maori-owned improvements of £35 (the remainder of the improvements being the Bowling Club assets). In February 1950 the Under Secretary for Maori Affairs was able to report:

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[479] Liaison Officer to Minister of Maori Affairs, 8 December 1948, attached to Under Secretary for Maori Affairs to Under Secretary for Lands, 22 December 1948. Lands and Survey Head Office file 1/1174. Supporting Papers #350-352.
The Liaison Officer had also spoken direct to Department of Lands and Survey officials. Notes of Interview with Liaison Officer, undated. Lands and Survey Head Office file 1/1174. Supporting Papers #349.
[480] Under Secretary for Maori Affairs to Under Secretary for Lands, 12 January 1949. Lands and Survey Head Office file 1/1174. Supporting Papers #353.
[481] District Valuer Te Kuiti to Officer in Charge Valuation Department Auckland, 25 March 1949. Lands and Survey Head Office file 1/1174. Supporting Papers #354-355.
[482] Under Secretary for Maori Affairs to Director General of Lands, 14 June 1949. Lands and Survey Head Office file 1/1174. Supporting Papers #356.
[483] A domain had not yet been established, so it is not clear how a Domain Board could have been established.
[484] Commissioner of Crown Lands New Plymouth to Director General of Lands, 16 August 1949, and Director General of Lands to Under Secretary for Maori Affairs, 29 August 1949. Lands and Survey Head Office file 1/1174. Supporting Papers #357-359 and 360.

> Following a recent meeting with representative owners at Te Kuiti recently, it was agreed that the matter has now reached a stage when acquisition proceedings can commence, it being understood that the area to be acquired for domain purposes will be limited to 4½ acres, and that in the assessment of compensation due consideration will be given to the prospective value of the land and to sums awarded for other land in the locality.[485]

The proposed taking of 4½ acres was recommended to the Minister of Lands, and approved by him. The submission to the Minister used the values for the 6½-acre area (£130 unimproved and £50 improvements) rather than figures reduced on a pro rata basis. The Minister was told:

> The Maori Affairs Department suggests that in view of the large number of owners, but having regard to the fact that the principal owners are agreeable to sell to the Crown for a Domain, the area be acquired under the Public Works Act 1928, and this would save further long drawn out negotiations.[486]

After a survey plan was prepared showing the area to be taken had an area of 4 acres 1 rood 15 perches[487], the Ministry of Works was asked to proclaim the taking. When proposing to its Minister that the land be taken under the Public Works Act and that a Notice of Intention to Take the land be issued, the Ministry stated that it should be compulsorily acquired because "the land is owned by nine Maoris, of whom one is a minor, and the delay in getting agreements would be considerable"[488]. The Notice of Intention, issued in December 1950[489], was personally served on five of the owners and the trustee for the minor[490], and was sent by registered post to the three other owners[491]. No objections were received, and the land was taken in March 1951[492].

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[485] Under Secretary for Maori Affairs to Under Secretary for Lands, 3 February 1950. Lands and Survey Head Office file 1/1174. Supporting Papers #361.
[486] Director General of Lands to Minister of Lands, 13 March 1950, approved by the Minister 22 March 1950. Lands and Survey Head Office file 1/1174. Supporting Papers #362.
[487] Taranaki plan SO 8408. Supporting Papers #2452.
[488] District Engineer Hamilton to Commissioner of Works, 27 October 1950. Works and Development Hamilton file 42/17. Supporting Papers #3286.
[489] *New Zealand Gazette* 1950 page 2077. Supporting Papers #4063.
[490] Engineer Te Kuiti to District Engineer Hamilton, 17 January 1951 and 18 January 1951. Works and Development Hamilton file 42/17. Supporting Papers #3287 and 3288.
[491] File note, undated (approximately 22 January 1951). Works and Development Hamilton file 42/17. Supporting Papers #3289.
[492] District Engineer Hamilton to Commissioner of Works, 21 February 1951. Works and Development Hamilton file 42/17. Supporting Papers #3290.
New Zealand Gazette 1951 page 454. Supporting Papers #4064.

Because there were buildings on the land, it was also necessary to obtain the Governor General's consent to the taking[493]. In a short submission that contained less information about the proposal than the submission recommending the taking, it was stated only that "there are buildings on the property, and this Order-in-Council is necessary in order to comply with Section 18(b) of the Act"[494]. There was no explanation about what sort of buildings they were, how they would be affected by the intended taking, and why it was necessary to take the land plus the buildings. While the need to obtain consent to a taking of land with obvious signs of occupation and development might appear to be a protection against the Crown's over-enthusiasm, in practice it turned out to be nothing of the kind. The buildings were actually related to the recreation use to which the land was already being put, though this was not disclosed or discussed in the submission.

It was only after the land had been taken that an objection was received. Hapina Pouaka of Mangapehi wrote to the District Engineer in Hamilton:

> I am in receipt of your letter of April 18th addressed to me at Marton, advising that you have acquired under the Public Works Act 1928 part of Rangitoto-Tuhua 68G2D2, amounting to an area of 4 acres 1 rood 15 perches as a Mangapehi domain.
>
> I have consulted the other owners in this land, and whilst we have for some years past agreed to allow this land to be used as sporting fields, and are prepared to allow the same use in the future, we wish to lodge an emphatic protest at the action of the Crown in compulsorily acquiring the land.
>
> As owners of the land we have always had, and have exercised, the right to graze our milking cows (house) there, whilst being used for sporting purposes, and the loss of this grassed land is a serious loss to us.
>
> We claim also that we have not been consulted, and the gazetting of the Proclamation was not sufficient notice of the Crown's intention to acquire the land.
>
> We the owners of this land ask that the Minister of Works be asked to receive submission from us to hear our views.[495]

[493] *New Zealand Gazette* 1951 pages 459-460. Supporting Papers #4065-4066.
[494] District Engineer Hamilton to Commissioner of Works, 21 February 1951. Works and Development Hamilton file 42/17. Supporting Papers #3291.
[495] Hapina Pouaka, Mangapehi, to District Engineer Hamilton, 8 May 1951. Works and Development Hamilton file 42/17. Supporting Papers #3292.

This letter from one of the owners was followed up by a notice of objection from the solicitors for the owners[496].

The response from the Ministry of Works was that the objection had been received out of time, the taking had already occurred, and application had been made to the Maori Land Court for it to determine compensation[497].

The application to assess compensation was heard by the Court in November 1951[498]. The main issue discussed at the hearing was the inclusion of the area leased to the Bowling Club in the 4½ acres that had been taken. Because this matter could not be resolved, the application was adjourned at the end of the hearing. An agent for the owners wrote to the Commissioner of Works after the hearing:

> When the matter came before the Court it was agreed to by all the parties, including the Ministry of Works representatives – after preliminary conference – that the portion containing 1 acre and 37 perches under lease and occupied by the Mangapehi Bowling Club Inc should be excluded….
>
> On behalf of the parties hereto, and particularly for the Maori owners, I as their agent and on their behalf, do hereby apply that the Proclamation taking the said land be amended, so as to specifically exclude the area under lease to and occupied by the Mangapehi Bowling Club Inc….
>
> In consequence of the facts of the matter as set out above, I have been directed by Judge Beechey, the presiding Judge of the Court, to refer this matter to you for further consideration.[499]

The Land Purchase Officer for the Ministry of Works wrote his own report to the Commissioner of Works about what had happened at the hearing.

> During the course of the hearing it became apparent that the Maoris were very antagonistic towards the Crown's attitude in taking that part of the land which had previously been leased to the Mangapehi Bowling Club. They further stated that they were unwilling to discuss compensation in any way unless the area occupied by the Club was excluded from the Proclamation. In the circumstances, therefore, the Judge was unable to deal with the matter on the basis of part only of the land, and agreed to adjourn the hearing to allow the Maoris to make representations for the partial revoking of the Proclamation.

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[496] Corbett and Low, Barristers and Solicitors, Te Kuiti, to District Engineer Hamilton, 14 May 1951. Works and Development Hamilton file 42/17. Supporting Papers #3293.
[497] Referred to in Corbett and Low, Barristers and Solicitors, Te Kuiti, to District Engineer Hamilton, 27 June 1951. Works and Development Hamilton file 42/17. Supporting Papers #3294.
[498] Maori Land Court minute book 77 OT 105-106. Supporting Papers #3716-3717.
[499] TM Hetet, Te Kuiti, to Commissioner of Works, 28 November 1951. Works and Development Hamilton file 42/17. Supporting Papers #3295.

> Dealing with the area held by the Club, there was in existence prior to the taking a lease covering 1 acre 0 roods 37 perches for 15 years from the 1st of July 1946, with a right of renewal for a further 15 years. The rent was £12 per annum. According to the terms of the lease the Club had the right to remove all buildings on the expiry of the lease. The Club itself was quite satisfied with the lease arrangements, and evidently was somewhat perturbed by the Crown's action in including this area in the Proclamation, in that its inclusion, according to the Club's solicitor, virtually debarred it from carrying out its intention (under its constitution as the Mangapehi Club) of obtaining a liquor licence. It therefore appeared as a result of the evidence produced by the interested parties at the Court hearing that it would be in the interest of both the Mangapehi residents and the Maoris to exclude the Club's area from the Proclamation, as both the local people and the Maoris were evidently in favour of the original leasehold arrangements continuing. However this Department's representatives made no comment on this aspect, and definitely did not make any statement to the Court to this effect….
>
> Following on the Court's decision to adjourn the matter, I obtained an interim agreement from the Maoris for a satisfactory sum covering the balance area in the Proclamation.
>
> It would now appear therefore that the matter should be referred back to the Commissioner of Crown Lands at New Plymouth for a further report.[500]

The Bowling Club also made representations to its local Member of Parliament, who passed them on to the Minister of Lands[501]. The Minister and his Department disapproved of having licensed premises on public domain, and agreed to the revocation of the taking Proclamation insofar as it related to the Bowling Club's area of occupation. This would have the effect of returning the land to its Maori owners, and restoring the lease arrangement that the Club had with the owners[502]. The area to be revoked was then surveyed, confirming that the area of the Club's lease was 1 acre 0 roods 37 perches[503].

However, the 4½ acres of taken land had already been reserved under the Public Reserves, Domains and National Parks Act 1928 as a recreation reserve to be known

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[500] District Commissioner of Works Hamilton to Commissioner of Works, 15 January 1952. Works and Development Hamilton file 42/17. Supporting Papers #3296-3297.
[501] WJ Broadfoot MP to Minister of Lands, 15 November 1951. Lands and Survey Head Office file 1/1174. Supporting Papers #363.
[502] Director General of Lands to Minister of Lands, 17 March 1952, approved by Minister 26 March 1952, and Minister of Lands to WJ Broadfoot MP, 26 March 1952. Lands and Survey Head Office file 1/1174. Supporting Papers #364-365 and 366.
[503] Taranaki plan SO 8503. Supporting Papers #2453.

as the Mangapehi Domain[504]. Legal opinion was that this reservation would have to be revoked before the taking Proclamation could be revoked[505]. As revocation of a reservation required the consent of the House of Representatives[506], it was decided that special legislation should be passed as a more convenient method of allowing the taking of the Bowling Club area to be revoked[507]. The special legislation was passed as Section 26 Reserves and Other Lands Disposal Act 1952.

The revocation of the bowling club lease area meant that the balance that remained taken land had an area of 3 acres 0 roods 18 perches. It was this area that the Land Purchase Officer had reached an interim agreement about after the hearing, the agreement being for the payment of £400. However, when a second hearing was held in February 1953, and the agreement was submitted to the Court, it was challenged by some of the owners, who presented evidence claiming that the land was worth significantly more. The Land Purchase Officer later explained what has happened:

> Some months prior to the Court hearing I endeavoured to obtain agreement as to price from the Maori owners. Of these owners there were two opposing factions, each represented by a different Maori Agent. Subsequent to my obtaining verbal agreement at £400 from the owners, who had been openly antagonistic to the taking, I left a form of agreement with their Agent on the understanding he would obtain the necessary signatures and then pass it on to the other Agent for completion by his clients, from whom no opposition was expected and who had in 1948 agreed to make over as gift to the public of Mangapehi an even larger area. It so happened however that the Agreement for £400 was ultimately signed by the former faction only, and the latter did not disclose until the day of the hearing that a much larger sum would be asked.[508]

As he was not prepared for a failure to reach agreement on the compensation to be paid, the Land Purchase Officer had turned up to the hearing with just one valuation witness, who under cross-examination turned out to be unfamiliar with the township. The Judge concluded that the Crown's witness was unreliable, and his award

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[504] *New Zealand Gazette* 1951 page 1012. Supporting Papers #6067.
[505] File note, 5 May 1952. Lands and Survey Head Office file 1/1174. Supporting Papers #367.
[506] Director General of Lands to Commissioner of Works, 8 May 1952 and Director General of Lands to Commissioner of Crown Lands New Plymouth, 21 May 1952. Lands and Survey Head Office file 1/1174. Supporting Papers #368 and 369.
[507] Director General of Lands to Minister of Lands, 12 June 1952. Lands and Survey Head Office file 1/1174. Supporting Papers #370.
[508] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 25 March 1953, attached to District Commissioner of Works Hamilton to Commissioner of Works, 25 March 1953. Works and Development Hamilton file 42/17. Supporting Papers #3298-3302.

concurred with a higher value of £600 advanced by some of the owners, which was based on the rental the Bowling Club was prepared to pay for its lease. He awarded compensation of £667-10-0d, including interest for the period since the taking[509]. This was a substantial increase on the March 1949 Government Valuation for 6½ acres of £180 (excluding Bowling Club improvements), and a November 1951 special Government Valuation for the 3 acres obtained by Ministry of Works of £430[510]. However, the Crown was obliged to accept the Court's award[511].

9.3 Waterworks

Provision of a piped water supply required takings of Maori-owned land by Te Awamutu Borough Council and Otorohanga Borough Council, discussed in the two sub-sections below.

9.3.1 Te Awamutu Water Supply

Te Awamutu Borough Council drew its water from the lower slopes of Mount Pirongia. Up until 1968 it achieved this without the need to take any land under the Public Works Act. That year it notified its intention to compulsorily acquire 428½ acres of Maori-owned land being the whole of Mangauika B2 Section 2 block[512]. When no objections were received, it applied to the Ministry of Works to have the land taken, explaining:

> This Block covers the headwaters of the stream feeding the Te Awamutu Borough water supply which has been in the hands of private Maori owners. Unfortunately the owners have allowed the Block to be milled for timber, and this has polluted the water supply. Our client Council therefore is most anxious that the taking of the land under the Act should proceed with the minimum of delay. We would be pleased, therefore, if you could do everything to expedite the issue of the Proclamation so that our client Council may enter and take such remedial steps as it can to prevent further pollution.[513]

Not explained in this letter was why the Council had failed to negotiate any protective covenants beforehand with owners of land in the catchment above its water supply

[509] Maori Land Court minute book 78 OT 41, 41A and 42-44. Supporting Papers #3718-3722.
[510] Commissioner of Works to Director General of Lands, 3 July 1953. Lands and Survey Head Office file 1/1174. Supporting Papers #371.
[511] Director General of Lands to Minister of Lands, 9 July 1953. Lands and Survey Head Office file 1/1174. Supporting Papers #372-373.
[512] *New Zealand Gazette* 1968 page 231. Supporting Papers #4092.
[513] Swarbrick and Swarbrick, Barristers and Solicitors, Te Awamutu, to District Commissioner of Works Hamilton, 12 June 1968. Works and Development Hamilton file 43/21/0. Supporting Papers #3307-3308.

intake, and why the Council felt that owning the land, rather than reaching an agreement with the Maori owners, was necessary before future remedial measures could be undertaken.

As far as the Crown was concerned, the Borough Council had correctly followed the preliminary steps for a taking, and had concluded that the taking was necessary. It saw no reason not to take the land. The Resident Engineer in Hamilton certified:

> There are no known objections to the taking of the land shown on S.O. 44259 for the purpose of water supply.
>
> There are no buildings, yards, gardens, orchards, vineyards, ornamental parks, pleasure grounds or burial grounds on the land to be taken.[514]

After a minor amendment was made to the Council's Memorial request that the land be taken[515], the block was taken and vested in the Borough Council in September 1968[516].

9.3.2 Otorohanga Water Supply

Part of Orahiri 2 Section 5B2A block, with an area of 98½ acres, was taken for water supply and vested in Otorohanga Town Board in September 1949[517]. This Maori-owned land, leased to a European, adjoined other land in the water supply catchment area already owned by the Town Board.

9.4 Sanitary Works

Takings for sanitary works from Maori-owned land occurred at Te Kuiti in 1912 and 1975-1976, and at Raglan in 1974. The 1912 taking is possibly for a rubbish dump, while the 1974 and 1975-1976 takings were for sewage treatment ponds.

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[514] Resident Engineer Hamilton to District Commissioner of Works Hamilton, 19 June 1968. Works and Development Hamilton file 43/21/0. Supporting Papers #3309.
[515] District Commissioner of Works Hamilton to Swarbrick and Swarbrick, Barristers and Solicitors, Te Awamutu, 1 July 1968, and Swarbrick and Swarbrick, Barristers and Solicitors, Te Awamutu, to District Commissioner of Works Hamilton, 7 August 1968. Works and Development Hamilton file 43/21/0. Supporting Papers #3310 and 3311.
[516] District Commissioner of Works Hamilton to Commissioner of Works, undated. Works and Development Hamilton file 43/21/0. Supporting Papers #3312.
New Zealand Gazette 1968 page 1520. Supporting Papers #4093.
[517] *New Zealand Gazette* 1949 page 2375. Supporting Papers #4060.

The taking at Raglan was objected to by the local tribal committee. The reasons given by the Tainui Tribal Committee, when a Notice of Intention to Take was issued in September 1973[518], were:

1. Siting of ponds 300 yards from Maori Community Centre, and the possibility of the prevailing winds carrying offensive smells into the area.
2. Siting of the ponds adjacent to an entirely Maori residential and community area.
3. Possible pollution of shellfish grounds.
4. Decrease of value of Maori property in the area.
5. Proximity to domain of Te Atai-o-rongo, the taniwha guardian of the Tainui people.
6. Further loss of Maori coastal lands.
7. Raglan Maoris have lost too much land through acquisition for public use.[519]

However, it is likely that the Committee's objection was disregarded by the County Council, because it was not from the Maori owner of the land. The oxidation ponds proposal required 15 acres of land owned by a Pakeha, and 9 acres (part of Rakaunui 1C2A2) owned by a sole Maori owner; this block had been declared to be European Land (i.e. no longer subject to the Maori Land Court) as a result of Part I of the Maori Affairs Amendment Act 1967. The Maori owner had not himself objected to the proposed taking[520].

In these circumstances the Maori Affairs Department, when the proposal was brought to its attention, felt there was nothing it could do.

> While one must sympathise with those directly affected, it must be conceded that the taking of the lands affected has been carried out strictly in accordance with existing regulations, and there seems to be little that you, as Minister, can do to intervene. There will no doubt be rights of appeal against the Raglan County Council's decision….[521]

Nor was there any sympathy from other arms of the Crown. The Minister of Health, writing to Wetini Tuteao in August 1974, stated:

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[518] *New Zealand Gazette* 1973 page 1868. Supporting Papers #4108.
[519] Secretary Tainui Tribal Committee to County Clerk Raglan County Council, 3 October 1973, attached to KT Wetere MP to Minister of Maori Affairs, 10 October 1973. Maori Affairs Head Office file 19/1/671. Supporting Papers #957-959.
[520] Assistant District Officer Hamilton to Secretary for Maori Affairs, 21 November 1973. Maori Affairs Head Office file 19/1/671. Supporting Papers #960.
[521] Secretary for Maori Affairs to Minister of Maori Affairs, 7 December 1973, and Deputy Secretary for Maori Affairs to KT Wetere MP, 7 June 1974. Maori Affairs Head Office file 19/1/671. Supporting Papers #964-965 and 961-962.

> The ponds are part of a much-needed sewage disposal scheme. This scheme has been examined and approved by the Ministry of Works and Development and the Department of Health. It has also been examined by the water Resources Council, which is responsible for maintaining the purity of the waters in Raglan Harbour, and a "right" has been granted, under the Water and Soil Conservation Act 1967, which will permit the discharge. The discharge will be a purified effluent which will not affect the quality of the waters into which it is made.
>
> The completion of the scheme, as planned, will result in a substantial improvement in the quality of the harbour waters, which have, particularly in recent years, been polluted by increasing amounts of untreated sewage. In view of the high standard of the treatment that the oxidation ponds will afford, and of the ample dilution that the harbour waters provide, the effluent will not pose any threat to the shellfish areas in which you are interested. There is, therefore, no justification for stopping the works or altering the plan which they are following.[522]

The nine acres (3.6414 hectares) of Rakaunui 1C2A2 were taken for sanitary works and vested in Raglan County Council in November 1974[523].

9.5 Flood Protection Works

A high intensity rainstorm over the period 22-24 February 1958 caused major flooding in the Waipa Valley. Otorohanga township, in particular, was severely affected[524]. After the flood extensive studies were carried out by the Waikato Valley Authority. These studies considered the problems at Otorohanga to have been caused by a combination of a narrowing of the Waipa Valley and river channel further downstream, a meandering river channel in the part of the valley around Otorohanga, and constriction of the river channel by willow growth. The solution to these problems was channel realignment upstream and downstream of the town, channel clearing, and stopbank defences around the town itself[525]. The straightening of the channel, and the provision of stopbanks required the acquisition of privately-owned

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[522] Minister of Health to Wetini Tuteao, Remuera, 21 August 1974. Maori Affairs Head Office file 19/1/671. Supporting Papers #963.

[523] *New Zealand Gazette* 1974 page 2584. Supporting Papers #4115.

[524] The extent of the flooding in the township is apparent in

(1) Photographs supplied to Waikato Valley Authority by *New Zealand Herald*. Supporting Papers #3848-3860.

(2) Waikato Valley Authority, *Otorohanga Borough Flood Protection Scheme: Brochure Commemorating Official Opening by Minister of Works, 12 March 1966*. Supporting Papers #3861-3867.

[525] Waikato Valley Authority, *Report on Major Control Scheme for Flood Protection, Lower Waikato and Waipa Rivers*, October 1959.

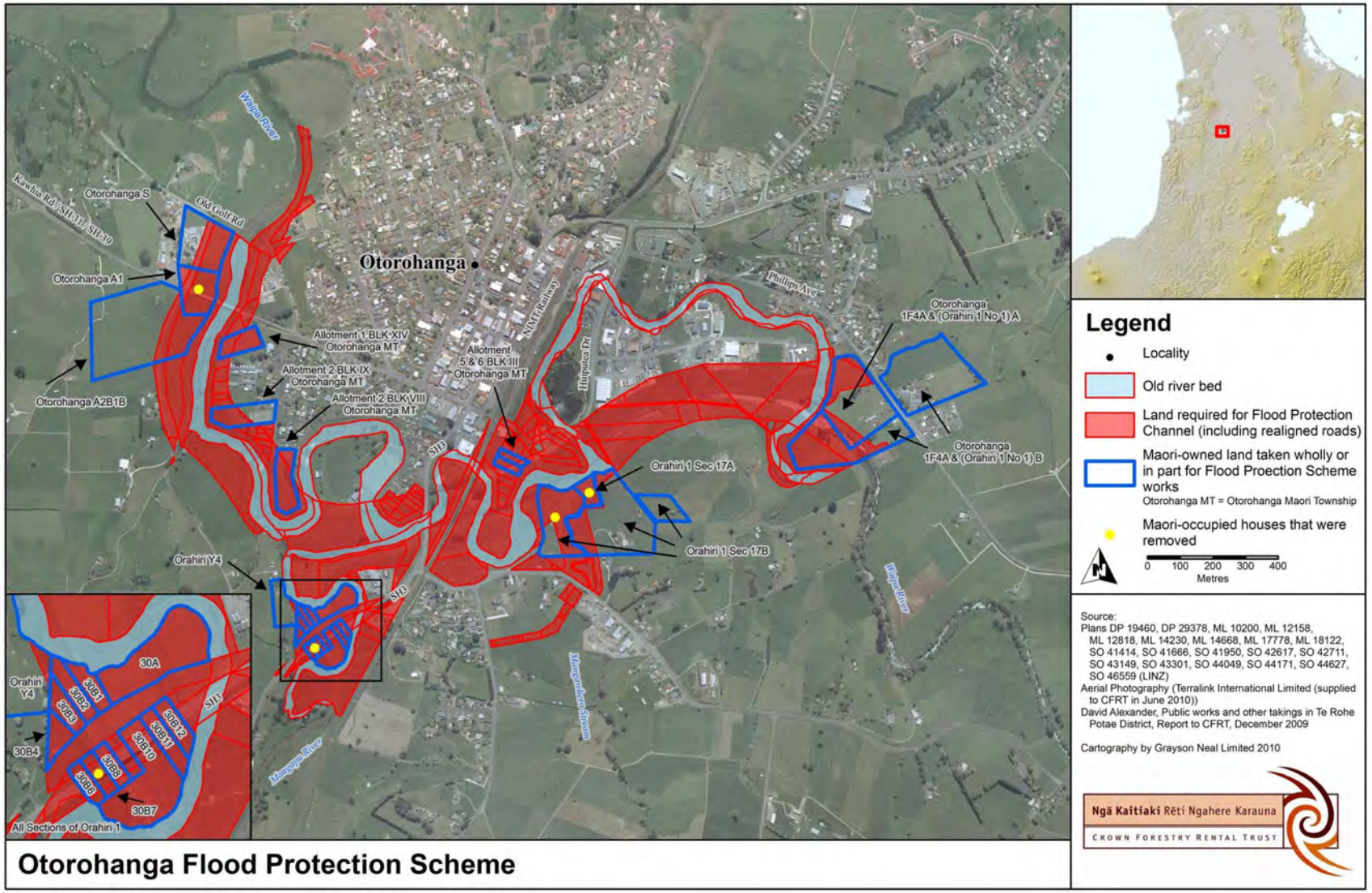
land. Since Maori were still significant landowners in the Otorohanga district, and in and around the edge of the Native Township, they became caught up in land title changes that the new works would require.

The scale of the works was greater than could be borne by the local community alone, and central government subsidy funding was an integral part of the flood protection scheme. The funding for the stopbanks was channelled through the National Water and Soil Conservation Organisation, serviced by the Ministry of Works. Other funding was provided by the National Roads Board (also serviced by the Ministry of Works) and the Railways Department. Local organisations involved were Waikato Valley Authority and Otorohanga Borough Council. The heavy involvement of the Ministry meant that there was a reliance on the Public Works Act to implement the land title changes.

As with road realignments, the organisations used their powers of entry provided by the Public Works Act to go on to privately-owned land and construct the flood protection works. Only after the works had been completed were they surveyed, and the extent of privately-owned land required shown on survey plans. This meant that, while most of the stopbank construction work took place in the early 1960s, and there was an official opening of the flood protection scheme in March 1966[526], the first survey plan was not completed until 1963, and the first takings did not occur until 1965. The last taking associated with the flood protection scheme was not until 1974.

The degree to which Maori at Otorohanga were affected by the flood protection works can be gauged from an examination of three different aspects of the use of the Public Works Act taking provisions, discussed in the sub-sections below.

[526] Waikato Valley Authority, *Otorohanga Borough Flood Protection Scheme: Brochure Commemorating Official Opening by Minister of Works, 12 March 1966*. Supporting Papers #3861-3867.



Map 13 Otorohanga Flood Protection Scheme

9.5.1 Urupa on Orahiri Y4

Orahiri Y4 Block of 2 acres is an urupa known as Rangituatahi on the west bank of the Mangapu River. This urupa had been declared to be a Maori Reservation in 1963-1964[527], and three trustees had been appointed at that time. In 1968 Otorohanga Borough Council reached an agreement with two of the trustees that 19.8 perches of the urupa would be taken, because it had already been used for the flood protection works[528]. The Council thought that this would be sufficient to allow the land to be taken under Section 32 of the Public Works Act 1928, whereby no Notice of Intention to Take was necessary because the prior consent of the owners had been obtained[529].

When the Registrar of the Maori Land Court was asked to confirm the details of the agreement in 1970[530], he replied that what the trustees had done was beyond the powers granted to them by the Court.

> The trustees have no authority to alienate the land except by way of lease for a period not greater than seven years. No agreement by them would therefore be valid, and an approach to the owners direct will be required.[531]

There were seven owners of Orahiri Y4 registered in the Court records.

The solicitors for the Borough Council were advised[532]. As a result the Council notified its Intention to Take the 19.8 perches in March 1970[533]. In July 1970 the Council provided a new Memorial requesting that the land be taken. This Memorial did not state whether any objections had been received (as that was not required by law), and certified only that all the preliminary provisions of the Act had been

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[527] Maori Land Court minute book 86 OT 37. Copy attached to Registrar Maori Land Court Hamilton to District Commissioner of Works Hamilton, 11 September 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3449-3450.
New Zealand Gazette 1964 page 1209. Not included in Supporting Papers.
[528] Agreement dated 14 September 1968, attached to Commissioner of Works to District Commissioner of Works Hamilton, 17 March 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3439-3442.
South Auckland plan SO 44627. Supporting Papers #2432.
[529] Pocock, Dix & Koretz, Barristers and Solicitors, Otorohanga, to District Commissioner of Works Hamilton, 22 August 1969. Works and Development Hamilton file 96/434220/0. Supporting Papers #3432-3434.
[530] District Commissioner of Works Hamilton to Registrar Maori Land Court Hamilton, 13 February 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3435-3436.
[531] Registrar Maori Land Court Hamilton to District Commissioner of Works Hamilton, 19 February 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3437.
[532] District Commissioner of Works Hamilton to Pocock, Dix & Koretz, Solicitors, Otorohanga, 11 March 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3438.
[533] *New Zealand Gazette* 1970 page 487. Supporting Papers #4099.

complied with, and the Council was of the opinion that the land was required for a public work[534].

The Resident Engineer reported:

> There appears to be no objection to the taking of the 19.8p for River Control purposes. The area is at present in pasture, and no burial ground is visible or known of by local people.[535]

In view of this conclusion, it seems questionable whether he made inquiries of the right local people. The District Commissioner of Works must have also had some concerns, as he asked the Maori Land Court Registrar "whether you know of any objections to the proposed taking and whether the area is Urupa"[536]. The Registrar confirmed that it was an urupa, adding that the Court hearing when the Maori Reservation was recommended had heard evidence that there had been burials on the block[537]. His reply did not address the question whether there were any objections to the taking.

This information made it necessary that the Governor-General should be asked to give his consent to the taking. Two submissions were prepared in Hamilton and forwarded to Wellington at the same time. The first, regarding consent to the taking, stated:

> The [Borough] Council is acquiring the land under the compulsory provisions of the Act, and although the area is shown as urupa or Maori burial ground the Department of Maori Affairs does not know of any objection to the taking of the land, which has in fact been physically taken for some years and is now being legalised.
>
> There are no Departmental objections to the proposed takings, and to comply with Section 18(b) of the Public Works Act 1928 the Order in Council is recommended for signature.[538]

The second submission was for the taking of the land.

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[534] Memorial of Otorohanga Borough Council, 15 July 1970, attached to Pocock, Dix & Koretz, Barristers and Solicitors, Otorohanga, to District Commissioner of Works Hamilton, 20 July 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3443-3446.
[535] Resident Engineer Te Kuiti to District Commissioner of Works Hamilton, 20 August 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3447.
[536] District Commissioner of Works Hamilton to Registrar Maori Land Court Hamilton, 3 September 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3448.
[537] Registrar Maori Land Court Hamilton to District Commissioner of Works Hamilton, 11 September 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3449-3450.
[538] District Commissioner of Works to Commissioner of Works, 16 October 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3451.

> All statutory requirements have been complied with, and the land is not occupied for any of the purposes specified in Section 18(b) of the Act, although the description of the area indicates that part of the land is urupa or Maori burial ground.
>
> The Department of Maori Affairs does not know of any objection to the taking, and an Order in Council consenting to the taking pursuant to Section 18(b) of the Act accompanies this proclamation, which is recommended for signature.[539]

These submissions are clearly flawed in the extent to which they discount the impact of the taking on burials in the urupa, and in their misleading summation of the reply from the Maori Land Court Registrar. The series of administrative layers involved in the Crown's procedures, from the Otorohanga Borough Council to the district office of the Ministry of Works, and then to the head office of the Ministry of Works, plus consultation with the Department of Maori Affairs, resulted in biased and incomplete information reaching Wellington.

However, officials in Wellington were not to know this. Both Proclamations, for the consent to the taking and the taking itself, for Soil Conservation and River Control purposes, were signed by the Governor General in November 1970[540].

9.5.2 Severance Area on Otorohanga 1F4A and Orahiri 1 No.1

At the time a survey plan was being prepared in 1966, the Maori owners of blocks known as '(Otorohanga 1F4A & Orahiri 1 No.1)A' and '(Otorohanga 1F4A & Orahiri 1 No.1)B' were informed at a meeting with Waikato Valley Authority staff about the large proportion of their land that would be required for the flood protection works. A new channel and stopbank for the Waipa River was needed, as well as a new channel for the Mohoanui Stream. The floodway would be fenced off, although the owners might be given grazing rights. They would still retain an area of 3.2 acres that had become severed from the rest of their land by the new flood channel, and was now on the other side of the Waipa River. This prompted a question from the owners

[539] District Commissioner of Works to Commissioner of Works, 16 October 1970. Works and Development Hamilton file 96/434220/0. Supporting Papers #3452.
[540] Consent to Taking – *New Zealand Gazette* 1970 page 2129. Supporting Papers #4101. Taking – *New Zealand Gazette* 1970 page 2127. Supporting Papers #4100.

as to how they could obtain legal access to the severed area[541]. After the meeting the Chief Engineer of the Authority commented to Ministry of Works that fording the river was not desirable, and "acquisition of the severance would appear to be the best solution"[542].

The survey plan, approved later that year, showed that just over 3½ acres (in two parcels) of the A block, and just under 3½ acres of the B block, would be required. The severance area was slightly under 3 acres[543].

The land was valued during 1968, with the valuer assessing the total area of 9¾ acres at $1500. He commented on the severance area, as a result of discussions he had with a neighbouring farmer (John Wooster) who had been assisting the owners up to that point.

> During normal floods [prior to the protection works], stock grazing on the lower areas could seek refuge on the higher ground. The new river diversion cut severs nearly 3 acres which is still liable to seasonal flooding, and as it has no high land it could become a bad hazard for stock.
>
> It seems that the owners do not wish to commit themselves as to whether they should sell or retain this area. I think they want to know what the Crown will offer for it before deciding. I think disposal would be more satisfactory to all concerned. If the owners decide to retain the severance, then in lieu of compensation an area of high ground immediately west of their land could be transferred to them for stock safety. Alternatively an exchange could no doubt be arranged with part of Section 26, which is Crown Land acquired from the NZ Dairy Company.[544]

The land required for the new flood channel and stopbanks was taken in April 1969[545]. This still left the questions over the severance area unanswered. In July 1969 the Maori Trustee, who was responsible for negotiating compensation on behalf of the owners, was provided with a copy of the valuation and asked whether the

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[541] North, Swarbrick, Mills & Westwood, Consulting Engineers, Hamilton, to Chief Engineer Waikato Valley Authority, 15 July 1966, attached to Chief Engineer Waikato Valley Authority to District Commissioner of Works Hamilton, 5 August 1966. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3493-3494.
[542] Chief Engineer Waikato Valley Authority to District Commissioner of Works Hamilton, 5 August 1966. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3493-3494.
[543] South Auckland plan SO 44049. Supporting Papers #2431.
[544] District Valuer Te Kuiti to District Commissioner of Works Hamilton, 4 March 1968. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3495.
[545] *New Zealand Gazette* 1969 page 771. Supporting Papers #4095.

severance needed to be acquired by the Crown[546]. He responded that he would need to see the Crown's offer of compensation, both with and without inclusion of the severance area, before he could comment[547]. An offer of $1650 (including interest) for the floodways and severance was made[548], to which the Maori Trustee, after receiving professional valuation advice, counter-offered that he would accept $1980 plus interest[549].

The Crown responded with another offer of $1600 plus interest and costs (which it calculated represented an offer of $1900). It also offered an alternative of an interim payment $1850, plus immediate taking of the severance, and with further negotiations on a final price after the taking[550]. After further discussions with its consulting valuer, the Maori Trustee then asked for $1800 plus interest and costs, and also payment of the 5% commission fee due to the Maori Trustee as agent for the owners[551]. The Crown replied that it could offer $2050 in full settlement, which represented an acceptance of the Maori Trustee's figure of $1800 plus $250 interest. The Crown was not prepared to discuss costs or the Maori Trustee's commission[552]. This, however, was unacceptable to the Maori Trustee, who held out for $1800 plus 5% interest from the date of taking (believed to be in late 1966), plus valuer's costs plus commission[553].

The District Commissioner of Works then sought further advice from the Waikato Valley Authority about the date of entry and the extent to which the block had been affected by erosion and accretion prior to the date of entry due to changes in the river channel[554]. The Authority advised that the date of entry was August 1965, when

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[546] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 29 July 1969. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3496.
[547] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 12 September 1969. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3497.
[548] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 14 January 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3498.
[549] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 27 January 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3499.
[550] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 30 January 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3500-3501.
[551] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 17 March 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3502.
[552] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 25 March 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3503.
[553] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 29 April 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3504.
[554] District Commissioner of Works Hamilton to Chief Engineer Waikato Valley Authority, 14 May 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3505.

temporary fencing was first erected. The river channel had encroached on the block to the extent of about 2 acres of erosion. The Maori owners would be unable to claim accretion as a taking for gravel pit in 1917 had cut the block off from the surveyed riverbed, meaning that any accretion would accrue to Otorohanga County Council as the titleholder for the taken land[555].

Armed with this new information showing that a portion of the block was not of as high a quality as the Maori Trustee's valuer had claimed because of the encroachment by the river, the Ministry of Works made a fresh offer of $2065, made up of $1600 for the land, interest of $400 and costs of $65[556]. Because this figure did not include any allowance for his commission, the Maori Trustee in Hamilton referred the matter to his head office, on the basis that local authorities regularly agreed to pay the commission, and the taking at Otorohanga was a local work for which the Borough Council was the initiating authority for the taking[557]. When the head office of the Ministry of Works pointed out that the flood protection scheme was financed by central government, which also paid the administration costs of running the Maori Trust office, the Maori Trustee decided not to take this issue further[558]. He also confirmed acceptance of the $2065 figure in full settlement for the taking of the flood channel and the severance[559].

A submission to pay this amount of compensation was prepared and approved[560]. The next step was to take the severance area, and a submission was prepared and sent to Wellington[561]. This submission proposed the land be taken under Section 32 of the Public Works Act, which covered takings where an agreement allowing land to be

[555] Chief Engineer Waikato Valley Authority to District Commissioner of Works Hamilton, 19 June 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3506-3508.
[556] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 18 August 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3509-3510.
[557] Telex Commissioner of Works to District Land Purchase Officer Hamilton, 1 October 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3511.
[558] Telex Commissioner of Works to District Land Purchase Officer Hamilton, 9 October 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3512.
[559] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 6 November 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3513.
[560] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 12 November 1970, and Commissioner of Works to District Commissioner of Works Hamilton, 20 November 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3514-3515 and 3516.
[561] Telex District Commissioner of Works Hamilton to Commissioner of Works, 9 December 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3517.

taken had been reached in advance. However, before the taking could be proclaimed, the Maori Trustee wrote again to the Ministry of Works, to advise that the owners did not give their consent. He had apparently been negotiating with the Crown for nearly one year without adequately consulting with the owners, on whose behalf he was acting.

> It appears that the owners are, at this belated stage, very much against the taking of the severance because, amongst other things, it seems that Mr Wooster, one of the owners, has claimed that a big shingle deposit is under part of the severance.
>
> We very much regret that this information was not fully appreciated previously, and must now ask at this late stage whether you would agree to the cancellation of the settlement proposed in my memorandum of 6 November 1970.
>
> Similarly, would you please advise urgently whether the proclamation taking the severance of 2 acres 3 roods 38.9 perches, as sent by you to Wellington on 26th last, can be withheld from gazetting. If we are too late to stop the proclamation, then would you please indicate whether you would be prepared to issue a further proclamation cancelling the take of the severance.[562]

The Maori Trustee was just in time. The notice taking the severance had been signed by the Minister of Works, but had not been gazetted. It was agreed that no further action would be taken while the matter was sorted out[563].

It was first referred back to the Waikato Valley Authority, so that the views of the Authority and Otorohanga Borough Council could be obtained about the alternative now being proposed by the landowners that the severance should not be taken[564]. The Authority replied that the severance should be taken "as a matter of urgency". Three points were made:

> (1) There is no possibility of providing legal access.
> (2) The long term stability of the diverted river reach, including the specially constructed weir, is dependent on strict control of any activity on the severance of 2 acres 3rds 38.9pcs. If any individual or company were to excavate even part of this area, it could have the effect of starting a disastrous meander. No risk can be taken in this regard. If excavation was started, the Borough and this Authority will have to

[562] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 10 December 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3518.
[563] Telex Commissioner of Works to District Commissioner of Works Hamilton, 11 December 1970. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3519.
[564] District Commissioner of Works Hamilton to Chief Engineer Waikato Valley Authority, 21 January 1971. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3521.

call on the full force of the law, including emergency action under the Public Works Act.

(3) The Otorohanga County cannot now operate on its shingle reserve adjacent, and already has made other arrangements.[565]

Faced with this request for urgency, the Ministry of Works decided to push ahead with the taking of the severance, which as a first step required the issue of a Notice of Intention to Take. The submission prepared in Hamilton stated:

> The land is a severance and part of a larger area which the Maori Trustee agreed could be taken for a consideration of $2065. However, before gazetting was finalised an objection to the taking of the area was raised on the grounds of its value as a source of shingle.
>
> The Waikato Valley Authority has pointed out that there is no possibility of providing legal access to the area, and further that disturbance of the severance could create serious future river problems.
>
> In view of the conflict of opinion, it has been deemed expedient to invoke the compulsory taking clause of the Act, and the Notice of Intention is accordingly recommended for signature.[566]

In Wellington the submission was rewritten.

> By Proclamations gazetted on 23 April 1969 at page 771 and 12 March 1970 at page 400 a total area of 6 acres 3 roods 27.6 perches of Maori-owned land was taken for this work. A settlement of compensation was negotiated with the Maori Trustee on behalf of the Maori owners, when it was agreed the Crown would pay compensation of $2065 for the land taken together with the severance of 2 acres 3 roods 38.9 perches which had not then been taken by Proclamation.
>
> A Declaration taking this severance was submitted for your signature on 2 December 1970 and signed by you a few days later, but before it could be gazetted the Maori Trustee requested that it be not proceeded with, as some of the Maori owners were objecting to the taking of the severance, principally on the ground that it contains valuable shingle deposits. The taking was not therefore proceeded with.
>
> The Waikato Valley Authority advises that it is essential that this land be acquired for the scheme, on the grounds that the long term stability of the diverted river reach including a specially constructed weir is dependent on strict control of any activity on this land. If any excavations were to take place on the land it could have the effect of starting a disastrous meander and no risk can be taken of this happening.

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[565] Chief Engineer Waikato Valley Authority to District Commissioner of Works Hamilton, 28 January 1971. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3522.

[566] District Commissioner of Works Hamilton to Commissioner of Works, 18 February 1971. Works and Development Hamilton file 96/434220/0. Supporting Papers #3453.

> It is therefore proposed to issue a Notice of Intention to Take the land in order to allow the owners to lodge objections if they so desire. In due course the land will be taken by Proclamation, provided no well-grounded objections are received, and then the settlement already agreed upon with the Maori Trustee can be completed.
>
> The Notice of Intention is recommended for approval.[567]

The Notice of Intention to Take was issued in March 1971[568], and a copy was sent by registered mail to the Maori Trustee in Hamilton, in lieu of service on individual owners. An objection was lodged by a solicitor on behalf of 12 of the owners, on the grounds that "all of the said land reasonably required for the said works has been already taken, and that the residue is not now and has not at any time been reasonably or properly required for these works"[569].

Ministry of Works in Hamilton prepared a report for its head office, which recommended that the taking should still go ahead.

> The original objection to the taking of the severance made to the Maori Trustee was made by a Mr Wooster, one of the owners, a European who also owns neighbouring land and who practices as a valuer (non-registered). One of the apparent reasons for the objection being a shingle deposit under the severance.
>
> I do not consider that items (1) and (3) of Waikato Valley Authority's objections would be sufficient in themselves to over-ride the owners wishes. In respect to item (1) above there may be a market to an adjoining owner. Item (3) is really irrelevant, as the taking of shingle commercially could not be done without a licence, and the local authority could refuse to issue one in respect of the severance.
>
> In view of the Waikato Valley Authority's item (2), which is most important, it is a pity that the disputed land was shown on the S.O. plan as severance. I consider that in the circumstances this was an administrative error, and the land should have been designated together with the other land as being required for soil conservation and river control purposes in the same way that extensive areas outside the stopbanks have been taken to protect the stopbanks.

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[567] Commissioner of Works to Minister of Works, undated, attached to Commissioner of Works to District Commissioner of Works Hamilton, 4 March 1971. Works and Development Hamilton file 96/434220/0. Supporting Papers #3454-3456.
[568] *New Zealand Gazette* 1971 page 577. Supporting Papers #4103.
[569] Notice of Objection, 6 May 1971, attached to Phillips & Powell, Barristers and Solicitors, Otorohanga, to Minister of Works, 7 May 1971. Works and Development Hamilton file 96/434220/0. Supporting Papers #3457-3458.

> It is recommended that the Minister of Works be advised that the land must be taken in view of the points made in Waikato Valley Authority's item (2) above.[570]

In Wellington, however, it was decided that the objectors should have an opportunity to state their objections more fully. The Minister of Works appointed the District Commissioner of Works to hear the objections and to provide a report[571].

The hearing took place in July 1971. The first matter raised was that the owners had not been individually served with a copy of the Notice of Intention to Take. John Wooster presented submissions about the value the severance could still hold for the Maori owners. There were then some legal points discussed, including that a severance was not land required for a public work as by its nature it was not required for Soil Conservation and River Control purposes, and that being a local work the taking should have been initiated by the Borough Council rather than by the Ministry. It was also claimed that the establishing legislation for the Waikato Valley Authority required that the Authority had to be specifically authorised before it could legally become involved, but there was no menton of this in the Notice of Intention to Take, nor indeed in any other taking notice or Proclamation to do with the flood protection scheme[572].

In his report to Wellington on the hearing, the Commissioner added his own comments on the matters raised.

> My comments on the objection submitted by Mr Wooster are as follows:
>
> (a) The preamble on the first two pages of the written submission is irrelevant – it is merely background information. The fact is that the taking of the land was notified in the correct manner as required by the Act, and this is proven by the fact that an objection was duly lodged on behalf of the owners.
>
> (b) Since the hearing I have had the description of the land checked by my District Surveyor (who is a registered surveyor), and he assures me that

[570] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 11 May 1971, attached to District Commissioner of Works Hamilton to Commissioner of Works, 11 May 1971. Works and Development Hamilton file 96/434220/0. Supporting Papers #3459-3461.

[571] Warrant dated 4 June 1971, attached to Commissioner of Works to District Commissioner of Works Hamilton, 27 May 1971 (sent 4 June 1971). Works and Development Hamilton file 96/434220/0. Supporting Papers #3462-3463.

[572] District Commissioner of Works Hamilton to Commissioner of Works, 11 August 1971. Works and Development Hamilton file 96/434220/0. Supporting Papers #3464-3466.

the land to be taken is correctly described in the Gazette notice and therefore in both the newspaper advertisement and the notice posted on the notice board of the Otorohanga Post Office. In any case it was clear at the hearing that the objection was to the taking of the piece of land severed by the river improvement works – the owners knew exactly which piece of their land was involved.

(c) The objection to "the surreptitious way that the Ministry of Works went about this particular taking" is not an objection to the actual taking, and is therefore of no consequence.

(d) The assumed reasons for taking the land are not grounds for objection to the taking. The reasons given by the Minister for the proposed taking are "for soil conservation and river control purposes", and it is not incumbent upon the Minister to give the basis upon which these reasons are founded (vide *Perpetual Trustees and another v. Dunedin City Council* (1968) NZLR 19 page 26 – "The reasons for the proposed work must be given, but there is no obligation on the Minister or a local authority to make available or to put at issue the material upon which those reasons are founded").

My comments on the submissions of Mr Phillips [solicitor] (written copy attached herewith handed in at the hearing, but unsigned and with no indication of the originator) are as follows:

1. The notice correctly describes the land in question.

2. (a), (b) and (c) The objector cannot dispute the reasons for the taking.

Mr Phillips questioned the legality of the taking of the land because, in the opinion of the owners, it was not genuinely required for the purposes stated. Although not required to justify his reasons to the objectors, the Chief Engineer Waikato Valley Authority has stated in writing that any disturbance to the land proposed to be taken could start a serious erosion and meander pattern in the river which could be disastrous, not only to Otorohanga Borough's water supply but also to the whole of the flood protection work which has been carried out in the area. The real reason for the owners' objection to the taking – the underlying shingle deposit – is the very reason why the land should not be disturbed and should remain under the control of the river controlling authority.

It is quite clear from my reading of the sections of the Acts quoted by Mr Phillips in his oral submissions that the Minister and the Ministry of Works is acting within the powers conferred by the various Acts in taking the land in question for the purposes described in the Gazette Notice.[573]

[573] District Commissioner of Works Hamilton to Commissioner of Works, 11 August 1971. Works and Development Hamilton file 96/434220/0. Supporting Papers #3464-3466.

The Minister decided, on the basis of this report, that he would instruct the Ministry of Works to proceed with the taking[574]. When informed, the solicitor for the owners replied that they would discuss the matter with their clients, but believed that they would be instructed to "institute proceedings in the Supreme Court to restrain the Ministry of Works from the action proposed"[575]. The owners did instruct their solicitor to this effect, and a claim for a declaratory judgement against the Crown was filed in the Supreme Court in November 1971[576].

The action in the Supreme Court was not prosecuted, but in the meantime the Notice of Intention lapsed one year after being issued. The legislation prevented a further Notice of Intention being issued for 12 months after it had lapsed. This meant it could not be issued until April 1973. The second Notice was actually issued in July 1973[577]. This time no objections were received, and the severance area was taken in January 1974[578]. A consent to the taking had been issued earlier that month[579], because a site inspection had revealed a small shed on the land[580].

The Maori Trustee reopened negotiations with the Crown in February 1974[581]. An offer of $2500 in full settlement was made, being a rounding-up of individual costs of $1600 for the land, $700 interest and $65 costs[582]. Not wanting to be found wanting

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[574] Telex Commissioner of Works to District Commissioner of Works Hamilton, 20 September 1971. Works and Development Hamilton file 96/434220/0. Supporting Papers #3467.

[575] Phillips & Powell, Barristers and Solicitors, Otorohanga, to Minister of Works, 17 September 1971, referred to in Commissioner of Works to District Commissioner of Works Hamilton, 13 October 1971. Works and Development Hamilton file 96/434220/0. Supporting Papers #3468.

[576] Statement of Claim, 4 November 1971, attached to Evans, Bailey & Co, Barristers and Solicitors, Hamilton, 15 November 1971. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3523-3526.

[577] *New Zealand Gazette* 1973 page 1453. Supporting Papers #4107.
The Notice was served on the solicitor who had acted for the owners in 1971, the Maori Trustee, and Otorohanga County Council. Resident Engineer Te Kuiti to District Commissioner of Works Hamilton, 5 September 1973. Works and Development Hamilton file 96/434220/0. Supporting Papers #3469-3470.

[578] District Commissioner of Works Hamilton to Commissioner of Works, undated. Works and Development Hamilton file 96/434220/0. Supporting Papers #3472-3473.
New Zealand Gazette 1974 page 110. Supporting Papers #4111.

[579] District Commissioner of Works Hamilton to Commissioner of Works, undated. Works and Development Hamilton file 96/434220/0. Supporting Papers #3474.
New Zealand Gazette 1974 pages 3-4. Supporting Papers #4109-4110.

[580] Resident Engineer Te Kuiti to District Commissioner of Works Hamilton, 5 September 1973. Works and Development Hamilton file 96/434220/0. Supporting Papers #3471.

[581] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 28 February 1974. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3527.

[582] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 11 April 1974 and 15 April 1975. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3528 and 3529.

again, the Maori Trustee advised that he would have to discuss the offer with the owners[583]. In July 1975 he accepted the Crown's offer, so long as an additional $50 was paid for John Wooster's expenses[584]. This was acceptable to the Crown[585].

It was noted at the time that the claim for this severance area was the last claim associated with the Otorohanga flood protection scheme still to be settled. The land taking and compensation matters had taken about twice as long (10 years) as the construction of the flood protection works (approximately 1961-1966).

9.5.3 Removal of Houses at Otorohanga

The flood protection works at Otorohanga were so extensive that they disrupted the established occupation pattern along the banks of the Waipa River, to the extent of requiring the removal of houses that had been well-established there for many years. These were Maori-owned houses on Maori Land.

Although it has not been possible to assess the full impact of the works on Maori who were living there, four house removals are discussed here as examples of the dislocation experienced by the local community.

Orahiri 1 Section 17A, from which 1¼ acres was taken in 1965[586], was a rural residential section at the confluence of the Waipa River and the Mangawhero Stream. The valuation report noted that it contained both an old dwelling and a partly-constructed cottage.

> An old dwelling in a very poor state of repair and with no conveniences apart from electric light is sited on the land, and there is also a poorly constructed and unfinished cottage comprising 3 bedrooms and living room containing 587 square feet of floor area. Conveniences consist of electric light, formica sink bench unit with no water laid on, and an open fireplace. The building is partly lined in pinex, but this had not been properly fixed and is unpainted.

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[583] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 18 April 1974. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3529.
[584] Maori Trustee Hamilton to District Commissioner of Works Hamilton, 18 June 1975, 24 June 1975 and 28 July 1975. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3532, 3533 and 3535.
[585] District Commissioner of Works Hamilton to Maori Trustee Hamilton, 3 July 1975, District Property Officer Hamilton to District Commissioner of Works Hamilton, 4 August 1975, and Commissioner of Works to District Commissioner of Works Hamilton, 22 August 1975. Works and Development Hamilton file 96/434220/0/75. Supporting Papers #3534, 3536-3537 and 3538.
[586] *New Zealand Gazette* 1965 page 42. Not included in Supporting Papers.

He gave a valuation for the buildings of £315 "in situ", but only £45 "for removal"[587].

Orahiri 1 Section 17B had two cottages on it owned by one of the Maori owners of the block. That owner agreed with Otorohanga Borough Council to vacate the cottages, and his interest in the block[588], in exchange for being awarded in exchange one acre of land with a house on it. The report seeking consent to this exchange revealingly states:

> The difficulties arising in dealing with all Maori-owned land required for the Otewa Road protection work were recognised many months ago, and although the [Borough] Council has been encouraged to expedite the completion of surveys and serving of Notices, it is faced with the problem of moving numerous Maori families out of the way. The Maori Affairs Department's Welfare Officer has also been active in endeavouring to persuade displaced Maoris to apply for Maori Housing aid, but his efforts have not been effective to a useful degree, particularly insofar as displaced Maori owners are concerned.[589]

Orahiri 1 Section 30B7 had a relatively new house on it, which had been built in 1959 (i.e. after the 1958 flood) and was being paid off by the owner with a Maori Affairs mortgage.

> It is a plain dwelling constructed on wood with an iron roof containing two bedrooms, lounge, kitchen, bathroom and laundry. Conveniences consist of a coal range, high pressure hot water system, formica sink bench, porcelain bath and hand basin, open brick fireplace, copper and tubs, and flush toilet. Floor area is 774 square feet. The building is in fair condition only and requires exterior painting.[590]

The Crown settled with the owner for the removal of the house and its relocation to Tokoroa[591]. In this case more than one Maori family was affected, as the owner was

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[587] District Valuer Te Kuiti to District Commissioner of Works Hamilton, 15 October 1963. Works and Development Hamilton file 96/434220/0/45. Supporting Papers #3481-3483.

[588] To enable the exchange, the owner's interest in Orahiri 1 Section 17B, which equated with the whole of the land required to be taken for flood protection works from that block, was partitioned out as Orahiri 1 Section 17B1 in November 1964. Maori Land Court minute book 87 OT 16. Not included in Supporting Papers.

[589] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 30 November 1964. Works and Development Hamilton file 96/434220/0/49. Supporting Papers #3485-3487.

[590] District Valuer Te Kuiti to District Commissioner of Works Hamilton, undated (valuation dated 13 April 1965). Works and Development Hamilton file 96/434220/0/59. Supporting Papers #3488.

[591] Phillips and Powell, Barristers and Solicitors, Otorohanga, to District Commissioner of Works Hamilton, 22 June 1965, Senior Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 28 June 1965, and Commissioner of Works to District Commissioner of Works Hamilton 7 July 1965. Works and Development Hamilton file 96/434220/0/59. Supporting Papers #3490, 3491-3492 and 3484.

renting the house to another family; the family renting the property applied for a State house in Hamilton[592].

A borrow area on McCready's Road, from which material used for constructing the stopbanks was extracted, required the taking of parts of Otorohanga S, Otorohanga A1 and Otorohanga A2B1B blocks. There was a house, an old meeting house, and a cowshed on Otorohanga A1, all of which had to be demolished[593]. In settling the loss of land and the house, the Crown agreed to resite another house on to the balance of Otorohanga S still remaining in Maori ownership; this house had to be shifted from 21 Rangipare Street[594].

[592] District Commissioner of Works Hamilton to Manager State Advances Corporation Hamilton, 1 June 1965. Works and Development Hamilton file 96/434220/0/59. Supporting Papers #3489.
[593] Rural Valuation and Short Report, 12 October 1962. Works and Development Hamilton file 96/434220/0/32. Supporting Papers #3478-3480.
[594] District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 27 February 1962, and Commissioner of Works to District Commissioner of Works Hamilton, 16 March 1962. Works and Development Hamilton file 96/434220/0/32. Supporting Papers #3475-3476 and 3477.

10 COMPENSATION

10.1 Introduction

Up until 1962 compensation for lands taken under the Public Works Acts was decided in either the Compensation Court (later known as the Land Valuation Tribunal) in the case of European-owned land, or the Native/Maori Land Court in the case of Maori-owned land. Deciding in a Court situation how much compensation should be paid could be regarded as being a recognition of the different directions that the two parties came from, since there was potential for conflict between opposing points of view. However, an adversarial Court environment could potentially exacerbate the tensions between the two parties. Besides addressing the points of view of the parties appearing before it, a court also had to have regard for the increasing complexity of compensation law over the years, as statute law responded to developments in case law. Over time, compensation hearings and decisions became less straightforward.

Reliance on two different courts for the determination of compensation inevitably raised questions about equity of outcome. Would Maori receive a similar award of compensation from the Native Land Court as they might have received from the Compensation Court?

Besides compensation being decided in two different jurisdictions, there was another fundamental difference about compensation arrangements for Maori-owned and European-owned lands. Whereas Europeans were responsible for applying to the Compensation Court for compensation to be determined, it was the authority that was responsible for the taking (i.e. the Crown or a local authority) that was responsible for applying to the Native Land Court for compensation to be awarded to Maori landowners[595]. This difference is presumed to have arisen because of the difficulties for Maori owners of multiply-owned land, who might have failed to apply for compensation themselves. While the difference might therefore be viewed as a protective duty towards Maori undertaken by the Crown (or local authority), it presupposed that an application was made, and that was not always the case. Because

[595] Local authorities were required to lodge the application within six months of the taking, but there was no time limit within which the Crown had to lodge any application for which it was responsible.

an application could not be lodged by the Maori owners themselves, or by the Court, in the absence of an application from the taking authority, the lack of an application prevented the owners from receiving compensation. Any failure to apply, either in a timely fashion or at all, would be a breach of the protective duty.

After 1962 a law amendment removed the determination of compensation from the workload of the Maori Land Court. Takings from land with up to four Maori owners was then to be negotiated directly with the taking authority by the owners themselves, while takings from land with more than four owners would be negotiated by the Maori Trustee, acting on the owners' behalf.

10.2 Applications to the Native / Maori Land Court

The Public Works Act made it the responsibility of the organisation for which the land was being taken (i.e. the organisation that would pay the compensation) to be responsible for applying to the Native Land Court to have it determine how much compensation should be paid. In theory, that would ensure that an application was sent to the Court, which might not happen if Maori owners, who may have been unaware of a taking, were made responsible.

This process would break down, however, if no application was made. There were two sets of circumstances where an application might not be made. The first was a breakdown of standard operating procedures, while the second was the existence of a gap in responsibilities between the Crown and local authorities. The difficulty for Maori landowners was that, if no application was made, there was no opportunity for the Court to award compensation. The Court lacked the legal authority to make a compensation award on its own application, or on the application of any owner who had identified that compensation was due but which had not been applied for. If no application was made, Maori were affected in two ways; they could not get any compensation, and they could not themselves remedy the failure to apply.

In the first set of circumstances, the breakdown of standard procedures, this was usually associated with takings initiated by local authorities. The Crown was generally diligent about sending an application to the Court shortly after land had

been taken. It seems to have been a standard part of the Public Works Department's procedures to send out a pre-printed form letter of application to the Native Land Court. This is apparent from the extent to which applications for compensation to be determined were still made even when it was known that land had been gifted (e.g. for schools), and it was known that nil awards were likely to be made. The law required that application be made, and the Crown (so far as it has been possible to determine during the research for this report) complied with that provision of the law. Problems with Crown takings tended to be concerned with delays in having compensation applications heard (see below).

Local authorities, however, seem to have been less diligent than the Crown in making applications to the Court, possibly because they had less regular experience of their obligations. A taking for a stores-site in 1913[596] was not compensated for until the Court made an award in 1920, while takings for quarries in 1914[597] and 1915[598] were not compensated for until 1924 and 1925 respectively; all these takings were of land that had been vested in Waitomo County Council. In the case of the 1914 quarry taking, the owners had complained to Sir Maui Pomare MP in both September 1922[599] and April 1924 "that they have received no compensation, and that they can get no satisfaction from the Waitomo County Council"[600]. On both occasions the Minister of Public Works declined to take an interest in the Council's failure to follow the requirements of the legislation, telling Pomare on the second occasion that "compensation is purely one for the County Council to deal with"[601].

The Waitomo County Council was a frequent offender. It was also the local authority involved with another taking, for gravel-pit in 1917[602], which was the subject of a petition to Parliament in 1924 (discussed in part also in the chapter on Takings for Roads and Road-Related Purposes). Among the matters listed in the petition was:

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[596] *New Zealand Gazette* 1913 page 608. Not included in Supporting Papers.
[597] *New Zealand Gazette* 1914 page 3941. Supporting Papers #3992.
[598] *New Zealand Gazette* 1915 pages 3093-3094. Supporting Papers #3995-3996.
[599] M Pomare MP to Minister of Public Works, 16 September 1922. Works and Development Head Office file 54/76. Supporting Papers #1635.
[600] M Pomare MP to Native Minister, 4 April 1924. Works and Development Head Office file 54/76. Supporting Papers #1641.
[601] Minister of Public Works to Sir M Pomare MP, 22 September 1922 and 17 April 1924. Works and Development Head Office file 54/76. Supporting Papers #1637 and 1642.
[602] *New Zealand Gazette* 1917 pages 180-181. Supporting Papers #4005-4006.

> That no application for assessment of compensation under Section 91 of the Public Works Act 1908 has been lodged by the said Council, and we are informed that the time limit for assessment of compensation has now expired.[603]

The Public Works Department set out the legal position, in a reply that also indicated that it did not consider that the failure of a local authority to apply was of any concern to it (nor, by implication, of concern to the Crown).

> Section 91 of the Public Works Act requires a Local Authority to make application not later than six months after the taking of the land to the Native Land Court for the purpose of ascertaining the amount of compensation to be paid to the Natives interested, or to the Native owners of any other land taken. If the Council failed to do this, I am not aware of anything which would prevent them now making application, and failure to strictly comply with Section 91 does not seem to be sufficient to invalidate the taking. On 3rd May 1918 the Solicitors acting for the County Council advised me that the interested parties were compensated by the Local Authority a considerable time before. I am not, however, aware whether this settlement was made through the Court or not.[604]

Although not stated in this reply, there was no penalty that could be imposed if a local authority failed to send in an application to the Court. Indeed, provisions in the legislation specifically stated that a taking was not invalidated if certain procedures such as application to the Court were not faithfully carried out.

The Registrar of the Native Land Court confirmed that no application had been lodged by the local authority.

> Messrs Hosking, Corbett and Mossman, Solicitors, Otorohanga, have on behalf of the Native owners lodged an application for assessment of compensation which however I pointed out they had no authority to make. The application was received on the eve of closing a panui, and they asked me to include it in the panui, stating they would arrange with the local body to treat the application as made on its behalf. No acknowledgement has yet been received from the local body.[605]

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[603] Petition 105/1924 of Ngamihi Te Huia and Tereme Te Huia. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2274-2276.
[604] Assistant Under Secretary for Public Works to Under Secretary Native Department, 16 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 23 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2277-2279.
[605] Registrar Native Land Court Auckland to Under Secretary Native Department, 16 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 23 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2277-2279.

In forwarding these replies to the Native Affairs Committee, the Under Secretary to the Native Department noted that he had been forced to intervene to get Waitomo County Council to lodge the application for compensation for the 1914 taking for quarry referred to above. He added that the only remedy available to owners if a taking authority did not apply was an action in the Supreme Court, but "the remedy of mandamus is much too expensive for the Natives to undertake in these cases, and the Department endeavours in similar cases that are represented to it to prevail upon the local authority to move in the matter"[606].

Because the Native Department seemed to be capable of resolving one part of the petition, by persuading the local authority to apply for compensation to be assessed, the Native Affairs Committee recommended that the petition be referred to the Government for consideration[607]. However, when Government received the Committee's recommendation, the Under Secretary to the Native Department referred it to his Minister "for your information", and the Minister responded, "no action for the present"[608]. Before this, in September 1924, the Native Land Court had dismissed the application from the claimants' solicitors, because they had no authority to make such an application, this being the prerogative solely of the local authority in this instance[609].

It was not until November 1928 that the matter was revived, when the Native Department wrote to Waitomo County Council suggesting that, as no compensation had been paid, the taking Proclamation should be cancelled and the land revested in the Maori owners[610]. The Council responded that the quarry was now in the district

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[606] Under Secretary Native Department to Chairman Native Affairs Committee, 23 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2277-2279.
[607] Report of Native Affairs Committee on Petition 105/1924, 10 October 1924. *Appendices to the Journals of the House of Representatives* (AJHR), 1924, I-3, pages 28-29. Supporting Papers #3904-3905.
[608] Under Secretary Native Department to Native Minister, 22 October 1924, and Native Minister to Under Secretary Native Department, 29 October 1924, both on cover sheet to Maori Affairs Head Office file 1924/372. Supporting Papers #922.
[609] Registrar Native Land Court Auckland to Under Secretary Native Department, 1 November 1928. Maori Affairs Head Office file 1924/372. Supporting Papers #904.
[610] Under Secretary Native Department to County Clerk Waitomo County Council, 7 November 1928. Maori Affairs Head Office file 1924/372. Supporting Papers #905.

administered by the Otorohanga County Council[611]. The solicitor for that Council advised Waitomo County Council that it had paid Waitomo for the quarry at the time of the transfer of assets between the two Councils, and it could not consent to the Proclamation being revoked[612]. Meanwhile the County Clerk for Waitomo County Council had searched the Council's records, and discovered that £200 was paid in 1917 as compensation, but could not discover further details; he agreed that an application for assessment of compensation would be made to the Native Land Court if that was necessary[613].

The Native Land Court heard and decided on the Council's application for assessment of compensation in November 1929, nearly thirteen years after the taking[614]. Whether it was before or after the application was made is not known, but a dispute arose in May 1929 between the former Maori owners and the Otorohanga County Council. Tereme Te Huia, on behalf of himself and Ngamihi Te Huia (the petitioners to Parliament in 1924), telegraphed the Native Minister that month:

> I am having trouble with the metal on my land Orahiri No.1. I locked the gate and the Council forced it open. We refused them admittance, because they had not paid any money for the metal, and also for the use of the right-of-way over the land.[615]

Further details are not known.

The second set of circumstances where an application was not made could arise when a taking was requested by a local authority, but the land when taken was not vested in the local authority. This meant that the taken land was vested in the Crown, and compensation was therefore the Crown's responsibility. However, the Crown might have assumed that the local authority, having requested the taking, would accept

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[611] County Clerk Waitomo County Council to Under Secretary Native Department, 12 November 1928. Maori Affairs Head Office file 1924/372. Supporting Papers #906.
[612] F Phillips, Barrister and Solicitor, Otorohanga, to County Clerk Waitomo County Council, 13 November 1928, attached to F Phillips, Barrister and Solicitor, Otorohanga, to Under Secretary Native Department, 13 November 1928. Maori Affairs Head Office file 1924/372. Supporting Papers #907-908.
[613] County Clerk Waitomo County Council to Under Secretary Native Department, 14 December 1928. Maori Affairs Head Office file 1924/372. Supporting Papers #909.
[614] Maori Land Court minute book 68 OT 147-156, 164 and 168-169. Not included in Supporting Papers.
Copy of decision (pages 168-169) attached to Registrar Native Land Court Auckland to Under Secretary Native Department, 22 December 1937. Maori Affairs Head Office file 1924/372. Supporting Papers #917-918.
[615] Telegram Tereme Te Huia and Ngamihi Te Huia to Native Minister, 21 May 1929. Maori Affairs Head Office file 1924/372. Supporting Papers #910-911.

responsibility for compensation. Meanwhile the local authority, because the land had not been vested in it, might not be aware that it had any such responsibility. This set of circumstances could apply in particular with road takings, when the taking was requested by a local authority, and the road, when taken, was not vested in that local authority.

For Maori, the key features in the various failures to pay compensation described above were that they received no recognition that their land had been taken, and no recompense. The Crown may take a different view, and wish to focus on whether the responsibility to apply rested with itself or with a local authority. This is because, in the context of the Crown's response to Treaty claims (discussed in an earlier chapter in this report), the Crown has not accepted any responsibility for acts and omissions by local authorities. However, it is arguable whether this should be a relevant consideration. The separation of responsibilities between central and local government may have some justification where the legislation extends a power of general competence to a local authority and the Crown has no knowledge of or is not actively involved in an act or omission of a local authority. However, in the case of a public works taking there was no such clearly defined separation. The Crown acted as a partner with local authorities in the taking of the land, and on occasion then made a conscious choice to take a further step of vesting that land in a local authority. After the taking had been proclaimed, there were some further steps required to complete the act of taking. The Crown delegated to local authorities the responsibility of publicly notifying the Proclamation in a locally-circulating newspaper, but continued to be involved when it insisted on being sent a copy of the public notice, so that it could verify that the taking had been notified. The Crown did this in order to satisfy itself that certain requirements of a taking had been completed, before it (rather than the local authority) then notified the District Land Registrar and asked him to record the taking in the Crown's official land registry records. Application to the Native Land Court to determine compensation, and the actual payment of compensation after the Court's decision, was another step delegated to local authorities in the case of Maori-owned lands taken and vested in local authorities. Compensation is an integral part of the taking process, and highly significant in the context of the extent of the constitutional powers of the State to interfere with the rights of its people, yet the Crown seems to consider that it should not accept any responsibility for it. In doing

so, it has established an artificial boundary within the overall taking process, when a wider interpretation of its responsibilities would suggest that, if it chooses to embark on a taking, it must accept that it has also chosen to take on certain obligations that ensure that the taking is completed in all respects. This includes verification of completion of steps that it has delegated to others. If the Crown fails to respond to complaints that compensation has not been paid, then that failure is not an isolated instance of a failure to protect Maori interests after the need for protection has been brought to its attention, but rather is a compounding of a more fundamental failure to follow through on all obligations that accompany a taking.

10.3 Compensation Hearing Procedures

When an application was lodged with the Native Land Court, it was still necessary to arrange when that application would be heard. The Crown (or local authority), as applicant, had to be available to prosecute its application. The Public Works Department's Land Purchase Officer, who was responsible for prosecuting compensation applications, was based in Wellington, and made infrequent trips to Te Rohe Potae District. He would often wait for a number of compensation cases to have accumulated before considering it worth his while to make the trip to the district. On other occasions, he might try to avoid making a trip altogether, if he knew and could advise the Court in advance that the amount the Crown was offering had been agreed to by the Maori owners, and there would be no argument before the Court about price or any other matter. Instances of the delays associated with the hearing, award and payment of compensation are to be found throughout the case studies forming part of this report. In most instances during the first half of the twentieth century, the amounts awarded were fixed sums, with no provision for any payment of interest to compensate for delays. The result was that the burden of delays in fixing compensation was passed from the Crown to the affected owners.

In some respects the owners' involvement in Court hearings was treated as being almost superfluous, with the Court acting as if it did not expect the owners to contribute much to the discussion, and they were not necessary to the process of determining a fair and adequate amount of compensation. If the owners did not appear at the hearing, or were not represented, the hearing would still go ahead and

the Court would still make a decision, based only on the Crown or local authority evidence presented to it.

Two instances where an award of compensation was made when the owners were not present were the subject of separate petitions to Parliament in 1924. The first instance related to a taking for recreation ground and vesting in Otorohanga Town Board in 1923[616]. The owner petitioned Parliament:

> That on the 22nd September 1923 the case was brought on for hearing before the Native Land Court sitting at Te Kuiti by the solicitor representing the Otorohanga Town Board.
>
> Your petitioner was totally unaware of the hearing, and was therefore unable to be present, produce evidence, or even be represented by [counsel].
>
> The case was heard and determined in our absence, without any evidence whatsoever being called, beyond the statement of the solicitor appearing in support of the application, whom we understand is a Member and Chairman of the Local Body taking our land and therefore an interested party.[617]

The Registrar of the Native Land Court, when confirming that no owner had been present at the hearing, provided a copy of the minutes of the hearing, which showed that the solicitor for the Town Board had told the Court that he had served notice on the owners by registered post, and one of the owners had written to the Court asking that the Court note his objection to the taking. The Registrar added that the receipts for some of the registered letters were held in the Court's records[618]. The Native Affairs Committee decided to recommend that the petition be referred to the Native Minister for his consideration[619]. It is not known what response the Native Minister had to the petition.

The second instance of a petition to Parliament about no owners being present at the compensation hearing was in connection with land taken for a quarry on Hauturu East

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[616] *New Zealand Gazette* 1923 page 1724. Supporting Papers #4027.
[617] Petition 107/1924 of Parekaihua Tuhoro. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2287-2289.
[618] Registrar Native Land Court Auckland to Under Secretary Native Department, 15 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 22 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2283-2286.
[619] Report of Native Affairs Committee on Petition 107/1924, 3 November 1924. *Appendices to the Journals of the House of Representatives* (AJHR), 1924, I-3, page 45. Supporting Papers #3906.

1E3 block in 1920 and vested in Waitomo County Council[620]. In this instance the Council did apply for assessment of compensation, and a hearing was held in October 1922, when compensation of £65 was ordered[621]. However the owner, Rangiwhakarewa Paraone, told Parliament:

> That as I was totally unaware of this hearing, I was neither able to be present myself or represented by Counsel.
>
> The case was heard and determined in my absence, only the evidence of two witnesses being heard, both of whom were representatives of the Waitomo County Council, and therefore interested parties.
>
> No outside evidence as to the value of the limestone was called, my interests being thus prejudiced by the under-estimate of the value by parties interested.
>
> That the full facts have since been disclosed to the Native Land Court by my agents, who have been informed by the Registrar, a copy of whose letter is attached hereto, marked A, that your petitioner's only remedy is to petition Parliament praying that the case may be reopened and petitioner granted full opportunity of producing expert witnesses before the Court as to the value and quantity of stone taken.[622]

The need for a petition in this instance highlights how some principles of justice were missing in the Public Works Act. There was no right of appeal against a decision of the Native Land Court about compensation. The only avenue that Maori owners could follow if dissatisfied with the Court's decision was a petition to Parliament.

The Registrar confirmed that, although both the owner and the lessee had been notified by registered post, neither had attended the hearing, and "the case had to be decided in their absence"[623].

The Public Works Department advised, on their reading of the legislation, that "there does not appear to be anything in the Public Works Act which would require the

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[620] *New Zealand Gazette* 1920 page 2128. Supporting Papers #4019.
[621] Maori Land Court minute book 64 OT 14 and 22. Copy with Registrar Native Land Court Auckland to Under Secretary Native Department, 16 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 22 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2293-2297.
[622] Petition 108/1924 of Rangiwhakarewa Paraone. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2299-2301.
[623] Registrar Native Land Court Auckland to Under Secretary Native Department, 16 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 22 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2293-2297.

Council to notify the owners of the hearing of the case by the Native Land Court"[624]. That this might be a contravention of principles of natural justice, and worth remedying, does not seem to have occurred to officials. Certainly there was no such amendment when a new Public Works Act was passed in 1928.

The Native Affairs Committee reported to Parliament that the petition should be referred to the Native Minister[625]. The Minister's first reaction was to take "no action for the present"[626]. When an agent for the owner wrote to the Minister asking him what action he was taking[627], he replied that he was not doing anything[628]. The agent then approached Maui Pomare, who asked the Minister if he would be prepared to refer the matter to the Court for a rehearing[629]. The Under Secretary of the Native Department advised that this would require special statutory authority[630], and nothing further was done. Pomare tried again in July 1926[631], and the Under Secretary reported:

> In addition to the notice given in the ordinary panui, the Registrar says a registered letter giving notice of the special date fixed for hearing was sent to the owner. The minutes show the receipt for the registered letter was produced. In the petition the owner claims that no notice was received. There is no appeal on the question of value, and the Waitomo Council would no doubt object to a re-opening. Before anything is done, I think there should be some tangible evidence, by declaration or otherwise from reputable persons, that the compensation has been under-assessed and that there has really been a miscarriage of justice.[632]

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[624] Assistant Under Secretary for Public Works to Under Secretary Native Department, 13 September 1924, attached to Under Secretary Native Department to Chairman Native Affairs Committee, 22 September 1924. Legislative Head Office Papers of Native Affairs Committee for 1924. Te Rohe Potae Petitions Document Bank pages 2293-2297.
[625] Report of Native Affairs Committee on Petition 108/1924, 10 October 1924. *Appendices to the Journals of the House of Representatives* (AJHR), 1924, I-3, page 29. Supporting Papers #3905.
[626] Native Minister to Under Secretary Native Department, 3 November 1924. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank page 2306.
[627] G Elliott, Te Kuiti, to Native Minister, 12 December 1924. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank pages 2333-2334.
[628] Native Minister to G Elliott, Te Kuiti, 18 December 1924. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank page 2335.
[629] M Pomare MP to Native Minister, 3 February 1925. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank page 2332.
[630] Under Secretary Native Department to Native Minister, 11 February 1925, on M Pomare MP to Native Minister, 3 February 1925. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank page 2332.
[631] M Pomare MP to Native Minister, 1 July 1926. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank pages 2330-2331.
[632] Under Secretary Native Department to Native Minister, 7 July 1926. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank page 2329.

Pomare was informed, and the agent for the owner told him:

> I desire to inform you that we have reliable expert evidence, which cannot be controverted or disproved, which will clearly show there has been a miscarriage of justice. We had this evidence available when we took the petition to Wellington, and have been waiting for an opportunity to produce the testimony of, 1st a civil engineer who will testify as to the quantity and value of the stone; 2nd a road contractor employed by the County Council at the time the stone was taken, who will declare that stone was taken from this quarry four times the value of the compensation awarded. This amount is only a trifle compared with the value of the stone still available in the quarry.
>
> The award of the Court that the sum of £25 [sic – should be £65] be paid to the Native owner was ridiculous, as it was based on the evidence of the County Chairman and Assistant Engineer, both of whom were interested parties. No outside evidence of any kind was sought, and the evidence given was only in connection with the value of the land and fences, the most important factor, viz. the quantity and value of the stone 'taken out' and 'still remaining in' the quarry, being totally disregarded by the Court. In view of the fact that lime works are operating close by, paying a high rate of royalty for the stone, we claim that a serious injustice has been done to the Native owner and petitioner, and ask for an opportunity to produce our evidence.
>
> We desire to add that the lime works referred to above was erected and working crushing carbonate of lime on part of this land at the time the award was made by the Court, yet no menton of this was made to the Court by the County witnesses.[633]

The Under Secretary was convinced, and recommended that the Native Land Court be instructed to hold an inquiry and report back on the claims and grievances in the 1924 petition; this inquiry procedure was provided for in Section 6 Native Land Amendment and Native Land Claims Adjustment Act 1922[634]. The Minister gave his approval[635].

The Court held its inquiry in January 1927, and reported back the following month. The Judge who inquired into the petition was the same Judge who had heard the application for compensation in 1922. He commented about the events in 1922 that

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[633] G Elliott, Te Kuiti, to M Pomare MP, 6 October 1926, attached to M Pomare MP to Acting Native Minister, 18 October 1926. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank pages 2325-2328.

[634] Under Secretary Native Department to Native Minister, 18 October 1926, on M Pomare MP to Acting Native Minister, 18 October 1926. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank pages 2325-2328.

[635] Acting Native Minister to Under Secretary Native Department, 10 November 1926, on M Pomare MP to Acting Native Minister, 18 October 1926, and Reference to Native Land Court, 15 November 1926. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank pages 2325-2328, and 2324.

"there was nothing to lead me to suppose there were any unusual circumstances". He referred to the receipt of notice about the hearing, advised that he could not recall how he had arrived at the compensation figure of £65, and added that the owner had accepted the compensation monies six weeks after the hearing and award. Of the inquiry proceedings, he explained how the agent for the owners[636] wished to present evidence about the value of the stone, while the County Council objected, because it had no previous knowledge of the petition until notified that the inquiry would be held, because the personnel of the Council had changed since 1922, and because it would wish to challenge the evidence presented on behalf of the owners. He had then closed the hearing without any expert evidence being presented. Since the hearing he had visited the quarry site, and had seen for himself that there was more stone present than he had been told about in 1922, but he held reservations about how valuable the limestone was, given that it was a low value product and its value was greatly affected by transport costs. He added:

> I find it impossible to make Natives understand that compensation must be assessed at the time of taking, and at the value of the land or stone taken to the owner and not the statutory taker. Yet both these principles are long settled in law…. [It was] asserted that stone had been taken from this quarry long before the Proclamation. I do not know whether that is so or not. There is no evidence of it so far, and the petition does not refer to it. If it be correct, it is doubtful whether compensation for the taking can include such stone, but there certainly was and still is a right of action for trespass against the Council.

The Judge concluded his report by commenting on whether a rehearing should be required.

> All these matters of course do not get over the fact that the Native owner, whether through her own neglect or not, has not been heard. I mention them mainly to emphasise my view that if on consideration of the circumstances it is thought proper to pass legislation to enable a rehearing, it should be upon the condition that a reasonable deposit of costs should be lodged by the Native claimants. I would suggest £20. Proceedings will be expensive. It is true that the Court could itself impose a deposit, but I think the legislation should expressly provide for it.[637]

The Under Secretary, who was also the Chief Judge of the Court, advised the Minister:

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[636] The sole owner in 1922 and 1924 had died and been succeeded by ten persons.

[637] Report on Reference for Inquiry, 11 February 1927, attached to Registrar Native Land Court Auckland to Chief Judge Native Land Court, 11 February 1927. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank pages 2314-2318.

> Whilst not actually recommending a rehearing, he seems to think that under the circumstances one should be granted upon terms. This would require legislative authority.[638]

The Minister deferred a decision until later in the year, then approved the inclusion of a clause in the annual special legislation bill which would order a rehearing subject to payment of a deposit of £20 within three months of the passing of the legislation. It was passed as Section 40 Native Land Amendment and Native Land Claims Adjustment Act 1927.

No deposit was paid in the time available, which effectively meant that the remedy provided by the legislation lapsed. When the owners sought, more than three months later, to have a rehearing held, and even offered to pay the deposit then, the County Council objected, and the Court was obliged by the terms of the legislation to dismiss the application. This sequence of events was drawn to the Minister's attention in August 1929, when he was told:

> The Natives consider that there has been a miscarriage of justice, and that as all the necessary declarations, estimates etc, are now lodged with the Head Office of the Native Department, the matter should again be brought before the Native Land Court by the Chief Judge with an application similar to the one struck out by the Court.[639]

He replied that another petition to Parliament would be necessary; "there is bound to be objection to an amendment, but the matter could be gone into by the Native Affairs Committee"[640].

Taking up the Minister's advice, Te One Haereiti, one of the successor owners, petitioned Parliament the following year. He asked for the rehearing powers in the 1927 legislation to be revived, claiming:

> That the delay in lodging the necessary deposit was not due to any fault of the petitioner, as the money was available and in the hands of our conductor in ample time for lodging with the Registrar.[641]

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[638] Under Secretary Native Department to Native Minister, 15 February 1927, on Registrar Native Land Court Auckland to Chief Judge Native Land Court, 11 February 1927. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank pages 2314-2318.
[639] Consolidation Officer Jones to Native Minister, 22 August 1929. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank page 2307.
[640] Native Minister to Consolidation Officer Jones, 12 September 1929. Maori Affairs Head Office file 1930/399. Te Rohe Potae Petitions Document Bank page 2308.
[641] Petition 201/1930 of Te One Haereiti. Legislative Head Office Papers of Native Affairs Committee for 1930. Te Rohe Potae Petitions Document Bank pages 2461-2462.

The Under Secretary for the Native Department supplied the Native Affairs Committee with a copy of the Judge's report on the inquiry he had held in1926, adding:

> It is unfortunate that the petitioner having got the right of rehearing should suffer through neglect of his conductor, but probably the Waitomo County Council would like to be heard from its point of view.[642]

Giving the County Council an opportunity to be heard may have caused the Committee to defer reporting on the petition. It is not known whether the Council was heard, but it was not until early 1933 that the Committee reported that it had no recommendation to make on the petition[643]. There the matter seems to have ended.

Another difficulty could arise, for the Crown in particular, but also for the Maori owners as it would have delayed their receipt of compensation, when the Court declined to consider a local authority's application. In Te Rohe Potae District, this happened in 1959 when there was a complaint that a taking Proclamation referred to the land incorrectly. In the Crown's survey records, the land was referred to as "(Otorohanga 1F4A and Orahiri 1 No.1)B", and both the survey plan and the Proclamation had used this appellation when taking an easement for waterworks over the land on behalf of Otorohanga Borough Council[644]. However, this survey had been for a partition block that had subsequently been cancelled by the Maori Land Court, and in the Court's records the affected land was known as "(Otorohanga 1F4A and Orahiri 1 No.1)D2". In the same taking for easement, a block known in the survey records as "Otorohanga 1F4C" was known in the Court records as "Otorohanga 1F4C2"; this was because a partition of 1F4C had been ordered but not surveyed. At the compensation hearing in February 1959 a solicitor for the Maori owners claimed that the Proclamation was invalid because of the incorrect descriptions of the land affected by the taking. The Court invited the Borough Council to make written submissions in support of its claim that the Proclamation was valid, and the Council's solicitor wrote to the Ministry of Works for assistance.

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[642] Under Secretary Native Department to Chairman Native Affairs Committee, 29 September 1930. Legislative Head Office Papers of Native Affairs Committee for 1930. Te Rohe Potae Petitions Document Bank page 2457.
[643] Report of Native Affairs Committee on Petition 201/1930, 14 February 1933. *Appendices to the Journals of the House of Representatives* (AJHR), 1932-33, I-3, page 9. Supporting Papers #3909.
[644] *New Zealand Gazette* 1958 page 900. Supporting Papers #4081.

> Is it the practice of your Department to disregard partitions of Maori Land which have not been registered in the Land Transfer Office, and if so can you quote authority for this?
>
> Our submission must be that the Maori Land Court has no jurisdiction to traverse the Proclamation as issued by the Governor General, but may look to its own records to decide who are the Maori owners to receive compensation.[645]

The Ministry of Works replied that it could not quote any authority.

> It is the practice of this office and, I believe, of all District Offices and my Head Office, to accept the Chief Surveyor's map and area schedule. In the particular case even the District Land Registrar has been satisfied with the document submitted to him.

This latter matter was probably at the heart of the Ministry's adoption of the conventions that it followed; being able to register a taking against the title in the Land Registry was the ultimate reason for following all the procedures that were used. The Ministry continued:

> The Maori Land Court has the remedy in its own hands, by having a survey made of partitions and lodging the Order in the Land Transfer Office.
>
> With regard to the invalidity of the Proclamation, I would refer you to the final note of Section 23 of the Public Works Act 1928.
>
> I expect shortly to be placed in the same position as the Borough Council, as we are taking land immediately to the south of your area, and it is also described as Otorohanga 1F4A and Orahiri 1 No.1B. I would be glad to learn the outcome of your submission to the Court.[646]

The submissions by the Borough Council have not been located, but the Court gave a written decision in August 1959. It ruled that the Proclamation was in error in the appellations used to describe the land subject to the taking, and therefore could not be used as the basis for any compensation order issued by the Court. In its opinion the survey plan would have to be amended to refer to the titles by the appellations used in the Court records, and the Proclamation would have to be revoked and reissued with correct descriptions of the land, after which a new application for assessment of

[645] Swarbrick & Swarbrick, Barristers and Solicitors, Te Awamutu, to District Commissioner of Works Hamilton, 1 May 1959. Works and Development Hamilton file 43/11/0. Supporting Papers #3303-3304.
[646] District Commissioner of Works Hamilton to Swarbrick & Swarbrick, Barristers and Solicitors, Otorohanga, 7 May 1959. Works and Development Hamilton file 43/11/0. Supporting Papers #3305.

compensation could be filed. The Court added a warning note for the Ministry of Works in connection with the proposed taking that the Ministry had identified earlier.

> The Court notes from the title file that the error in description has been repeated in a Notice of Intention to Take land for a public school, area 5a 2r 04p, described as Part Otorohanga 1F4A and Orahiri 1 No.1B[647]; the land to be taken is clearly shown by Mr Wooster's sketch to be part of Otorohanga 1F4A and Orahiri 1 No.1D2 – the land described as 1B is on the other side of the road from the school site and contains 1 acre only. Unless this Notice is withdrawn and a new Notice issued showing the correct description of the land taken for the school, the same difficulties will arise when application is made by the Ministry of Works on behalf of the Crown to have compensation assessed and awarded in respect of the school site.[648]

The Borough Council's solicitors were at a loss to know what to do next, and again turned to the Ministry of Works for advice.

> If the Judge is right, then no Maori land which has been partitioned without a survey plan can be taken under the Act unless the partition is first surveyed.
>
> There is the further point that the Proclamation has been registered in the Land Transfer Office, and a Land Transfer title cannot be attacked except on the grounds of fraud….[649]

The Ministry in turn referred the matter to the Chief Surveyor[650]. It was a full year before he replied.

> In the past it has been the custom to show on a proclamation plan only such Maori Land Court titles as have been surveyed and shown on approved plans, and I understand that in claims for compensation by owners of unsurveyed partitions the Court has, where possible, acted upon a compiled sketch (as distinct from a survey plan) showing approximately the areas taken from each Maori Land Court title.
>
> If this practice is not acceptable to the Court in this case owing to the involved amendments made to the title descriptions, and duplication of appellations, it would seem that the requirements of the Court in regard to survey of the up to date titles must be acceded to.
>
> It is agreed that the Court's request could be far-reaching in its applications, but as the Borough action seeking registration of the easement is one of

[647] *New Zealand Gazette* 1959 page 390. Supporting Papers #4082.
[648] Decision of the Court, 27 August 1959 (Maori Land Court minute book 83 OT 108-109). Copy on Works and Development Hamilton file 39/130/3/0. Supporting Papers #3222-3223.
[649] Swarbrick & Swarbrick, Barristers and Solicitors, Te Awamutu, to District Commissioner of Works Hamilton, 3 September 1959. Works and Development Hamilton file 43/11/0. Supporting Papers #3306.
[650] District Commissioner of Works Hamilton to Chief Surveyor Auckland, 25 September 1959. Works and Development Hamilton file 39/130/3/0. Supporting Papers #3224.

> disturbance to the title, there would appear to be some justification for the request of the Court in this particular case.[651]

The reasons for doing so are not known, but the Ministry of Works decided to proceed with its own taking of 5 acres for public school, continuing to use the appellation "(Otorohanga 1F4A and Orahiri 1 No.1)B". The taking was proclaimed in November 1960[652], and application was made to the Maori Land Court to determine compensation. The Registrar explained the difficulties he had understanding which Maori Land Court title had been affected by the taking, and asked that "the necessary amendments" be made to the application before it was advertised in the panui[653]. The Hamilton office of the Ministry then referred the matter to its head office.

> It seems to me that the position will arise, when our application is heard to assess compensation, that the Court will not be able to make an assessment. This is similar to Otawa No.2 and Torere Deviation application, your P.W. 52/137.
>
> I agree with the Chief Surveyor's suggestion that a survey of the up to date titles is necessary, but I do not agree with the implication that the Department should pay for it.[654]

The Commissioner of Works replied:

> It is the duty of this Department to move the Maori Land Court to make an award of compensation. That duty must include the placing of all necessary information before the Court, including such surveys as are needed.
>
> The cost of the survey must be met by the same vote as meets proclamation surveys for schools.
>
> I think that the Lands and Survey supplies free surveys to certain non-trading Departments, including Education, as part of the function of Lands and Survey. If that is the case, no doubt the Chief Surveyor should meet the cost in this instance.
>
> If you have to meet the cost of Education surveys, you should meet the cost of any survey required by Court.[655]

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[651] Chief Surveyor Auckland to Swarbrick & Swarbrick, Barristers and Solicitors, Te Awamutu, 7 October 1960, attached to Chief Surveyor Auckland to District Commissioner of Works Hamilton, undated. Works and Development Hamilton file 39/130/3/0. Supporting Papers #3225-3226.
[652] *New Zealand Gazette* 1960 page 1812. Supporting Papers #4087.
[653] Registrar Maori Land Court Auckland to District Commissioner of Works Hamilton, 7 December 1960. Works and Development Hamilton file 39/130/3/0. Supporting Papers #3227-3228.
[654] District Commissioner of Works Hamilton to Commissioner of Works, 1 February 1961. Works and Development Hamilton file 39/130/3/0. Supporting Papers #3229.
[655] Commissioner of Works to District Commissioner of Works Hamilton, 20 March 1961. Works and Development Hamilton file 39/130/3/0. Supporting Papers #3230.

Six weeks later the Commissioner sent a second letter.

> This matter has now been given further consideration, and it appears that no survey is necessary for the purpose of assessing compensation.
>
> I understand that the survey of the land taken for school purposes coincides as accurately as can be established with the unsurveyed boundary between the latest partitions now known as Otorhanga 1F4A and Orahiri 1 Section 1D2, and Otorohanga 1F4A and Orahiri 1 Section 1D1 blocks. If this is correct the land taken is all out of the one block, whether the appellation prior to 1937 or that at present given to the block by the Maori Land Court is used, and no question of apportioning the compensation between the owners of different blocks arises.
>
> Regarding the general policy where land is taken from unsurveyed partitions of a Maori block, the Department has always refused to be responsible for the survey of these partitions, but normally supplies the Court with a sketch plan compiled by the Lands and Survey Department showing as accurately as possible the areas taken from each partition.
>
> No action should be taken which would establish a precedent involving the Crown in the survey of Maori partitions.[656]

This advice from the Commissioner of Works was used to reply to the Registrar of the Court[657]. A sketch plan showing the area taken for school overlaid over an approximation of the unsurveyed partition boundaries, prepared by the Department of Lands and Survey, was also supplied. This response was considered sufficient by the Registrar for the application to be advertised in the panui, although he added that "the question of the [validity of the] Gazette notice still remains to be looked into"[658]. It was not until the following year, in June 1962, that the Court ordered an award of compensation for the taking for the public school[659].

The effect of the delays was that the Maori owners were unable to receive any compensation payment in a timely fashion. The Crown, on the other hand, had the comfort of provisions in the Public Works Act that protected a taking from being voided by any procedural flaws in the Proclamation.

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[656] Commissioner of Works to District Commissioner of Works, 9 May 1961. Works and Development Hamilton file 39/130/3/0. Supporting Papers #3231.
[657] District Commissioner of Works Hamilton to Registrar Maori Land Court Auckland, 25 May 1961. Works and Development Hamilton file 39/130/3/0. Supporting Papers #3232-3233.
[658] Registrar Maori Land Court Auckland to District Commissioner of Works Hamilton, 27 June 1961. Works and Development Hamilton file 39/130/3/0. Supporting Papers #3234.
[659] Maori Land Court minute book 41 M 47. Supporting Papers #3647.

10.4 Awards of Compensation

When a hearing was held, it was inevitable that there would be differences between the amounts offered by the Crown or local authorities, and the amounts sought by aggrieved landowners who had lost some of their land. The Crown officials, always conscious of a duty to spend government funds wisely, and of a need to avoid the creation of precedents that might be exploited by claimants in the future, used a method that assured consistency and had some sort of factual basis to it. The method they relied upon was the Government valuation of land, as decided by the Valuation Department in connection with rating. As a standard matter of administrative practice, they would obtain a valuation from the Valuation Department at about the same time as an application was made to the Native/Maori Land Court (in the case of Maori-owned land) for the assessment of copmensation. They would then offer this valuation amount as compensation, it becoming their starting point if there was any debate or negotiation.

There is a perception of bias when a Crown employee, rather than an independent third party, makes a valuation about a taking by the Crown, because the Crown stood to benefit from any valuation that underestimated true market value. This perception is especially acute if there is no countervailing alternative valuation evidence presented to the Court. Unlike the Compensation Court, where Europeans were motivated by the prosecution of their own application for compensation to present their own evidence of valuation, there were difficulties for Maori in organising their own valuation witnesses. With multiply-owned land, which lacked administrative structures to enable the owners to act together, it would be hard to agree upon a united stance to adopt. Then there was the matter of cost; small areas taken would not result in awards that were large enough to justify the hiring of valuation witnesses, and any awards made had to be distributed among many owners, often making it uneconomic for any one owner to act on behalf of all. There were a number of instances in Te Rohe Potae where, in the absence of evidence to counter the special valuation presented by the Crown, the Native Land Court felt obliged to accept the Crown's evidence, and make that the basis for its award.

A number of compensation amounts were agreed to between the two parties before the Native Land Court held its hearing. The amounts agreed would presumably have been close to the Government valuation, to allow the Crown officials to accept them. At the hearing the Court would be told about the agreement, and it would accept the agreed amount as the compensation award it then made. An example was a taking of the whole of Ouruwhero 3G19 for public school in 1956[660]. Even prior to the taking the sole owner had agreed to accept £85 in full compensation for the taking of his section[661]. At the compensation hearing, the Court heard from both the Crown and the owner of the taken land that this amount had been agreed to, and adopted it as its award[662].

At other hearings the amount of compensation to be paid would be challenged. At that point, the Crown or a local authority would present the valuer as a witness, and he would speak to the value he had assessed. The applicant might also call local landowners as witnesses, who could corroborate the price of land prevailing in the district. The claimants would then present their own valuation witnesses, who came from a similar background. It would then be left to the Native/Maori Land Court to decide between the competing claims. In a number of instances the Court would adjourn the hearing, so that it could visit and view the taken land, before it reached a decision. In other cases it might adopt a mid-point between the competing amounts. In only a few cases, such as for Mangapehi post office[663] and Mangapehi recreation ground (see chapter on Other Takings Initiated by Local Government), were Maori witnesses better organised than Crown witnesses and able to obtain substantially better awards than the Crown was willing to offer. The evidence from multiple valuation witnesses tended to give the hearing a European flavour, reducing the Maori owners (if they were present) to the status of bystanders.

Generally the greater the amount of compensation likely to be ordered, the more valuation witnesses would be called by each side. The hearing of compensation for

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[660] *New Zealand Gazette* 1956 page 808. Supporting Papers #4073.
[661] District Commissioner of Works Hamilton to Commissioner of Works, 28 May 1956. Works and Development Head Office file 31/1596. Supporting Papers #1458.
[662] Maori Land Court minute book 35 M 374. Copy on Works and Development Head Office file 31/1596. Supporting Papers #1459.
[663] Maori Land Court minute book 74 OT 366-370, and 75 OT 3-4. Supporting Papers #3709-3713 and 3714-3715.

the Tokanui takings (see chapter on Tokanui in Part III) is an example of this. Another is the hearing of compensation for the Mangoira Block (see chapter on Scenery Preservation Takings in Part III), where there were so many witnesses that the hearing lasted a whole week.

In every case the Court was bound to act reasonably, and not favour any one party. However, the Court appears to have been very well aware of the power imbalance between the Crown and Maori claimants. Acting reasonably, though, also meant that the Native/Maori Land Court had to be aware of advances in compensation law developing in the Compensation Courts for European-owned land, and had to be prepared to apply those developments to Maori-owned land as it saw fit. Legislative provisions in the Finance Act 1936 and the Finance Act 1944, among others, had the effect of constraining the Court in how it went about assessing compensation.

Acceptance of land valuation as a basis for compensation had become well established in case law during the nineteenth century. Another development was the concept of 'betterment'. This is the idea that the provision of a public work might confer some benefit on the remainder of a block of land that was not taken, in terms of a likely increase in selling price, and that as a result the owners of the taken land could not expect to receive as much compensation as if there was no benefit to them. In a case affecting Rangitoto-Tuhua 36A and Maraeroa A3 partitions in 1937, the Court considered that it was obliged to take betterment into account, although it held that the increase in value of the land that remained in Maori ownership would not be great[664].

However, in general the Native/Maori Land Court considered that it had been given the responsibility for determining compensation for a particular reason. It had insights into matters Maori, and therefore into the impact on Maori life that takings might have, that a eurocentric Compensation Court could not have.

Different jurisdictions for assessing compensation owed to Maori and to European landowners introduces another issue, that Maori might have been treated less

[664] Maori Land Court minute book 71 OT 72-73. Supporting Papers #3707-3708.

generously than Europeans. It is not a straightforward matter to compare compensation payments to different claimants, as there may be any number of local differences that justify differences in the amounts paid. The research for this report has not been sufficiently forensic in nature to make anything other than some very general comments.

The Crown's approach of taking Government valuation as a starting point for the negotiation of claims does provide a standard baseline for cases in both the Compensation Court and the Native/Maori Land Court. However, there were some disadvantages for Maori in that approach. Because of multiple ownership and lack of access to capital, Maori-owned land might be less developed. The Crown might assess a market value for developed European-owned land, and then argue that the value on nearby Maori-owned land should be discounted because of its less developed state. This appears to have been the approach adopted by valuation witnesses for the Crown in the Tokanui compensation case.

A greater difficulty for Maori, however, lies in different perceptions of value to Maori and to Europeans. Europeans and Government valuers looked upon rural land as an economic resource for land settlement purposes, and perhaps more specifically for the growing of grass on which sheep and cattle could graze. The value of the rural land was therefore a reflection of the income that could be derived from growing meat and wool. Urban land would be looked upon in terms of its subdivision potential, and the number of housing or commercial sites that it could be divided into.

In all Maori communities there would be additional values attached to particular pieces of land. Long traditional histories meant that different lands had different stories attached to them, all of which had value to those communities. Some of the most valuable lands would be urupa or old occupation sites. Certain lands might be important as food resources, or for the provision of access to food resources such as the sea, the foreshore, and the rivers.

These perspectives on value could not be assessed by European valuers, and tended to be referred to rather disdainfully by Crown officials as "sentiment".

In addition, Maori land might increase in its value to Maori as the amount of Maori-owned land remaining in a district declined. If little land remained for a community's food growing and other needs (its ability to sustain in both an economic and a social sense), then the loss of even a small part of what remained might have large consequences. Because the amount of Maori-owned land had declined so dramatically during the nineteenth century, it was a requirement of the Native Land Act 1909, when considering proposals to reduce the amount of land owned by Maori still further through purchase by Europeans, that a check be made to see whether the loss of further land would render Maori individual owners landless (or with insufficient land for their needs). The District Maori Land Boards (whose task was taken over by the Native Land Court from 1932) did this sufficiency-of-land test by informally choosing an area below which an individual's total land holdings should not fall. However, there was no similar check on remaining landholdings built into the taking powers of the Crown under the Public Works Act, nor was there any ability for the Native Land Court to factor in whether a public works taking resulted in an individual's total land holding falling below any formal or informal minimum area.

These were structural failures of the public works legislation to ensure that Maori landowners were properly compensated for contributing to the public good (as the Crown saw it). The Native Land Court was not able to fully address aspects of land ownership that were unique to Maori. Instead the evidence suggests that both the Court and the Public Works Department were aware of the need for compensation amounts paid to Maori and Europeans to be similar, resulting in a one-dimensional approach that was heavily weighted towards monetary compensation and European viewpoints.

10.5 Compensation Negotiated by the Maori Trustee

Under a 1962 amendment to the Public Works Act 1928, the requirement that compensation be determined by the Maori Land Court was discontinued. Instead compensation would be negotiated directly with the owners, if there were four or fewer owners, or with the Maori Trustee if there were more than four owners. Only if agreement could not be reached with either the owners or the Maori Trustee would the matter be argued before the Land Valuation Court.

The Maori Trustee was heavily involved in negotiating compensation on behalf of Maori owners at Otorohanga when land was taken for the flood protection works there. Initially, prior to the passing of the 1962 amendment, this involvement was confined to those lands which the Maori Trustee was administering under the Maori Reserved Lands Act 1955. These were some of the Native Township sections that were leased out, predominantly to Europeans. For these lands, the Maori Trustee was the legal 'owner', and the Crown (acting on behalf of Otorohanga Borough Council and Waikato Valley Authority) was dealing with the Maori Trustee on that basis[665].

This meant that the Maori Trustee already had experience of compensation negotiations when he was given additional responsibilities by the 1962 amendment. His efforts on behalf of the owners of Otorohanga 1F4A and Orahiri 1 have already been discussed in an earlier chapter (on Other Takings initiated by Local Government). There were also a number of other taken areas for which he negotiated compensation because there were more than four owners[666].

Another substantial involvement of the Maori Trustee was in negotiating compensation for the construction of the Kapuni natural gas pipeline trough Maori-owned land (discussed in the chapter on Other Central Government Takings).

10.6 Compensation for Occupation and for Removal of Stone

Although not a taking and permanent loss of land, the Public Works Act also allowed temporary occupation of private property, and the removal of sand, stone and metal, for purposes of carrying out a public work. This "right of entry" was provided in Section 121 Public Works Act 1928. The right was exercised when notice was served by the Public Works Department on the owner of the private property. Where entry occurred under this power, the compensation provisions of the Act applied, which in the case of Maori-owned land meant that compensation would be assessed by the Native Land Court.

[665] Examples are the compensation arrangements discussed on Works and Development Hamilton files 96/434220/0/5, 96/434220/0/6, 96/434220/0/19, 96/434220/0/24 and 96/434220/0/25.
[666] Examples are the compensation arrangements discussed on Works and Development Hamilton files 96/434220/0/32 and 96/434220/0/60.

The right of entry provided by the legislation did not constitute land loss, but did provide the Crown with an opportunity to take over and exercise management control over Maori-owned land. Under such circumstances Maori were no longer able to freely exercise their own freehold rights over their own lands.

Although use by the Crown of the right-of-entry power has not been a focus of the research for this report, some examples were identified when examining Native Land Court records about compensation for public works takings. The following instances of compensation hearings were identified:

Table 10.1 Compensation for Use of Land

Date	Blocks Affected	Maori Land Court minute book reference
November 1935	Moerangi 3J	26 M 264
October 1936	Rangitoto-Tuhua 74B6D	70 OT 328-329
April 1937	Mahoenui 2 Section 6	71 OT 11
April 1937	Umukaimata 2B5C2 & 2B5D2	71 OT 17-18
April 1937	Mangauika 1B1 & Whakairoiro 5C2C	71 OT 27-33

Source: Maori Land Court minute books.

All but one of these cases were concerned with assessing compensation for the removal of shingle and roading metal. The single exception was the use of the Umukaimata blocks as a camp for workers at a nearby quarry, making the compensation awarded by the Court the equivalent of rent for the use of the land. The dates of these hearings suggest that the Crown moved on to the Maori-owned properties in connection with Depression-era unemployment relief schemes.

The payments for shingle and stone were relatively small, because this material is often of low quality, being chosen by the Crown only for its suitability for roading purposes, and because there is little in the nature of a competitive market for it. However, in Te Rohe Potae District there are numerous outcrops of limestone, and the manufacture of agricultural lime has been one of the district's industries. Such

limestone may have a higher value than just for use for roading purposes, which raises the stakes when determining how much compensation to award. In an earlier chapter on Takings for Road-Related Purposes, a notice of entry on to land that later became Troopers Road quarry has been referred to. The case concerned limestone quarrying by the Public Works Department, at first without the permission of the Maori landowners, then under a right of entry issued in 1946, followed by a taking of the quarry site in 1949. A solicitor for the owners had objected to the taking on the grounds that the earlier occupation and quarrying had not been paid for by the Crown, and was told that compensation was a matter for the Native Land Court. At the hearing into compensation in 1951, the Crown accepted that the compensation to be assessed for the taking had to provide for the taking of limestone before 1949. The Public Works Department gave evidence that 13,776 cubic yards of limestone had been removed before the site was taken.

One of the issues the Court had to address was the use to which the stone could be put. Because it was of a quality suitable for the manufacture of lime, the value of the stone would be higher than if it was only suitable for road metal, and comparisons could be made when assessing that value with other quarries in the district supplying limeworks. However, another issue was distance to market; the further away the quarry was from the limeworks and the Main Trunk Railway, the lower would be the value of the limestone; and if those limeworks had sources of supply closer to hand than the Troopers Road quarry, the value of stone in the taken land would be reduced still further.

The Public Works Department did not dispute that the stone was of lime-manufacture quality, but argued that it had no value for that purpose as there would be no market for it. The Court accepted this argument, and found that the Troopers Road limestone had no value as a source of supply for any of the existing limeworks in the district. However, it found that it did have value as a source of supply for burnt lime, because being softer stone than the limestone near Te Kuiti, it required less coal to burn it and release the lime in the stone. This finding was based on the evidence that a lime-burner had paid for limestone rights in an adjoining block. Although lime-burning based on supply from that adjoining block had not gone ahead, this evidence had

raised the prospect of the limestone on the taken land having a value for lime-burning, and that was sufficient, in the Court's opinion, for it to decide that it had a value[667].

Ironically, the evidence about the sale of quarrying rights to the lime-burner had been introduced to the Court by the Crown. Since it had the effect of increasing the amount of compensation the Crown would have to pay, the District Commissioner of Works in Hamilton felt obliged to send an apologetic memorandum to his head office.

> It is correct that Beros Bros. are the only lime millers in the district who also manufacture burnt lime. This was not known until the day of the hearing. Also it was only whilst waiting for the Court to open that it was learned that his firm had purchased rights over a block across the road. It was too late then to do anything about the matter, and it was decided to call Mr Beros as a witness, and he did prove to be a good witness.

The District Commissioner offered to try and reach an agreement with the Maori owners, rather than leave it solely to the Court to decide upon[668].

The Commissioner of Works, however, preferred to challenge the Court's decision, which had been issued as an interim one pending the hearing of further evidence on value. He wrote to the Court disputing the final part of the Court's decision, arguing that as the intentions of one particular purchaser for lime-burning had not come to fruition, it was unreasonable to imagine that a second quarrying site (the taken land) would have any value in providing lime for burning. He pointed to another part of the decision, where the Court had concluded that the only realistic purchasers of the taken land were the Crown and the local authority, who would use the stone only for roading purposes[669].

The hearing did not resume until November 1953, 2½ years after the interim decision had been issued. The owners' solicitor referred to the sixpence per cubic yard requested by the owners when the Crown had entered their property in 1946, and noted that this amount had also been quoted by the lime-burner in his evidence at the

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[667] Maori Land Court minute book 76 OT 226, 330-349, 349A-349H, and 350-355. Not included in Supporting Papers.
Interim Decision of Maori Land Court, 23 April 1951 (76 OT 349A-349H). Copy on Works and Development Head Office file 54/290. Supporting Papers #1669-1676.

[668] District Commissioner of Works Hamilton to Commissioner of Works, 17 September 1951. Works and Development Hamilton file 54/290. Supporting Papers #1677-1678.

[669] Acting Commissioner of Works to Registrar Maori Land Court Auckland, 5 October 1951, and Acting Commissioner of Works to District Commissioner of Works Hamilton, 8 October 1951. Works and Development Head Office file 54/290. Supporting Papers #1679-1680 and 1681.

earlier hearing. The same amount was being paid by a quarry operator at Otorohanga. The Crown pursued its argument that the lime-burning proposal had come to nothing, so that compensation should not be based on a royalty figure; it wanted compensation to be based only on the farming value of the land[670]. The Court in its decision did not revise its interim decision, as hoped for by the Crown, so that a royalty basis was still appropriate. It decided that threepence per cubic yard was a fair royalty to set. Besides the 13,776 cubic yards quarried before 1949, there was still 10,000 cubic yards remaining on the site, so the Court fixed the total quantity of stone at 24,000 cubic yards. That amount at threepence per cubic yard would total £300. Applying a discount to account for the fact that some of the stone had not been extracted at the time of the Notice of Intention to Take, it assessed the value of the taken land at £250, to which would be added interest from the date of the Notice of Intention in 1947[671].

A comparison with the value of the land for farming purposes shows what was at stake for the Crown. A Government Valuation obtained at the time of the taking in 1949 showed a value for the quarry site of just £3-10-0d[672]. In this instance therefore, where the Crown felt that the Court's decision was arguable, the involvement of the Maori Land Court had been beneficial to the Maori owners.

[670] Maori Land Court minute book 78 OT 238-244. Copy attached to District Commissioner of Works Hamilton to Commissioner of Works, 23 December 1953. Works and Development Head Office file 54/290. Supporting Papers #1682-1685.
[671] Maori Land Court minute book 78 OT 249-252. Copy attached to District Commissioner of Works Hamilton to Commissioner of Works, 23 December 1953. Works and Development Head Office file 54/290. Supporting Papers #1682-1685.
[672] District Officer Valuation Department Auckland to Commissioner of Works, 24 November 1949. Works and Development Head Office file 54/290. Supporting Papers #1668.

11 LAND NO LONGER REQUIRED FOR ITS TAKEN PURPOSE

11.1 Introduction

The principle that land that had been compulsorily acquired should be offered back to its original owners when no longer required has only been established in New Zealand public works legislation and practice with the passing of the Public Works Act 1981. Before then, although many lands ceased to be used for the purpose for which they were taken, the Crown exhibited little inclination to relinquish the properties and return them to former owners, because it had no statutory obligation to do so. Certainly its interest in returning land did not match its determination to acquire the lands in the first place.

The main exception to this was with respect to Native School sites that had traditionally been gifted to the Crown. Whenever these sites were abandoned, either because of physical unsuitability or because of the closing of small rural schools, the Crown acknowledged a duty to return them to their former Maori owners (or their descendants) at no cost to the new owners. A legislative provision passed in 1943 enabled these returns. However, the return at no cost was only of the land. If the land was still occupied by school buildings, the new owners were expected to pay the Crown for their acquisition.

Taken lands with habitable properties on them that became surplus to requirements were usually quickly disposed of, because of the costs and risk of loss to the Crown associated with retaining them. However, as a generalisation, Crown departments have tended to declare lands to be surplus to their requirements only when spurred on by some incidental event or factor that made it worth their while to do so.

Local authorities have adopted a similar approach, until recently. It has only been since 1989, with restructuring of the sector, and the adoption of an organisational culture based around asset management, that local authorities have taken positive steps to review their land assets and consider returning surplus properties.

11.2 Return of Gifted Native School Sites

The Crown has distinguished lands taken for Native school sites from lands taken for other purposes, because no compensation was paid for the Native school sites. It accepted that they would be returned to their former owners or their descendants once the Crown no longer had a need for them.

As explained earlier in this report, the Crown did not consider that it had any moral obligation to return a Native school site gifted to it if the land was still being used for education purposes, such as when a Native School was transferred into the public schools system. When the Maori school system was amalgamated into the public school system in 1968, only two of the sites referred to earlier in this report still had operating Maori schools; these were the schools at Makomako and Taharoa[673]. There was no consultation with Maori from these two communities about the change of policy.

A number of the Native school sites in Te Rohe Potae District have been returned to Maori ownership over the years, and each is discussed below.

11.2.1 Mangaorongo

Although it had ceased to be used as the site of a Native School in 1908, the land taken under the Public Works Act in 1903 for the Mangaorongo Native School continued to be held by the Crown. The school buildings were made available to the Auckland Education Board for removal to Rangiatea Public School in 1927, and their removal apparently occurred the following year. Correspondence with the Auckland Education Board in 1949 and 1950 resulted in requests from the Board that the Crown retain the site as it might be required for future educational use[674]. Holding the land 'just in case' was apparently regarded as sufficient reason to avoid declaring the land surplus and returning it to the descendants of the former Maori owners.

[673] *New Zealand Gazette* 1969 page 12. Supporting Papers #4094.
[674] Secretary Auckland Education Board to District Superintendent of Education Auckland, 19 October 1949 and 20 November 1950. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1909 and 1910.

In 1955, however, in response to an approach from the Maori lessee of the land surrounding the school site[675], the Director of Education recommended, and the Minister of Education approved, the transfer of the site to the Department of Lands and Survey for disposal[676]. The Education Department then amended this, and chose to rely on Section 436 Maori Affairs Act 1953, whereby the land could be revested in owners determined by the Maori Land Court. Without appreciating that this section required an application to the Court by the Crown, the Education Department wrote to Maori Affairs Department asking that "in view of the circumstances, it would be appreciated if you would arrange for the disposal of this land"[677].

The Registrar of the Maori Land Court determined that the school site was located within Rangitoto A15I block, which had five owners[678]. However, because the Court had not received an application, it made no further moves, and the whole matter languished unattended for four years. It was not until another inquiry from a Maori owner of the adjoining land was received in November 1960[679] that the revesting of the site was resurrected. The solicitor for the owner was told, incorrectly, that "the site was handed to the Registrar of the Maori Land Court on 14 March 1956 for return to the descendants of the original owners, and is now out of my control"[680]. After some discussion among government departments, during which the Court said that it would accept a fresh application for revesting under Section 436, it was agreed that the Ministry of Works, as one of the Crown's land disposal agencies, would lodge the application on behalf of the Crown[681]. The application was made in March 1961[682],

[675] Commissioner of Crown Lands Hamilton to District Administrative Officer Auckland, 15 April 1955. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1911.
[676] Director of Education to Minister of Education, 24 May 1955, approved by Minister 31 May 1955. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1912.
[677] District Administrative Officer Auckland to District Officer Maori Affairs Auckland, 8 July 1955. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1913.
[678] Registrar Maori Land Court Auckland to District Superintendent of Education Auckland, 4 May 1956. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1914-1915.
[679] Phillips and Powell, Barristers and Solicitors, Otorohanga, to Education Department Hamilton, 7 November 1960. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1916.
[680] District Executive Officer Auckland to Phillips and Powell, Barristers and Solicitors, Otorohanga, 16 November 1960. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1917.
[681] Maori Schools Officer Auckland to District Commissioner of Works Hamilton, 2 February 1961. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1918.
[682] Deputy District Commissioner of Works Hamilton to Registrar Maori Land Court Auckland, 22 March 1961. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1919.

and the Court ordered it to be revested in Maori ownership and included in the title to Rangitoto A15I in November 1962[683].

11.2.2 Te Kopua (Raglan)

No school was built on Te Kopua school site (Te Kopua 15A) after it had been taken under the Public Works Act in 1904. In 1913 Whare Paekau asked the obvious question; why could the school site not be "done away with"?[684] He was told:

> Legislation will be necessary to enable the land to revert to the Maoris, and that, as it is not now required, nor likely to be required for school purposes, the Government proposes taking steps to obtain legislative authority for the return of the land.[685]

This advice was not legally correct, as the Proclamation could have been revoked without the passing of special legislation. In any event, the Secretary for Education had second thoughts later that year when he noted:

> On looking further into this, I see no sufficient reason to move at present. The land was taken in good faith, and it is not the fault of the Government that the school did not eventuate.[686]

It was to be another ten years before the matter was reconsidered. Local settlers were anxious to obtain title to the school site, in order to quarry a limestone outcrop, and were confused about whom to approach as the Lands and Survey records showed it to still be Crown-owned, while Whare Paekau, who was in occupation, claimed that the site had reverted to its former owners because it had not been used for a school[687]. The settlers were told that the site remained the property of the Crown, which would investigate whether it should be returned to the former owners; in the meantime the Crown would not consent to it being quarried[688].

The Inspector of Native Schools could see no reason why the site should not revert to Maori ownership, as it was unlikely to be used for the purpose for which it was taken,

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[683] Maori Land Court minute book 85 OT 166. Supporting Papers #3723.
[684] Whare Paekau, Raglan, to Native Minister, undated (received 12 May 1913). Education Auckland file 44/4 (Te Kopua). Supporting Papers #2156-2157.
[685] Secretary for Education to Whare Paekau, Raglan, 29 May 1913. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2158.
[686] Secretary for Education to Mr Severne, 2 October 1913. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2159.
[687] SH Dando, Raglan, to Secretary for Education, 3 May 1923. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2160.
[688] Director of Education to SH Dando, Raglan, 25 May 1923. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2161.

the Minister gave his approval[689], and the Public Works Department was asked to revoke the taking Proclamation[690].

The Public Works Department was willing to take this step only if it complied with the relevant legislative requirement, which stated that a revocation of a Proclamation could only occur if compensation had not been paid or awarded[691]. When this was confirmed[692], the Proclamation was revoked in July 1923[693].

While the revocation was quickly achieved once the Education Department had approached the Public Works Department, neither Department notified Te Kopua Maori that the land was back in their ownership. This meant that it was not until 1942 that the former school site was dealt with by the Native Land Court. In February 1942 it vested the section in Tuumu Paekau solely[694].

11.2.3 Rakaunui

Rakaunui School closed in 1967. In December of that year RT Takiari indicated his interest in acquiring the site[695]. He was told that the Education Department was looking at the possibility of relocating the buildings elsewhere. Once that had been decided upon, either the site, or the site with the buildings, would be declared surplus and available for disposal[696]. Separately solicitors for Martin Searancke asked for the site to be returned to him, claiming that his mother had gifted it to the Crown[697]. They were given the same advice about disposal, with the additional information that the school site appeared to be derived from Awaroa A3 block, which had 42 owners

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[689] Inspector of Native Schools Porteous to Director of Education, 14 June 1923, approved by Minister of Education 18 June 1923, on Director of Education to SH Dando, Raglan, 25 May 1923. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2161.
[690] Director of Education to Under Secretary for Public Works, 25 June 1923. Works and Development Head Office file 31/367. Supporting Papers #1448.
[691] Assistant Under Secretary for Public Works to Director of Education, 29 June 1923. Works and Development Head Office file 31/ 367. Supporting Papers #1449.
[692] Director of Education to Assistant Under Secretary for Public Works, 4 July 1923. Works and Development Head Office file 31/367. Supporting Papers #1450.
[693] *New Zealand Gazette* 1923 page 2048. Supporting Papers #4029.
[694] Maori Land Court minute book 28 M 335-336. Supporting Papers #3637-3638.
[695] RT Takiari, Oparau, to Regional Superintendent of Education Auckland, 16 December 1967. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2039.
[696] Regional Superintendent of Education Auckland to RT Takiari, Oparau, 23 January 1968. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2040.
[697] Duncan & Dennett, Barristers and Solicitors, Rotorua, to Minister of Education, 23 January 1968. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2041.

when the Court Order for it had been issued in 1901[698]. A third approach was made by solicitors for the Rakaunui Tribal Committee, which wanted the site and buildings for an interdenominational church[699].

In March 1968 the Education Department obtained the approval of the Minister of Education to declare the site and buildings surplus, and to be handed over to the Ministry of Works for disposal[700]. When the Ministry was asked to undertake the disposal action, it was told of the three approaches made to acquire the old school[701].

The Ministry's stance was that because the site had been gifted by the former Maori owners, it "should be returned to them free of charge through the Maori Land Court"[702]. An application was made to the Court in August 1968 for the revesting of the land in "such persons as may be found by the Court to be justly entitled thereto"[703].

At the Maori Land Court hearing the following month, the Ministry of Works' representative explained that the buildings were still on the site and the Crown reserved the right to sell them to whoever was awarded the land. He added that one possibility was to vest the site in the Maori Trustee with power to sell, and any proceeds of sale then going to the local marae. The Deputy Registrar of the Court supported a revesting of this nature, because "it will be a very big job to ascertain successors to owners 60 years ago"; he believed that the beneficial owners of the marae would be the successors to the former owners of the gifted land. The Court,

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[698] Minister of Education to Duncan & Dennett, Barristers and Solicitors, Rotorua, 13 February 1968. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2042.
[699] Edmonds, Dodd, Goldfinch & Storey, Barristers and Solicitors, Te Awamutu, to Property Supervisor Auckland, 26 February 1968. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2043.
[700] Director General of Education to Minister of Education, approved 26 March 1968. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2044.
[701] Regional Superintendent of Education Auckland to District Commissioner of Works Hamilton, 4 April 1968. Works and Development Hamilton file 39/0. Supporting Papers #3211-3212.
[702] District Commissioner of Works Hamilton to Regional Superintendent of Education, 18 April 1968. Works and Development Hamilton file 39/0. Supporting Papers #3213.
[703] Application for Order Revesting Land, 2 August 1968. Works and Development Hamilton file 39/0. Supporting Papers #3214.

however, refused to be rushed, and wanted to first hear from Martin Searancke, who claimed to be a descendant of one of the former owners[704].

The stance adopted by the Ministry of Works is open to question. It could be argued that, the Crown having entered into a partnership arrangement with certain Maori in 1909 when the site was gifted, it was bound to maintain that partnership until the arrangement was terminated by the consent of both parties. Whether the closing of the school had been by consent of the local community has not been investigated for this report. There had been no discussion with descendants of the former owners prior to putting forward an alternative disposal mechanism at the Maori Land Court hearing, which, incidentally, was not attended by anyone from the local community.

Later in September 1968 the hearing resumed. Searancke was not present or represented, but Rohe Takiari and the Chairman of the Rakaunui Marae Committee both attended. Takiari, who lived close to the site, offered to purchase it. The Marae Committee also offered to purchase the site and buildings, with the house to be used by the Maori Queen when she visited the marae, and rented out as a residence at other times of the year. The only involvement of the Ministry of Works' representative at the hearing was to query how realistic the Marae Committee's proposal was, because a "building of that age wants to be continuously occupied and maintained". The Court reserved its decision[705].

The Court gave its decision the following month. This inadvertently highlighted how minimal had been the contact with the descendants of the former owners. Searancke's mother's name could not be identified among the owners of Awaroa A3 or Awaroa A3B. The Chairman of the Marae Committee had named three persons he claimed were former owners, but only one could be identified with certainty in the ownership lists. Takiari was the sole owner of Awaroa A3B2A2, and could therefore probably claim descent from one of the former owners. Thus both the Marae Committee and Takiari could claim only minimal representation of the former owners in support of

[704] Maori Land Court minute book 46 W 297. Copy on Works and Development Hamilton file 39/0. Supporting Papers #3215.
[705] Maori Land Court minute book 46 W 305-306. Copy on Works and Development Hamilton file 39/0. Supporting Papers #3216-3217.

their respective applications, given that the 40 or so owners in 1909 were likely (on the Deputy Registrar's estimate) to have expanded to at least 150 descendants.

The Maori Land Court was clearly swayed by the Ministry's remarks about the impracticality of the Marae Committee application, comparing this with the "very considerable assistance" to his farming operation that Takiari as adjoining owner would gain if he was able to purchase the site and buildings. It decided to make an order vesting the land in Takiari solely, subject to him reaching agreement with the Crown on the price to be paid. Takiari was expected to pay for the land, which the Court specified should be sold for not less than $200[706].

In October 1968 the Court was advised that it had been agreed that Takiari would pay $750, being $300 for the land and $450 for the buildings. After that sum was paid to the Crown, the Ministry of Works sent a cheque for $300 to the Court Registrar, with the suggestion that it be "paid to the Maori Trustee for disbursement to the Marae Committee or as the Court directs"[707]. The Court decided to hold the money until "status of Marae Committee is made known to the Court"[708].

Subsequent distribution of the money is not recorded on the Crown files. This is despite it being of direct relevance to the moral contract that the Crown entered into with the owners of the gifted land in 1909. Because what had happened in disposing of the land had become clothed with the legal decisions and approvals of the Maori Land Court, the Crown was able to walk away from the arrangements it had made with the former owners, without feeling any sense of obligation to see those arrangements through to an agreed conclusion.

11.2.4 Moerangi (Kaharoa)

Kaharoa Maori School closed at the end of 1964. In July 1965 the land and remaining buildings were declared surplus to the requirements of the Education Department, and were handed to the Ministry of Works to arrange disposal. The Ministry was advised

[706] Decision of the Court, 9 October 1968. Copy on Works and Development Hamilton file 39/0. Supporting Papers #3218-3219.
[707] District Commissioner of Works Hamilton to Registrar Maori Land Court Hamilton, 11 October 1968. Works and Development Hamilton file 39/0. Supporting Papers #3220.
[708] Maori Land Court minute book 46 W 311. Copy on Works and Development Hamilton file 39/0. Supporting Papers #3221.

that some approaches had been made to purchase the land and buildings, including a request from the Waikato-Maniapoto District Maori Council that the land be returned to the Ngati Mahanga people of Aramiro for use as a community centre[709].

The Ministry of Works proposed to return the land by having it revested by the Maori Land Court under Section 436 Maori Affairs Act 1953. Rather than specify in whom the Crown thought the land should be revested, it chose to leave that decision to the Court. The application, made in February 1966, sought vesting in "such persons as may be found by the Court to be justly entitled thereto"[710].

The Court seems to have had little difficulty deciding in whom to revest the school site. All the Maori-owned land surrounding the site had been amalgamated into the Aramiro Block, and the Court ordered in March 1966 that the school site be vested in the present owners of Aramiro, further ordering that the boundaries of that block be amended to include the site[711].

11.2.5 Te Kopua (Waipa Valley)

Prior to becoming a school site, the land for Te Kopua Native School had been Crown Land set apart under Part I Native Land Amendment Act 1936 for the purposes of Maori land development (as part of the Pirongia Development Scheme).

Although Te Kopua School closed in 1956, it was not until 1961 that steps were taken to dispose of the site. The teacher's residence was still in use (for a teacher working at Tihiroa School), but the rest of the site was considered surplus. This surplus area was surveyed, and found to have an area of 3 acres 2 roods 11 perches[712]. It was declared to be no longer required in 1961[713], thereby reverting to its former status of Crown Land, although this time without any tag allocating it to Maori land development activities.

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[709] Regional Superintendent of Education Auckland to District Commissioner of Works Hamilton, 6 July 1965. Works and Development Hamilton file 39/0. Supporting Papers #3201-3209.
[710] Application for Order Vesting Land, 15 February 1966. Works and Development Hamilton file 39/0. Supporting Papers #3210.
[711] Maori Land Court minute book 44 W 221. Supporting Papers #3771.
[712] South Auckland plan SO 40924. Supporting Papers #2429.
[713] *New Zealand Gazette* 1961 page 1928. Supporting Papers #4090.

The teacher's residence was no longer required from 1973[714]. The buildings were removed and in 1974 the site was declared to be no longer required and to become Crown Land[715]. This balance had an area of 1 rood 29 perches[716].

11.2.6 Makomako

When the Maori Schools system was amalgamated with the public schools system in the late 1960s, administrative responsibility for Makomako School passed to the Auckland Education Board. By 1985, however, the school had closed, the Board had handed the site back to the Department of Education, and the site was surplus to the Department's requirements. Both the Department of Lands and Survey and the Ministry of Works and Development, as the Government agencies responsible for disposal of surplus property, were advised.

> Several buildings remain on the site, including two small classrooms, a three-bedroom house with garage and other small outbuildings, workshop, shower and toilets….
>
> I have been informed that the buildings are being vandalised, so you may need to instigate measures to protect the improvements on the site, particularly the residence.[717]

At about the same time the local Member of Parliament was approached by a member of the Maihi family, who were among the descendants of the owners of Moerangi 3D2 who had gifted the land in 1923. He asked for urgency in the handing back of the site, noting that Lands and Survey had agreed that Denny (also known as Dennie) Maihi should be regarded as caretaker for the site in the interim[718].

The issue as far as the Ministry of Works and Development was concerned was the worth of the buildings on the site. There was never any argument that the land would be returned to its former owners at no cost to them, because the site had been gifted, but the buildings had a value that the Crown wanted to see recouped if it disposed of

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[714] Regional Superintendent of Education Auckland to District Commissioner of Works Hamilton, 15 June 1973, attached to District Land Purchase Officer Hamilton to District Commissioner of Works Hamilton, 28 August 1973. Works and Development Head Office file 31/367. Supporting Papers #1452-1453.
[715] *New Zealand Gazette* 1974 page 1716. Supporting Papers #4113.
[716] South Auckland plan SO 40924. Supporting Papers #2429.
[717] Regional Superintendent of Education Auckland to Commissioner of Crown Lands Hamilton, 5 December 1985. Works and Development Hamilton file 39/283/0. Supporting Papers #3235.
[718] T Mallard MP to District Property Management Officer Hamilton, 18 December 1985. Works and Development Hamilton file 39/283/0. Supporting Papers #3236-3238.

the site. It obtained a valuation showing the improvements were worth $30,000. This value was primarily in the house and its outbuildings, the classrooms adding only limited value to the improvements[719]. The need to be paid for the improvements was highlighted in the recommendation that Works and Development officials prepared.

> As the above school site is now surplus to the Department of Education requirements, it may now be disposed of to its former owners, and the land should be offered back to the Maihi family at nil value, because the land was originally gifted. However the Maihi family would be required to pay current market value for the improvements to the land which have been assessed at $30,000. It is proposed to apply to the Maori Land Court under Section 436 of the Maori Affairs Act 1953, requesting the Court to dispose of the land to the former owners or their successors at nil value, subject to the owners paying $30,000 for the improvements thereon.[720]

The recommendation was approved, and an application to the Court for revesting of the land was made in May 1986[721].

When the Maihi family were told that they would have to pay the Crown $30,000 for the buildings, and unless they did so they would not get their land back, they went back to their local Member of Parliament. He wrote to the Minister of Works and Development.

> [My constituent] has been told that his family must pay for the improvements on the land, and is extremely concerned at this suggestion. He is happy for your Ministry to remove the improvements.
>
> I am concerned that if this matter is not cleared up quickly, it might become a focal point for at least one local land activist.[722]

In response to the Ministerial approach, local staff prepared a draft for the Minister's signature that advised that an application to the Maori Land Court for a revesting order was the appropriate action to take, and that if the Maihi family were not prepared to pay for the improvements, "they should advise the Registrar of the Maori

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[719] District Valuer Hamilton to District Commissioner of Works Hamilton, 1 April 1986. Works and Development Hamilton file 39/283/0. Supporting Papers #3239-3240.
[720] District Property Officer Hamilton to District Commissioner of Works Hamilton, 15 April 1986. Works and Development Hamilton file 39/283/0. Supporting Papers #3241-3243.
[721] Application by Minister of Works and Development, 13 May 1986. Works and Development Hamilton file 39/283/0. Supporting Papers #3244-3245.
[722] T Mallard MP to Minister of Works and Development, 10 June 1986, attached to Commissioner of Works to District Commissioner of Works Hamilton, 17 June 1986. Works and Development Hamilton file 39/283/0. Supporting Papers #3246-3247.

Land Court, and a decision could then be made whether the improvements should be sold for removal or included in the vesting action at nil value also"[723].

In Head Office, however, the reply for the Minister's signature was rewritten, because there was a feeling that the valuation for the improvements was high, and that they may have been valued on an incorrect basis. Rather than state in the application to the Court that the land was to be revested subject to $30,000 being paid, the wording should be softened to state that the land was to be revested subject to the Court having the discretion to decide what should be paid for the improvements[724]. This change of approach was communicated to the Court in December 1986[725].

Although the Ministry of Works and Development was willing for the Court to proceed with its hearing into the matter, the Maihi family were not. They saw no reason to pay for structures on the property that held no value for them. They also calculated that it would be possible for them to effectively call the Crown's bluff if they suggested they would only accept the return of the land subject to the improvements first being removed. This was because removal of the structures (which included a swimming pool) would be a costly exercise for the Crown. On reflection, the Ministry could see that pursuing the application as it stood might not produce a result that the Crown would be happy with.

In January 1987 the Department of Education, whose accounts would benefit from any payment made for the improvements on the site, was asked if it would agree "as a goodwill gesture" to allow both the land and the improvements to be transferred to the descendants of the former owners for nil consideration[726]. However, the Department would not agree.

> Given that these improvements do have a residual value, we are unable to agree they should be transferred at nil value. We believe that some recognition of this should be made by the Maihi family, and I confirm our

[723] District Commissioner of Works Hamilton to Commissioner of Works, 26 June 1986. Works and Development Hamilton file 39/283/0. Supporting Papers #3248.
[724] Minister of Works and Development to T Mallard MP, undated (11 July 1986). Works and Development Hamilton file 39/283/0. Supporting Papers #3249.
[725] District Commissioner of Works Hamilton to Registrar Maori Land Court Hamilton, 11 December 1986. Works and Development Hamilton file 39/283/0. Supporting Papers #3250.
[726] Commissioner of Works to Director General of Education, 9 January 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3251-3252.

> earlier suggestion that negotiations for a settlement on a reduced value should be entered into.[727]

The Minister of Works and Development reported this turn of events to the local Member of Parliament, adding:

> I share the concerns expressed in your letters to me of 10 June and 25 November 1986, and I am, therefore, sending copies of your representations to my colleague the Minister of Education to alert him to the situation which may develop should the Department of Education insist on obtaining some monetary recompense for these improvements.[728]

This exchange at the political level of Government meant that the Department of Education would then be required to explain and justify its stance to its own Minister. The correspondence between the Education Department and its Minister are not known, but in June 1987 the Ministry of Works and Development was advised that the Education Department had changed its mind and, "in order that the matter may be finalised as quickly as possible", was prepared to transfer both land and improvements at nil consideration[729].

In the interim, a new development had complicated matters. The house on the site was being occupied by a family, with the mother of that family being a descendant of the former owners of the land; the husband and wife offered to purchase the building for $26,000[730]. The response of the Ministry of Works and Development was to pass this matter to the Maori Land Court[731], because the Crown was content to see the Court decide in whom the site should be revested, and whether any compensation should be paid for improvements.

The Court, on the other hand, believed that it was the Crown's responsibility to negotiate with the persons in whom the land would potentially be revested, and it supplied the Ministry of Works and Development with an up-to-date list of the

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[727] Director Property Services to Commissioner of Works, 4 March 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3253.
[728] Minister of Works and Development to T Mallard MP, 31 March 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3254.
[729] Regional Superintendent of Education Auckland to District Commissioner of Works Hamilton, 15 June 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3259.
[730] LE & MR Stephenson, Moerangi, to District Commissioner of Works Hamilton, 5 June 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3255.
[731] District Commissioner of Works Hamilton to LE & MR Stephenson, Moerangi, 11 June 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3256.

owners of Moerangi 3D2B2, which was the portion of Moerangi 3D2 where the school site was situated[732].

After some discussion with the member of the Maihi family who had taken an interest in the revesting since 1985, and had been the person not prepared to pay anything for the improvements, it was apparent that there was a difference of opinion within the whanau. In an attempt to resolve this in an inclusive manner, the Court Registrar chaired an initial meeting with some members of the whanau in September 1987. He advised them that a larger meeting should be held, with all the descendants of the former owners (i.e. the current list of owners of Moerangi 3D2B2) being invited, and with adequate notice given in advance to everyone. This was agreed to[733].

The meeting was held in October 1987, and was convened by Maori Land Court staff. There was some initial confusion as to whether the improvements would need to be paid for, which was resolved when a letter from the Ministry was quoted that stated that no payment need be made. At the meeting it was recounted how, at the time of partition in 1953, it had been agreed that the portion of the block surrounding the school site should be awarded to Denny Maihi's mother, and she had declined to accept additional land at that time. This, in the opinion of the majority at the meeting, meant that Denny Maihi had the strongest claim to the school site. A resolution was passed calling for the site to be revested in Denny Maihi and two others. The mother of the family living in the house on the site, and a relative of hers, recorded their dissent[734].

No representatives of the Ministry of Works and Development had been present at either of these Court-convened meetings. The Ministry was, however, represented when its revesting application was heard by the Maori Land Court in December 1987. Also present was a solicitor acting for Denny Maihi, while a solicitor acting for the

[732] Deputy Registrar Maori Land Court Hamilton to District Commissioner of Works Hamilton, 9 June 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3257-3258.
[733] Notes of Meeting, 14 September 1987, attached to Registrar Maori Land Court Hamilton to District Commissioner of Works Hamilton, 22 September 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3260-3263.
[734] Minutes of Meeting, 16 October 1987, attached to Registrar Maori Land Court Hamilton to District Commissioner of Works Hamilton, 18 November 1987. Works and Development Hamilton file 39/283/0. Supporting Papers #3264-3269.

two objectors was unable to be present and asked that the hearing be adjourned. At the hearing the Crown adopted a neutral attitude, considering that it was up to the Court to decide who would be beneficially or justly entitled to the land. The Crown considered that as a general rule all the descendants of the former owners were beneficially entitled to the land, but accepted that by agreement among those beneficial owners the land could be revested in a narrower group of persons. As the objectors were among those beneficial owners, the Crown supported an adjournment.

The Judge decided to take evidence in support of the meeting resolution that the land should be vested in three persons, before deciding whether or not to adjourn the meeting. The evidence in support was of the earlier agreement at the time of partition that the portion of Moerangi 3D2 in the immediate locality of the school site should go to Denny Maihi's mother, while her brother, the father of the objectors, should take their land on the other side of the road.

Once the evidence was taken, the Judge decided to agree to an adjournment, but only on the basis that the objectors would be limited to challenging the evidence presented that day, and if their challenge was unsuccessful they might be faced with costs being awarded against them[735].

In June 1988 the Court ordered that the school site be revested in Dennie Tahupo Maihi solely[736].

11.3 Public Works Act Procedures

This section examines the use in Te Rohe Potae District of three procedures set out in the Public Works Act for dealing with lands no longer required for their taken purpose. These are revocation of a Proclamation, issue of a direction to sell land, and stopping a road. A fourth procedure, declaring that land is no longer required and shall become Crown Land, is discussed in the next section.

[735] Maori Land Court minute book 67 W 65. Copy on Works and Development Hamilton file 39/283/0. Supporting Papers #3270-3278.
[736] Maori Land Court minute book 67 W 161. Supporting Papers #3844.
Order of the Court, 24 June 1988. Copy on Works and Development Hamilton file 39/283/0. Supporting Papers #3279.

11.3.1 Revocation

Revocation of a taking Proclamation has a particular meaning in the Public Works Act. It refers to the cancellation of a taking, but only in circumstances where no compensation had been paid. In other words, a taking was reversible using the simple revocation procedure up until the time when compensation had been paid for it; after that the land was deemed to be land that the Crown had acquired and held full rights to, and generally more complex procedures were required to return it to its former owners.

Return of Te Kopua (Raglan) Native school site was by revocation (see above). Other revocations of land taken from Maori owners that are noted in the database are:

Table 11.1 Revocations of Taking Proclamations

Year	Originally Taken From	In	For	*NZ Gazette* Revocation Reference
1916	Te Kuiti 2B4	1912	Quarry	1916/3219
1917	Rangitoto-Tuhua 35G2 No.1	1917	Road	1917/4015-6
1920	Rangitoto-Tuhua 77F1A1	1919	Road	1920/2371
1921	Rangitoto-Tuhua 72B2	1921	Road	1921/2843
1923	Pirongia West 3B2C3	1923	Shingle-quarry	1923/1190-1
1924	Kahuwera B2B5	1921	Gravel-pit	1924/2900-1
1925	Kinohaku East 5E2B	1915	Quarry	1925/1130

Source: Te Rohe Potae District Takings Database

When the quarry on Te Kuiti 2B4 was returned to its Maori owners in 1916, the County Council paid them £60 for loss of use of the land[737].

The land taken from Kahuwera B2B5 in 1921 had been taken with the consent of the owners. The Resident Engineer recorded at the time that he had "interviewed the owners of the land, and they state they have no objection to the land being taken"[738]. This was because they "agreed to give the land to the Council provided a road was put

[737] Maori Land Court minute book 58 OT 362. Supporting Papers #3680.
[738] Resident Engineer Taumarunui to Assistant Under Secretary for Public Works, 29 April 1921. Works and Development Head Office file 37/330. Supporting Papers #1460.

in giving access to their holdings"[739]. However by 1924 the Waitomo County Council had discovered that it would be a costly exercise to open up the quarry, and obtaining road metal and stone from other quarries in the district was more economical. The access road for the owners had not been constructed, and the owners agreed to the taken land being returned to them. The Council therefore asked that the taking be revoked[740]. On providing a Memorial setting out that the land was no longer required[741], the taking was revoked.

The land taken from Kinohaku East 5E2B in 1915 had been examined by local Public Works Department officials at that time, with these officials reporting that "the quarry contains first class rubble"[742]. However, when Waitomo County Council requested revocation in 1925, a different story was told.

> The piece of land taken from Kinohaku East 5E Section 2B has proved of difficult access and it contains very little suitable stone.
>
> Some time ago the Native owners of Kinohaku East 5E Section 2B approached the Council and requested that as this area was not being used as a quarry, that it should be revested in them. A small quantity of stone was at one time removed from this land, and a satisfactory arrangement re compensation has been arrived at between the Natives and the Council, but no payment or award has yet been made.[743]

It was the failure of the Council to apply to the Native Land Court for compensation to be awarded that made it a relatively simple matter to return the taken land to its Maori owners. After the revocation had been proclaimed, the Council applied to the Native Land Court, and the Court confirmed a compensation payment of £15 that covered the removal of the stone and the owners' loss of their land for 10 years[744].

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[739] Broadfoot, Finlay & Mackersey, Barristers Solicitors and Notaries Public, Te Kuiti, to Under Secretary for Lands, 21 October 1924, attached to Under Secretary for Lands to Under Secretary for Public Works, 24 October 1924. Works and Development Head Office file 37/330. Supporting Papers #1461-1463.

[740] Broadfoot, Finlay & Mackersey, Barristers Solicitors and Notaries Public, Te Kuiti, to Under Secretary for Lands, 21 October 1924, attached to Under Secretary for Lands to Under Secretary for Public Works, 24 October 1924. Works and Development Head Office file 37/330. Supporting Papers #1461-1463.

[741] Broadfoot, Finlay & Mackersey, Barristers Solicitors and Notaries Public, Te Kuiti, to Under Secretary for Public Works, 18 November 1924. Works and Development Head Office file 37/330. Supporting Papers #1464-1466.

[742] Resident Engineer Taumarunui to Assistant Under Secretary for Public Works, 16 August 1915. Works and Development Head Office file 54/113. Supporting Papers #1653.

[743] Broadfoot & Mackersey, Barristers, Solicitors and Notaries Public, Te Kuiti, to Under Secretary for Public Works, 8 April 1925. Works and Development Head Office file 54/113. Supporting Papers #

[744] Maori Land Court minute book 65 OT 316. Supporting Papers #1654-1658.

11.3.2 Directing the Sale of Land

Section 30 of the Public Works Act 1928 allowed land no longer required for its taken purpose or any other public work purpose to be sold by the Crown or a local authority. This was a logical extension of the Crown's view that, having acquired the land, albeit compulsorily and for a particular public purpose, it had become its own land to deal with as it chose. The Crown considered that this right included the ability to sell the land if that suited its purposes. The opinions or needs of the former owners were not a factor requiring consideration. The Crown applied this line of thinking to land taken by it on behalf of local authorities as well. If the taking had vested the land in a local authority, then the proceeds of any sale would belong to the local authority.

Notices directing the sale of land were issued by the Minister of Public Works under Section 30 Public Works Act 1928. This section required that a sale of land had to be specifically requested in advance, in the form of a Memorial presented to the Minister, and it had to be offered first to adjoining owners. Examples in Te Rohe Potae include the directions to sell some of the Tokanui lands in 1933, 1936, 1938 and 1940, referred to in the Tokanui case study in Part III.

Another circumstance was the sale of school sites to the Auckland Education Board. This had been specifically provided for in the legislation, whereby the requirement to offer the land for sale to adjoining owners did not apply when it was being sold or granted to an education board. A site for a school at Waitomo Caves was identified on land taken in 1906 for Waitomo Caves Accommodation-house purposes[745], and the Tourist and Health Resorts Department agreed to hand one acre over to the Education Board without requiring payment. A legal opinion from Crown Law Office satisfied the Public Works Department that a gifting of the land was encompassed within the sale or granting phrase used in the legislation[746], and the direction was proclaimed in April 1927[747]. A similar procedure was followed when four acres of the Tokanui

[745] *New Zealand Gazette* 1906 page 3218. Supporting Papers #3931.
[746] Assistant Under Secretary for Public Works to Solicitor General, 23 March 1927, and Crown Solicitor to Under Secretary for Public Works, 31 March 1927. Works and Development Head Office file 31/458. Supporting Papers #1454-1455 and 1456.
[747] Land Purchase Officer Carter to Under Secretary for Public Works, 7 April 1927. Works and Development Head Office file 31/458. Supporting Papers #1457.
New Zealand Gazette 1927 page 950. Supporting Papers #4036.
South Auckland plan SO 24236. Supporting Papers #2402.

Mental Hospital lands were sold to the Board for the site of Tokanui public school, also in 1927[748].

Local authorities could send in a Memorial requesting an authorisation to sell land. One instance of this was a direction authorising the sale of land vested in Te Kuiti Borough Council. It had arranged the taking from Maori owners of parts of Pukenui 2D7B2 for street and for paddocking driven cattle in 1916[749], but then decided that the land was no longer required, and obtained an authorisation to sell in 1921[750].

In another instance of a local authority receiving permission to sell taken land, Te Kuiti Borough Council was directed in 1974 to sell a quarry site and two sections in the township taken for municipal buildings[751]; these lands had originally been taken from Maori owners and vested in the Borough Council in 1911[752].

In each of these cases, the Crown gave no thought to the former Maori owners, because the legislation did not require it to. They were not asked for their views, and they were not offered the land themselves before the Crown or the Council were allowed to sell the land.

11.3.3 Road Stopping

Where land had been taken for road, and the road had ceased to be required, usually because a realignment of a road on to a new line made the old line surplus, the road would be stopped. The legislation provided that only a Government road could be stopped, so often a two-part process was required, first to declare that a road was a Government road, and then to stop the Government road.

Once stopped, it was possible to declare the road to be Crown Land, thereby making it available for disposal to an adjoining owner. Often this disposal of the old road line was part of the compensation arrangements for the taking of land for the new line of road. If the compensation arrangements concerned Maori-owned land, then the next

[748] *New Zealand Gazette* 1927 page 2529. Supporting Papers #4037.
South Auckland plan SO 24490. Supporting Papers #2403.
[749] *New Zealand Gazette* 1916 page 3499. Supporting Papers #4004.
[750] *New Zealand Gazette* 1921 page 890. Supporting Papers #4021.
[751] *New Zealand Gazette* 1974 page 157. Supporting Papers #4112.
[752] *New Zealand Gazette* 1911 pages 2589 and 2590. Supporting Papers #3957 and 3958.

step was to invite the Native/Maori Land Court to include the former road in the adjoining block title. There are a number of occasions, recorded in the Block Narratives Document Bank, where the Court agreed to this.

11.4 Exchange of Lands

One potential option open to Maori owners to achieve return of taken lands was to offer other land to the Crown in exchange. This could represent an advantage for Maori if an area with strong traditional significance was received in exchange for another area with lesser significance.

A successful exchange at Tokanui in 1936 is discussed in Part III in the case study on Tokanui Mental Hospital and Reformatory Farm. An area of Maori-owned land surrounded on three sides by Tokanui Hospital land was exchanged for a portion of Tokanui Hospital land on the edge of the Crown's holdings and adjoining other Maori-owned land. The mechanism to achieve the exchange was cumbersome, however, involving a taking of the Maori-owned land, and the Native Land Court agreeing to nil compensation subject to the vesting of the Crown's land in the Maori owners. The statutory complexities of effecting an exchange, when the legislation was not structured around such arrangements, meant there was no encouragement for such transactions, and therefore no incentive for the Crown to initiate them.

Nor was there much incentive for the Crown to respond favourably to requests from Maori owners for an exchange. As an example, an exchange was offered by Maori at Wairere Falls in 1924. Over four acres had been taken for road in 1904[753] (discussed in the chapter on Takings for Roads with Compensation Payable), although not all of this area was occupied by roads and the approach to the bridge over the Mokau River. Maui Pomare MP wrote to the Minister of Public Works:

> Mr Tame Kaawe of Te Kuiti called upon me recently regarding the desire of the local Natives for the exchange of a piece of flat land alongside the road for the area taken under the Public Works Act for quarry purposes. This latter area includes the site of a Pah adjoining the Wairere Falls.
>
> Mr Kaawe's father-in-law, Kehu Wetere, consented to the alienation of the land for road purposes, but he did not understand that it would be used as a

[753] *New Zealand Gazette* 1904 page 2166. Supporting Papers #3924.

> quarry. The area now offered by way of exchange is said to be worth more than the area which was taken under the Public Works Act.[754]

The proposal was to return to Maori some of the taken land on the downstream (western) side of the formed road, and allow the Crown to take an equivalent area out of the Maori-owned Karu-o-te-Whenua B5A block on the upstream (eastern) side of the formed road.

The District Engineer, in commenting on the proposal, first referred to an earlier report he had made in which he had stated:

> [As the land to the west of the formed road] gives access to a metal quarry, and … may be useful in connection with Wairere Power Board requirements, and indeed is of no real use to the Natives except to hold as a speculation, I would not recommend handing any of the area … back to the Natives. I have discussed the matter with Waitomo County officials, who are of the same opinion as myself in this matter.[755]

He then continued:

> The Power House will be erected somewhere in the vicinity of the Wairere Falls, and it is possible that some of the land coloured green [taken for road] will be required for attendant cottages etc. In my letter of the 27th April I suggested the land was of no real use to the natives except to hold as a speculation. It rather appears as though the possibility for a profitable sale to the Power Board is the motive of the natives' anxiety to have the land returned. These remarks must be accepted, however, as merely comment, as I have no information to substantiate the statement made.
>
> I would suggest that consideration of the natives' request be held over pending the completion of the Power Board's scheme.[756]

The Minister of Public Works then replied that it "would appear to be inadvisable at the present time to give effect to the Natives' request", but that "the matter can be receive further consideration" when the land requirements of the Crown and the Wairere Electric Power Board had been decided[757]. The land had been taken for road, not for any other purpose, and was not being used for that purpose. The Crown decided that it would be held for possible use for another public purpose. The effect

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[754] M Pomare MP to Minister of Public Works, 10 September 1924. Works and Development Head Office file 54/76. Supporting Papers #1643.
[755] District Engineer Taumarunui to Under Secretary for Public Works, 27 April 1923. Works and Development Head Office file 54/76. Supporting Papers #1638.
[756] District Engineer Taumarunui to Under Secretary for Public Works, 9 December 1924. Works and Development Head Office file 54/76. Supporting Papers #1644-1645.
[757] Minister of Public Works to Sir M Pomare MP, 12 December 1924. Works and Development Head Office file 54/76. Supporting Papers #1646.

of this was to deny the Maori owners the opportunity to obtain a possible economic benefit from their land, and allow the Crown to hold the potential benefit to itself. The Crown comments imply that there was something inherently wrong with Maori gaining speculative advantage, but nothing wrong with the Crown benefiting in that manner. This is a consequence of the Crown policy at that time, discussed in the next section of this chapter, that taken land had become freehold land of the Crown, and was the Crown's to decide what to do with as it saw fit, without having regard for the interests of the former Maori owners.

11.5 Land No Longer Required and Declared to be Crown Land

It was entirely a matter for the government department responsible for the land to decide if or when taken land was to be declared surplus to the purpose for which it had taken. The Public Works Department did not check that sites taken for a particular purpose under the Public Works Act continued to be used for that purpose. Nor was there any penalty faced by departments if they ceased to use land for its taken purpose and failed to declare it surplus to their requirements.

Of all the departments, the Education Department was one of the few that declared sites surplus with some alacrity, although not in every case. This was primarily because school sites had buildings on them, the maintenance of which involved some cost, and the Department was unwilling to accept such costs when it would gain no benefit from doing so.

The former Native school at Kawhia became a public school, which then closed in 1956. Of the four-acre site, three acres had been Crown-owned land (originally acquired as part of the Pouewe purchase) that was reserved for Native School Site purposes in 1898, while one acre had been taken for Public School (with compensation paid) from Maori-owned Kawhia P8 Section 3 in 1932[758]. Because there was a residence occupied by a teacher on the site, which might have occupied ¼ acre of the site, the whole site continued to be held by the school authorities. It was only in 1979 that the whole site was declared to be no longer required[759], and became

[758] *New Zealand Gazette* 1931 page 1807. Supporting Papers #4039.
[759] Regional Superintendent of Education Auckland to District Commissioner of Works Hamilton, 24 April 1978, and District Property Officer Hamilton to District Commissioner of Works Hamilton, 16

Crown Land for disposal[760]. The residence was not on the Kawhia P8 Section 3 land, so the owners of that block were prevented for 24 years from being able to regain ownership of their land (although the Crown did not have an offer-back policy in 1956, see later in this chapter). The offer-back that was eventually made by the Department of Lands and Survey after 1979 apparently has some flaws[761], but this has not been researched for this report.

When a department decided that a site was surplus to its requirements, it would notify the Public Works Department (subsequently the Ministry of Works and then the Ministry of Works and Development), because it was that Department's responsibility to notify in accordance with the Public Works Act that the site was no longer required for the purpose for which it had been taken. Once notified under this procedure, the site then became Crown Land, at which point it would become the responsibility of the Crown's land disposal agency, the Department of Lands and Survey. There would be a bookkeeping transaction whereby the book value of the property would be paid by the new administering government department to the previous administering government department.

From sometime in the 1960s, an additional step in the surplus lands procedures was interposed. After receipt of notice from a government department that land was surplus to its requirements, but before formally notifying that it was no longer required, the Ministry of Works would circulate the information about the surplus property around all relevant government departments, to see if any other branch of the Crown had a need for it. An example of this was the Kawhia former Native School site, where 16 different government departments were advised of the availability of the land in 1978[762]. If the land was required by another government department, the Ministry would then set the land apart for the new purpose. The instances where this procedure was adopted can be identified in the public works taking database, wherever the authority for the new setting apart is Section 25 Public Works Act 1928, or Section 52 Public Works Act 1981.

August 1978. Works and Development Hamilton file 39/413/0. Supporting Papers #3280 and 3283-3285.

[760] *New Zealand Gazette* 1979 page 1019. Supporting Papers #4120.

[761] F Thorne, personal communication.

[762] District Commissioner of Works Hamilton to Government Departments, 28 June 1978. Works and Development Hamilton file 39/413/0. Supporting Papers #3281-3282.

Given the wide range of purposes for which land could be taken under the Public Works Acts by the middle of the twentieth century, there were few impediments to the operation of this procedure. It had the advantage of ensuring that the Crown used its own property and so presumably reduced the instances where private property needed to be acquired. However, it disadvantaged the descendants of the former owners of the taken land, who were not given the opportunity to know about the land becoming surplus, let alone to have it returned to them.

Only if there were no other government departments interested in the land would the Ministry of Works use its powers under the Public Works Act to declare that the site was no longer needed for the purpose for which it had been taken, and had been transferred to the Department of Lands and Survey.

However, there was no certainty that Lands and Survey would offer any land taken from Maori owners, and for which compensation was paid, back to its former owners or their descendants. Up until the late 1960s or early 1970s the Department considered that, because the Crown had paid for the land, it was at liberty to treat it as ordinary uncommitted Crown Land, and to put it to any use allowed by the Land Act, including reserving it or putting it up for sale on the open market. The payment of compensation at the time of taking was regarded as clearing the land of any covenants or commitments the Crown might owe to the former Maori owners.

Only if it deliberately chose to offer the land back to Maori would Lands and Survey make an application to the Maori Land Court for revesting in whichever owners the Court considered appropriate, in accordance with Section 7 Native Purposes Act 1943 and its successor Section 436 Maori Affairs Act 1953. These two sections could be invoked as soon as taken land was declared surplus. It was not necessary for the land to be declared to be no longer required and to become Crown Land. This meant that the Minister of Works, or the Minister responsible for the government department which administered the taken land, could make an application for revesting, in the same way as the Minister of Lands would make application if the land had become Crown Land.

All of the policy and practice set out above relies upon the government department with administrative responsibility for the land declaring it surplus to its requirements. Without that first step being taken, the return and offer-back procedures are not triggered. Whenever land is not declared surplus after it ceases to be used for its taken purpose, the Crown fails to show any regard for the owners of the land that was taken.

Four examples in the following sub-sections illustrate the changes of Crown policy that have occurred in the last forty years. In the first, concerning Mangapehi Domain, no consideration was given by Lands and Survey officials in 1970 to the possible return of the land to its former Maori owners. The second example, dated 1976, is of a similar nature, and concerns the ability for a local authority to overcome the restrictions of a taken purpose for waterworks, again without any thought for the land's former Maori owners. The third example is of the return of the golf course at Raglan, where the Crown agreed to its return in 1976, although it was did not complete its promise until 1987. The tribulations faced by both Maori and the Crown over that eleven year period were a direct consequence of a poorly thought-through policy that continued to evolve over that period. The fourth example is of the return of lands at Waitomo Caves in the 1986-1993 period, where fresh thinking on the part of the Crown saw a less volatile and less painful transfer of ownership.

11.5.1 Disposal of Mangapehi Domain

Mangapehi Domain has been referred to in an earlier chapter about takings for recreation-grounds. The reserve had been vested in Waitomo County Council in 1960[763]. When the timber mill and coal mine closed, Mangapehi township lost its reason for existence, its residents moved away, the township became "characterised by empty sub-standard buildings in various stages of deterioration"[764], and the domain was no longer needed. In 1969 the County Council approached the Department of Lands and Survey, asking for the vesting to be cancelled and the reservation to be revoked, because a local farming family had approached it about purchasing the land. After the Ministry of Works advised that it knew of no potential Government use for

[763] *New Zealand Gazette* 1960 page 1051. Supporting Papers #4084.
[764] Submission R69/290 to Head Office Committee Reserves, and 69/614 to Head Office Committee Land Settlement Board, approved 15 November 1969. Lands and Survey Head Office file 1/1174. Supporting Papers #374-375.

the land, the Department and the Minister of Lands agreed to this course of action, and to the sale of the land to the private buyer, without giving any consideration to any obligations the Crown might have towards the former Maori owners[765]. The cancellation of the vesting and revocation of the reservation was notified in February 1970[766], and had the effect of making the land ordinary Crown Land that could be sold.

11.5.2 Otorohanga Waterworks

Nearly 500 acres had been consolidated as the Otorohanga Borough Waterworks Reserve. Of this 137 acres had been compulsorily acquired under the Public Works Act[767]; 98 of these acres had been a block (Orahiri 2 Section 5B2A) taken from Maori owners[768]. When a new water supply was commissioned in the late 1950s, the waterworks reserve was no longer required for that purpose. In 1976 the Otorohanga County Council wanted to make alternative use of the taken land, but was hampered by the continuing purpose for which it had been taken. It wrote to the Department of Lands and Survey:

> For some time the Council has been concerned at the lack of sections available at Otorohanga for residential purposes. Briefly, the Council has been investigating certain lands for possible residential development, and at this stage has an opportunity to purchase approximately 18 acres of land adjoining the Otorohanga community boundary. The landowners concerned are prepared to exchange their land for council's land, with there being a cash balance payable by Council to complete the purchase. The Council wishes to proceed with the proposal, but is prevented from doing so because of the [taking purpose] restriction on the Certificate of Title to the area referred to.
>
> Section 35 of the Public Works Act 1928 governs the position applicable where land taken for Public Works is no longer required for such public works. The Council wishes to ascertain whether or not the Department could assist Council in the matter in having the [taking purpose] designation uplifted. It appears this would require the issue of a Proclamation to declare the land to be Crown Land subject to the Land Act 1948, and the land thereupon to vest in the Crown as Crown Land subject to the Land Act 1948. If the Crown acquires the land, the Council presumably could then approach

[765] Submission R69/290 to Head Office Committee Reserves, and 69/614 to Head Office Committee Land Settlement Board, approved 15 November 1969; and Director General of Lands to Minister of Lands, 12 February 1970, approved by Minister 24 February 1970. Lands and Survey Head Office file 1/1174. Supporting Papers #374-375 and 376-377.
[766] *New Zealand Gazette* 1970 page 293. Supporting Papers #4098.
[767] *New Zealand Gazette* 1949 pages 1391 and 2375. Supporting Papers #4058 and 4060.
[768] *New Zealand Gazette* 1949 page 2375. Supporting Papers #4060.

> the Crown for Council to 'purchase' the land under the Land Act, and thereby leave Council free to deal with the land as it wishes.[769]

The proposal was therefore similar in intent to the Council obtaining a consent to sell the land (see sub-section above on Directing the Sale of Land). The Council did not explain why a Proclamation directing the sale of land was not applicable in this circumstance, nor did any Crown agency ask that question; it is likely that the conditions of sale set out in Section 30 Public Works Act 1928 were deemed too restrictive to suit the approach the Council wished to adopt.

The Department of Lands and Survey advised that it was willing to go along with the County Council's proposal. Because the land taken for waterworks had been vested in Otorohanga Town Board, and compensation had been paid by the Town Board, the land was effectively the County Council's property (the Council having succeeded to the Town Board's assets), so the Commissioner of Crown Lands offered to "seek authority to sell the land to Council at a nominal purchase price"[770]. With this promise in place, the Ministry of Works and Development then arranged on behalf of the Council the publication of the notice that the land was no longer required for its taken purpose and would become Crown Land[771].

This collusion between the Council and two Crown departments deprived the former Maori owners of any involvement in the transaction, and in doing so deprived them of any opportunity of gaining to gain the land back for themselves. Because no general offer-back policy was in place at this time, the interests of the former owners did not enter into the Crown's consideration of the matter.

11.5.3 Revesting of Raglan Golf Course

The major case study in this report about the return of taken land is the revesting of the Raglan golf course, which was a portion of the land on the spit opposite Raglan taken for defence purposes in 1941. This case study forms a chapter in Part III. It

[769] County Clerk Otorohanga County Council to Commissioner of Crown Lands Hamilton, 23 July 1976. Works and Development Head Office file 50/798. Supporting Papers #1467.
[770] Commissioner of Crown Lands Hamilton to County Clerk Otorohanga County Council, 18 August 1976. Works and Development Head Office file 50/798. Supporting Papers #1468.
[771] *New Zealand Gazette* 1976 page 2444 (amended at *New Zealand Gazette* 1977 page 2540). Supporting Papers #4118 and 4119.

indicates the tentative steps that the Crown was taking in the mid 1970s in offering lands back to the former owners. There was no intention by the Crown to return the land until a request was made by descendants of the former owners. When the request was received there was little in the way of a developed Crown policy about returns of land for which compensation had been paid, only a case-by-case consideration of each request as it was received. In the case of Raglan, the Crown agreed to return the land, but subject to conditions, the most stringent and contentious of which were that the Crown wanted to be paid for the land (because it had itself paid compensation when acquiring the land), and it wanted an existing lease to the Golf Club to be honoured by the new owners. Neither of these conditions was attractive to descendants of the former owners, who considered that accepting the loss of the land for the previous 35 years was the only concession they needed to make to the Crown. It then took eleven years of argument from the date of the Crown's offer-back to the date the golf course was revested by the Maori Land Court, for the land to be returned. That length of time is in itself an indication of the absence of a well-formed and coherent Crown policy to make returns of land possible.

Not referred to in the case study, because of their general policy nature, are some discussions that Cabinet had in February and March 1978. At the Monday meeting of Cabinet immediately following the weekend of the occupation of the golf course at Raglan, the result of a general discussion was that the Minister of Lands was asked to prepare a paper in consultation with the Minister of Maori Affairs on problems involved in disputed Maori land and its return, "with particular reference to any land having special status, eg sacred burial grounds". In the paper, the Minister stated:

> The Department of Lands and Survey has had considerable involvement in cases of land disputed by Maoris, principally because in most cases the land in dispute is currently Crown Land. In addition, because the Department is responsible for the disposal of surplus Government land, it has been involved in the return of surplus Maori school sites. Many of these sites were donated by local Maoris, on the basis that they be returned when no longer needed for educational purposes, and there are statutory provisions for this. As a consequence a policy has grown up that such surplus Maori school sites should be returned to the former owners or their descendants.
>
> Over recent years there seems to have been a steady growth in public opinion, both as regards Maori land and other land, that land acquired by the Crown for a particular purpose, when it is no longer needed for that purpose, should be

offered back on reasonable terms to its former owners or their current representatives.

The Minister argued that each case had its own circumstances, and therefore required its own tailor-made approach. Referring to the topical Raglan golf course case, the paper remarked: "sometimes difficulty is caused by rights having been granted to a third party". On the matter of burial grounds, it stated:

> Generally the Department of Maori Affairs should be able to supply information as to recognised burial grounds etc, since most recognised burial grounds have at some stage been recorded and authenticated. However, there are around the country many odd graves of which the existence and status is not general knowledge. These can be checked out through the Department of Maori Affairs before being formally recognised.

The Minister then advanced what he referred to as "a set of tentative propositions".

> Where land has been acquired by the Crown for a particular purpose and is no longer needed for that purpose, or for another purpose for which it could be acquired compulsorily, it should be offered on a reasonable basis to the original owners or their representatives. This is particularly so when the land was donated or compulsorily taken, but nevertheless may apply where it was acquired by negotiation.
>
> There should be a uniform approach applicable to both Maori land and other land. This is supported by the recently passed Human Rights Commission Act. The return of land to the original owner is supported by the Crichel Down case in England, where land compulsorily taken in 1937 was, after public enquiries and the commissioning of a report (the Woods Report), returned to one of the original owners.
>
> What are reasonable terms depends on the circumstances of the case. In general, however, claimants should not have to pay for anything except true added value (to them) plus the repayment of the consideration they originally received, appropriately adjusted. A reasonable degree of liberality is desirable here, particularly in the case of compulsory takings.
>
> At an early stage in any claim, Maori Affairs Department should be asked to supply information on identity of entitled claimants, and on who might properly be regarded as spokesmen. This will not always be the last word.[772]

At a meeting in mid March 1978, Cabinet discussed the paper. The Cabinet minutes record that it "noted" the tentative guidelines[773].

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[772] Draft Cabinet Paper on Disputed Maori Land, attached to Director General of Lands to Secretary for Maori Affairs, 2 March 1978. Maori Affairs Head Office file 19/1/671. Supporting Papers #976-979.
[773] Cabinet Minute 78/8/41 of 13 March 1978. Maori Affairs Head Office file 19/1/671. Supporting Papers #980.

The Raglan golf course case had a further positive outcome in that, along with other notable 1970s cases such as Bastion Point, it persuaded the Crown to include offer-back provisions in the Public Works Act 1981. These provisions, which were not in the predecessor 1928 Act, specified that where taken land was surplus to Crown requirements, it was to be offered back to the former owners or their descendants. Only if the offer-back was not accepted could the land then be sold on the open market.

11.5.4 Revesting of Land at Waitomo Caves

The revesting of certain taken lands at Waitomo Caves has its origins in the offer-back provisions of the Public Works Act 1981, and in a claim to the Waitangi Tribunal by Josephine Anderson on behalf of the hapu of Ruapuha (WAI-51). Some of the revestings were in settlement of that claim. Whether the circumstances of that settlement preclude further consideration by the Waitangi Tribunal of the particular takings and revestings is a matter for claimants to consider and make submissions on, and for the Tribunal itself to decide upon. They are discussed in this report not only because there may be matters capable of further settlement, but also because they provide significant and well-documented examples of the Crown's dealings with some Te Rohe Potae District lands. The takings have been discussed elsewhere in this report[774], and the revestings are discussed in this sub-section.

Prior to the passing of the Public Works Act 1981 and its offer-back requirements, the Waitomo Caves Museum Society had established a small local museum on part of the land that had originally been taken under the Public Works Act for Waitomo Caves Accommodation-house in 1906, and that had then been sold to the Auckland Education Board in 1927 (see earlier sub-section in this chapter on Directing the Sale of Land)[775]. In the mid 1980s the Museum Society wanted to expand the museum

[774] The takings for Waitomo Caves Accommodation-house are discussed in the chapter in Part II on Other Central Government Takings. The takings for scenic or scenery preservation purposes are discussed in the case study chapter in Part III on Takings for Scenery Preservation.

[775] Following its transfer to the Auckland Education Board, it had been reserved as a public school site in 1942 (*New Zealand Gazette* 1942 page 2429 - not included in Supporting Papers). It was set apart for a public school in 1957 (*New Zealand Gazette* 1957 page 1181 - not included in Supporting Papers), then the part no longer required for school was declared Crown Land in 1980 (*New Zealand Gazette* 1980 page 3202 and South Auckland plan SO 51020 - not included in Supporting Papers), in order that it could be reserved as a local purpose (museum site) reserve in 1983 (*New Zealand Gazette* 1983 page 495 - not included in Supporting Papers).

building. Expansion was only possible by extending the building on to land that still formed part of the local school site[776]. In furtherance of the Museum Society's proposals, that particular part of the school site was deemed surplus to education requirements[777]. This meant that the offer-back provisions of the Public Works Act 1981 applied, requiring that the land be offered to the descendants of the sole owner from whom it had originally been taken in 1906, Tanetinorau Opataia, rather than being transferred to the Museum Society.

It was the Museum Society that first approached the whanau descendants of Tanetinorau[778]. In response to the approach the whanau decided at a meeting in January 1986 that it would seek the return of the land that the Museum Society sought. The whanau also considered that steps should be taken to seek the return of all of the land (67 acres) taken for Accommodation-house in 1906, only part of which was occupied by the Tourist Hotel Corporation hotel in accordance with its taken purpose. In addition, the manner in which the Waitomo Cave entrance had been compulsorily taken for scenic purposes in 1906, and further land around the cave had been compulsorily taken for accommodation-house purposes in 1911, were historical grievances that had been passed down through the generations and were strongly held by the whanau.

As a result, when the Department of Lands and Survey formally approached the whanau about the relatively small museum extension site at a meeting on Maatuaiwi Marae in March 1986, the whanau responded by setting out their wider claim for the return of all the taken land in the vicinity of Waitomo Caves. They were also able to have a meeting with the Minister of Lands when he visited Waitomo one week later, at which the Minister instructed his officials to carry out historical research to identify how the lands had been acquired by the Crown.

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[776] As with the initial museum site, this land had also been sold to the Auckland Education Board in 1927, reserved as a public school site in 1942, and set apart for a public school in 1957.

[777] It was declared to be Crown Land in May 1986. *New Zealand Gazette* 1986 page 2223. Supporting Papers #4126.

[778] The information in this and the following five paragraphs has been drawn from documents held in the records of the Waitangi Tribunal for the WAI-51 claim (being papers received from Josephine Anderson on 15 July 1987, i.e. prior to the claim being lodged in January 1988). The Crown records have not been examined.

With respect to the museum extension site, a number of possibilities were discussed. The Crown acknowledged that the whanau had an absolute right to have the site returned to them, because it was surplus, but sought a concession from the whanau to allow the museum to make use of the land. Because compensation had been paid at the time the land was taken, the Crown sought payment for the land's return, but was prepared to waive this if the whanau was prepared to make the site a Maori Reservation for the benefit of all New Zealanders, and allow the museum extension to be built on it. At the meeting with Departmental officials, another option discussed was for the whanau to lease the site back to the Crown.

At a further meeting with officials the following month, the basis for an agreement began to emerge. The museum extension site would be revested in the descendants of Tanetinorau, who would lease it to the Crown with a right to sub-lease it to the Museum Society. The land occupied by the school and the post office would only be dealt with when they became surplus and no longer required for their valued community purposes. Likewise the Tourist Hotel Corporation hotel and associated buildings would be dealt with later. These deferrals were seen as expressions of goodwill by the whanau, and as pragmatic concessions that would allow priority to be given to obtaining the return of the balance of the 67 acres that was not being used for its taken purpose.

The Crown still wanted to be paid for any land it transferred to the whanau. The formula agreed upon was based around the historical fact that although 67 acres had been taken in 1906, about 40 acres had never been used for accommodation-house or other public purposes, and should really have been declared surplus and returned to the Maori owners at that time. If that had occurred, then the re-purchase price, given that the compensation awarded in 1907 for the whole 67-acre block was £670, would on a proportionate acreage basis be likely to have been about £400 ($800). Taking this figure as the modern re-purchase price, and again applying a proportionate acreage basis, the re-purchase price for the museum extension site only would be about $5.

Progress after that meeting in April 1986 was slow. It was not until September 1986 that the Tourist Hotel Corporation was asked if it would declare surplus to its

requirements the 40 acres it was not itself using. Of this 40 acres, 38 acres was being leased to a local farmer, and most of the balance was being used as an addition to the Waitomo Domain across the road from the hotel. When by January 1987 the Corporation had failed to respond, the whanau gave notice that it would be lodging a claim with the Waitangi Tribunal. Department of Lands and Survey officials in Hamilton were embarrassed by the delay, and were anxious to assist the redevelopment of the museum. In March 1987 they drew up an agreement between the Crown, the whanau and the Museum Society, whereby, subject to the Minister signing an application for revesting, the museum extension site would be revested in the whanau, the whanau would lease the site to the Crown (with provision for a sub-lease to the Museum Society), and the whanau would allow the Museum Society to proceed immediately with its rebuilding programme. The agreement was signed by all parties that month. It was accepted that the whanau's willingness to allow the museum extension to proceed was without prejudice to the wider claim it was still discussing with the Crown.

The Minister signed the revesting application for the museum extension site[779], and the Maori Land Court ordered in September 1987 that it be revested in Tanetinorau Opataia solely[780].

In 1988 the Waitomo Caves post office site (including the building) was declared surplus to requirements. The site was also part of the land that had been taken under the Public Works Act for Waitomo Caves Accommodation-house in 1906[781], and had subsequently been set apart for post office in 1916[782]. The Department of Lands, successor to the Ministry of Works and Development following the disestablishment of that Department in March 1988, decided that the site and building should be offered back to the descendants of the original Maori owners[783]. Discussions were then held with the Tanetinorau whanau. The whanau wanted the land returned, and

[779] Section 44 Block X Orahiri SD, area 1410 square metres, shown on South Auckland plan ML 21801. Supporting Papers #2334.
[780] Maori Land Court minute book 103 OT 241. Supporting Papers #3724.
[781] *New Zealand Gazette* 1906 page 3218. Supporting Papers #3931.
[782] *New Zealand Gazette* 1916 page 1958. Supporting Papers #4002.
[783] District Property Officer Hamilton and Regional Manager Hamilton to Acting Director General of Lands, 11 July 1988, approved by Director of Property, 11 August 1988. Works and Development Head Office file 20/308. Supporting Papers #1080-1082.

offered the Crown a similar arrangement to that made for the museum extension site (i.e. only a nominal £5 payment being made to the Crown for the land). The whanau also agreed to pay the Crown for the post office building[784]. The Minister of Lands approved the return of the land, and signed an application to the Maori Land Court for an order revesting it in the descendants, who were grouped together as the Tanetinorau Opataia Whanau Trust[785]. The Court made the order in October 1989[786]. The revested land is known as Hauturu East 7 block.

While the relatively small areas of land associated with the museum extension and the post office were being dealt with separately, the whanau were proceeding with their claim to the wider area that had been taken by the Crown at the beginning of the twentieth century. Josephine Anderson, the whanau committee's secretary, corresponded with Waitangi Tribunal staff from April 1987 onwards, and in January 1988 lodged a claim on behalf of the hapu of Ruapuha with respect to the Hauturu East 1A block[787]. She claimed to be

> prejudicially affected by the practice and procedures of the Crown in acquiring the Hauturu East 1A Block or parts thereof from the Maori owners thereof, and in the subsequent administration of the Block, whereby parts of the land are no longer held for the original purposes for which they were acquired.[788]

In July 1989 the claim was amended and particularised. It was now focussed solely on takings under the Public Works Act in the 1906 to 1911 period, and removed any reference to the Crown's dealings with Hauturu East 1A block before 1906. The takings the claim was concerned with were:

- The whole of Hauturu East 1A6, 3 acres at the entrance to Waitomo Cave, taken for Scenic purposes in 1906[789],

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[784] Acting Director General of Lands to Minister of Lands, 9 August 1989. Works and Development Head Office file 20/308. Supporting Papers #1083-1084.
[785] Application for Revesting Order, 10 August 1989. Works and Development Head Office file 20/308. Supporting Papers #1085.
[786] Maori Land Court minute book 104 OT 47-48. Supporting Papers #3725-3726. Submission to the Court by Representative for Minister of Lands, undated (4 October 1989), attached to District Manager Hamilton to Acting Director General of Lands, 6 October 1989. Works and Development Head Office file 20/308. Supporting Papers #1086-1088.
[787] This report looks only at the takings under the Public Works Act at Waitomo Caves. A summary of events from 1889 to 1935, drawn from an examination of Lands and Survey Hamilton District Office file 13/45, was prepared in 1954. This summary refers to some of the correspondence relied on for this report. Précised Material and Extracts on Waitomo Caves, and E Dellimore to Administration Officer, 11 March 1954. Lands and Survey Head Office file 4/156. Supporting Papers #478-522 and 473-477.
[788] WAI-51 Statement of Claim, 29 January 1988. WAI-51 Claim Document 1.1. Supporting Papers #47-48.
[789] *New Zealand Gazette* 1906 page 11. Supporting Papers #3925.

- The whole of Hauturu East 1A5C, 67½ acres taken for Waitomo Caves Accommodation-house purposes in 1906[790],
- Parts of Hauturu East 1A5B and 3B1, together having an area of 18 acres, between Waitomo Cave, the road and the hotel, taken for purposes of the Use, Convenience and Enjoyment of the Waitomo Caves House in 1911[791].

The claim was that the takings under the Public Works Act had been in breach of Article II of the Treaty of Waitangi. The relief sought was the return of the lands (excluding the hotel, the school and the domain in the case of Hauturu East 1A5C), compensation for loss of revenue since the taking, and provision for a share of future revenue. Representation on the board managing the Waitomo Domain was also sought as an alternative to the return of that portion of Hauturu East 1A5C[792].

The inclusion of the taking from Hauturu East 3B1 was a slight broadening of the claim that had been initially lodged. In recognition of this addition, the claim was from July 1989 referred to as a claim by the hapu of Ruapuha and Uekaha.

Although the former Department of Lands and Survey had indicated its sympathy for the claim, while acknowledging that it was up to the Tourist Hotel Corporation (as administrator of the land[793]) to respond in the first instance, the claim was also made at a particularly sensitive time for the Crown, as it was in the middle of preparing the Tourist Hotel Corporation for privatisation. If this claim was left unresolved, it would have a bearing on the success or otherwise of the privatisation process. There was therefore a willingness on the part of the Crown to engage with the claimants, and endeavour to reach an agreement. Initial informal negotiations between a Treasury consultant working on the privatisation process and the lawyer acting for the claimants indicated some flexibility on the part of the claimants, with return of the land their paramount aim, a future income stream a lesser priority, and compensation

[790] *New Zealand Gazette* 1906 page 3218. Supporting Papers #3931.
[791] *New Zealand Gazette* 1911 page 1274. Supporting Papers #3952.
[792] Amended Statement of Claim, undated (received 14 July 1989), attached to Kensington Swan, Barristers, Solicitors and Notaries Public, Wellington, to Registrar Waitangi Tribunal, 14 July 1989. WAI-51 Claim Document 1.1(a). Supporting Papers #49-53.
Later that month the claimants also provided a Historical Background – Chronology of Events. Kensington Swan, Barristers, Solicitors and Notaries Public, Wellington, to Registrar Waitangi Tribunal, 28 July 1989. WAI-51 Record of Documents #A5. Supporting Papers #54-58.
[793] An Order in Council was issued in September 1957 declaring that the taken lands that were the subject of the claim were to be administered by the Corporation in terms of the Tourist Hotel Corporation Act 1955. *New Zealand Gazette* 1957 page 1641-1642. Supporting Papers #4077-4078.

for the past a lower priority again[794]. The willingness of both parties encouraged the Waitangi Tribunal to set up a mediation process, chaired by Judge Peter Trapski.

Just what share of the outcome can be attributed to Judge Trapski's mediation efforts, and what share can be attributed to direct negotiations between the Crown and the whanau outside the mediation, is not clear[795], but in February 1990 the terms of a settlement were presented to Cabinet for its endorsement. Cabinet agreed that an offer would be made to the hapu of Ruapuha and Uekaha containing the following elements:

- Hauturu East 1A6, 3 acres at the cave entrance, would be vested in the claimants. This would still leave one acre at the entrance (Section 10 Block X Orahiri SD) vested in the Crown, and would effectively return land status at the cave entrance to the position it had been in prior to the 1906 taking. Future control of the cave would be shared between the Crown and the claimants through a joint management committee.
- Most of Hauturu East 1A5C, 67½ acres, would be vested in the claimants. This would include the museum site. The museum extension site and the former post office had already been vested in the former owners. The portions that would not be vested were the school, the hotel and the tavern. The school site would be offered back under the provisions of the Public Works Act 1981 if it was no longer required for education purposes. The hotel site would remain vested in the Crown, as it was still being used for the purpose for which it was taken, and would be leased to the purchaser of the Tourist Hotel Corporation when the Corporation was privatised. The tavern site would be offered to the claimants if the tavern closed.
- The parts of Hauturu East 1A5B and 3B1 would be vested in the claimants.
- A 32-year licence would be issued to the Tourist Hotel Corporation for the operation of a commercial cave guiding and souvenir shop service. Revenue from the licence would be shared between the Crown (25%) and the claimants (75%), this arrangement reflecting the acreages held by each party at the cave

[794] File note by GB Quinn, 20 July 1990. Survey and Land Information Head Office file LANDS 10/2/17. Supporting Papers #1021-1022.
[795] It was one of the terms of reference of the mediation that results only would be recorded, and discussions would remain private and unrecorded.

entrance. The licence would become one of the assets sold by the Crown to the purchaser of the Corporation (although the claimants would not share in any of the proceeds of the sale of the Corporation).

- The Crown would provide to the claimants an interest-bearing loan of $1 million as an advance on licence fee revenues. The loan would be repaid from a fixed proportion of the revenues received by the claimants from the licence. It was expected that the loan would be completely repaid in this manner within the 32-year period of the licence. The remaining proportion of the licence fee revenues would be available to the claimants as it was received.
- The Waitomo Domain would remain administered by Waitomo County Council, with the Council consulting the claimants on any significant use of the domain land. The claimants could achieve representation on the management committee by standing for election and being elected[796].

There was no mention in the offer of compensation for lost revenue since the takings.

The offer was put to the claimants later that month[797]. After a meeting at Tokikapu Marae in April 1990, the two hapu agreed in general to the offer that had been presented to them, with one notable exception. The offer about the Domain did not restore to the claimants their mana whenua with respect to that land[798]. After further negotiations, they and the Crown negotiators agreed that the Domain land would be vested in the claimants, with the land then being declared a Maori Reservation (under Section 439 Maori Affairs Act 1953) for the use and benefit of all New Zealanders. This amendment was agreed to by the Cabinet Committee on Treaty of Waitangi Issues in May 1990[799], and a final agreement was reached between the Crown and the claimants the following month[800].

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[796] Cabinet Minute CAB (90) M 3/11 of 12 February 1990. Copy attached to Joint Memorandum of Crown and Claimant Counsel advising the Waitangi Tribunal of the Settlement of the Waitomo Claim, 19 January 1996. WAI-51 Record of Documents #A12. Supporting Papers #59-70 at 65-67.
[797] Director Treaty of Waitangi Policy Unit to CH Toogood, Kensington Swan, Barristers and Solicitors, Wellington, 20 February 1990. Survey and Land Information Head Office file LANDS 10/2/17. Supporting Papers #1011-1013.
[798] CH Toogood, Barrister, Wellington, to Director Treaty of Waitangi Policy Unit, 27 April 1990. Survey and Land Information Head Office file LANDS 10/2/17. Supporting Papers #1014-1020.
[799] Cabinet Committee Paper TOW (90) 9 of 8 May 1990. Copy attached to Joint Memorandum of Crown and Claimant Counsel advising the Waitangi Tribunal of the Settlement of the Waitomo Claim, 19 January 1996. WAI-51 Record of Documents #A12. Supporting Papers #59-70 at 69-70.
[800] Agreement in Principle between the Crown and WAI-51 Claimants, 17 June 1990. Copy attached to Joint Memorandum of Crown and Claimant Counsel advising the Waitangi Tribunal of the Settlement

There were some additional matters agreed to during the discussions about the settlement, which did not get referred to in the settlement itself (as set out in Cabinet papers).

- The Domain consisted of three parcels, each with different ownership histories, that had been amalgamated once they had all come into Crown ownership[801]. One part was a portion of Hauturu East 1A5C, the land taken for Waitomo Caves Accommodation-house in 1906. A second part was the whole of Hauturu East 1A3, being two acres awarded to the Crown at the partitioning of Hauturu East 1A in 1899, while a third part was a portion of Hauturu East 3B1 that had been taken for Scenic purposes in 1911[802]. Although the amended statement of claim had not covered Hauturu East 1A3 or this particular part of Hauturu East 3B1, they were included in the settlement as a consequence of the agreement that the Domain lands would be returned to Maori ownership.
- The different ownership and title histories of the three parts of the Domain were ignored in the settlement, with it being agreed that the whole of the Domain would be revested in Tanetinorau Opataia. He was the sole owner of Hauturu East 1A5C at the time it was taken by the Crown in 1906, but Hauturu East 1A3 was derived from the shares of owners in Hauturu East 1A who had sold their interests in that block to the Crown prior to 1899, and Hauturu East 3B1 had been taken from members of the Uekaha hapu. Vesting the title to the whole of the Domain in Tanetinorau Opataia was therefore not a return to the title status prior to the Crown's intervention in 1906 and 1911. The rationale for favouring Tanetinorau Opataia (and his descendants), rather than others of Ruapuha and Uekaha hapu, was that (a) Hauturu East 1A3 had become the Crown's to dispose of as it saw fit when the owners who had sold their interests in Hauturu East 1A prior to 1899 had done so on a willing buyer / willing seller basis, (b) the owners of Hauturu East 3B1 were obtaining some additional benefit at the cave entrance (see below), and (c) Tanetinorau Opataia (and his descendants) were being disadvantaged by (and therefore

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of the Waitomo Claim, 19 January 1996. WAI-51 Record of Documents #A12. Supporting Papers #59-70 at 62-64.

[801] The legal description of the Domain was Section 28 Block X Orahiri SD, delineated on South Auckland plan SO 41658. Not included in Supporting Papers.

[802] *New Zealand Gazette* 1911 page 2905. Supporting Papers #3959.

needed to be compensated for) their agreement not to press for the return of the part of Hauturu East 1A5C occupied by the hotel and being retained by the Crown.

These were quite complex matters, and the degree to which they were explained, discussed and consented to by the members of the hapu who were affected is not clear. Whether informed consent was given by all those with an interest in the matter could be a relevant issue, given that agreement on the return of the Domain to Maori ownership was a late addition to the settlement, after the hui held on the Tokikapu Marae in April 1990.

Writing after the final agreement had been reached, the Treasury consultant working on the privatisation of the Tourist Hotel Corporation noted that the claimants had been prepared to compromise on their initial claims in order to allow a settlement to be reached.

> These compromises had not originally been contemplated by me, but [were], as a result [of] the insistence of the Andersons in particular and their lawyer, to enable a deal to be done. Their reasonableness was a big factor in convincing DOC and the Crown that the return of the cave areas to the claimants and a joint management venture could be carried out successfully.
>
> The claimants in my opinion made a considerable concession in not pursuing the question of compensation, the return of their lands being the paramount issue.
>
> The Crown used its financial facilities as a reciprocal gesture on their part, to finance a capital fund on full commercial terms to be repaid from part of the claimants' share of cave revenues.[803]

In order to legally prepare the lands in the settlement for revesting, they all had to be given the status of unencumbered Crown Land[804]. This meant that the administration under the Tourist Hotel Corporation Act had to be revoked[805], and any reservations under the Reserves Act (for the cave entrance, the domain and the museum) also had to be revoked[806].

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[803] File note by GB Quinn, 20 July 1990. Survey and Land Information Head Office file LANDS 10/2/17. Supporting Papers #1021-1022.
[804] Commissioner of Crown Lands to Minister of Lands, 28 August 1990. Survey and Land Information Head Office file LANDS 10/2/17. Supporting Papers #1023-1027.
[805] Referred to in Maori Land Court minute book 104 OT 246. Supporting Papers #3728.
[806] *New Zealand Gazette* 1990 pages 3358-3359. Supporting Papers #4127-4128.

In October 1990 the taken lands were revested in Maori ownership by the Maori Land Court, as follows:

- Hauturu East 1A6 (the cave entrance), and the portion near the cave entrance taken from Hauturu East 3B1 for the Use, Convenience and Enjoyment of Waitomo Caves House, were revested in their former owners as at 1906 and 1911 respectively, with a new appellation of Hauturu East 8. Because the ownerships of the two former blocks were combined into a single ownership list, members of Uekaha hapu became part-owners of the cave entrance (and as a result became beneficiaries of the licence fee revenue).
- The portion taken from Hauturu East 1A5B was revested in the former owners of that block as at 1911 in three parcels, named Hauturu East 9, 10 and 11.
- The portions to be returned from the former Hauturu East 1A5C (excluding the Domain) were revested in their former owner as at 1906 in three parcels, named Hauturu East 12, 13 and 14.

Easements over some of these lands were ordered in favour of the Crown, to provide for water supply connections to the hotel site. A roadway order over the hotel site allowed access to Hauturu East 10. Each block was then vested in trustees under Section 438 Maori Affairs Act 1953[807].

Each of the revestings was made subject to the receipt of an application from the Minister of Lands under Section 436 Maori Affairs Act 1953. This was because the application signed by the Minister and received prior to the hearing had specified that it was made in terms of Section 267 Maori Affairs Act 1953. This section allowed for Trust Orders vesting land in trustees to hold and administer land for the use and benefit of descendants of deceased owners. Although signed by the Minister, the application had been prepared by a solicitor acting for the claimants, to whom the preparation task had been contracted out by the Crown. This apparent conflict of interest was not perceived to be an issue at the time, presumably because it is in the nature of a settlement that, once a settlement is reached, both the Crown and the claimants are acting together in concert. The reference to Section 267 was inserted because the solicitor and the Crown official briefing him could not agree on the use of

[807] Maori Land Court minute book 104 OT 244-256. Supporting Papers #3727-3733.
South Auckland plan ML 22079. Supporting Papers #2331-2333.

Section 436, and Section 267 was a compromise that they could agree on. The Crown official later wrote:

> Mr Woods [the solicitor] drafted applications in terms of Section 436 of the Maori Affairs Act 1953 to vest the land in certain individuals nominated by the claimants. I disputed the appropriateness with him on several occasions, my stance being that the land should vest in either the people from whom the land was acquired, or their descendants.
>
> I reached an impasse with Mr Woods and referred the matter to the Minister of Lands, who was the applicant in this matter. The Minister was adamant that the land should be vested in either the original owners, or in an interim trust for the original owners, with the Court to determine beneficial ownership.
>
> After some discussion, Mr Woods proposed applying for a Section 267(3)(a) Trust Order vesting the land in trustees to hold and administer the land for the use and benefit of the descendants of the owners recorded on the respective instruments of title at the date of taking. This proposal met the requirements of the Minister, and it was agreed to proceed in this manner.[808]

However, on the day of the hearing there was a pre-hearing conference in chambers, and it was agreed that an application under Section 436 vesting the land in the owners from whom the land had been taken was more appropriate, with trust administration to be the subject of separate applications by the claimants, rather than by the Crown. The Minister of Lands signed the retrospective revesting application under Section 436 a few days after the hearing[809].

The Domain was to be dealt with later, because the earlier ownership history (referred to above) had required additional discussion between the Crown and the claimants' solicitor about the legalities of dealing with its revesting[810]. This aspect has not been followed up in research for this report.

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[808] Commissioner of Crown Lands to Treaty of Waitangi Policy Unit, 31 October 1990. Survey and Land Information Head Office file LANDS 10/2/17. Supporting Papers #1032-1034.
[809] Commissioner of Crown Lands to Minister of Lands, 5 October 1990, approved and signed 10 October 1990. Survey and Land Information Head Office file LANDS 10/2/17. Supporting Papers #1028.
[810] C Toogood, Barrister, Wellington to Commissioner of Crown Lands, 17 October 1990; Commissioner of Crown Lands to Treaty of Waitangi Policy Unit, 31 October 1990; C Toogood, Barrister, Wellington to Treaty of Waitangi Policy Unit, 7 November 1990; Commissioner of Crown Lands to Treaty of Waitangi Policy Unit, 16 November 1990; C Toogood, Barrister, Wellington, to Commissioner of Crown Lands, 22 November 1990; Commissioner of Crown Lands to C Toogood, Barrister, Wellington, 27 November 1990; and Chairperson Waitomo Implementation Committee to Commissioner of Crown Lands, 28 November 1990. Survey and Land Information Head Office file LANDS 10/2/17. Supporting Papers #1029-1031, 1035-1036, 1037-1038, 1039-1040, 1041-1042 and 1043.

PART III - CASE STUDIES

12 NATIVE SCHOOL SITES

12.1 Introduction

As discussed in the Legislative Framework chapter in this evidence, the Crown's priority was to obtain Native school sites without paying for them. This was seen as part of its policy of supporting those Maori communities that were prepared to support themselves and could demonstrate a desire and commitment for having schooling for their children. The policy had been incorporated into the Native Schools Code.

The standard approach varied between the nineteenth and twentieth centuries. During the nineteenth century, acquisition of Native school sites was achieved by transfers of land from Maori to the Crown. Only after native schools were added in 1900 to the list of purposes for which land could be taken under the Public Works Act was land then taken under that Act, with no compensation paid.

Inevitably, some non-standard approaches were also used. These included providing land for native schools out of the Crown's own lands, and leasing lands where it was not considered politic to insist on the Crown holding the freehold title to the land. It might be thought that these alternatives would have gained a stronger currency, instead of taking land, but the policy of obtaining freehold title as a partial quid pro quo for providing a school building, a teacher, and teaching materials, was so well-entrenched in Crown thinking that alternatives were rarely considered, with the result that the Public Works Act was used more often than it needed to be.

For this evidence, the genesis of each of the known Native schools in Te Rohe Potae has been examined, and the means by which the Crown obtained the land for each school site established.

Table 12.1 Te Rohe Potae District Native Schools and Site Acquisition

Native School	Date Site Acquired	How Site Acquired
Te Kopua (Waipa Valley)	1886 1949	Leased from Wesleyan mission Second school site acquired from the Crown (Native Department's land development land)
Otorohanga	1889	Site ordered by the Native Land Court and conveyed to the Crown; nominal payment only
Kawhia	1884 1898	Inquiry held into gifting under Native Schools Sites Act 1880, but unsuccessful in obtaining a site Crown-owned land subsequently used for site
Te Kuiti	1898	Acquired as part of a Crown purchase of Pukenui 2A North block, with the Crown not paying for 3 acres that it obtained
Raorao (Aotea Harbour)	1899	Leased from Wesleyan Mission
Mangaorongo	1903	Taken under the Public Works Act; no compensation paid
Te Kopua (Raglan)	1904	Taken under the Public Works Act; no compensation paid
Oparure	1905	Transfer from a Maori owner; nominal payment only
Rakaunui	1909	Taken under the Public Works Act; no compensation paid
Taharoa	1910	Taken under the Public Works Act; no compensation paid
Moerangi (Kaharoa)	1916	Transfer from three Maori owners (acting as trustees for the local community); nominal payment only
Makomako	1923	Taken under the Public Works Act; no compensation paid
Owairaka Valley	1942	Already a public school before becoming a Native school; a European settler had sold the site to the Auckland Education Board for the public school

Each school site is discussed in turn below, with greater emphasis being given to those events that involved an interaction with Maori communities. This evidence discusses only the acquisition of the school site; it does not discuss the numbers of children going to the schools or what went on in the schoolroom.

12.2 Te Kopua (Waipa Valley)

A native school was established at Te Kopua, on the west bank of the Waipa River near Puketotara. When it was opened is not known, although it was in existence in 1889, when it was referred to by an Inspector of Native Schools in a report about a proposed school at Otorohanga (see next section of this report). Only limited details about how the Crown obtained the school site have been located during the research for this report. The Wesleyan Missionary Society had established a mission station on the bank of the river, and had obtained a title from the Crown to the mission site[811]. In August 1886 the Methodist Church's property trustees leased a two-acre site to the Crown "for the purpose of a site for a public school and schoolhouse for educational purposes only for the benefit of the aboriginal natives of New Zealand and others residing in the said district". The lease was for 21 years, and was renewed for a further term of 21 years in 1907[812]. In each case rental was one peppercorn "if demanded" (i.e. the Crown did not have to pay for use of the site). In 1945 Te Kopua Maori School had a roll of 27 children, half of whom crossed the river by canoe each day from the Kakepuku side to reach the school[813].

The original school site was prone to flooding, and a new site for the Maori school was acquired in October 1949[814]. The site, of four acres, was Crown-owned, but subject to legislative provisions, which require some historical background by way of explanation. The four acres had been subdivided out of a larger block, Section 11 Block XII Pirongia Survey District of 26 acres, for which a title was issued in the name of the Native Trustee in May 1932[815]. In 1937 Section 11 was made subject to the provisions of Part I Native Land Amendment Act 1936, and included in the

[811] Believed to be Old Land Claim 370.
[812] Two leases forming Auckland Crown Purchase Deed 1683. Supporting Papers #71-74 and 75-78.
[813] Director of Education to Under Secretary for Public Works, 15 November 1945. Works and Development Head Office file 31/367. Supporting Papers #1451.
[814] South Auckland Land Registry Transfer 463152. Supporting Papers #2208-2215.
South Auckland plan DP 36652 (Lot 1). Not included in Supporting Papers.
An earlier plan (South Auckland plan SO 33044 – Supporting Papers #2418) had been prepared in 1946 in expectation at that time that the site would be taken under the Public Works Act, but this plan was abandoned when it was decided to transfer the land under the Land Transfer Act instead, thereby requiring the lodging of a Deposited Plan rather than the preparation of a Survey Office plan.
[815] South Auckland Certificate of Title 636/157. Not included in Supporting Papers.

Pirongia Maori land development scheme[816]. It was then transferred from the Native Trustee to the Crown[817].

Because the land was subject to Part I of the 1936 Act, the agency with legal responsibility for the land was the Board of Maori Affairs. At some stage prior to February 1949, the Board agreed to transfer the four acre school site to the Education Department, and received £42 as the agreed-upon value of the land. It was also the Board that signed the transfer document for the school site on behalf of the Crown, when transferring the school site from His Majesty the King, to His Majesty the King "as a Maori School site"[818]. In addition the Board agreed to the release of the school site from the provisions of Part I of the 1936 Act[819].

12.3 Otorohanga

The first mention of a native school at Otorohanga is in 1885, when George Wilkinson, the Government land purchase officer active in the district, suggested that a school be established there.

> Advisable I would suggest that you see the Ngatimaniapoto chief Wahanui, who is now at Wellington, and try and get him to agree to have a native school at settlement called Otorohanga, about fifteen miles from here [Alexandra] and ten from Kopua, where there are large a large number of half caste and native children.[820]

The Education Department, however, was not keen because one of its core principles in connection with native schools was that the local Maori community had to demonstrate its enthusiasm for and commitment to having a school in its midst. As the Inspector of Native Schools commented:

> To follow the advice given here would be to initiate a new policy – to ask the Natives to allow the Department to give them schools, instead of insisting that the request should come from them in the first place.[821]

The Secretary for Education then added his own comment:

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[816] *New Zealand Gazette* 1937 page 1502. Supporting Papers #4048
[817] South Auckland Land Registry Transfer 290049. Not included in Supporting Papers.
[818] South Auckland Land Registry Transfer 463152. Supporting Papers #2208-2215.
[819] Request of Board of Maori Affairs, 13 September 1949. South Auckland Land Registry Instrument K.34800. Supporting Papers #2248-2249.
[820] Telegram Government Native Agent Alexandra to Secretary for Education, 9 September 1885. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1976-1977.
[821] Inspector of Native Schools Pope to Secretary for Education, 9 September 1885, on cover sheet to Education file 1885/1185. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1979.

> Unless the want of a Native School is as felt as to lead the Natives interested to move in the first place, there would be small prospect of success. The better plan might have been for Mr Wilkinson to advise Wahanui to speak to the Minister or call here.[822]

As a result the land purchase officer was told in response to his telegram:

> Thanks for suggestion, but Department finds it necessary policy to let overture come first from Natives. Better course for you to wire Wahanui suggesting his talking to Minister Education or Secretary about school at Otorohanga, if he wishes a school established.[823]

In May 1889, at a public meeting called by Government Ministers visiting Otorohanga, "the Natives asked … that Government should establish a school there"[824]. The Inspector of Native Schools was instructed to visit the town and, while there, select a suitable site and obtain the agreement of local Maori to it being given to the Crown for a school[825]. The Inspector's visit took place in July 1889, and he reported while still there. His report is repeated in this evidence almost verbatim, despite its rather florid nature, because of the light it sheds on circumstances and attitudes at Otorohanga at the time.

> Otorohanga is fourteen miles by railway from Te Awamutu, and twelve from Te Kuiti. It is seventeen miles by bridle track from Kihikihi, and ten from Te Kopua. Otorohanga is at the northern extremity of a tract of tolerably level and very fertile country extending southward some distance beyond Te Kuiti. The township of Otorohanga is, at present, entirely on the western side of the Waipa.
>
> Although Otorohanga owes its present importance to the fact that a virtually permanent Land Court is being held there, and although it is certain that when the time does come for the closing of the Court much of the present life and bustle will cease, it seems quite certain that, from its position and the fertility of the country of which it is "the key", it must, like Hamilton and Cambridge, always be a place of considerable importance. At the present time, too, there are two flax mills in Otorohanga in full work. On the whole it seems certain that the founding of a school at Otorohanga cannot be a mistake.
>
> On first arriving here I was led to conclude, from the character of the buildings and the general appearance of the place, that a Board School, and not a Native School, was what was wanted. Further observation and careful inquiries,

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[822] File note by Secretary for Education, 10 September 1885, on cover sheet to Education file 1885/1185. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1979.
[823] Telegram Secretary for Education to Government Native Agent Alexandra, 10 August [sic – should be September] 1885. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1978.
[824] File note to Minister of Education, 1 June 1889. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1980.
[825] File note, 5 June 1889, attached to file note to Minister of Education, 1 June 1889. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1980.

however, have enabled me to see that a Board School could not succeed until the ground had been prepared for it either by Native school work or by a large increase of the European population. To this I may add that it seems unlikely that the history of Otorohanga will be quite like that of Cambridge, where the place of the Native population was taken by whites almost immediately after the titles had been adjusted. The Natives and especially the half castes here are industrious, they have to some extent been taught by experience and their attempts to keep some hold on the position which they now occupy, will be longer sustained and more successful. The land will gradually pass over into European hands, but the process will take longer. My opinion therefore is that several years will probably elapse before it will be found desirable to hand over the Native school (if one is established) to the Auckland Board, and that therefore also it will be quite safe to give a character of considerable permanence to such arrangements as may be made here for carrying on a Native school.

There is one fact that needs to be carefully borne in mind by anyone who wishes to come to a just conclusion with regard to the state of affairs in Otorohanga, and that is that there are two very distinct parties among the Natives here. One party includes the educated and respectable half castes (of whom there are many in the district), the more intelligent of the young Maori men of rank, and those who are in favour of progress. The other party, a much smaller one, is made up of two or three old chiefs, many influential women, and the old fashioned Maoris who are opposed to all innovation. The second of these two parties acts as a drag on the first and impedes their efforts in the direction of progress. In addition to this difficulty the usual jealousies between hapu and hapu are found here in full force. Thus it might easily come about that anyone visiting the district might form an entirely erroneous conception with regard to the feeling existing among the Natives as to the establishment of a school. One who came into contact with the old school of Natives only might think that the feeling is one of indifference or even slightly concealed hostility; one who met only members of the progressive party might think that the establishment of a school would be received with enthusiasm. The truth is that the school will have to fight a battle here, to confirm the friendship of its friends and conquer the hostility of its foes, active and passive. It will therefore be of great importance to secure thoroughly good teachers for the school. As teachers who have succeeded in establishing a school where many thought that success was hopeless, as patient and trustworthy workers, as people not in the least likely to arouse any kind of antagonism, I know no teachers so likely to start this school successfully as Mr and Mrs Beattie of Kawakawa, and if suitable successors to them could be found for their present school I should be glad to see them at work here.

It would seem unnecessary to give a particular account of the hard struggle that has resulted in the acquisition of a document (forwarded herewith) which may and should be immediately converted into a valid title by means of the action of the officers of the Land Court. Major Mair and Mr Johnson undertake, if a formal deed is sent them, to secure Te Kanawa's signature to it. I think that both of these gentlemen should be thanked for the valuable assistance they have given me in a very perplexing and harassing business. It

would be well, too, if some recognition were shown of Te Kanawa's public spirit in offering to do his best to secure a school when such an offer was very greatly needed. In fact if Te Kanawa, who is quite an elderly Maori chief, had not been willing to do a very great deal more than bear his share of the burden of giving a site, the whole business must have been postponed, when a valuable opportunity of pushing forward an outpost of civilisation would have been lost and not found again for years perhaps. The site marked upon the plan is a good one. The only fault is that it is rather low lying. It was flooded slightly in 1875, but never before in the memory of man, and never since. The soil is fertile and would I should think grow almost anything. At present there is a great deal of gorse on it. It is easy of access from every side and is very conveniently situated for the Otorohanga children.

I cannot form an estimate of the number of children who will attend, but no one fixes the lower limit at less than 30, and this limit will certainly not be reached unless those who are now apathetic or hostile to the school continue so. Wahanui, who is perhaps too wily to unnecessarily incur odium with the old fashioned Maoris, and so took no active part in the proceedings, told me that he was greatly in favour of the establishment of a school, and that at least sixty would go to one. Besides these, he says there are numerous outsiders of whom he takes no account….

Seeing that the Minister's directions to secure a site appeared to be absolute, I spared no effort to accomplish this, and although I made no promise on the subject I thought it unnecessary to correct the impression which prevailed among the Natives that the giving of a site would very speedily be followed by the erection of buildings. If through any cause of which I am ignorant this impression is erroneous, I think the Natives should be informed of the fact, that they should be told how long the delay is likely to last, and what the cause of it is.

I should be glad if a letter of thanks were sent to Mr Paratene Ngata, who greatly helped me at a meeting held on Saturday last by speaking at length in favour of Native Schools, and the work done by them. Mr Paratene is Assessor of the Otorohanga Land Court.

It may be worth while to add a word or two with regard to the political aspect of the question of building a Native School at Otorohanga. I visited Kopua last year, and I have visited it again this year. I notice that a very distinct advance has been made in the interval in the direction of lessening the separation between Maoris and Europeans. It is obvious to anyone accustomed to observe such matters that the Kopua Maoris, to say nothing of the half castes, are much more friendly, much more civilised, and much more accessible, than they were last year, and I can assign no cause for the change except the operation of the school. It seems to me extremely probable that as it has been at Kopua, so will it be at Otorohanga, and the latter place is very

> much more important than the former, being as I have before said the key to a larger stretch of country having great possibilities.[826]

Reading between the lines of this report, it is possible to gain an impression that obtaining a school site was not a foregone conclusion, and that even when the Inspector had obtained an agreement from Te Kanawa it could still have been revoked unless some quick follow-up action was taken by the Native Land Court to issue a title and arrange a conveyance of the site to the Crown. The presence of the Court seems to have been crucial in obtaining the consent of local Maori, and also would be crucial in the future in arranging for the Crown to obtain the school site. Paratene Ngata of Ngati Porou would have been a strong ally for the Crown because he would have been familiar with the various native schools established on the East Coast, in particular the school at Waiomatatini established in 1885[827].

On the same day that the Inspector wrote his report, the Native Land Court considered two applications to define school sites. The first application was by Te Kanawa, who had "arranged" that two acres should be given on Orahiri 1 Block. The second was made by a number of owners of the Otorohanga Block, offering two acres at Kakamutu. Knowing that only one school site was required, the Court declined to make an immediate decision, instead holding the applications over until later in the day to give all those interested a chance to reach agreement among themselves[828]. At the resumed hearing in the afternoon, the Court heard that the Otorohanga Block proposal was not being proceeded with, and that the Orahiri 1 Block proposal had the support of the people.

> Court said that an award would be made accordingly, and an Order of the Court would be issued for the two acres in favour of Te Kanawa, with the view to his transferring the land to the Education Department. Te Ruruku asked who would pay the Court fees in connection with the matter. Court said that the Government would pay. It would not be long before they saw a building erected in which their children could be educated. Mita Karaka suggested that Mr Pope [Inspector of Native Schools] might prepare a Deed

[826] Inspector of Native Schools Pope to Inspector General of Schools, 8 July 1889. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1981-1987.
[827] D Alexander, *Public Works and Other Takings: The Crown's acquisition of Maori-Owned Land on the East Coast for Specified Public Purposes*, Crown Forestry Rental Trust East Coast Research Programme, November 2007, pages 385-387.
[828] Maori Land Court minute book 7 OT 51-52. Supporting Papers #3648-3649.

> for Te Kanawa's signature before going away. Court said that this would be done.[829].

The school site, Orahiri 1A block of two acres, was located on the boundary line between the Orahiri and Otorohanga Blocks, presumably in order to make it accessible to children of the owners of both blocks.

A deed conveying the site to the Crown could not be prepared immediately, as a survey of the site offered by Te Kanawa was required first. This was ordered within two weeks of the Inspector's visit[830], and was completed in August 1889[831]. When a diagram based on the survey was added to the Court's order, and the Judge had signed the order, it was complete[832]. As soon as the Court title formalities had been completed, it was possible for the site to be conveyed to the Crown. In mid September a deed of conveyance was drawn up in Wellington and posted to Wilkinson, the local land purchase officer[833]. It was signed by Te Kanawa early the following month, at which time a nominal payment of one shilling was handed over to him[834].

The Inspector's report was sent to the Native Minister. He added a comment that demonstrated how the Crown's Native schools policy supported and assisted its land purchase ambitions.

> No delay should be made in erecting this school, as it is important in the interest of furthering our land purchase negotiations that the Natives should see that the Government are earnest in their drive to help.[835]

The Inspector's statement in his report about Otorohanga school being a potential "outpost of civilisation" shows also the widespread circulation among Government officials of attitudes that fuelled the Government's endeavours to extend its influence

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[829] Maori Land Court minute book 7 OT 58-59. Supporting Papers #3650-3651.
[830] Secretary for Education to Surveyor General, 22 July 1889. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1988.
[831] Survey Plan of Orahiri A1 School Site. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1991.
[832] Order of the Court, 8 July 1889. Copy on Education Auckland file 44/4 (Otorohanga). Supporting Papers #1996-1997.
[833] Secretary for Education to Native Land Purchase Officer Alexandra, 19 September 1889. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1994.
[834] Government Native Agent Alexandra to Secretary for Education, 9 October 1889. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1995.
[835] File note by Native Minister, 1 August 1889, on cover sheet to Education file 1889/654/480. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1989-1990.

into Te Rohe Potae. As a further demonstration of the ability to manage events to assist the Crown's policy, the Under Secretary to the Native Department noted that "if the school could be built by February [1890], perhaps H.E. [the Governor] might consent to open it"[836].

12.4 Kawhia

Kawhia was the first location in Te Rohe Potae that was considered for a Native School. A teacher from Pakowhai Native School near Napier had sown the seeds for the first application, when he had conversed with King Tawhiao and other chiefs "from Taupo and Waikato" in 1883 about the advantages of establishing schools "in the so-called King Country", during a visit they were making to Heretaunga[837]. One year later Hone Wetere of Kawhia wrote to the Governor asking for a school[838].

Perhaps because this request was seen as an opportunity for the Crown to inveigle itself into Te Rohe Potae, it was quick to respond, with an Inspector of Native Schools visiting within one month of the letter being received. He found sufficient children to justify a school, but tribal divisions and the scattered nature of the population as difficulties that any school would face.

> There is a considerable Maori population on the shores of Kawhia Harbour, and on the banks of the rivers that run into it. There is, however, as far as I could learn, no large kainga in the district, unless that at Pouwewe, where the Government is, may be considered.
>
> There are two principal tribes in the district, the Ngatihikairo on the north side, and the Ngatimaniapoto on the south; besides these there are scattered here and there small settlements of Waikato proper; these latter are still sulky and not well-disposed towards the Government.
>
> The state of feeling amongst the natives of Kawhia is not what it is generally supposed to be. I learn that six months ago, however, there was only one friendly native in the district, Hone Wetere, now there are scores. The improvement is, I judge, owing to the kindly firmness of Major Tuke in giving effect to the views of the Government. This gentleman has a friendly smile and a pleasant joke for every native, whilst at the same time insisting on strict

[836] Under Secretary Native Department to Secretary for Education, 20 September 1889, attached to Telegram Government Native Agent Otorohanga to Under Secretary Native Department, 10 September 1889. Education Auckland file 44/4 (Otorohanga). Supporting Papers #1992-1993.
[837] Teacher Pakowhai School to Secretary for Education, 31 March 1883. Education Auckland file 44/4 (Kawhia). Supporting Papers #1728.
[838] Secretary for Education to Hone Wetere, Kawhia, 20 March 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1729.

> compliance with the rules laid down. The results are, as far as our Department is concerned, that the natives of the north shore and those of the south are anxious to have the means of getting their children educated. The natives are evidently beginning to think that good pakehas may be trusted and even liked.
>
> It seems certain that two schools will be needed here. That for the Ngatihikairo should be on a site some quarter of a mile down the harbour towards the Heads from the fort; the south school should, I think, be at Te Ahuahu.
>
> It is not improbable that the school on the north shore would soon merge into a European school, seeing that Europeans are sure to settle at Kawhia in considerable numbers as soon as the road through to Alexandra [Pirongia] is completed, but at first it would be well to have a purely native school there. I think it would be worthwhile to put some of our best buildings here, but it should be with the intention of handing them over to the [Auckland Education] Board as soon as a suitable state of matters exists….
>
> The school at Te Ahuahu would be a permanent native school. The enquiries that I made on the spot led me to believe that fully fifty children could attend the school. Unfortunately this school could have no "backbone", all the settlements being small. Te Ahuahu would be a very good site in every other respect, and especially because it is quite central.
>
> I am convinced that there is a strong desire on the part of the natives north and south for a school, but I thought it would be unwise to make them any kind of promise. I merely told them that if they wished to have schools, they must send in a formal petition showing the numbers of parents that were interested, and the number of children that each parent would send. They were directed to forward their petitions, through Major Tuke, to the Government when they would receive full consideration. I also gave Major Tuke, who feels quite sure that schools would succeed at Pouwewe and at Te Ahuahu, very full information as to the steps that would have to be taken in the event of the Minister's granting the petitioners' request.

The Inspector recommended that copies of the Native Schools Code should be sent to Major Tuke, officer in charge of the Armed Constabulary contingent at Kawhia, for distribution[839].

While the Inspector in his report had referred to a suitable site for the 'north side' school near the Armed Constabulary fort, he did not obtain any agreement from the owners to gift it. However, in June 1884 the Government's Native Agent in Alexandra, George Wilkinson, telegraphed:

[839] Inspector of Native Schools Pope to Secretary for Education, 17 April 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1730-1731.

> Hone Wetere and Hone te One of Kawhia called on me this morning to say that all the Ngatihikairo of Kawhia had agreed to give a piece of land about 2 or 3 acres for a school at a place on the beach about mile and a half from present A.C. barracks. The newly made road forming back boundary, it will be about east north east of barracks. I think that before making arrangements for having title investigated, please ascertain from Native Department whether (supposing the ownership may be contested by Waikato) any action of that sort would be premature or detrimental to Mr Bryce's policy as at present being carried out.[840]

The Bryce policy referred to by the Inspector has not been researched for this report.

The offer was confirmed by Major Tuke.

> Re schools, I am continually urging the aborigines to come to some definite agreement about them. They now tell me that they saw Mr Wilkinson (Native Agent) about the matter in my absence, and requested him to forward a petition urging the Government to establish one at least on this side of the harbour.
>
> The 'hitch' will be about a clear title to the land required, as until the Land Court determines the several claims nothing can be satisfactorily settled in that respect….
>
> The King's mission to England has quite absorbed their attention of late, and I notice a disinclination on the part of the 'old men' of the tribes to listen to any agreement re land, schools, or in fact anything, till they hear from him as to his success or otherwise in negotiating with the powers that be at home.[841]

The Inspector of Native Schools replied that in his opinion the best course of action was to "keep the subject well before the minds of the natives", though without making "any great endeavour to secure immediate action"[842].

Wilkinson had also informed the Native Department of the approach made to him[843], which is consistent with his concerns for the impact on "Mr Bryce's policy". In Wellington the Under Secretary for the Native Department advised Native Minister Bryce that "I scarcely see that any steps can be taken for the investigation of the title of the small piece of land proposed to be given as a school site until the Kawhia lands

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[840] Telegram Government Native Agent Alexandra to Inspector of Native Schools Pope, 11 June 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1732-1734.
[841] Major Tuke, Kawhia, to Inspector of Native Schools Pope, 4 July 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1737-1740.
[842] Inspector of Native Schools Pope to Major Tuke, Kawhia, 7 July 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1741.
[843] Telegram Government Native Agent Alexandra to Under Secretary Native Department, 11 June 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1735-1736.

are before the Native Land Court"[844]. Bryce, however, decided that "there is no objection to the acceptance of a piece of land for school purposes as herein suggested", because "it is authorised under special Act to the extent, if I remember rightly, of five acres without the usual investigation of title"[845].

The special act was the Native Schools Sites Act 1880. In following the steps set out in this Act, a survey of the proposed site was ordered[846], and Wilkinson was appointed to go to Kawhia and hold the public inquiry that would test whether the rightful owners had willingly gifted their land to the Crown[847].

Wilkinson held his inquiry in October 1884, and was obliged to report that he had been unable to obtain any consent to the gifting. He first telegraphed:

> Had to dismiss inquiry into title to native school site offered by Hone Wetere and others of Ngatihikairo, on account of the title to same being hotly disputed by certain hapus of Waikato tribes resident at Kawhia. Hearing lasted nearly all Friday, about one hundred natives present. Both sides make such strong case, both of conquest and occupation, and it was plain that it was a case more for a protracted hearing by Native Land Court than inquiry under Native Schools Sites Act, so I dismissed to be heard by Court at some future time, which both parties agreed to attend.[848]

Wilkinson followed up his telegraphed advice with his full report on the meeting.

He identified the land offered as being named Poko-o-Riri.

> Having obtained a plan of the block from the Survey Office at Auckland, and after having notices in English and Maori inserted in the local newspaper (the Waikato Times), and slips of same circulated amongst the Natives of the Kawhia district, I proceeded there on Thursday last (9th inst [October]), for the purpose of holding the inquiry on the 10th inst, as notified in advertisement, a copy of which I attach hereto.
>
> The inquiry (which was held in a large marquee at the Constabulary Barracks at Kawhia, the use of which was kindly given by Major Tuke) was opened by me at 10 a.m., and about one hundred Natives were present, nearly all being

[844] Under Secretary Native Department to Native Minister, 7 July 1884, on cover sheet to Education file 1884/971. Education Auckland file 44/4 (Kawhia). Supporting Papers #1742.
[845] File note by Native Minister, 10 July 1884, on cover sheet to Education file 1884/971. Education Auckland file 44/4 (Kawhia). Supporting Papers #1742.
[846] Secretary for Education to Surveyor General, 21 July 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1743.
[847] Proposal for Warrant of Appointment, 15 August 1884, approved by the Governor 23 August 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1744.
[848] Telegram Government Native Agent Alexandra to Secretary for Education, 13 October 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1745-1746.

male adults. They consisted of representatives of the Ngatihikairo tribe (who offered the land as a school site), and sections of the Waikato tribe known as Ngatimahuta and Te Patupo, the two latter outnumbering the Ngatihikairo. It was apparent from the number of Natives present that great interest was being taken by them in the matter and, as the inquiry proceeded, it was plain that, notwithstanding the smallness of the piece of land the title to which was being investigated (4¼ acres), and the laudable purpose for which it was being given, the Natives, especially the Waikato or King-party, looked upon the inquiry in a serious and important light, viz, that of a Court to decide upon the relative merits of their and the Ngatihikairo claims to land on the north side of Kawhia harbour, which have always been hotly disputed on both sides. The general impression appeared to be that, whatever the judgement in this case might be, it would be looked upon as a precedent, and would therefore affect their claims to other lands in the Kawhia district; hence the determination of the King-party to make known their claims at whatever investigation or Court might be held, and their fear lest by remaining away or keeping silence might prejudice their case. They were most orderly and attentive during the inquiry, which lasted from 10 a.m. until 3 p.m.

I should not have continued the investigation so long as I did, only that I wished the Ngatihikairo (who claimed and offered the land) to see how impossible it was, in the face of the opposition offered to their claim, for me to come to any decision in the matter with the time and appliances [sic] at my command.

The principal speakers of the King-party were Tu-te-Ao, Te Ngunguru and Hamuhamu, although several others took part and gave evidence. They set up two claims; one was on behalf of Tawhiao the King of the Maori race, and in whose name all the lands in that district were vested. The second claim was on account of conquest and occupation. With regard to the first claim, I refused to take any notice of it whatsoever, or to allow it to be referred to during the investigation, as I hold that whenever the Natives themselves (as the Ngatihikairo in this case do) ignore any liability or responsibility regarding a doubtful cession of land which, if it took place at all many years ago, was only temporary and for a particular purpose, it is not my place as a Government officer and representative of European law to recognise it in any way, much less to attempt to force it upon Natives to whom it is distasteful, or to attempt to clothe it with an aspect of legality which it does not really possess. The second claim, however, was a proper one and according to Maori custom.

The witnesses who gave evidence for the King-party side made out a strong case both of conquest and occupation, they having, as alleged, driven off the original occupiers Ngatitoa, Ngatikoata and Ngatiteariari, and that they have more or less occupied the land from then to the present time.

On the other hand the Ngatihikairo, whose speakers were Hone te One, Pikia, Hone Kaora and Riki Taimana, also showed that they, with the assistance of Ngatimaniapoto and Waikato, had driven the original inhabitants off, after which they divided the district out amongst themselves, and the tribe to which

each portion was allotted has occupied it ever since; and that Waikato, for reasons they explained, returned home without claiming any portion of the territory.

There is no doubt, I think, as to the original inhabitants having been driven off, nor will it be difficult to find who are the tribes who took part in the fighting in those days; but the question will, I think, turn upon whether the Waikato tribes who came over from the eastern side of Pirongia mountain to take part in the fighting and to assist Ngatimaniapoto and Ngatihikairo against the original inhabitants, really made the quarrel their own, and therefore fought it out for what revenge and benefits (in the shape of land etc) they could reap from it; or whether they merely came over to assist Ngatimaniapoto in return for services which they had previously rendered Waikato during their wars with the tribes living adjacent to Auckland, Mangere, Tamaki and Otahuhu, which land, although conquered by Waikato assisted by Ngatimaniapoto, was retained by Waikato alone.

That question would of course be cleared up were a proper investigation to be held into the matter by the Native Land Court, in which case all Natives who are qualified to speak upon the subject as representing both sides, would in all probability be there to give evidence, in which case the hearing would last over several days or weeks as often happens.

Seeing therefore that this was evidently a case for a properly constituted Native Land Court, with its complement of Judges, Assessors, Interpreter and Clerk, to decide, more than to be dealt with by a simple inquiry under the Native Schools Sites Act, I did not think I would be justified in going any further into the matter, or giving a hasty decision upon evidence that I could obtain during a few hours only of inquiry. I therefore dismissed it to be dealt with by the Native Land Court at some future time.

Both sides were satisfied with this way of disposing of it, and promised to attend the Court whenever it may sit, and the Ngatihikairo wished me to request the Government to fix a sitting of Court for the hearing of Kawhia district land claims as soon as possible.

It is rather unfortunate for the sake of the Native children of Kawhia that the ownership to this block was so much disputed, as unless a Native Land Court sits there quickly, some time must elapse before a school can be erected upon land given by the Natives, as I am satisfied that, until the question of disputed title to land on the north side of Kawhia harbour is settled as between Ngatihikairo and Waikato, nothing can be done in the way of getting a school site from there, because wherever the piece may be, and whether large or small, the ownership to it is sure to be contested.

I believe there is a portion of the Government township at Kawhia that was set on one side as an Education Reserve, could not this be utilised as a temporary

> site for a mixed school for Natives and Europeans, pending other arrangements?[849]

That was virtually the end of the matter as far as the Crown was concerned. The Inspector General of Schools advised the Secretary for Education:

> No doubt it would be a very good thing to establish a school at Kawhia, but perhaps it would be best to wait until the Maori people make formal application, by sending names of parents and children, which they have been advised to do and have not done. Even then it might be well to wait until they could show the earnestness of their desire by agreeing to give a site. Until we know that they would value a school, we may be doing more harm than good by pressing one on them.
>
> The Education Reserve referred to … is not yet reserved in legal form. Perhaps the section marked as a Government Reserve would be preferable to that marked E.R. I suppose an Education Reserve when properly made would vest in the Auckland Education Board.[850]

The Secretary for Education then in turn advised the Minister of Education:

> As stated by [the Inspector General], the Natives themselves have not yet shown any sign of earnestness in the matter of a school, and as a rule the Department has found that, unless established at the earnest request of the Natives themselves, a Native School does not succeed.
>
> I now find from correspondence attached that already there are as many European children that would attend school as would warrant the establishment of an ordinary Board School. In all probability the number of European children will increase, and if a school should be desired by the Natives it would be better in the purely Native settlement outside and probably at some distance from the European township.
>
> Under the circumstances I am disposed to advise that the Europeans be counselled to apply to the Board in the usual way for a school. In consideration of there being a Native population, the Department might undertake to pay, for a year at any rate, the rent of Mr Langley's premises if the Board should be prepared to run it, and also pay half the cost of school fittings and furniture.[851]

The Minister agreed.

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[849] Report of Government Native Agent Alexandra, 14 October 1884, attached to Government Native Agent Alexandra to Secretary for Education, 14 October 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1747-1754.
[850] Inspector General of Schools to Secretary for Education, 17 November 1884. Education Auckland file 44/4 (Kawhia). Supporting Papers #1755.
[851] Secretary for Education to Minister of Education, 18 November 1884, on cover sheet to Education file 1884/1837. Education Auckland file 44/4 (Kawhia). Supporting Papers #1757.

The offer was made to and accepted by the Auckland Education Board[852]. However, the Kawhia European settlement was not a success, and by 1888 there were no European children attending the public school, and only seven Maori children[853]. The Government had no objection to the school being closed.

> I am directed to say that the Minister does not think the country can afford to keep up any school for seven children, but that the Act leaves all such questions in the hands of the Boards, and regards Maori as equal to Europeans.[854]

There were no further requests received for a native school at Kawhia until 1895. That year Hone Kaora and Arthur Langley wrote to the Native Minister that a meeting attended by "all the Maori tribes of Kawhia" had appointed them to request that a native school be established. Their letter contained a list of parents and 41 children of school age, and an offer to allow the use of a building known as the Court House for the first year of the school's existence[855].

Wilkinson was asked for a report[856], and he replied:

> Board and lodging for a female teacher can be obtained at Kawhia. There are 55 children who can attend school and whose names will be put on roll, and out of these an attendance of at least 35 is anticipated. The local Natives will give use of Courthouse there free for one year, which will enable Department to see whether it will be advisable to build a permanent school there or not. Courthouse is quite large enough to accommodate 50 children. Natives are desirous that schoolteacher should be able to give medicine and treat ordinary sicknesses.[857]

The Education Department accepted the advice, and a school was opened in the Court House in June 1895. By September 1895 the teacher was busying himself identifying a possible permanent site for the school, choosing one he thought could be purchased

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[852] Secretary for Education to Secretary Auckland Education Board, 20 November 1884, and Secretary Auckland Education Board to Secretary for Education, 11 May 1885. Education Auckland file 44/4 (Kawhia). Supporting Papers #1756 and 1758.
[853] Telegram Secretary Auckland Education Board to Secretary for Education, 26 April 1888. Education Auckland file 44/4 (Kawhia). Supporting Papers #1759.
[854] Telegram Secretary for Education to Secretary Auckland Education Board, 27 April 1888. Education Auckland file 44/4 (Kawhia). Supporting Papers #1760.
[855] Hone Kaora and AE Langley, Kawhia, to Native Minister, 16 March 1895. Education Auckland file 44/4 (Kawhia). Supporting Papers #1761-1763.
[856] Inspector of Native Schools Kirk to Secretary for Education, 1 April 1895, on cover sheet to Education file 1895/242/335. Education Auckland file 44/4 (Kawhia). Supporting Papers #1764.
[857] Telegram Government Native Agent Otorohanga to Secretary for Education, 27 April 1895. Education Auckland file 44/4 (Kawhia). Supporting Papers #1765-1766.

for £25 or £30[858]. However, this was not acceptable to the Department, which remarked that "our rule [underlining in original] is to look to the Maori people to find the land"[859]. By February 1896 the teacher had obtained a written agreement to offer four acres, being two acres of Kawhia P block and two acres of Kawhia G1 block, for a school site, although he added:

> This piece of land is not altogether suitable, but it is the only available piece procurable near the township, and as the Government purchased in 1892 a small portion of land from a native called Mauria [sic] (deceased), which is as yet undealt with by the Government and which contains about three acres, I am securing the four acres in the hope that an exchange could be effected, as Mauria's portion is a very suitable site.[860]

The following month the witness to the signatures on the agreement stated that "the Natives clearly understand the gift is in perpetuity and it is their contribution towards the school, and they are prepared to sign a formal Deed whenever called upon to do so"[861].

Wilkinson was asked to identify the blocks referred to. His reply showed that both Kawhia P and Kawhia G1 were large blocks with multiple owners, certainly many more than the seven persons who had signed the gifting agreement, and neither of the two-acre portions referred to in the agreement had yet been partitioned out by the Native Land Court[862]. None of this suggested that the agreement was a sound basis for the Crown to acquire the land.

More information, but not necessarily more clarity, came in a letter from the Kawhia School Committee in April 1896.

> The Committee would … bring to your remembrance the fact that the year for which the Hall was allowed to be used for school purposes will shortly expire. With regard to the four acres that it was proposed should be used to raise food in, the people have agreed to that; and the good land has been sold by Maurea to the Government, known as Poriro-Hauraki, and if the Government would

[858] Teacher Kawhia School to WP Reeves MHR, 18 September 1895. Education Auckland file 44/4 (Kawhia). Supporting Papers #1767-1768.
[859] Secretary for Education to WP Reeves MHR, 26 September 1895. Education Auckland file 44/4 (Kawhia). Supporting Papers #1769.
[860] Teacher Kawhia School to Secretary for Education, 12 February 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1770-1772.
[861] JH Phillips, Kawhia, to Secretary for Education, 9 March 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1773-1774.
[862] Government Native Agent Otorohanga to Under Secretary for Native Land Purchases, 26 March 1896, on Secretary for Education to Under Secretary for Native Land Purchases, 18 March 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1775-1776.

> agree to do so, they might give the land originally given by the natives in exchange for the land consisting of two acres in Kawhia P and two acres in Kawhia G, where these two blocks touch one another.[863]

A visit by an Inspector of Native Schools was already imminent, because of the need to decide if the school should continue after its one-year trial period. Both the Inspector and Wilkinson were asked to explain in more detail what was proposed. Wilkinson replied first.

> Since the N.L. Court opened here, some of the Kawhia Natives have been here and I have found out from them what their proposal really is regarding the school site. The following is the position:
>
> About 3 years ago I bought the interest of one of the owners in Kawhia K or Te Puru Block (adjoining the Government Township there). That interest represents an area of 2 acres 0 roods 18 perches.
>
> When the N.L. Court adjudicated on the title to Kawhia K, it stated (and I believe it appears in the Court Minute Book) that the locality of the share of Maurea Watikena (the owner who subsequently sold to Government) was at a place known to the Natives as Poriro-Hauraki, which is a strip of dry land that lies between the north-west end of Kawhia Township and the lagoon or swamp known as Kawhia S or Paretao Block.
>
> It is this interest that Government has acquired in Kawhia K that the Kawhia Natives would like to get for a school site, and, in return for it they propose to give to Government 4 acres, viz, 2 acres out of Kawhia P or Motungaio, and two acres out of Kawhia G2, the two areas to join each other so as to form one block.
>
> There will not be any difficulty in bringing about an exchange as proposed, if Government agrees to it. It can be done in the N.L. Court under Subsection 3 of Section 14 of the N.L. Court Act 1894. It might, however, be necessary to establish our title to the 2 acres 0 roods 18 perches in Kawhia K (at present we have only a deed signed by the owner who sold), but that could be done by an application to have the Crown's interest defined in Kawhia K and the proceedings for the exchange could come on directly afterwards, supposing the necessary applications were duly gazetted beforehand, and were part of the work for the Court.
>
> Kawhia P or Motungaio contains 269 acres and has 46 owners. Kawhia G2 contains 50 acres 1 rood 6 perches and has 10 owners. The price paid by me for the share acquired in Kawhia K was 20/- per acre, and it has since been valued by a competent valuer at 40/- per acre (that is, the whole of Kawhia K has been valued at that price).

[863] Chairman Kawhia School Committee to Secretary for Education, 25 April 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1777-1780.

> The price that is being paid for Kawhia P is 1/6 per acre. The purchase of Kawhia G2 has not been started yet, but its value is not more than 4/- or 5/- per acre. A portion of both Kawhia P and Kawhia G2 is sand hills, but not the 4 acres proposed to be given in exchange for Kawhia K. It will be seen therefore that the value of the land offered in exchange for what they want Government to give up for a school site is less than that of the piece asked for in exchange.
>
> The whole of Kawhia K is dry land and several sites suitable for a school house could be selected out of it. I cannot therefore see why the owners of Kawhia K who still retain their interests do not set aside a portion of their own land in that Block for a school site, instead of asking for the Government piece, unless it be because Kawhia K is valuable because of its proximity to Kawhia Township and for that reason they do not want to part with it.
>
> But why all this trouble about a school site at Kawhia? Why not utilise the two Education Reserves that are within the Kawhia Township? They happen to be in the immediate locality of the piece Natives want Government to give them (there is only a road between them). Or take a sufficient area out of the six acres close by that was reserved as a recreation reserve? The school will be for children of both races, and as the Kawhia district gets settled and opened up the European children will soon equal or even exceed in numbers the Native children attending the school. If a school is built on land now given by the Natives (or paid for by them by giving their other land in exchange) there will most likely be further complications when the time arrives when it will be advisable to hand the school over to the Education Board in consequence of the predominance in numbers of the European children attending it.
>
> I shall be in Auckland next week, and could see Mr Pope [the Inspector] further about this matter if he desires to see me, but I have purposely made this minute a long one in order to put you in possession of all the facts and particulars in connection with it.[864]

The Under Secretary for Native Land Purchases, to whom this report was made, could not understand why such a complicated arrangement was being proposed. He suggested instead that the Crown interest in Kawhia K be defined by the Native Land Court, and then the resulting Crown Land reserved as a native school site, adding if that was the case,

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[864] Land Purchase Officer Otorohanga to Under Secretary for Native Land Purchases, 23 May 1896 (copy only). Education Auckland file 44/4 (Kawhia). Supporting Papers #1782-1785.
The original of this memorandum has been located in Maori Land Court Hamilton records. Te Rohe Potae Block Narratives Document Bank #2760-2763.

> We will proceed to complete a title to it and let you have it. An exchange and the roundabout and costly proceedings to effect it will then be obviated, but see Mr Wilkinson's suggestion [about use of the Education Reserves].[865]

The use of the Crown interest, rather than the Education Reserves, was accepted by the Secretary for Education[866], and approved by the Minister of Education[867]. Wilkinson was instructed to make the application to the Native Land Court.

In the lead-up to the hearing of the application, Wilkinson expressed his confusion about reserving Crown Land rather than obtaining a gift of land for a school from Maori, as was normally the case with sites for native schools. The Under Secretary for Native Land Purchases had told him that no exchange was necessary, as "the Crown wants the fee simple of the school site", and his proposed exchange "would alienate fee simple from the Crown to the Natives" of the land that the Crown wanted for a native school site[868]. To which Wilkinson countered:

> Yes, but that is so as to make use of the law of exchange, and so get the particular 4 acres that the Natives are willing to give us out of Kawhia P and G2. The alienations would only be temporary because the Natives to whom our two acres was awarded would have to reconvey it to Government for a Native School site, because the Natives are supposed to provide the land required for a school site, that is, convey it to Government.[869]

The Under Secretary replied that, if the Maori owners were "in earnest" about wanting the native school sited on Maurea's portion of Kawhia K, they would not put any difficulties in the way of the Crown having its interest located there[870]. Wilkinson was not satisfied with this answer, as solely concentrating on defining the Crown's interest in Kawhia K meant that the Crown was not going to obtain the four

[865] Under Secretary for Native Land Purchases to Secretary for Education, 30 May 1896. on Land Purchase Officer Otorohanga to Under Secretary for Native Land Purchases, 23 May 1896. Maori Land Court Hamilton records. Te Rohe Potae Block Narratives Document Bank #2760-2763 at #2760.
[866] Secretary for Education to Under Secretary for Native Land Purchases, 12 June 1896, on Land Purchase Officer Otorohanga to Under Secretary for Native Land Purchases, 23 May 1896. Maori Land Court Hamilton records. Te Rohe Potae Block Narratives Document Bank #2760-2763 at #2761.
[867] Secretary for Education to Minister of Education, 5 June 1896, approved by Minister 8 June 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1781.
[868] Under Secretary for Native Land Purchases to Land Purchase Officer Otorohanga, 1 September 1896, on copy of Land Purchase Office Otorohanga to Under Secretary for Native Land Purchases, 23 May 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1782-1785.
[869] Land Purchase Officer Otorohanga to Under Secretary for Native Land Purchases, 5 September 1896, on copy of Land Purchase Office Otorohanga to Under Secretary for Native Land Purchases, 23 May 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1782-1785.
[870] Under Secretary for Native Land Purchases to Land Purchase Officer Otorohanga, 17 September 1896, on copy of Land Purchase Office Otorohanga to Under Secretary for Native Land Purchases, 23 May 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1782-1785.

acres in the other two blocks, so that in effect the local Maori community was not contributing land to the Crown as a gift.

> You do not seem to understand the position (or else I do not) regarding the 4 acres that the Natives propose to give to Government out of 2 adjoining blocks. Briefly put, it is as follows.
>
> The Natives want a Native School at Kawhia, and are willing to give an area for a site, but the particular piece on which they want the school built is within Kawhia K, and they know that when Government bought old Maurea Watikena's share in that block, they acquired that particular piece, so the Natives say (in effect), "very well, you give that 2 acres for a school site and we will give you 2 acres out of Kawhia P and 2 acres out of Kawhia G2 (4 acres in all) in return for it". Now, if I understand the matter rightly, we are going to set 2 acres in Kawhia K on one side for a Native school site (as soon as we get a legal title to it), which means that we are going to carry out the wishes of the Natives by supplying the site for their school, but what are we doing, or going to do in order to get the 4 acres above mentioned that they offer us in return?[871]

The Under Secretary's answer to this question was brief and to the point: "nothing", he wrote[872]. There would be no gifting of land by Maori, directly or indirectly, for a native school site at Kawhia.

In October 1896 the Crown was awarded 4 acres 0 roods 37 perches, to be known as Kawhia K1, which included the two acres or so earmarked for the native school site[873]. The next step was to have the school site surveyed, in preparation for its reservation under the Land Act. An area of 2 acres 0 roods 20 perches was surveyed[874], but no action was immediately taken to reserve the site. The following year the surveyor who had undertaken the survey reported on a conversation he had with the schoolteacher at Kawhia.

> Mr Hamilton, Native School teacher, … expressed his great regret that the Government were going to erect a Native School and teacher's residence on recently surveyed site. In my report at the time I sent in the survey, I mentioned the unsuitability of the site chosen. I believe that Mr Kirk (Native School Inspector) is of the same opinion. Tenders are to close shortly for the

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[871] Land Purchase Officer Otorohanga to Under Secretary for Native Land Purchases, 2 October 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1786.
[872] File note by Under Secretary for Native Land Purchases, 9 October 1896, on Land Purchase Officer Otorohanga to Under Secretary for Native Land Purchases, 2 October 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1786.
[873] Maori Land Court minute book 28 OT 20-22. Not included in Supporting Papers.
Land Purchase Officer Otorohanga to Under Secretary for Native Land Purchases, 10 October 1896. Education Auckland file 44/4 (Kawhia). Supporting Papers #1787-1788.
[874] Sketch Plan, undated. Education Auckland file 44/4 (Kawhia). Supporting Papers #1789.

> erection of the school … and if anything is to be done it should be done at once in the matter….
>
> Mr Hamilton … will suggest cutting off 3 acres of the Recreation Ground 10 chains further in. This would be a splendid site for residence and school, being at a greater altitude above the swamps on either side, and hence healthier. It would be well sheltered and easy of access, and in every way suitable for such a permanent building, as the school is likely to be for years to come. The school is of far more importance than the Recreation Ground, and other sites more suitable for recreation will no doubt be acquired by the Government in the near future.[875]

The Chief Surveyor in Auckland, to whom this report was made, forwarded it to the Education Department, adding:

> The new site proposed is portion of a gazetted Plantation Reserve close to the Town of Kawhia. There would be no difficulty in changing the purpose of portion of the Reserve if required.[876]

The Inspector of Native Schools who had visited Kawhia agreed with the new proposal.

> I regarded the site, known in earlier stages of this correspondence as Maurea's piece, as more suitable than the one offered by the Natives, and indeed as the most suitable that we could then expect to get. I knew nothing (in July 1893 [sic, should be 1896]) of the possibility of obtaining part of the recreation reserve. I think the opinion of Mr Vickerman, especially when backed by Mr Hamilton's opinion, of such weight that we should take steps now to try to get part of the recreation reserve.[877]

So too did Wilkinson, who could not resist pointing out that he had suggested this alternative in his May 1896 report[878]. The schoolteacher independently wrote in with his support for the alternative, noting that he had not paid much attention to the location of Maurea's piece close to the swamp, but having recently been the victim of "malarial fever" he now understood how that site would be an unhealthy one[879].

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[875] AH Vickerman, Raglan, to Chief Surveyor Auckland, 6 September 1897. Education Auckland file 44/4 (Kawhia). Supporting Papers #1790-1792.
[876] Chief Surveyor Auckland to Secretary for Education, 9 September 1897, on AH Vickerman, Raglan, to Chief Surveyor Auckland, 6 September 1897. Education Auckland file 44/4 (Kawhia). Supporting Papers #1790-1792.
[877] Inspector of Native Schools Kirk to Secretary for Education, 15 September 1897, on cover sheet to Education file 1897/417/329. Education Auckland file 44/4 (Kawhia). Supporting Papers #1793.
[878] Telegram Land Purchase Officer Otorohanga to Secretary for Education, 16 September 1897. Education Auckland file 44/4 (Kawhia). Supporting Papers #1794-1795.
[879] Teacher Kawhia School to Secretary for Education, 6 September 1897. Education Auckland file 44/4 (Kawhia). Supporting Papers #1796-1798.

A request that part of the Plantation Reserve should be allocated for a Native school site was made to the Under Secretary for Crown Lands[880], who had no objection[881]. Three acres of the Plantation Reserve was then surveyed as Section 2 Block X Town of Kawhia[882], and the reservation of that section was changed to a reserve for a site for a native school in January 1898[883].

The Crown claimed as its own the land that it had earlier declared a Plantation Reserve by virtue of the Pouewe Purchase. This early purchase has not been examined for this report.

12.5 Te Kuiti

The first request for a Native School at Te Kuiti was made in February 1896 when a deputation approached the Native Minister during a visit he was making to the town.

> They stated that there were a large number of children who would attend, and promised to give the necessary land in the usual way.[884]

Henry Hetet, "a half caste [who] acted as spokesman of the deputation"[885], was sent a copy of the Native Schools Code, and asked to provide a list of the children who might attend the school. He was also requested to provide "a description of the land your people would give for the school and the master's house, garden and grazing ground"[886].

Jeremiah Ormsby provided a list of 33 children, adding that "there are also a few European children always in the place, but not settled". As to the site, he asked to be

[880] Secretary for Education to Under Secretary for Crown Lands, 15 September 1897. Education Auckland file 44/4 (Kawhia). Supporting Papers #1799.
[881] Assistant Surveyor General to Secretary for Education, 1 October 1897. Education Auckland file 44/4 (Kawhia). Supporting Papers #1800.
[882] Plans of Plantation Reserve, and of Sections 1 and 2 Block X Town of Kawhia. Education Auckland file 44/4 (Kawhia). Supporting Papers #1801, 1802 and 1803.
[883] *New Zealand Gazette* 1898 page 188. Supporting Papers #3910.
South Auckland plan SO 3237. Supporting Papers #2337.
[884] Native Minister to Secretary for Education, 8 February 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2162.
[885] Private Secretary to Native Minister to Secretary for Education, 19 February 1896, on cover sheet to Education file 1896/134/336. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2164.
[886] Secretary for Education to H Hetet, Te Kuiti, 25 February 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2163.

given "the Inspector's opinion before we finally decide on a site for the proposed school, but I may tell you we will give the best site possible"[887].

In July 1896 an Assistant Inspector of Native Schools visited Te Kuiti, "which is at present the terminus as far as timetable trains are concerned of the Trunk Railway". He provided a word picture of the district, as well as commenting about the prospects for a school.

> Its appearance is that of a small European township, and indeed the stores are in the hands of Europeans. Several of the Maoris live in good weather-board houses, on land to which they have a legal individual title. The soil is, for the most part, good. Generally the place gives promise of being permanent, with an increasing European element, as at Otorohanga.
>
> There is no doubt that there are between 30 and 40 Maori and half-caste children of school age living within two miles of the centre of the township and, in view of the fact that several of the parents are much in earnest in their wish to have a school and that none of them oppose the project, there is reason to believe that an average attendance of from 25 to 30 children could be relied upon....
>
> About a mile and three-quarters north of Te Kuiti is Te Kumi, a small and apparently permanent Native settlement. It is connected by a good road and by rail with Te Kuiti. Mr Josephs (half-caste), a man of influence there, told me that there were about 12 children of school age belonging to the settlement. The people of Te Kumi are hau-haus, and their support could not be relied upon; but it is probable that, before long, they would send their children to school, if there was a school within reach.
>
> From Te Kumi a muddy and hilly road runs about two miles SW to Oparure, which I did not see. It is said to be a settlement of moderate size; but the people are hau-haus. There is no serviceable road between Oparure and Te Kuiti.
>
> If the Natives of all these places were anxious for a school, the proper place for it would be at or near Te Kumi. As, however, the Te Kumi and Oparure people would give no support, at first at all events, to a school, the site should, I think, be first outside Te Kuiti and on the north side, in order that the Te Kumi children could attend if they wished to do so.
>
> The best site is on the spur that crosses the railway line just outside the township. There is also a suitable site on the flat, just at the foot of the spur. If this site is taken, one boundary should be a little stream that crosses the railway, and another should run about E and W, and should pass about a chain to the north of a little whare (deserted) shown in the accompanying rough

[887] J Ormsby, Te Kuiti, to Secretary for Education, 28 May 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2165-2166.

> sketch plan. That would exclude from the site all land on which water lies at any time of the year. Both sites are in the Pukenui block, awarded by the Court to about 200 owners, holding different numbers of equal shares. A piece could be cut out by the Land Court (Court is now sitting at Kihikihi). The land on the spur is in dispute between Reweti, who has built a house on part of it, and J Hettitt [sic], who had previously laid down part in grass. It is doubtful whether a piece of land could be got there. The owners that guarantee a site in the block are John Hettit [sic], Henry Hettit [sic], George Hettit [sic], Mrs Jeremiah Ormsby and Mrs Nikora.
>
> I recommend that a school seated for 30 children be erected as soon as the site is obtained.
>
> I had two interviews with Mr Wilkinson, from whom I received much ready and valuable help.
>
> Mr Jeremiah Ormsby is, in my opinion, the man to whom the Department's correspondence should be addressed.[888]
> [Underlining in original]

Upon receipt of the report, the Assistant Inspector's superior officer commented:

> This case seems sufficiently promising to warrant the establishment of a school at Te Kuiti. But should we not, with the flagrant Otorohanga instance before us, urge the Auckland Board to found a school at Te Kuiti, intending however to take up the matter ourselves if the Board should refuse to do so? The trend of affairs at Te Kuiti seems to me to promise almost a fac simile of the Otorohanga case. Should we strain our limited resources in helping the Board when there is so much real Native work waiting to be done? In any case, it would strengthen our hands greatly to ask the Board to take this work up.[889]
> [Underlining in original]

The Assistant Inspector was asked for his thoughts on these comments, and replied:

> Te Kuiti will probably become English, as Otorohanga has done, but not so quickly. I do not think we should hold back on that account. At present there are no resident English children.[890]

A decision was then made to proceed with the school, the first step of which involved obtaining a site. In August 1896 the Crown official in charge of Native land purchases, Patrick Sheridan, was asked to arrange for the Crown to obtain three acres

[888] Assistant Inspector of Native Schools Kirk to Secretary for Education, 22 July 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2167-2170.
[889] Inspector of Native Schools Pope to Secretary for Education, 28 July 1896, on cover sheet to Education file 1896/671/336. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2171.
[890] Telegram Assistant Inspector of Native Schools Kirk to Inspector General of Schools, 30 July 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2172-2173.

at either of the two sites identified by the Assistant Inspector[891]. He referred the request to the land purchase officer for Te Rohe Potae, George Wilkinson, explaining:

> If we have a sufficient interest in the block within which the site is situated, you can probably arrange that the Education department shall take possession at once on the understanding that the site shall form part of the award to the Crown on partition.[892]

Wilkinson replied:

> We have only acquired 3 shares to date out of a total of 237½ shares. Our three shares represents an area of 155½ acres. The name of the block is Pukenui No 2. There are 210 owners, so it would not be safe to arrange with any of them, other than a large majority, as to where the Crown shall get its area, or part of it. All the land in the vicinity of the Te Kuiti railway station will be very hotly contested on partition. The ownership to the portion where the two proposed school sites are will be disputed between the Hetet family and a Native named Te Rewatu. Hone Hetet (John Hetet, h.c.) is at present in Wellington; when he comes back I will have a talk with him and Te Rewatu as to one, or both of them, sending in an application for partition of that small portion, neither of them to oppose the other, or whether they will combine to support me in applying for that piece as portion of the area acquired by the Crown. The trouble in the latter case would be as to where the Crown was to take the balance of its area. Seeing who I have bought from, I feel sure that the majority of the owners would not agree to it being taken very near to the railway station. The block contains over 12,000 acres – only that it is with a view to assist the Education department it is premature to ask to have the Crown's interest defined in the block at present.[893]

Wilkinson also suggested that the Chief Land Purchase Officer and the Secretary for Education might contact John Hetet while he was in Wellington to discuss the matter[894]. An approach was made to Hetet in October 1896, to see if "his party will assent to the school site being claimed as a portion of the Crown award"[895], but Hetet

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[891] Secretary for Education to Chief Land Purchase Officer, 1 August 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2177-2178.
[892] Chief Land Purchase Officer to Land Purchase Officer Otorohanga, 10 August 1896, on Secretary for Education to Chief Land Purchase Officer, 1 August 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2177-2178.
[893] Land Purchase Officer Otorohanga to Chief Land Purchase Officer, 13 August 1896, on Secretary for Education to Chief Land Purchase Officer, 1 August 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2177-2178.
[894] Telegram Land Purchase Officer Otorohanga to Under Secretary Native Land Purchase Department, 14 August 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2174-2175.
[895] Chief Land Purchase Officer to W Grace, 18 August 1896, on Secretary for Education to Chief Land Purchase Officer, 1 August 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2177-2178.

"would not consent to it"[896]. The Chief Land Purchase Officer then decided that "this matter had better stand over until we can acquire a few more interests"[897]. Meanwhile Jeremiah Ormsby wrote to the Secretary for Education that "we are anxious to know what is being done with regard to our application for a school here"[898].

Perhaps it was on Hetet's return to Te Kuiti from Wellington that he was reminded of the community's enthusiasm for a school, or perhaps Wilkinson had his promised talk with Hetet. In any event, in November 1896 Wilkinson was able to report that it had been agreed that a school site would be provided.

> The above letter refers to the proposed site for a Native School at Te Kuiti. It is from Mr John T Hetet, h.c. [half-caste], who is an important owner in Te Pukenui No.2 Block. He says that he and other owners representing the Ngatirora hapu have had a talk about the school site, and have agreed to let Government take 3 acres at the place proposed by them (Ng' Rora) for a school site as part of the area that it (Government) is entitled to by purchase out of the Pukenui No.2 Block, on the understanding that Government gives it for a school site, and that Government does not claim any more land there as part of its purchase.[899]

This offer was not immediately acceptable to the Chief Land Purchase Officer.

> We can't tie our hands in the manner proposed. If we are entitled to land in the locality, we will claim it whether they give the school site or not. At the same time the fact of the Natives having given 3 acres in the locality will not be taken advantage of to prove a claim which does not otherwise exist, and the land will not be utilised for any other purpose.[900]

Wilkinson then replied:

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[896] W Grace to Chief Land Purchase Officer, 27 October 1896, on Secretary for Education to Chief Land Purchase Officer, 1 August 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2177-2178.
[897] Chief Land Purchase Officer to Land Purchase Officer Otorohanga, 27 October 1896, on Secretary for Education to Chief Land Purchase Officer, 1 August 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2177-2178.
[898] J Ormsby, Te Kuiti, to Secretary for Education, 26 October 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2176.
[899] Land Purchase Officer Otorohanga to Chief Land Purchase Officer, 26 November 1896, on JT Hetet, Te Kuiti, to Land Purchase Officer Otorohanga, undated. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2179-2180.
[900] Chief Land Purchase Officer to Land Purchase Officer Otorohanga, 7 December 1896, on JT Hetet, Te Kuiti, to Land Purchase Officer Otorohanga, undated. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2179-2180.

> I have seen Mr John Hetet again about this matter. He agrees to what you propose, and says that he does not anticipate any objection from his people, as all are desirous of having a school at Te Kuiti.[901]

On the basis of this exchange of correspondence, and the understandings that it contained, the Chief Land Purchase Officer advised the Secretary for Education that "the building can be safely proceeded with"[902]. Before that advice was followed, however, the Education Department checked with the Auckland Education Board whether it had any intention to establish a public school at Te Kuiti[903]. It was only when the Board replied in the negative[904] that approval was given for the school to be established[905], and plans were drawn up for the school buildings.

With respect to the site, the next step was to survey its boundaries. The Surveyor General did not foresee any difficulties, although he did comment:

> I am sorry this question has cropped up just now, for it is proposed shortly to endeavour to bring Te Kuiti under the Native townships act, where streets etc will be laid out, and I fear your school site will not come into line. However, I suppose you cannot wait.[906]

The survey plan was completed in July 1897, it being noted that "care has been taken that it does not interfere with the future Township, a scheme [plan] of which has been filed"[907].

The transfer of the site to the Crown was completed in March 1899 when Pukenui 2 was partitioned in order to allow the shares held by the Crown to be separately defined. The Native Land Court defined a block of 15 acres, described as Pukenui 2A

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[901] Land Purchase Officer Otorohanga to Chief Land Purchase Officer, 12 December 1896, on JT Hetet, Te Kuiti, to Land Purchase Officer Otorohanga, undated. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2179-2180.
[902] Chief Land Purchase Officer to Secretary for Education, 16 December 1896, on JT Hetet, Te Kuiti, to Land Purchase Officer Otorohanga, undated. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2179-2180.
[903] Secretary for Education to Secretary Auckland Education Board, 18 December 1896. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2181.
[904] Secretary Auckland Education Board to Secretary for Education, 13 January 1897. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2182.
[905] J Ormsby, Te Kuiti, to Secretary for Education, 21 January 1897, and Secretary for Education to J Ormsby, Te Kuiti, 17 February 1897. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2183 and 2184.
[906] Surveyor General to Secretary for Education, 30 April 1897, on Secretary for Education to Chief Land Purchase Officer, 27 April 1897. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2185.
[907] Chief Surveyor Auckland to Surveyor General, 27 July 1897. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2186-2187.

North, which included the three acres of the school site[908]. The three acres had been "given by the Natives without consideration"[909].

The Crown's acquisition was declared to be Crown Land in July 1899[910]. Before that, however, in November 1898, the school site was reserved under the Land Act 1892[911]. The school itself had opened its doors in January 1898[912]. How the Crown was able to treat the school site as Crown-owned land before it had received a title to it from the Native Land Court is not clear.

By 1904 the increased population of Europeans in the town meant that more than half the children at the Native school were European. When an Inspector visited in July that year, he reported:

> There has been lately a movement on the part of the Pakehas to compel attention to their demands by gathering all their forces; the Maori have done likewise. Hence the school built for 30 children has 82 on roll and an average of over 50. It is thus overcrowded. There can be little doubt that the school has passed from Maori to Pakeha, and I cannot see any help for it but to hand the school over. There will be left here in Te Kuiti about 14 children…. The remaining Maori children from Te Kumi would go to Oparure.[913]

In a further report later that same month, he added:

> With reference to the proposal to hand over the Te Kuiti Native School to the Auckland Education Board, I have to state that I made, when at Te Kuiti, such inquiries as my time allowed as to the actual school requirements of the Native children near Te Kuiti.
>
> The sources of supply of Te Kuiti Native School at present are four, viz: (1) Te Kuiti, (2) Te Kumi, about 1½ miles distant along the railway line, (3) Te Uira, on the hills above Te Kumi, and (4) Oparure, beyond those hills, on the next face, and distant about six miles from Te Kuiti. With Te Kumi may be added Moerua's people.
>
> From Te Kuiti there are not many purely Native children. There are several half-castes such as the Hetets, who speak English and live in English style.

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[908] Order of the Court, 14 March 1899. Auckland Crown Purchase Deed 3216. Supporting Papers #79-80.
[909] Chief Land Purchase Officer to Secretary for Education, 24 February 1899. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2189.
[910] *New Zealand Gazette* 1899 pages 1359-1361. Supporting Papers #3913-3915.
[911] *New Zealand Gazette* 1898 pages 1948-1949. Supporting Papers #3911-3912.
[912] Teacher Te Kuiti Native School to Secretary for Education, 3 February 1898. Education Auckland file 44/4 (Te Kuiti). Supporting Papers #2188.
[913] Report of Inspector of Native Schools Bird, 2 July 1904. Excerpt on Education Auckland file 44/4 (Oparure). Supporting Papers #1927.

> There can be little doubt that with 38 Pakeha children on the roll at present there is sufficient reason for the transition of Te Kuiti School from Native to Board School.[914]

As a result of this recommendation, the Native school at Te Kuiti became a public school administered by the Auckland Education Board at the beginning of 1906. Meanwhile a new Native school was opened at Oparure at the same time (see later section of this chapter). The teacher at Te Kuiti Native School transferred and became the first teacher at Oparure Native School.

12.6 Raorao

In September 1896 the Education Department received a request for a Native school on Aotea Harbour. The request was sent by the teacher at Kawhia Native School.

> I have been endeavouring to get the natives at Aotea to send their children to school, but I find it is too far, and as they are very conservative they will not allow their children to live with the Kawhia natives.
>
> There are a great many children of school age. They say 50 or 60.

He suggested that he start an auxiliary school there himself, noting that "the natives have promised me the use of the Hall there", and adding:

> The natives say that there was a piece of land given for school purposes many years ago, but I believe it was for a mission station.[915]

He was asked to visit Aotea, tell the local people the requirements for a native school set out in the Native Schools Code, and arrange for schedules of school age children to be drawn up, and for a possible site for a school to be identified[916]. When he reported back the following month, he explained that he had left copies of the Code in Maori and the schedule forms. He identified on a map the two places he had visited, at Raorao and Makaka.

> With regard to the earnestness of the natives, I believe they are filled with it. They say they are prepared to give the land, but as they had given a large block of land to the Wesleyan body, on the understanding that it was for school purposes, among others, they have written asking that three acres be given up for a school site. Of course I do not know the rights of the matter,

[914] Inspector of Native Schools Bird to Secretary for Education, 26 July 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1934-1938.
[915] Teacher Kawhia Native School to Secretary for Education, 10 September 1896. Education Auckland file 44/4 (Raorao). Supporting Papers #2045-2047.
[916] Secretary for Education to Teacher Kawhia Native School, 22 September 1896. Education Auckland file 44/4/ (Raorao). Supporting Papers #2048.

> but I told them they have not the slightest chance to get it, and that it is only deferring the establishment of a school. They feel very strongly about the matter, and say they will await an answer, but they assured me that they desired to have their children educated as the Kawhia children were.[917]

He followed this up with a further report in December.

> I have been to Rao Rao to see the natives about the establishment of a school five or six times now, and am happy to say that they have agreed to give three acres in a very suitable place, being a little nearer Rao Rao than where I marked on the sketch map [sent with my report in October].
>
> On Saturday last the natives sent over and asked me to meet them at their quarterly meeting on the 1st (yesterday). Leaving the school in charge of Miss Prentice and my daughter, I went, not expecting to persuade them to give what they consider a second grant for education, as the whole difficulty has arisen through a religious body having a grant of 178 acres on the understanding that a school would be established; and not having abided by the promise, and as these natives are bigoted Hau Haus, it has been a matter of considerable difficulty to get them to part with a second lot. Indeed, if it had not been for Mr JH Phillips and Mr John Ormsby, my efforts simply would have been futile, I am afraid.[918]

He was told in reply that no action could be taken "until the Maoris make application to the Department directly"[919].

In March 1897 the Education Department was still waiting for the lists of children who would attend the school if it was opened, when Moeroa Piripi wrote offering to gift three acres between Makaka and Raorao[920]. Another visit by an inspector was scheduled, which took place at the beginning of May. The inspector, starting from Kawhia in the morning, was unable to cross the harbour by canoe, and had to ride on the mudflats around the edge, so had only a short time at Raorao before he returned to Kawhia.

> I find that the Raorao people were quite unwilling to find any land for a school, as they say they gave over 100 acres to the Wesleyan Church especially for a school, which school was in existence for several years. They, however, expressed a wish to have a school, and I think they are in earnest.

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[917] Teacher Kawhia Native School to Secretary for Education, 14 October 1896. Education Auckland file 44/4 (Raorao). Supporting Papers #2049-2053.
[918] Teacher Kawhia Native School to Secretary for Education, 2 December 1896. Education Auckland file 44/4 (Raorao). Supporting Papers #2054-2057.
[919] Secretary for Education to Teacher Kawhia Native School, 21 December 1896. Education Auckland file 44/4 (Raorao). Supporting Papers #2058.
[920] Moeroa Piripi, Makaka, to Secretary for Education, 16 March 1897. Education Auckland file 44/4 (Raorao). Supporting Papers #2059.

> From what I saw of Raorao, and of the neighbouring settlement of Makaka, I concluded that an attendance of from 25 to 30 children could be maintained….
>
> I recommend that the Wesleyan authorities be asked to give a short history of their school, and of the cause of its collapse. Unless, as is unlikely, that history should give grounds for taking no action, I think they should be asked to give the Government a title to five acres of their reserve, or if they cannot give a title to give at least a 50 years lease at a nominal rental. If the site can be arranged for, I think that a school should be established.

In the meantime he recommended that a temporary school be established in "The Hall" at Raorao[921].

Both recommendations were accepted[922]. The Crown wrote to the Wesleyan Mission asking if it would be prepared to grant a 21 year lease at a peppercorn rental over 5 acres of the Church's endowment, "as was done in the case of the school at Te Kopua"[923]. The Wesleyan Property Trustees replied that they were willing to grant a lease, but the block was already leased to two Europeans. While they were in arrears of rent and may have forsaken the block, their consent to a lease to the Crown was still required, unless their lease could be terminated[924].

Meanwhile a temporary school (described as an 'experimental school') had been started in the hall, and the Maori owners agreed to allow its use free of charge for one year, "and we trust by the end of that time that you will see your way to build us a permanent school house"[925].

In August 1897 the Education Department decided that "as the season for … cultivation is at hand", it should pre-emptively identify the land required for a school

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[921] Assistant Inspector of Native Schools Kirk to Inspector General of Schools, 2 June 1897. Education Auckland file 44/4 (Raorao). Supporting Papers #2060-2062.
[922] Secretary for Education to Minister of Education, 29 June 1897, on cover sheet to Education file 1897/520/339. Education Auckland file 44/4 (Raorao). Supporting Papers #2064.
[923] Secretary for Education to Rev WJ Williams, Auckland, 2 July 1897. Education Auckland file 44/4 (Raorao). Supporting Papers #2063.
[924] Buddle, Button and Co, Barristers, Notaries etc, Auckland, to Secretary for Education, 21 July 1897. Education Auckland file 44/4 (Raorao). Supporting Papers #2065.
[925] Moeroa Piripi, Te Mata, to Secretary for Education, 14 September 1897. Education Auckland file 44/4 (Raorao). Supporting Papers #2066-2067.

site of five acres, and have it surveyed[926]. A survey of five acres of the Wesleyan Mission Grant on the shore of Aotea Harbour was completed in September 1897[927].

One year later, in August 1898, the church trustees supplied a draft terms of lease[928]. An Assistant Law Officer looked at the draft, and made some comments on some of its specifics, as well as the following general comments.

> I am not aware what powers the Trustees have to execute such a lease, but as they granted one in 1886 for a like period of 21 years it may be assumed such power exists. As regards the Crown, there is no legal power in the Crown to accept such a lease without the authority of an Act of Parliament.[929]

Despite this opinion, the lease was signed the following month[930].

The lease required the Crown to erect a school building within twelve months. Tenders were called for and a contract was entered into for building work in April 1899[931]. When the schoolhouse was built, the temporary use of the hall ceased.

The file for Raorao Native School after 1899 is not recorded in Archives New Zealand records and has not been located during research for this report. Only brief references in other Te Rohe Potae District school files have been located. In July 1904 the Inspector of Native Schools recommended writing to the Chairman of the Raorao School Committee "pointing out that the people have apparently gradually been losing interest in their school, and informing him that the Department is considering the question of removing the buildings to a place where the natives are anxious to have a school"[932]. In May 1907 the school buildings were being

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[926] Secretary for Education to Surveyor General, 16 August 1897. Education Auckland file 44/4 (Raorao). Supporting Papers #2068.
[927] Chief Surveyor Auckland to Assistant Surveyor General, 28 September 1897. Education Auckland file 44/4 (Raorao). Supporting Papers #2069-2070.
South Auckland plan SO 11057. Supporting Papers #2338.
[928] Buddle, Button and Co, Barristers, Notaries etc, Auckland, to Secretary for Education, 4 August 1898. Education Auckland file 44/4 (Raorao). Supporting Papers #2071-2075.
[929] File note by Assistant Law Officer Reid, 11 August 1898, on Buddle, Button and Co, Barristers, Notaries etc, Auckland, to Secretary for Education, 4 August 1898. Education Auckland file 44/4 (Raorao). Supporting Papers #2071-2075.
[930] Recommendation to Governor to Sign Deed of Lease, 12 September 1898, signed 13 September 1898. Education Auckland file 44/4 (Raorao). Supporting Papers #2076.
The lease has not been sighted during research for this report. It has been registered as Instrument 145213 in the Auckland Deeds Registry records, and as Auckland Crown Purchase Deed 3146.
[931] File note, 12 April 1899. Education Auckland file 44/4 (Raorao). Supporting Papers #2077.
[932] Inspector of Native Schools Bird to Secretary for Education, 27 July 1904, on cover sheet to Education file 1904/197/210. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2137.

recommended for removal to Rakaunui school site[933], however by March 1909 the buildings, while described as "disused", were not available for relocation because "the owners of the land on which the Raorao buildings stand objected to their being removed"[934].

12.7 Mangaorongo

A request for a Native School at Mangaorongo was made in August 1902. Paehua Matekau and four others wrote to the local Crown official George Wilkinson listing the names of 37 children who would attend a school if it was established[935]. Wilkinson forwarded the letter to the Secretary for Education, noting:

> Mangaorongo is a populous and permanent settlement about ten miles from here [Otorohanga], situated about midway between here and Kihikihi, but not near the main road. It is a suitable place for a native school, in my opinion, and I believe one would be well attended. I would suggest that you send your inspector to make the necessary inquiries. There is another settlement about three miles off that would also contribute children. This settlement is called Otewa.[936]

The Inspector of Native Schools decided that the list of children did not contain sufficient information, and provided forms to be filled in[937]. When the form was completed and returned in December 1902 it contained 32 names. Wilkinson commented:

> I am also informed that there are other children living in the vicinity whose names are not included in the list because their parents or guardians are not in favour, at present, of such an innovation as a school in their midst. It is thought however that if the school is staffed they will soon fall into line with the others.[938]

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[933] Inspector of Native Schools Bird to Secretary for Education, 25 May 1907. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2026-2029.
[934] Minister of Education to G Whitcombe, Kawhia, 5 March 1909. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2038.
[935] Paehua Matekau and 4 Others, Mangaorongo to Native Agent Otorohanga, 14 August 1902. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1876-1880.
[936] Native Agent Otorohanga to Secretary for Education, 23 August 1902, on Paehua Matekau and 4 Others, Mangaorongo to Native Agent Otorohanga, 14 August 1902. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1876-1880.
[937] Secretary for Education to Native Agent Otorohanga, 4 September 1902. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1881.
[938] Native Agent Otorohanga to Secretary for Education, 19 December 1902. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1882-1883.

An inspector visited Mangaorongo in March 1903. Unfortunately his report has not been located on the Mangaorongo School file. When received, the Secretary for Education was told that "this seems to be a good case for the establishment of a native school", and he in turn advised the Minister of Education, "I recommend that steps be taken to establish a native school at Mangaorongo"[939]. The Minister gave his approval.

In a memorandum to the Government official in charge of Native Land Purchases, the part of the Inspector's report about the site for the school is quoted.

> "I am sorry to say that I forgot to ask the name of the block in which the site is situated; it is, however, awaiting subdivision after having been put through the Land Court as a block. It will be easy to obtain the name from the Survey or the Land Purchase Department. I may mention here that the owners all belong to the Maniapoto tribe – Ngatimaniapoto…."
>
> "Mangaorongo lies in a kind of amphitheatre, the surrounding hills being of moderate height only, but decidedly rugged; the central district really deserves to be called a plain; it has a pretty stream flowing through it. There are three small settlements on the plain, at the corners of what impresses one as being an equilateral triangle, each settlement being about three miles from each of the other two. Somewhere near the middle of the plain is a roughly semicircular piece of ground of about three acres in extent; this the Maoris offer to give as a school site. There is a stockyard on the proposed site."[940]

Inquiries by Wilkinson disclosed that:

> The Blocks at one time known as Rangitoto-Tuhua Nos 19 and 20 now form part of the Block called by the Appellate Court "RangitotoA", and I am satisfied that the Mangaorongo settlement and the proposed school site is within that Block. The title to Rangitoto A is an Order of the Native Appellate Court dated 7th September 1900. The total number of owners is 1042, the total number of shares is 570. From what I can find out from the Natives, the proposed school site is upon the portion of the Block that is claimed by a section known as Ngatiwhakatere, but no partition has yet taken place of the Block, but application for partition have been sent to the N.L. Court. The total area of Rangitoto A is estimated at about 98,600 acres.[941]

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[939] Secretary for Education to Minister of Education, 14 April 1903, approved by Minister 20 April 1903, on cover sheet to Native Schools file 1903/73/131. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1884.

[940] Secretary for Education to Chief Land Purchase Officer, 21 April 1903. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1885-1889.

[941] Native Agent Otorohanga to Under Secretary for Native Land Purchases, 23 May 1903, on Secretary for Education to Chief Land Purchase Officer, 21 April 1903. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1885-1889.

Given the number of owners who would have to be approached if the site was to be transferred or conveyed to the Crown, the Under Secretary for Native Land Purchases advised:

> I think that you should request the surveyor who I gather from Mr Pollen's minute of the 20th inst is now on the block, to survey the proposed school site with a view to its being proclaimed under the PW Act.[942]

A survey was requested[943], and a plan showing the school site of three acres was completed in July 1903[944]. Despite the Inspector referring to a circular shape, when surveyed it had a rectangular shape. The plan recorded that the stockyard was on the site. Completion of the plan cleared the way for the site to be taken for a Native School under the Public Works Act the following month[945].

It was the Education Department that arranged for the taking Proclamation to be signed. This Department had less experience in the taking steps than the Public Works Department. Perhaps because it regarded the acquisition of the site as a gift to the Crown, albeit using the Public Works Act, it failed to follow the procedures set down in the legislation and apply to the Native Land Court for it to assess what compensation should be paid.

The school opened in July 1905, but the school roll was not as large as expected, because a number of Mangaorongo Maori had moved to the timber township of Mokai for work[946], and it closed in early 1906. It reopened in August 1906, but then closed again permanently in March 1908[947]. In 1911 the Auckland Education Board was allowed to use the building for a half-time public school[948], but this too closed in

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[942] Chief Land Purchase Officer to Secretary for Education, 29 May 1903, on Secretary for Education to Chief Land Purchase Officer, 21 April 1903. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1885-1889.
[943] Secretary for Education to Surveyor General, 1 June 1903. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1890-1891.
[944] Assistant Surveyor General to Surveyor General, 29 July 1903. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1892-1893.
South Auckland plan ML 6992. Supporting Papers #2329.
[945] *New Zealand Gazette* 1903 pages 2097-2098. Supporting Papers #3919-3920.
[946] Inspector of Native Schools Bird to Secretary for Education, 2 July 1905, Teacher Mangaorongo Native School to Secretary for Education, 20 July 1905, and Native Agent Otorohanga to Secretary for Education, 22 July 1905. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1894-1895, 1896 and 1897.
[947] Secretary for Education to Minister of Education, 31 March 1908, approved by Minister 31 March 1908. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1898.
[948] File note, undated. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1899.

1916 when the teacher enlisted. After that the school building was no longer used as a school, and a Maori family occupied it as a residence[949]. In 1926 the Education Department asked the Police to evict the Maori occupiers of the building[950], and the occupiers agreed that they would vacate when the Department chose to reopen the school[951]. However, the Department declined to reopen the school[952]. At some stage after 1927 the building was removed, but the three-acre site remained Crown-owned land.

The revesting of the school site in the owners of the surrounding Maori Land in 1961 is discussed in the chapter on the return of taken lands.

12.8 Te Kopua (Raglan)

The first request for a native school at Te Kopua, near Raglan, was made in June 1900 by W Te Aoterangi and 48 others[953]. Te Aoterangi was sent a copy of the Native Schools Code and asked to fill in forms that indicated the names of children who would attend the school, their ages, the names of their parents, and the distance they lived from the proposed school. He was also asked how far Te Kopua was from the nearest public school[954]. Te Aoterangi responded with a list of 41 children from Te Kopua, Patikirau and Nihinihi settlements[955].

The Secretary for Education again asked how far Te Kopua was from the nearest public school, and also why the community's children did not attend Raglan Public

[949] Inspector of Native Schools Porteous to Mr Bell, 22 November 1926. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1903-1905.
[950] Director of Education to Police Officer in Charge Otorohanga, 30 November 1926. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1906.
[951] Constable Fry, Otorohanga, to Sergeant in Charge Te Kuiti, 8 December 1926. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1907.
[952] Inspector of Native Schools Henderson to Director of Education, 6 June 1926, Inspector of Native Schools Porteous to Mr Bell, 22 November 1926, and Secretary for Education to Minister of Education, 15 January 1927, approved by Minister 19 January 1927. Education Auckland file 44/4 (Mangaorongo). Supporting Papers #1900-1902, 1903-1905 and 1908.
[953] W Te Aoterangi and 48 Others, Raglan, to Native Minister, 1 June 1900. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2084-2086.
[954] Secretary for Education to W Te Aoterangi, Raglan, 15 August 1900. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2087.
[955] W Te Aoterangi, Raglan, to Secretary for Education, undated. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2088-2090.

School[956]. Te Aoterangi replied that Raglan School was 1¼ miles from Te Kopua, but was separated from it by a river that had to be crossed. No one was able to properly supervise the children once they were on the other side. He added:

> The site for our school has been arranged, it is right at our kainga, being about 20 chains from it. There are three acres, the name of our school site is Te Tarata.[957]

The reaction of the Education Department to the information that Te Kopua was so close to Raglan was to refer the application to the Auckland Education Board for its comments, and not to support a native school "unless strongly urged by the Board to do so"[958]. The Board sought the advice of the Raglan School Committee, which saw no reason why another school should be established[959].

At about the same time this reply was received, an Inspector of Native Schools reported that the matter should not be thought of as being so clear-cut.

> Hami Kereopa of Raglan called on me at Kopua [in the Waipa Valley] to represent the Maoris of his district, and to show me that in spite of their proximity to a Board School, a Maori school is greatly needed by them. What Hami said convinced me of one thing, at all events, and that was that a visit to the place would be necessary; the matter would have to be decided on the ground. The main point to be determined is whether their contention that their children could not attend the Board School without endangering their lives is true or not. I think the place should be visited at the first opportunity.[960]

Despite this, the Secretary for Education decided that "the Department does not at present see its way to establish a school there"[961]. This was not the answer the local community wanted, and Pera Kiwi wrote the following month asking again for a school to be established at Te Kopua without delay[962]. An Inspector commented:

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[956] Secretary for Education to W Te Aoterangi, Raglan, 11 October 1900. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2091.
[957] W Te Aoterangi, Raglan, to Secretary for Education, 11 November 1900. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2092-2096.
[958] Inspector of Native Schools Pope to Secretary for Education, 7 December 1900, on cover sheet to Education file 1900/1165/404. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2097.
[959] Secretary Auckland Education Board to Secretary for Education, 4 April 1901. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2098.
[960] Inspector of Native Schools Pope to Secretary for Education, 13 April 1901. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2099.
[961] Secretary for Education to W Te Aoterangi, Raglan, 4 October 1901. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2100.
[962] Pera Kiwi, Te Kopua, to Inspector of Native Schools Pope, 16 November 1901. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2101-2103.

> I think that in time we shall have to establish a school at Kopua, but we should give the Raglan people every chance.

He recommended that Pera should be replied to and told that the people of Te Kopua should take advantage of the school already provided at Raglan, and "overcome the difficulties in the way of sending their children to that site just as Europeans in the same position would do"[963].

It was another twelve months before a further request for a school was made by the people of Te Kopua, this time in a letter to the Premier from Wahanga Wetini and 29 others of Tainui-a-Whiro. They cited as reasons for a school the dangers of crossing the Rakikore River, the unenthusiastic attitude of the teacher at the Raglan School towards teaching Maori children ("because the Pakehas look upon us as still being Hauhaus"), the precedent set by the close proximity of a Public and a Native school at Kawhia, and the discrimination the community would be faced with if Maori were not able to have a school even while Europeans in the district had a school.

> If this school should not be granted, this saying "that the Maori and the Pakeha are one" will be mere idle words.
>
> Well then, we agree to there being three acres as a site for that school, it is a very good site and on an elevation.[964]

The Education Department was still reluctant to agree to a Native school, but did acknowledge that there could be a case for one. One inspector wrote to another:

> Do you agree with me in thinking that the Department might, in this rather difficult case, yield to pressure, if it can be shown that the Raglan Maoris are not attending, and believe they cannot attend, the Raglan Public School without danger? It is plain that the Maoris ought to attend at Raglan, but they find, apparently, great difficulty in doing so; of course this is not necessarily the fault of the Maoris, it may be that they are not welcomed over the river. You know this case through and through. I do not because it has not fallen to my lot to visit Raglan, but could write the report if you would kindly state your present views.[965]

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[963] Inspector of Native Schools Kirk to Inspector of Native Schools Pope, 3 December 1901, on cover sheet to Education file 1901/1868/404. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2104-2105.
[964] Wahanga Wetini and 29 Others, Te Kopua, to Premier, 18 December 1902. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2106-2115.
[965] Inspector of Native Schools Pope to Inspector of Native Schools Kirk, 10 January 1903, on cover sheet to Education file 1901/1868/404. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2116.

His colleague responded:

> I think we should tell the people that the matter is under consideration, and that we should ask the Auckland Board for information as to the number of Maori children attending the Raglan School, and as to their average attendance for, say, the last six months. [966]

The reply from the Auckland Education Board showed 18 Maori children enrolled at the Raglan Public School, with an attendance rate of less than 50%[967]. The number of children enrolled was less than half the number who were potentially available at Te Kopua for enrolment, so this seemed to confirm that some parents were disinclined to send their children to Raglan Public School, for whatever reason. When this was put to the Education Board[968], it replied that it "willingly acquiesces" to a Native School being established at Te Kopua[969].

The next step was for an Inspector to visit Te Kopua. This could not be arranged quickly. In May 1903 the Premier visited Raglan, and was lobbied by Te Kopua Maori about the need for a school[970]. In response to the Premier's request for more information, Wahanga Wetini replied two days later, attaching a list of names of 41 children[971]. The Secretary for Education was briefed:

> At various times since June 1900 the natives at Te Kopua near Raglan have made applications for a school. Owing to the proximity of their kainga to the Raglan Public School, which is less than two miles distant, and to representations made that the establishment of a Native school might seriously affect the Public School, the question was deferred in order to give the Maori children an opportunity of attending the Public school. The result, for six months, shows that an average of 7 children attended. Were a Native School erected, there would be an attendance of between 35 and 40 children. The Auckland Board willingly acquiesces in the proposal to establish a school. The Natives were informed that an Inspector would visit the place shortly

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[966] Inspector of Native Schools Kirk to Inspector of Native Schools Pope, 12 January 1903, on cover sheet to Education file 1901/1868/404. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2116.
[967] Secretary Auckland Education Board to Secretary for Education, 9 February 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2117.
[968] Inspector of Native Schools Pope to Secretary for Education, 15 February 1903, on cover sheet to Education file 1901/1868/404. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2118.
[969] Secretary Auckland Education Board to Secretary for Education, 6 March 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2119.
[970] Premier to Minister of Education, undated. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2120.
[971] Wahanga Wetini and 3 Others, Te Kopua, to Premier, 30 May 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2121-2124.

> ([on] 2.4.03). It has been arranged that I shall visit Te Kopua towards the end of July.[972]

The Secretary in turn briefed the Minister, who agreed to wait until receiving the Assistant Inspector's report of his visit before deciding whether to agree to a school being established at Te Kopua[973].

The Assistant Inspector was not able to visit until August 1903. He found 20 children of school age at Te Kopua settlement alone, and was told of a further 20 children in the surrounding locality.

> I also inspected the proposed site – on a sloping hill some distance out of the kainga. The situation is a very good one, as it commands a view of the whole place. The natives are exceedingly anxious to have a school. I gave them what advice I felt justified in giving, and they seemed to me to be in real earnest over the matter. If anything is done, it should be done now, while the children are ready and the people anxious for the school.[974]

His superior officer concluded:

> Mr Bird's report shows that the case is a satisfactory one. It removes all the ground for doubt that seemed to exist at the time of Mr Kirk's visit. I recommend the case for your favourable consideration. There is no apparent room for doubt that an average attendance of about 30 would be maintained. Mr Bird's map shows that while there is access to the Pakeha School over the river, the passage must be very often dangerous.[975]

The Minister was then briefed by the Inspector General of Schools:

> This seems to be a fair case for the establishment of a Native School. There are probably at least 40 children of school age, and there would be a good prospect of an average attendance of thirty (30).
>
> I recommend that the first steps be taken to establish a Native school, viz. to ask the Maoris to give a site, and to prepare plans.[976]

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[972] Assistant Inspector of Native Schools Bird to Secretary for Education, 18 June 1903, on cover sheet to Education file 1901/1868/404. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2125.
[973] Secretary of Education to Minister of Education, 18 June 1903, approved by Minister 19 June 1903, on cover sheet to Education file 1901/1868/404. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2125.
[974] Assistant Inspector of Natives Schools Bird to Inspector of Native Schools, 3 September 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2126.
A sketch plan of the school site originally attached to the Assistant Inspector's report has been located in Lands and Survey Department records, attached to Assistant Secretary for Education to Surveyor General, 8 January 1903 [sic – should be 1904]. Lands and Survey Head Office file 6/5/111. Supporting Papers #770-772.
[975] Inspector of Native Schools Pope to Inspector General of Schools, 4 September 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2127.
[976] Inspector General of Schools to Minister of Education, 15 September 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2127.

The Minister gave his approval, but only after an unexplained three month delay. During that period another request for a school was received from Hamiora Kingi[977].

The school site was on Te Kopua block, which had 88 owners, whose shares were not defined[978]. The advice from the Crown's Chief Native Land Purchase Officer was that "the only way I can suggest is to take the land under the P/W Act"[979].

Following a request to the Surveyor General in January 1904[980], the site of three acres was surveyed in May 1904[981], and the taking under the Public Works Act was proclaimed the following month[982].

As indicated in an earlier briefing note, the next stage would have been the drawing up of plans for the school buildings, and the calling of tenders for the construction of the buildings. These steps were not immediately taken, and it was left to Te Kopua Maori to prompt the Crown in July 1904[983]. Rather than draw up plans for a new building, an alternative was suggested and approved:

> I suggest that the Department write to the Chairman of Raorao Native School pointing out that the people have apparently gradually been losing interest in their school, and informing him that the Department is considering the question of removing the buildings to a place where the Natives are anxious to have a school. Should he in reply show no good grounds to the contrary, I recommend that the Raorao buildings be removed to Te Kopua.[984]

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[977] Hamiora Kingi, Raglan, to Premier, 5 October 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2128-2129.
[978] Registrar Native Land Court Auckland to Chief Land Purchase Officer, 11 December 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2130-2131.
[979] Chief Land Purchase Officer to Secretary for Education, 17 December 1903, on Registrar Native Land Court Auckland to Chief Land Purchase Officer, 11 December 1903. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2130-2131.
[980] Assistant Secretary for Education to Surveyor General, 8 January 1903 [sic – should be 1904]. Lands and Survey Head Office file 6/5/111. Supporting Papers #770-772.
[981] South Auckland plan ML 7085. Copy on Education Auckland file 44/4 (Te Kopua). Supporting Papers #2132.
[982] *New Zealand Gazette* 1904 pages 1624-1625. Supporting Papers #3921-3922.
[983] Hami Kingi, Kopua, to Secretary for Education, 4 July 1904, and Assistant Secretary for Education to Hami Kingi, Kopua, 29 July 1904. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2133-2135 and 2136.
[984] Assistant Inspector of Native Schools Bird to Secretary for Education, 27 July 1904. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2137.

Further requests from Te Kopua during 1904 failed to get the Crown to hasten to provide a school[985]. By August 1905 matters had progressed to receipt of a tender for the moving of the buildings from Raorao to Te Kopua[986], at which point the Department had second thoughts, because the Maori community may have moved[987]. It telegraphed to Hamiora Kingi and to a European settler (who had previously been a teacher at Raglan):

> Department ... now hears Natives removing or have removed to other side of harbour. Can you say if this is correct? Shall be glad of any general information you may be able to supply, and of advice as to present prospects of a school on site selected.[988]

The European replied:

> Before receiving your telegram, for some time back, whilst passing to and fro through the settlement of Te Kopua, noticed how few natives were in residence there, and saw very few children about. And after due inquiry, found that many were in other parts of the district. And since receiving yours, have made further inquiry, and find that the natives are in all probability going to leave Te Kopua and take up their abode at the other side of the harbour at Te Akau, the lease of which to the Land Co has now expired, and the natives have just come into possession again.
>
> Under these circumstances I cannot see there is any "present prospect" of a school being carried on as I am sure the Department would desire. So cannot advise its erection on the site selected at the present time. The natives of Te Kopua are our neighbours, and I should be sorry to say or do anything that would not promote their lasting welfare. Have found them at all times during long residence at Raglan kind and obliging to me and mine. And I therefore feel the responsibility you have placed upon me. But on public grounds, as well as the interest and welfare of the natives, think that unless a school at Te Kopua could after erection be carried on with success, that it would be unwise to take that course at present. Besides, we have a very good school at Raglan, only within a mile or two of Te Kopua, at which several Maori children have or are now attending. Children from our side, which is two miles further, have attended from time to time. Of course if there was a prospect of a full number of Native children attended the proposed school at Te Kopua, and a good

[985] Hamiora Kingi, Kopua, to Secretary for Education, 15 August 1904, Assistant Secretary for Education to Hamiora Kingi, Kopua, 23 August 1904, Hami Kingi, Kopua, to Secretary for Education, 21 September 1904, and Assistant Secretary for Education to Hami Kingi, Kopua, 3 October 1904. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2138-2140, 2141, 2142-2144 and 2145.
[986] Telegram Secretary for Education to Inspector of Native Schools Bird, 12 August 1905. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2146.
[987] Telegram Inspector of Native Schools Bird to Secretary for Education, 14 August 1905. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2147.
[988] Telegram Secretary for Education to JV Pegler, Raglan, 15 August 1905, and Telegram Secretary for Education to Hamiora Kingi, Te Kopua, 15 August 1905. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2148 and 2149.

> teacher appointed, I should only be too glad to see a school in full work there.[989]

The Education Department had never been particularly enthusiastic about establishing a school at Te Kopua because of its proximity to the school at Raglan. It took the opportunity provided by the settler's letter to put a decision about establishing a school at Te Kopua "in abeyance until it is seen what the intentions of the natives really are"[990].

This decision was made before a reply was received from Hamiora Kingi. He told the Department that he had enquired of the people at Te Kopua, and "their decided word is that the Government erect a school house on that piece, the three acres"[991]. However, the Education Department's decision was unchanged. No review in subsequent years is recorded on the departmental file, so a Native school was never established at Te Kopua.

The taking of the school site was revoked in 1923. This is discussed in the chapter on the return of taken lands.

12.9 Oparure

In September 1902 Whare Hotu and seven others wrote to the Native Minister asking that a Native School be established at Oparure. They told him that they were of Ngati Kinohaku hapu, there were 32 children in their settlement ready to be schooled, and they could offer two acres, "to be under the 'mana' of the Government", as a site for the school. Their request was because "the school at Te Kuiti is at such a distance, and the road is exceedingly bad in the winter"[992]. A further request for a school at Oparure was sent to the Inspector of Native Schools by an Otorohanga resident in

[989] JV Pegler, Raglan, to Secretary for Education, 17 August 1905. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2150-2152.
[990] Secretary for Education to JV Pegler, Raglan, 25 August 1905. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2153.
[991] Hami Kingi, Raglan, to Secretary for Education, 1 September 1905. Education Auckland file 44/4 (Te Kopua). Supporting Papers #2154-2155.
[992] Whare Hotu and 7 Others, Oparure, to Native Minister, 24 September 1902. Education Auckland file 44/4 (Oparure). Supporting Papers #1920-1922.

December 1902[993]. In both cases the Education Department sought further details about the children who would attend, and the school site (at least three acres would be required)[994], but nothing was received.

In July 1904 the matter was revived again. A European settler wrote to the Native Minister advising him that Ngati Kinohaku at Oparure wanted a school at their settlement, and felt neglected because they had twice as many school-age children as Te Kuiti, where a Native school already operated[995]. That same month Lucy Josephs of Oparure wrote to an Inspector of Native Schools, whom she had apparently spoken to when he had recently visited Te Kuiti School.

> I am waiting to hear from you as you promised. We are all anxious to hear and get our school. We want to see you this summer. Please come and see the land that I gave you. The natives of Oparure asked me to write to you to come at once, that is if you can.[996]

The Inspector provided his report later that month. After first explaining that children from Te Kuiti, Te Kumi, Te Uira and Oparure attended the Te Kuiti Native School, but that the school was predominantly European in character because of the number of European children from the town who attended it, and it should therefore become a public school, he then discussed what schooling should be provided for the Maori children from the settlements surrounding Te Kuiti.

> [From Te Kumi, Te Uira and Oparure] the children are all Maori, and their education should be provided for. The Te Kumi people have about 15 children. Moerua has about 5, Whitinui at Te Uira has 5 or 6, while at Oparure there are alleged to be 42, and I am quite prepared to believe this statement. Hitherto Te Whitinui (a Te Whiti-ite) has steadfastly opposed the school, the Te Kumi people have not sent their children to Te Kuiti, Moerua's children have attended, and some have gone from Oparure, which is by far the most remote.

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[993] E Creagh, Otorohanga, to Inspector of Native Schools Pope, 18 December 1902. Education Auckland file 44/4 (Oparure). Supporting Papers #1924-1925.

[994] Secretary for Education to Whare Hotu, Oparure, 9 October 1902, and Inspector of Native Schools Pope to E Creagh, Otorohanga, 24 December 1902. Education Auckland file 44/4 (Oparure). Supporting Papers #1923 and 1926.

[995] W Baucke, Te Kuiti, to Native Minister, 6 July 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1928-1931.
Baucke also wrote an article in an Auckland newspaper. *New Zealand Herald*, 16 July 1904, attached to Teacher Te Kuiti Native School to Secretary for Education, 18 July 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1932-1933.

[996] Lucy Josephs, Oparure, to Inspector of Native Schools Bird, 21 July 1904, attached to Inspector of Native Schools Bird to Secretary for Education, 26 July 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1934-1938.

> I think, therefore, that the Oparure people deserve consideration on the ground that the other people, having had the opportunity to attend Te Kuiti by a good road, have not readily availed themselves of the opportunity. The difficulty in the way of establishing a school there hitherto has been that the people have had their land divided into lots each of six acres. They could not therefore spare enough for a site.
>
> The contour of the district is roughly as follows. Three ranges of hills run parallel in a north and south direction. In the valley between the first pair, beginning at the eastern side, runs the railway line to Te Kuiti. It passes Hangatiki and Te Kumi before reaching Te Kuiti. On the side of the middle range, looking down on Te Kumi and the railway line, is Whitinui's place, called Te Uira. There are but three or four houses scattered here, and about five children. The road from the line passes straight up to Te Whitinui's house, and bends to the north on the crown of the hill. In this bend, Te Whitinui offers what land is necessary for a school. Continuing down the hill, you come to a gully with a stream flowing through it. Crossing the stream by a fine new bridge, you are in Oparure. Oparure presents an ideal situation for a native school. There are some 30 houses, all well built and fairly close together. The people say there are 40 children and my informant, a very clever half-caste woman named Mrs Josephs, offered me half her land – fine level site already cleared.
>
> The difficulty to my mind was this. If the school is built at Oparure, the Te Kumi, Te Uira and Moerua lot will be unlikely to go, though in the case of Te Uira we can compel attendance. If on the other hand, we put the school at Te Uira, the Oparure children, by far the most number, will not attend. The gully has a bad road which is boggy in winter. What I propose is to send letters with lists to (1) Mrs Lucy Josephs, Oparure, Te Kuiti, and (2) Whitinui, Te Kumi, Te Kuiti….
>
> I attach (1) a letter from Mrs Josephs, a half-caste woman of Oparure, who is exceedingly keen on having a school there, and who offered me half her land, and (2) a rough sketch showing the disposition of the settlements. I am inclined to think that Oparure is the most deserving place for the school, and should a school be erected there the Te Uira children could go at least in fine weather.[997]

The Secretary for Education forwarded the Inspector's recommendation to the Minister of Education.

> I recommend that preliminary steps be taken towards the establishment of a native school at Oparure (i.e. letting the people there know that this is the proposal, obtaining lists of children, and ascertaining the possibility of getting a site).[998]

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[997] Inspector of Native Schools Bird to Secretary for Education, 26 July 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1934-1938.
[998] Secretary for Education to Minister of Education, 26 July 1904, on cover sheet to Native Schools file 1904/207/40. Education Auckland file 44/4 (Oparure). Supporting Papers #1939.

The Minister gave his approval, and the letters were written[999]. In the letter to Mrs Josephs, it was explained:

> Before the Department can agree to establish a school, however, it is necessary that a suitable site should be offered by the Natives, and that a list of the children available for the school should be furnished. Mr Bird informs the Department that you are willing to give a suitable site of three acres in extent; I shall be glad to have your written statement to that effect. I shall also be glad if you will have the enclosed forms filled in with the required information and returned to the Department as early as possible, so that the matter may receive immediate attention.[1000]

Lucy Josephs confirmed her offer.

> We are all glad to hear that we will get a school in Oparure, as we have been trying for over 5 years, but I suppose we went the wrong way. I am only too glad to sign my name for the three acres, as promised by me to Mr Bird, and also the most suitable site in Oparure…. We also would like to see Mr Bird to pick out which part, as there is others offering land also for a school in Oparure, but I am almost sure my offer is the best site.[1001]

The Department felt that the Inspector had provided enough information about the site, and would not need to make another visit to the settlement[1002]. Instead it followed up her offer by arranging for the title details to her land to be investigated.

George Wilkinson supplied the title details.

> Ruita te Mihinga (generally know as Mrs Lucy Josephs or Mrs John Josephs) is the sole owner of a piece of land at Oparure settlement containing 6 acres 3 roods 26 perches. The name of the block is Kinohaku East No.1F Sec.16, the title is a partition order dated 2nd November 1900. The land is inalienable except by lease for a period not exceeding twenty-one years. Oparure settlement is one of the most promising in the district, and is likely to be the most permanent. The land is first class. A number of the owners of Kinohaku East No.1F (of which Lucy Page's block is part) have had their shares individualised and located by the Court. Others have grouped themselves in families, and have had their portion also located. Roads have been laid off through the Block giving each division a frontage to some road. Several of the owners have built wooden cottages for themselves, in which they are living in European fashion; they deserve every encouragement. There are a number of

[999] Secretary for Education to L Josephs, Oparure, 29 July 1904, and Secretary for Education to W Whitinui, Te Kuni, 29 July 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1940 and 1941.
[1000] Secretary for Education to L Josephs, Oparure, 29 July 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1940.
[1001] L Josephs, Oparure, to Secretary for Education, 5 August 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1942-1943.
[1002] Secretary for Education to L Josephs, Oparure, 10 August 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1944.

> children there and, as the settlement is likely to be a permanent one, the number will increase yearly. I think a school should be established there.[1003]

Because there was only the one owner of the proposed site, the Education Department was advised that "the matter can be settled at once by a deed of transfer from Ruita te Mihinga to the Crown"[1004].

However, the Education Department was obliged to decline the offer of the land and defer its approval of a Native School, because its funding for the year had not been decided[1005]. While there was this delay, some conflicting reports were received. The school teacher at Te Kuiti advised that in his opinion the site offered by Josephs was unsuitable, because "on this six acre block there is an accommodation house, in which grog is known to be freely dispersed, and at times rowdyism, violence and curious scenes enacted". He preferred that Whitinui's site on the hill be chosen instead, as this was close enough to Hangatiki, Te Kumi and Te Kuiti to attract pupils from these settlements[1006]. On the other hand the European settler who had written earlier, wrote again, signing himself as "for your petitioners of the Ngati Kinohaku", applauding the idea of a school located at Oparure[1007], and Lucy Josephs wrote urging that a decision be made[1008]. In November 1904 the Minister approved the establishment of the school at Oparure.[1009].

Lucy Josephs was asked to mark on a plan which three acres of her six-acre block she was offering to the Crown[1010]. When she indicated the eastern portion[1011], a survey plan was ordered. This plan, compiled in the Survey Office on the basis of already

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[1003] Native Agent Otorohanga to Chief Land Purchase Officer, 17 September 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1945-1947.
[1004] Chief Land Purchase Officer to Secretary for Education, 22 September 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1945-1947.
[1005] Secretary for Education to L Josephs, Oparure, 26 September 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1948.
[1006] Teacher Te Kuiti to Inspector of Native Schools Bird, 12 September 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1949-1951.
[1007] W Baucke, Oparure, to Secretary for Education, 3 October 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1952-1953.
[1008] L Josephs, Oparure, to Secretary for Education, 25 October 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1954.
[1009] Secretary for Education to Minister of Education, 26 November 1904, approved 27 November 1904, on L Josephs, Oparure, to Secretary for Education, 25 October 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1954.
[1010] Assistant Secretary for Education to L Josephs, Oparure, 14 December 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1955.
[1011] L Josephs, Oparure, to Secretary for Education, 20 December 1904. Education Auckland file 44/4 (Oparure). Supporting Papers #1956.

surveyed boundaries plus a fixed area of three acres, rather than being newly surveyed on site, was received in February 1905[1012]. At the end of the following month Wilkinson obtained a signed conveyance of the three acres from Ruita te Mihinga[1013]. The document conveyed the land to the Crown and referred to a purchase price of 5 shillings. This was generally regarded as a nominal amount, and is consistent with other acquisitions of native school sites in other parts of the country, where a minimal amount is written into the standardised transfer form, but the acquisition is to all intents and purposes thought of as a gift rather than a sale. Despite this, Wilkinson recorded that "I paid her the purchase money (5/-) out of my own pocket"[1014].

With the opening of the school in March 1906[1015], the Te Kuiti Native School became a public school. The teacher at Te Kuiti was transferred and became the first teacher at Oparure, while the Auckland Education Board appointed its own teacher and assistant at Te Kuiti.

In August 1906 the Inspector reported what he considered to be "a gross breach of faith between the Government and Mrs Lucy Josephs".

> Mrs Josephs' land consisted of six acres in all, and of this she offered the Department one-half as a site for a school.
>
> At my visit she pointed out to me the piece she was willing to give – in my opinion the better half. She stated that on the inside boundary the Department could cut into the land then under crop if necessary, but that she wished to reserve to herself the corner near some limestone rocks which she had for many years used as her own garden.
>
> I promised, as the representative of the Department, that this would be reserved for her, and if I remember aright asked the Department not to take the whole three acres and not to include the little piece referred to.
>
> To prevent any misconception, and to prevent this particular piece being included, I drew a sketch and showed where the buildings could be placed to exclude it.

[1012] Under Secretary for Lands to Secretary for Education, 27 February 1905. Education Auckland file 44/4 (Oparure). Supporting Papers #1958-1960.
[1013] Auckland Crown Purchase Deed 3580. Supporting Papers #81-84.
[1014] Native Agent Otorohanga to Under Secretary for Land Purchases, 30 March 1905, on Under Secretary for Lands to Secretary for Education, 27 February 1905. Education Auckland file 44/4 (Oparure). Supporting Papers #1958-1960.
[1015] Teacher Oparure Native School to Secretary for Education, 29 March 1906, and *Waikato Times*, 27 March 1906. Education Auckland file 44/4 (Oparure). Supporting Papers #1967-1968 and 1969.

> You may judge of my disgust when I found today that the residence stands on the very spot which I promised should be excluded from the school site.
>
> Worse than this, when the work of erection was begun, the garden was in crop, with kumara, kumakuma, tomatoes, blight-proof potatoes, etc, which Mrs Josephs had bought from Yates in Auckland. These were, of course, destroyed when at their best in January or February. Mrs Josephs stood by and cried; she asked the Inspector if he could not put the house elsewhere – several of the natives had seen my sketch plan – but was told no.
>
> As Mrs Josephs was afraid even then lest something should jeopardise her school, she said nothing. Nor does she complain now that the school has been built.
>
> But, Sir, I do not think I should be acting fairly by Mrs Josephs, who has done so much for the school, were I not to make some representation to the Department on the facts of the case.
>
> I therefore desire to suggest (1) that enquiries be made as to who was responsible for the placing of the residence on its present site; (2) that the Department express its regret to Mrs Josephs and pay her some compensation, at least for the crops, if not for the land. I certainly think that some such action ought to be taken in reparation of her loss.[1016]

Two weeks later he added:

> When I first visited Oparure in July [1905] to approve of the site offered for a school, I was under the impression that, as is usual in such cases, the survey would follow my visit. I now find upon examining the records that the site having been marked off (date 6/2/05) and a title obtained prior to my visit, a survey was not necessary. The reservation made by Mrs Josephs during my visit was not indicated by her on the plan on which prior to my visit she was asked to mark the site she offered. Hence by an unfortunate accident the garden comes to be included in the School glebe. I made the disposition of the buildings according to my sketch in order to secure to Mrs Josephs the garden, and I think therefore that it is to be regretted that the Department was not consulted before the disposition was altered. I think that Mrs Josephs has a substantial claim against the Department in the loss of her garden and crops, and suggest that the sum of £10 be offered her in compensation.[1017]

The Minister was briefed.

> The area of the piece of land in question is about a quarter of an acre, and its value with the crops would be, apart from sentimental consideration, about £5. I would recommend payment of that sum only, but for the consideration that the owner sets a very high value on the spot, and moreover has made a free

[1016] Inspector of Native Schools Bird to Secretary for Education, 10 August 1906. Education Auckland file 44/4 (Oparure). Supporting Papers #1961-1963.
[1017] Inspector of Native Schools Bird to Secretary for Education, 24 August 1906, on cover sheet to Native Schools file 1906/284/118. Education Auckland file 44/4 (Oparure). Supporting Papers #1964.

> gift of half her holding for the school site. In these circumstances you will perhaps think £10 not too much.[1018]

The Minister agreed, and Lucy Josephs was written to.

> The mistake arose from the fact that in marking off the school site on the plan sent to you for the purpose, you did not mark any reservation, and a survey not being necessary the site was taken as you marked it. The Minister regrets to learn that you have thus been put to inconvenience, and offers you in compensation the sum of £10, a cheque for which amount will reach you shortly.[1019]

She replied:

> I am very much obliged to you for the £10-0-0. I do not know how to thank you and Mr Bird for it.
>
> My heart is very glad on account of this money. I think I will take a trip to the Exhibition [in] Christchurch with this money.[1020]

By 1923, as had occurred in Te Kuiti in 1904 (and had prompted the establishment of the Oparure Native School), European children outnumbered Maori children[1021]. In July 1923 the Minister of Education approved the transfer of the school to the Auckland Education Board, to be run as a public school[1022]. Local Maori objected, citing as a reason:

> Let the school remain upon the conditions for which the land was given by Te Mihinga, namely for a Maori School for the children of Oparure and for other children. Because of this great affection which Te Mihinga had shown towards her family, we strongly object to any attempt to use this school for any other purpose than that for which it was intended by the donor of the land.[1023]

However this appeal was rejected.

> I have to inform you that the establishment and maintenance of a school as a Native School is justified only when the community which it is intended to serve is purely or almost purely Native in character. As soon, however, as it becomes apparent that a community once Maori has, by process of

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[1018] Secretary for Education to Minister of Education, 24 August 1906, on cover sheet to Native Schools file 1906/284/118. Education Auckland file 44/4 (Oparure). Supporting Papers #1964.
[1019] Secretary for Education to L Josephs, Oparure, 27 August 1906. Education Auckland file 44/4 (Oparure). Supporting Papers #1965.
[1020] L Josephs, Oparure, to Secretary for Education, 28 September 1906. Education Auckland file 44/4 (Oparure). Supporting Papers #1966.
[1021] Inspector of Native Schools Porteous to Director of Education, 16 June 1923. Education Auckland file 44/4 (Oparure). Supporting Papers #1970.
[1022] Deputy Director of Education to Minister of Education, 17 July 1923, approved 24 July 1923, on Secretary Auckland Education Board to Director of Education, 12 July 1923. Education Auckland file 44/4 (Oparure). Supporting Papers #1971.
[1023] Atutahi Porokoru and 46 Others, Oparure, to Director of Education, 7 August 1923. Education Auckland file 44/4 (Oparure). Supporting Papers #1972-1974.

civilisation, or by the advent of Europeans in superior numbers, advanced beyond the stage at which the need for a school of special character has largely ceased to exist, it is the custom to invite the Education Board of the district to take over the administration of any such school, and hence the decision for the transfer to the Education Board of the Oparure Native school, which has now become more European than Maori, with every indication of becoming increasingly so.

It is not anticipated that the interests of the Maoris will suffer in any way through the change that it has been found necessary to make in the management of the school.[1024]

12.10 Rakaunui

In July 1904 the local Member of Parliament wrote to the Native Minister about having a Native school established at Opewa. Carroll passed the letter to the Minister of Education, who replied:

> I have the honour to request you to be so good as to furnish me with the name of some influential Native resident of the district, who could be communicated with on the matter.
>
> I may remark that the preliminary steps in an application of this kind are to obtain a list of children who would be available for a school if established, and an offer from the Natives of a suitable site for the school. If the information received on these points were considered satisfactory, a visit by the Inspector of Native Schools would be arranged as soon as a convenient opportunity presented itself, with a view to enquiring into and reporting on the school requirements of the district.[1025]

A similar reply was sent to a local European settler at Waiharakiki who wrote in August 1904, enclosing a petition signed by residents of the district and asking for a Native school to be established. He was told:

> I have to send you herewith some forms which please have filled in in accordance with the divisions printed thereon, and returned to the department. I have also to ask you if the Maoris are prepared to give a suitable site for a school of at least three acres in extent, in accordance with the requirements of the Native Schools Code. I enclose herewith a map of your district, on which please be good enough to mark the spot where it is proposed that the school should be established, also the position of the surrounding settlements and kaingas. If the information given to the Department is regarded as satisfactory, the Inspector of Native Schools will visit Waiharakiki, when a convenient opportunity for doing so presents itself, with a view to acquainting

[1024] Director of Education to Atutahi Porokoru, Oparure, 17 August 1923. Education Auckland file 44/4 (Oparure). Supporting Papers #1975.
[1025] Minister of Education to FW Lang MHR, 26 July 1904. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2009.

himself of the school requirements of the district, and reporting thereon to the Department.

I may here add that the Department has before it an application for the establishment of a Native School at Opewa, on the Awaroa River, and this application will be considered by the Department along with the Waiharakiki application. I would be much obliged therefore if you would confer with the residents of Opewa on this matter, and also indicate the position of the settlement on the map that I am enclosing with this letter.[1026]

The local Member of Parliament provided the name of Rangituataka Matini, who was written to in the same vein as the other two letters[1027]. Matini replied:

I have the pleasure to state that the Maoris are very anxious to have the school built, the names of the children and situations of the kaingas are numbered and marked in blue on map.

The spot where the site is, is numbered A. Te Mahoe and Waiharakeke are marked B and C. It is impossible to have one school for both places, as they are situated about 12 miles apart and have tidal rivers to cross.

Opewa is an Educational Reserve (Government) situated on the Awaroa River.[1028]

A further request from a Member of Parliament was received in June 1906. Rather than await full details about numbers of children and provision of a site from local people, it was decided that an Inspector should visit the district[1029]. The visit was made in August 1906, and the Inspector reported:

Te Awaroa is really the name of one of the rivers flowing into Kawhia Harbour, and there is thus no actual settlement of that name as far as Maori residents are concerned. The settlement is called Hauturu, and is distant some fifteen miles from Kawhia, close to a very striking limestone cliff called Hautapu. Near the base of this cliff, which can be seen for many miles, is a small settlement, the leading man of which is a half-caste named Green. At Hauturu there are three or four houses, in one of which Mrs Grey, the correspondent in the matter, resides.

[1026] Assistant Secretary for Education to W Hillyer, Waiharakiki, 19 August 1904. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2010-2011.
[1027] Assistant Secretary for Education to Te Rangi Tuataka Matini, Hauturu, 8 December 1904. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2012-2013.
[1028] Rangituataka Matini, Hauturu, to Secretary for Education, 27 December 1904. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2014.
The map referred to in the letter has not been located.
[1029] Inspector of Native Schools Bird to Inspector General of Native Schools, 29 June 1906, on cover sheet for Native Schools file 1904/220/137. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2015.

> There are, I am informed, about 13 children at Hauturu, further up the river are about 10 children, and below Hauturu towards the mouth of the Awaroa River there are said to be 25 children. The difficulty is, however, these children are spread over a very wide area, and there are not enough in any one spot to warrant the Department in establishing a school there.
>
> It is stated that the natives of other kaingas have interests in the Awaroa block, and were a school established they are likely to come to Hauturu to settle. Of course, the same might be said of all the other kaingas, viz., Rakaunui, Te Kauri, Hikuparia, Mania, in the Awaroa district, the children of which are included in the list.
>
> Mrs Grey is an exceedingly shrewd woman, is well educated and very keenly interested in the matter. I asked her about the site, and learned that there is an Education reserve of three acres opposite the cliff I have spoken of. There are limestone rocks cropping out in this place, which is known as Opewa. Hence Te Awaroa and Opewa are identical, so far as the applications for a school are concerned, though neither is the name of a Maori village.

He arranged with Mrs Grey for her to canvas the views of all the kaingas and get them to consider a convenient site for a school. Once that was done, an Inspector could make another visit of a more thorough nature to gain a better understanding of the district[1030].

The choice of a suitable site was apparently made more complex because of local hapu affiliations. An attempt was made to overcome this when another local settler, George Whitcombe, writing on behalf of local Maori, wrote to the Inspector one month after his visit that they were prepared to offer a site of three acres near Manea, which would straddle the hapu boundary so that half was contributed by Ngati Kiriwai, and half by Ngati Hua. Alternatively Ngati Hua on their own would offer another site nearer Rakaunui Inlet and Hekaheka settlement[1031].

The Education Department replied that it was awaiting a response from Mrs Grey[1032]. Whitcombe then advised:

> The natives interested, resident in Manea, Hekaheka and Hikuparea, tell me that Mrs Grey asked them about the best site for a school, and they told her "near Manea". That will not suit the few in Awaroa, and Mrs Grey I suppose

[1030] Inspector of Native Schools Bird to Secretary for Education, 26 August 1906. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2016-2017.
[1031] G Whitcombe, Paramea, to Inspector of Native Schools, 24 November 1906. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2018-2019.
[1032] Secretary for Education to G Whitcombe, Paramea, 3 December 1906. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2020.

> on that account has dropped the matter. However, I fail to see why the Manea natives should be deprived of a school because Mrs Grey does not choose to reply. Will you let me know whether there is any likelihood of the Department accepting the site offered this year or not.[1033]

Whitcombe followed this up early in 1907 with lists of children, and a further offer of the joint site.

> The natives are prepared to offer a site of about 3 acres near Tanuku, which is in a central position for the families affected. The proposed site is half in Awaroa A No 2 and half in Awaroa A No 3. The land has been through the NL Court, and has been partitioned amongst the various hapus. The natives are particularly anxious to have a school, as they are now feeling the drawbacks of not knowing the English language.[1034]

The same Inspector who had visited the district in August 1906 made a second visit in May 1907.

> As stated in my previous report on the subject, Awaroa is one of the rivers flowing into Kawhia Harbour on the east side. The next river to the south on the same side is the Rakaunui, and then comes the Waiharakeke.
>
> Between the Awaroa and the Rakaunui are several small kaingas, and from these the majority of the children come. The most central place is Te Mania, and this also at my visit had the most children. It is not far across from the Awaroa to the Rakaunui, and on the Rakaunui is another small settlement called Hekaheka. This is close to the river landing, and from this place several children are canoed daily up the Rakaunui to attend a household school at a place called Otarewa. The majority of the Awaroa children are, however, unable to get to the this school, which is moreover in charge of an uncertificated teacher and is therefore, I was informed, limited to fifteen children. The crossing is very dangerous owning to the river's being confined at this point between very high limestone cliffs which form a sort of gateway.
>
> The people offer a site of 3 acres of good land between Mania and Hekaheka, distant about 10 chains from the river landing on the Rakaunui. This would be the most convenient for all those concerned, as well as to the Department should it be decided to erect a school, and to the teacher if one should be appointed.
>
> The name of the piece of land is Pukeinoi – "the prayer hill" – as in olden days the people went up there to pray.

[1033] G Whitcombe, Paramea, to Secretary for Education, 18 December 1906. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2021.

[1034] G Whitcombe, Paramea, to Secretary for Education, 10 February 1907. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2022-2025.
On the map attached to this letter, the site offered is indicated by the number "5". The "new site" is a later addition, added by Inspector Bird after his visit in May 1907.

> At Mania itself there were twelve children, at Arangaitewhitu two, at Paramea two, at Rakaunui five, and there are stated on good authority some eighteen at Hikuparia, making a total of about forty children. It seems very probable therefore that a school of thirty children can be maintained here, and from what I have seen of the efforts of the people to get education for their children, I think there should be little difficulty in securing an attendance of that number. Further, the people are related to those of Te Mahoe, Waiharakeke, and the children from Te Mahoe will probably also attend, though I am not counting upon them.
>
> Mr Whitcombe of Paramea will send his two children to the school if established. He is an authorised surveyor, and went over the ground with me. There should be no difficulty therefore in getting the survey completed within a very short time. Mr Whitcombe said he would do it at once if asked to do so.
>
> I recommend that a school be established at Pukeinoi, Rakaunui, that it be called Rakaunui Native School, and I trust that, should the Department agree to my recommendation, the matter will be put in hand as early as possible, for I am convinced that nothing is so prejudicial to the interest of a new (Native) school as delay.[1035]

The Rakaunui site recommended by the Inspector was not the joint site but the alternative site wholly on Ngati Hua land[1036]. It was located on Awaroa A3 block, which had 42 owners. Patrick Sheridan, the Chief Land Purchase Officer and the official in the Lands Department with the most experience of Crown acquisition of Maori Land, advised:

> You can complete a title under the Public Works Act only. A deed of transfer [i.e. obtaining the signed consent of every owner] is almost an impossibility.[1037]

The Rakaunui school was approved. Before that decision could be communicated to the local people, another request for a school was sent by Whitcombe's wife[1038], via the local Member of Parliament. She was told of the approval for the school, but that the school could only be provided when the site had been surveyed and then taken

[1035] Inspector of Native Schools Bird to Secretary for Education, 25 May 1907. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2026-2029.
[1036] It is marked "new site" on the plan attached to G Whitcombe, Paramea, to Secretary for Education, 10 February 1907. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2022-2025.
[1037] Chief Land Purchase Officer to Secretary for Education, 27 August 1907, on Secretary for Education to Chief Land Purchase Officer, 15 August 1907. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2030-2031.
[1038] MJ Whitcombe, Paramea, to HJ Greenslade MHR, 10 September 1907. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2032-2035.

under the Public Works Act, at which point tenders would be called for the school buildings[1039].

George Whitcombe was also the surveyor who drew up the plan[1040]. Included in the survey was road access to the site. However, this was of too steep a grade to be acceptable to the District Road Engineer, so a fresh survey of a suitable road access had to be prepared[1041]. Both the school site and the road access were taken in January 1909[1042].

There is no evidence of any application to the Native Land Court for it to determine how much, if any, compensation should be paid, nor of any Court order that was made. It would seem that this requirement of the Public Works Act was ignored by the Crown, presumably on the basis that the site had been gifted.

12.11 Taharoa

During 1910, when the establishment of a Native school at Taharoa was being considered, a note on the Education Department file stated:

> Natives are represented as willing to make free gift of land, but no formal agreement in writing from Native owners has been received.[1043].

This lack of written agreement was overcome by obtaining a statutory declaration from the Inspector of Native Schools who had visited Taharoa. He declared:

> On the 22nd February 1909, at a meeting between myself and Tuteao, Turanga Kingi, Rewi Wetini and other principal Maoris of the district, the said Maoris agreed that four acres of land in Taharoa Block A, fronting the main road, should be made a free gift by them to the Government for the purposes of a school site, and further, that the land shown on the plan as surveyed by A.J. Mountford (September 5th 1909) for the purposes of the Public Works Act is the piece of land offered by the Maoris for such site[1044].

[1039] Minister of Education to HJ Greenslade MHR, 30 September 1907. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2036.
[1040] South Auckland plan SO 14416. Supporting Papers #2348.
[1041] Under Secretary for Lands to Secretary for Education, 8 April 1908. Education Auckland file 44/4 (Rakaunui). Supporting Papers #2037.
South Auckland plan SO 14560. Supporting Papers #2349.
[1042] *New Zealand Gazette* 1909 page 345. Supporting Papers #3937.
[1043] File note, undated (April 1910). Education Auckland file 44/4 (Taharoa). Supporting Papers #2078.
[1044] Statutory Declaration by WW Bird, Inspector of Native Schools, 18 April 1910. Education Auckland file 44/4 (Taharoa). Supporting Papers #2079.

From this declaration it is apparent that the Crown had obtained the agreement of those it considered to be the principal owners of Taharoa A, and a surveyor had then been on the site to survey the four acres for the proposed school[1045]. There is no record of any challenge to the surveyor carrying out his work, as would have been likely if the provision of a school site had not been agreed to.

Supported by the statutory declaration, a request was made to the Public Works Department to take the site under the Public Works Act.

> The land is to be made a free gift to the Crown in accordance with the conditions under which Native Schools are established….
>
> The case is one of extreme urgency, and I shall be obliged, therefore, if you will have the necessary steps taken with the least possible delay.[1046]

As an indication of the apparent urgency, the letter to the Public Works Department is dated (i.e. typed up) three days before the statutory declaration was signed. Presumably the letter was held until the declaration was signed, before both were sent to the Public Works Department.

The establishment of the school also appears to have been an urgent matter for local Maori. Shortly after the request was made to the Public Works Department, Mahuta Tawhiao Te Wherowhero wrote to the Minister of Education, referring to discussions he had had with the Minister, and asking on behalf of Ngati Mahuta when the school would be ready, mentioning that there were more than 40 children ready to enrol[1047]. The Minister replied that "as soon as a title to the site has been secured, the question of erecting buildings will be brought forward"[1048].

Because Taharoa A was Maori Land and the written consent of all the owners had not been obtained, it was necessary to first publish a Notice of Intention to Take the site. This occurred in June 1910[1049] and gave objectors forty days to send in any objections. Whether any objections were received is not known, but this is unlikely

[1045] South Auckland plan ML 6206. Not included in Supporting Papers.
[1046] Secretary for Education to Under Secretary for Public Works, 15 April 1910. Education Auckland file 44/4 (Taharoa). Supporting Papers #2080.
[1047] Mahuta Tawhiao, Waahi, to Minister of Education, 22 April 1910. Education Auckland file 44/4 (Taharoa). Supporting Papers #2081-2082.
[1048] Minister of Education to Hon MTP Te Wherowhero, Waahi, 11 May 1910. Education Auckland file 44/4 (Taharoa). Supporting Papers #2083.
[1049] *New Zealand Gazette* 1910 page 1692. Supporting Papers #3945.

given the short intervening period before the four acre site was taken for Native School purposes under the Public Works Act 1908 in early September 1910[1050].

The subsequent application for assessment of compensation was heard by the Native Land Court at Ngaruawahia in January 1911[1051]. No affected Maori were present when the Public Works Department's land purchase officer told the Court:

> Area taken is 4 acres. Mr Bird declares that leading Natives offered to give site for school free. Natives have been agitating for some time past for a school. There is considerable correspondence showing that Natives have promised the land to the Department. I ask that no compensation be payable.

On the basis of this evidence the Court ordered that no compensation was payable.

12.12 Moerangi (Kaharoa)

The first recorded request for a school at Kaharoa, on the Moerangi Block, was in September 1910, when Tai Rakena, for Ngati Mahanga, wrote to the Native Minister.

> I and my people have decided to urge that a school be built at our village of Moerangi here.
>
> Mr Carroll, we are aware that Government has been put to unnecessary expense in connection with the erection of some Maori schools, but in those cases the trouble has chiefly arisen from the fact that parents have moved to reside at others of their many settlements (after the school has been built). That is a contingency which will not arise in our case, for we hasten to assure you that we have no intention of moving elsewhere, indeed we have no land or home elsewhere. We are anxious to acquire up to date knowledge such as you have been urging upon your Maori people, and to this end we have set apart 3 acres for a school site.
>
> Mr Carroll, there is already a school on the borders of Waitetuna, a pakeha school; but it is impassible to our children, owing to the bad state of the road in winter time. We have therefore set our hearts upon one that will be near and always accessible.[1052]

The Native Minister forwarded the letter to the Education Department, and Tai Rakena sent the forms to fill in, and told that a minimum of four acres was required for a school site[1053].

[1050] *New Zealand Gazette* 1910 page 3345. Supporting Papers #3947.
[1051] Maori Land Court minute book 15 M 42-43. Supporting Papers #3626-3627.
[1052] T Rakena, Moerangi, to Native Minister, 7 September 1910. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1686-1689.
[1053] Secretary for Education to T Rakena, Moerangi, 23 September 1910. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1690.

Rakena had also written to Rev Gittos of the Wesleyan Mission, asking him to support his people's request for a school[1054]. Gittos provided support in general terms, although explaining that he had not visited "their new kainga", so could not speak from personal knowledge[1055].

Rakena sent back the filled-in forms the following month. He agreed to provide four rather than three acres.

> The four acres is agreed, and it is proposed where the school [is] going to be, it is bush, all in grass, it's about the best place we can propose.[1056]

The next step was for an Inspector of Native Schools to visit and report on the request, but it was to be seven months before this occurred.

When the Inspector eventually visited in May 1911, he reported:

> Moerangi is situated in the Moerangi Block, some seventeen miles distant from Raglan, and consists of a comparatively new settlement formed by the Maoris on the recently opened land there. The principal man of the place, Tai Rakena, is a man of progressive ideas, and has formed a company of 200 people to work as a farm the 8000 or 10,000 acres of land awarded to them by the Court. Of the 200 people in the company, there are at present about 50 settled on the land, the others are to come in later from Whatawhata, Aotea and Raglan.
>
> The homestead block is situated on the road from Waitetuna to Ohaupo, and is opposite to the farm held by the son of His Honour Justice Cooper.
>
> The settlement is distant between 3 or 4 miles from the public school at Waitetuna, and seven of the Maori children are in attendance at the school. The road is however very bad in winter, and is practically impassable for several months in the year, so that the children cannot attend….
>
> The site offered for the school is an admirable one, and does credit to the Maori who offers it. It consists of 4 acres of excellent land fronting the road referred to, cleared and grassed, and fenced along the road frontage. Part of it, where the school buildings might be put, is on a small plateau; the other part is flat alluvial land. Tai Rakena offers 4 acres to be taken thus: beginning at his boundary fence on the road corner, and, leaving him 40 feet for his own road, from the corner post of his division fence a distance southwards of 4 chains,

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[1054] T Rakena, Moerangi, to Rev Gittos, 2 September 1910, attached to Rev W Gittos, Devonport, to Inspector of Native Schools Bird, 14 September 1910. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1691-1694.
[1055] Rev W Gittos, Devonport, to Inspector of Native Schools Bird, 14 September 1910. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1691-1694.
[1056] T Rakena, Moerangi, to Secretary for Education, 7 October 1910. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1695-1698.

> by a distance of 10 chains along the road line. This will take in all the plateau referred to, and part of the lower flat, which contains one or two very large kahikatea trees.
>
> The section is part of the Moerangi Block, which I understand has not yet been partitioned by the Court…
>
> There is no doubt, I think, that Tai Rakena himself is in earnest over the matter, and that he is working on the right lines. At the same time the difficulty presents itself that there are not many children at present available for the school, not sufficient at any rate to warrant an immediate recommendation for the establishment of a school.
>
> Tai Rakena is positive that there will be a big school of 40 or 50 children at Moerangi, but though I think it not unlikely that in a year or so this will be the case, still the prospects do not seem so alluring at present. He tells me that in July many people will be there to carry on bush falling in order to spread the settlement, but I do not see how these can yet be regarded as permanent settlers.
>
> If the Maoris go on as they are doing, there will be a school needed within a short time, but a sufficient attendance could not be maintained at present to warrant the expenditure of a large sum of money.
>
> I think however that the preliminary steps might be taken. The Court sits in Raglan in July and the land might be acquired then if the Department approves of the suggestion. Another visit should however be made before any final decision is come to with regard to the establishment of a school.[1057]

Because the Moerangi Block had not been fully dealt with by the Native Land Court, this was used as the reason for deferring a decision on the establishment of the school.

> Though the Inspector's report shows that the request is one that deserves consideration, the Department is informed by the Native Department that the part of the Moerangi Block which is at present being settled upon by you and your people has not yet been definitely awarded to you by the Court. For this reason the Department cannot proceed further in this matter until a decision of the Court as to the partition of the land has been made.[1058]

It was to be another year before the Native Land Court had completed its inquiries, and made its decisions on the splitting up of the block. As part of that partitioning it ordered a school site of three acres in August 1912, the boundaries to be decided by

[1057] Inspector of Native Schools Bird to Secretary for Education, 10 May 1911. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1699-1703.
[1058] Secretary for Education to T Rakena, Moerangi, 28 June 1911. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1704.

the surveyor. The site was ordered in the name of three owners, Tai Rakena, Marepo Heruika and Tiatia Heruika[1059].

Immediately after the Court's order had been made, Tai Rakena wrote to the Inspector of Native Schools asking him to expedite the establishment of the school[1060]. The Inspector advised the Secretary for Education that "another visit will be necessary"[1061], but no visit took place at that time.

In August 1913 Tai Rakena and others made a further request for a Native school, supplying a further list of children at the settlement who would attend if the school was opened there[1062]. He was told that an Inspector would visit "at the first convenient opportunity"[1063], but again there was no immediate action, not even after lists of children were sent to Wellington in November 1913[1064]. It was not until May 1914 that the visit occurred.

> At my visit I saw Rai Rakena, the prime mover in the application for a school, and he is certainly a very progressive Maori. He took special delight in explaining the constitution of the company which is gradually improving the block of land belonging to the Maoris there. He showed me a copy of the agreement legally entered upon by the people, and pointed out that the withdrawal of any shareholder from the place leads to the forfeiture of his shares in the company. Already some 900 acres have been cleared, grassed and stocked, and there is even some talk of leasing from the Government an additional area in order to expand operations. On the property is a mill owned by and worked by the company, and from this source all the settlers in the surrounding district obtain their supplies of timber. All these matters were explained to me with the object of demonstrating the permanency of the settlement. I saw a large number of children who will be available for the school.

[1059] Details of Court Order of 9 August 1912 supplied by Registrar Native Land Court Auckland, 13 September 1912, attached to T Rakena, Moerangi, to Inspector of Native Schools Bird, 2 September 1912. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1705-1707.
[1060] T Rakena, Moerangi, to Inspector of Native Schools Bird, 2 September 1912. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1705-1707.
[1061] Inspector of Native Schools Bird to Secretary for Education, 29 September 1912, attached to T Rakena, Moerangi, to Inspector of Native Schools Bird, 2 September 1912. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1705-1707.
[1062] T Rakena and Others, Waitetuna, to Secretary for Education, 7 August 1913. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1708-1710.
[1063] Secretary for Education to T Rakena, Moerangi, 2 September 1913 and 7 October 1913. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1711 and 1712.
[1064] List of Children Available for Proposed School at Moerangi, received 26 November 1913. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1713-1715.

> The nearest school is Waitetuna public school, which is said to be 4 miles distant, the distance I should judge is approximately correct. About a dozen of the children attend this public school under difficult circumstances, particularly in the winter and spring months. The road when I travelled it was very bad, and it is out of the question for the very large number of smaller children to attend this school….
>
> The people are exceedingly anxious for a school more conveniently situated, and they regard its establishment as an important link in their chain of progress. Were a school built, there would be an immediate attendance of about 30 to 35 children, and subsequently perhaps 40 as there is a large number of small children….
>
> I think that the claims for the establishment of a school are valid, and I recommend that a school to accommodate from 35 to 40 children be built at Moerangi…. As considerable time must elapse before the timber had become seasoned and fit for building purposes, [Tai Rakena] is anxious that a temporary school be opened in the new church building, which I find would accommodate about 30 children[1065].

The Inspector drew up a Memorandum of Agreement whereby the owners of the three-acre school site would agree to sell the site to the Crown for one peppercorn. Tai Rakena signed the agreement, but the other two owners were not at Moerangi at the time of the visit, and their signatures were not obtained[1066].

In Wellington, however, Education Department officials were concerned about the impact on Waitetuna public school if a new school was established within its catchment area. They also favoured the temporary school option, rather than committing the Crown at that time to building a new school[1067]. Tai Rakena was informed[1068], and the Auckland Education Board was asked for its views[1069]. The Board had no objection, as the loss of the Maori children would not threaten the

[1065] Inspector of Native Schools Porteous to Secretary for Education, 16 May 1914. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1716-1720.
[1066] Memorandum of Agreement, 8 May 1914, attached to Inspector of Native Schools Porteous to Secretary for Education, 16 May 1914. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1716-1720.
[1067] Inspector of Native Schools Bird to Secretary for Education, 24 May 1914, and Secretary for Education to Minister of Education, 8 June 1914, both on cover sheet to Native Schools file 1914/153/154. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1721.
[1068] Secretary for Education to T Rakena, Moerangi, 16 July 1914. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1722.
[1069] Secretary for Education to Secretary Auckland Education Board, 17 July 1914. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1723.

continued viability of the public school[1070], and Rakena was informed in December 1914 that a temporary school would be established at Moerangi[1071].

It was not until August 1915 that the temporary school opened. Meanwhile the Native Department, on behalf of the Education Department, had been pursuing the acquisition of the three-acre school site for a permanent school. In August 1915 it advised that it had been successful in obtaining the signatures of all three owners on a transfer of the land to the Crown[1072]. The Education Department was told:

> You will notice in the transfer that the consideration shown as being £4. The following extract from the Native Land Purchase Officer's report will explain why this amount was paid out, and will indicate what difficulty is experienced in obtaining signatures in out of the way districts:
>
> > "Your instructions were to endeavour to acquire the land for a nominal consideration. The price shown in the transfer is £4. This amount I paid the owners on their representation that they had had to pay for horse feeds, stabling, board, etc, and travelling from Waitetuna to Whatawhata to meet me. If the roads over which they had to come were anything like the roads over which I travelled, I certainly think they were not overpaid for their trouble.
> > Signed: WH Bowler, N.L.P.O."[1073]

Although the Crown had obtained the site, the school continued to operate in the church buildings provided by the local community. In December 1916, the conditions were being described as unsatisfactory, and it was agreed that a permanent building was needed on the school site[1074]. However, it was not until the second half of 1918 that the building was completed, and the school was able to open on the gifted site.

12.13 Makomako

Besides the request from Tai Rakena for a school at Kaharoa (see previous section), there was another request for a Native School on the Moerangi Block, to be located at

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[1070] Secretary Auckland Education Board to Secretary for Education, 26 November 1914. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1724.
[1071] Secretary for Education to T Rakena, Moerangi, 23 December 1914. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1725.
[1072] South Auckland Land Registry Transfer 90807. Supporting Papers #2201-2204.
[1073] Under Secretary Native Department to Secretary for Education, 27 August 1915. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1726.
The Certificate of Title issued in the name of the Crown as a result of the transfer is registered as Auckland Crown Purchase Deed 3994. Not included in Supporting Papers.
[1074] Inspector of Native Schools Porteous to Director of Education, 20 December 1916, on cover sheet to Native Schools file 1916/272/122. Education Auckland file 44/4 (Kaharoa). Supporting Papers #1727.

Makomako. This request was made by Karamu Maihi in a letter to the Native Minister in 1911[1075]. In reply, Maihi was told:

> Enquiries made in connection with [Tai Rakena's application] have shown that the matter cannot be proceeded with until the Court has come to a decision with regard to the partition of the land. If however your application refers to a place different from that of the Tai Rakena application, I shall be glad if you will give me definite information as to its locality.[1076]

Maihi then explained:

> Tai Rakena wanted a school on the same block, but on the eastern side, and I wanted one on the western side at Aotea in the Kawhia County.[1077]

The next request came in 1913, again from Karamu Maihi, supported by 15 other signatories, and offering a site at Tanehiha.

> Tanehiha comprises an area of two acres. It has been properly set apart as a school site by Judge Holland, at a sitting of the Native Land Court held at Ngaruawahia in the year 1912.[1078]

Maihi provided lists of children the following month[1079].

It was not until May 1914 that an Inspector was able to visit Tanehiha.

> This settlement is probably anything between 12 and 15 miles from Kawhia, and is situated along the shore of Aotea Harbour. Karamu and his people live on their own sections in that portion of the Moerangi Block which fringes the shores of the harbour. The people are apparently improving and cultivating their sections. They are related to the Raorao people, and I met here young men and their wives who at the time attended the Raorao school under Miss Lundon. The nearest school as far as I could learn is now the Kawhia school, to which it is of course impossible for the children to go. There is no road from Kawhia except to the beach from which point it is possible to travel over a vast expanse of sandy flat, when the tide is out, to Tanehiha.
>
> I saw at my visit 30 children, including several babies and a good number of children under school age. Not more than sixteen or seventeen were of school age, so that it will be seen that there is not a sufficient number of children of school age to warrant the establishment of a school at present. In this respect the Tanehiha settlement evidently somewhat resembles Moerangi (Tai

[1075] Karamu Maihi, Moerangi, to Native Minister, 14 September 1911. Education Auckland file 44/4 (Makomako). Supporting Papers #1804-1806.
[1076] Secretary for Education to Karamu Maihi, Moerangi, 17 November 1911. Education Auckland file 44/4 (Makomako). Supporting Papers #1807.
[1077] K Maihi, Tanehiha, to Secretary for Education, 2 December 1911. Education Auckland file 44/4 (Makomako). Supporting Papers #1808.
[1078] K Maihi and 15 Others, Moerangi, to Secretary for Education, 6 July 1913. Education Auckland file 44/4 (Makomako). Supporting Papers #1809-1812.
[1079] K Maihi, Te Papatapu, to Inspector of Native Schools, 24 August 1913. Education Auckland file 44/4 (Makomako). Supporting Papers #1813-1817.

> Rakena' settlement) when Mr Bird first visited it. I believe that in a short time there will be sufficient children for a school, and I consider that this settlement should be visited again, say in a year's time….
>
> Karamu Maihi offered a site of 2 acres, but when it was explained to him that the Government expected a site of 4 acres, he expressed his willingness to give that area, the whole of which will come out of his and his wife's section. It is a remarkably good site, all of it almost perfectly flat, the soil appears to be of excellent quality. It is really a terrace abutting on the Makomako tidal river, which gives access to the harbour. The site, good as it is, would be almost inaccessible as far as getting timber on the land is concerned, were it not for this creek up which a launch could easily get. Indeed, were a school to be built, this creek would be the only means of access from the Aotea Harbour, and timber would require to be brought from Waitara or from Raglan, say from Tai Rakena's mill. On the side of the river opposite the site and running along the river, is the proposed road from Raglan to Kawhia. A small vessel comes up to the mouth of this creek from Waitara, I understand, but it would be unable to pass up the creek owing to the telegraph wires which cross at one place. The soil appears first class and has been cultivated; the site is centrally situated for the various Maori families around. It is not often that the Maoris offer a site so good, and the Department should, I think, while regretting that the number of children for school is not yet quite sufficient, thank Karamu for his offer of so good a piece of land. The site is situated in the Moerangi Block 3C, and is called Tanehiha. It is bounded on one side by the Makomako River and on the opposite side by the Pourau Creek – really a swamp. Karamu and his people are making an effort to farm their individual sections, and should be encouraged by being told that the Department considered there was a good prospect of a school being established in the near future. The preliminary steps might be taken in acquiring the site….
>
> The owners of the land out of which the site is to be located are Karamu Maihi and his wife Ngarongo.[1080]

When told, in line with the Inspector's recommendation, that there were insufficient children to justify the establishment of a school[1081], Maihi responded angrily that if there was no school established in 1914 or 1915, then "we would no more want a school"[1082]. However, the Department replied that to provide school buildings would cost in the order of £1000, and it "cannot undertake to expend so large a sum for so few children". Nevertheless, it wanted to provide education if there was a less expensive means of doing so, and asked Maihi if there were buildings already in

[1080] Inspector of Native Schools Porteous to Secretary for Education, 3 June 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1818-1823.
[1081] Secretary for Education to K Maihi, Te Mata, 23 June 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1824.
[1082] K Maihi, Mangere Bridge, to Secretary for Education, 17 July 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1825.

existence that could be used for a temporary school and temporary residence for a teacher[1083].

Maihi was not appeased by this alternative. Without answering the question, he replied:

> I must say that if I was to wait for any longer two of my sons will be over school age, and that I have made up my mind to send my sons elsewhere, and I don't see that the ground I offered to the Department, after I send my children away, would be of much benefit to me.[1084]

The Inspectorate was still sympathetic to the establishment of a school, with a different Inspector to the one who visited Moerangi Block saying:

> I consider that a good case has been made out here for the establishment of a school, and I recommend that steps be taken to acquire the site offered by Karamu Maihi. It must be some considerable time before the buildings are erected, and if the Department approves of my recommendation, I would reply to Karamu to the effect that if he can suggest the means of beginning work in the early part of next year, the Department will make the necessary arrangements by then.[1085]

However, the Secretary for Education, noting that Maihi "practically withdraws his offer of a site, and has already been asked to suggest a building for temporary use"[1086], replied to him that there was no immediate prospect of a school[1087]. Maihi concluded this string of correspondence by advising that he had made his own arrangements for a Mormon elder to teach his children, and had "quite made up my mind to do away with all arrangements I made with you re school at Tanehiha"[1088].

In mid 1915, there was another request for a school on the Moerangi Block, this time from Wiri Ngatokorua, who confirmed that the local people "have given a piece of

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[1083] Secretary for Education to K Maihi, Te Papatapu, 27 July 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1826.
[1084] K Maihi, Te Papatapu, to Secretary for Education, 11 September 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1827-1828.
[1085] Inspector of Native Schools Bird to Secretary for Education, 3 October 1914, on K Maihi, Te Papatapu, to Secretary for Education, 11 September 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1827-1828.
[1086] File note by Secretary for Education, undated, on K Maihi , Te Papatapu, to Secretary for Education, 11 September 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1827-1828.
[1087] Secretary for Education to K Maihi, Te Papatapu, 16 October 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1829.
[1088] K Maihi, Te Papatapu, to Secretary for Education, 19 December 1914. Education Auckland file 44/4 (Makomako). Supporting Papers #1830.

land for the school"[1089]. But the Crown's stance was unchanged; in its opinion there was not a sufficient number of children to warrant the size of expenditure that a schoolhouse and teacher's residence would entail[1090].

In August 1915 Karamu Maihi advised that he had erected a building that could be used as a schoolroom for the 12 children who were ready to enrol, and asked "what do you propose to do about it"[1091]. Despite this advice largely complying with the Department's earlier suggestion that temporary buildings be made available, the Secretary for Education replied that the conditions had not altered from those discussed the previous year, and that "the Department regrets its inability to reconsider the matter".[1092]

Two and a half years later, Maihi wrote again:

> I must ask you to return my land to me; because a long time has passed and no school is erected. That being so, let my land be returned to me.[1093]

He was told that "the land is still yours", as no steps had been taken by the Crown to obtain the title to it when the decision had been made not to proceed with establishing a school at Tanehiha[1094].

In 1919 a local European settler added his support for a native school in a letter to the Native Minister.

> I understand from the Natives here that you are being asked to support their petition for a school at the Maari Stream. The list of children and their ages will indicate to you how important it is to provide for their education, to fit them for their life's work.
>
> The nearest schools to them are 6 to 8 miles distant at Ruapuke, and 10 to 12 miles at Kawhia. The only means of reaching either place is by tidal tracks covered by the sea for the greater part of the day, and dangerous to the health

[1089] W Ngatokorua, Te Papatapu, to Secretary for Education, 14 June 1915. Education Auckland file 44/4 (Makomako). Supporting Papers #1831-1832.
[1090] Secretary for Education to W Ngatokorua, Te Papatapu, 20 September 1915. Education Auckland file 44/4 (Makomako). Supporting Papers #1833.
[1091] K Maihi, Te Papatapu, to Secretary for Education, 22 August 1915. Education Auckland file 44/4 (Makomako). Supporting Papers #1834-1835.
[1092] Secretary for Education to K Maihi, Te Papatapu, 20 September 1915. Education Auckland file 44/4 (Makomako). Supporting Papers #1836.
[1093] K Maihi, Te Papatapu, to Secretary for Education, 6 February 1918. Education Auckland file 44/4 (Makomako). Supporting Papers #1837-1838.
[1094] Secretary for Education to K Maihi, Te Papatapu, 21 February 1918. Education Auckland file 44/4 (Makomako). Supporting Papers #1839.

> and lives of the children. My nearest neighbour Mr Toko has endeavoured to send the elder children of his family to the school at Ruapuke. To cross the tidal creek on the road necessitates a start for school at 6 a.m., and the return is prevented till 7 and 8 in the evening. You will recognise the great hardship to both children and their ponies under these hard conditions. These children are eager to learn, and granted even moderate facilities will acquit themselves with credit.
>
> As postmaster here for many years, I have seen the disaster to the neglected Maori in his lack of education, and I trust that in you they have found a powerful friend.[1095]

This letter was passed to the Education Department, and the Director of Education replied with a summary of the previous dealings with Karamu Maihi. Without saying so directly, he implied that it was for local Maori to tell the Department if circumstances had changed to warrant a school being established[1096].

Maraea Edwards took up the challenge in November 1919. She forwarded a request for a school on the Moerangi Block signed by 13 parents, and listing 34 children who would attend a school if one was established[1097]. She was asked to arrange for the official forms to be filled in, listing the children who would attend (and their ages), and "to inform the Department whether the Maoris are prepared to give a suitable site of not less than five acres for school purposes". Only when these initial requirements had been satisfied would an Inspector visit the district[1098]. No reply was received from Maraea Edwards.

The matter was revived when an unsigned note was placed on the Education Department file in August 1921. This note is believed to have been written by Dr Mackenzie, a doctor resident in the Aotea Harbour district (possibly at Oparau).

> Did you say anything to Mr Caughley [Director of Education] about the need for a school at Aotea? I have ascertained that there are over 50 children there who don't go to school at all. The nearest school is eight miles away, far too far for little children. A few bigger children ride there, but only on fine days. From Papatapu Post Office all along the Aotea Beach there are numbers of

[1095] EW Buckeridge, Te Papatapu, to Native Minister, 13 February 1919. Education Auckland file 44/4 (Makomako). Supporting Papers #1840-1841.
[1096] Director of Education to EW Buckeridge, Te Papatapu, 13 May 1919. Education Auckland file 44/4 (Makomako). Supporting Papers #1842.
[1097] M Edwards, Kawhia, to Minister of Education, 21 November 1919. Education Auckland file 44/4 (Makomako). Supporting Papers #1843-1845.
[1098] Director of Education to M Edwards, Kawhia, 3 February 1920. Education Auckland file 44/4 (Makomako). Supporting Papers #1846.

> Maori farmers, most with big families, and no school. Once these people lived in a pa at Raurau [sic] and there was a school there, but since the land has been divided up, the pa is almost deserted and the people are living like Europeans on their own land. I have a good many ones for patients – five the Sunday before last – and they are a good class of people, far better than the Maoris about here.
>
> The old school house at Raurau [sic] is now used as a dwelling house by a white man James Phillips, and is too far way from the present settlements for a school anyway.[1099]

The Inspector of Native Schools who had visited the Moerangi Block in 1914 provided some comments.

> From my knowledge of the district (and I have a vivid recollection of my visit) it will be a very difficult matter to find a locality so centrally situated as to [illegible] the children. Dr Mackenzie speaks highly of the Maoris in this district, who he says are farming their lands, and he says that he is certain that there are fully 50 children available for school.
>
> A visit by an Inspector will be necessary before any further steps can be taken towards the establishment of a school, and I recommend that the district be visited by the Inspector of Native Schools who is next in that district – say next April. A special visit would occupy a lot of time, and would be expensive.[1100]

The Inspector's visit took place in May 1922.

> I proceeded to Aotea Harbour today and saw the principal Maoris concerned in the application for a Native School on the shores of that inlet. Since 1911 these people have been asking that a school be established there. The nearest schools are Kawhia, 12 miles distant, and Ruapuke, 10 miles distant. Only two of the children, two big children of 14 and 11 years, go to school, riding 7 miles over roads that are impassable at high tide. I counted the children of school age who I saw, and got reliable information from a white settler Mr Riddle, postmaster at Moerangi, about the others. There were 37 children, of whom I saw 25. I was unable to see the other 12 owing to lack of time to go to their houses. However, I am quite satisfied they are there. The ones I saw are nice-looking intelligent children, and it is a great pity that they should be unable to attend school. Seven of the thirty-seven are white children, five of them belonging to Mr Riddle.
>
> I was shown two very suitable sites, both near the Makomako Stream, and within a mile of the Tanehiha site formerly offered by Karamu Maihi and seen by Mr Porteous. I considered the lower of these, which is at the junction of

[1099] Notes, unsigned (believed to have been written by Dr Mackenzie, Kawhia) and undated (received 15 August 1921). Education Auckland file 44/4 (Makomako). Supporting Papers #1847-1848.
[1100] Inspector of Native Schools Porteous to Director of Education, 21 September 1921. Education Auckland file 44/4 (Makomako). Supporting Papers #1849-1850.

three roads, the more central, and induced the owner Mr Moeparu Tauira to offer it to the Department for a school site. I enclose his written offer.

Some of the white settlers in the neighbourhood have applied to the Auckland Education Board to have a Board school established for the 7 white children, but Mr Riddle who owns [sic] 5 of these (the other two belong to a Mr McAllister) thinks that a Native School would be more suitable, as the other white settlers are opposed to the Maori children attending their school (if established) and would have it placed where it would be very inconvenient for the majority of the Maori children to attend. Riddle and his wife are in favour of having a school that both Maori and white children can attend, and the site mentioned above would be within ½ mile of their house, which is the post office.

Launches can come up the Makomako Stream to within a few chains of the site, and so the question of getting building material to the site is not a difficulty. There is no building in the place suitable to establish a temporary school, but Mr Riddle says that if the Department would supply material for a temporary building, the settlers would erect it among them. He says that he and his wife would do their best to accommodate a lady teacher if one were appointed. Their house, however, is only a makeshift one and she would have to be content with somewhat primitive conditions. There is a three-roomed cottage belonging to a brother of Karamu Maihi and at present unoccupied, which would if patched up serve as temporary quarters for a teacher.

The site is a terrace above the bed of the stream and, from the vegetation growing on it should be good soil. It is in a dry sunny position.

Mr Bird, who visited the place when an application for a school was first made, expressed the opinion that there should be a school in the locality. As the Maoris have been asking for a school so long, and have twice offered good sites, I consider that their petition should be granted, and accordingly recommend that the Department take steps to acquire the site and establish a school on it as soon as possible.[1101]

The Inspector's visit had an ongoing reaction among local Maori. Karamu Maihi was still upset at the way he had been treated. He wrote that some of his children went to Moerangi School and stayed at the home of his married daughter, so that he had withdrawn his offer of the site at Tanehiha, and did not want a school at Makomako[1102]. However, Riddle, the local postmaster who had assisted the Inspector when he visited the district, claiming to act as a spokesperson for the local

[1101] Inspector of Native Schools Henderson to Director of Education, 9 May 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1851-1853.
[1102] K Maihi, Puketutu, to Director of Education, 6 May 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1854-1855.

community, asked when the request for a school would be granted[1103], and supplied completed forms showing up to 40 children would attend a school if it was established[1104]. He was told that a good case for a school had been made out, but that "under present financial conditions", only very urgent cases for new schools could be considered. In the meantime, he could supply some further information about the proposed site.

> A preliminary step in connection with the establishment of a school is the acquisition under the Public Works Act of the site offered, as no buildings can be erected by the Government on a site to which there is no title. In order to facilitate the business, information is required regarding the name of the Block and the number of the section. The Department must know whether there are several owners concerned in the site offered, and whether the land has been through the Court. I shall be pleased if you will furnish the Department with this information, and arrange for the enclosed agreement to be signed by the owner or owners, and witnessed.[1105]

Riddle's reply disclosed that the site offered to the Inspector was no longer available, as a consequence of dealings nearly 20 years earlier over the Raorao School.

> I have failed utterly to persuade the owners of the section on which the school site chosen by Mr Henderson is situated to part with four acres to be used as a site for a school. One man is willing, but the other owner (his sister) is decidedly otherwise. The Maoris interested previously gave the missionaries sufficient land for a school site, on this site a school was built, they also gave the right to take firewood from an adjoining piece of land. The teacher then became so severe on the children that all left school. The missionary then sold the lot, about 300 acres, this is the reason given for the present action.
>
> I suggested sending your agreement back for alteration, to show that the land would be returned if out of use as a school site, but this was no use, she has decided to erect a milking shed there, so nothing will change her decision.
>
> The other owner (Tuawhenua) will give four acres at the other end of his section, if it is satisfactory to you. This piece is at the Crown Lands boundary and although a good building site is not central.
>
> All the natives are on one side of this site, and children would require to travel 40 chains further than would be the case if Inspector Henderson's site was procurable, but it is unlikely to obstruct the attendance of children if a school was built on the site offered, as all know the circumstances. The best site

[1103] R Riddle, Moerangi, to Director of Education, 1 June 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1856-1857.
[1104] R Riddle, Moerangi, to Director of Education, 30 June 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1858-1859.
[1105] Director of Education to R Riddle, Moerangi, 7 July 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1860-1861.

> cannot be obtained, and only one suitable site remains. This was the site first chosen, and the natives were then satisfied with it.[1106]

Another Inspector's visit was required, and this took place in November 1922. He was able to report that he had obtained agreement to gift another site to the Crown.

> The site which I chose on my former visit in May last is the most suitable and central, but one of the owners, Mrs Ruku, had refused to agree to its transfer to the Department. During my visit Mrs Ruku (Kumeto) and the other owner Mr Jack (Moeparu) Tuawhenua Tauira, both signed an agreement to give the land [at the alternative site] to the Department, with the proviso that if the latter at some future date no longer requires it for school purposes it shall revert to the present owners or their heirs. This seemed to me a reasonable concession to make, as it leaves the control of the land with the Department, who would be the only people qualified to say whether they required it or not.[1107]

The Inspector's superior officer commented:

> From the evidence now before the Department, there appears to be little doubt that the claims of the district for a school are strong. There are 38 children said to be available for school, and it is probable that the number may increase. Only 2 or 3 of these children are at present attending school, and in order to do so they have to ride 7 or 8 miles. A site of 4 acres of good land has been offered as a free gift to the Government.
>
> I recommend that as there is an urgent need for a school, a native school be established at Makomako, and that as a step preliminary to the acquisition of the site, authority be obtained for its survey.[1108]

When the recommendation was put to the Minister, he asked for the matter to "stand over for one month"[1109]. At the end of January 1923 he agreed that survey and acquisition of the site could proceed[1110].

The site was surveyed in March 1923[1111], and the Public Works Department was asked to arrange the taking of the land under the Public Works Act.

[1106] R Riddle, Moerangi, to Director of Education, 11 August 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1862-1863.
[1107] Inspector of Native Schools Henderson to Director of Education, 13 November 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1864-1869.
[1108] Inspector of Native Schools Porteous to Director of Education, 27 November 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1870-1871.
[1109] Minister of Education to Director of Education, 18 December 1922, on Inspector of Native Schools Porteous to Director of Education, 27 November 1922. Education Auckland file 44/4 (Makomako). Supporting Papers #1870-1871.
[1110] Minister of Education to Director of Education, 29 January 1923. Education Auckland file 44/4 (Makomako). Supporting Papers #1872.
[1111] South Auckland plan SO 22674. Supporting Papers #2401.

> In accordance with the requirements governing the establishment of Native Schools the site is to be made a free gift to the Crown, and a written agreement to this effect is herewith enclosed bearing the signatures of two of the Maoris, who are understood to be the owners or principal owners of the piece of land under offer.[1112]

The site was in Moerangi 3D2 block, which on investigation was found to have seven owners. The two owners who had signed the agreement held 236 shares out of a total of 582 shares[1113]. Because not all the owners had agreed to the taking of the land, it was necessary to first issue a notification of intention to take the land. This happened in May 1923, and gave anyone interested forty days in which to lodge an objection[1114]. As far as is known no objections were received, and the site was taken for Native School under the Public Works Act in September 1923[1115].

At a sitting of the Native Land Court in August 1924, the Court ordered that no compensation was payable[1116], thereby confirming that the site had been gifted to the Crown.

12.14 Owairaka Valley

This school site was acquired from a local pakeha settler by Auckland Education Board for a public school in 1933[1117]. The price paid for the three acre site was £30.

In 1942 the school had a roll of 12 to 14 pupils, mostly Maori. The Education Board was having difficulty finding a teacher for the school, primarily because of accommodation difficulties, and suggested that the children at the school should be bussed to Parawera Native School, 4½ miles away (to the north of the Puniu River and therefore outside Te Rohe Potae Inquiry District). Because of wartime restrictions, and "the necessity of conserving petrol and tyres", the Education Department suggested instead that it take over the Owairaka Valley Public School and

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[1112] Director of Education to Under Secretary for Public Works, 24 March 1923. Education Auckland file 44/4 (Makomako). Supporting Papers #1873.
[1113] Assistant Under Secretary for Public Works to Director of Education, 17 April 1923. Education Auckland file 44/4 (Makomako). Supporting Papers #1874-1875.
[1114] *New Zealand Gazette* 1923 page 1755. Supporting Papers #4028.
[1115] *New Zealand Gazette* 1923 page 2231. Supporting Papers #4030.
[1116] Maori Land Court minute book 23 M 288. Supporting Papers #3632.
[1117] Part of Wharepuhunga 7C3B, shown on South Auckland plan DP 24855. Supporting Papers #2323.
South Auckland Land Registry Certificate of Title 648/262. Not included in Supporting Papers.

run it as a Native School[1118]. This was accepted by the Education Board, which pointed out that the Crown would have to also accept the responsibility it had agreed in 1933, that if the site ceased to be used as a school it should be transferred back to its donor at a price of £30[1119]. The transfer was approved by the Minister of Education[1120].

The site was transferred to the Crown in October 1942[1121], and was then reserved under the Land Act 1924 as a Native-school site in August 1943[1122]. For this purpose it had been given a new appellation[1123].

In November 1943 the Senior Inspector of Native Schools visited Owairaka Valley. He found the school had a roll of 13 children, five of whom were European. The pakeha children lived close to Wharepapa Public School, but their parents had some type of disagreement with the teachers at that school. Of the Maori children, "only 3 live in close proximity to the school, and the others are within reasonable range of Parawera". He recommended that the school be closed at the end of that year, as "it is a waste of teaching power to have a fully certificated teacher running a school with a roll of 8", with the Maori children being bussed to Parawera[1124]. This recommendation was accepted[1125].

[1118] Director of Education to Secretary Auckland Education Board, 9 June 1942. Education Auckland file 44/4 (Owairaka Valley). Supporting Papers #1998.
[1119] Secretary Auckland Education Board to Director of Education, 23 June 1942, and Undertaking dated 9 October 1933 attached to Edmonds, Page and Pettit, Barristers and Solicitors, Te Awamutu, 18 February 1953. Education Auckland file 44/4 (Owairaka Valley). Supporting Papers #1999 and 2007-2008.
[1120] Director of Education to Minister of Education, 2 July 1942. Education Auckland file 44/4 (Owairaka Valley). Supporting Papers #2000.
[1121] Director of Education to Minister of Education, 16 October 1942, signed by Minister 20 October 1942. Education Auckland file 44/4 (Owairaka Valley). Supporting Papers #2001.
The Certificate of Title recording the transfer to the Crown is registered as Auckland Crown Purchase Deed 5185. Not included in Supporting Papers.
[1122] *New Zealand Gazette* 1943 page 1016. Supporting Papers #4056.
[1123] Section 1 Block XIII Maungatautari Survey District.
South Auckland plan SO 31986. Supporting Papers #2417.
[1124] Senior Inspector of Native Schools Fletcher to Director of Education, 30 November 1943. Education Auckland file 44/4 (Owairaka Valley). Supporting Papers #2002.
[1125] Director of Education to Head Teacher Parawera Native School, 21 December 1943. Education Auckland file 44/4 (Owairaka Valley). Supporting Papers #2003.

It was not until 1952 that the Education Department declared the site to be surplus to its requirements[1126]. This was in response to a request from the former pakeha owner that the site should be offered back to him[1127]. The reservation was revoked in March 1953[1128].

12.14 Concluding Remarks

The Crown took seriously, and rigorously applied in Te Rohe Potae District, the policy established in the Native Schools Code. Before a Native school would be established, the local Maori community had to actively demonstrate a desire to have a school established in their midst, and had to provide the Crown with a freehold title to the school site. The former requirement meant that only after repeated appeals for a school from a community was that community desire recognised and responded to. The latter requirement was only relaxed where church mission land had already been obtained from the local community and was underused; the Crown then took out a lease from the church authorities.

The willingness of Maori to gift land to the Crown needs to be seen in the wider context within which the gifting occurred. If there had been no gifting offered, the Crown would not have offered to establish a Native school. The 'no land, no school' policy of the Crown was therefore coercive. During the late years of the nineteenth century, and the earliest years of the twentieth century, at a time when Maori landholdings were larger than they subsequently became, the giving up of three or four acres might have seemed a small price to pay, yet it is clear that finding some of the sites prompted spirited discussions within the local community, and that the loss of tribal land was not a simple or easy matter to come to terms with even then. This perhaps happened more especially in the nineteenth century, when the Crown's approach wanted individuals to be picked out of the community, whose names could go on the title, and who would act for the community in arranging the legalities of the

[1126] Assistant Director of Education to Minister of Education, 28 October 1952, and District Administrative Officer Auckland to Director General of Lands, 12 November 1952. Education Auckland file 44/4 (Owairaka Valley). Supporting Papers #2004 and 2005.
[1127] Edmonds, Page and Pettit, Barristers and Solicitors, Te Awamutu, to Minister of Education, 10 September 1952. Education Auckland file 44/4 (Owairaka Valley). Supporting Papers #2006.
[1128] *New Zealand Gazette* 1953 page 437. Supporting Papers #4068.

gifting. In these circumstances the process of putting individual names on the title might have been as contentious as the principle.

The tough pre-conditions about a site, and about proving that high numbers of pupils would attend any proposed school, coupled with the requirement that an overworked Native schools inspectorate visit and report on any request, meant that there were considerable delays, bordering on neglect, in the Crown responding to requests. The universality of the delays in the instances examined in this report suggests that they were a technique for measuring Maori commitment to having a school, and for rationing assistance when the Crown was unwilling to commit sufficient resources to meet every request received from around the country.

Nominal payments were made when obtaining the signatures of Maori owners on conveyances or transfers to the Crown of school sites at Otorohanga, Oparure and Kaharoa. The use of nominal payments when conveying school sites has been identified in other parts of the country. The Land History and Alienation Database project for the Central North Island inquiry districts recorded two such payments, for Okahu school site and Waingaro school site. Gillingham and Woodley recorded nominal payments in Tai Tokerau[1129], and Alexander recorded nominal payments on the East Coast[1130]. Such payments should not obscure the intentions of the local community, or the expectations of the Crown, that the acquisition of the school site was by means of a gifting from Maori to the Crown.

Even before a number of Native schools were established in Te Rohe Potae District, there was discussion about them later becoming part of the public school system, as the European roll grew to outnumber the Maori roll. This was referred to at Otorohanga, Kawhia and Te Kuiti. Unlike Native schools, however, whenever public schools were established on Maori-owned land by taking under the Public Works Act, compensation was paid. In seeking to establish Native schools on gifted land, knowing in all likelihood that they would later become public schools, the Crown was

[1129] M Gillingham and S Woodley, *Northland: Gifting of Lands*. Crown Forestry Rental Trust, December 2006, pages 79-80.
[1130] D Alexander, *Public Works and Other Takings: The Crown's Acquisition of Maori-Owned Land on the East Coast for Specified Public Purposes*. Crown Forestry Rental Trust, November 2007, pages 90-93.

purposefully opting to avoid paying for the site. This approach was compounded by the absence of meaningful consultation with the local Maori community at the time of the transfer to the public school system. There was no specific consultation about the fate of the gifted site at the time of such transfer.

With closures and earlier transfers to the public school system, only Taharoa and Makomako Schools were still part of the Maori schools system when the two systems were amalgamated in 1968. The amalgamation meant that responsibility for the schools and their sites transferred from the Education Department to the South Auckland Education Board[1131]. Makomako has since closed. The return to Maori ownership of some of the school sites referred to in this chapter is discussed in the chapter on Land No Longer Required.

[1131] New Zealand Gazette 1969 page 12. Supporting Papers #4094.

13 TAKINGS FOR SCENERY PRESERVATION

13.1 Introduction

The database shows that a number of takings between 1904 and 1924 were for scenery preservation or scenic purposes. The great majority (51 out of 58) of these takings were from Maori owners, and were of relatively large areas (as compared to most takings for other purposes at that time). This chapter looks at the takings, to see if any common themes are apparent. Takings for scenery preservation or scenic purposes were identified in the project brief as suitable for case studies.

13.2 Scenery Preservation Commission

The Legislative Framework chapter has explained how the Scenery Preservation Act 1903 was passed at the same time as an amendment to the Public Works Act allowed land to be taken for scenery preservation purposes. Allowing lands to be taken for scenery preservation purposes was only one part of the legislative changes, however; the main purpose of the Scenery Preservation Act was to establish a Scenery Preservation Commission, whose task it was to identify lands worthy of preservation for their scenic qualities.

Scenery preservation had not been at the forefront of the minds of the earliest European settlers. Their efforts during the nineteenth century were directed towards gaining an economic return from an environment that was new to them. Although they might appreciate natural beauty, that did not provide them with food, clothing or shelter. Even where steep-sided ranges provided a backdrop to the farmed lands, that was viewed in utilitarian terms; reservations of the upland ranges were made for "climatic and timber preservation" purposes, to reduce the risk of flooding of the lowlands, rather than for scenic purposes.

As European settlement developed, however, so did the horizons of the settlers. They enjoyed their leisure time in the New Zealand outdoors, and some activities, such as visits to the coast, to swimming holes below waterfalls, and to particularly large specimens of native trees, resulted in the first tentative steps towards reserving lands for aesthetic purposes. They were also exposed to overseas tourists who made trips to

such places as Mount Cook and the Pink and White Terraces near Rotorua, and who brought with them ideas that certain landscapes (rather than individual components in a landscape) were so magnificent that they should be protected as a package. Waitomo Caves were also on the agenda for overseas tourists once the Main Trunk Railway was constructed, and a dray road was built from Hangatiki Railway Station during the 1890s.

Indeed, it was the tourism industry that initially developed the scenery preservation concept, because natural New Zealand was very much the drawcard attracting visitors to the country. A Department of Tourist and Health Resorts had been established by Government in 1900, and the Scenery Preservation Act 1903 was developed and administered within that department. With the passing of the Act and the establishment of the Scenery Preservation Commission, five persons, one of whom (Hone Tunuiarangi of Wairarapa) was Maori, were appointed as Commissioners in March 1904[1132].

In 1906 the Commission published a catalogue of all the recommendations it had made[1133]. There was a total of 380 recommendations. A quick analysis shows that certain parts of the country had received particular attention. The Southern Alps of the South Island were one such area. Another focus was the thermal attractions of the Rotorua region.

Of the Commission's 380 recommendations, fourteen were concerned with Te Rohe Potae District.

[1132] *Appendices to the Journals of the House of Representatives* (AJHR), 1904, H-2A. Supporting Papers #3872.
[1133] Report on Scenery Preservation for the year ended 31 March 1906. *Appendices to the Journals of the House of Representatives* (AJHR), 1906, C-6. Not included in supporting Papers.
The catalogue of recommendations (ordered by Land District) was repeated in *Appendices to the Journals of the House of Representatives* (AJHR), 1907, C-6, pages 14-22. Supporting Papers #3876-3884.

Table 13.1 Recommendations of Scenery Preservation Commission, 1904-1906

Recommendation Number	Locality	Area (ac-r-p)
8	Waitomo Caves, Hauturu East 1A Block, Section 6	3-0-00
60	Motutawa Island (mouth of Mokau River)	3-0-00
80	Mangaotaki Gorge, Mokau (Karu-o-te-Whenua Block)	750-0-00
118	Kawau Pa, Mohakatino (Block I Mimi Survey District)	2-2-05
119	Katikatiaka Pa and Forest (Mohakatino-Parininihi No.3 Block)	23-0-00
199	Ruakuri Caves, Waitomo, Sections 6, 7 & 8	379-3-02
323	Mokau River banks (Auckland and Taranaki Districts)	12,365-0-00
324	Junction of Awakino and Manganui rivers (east of Section 8 Block VII Awakino North Survey District)	250-0-00
327	Kahikatea Bush (Te Kumi Nos 9 & 10 Blocks, Orahiri Survey District)	24-0-00
328	Hangatiki Forest (Hauturu No 2 Block, Section 3 Orahiri Survey District)	25-0-00
329	Forest on Hangatiki – Waitomo Road (Hauturu East No.1E Block, Section 5)	80-0-00
330	Ruakuri Caves (Section 2A Block X Orahiri Survey District)	27-1-30
331	Waitomo Bush, Otorohanga (Hauturu East No.3 & B No.A Blocks)	40-0-00
332	Manga-o-kewa Gorge, Te Kuiti (parts Te Kuiti 2B and Pukenui 2M Blocks)	138-0-00

Source: *Appendices to the Journals of the House of Representatives*, 1907, C-6.

While the ownership of all of these recommended lands has not been investigated for this report, it is likely that almost all, with the exception of the Ruakuri Caves (Recommendations 199 and 330, on Crown leased lands), were on Maori-owned land[1134]. The extent to which the Crown identified Maori land for scenery

[1134] Mokau River banks (Recommendation 323) contained large areas of Maori-owned land leased to European settlers, as well as Maori-owned land leased to coal-mining speculators whose title dealings were so entangled that the remaining Maori interest in the land may have been minimal. The titles situation as at 1904-1906 has not been researched, although the situation after 1911, when some tidying up of titles occurred, is discussed later in this chapter.

preservation has to be compared with its actions in reserving its own land for scenery preservation purposes. Large areas of bush-covered and scenically attractive land in Te Rohe Potae District had been purchased by the Crown and cut up for settlement. The Land Act 1892, the legislation under which this cutting up process proceeded, also had a provision for the permanent reservation of lands for protection purposes, and it would be expected that scenic reserves would have been established as part of that process. However, a schedule of scenic, historic and thermal reserves set apart by the Crown up to 1907 out of its own land holdings shows only twelve reserves in Te Rohe Potae District, and these concentrated around Ruakuri Caves at Waitomo, and in the hill country south of Aria[1135].

Table 13.2 Scenic Reserves established on Crown-Owned Land, 1903-1907

Local Name	Description	Area (ac-r-p)	*NZ Gazette* (year/page)
Taumatatotara	Section 2 Block VI Kawhia South SD	261-0-00	1903/736
Mangaotaki	Section 13 Block VI Maungamangero SD	19-0-00	1903/1201
Ruakuri Caves	Section 7 Block X Orahiri SD (part of Commission's Recommendation 199)	192-0-00	1905/2947
Ruakuri Caves	Part Section 6 Block X Orahiri SD (part of Commission's Recommendation 199)	90-2-00	1906/2
Ruakuri Caves	Section 2A Block X Orahiri SD (Commission's Recommendation 330)	27-1-30	1906/2453
Ruakuri Caves Forest	Section 9 Block X Orahiri SD (part of Commission's Recommendation 199)	97-1-02	1906/2507
	Section 16 Block II Aria SD	3-2-29	1907/1236
	Section 5 Block VIII Aria SD	19-3-36	1907/1236
	Section 12 Block XI Aria SD	303-0-00	1907/1236
	Sections 27 & 28 Block XV Aria SD	104-1-00	1907/1236
	Section 11 Block XVI Aria SD	7-1-00	1907/1236
	Sections 23 & 24 Block IX Totoro SD	12-1-17	1907/1236

Source: *Appendices to the Journals of the House of Representatives*, 1907, C-6.

[1135] Report on Scenery Preservation for the year ended 31 March 1907, Schedule B, List of Scenic, Historic and Thermal Reserves as at 31st March 1907. *Appendices to the Journals of the House of Representatives* (AJHR), 1907, C-6, pages 6-7. Supporting Papers #3874-3875.

The comparison indicates a greater willingness on the part of the Crown in Te Rohe Potae District to obtain Maori-owned land for scenery preservation than to disrupt its own programme of settling European farmers on the land.

Of the Commission's recommendations concerning Maori-owned land in Te Rohe Potae District, only three were acted upon and completed under the taking powers of the Scenery Preservation Act 1903. Of these, one (Waitomo Cave Recommendation 8) was taken before the Commission was disbanded in March 1906, while the other two (Ruakuri Cave Recommendation 199, and Kawau Pa Recommendation 118) were taken later in 1906, after the Commission had been disbanded, but before the Scenery Preservation Board (see next section) had been established in its place. Each of the three recommendations is discussed in the following sub-sections.

13.2.1 Waitomo Cave Scenic Reserve (Lands Taken in 1906)

Recommendation 8, passed by the Commission in April 1904, read:

> That the Government be recommended to acquire from the Native owners the remaining 16½ shares in that portion of the Hauturu East block which contains the Waitomo Caves, Auckland Land District, for scenic purposes, and a Proclamation under Section 4 of the Scenery Preservation Act 1903 be issued at an early date in order that the Government may be in a position to effectually protect the caves from depredations that are reported as likely to occur. The Commission considers that the price per share may reasonably be doubled in order to secure the sole right of the Government to the caves.[1136]

The land at the entrances to Waitomo Cave was partly owned by Maori and partly owned by the Crown[1137]. In the 1890s the Crown had purchased shares in the Hauturu East 1A block, and had then applied to the Native Land Court to have its interests defined in the form of land awards. In July 1899 the Court split the block into six parts, awarding three portions (Hauturu East 1A1, 1A2 and 1A3) to the Crown, and the other three portions (Hauturu East 1A4, 1A5 and 1A6) to those Maori owners whose interests had not been acquired by the Crown. Hauturu East 1A2 (one acre)

[1136] Scenery Preservation Commission minute book, page 9. Not included in Supporting Papers.
[1137] This report looks only at the takings under the Public Works Act at Waitomo Caves. A summary of events from 1889 to 1935, drawn from an examination of Lands and Survey Hamilton District Office file 13/45, was prepared in 1954. This summary refers to some of the correspondence relied on for this report. Précised Material and Extracts on Waitomo Caves, and E Dellimore to Administration Officer, 11 March 1954. Lands and Survey Head Office file 4/156. Supporting Papers #478-522 and 473-477.

and 1A6 (three acres) were located beside one another at the entrances to the cave, and the Crown award of one acre represented the proportion of the cave system that the Crown was entitled to by virtue of the shares it had purchased. The Crown-awarded portion contained the river entrance to the cave, while the Maori-awarded portion contained the upper entrance. Hauturu East 1A6 had 12 owners holding a total of 16½ shares[1138].

The Commission's recommendation to acquire Hauturu East 1A6 meant that, from the Crown's point of view, the sharing mechanism arranged five years earlier was not working and was not sustainable. In fact, no partnership had operated during that period. The Commission's recommendation followed the preparation of two reports by the Assistant Surveyor General in Auckland, copies of which were provided to it. Both reports had been prepared in response to a letter that had been sent in November 1903 to the Tourist and Health Resorts Department by the new lessee of Hauturu 1A5C, a block adjoining the caves, and which was the site of a rudimentary accommodation-house[1139]. This letter had referred to additional measures that he, on behalf of the Maori owners, intended to take to provide for visitors inside the cave. These measures had not been discussed with the Crown, which saw itself as a part-owner of the cave, nor had the Crown been receiving any of the revenue from showing visitors through the cave. The Department of Lands and Survey was nominally responsible for the Crown's interest in the cave, because Hauturu East 1A2 was Crown Land, but had done nothing to assert the Crown's part-ownership. On receipt of the letter from the lessee, it had been asked what action it intended to take[1140]. The immediate reaction of the Under Secretary for Lands to this information had been that "steps should be taken to acquire full control" of the cave[1141], and the Assistant Surveyor General had been asked to advise "whether it is possible for the Crown to obtain complete control of the Caves, and if so in what manner, and upon

[1138] Maori Land Court minute book 36 W 254-259. Not included in Supporting Papers.
[1139] The lease and the accommodation-house are discussed in a section on the Waitomo Caves Accommodation-house taking in the chapter in Part II of this report about Other Central Government Takings.
[1140] Superintendent Tourist and Health Resorts Department to Under Secretary for Lands, 18 November 1903. Lands and Survey Head Office file 4/156. Supporting Papers #405.
[1141] File note by Under Secretary for Lands, 4 December 1903. Lands and Survey Head Office file 4/156. Supporting Papers #406.

what terms"[1142]. The two reports from the Assistant Surveyor General stemmed from this request[1143].

In the first report, the ownership of Hauturu East 1A6 was explained. While the block had 16½ shares, effective control was held by Tanetinorau Opataia, because of a combination of shares he held, shares he had acquired by exchange, and shares he controlled as trustee for minors. He had control of 8 shares, with five other owners holding the remaining 8½ shares. The nature of the Maori ownership was such that it could be exploited by the Crown.

> Tanetinorau represents the whole of the Natives. He is the man who collects the fees, and from what I can learn very conscientiously retains them for himself, which has caused a great deal of ill-feeling on the part of the other natives, and I have reason to believe that if these were approached in a judicious way they would be quite willing to dispose of their shares to the Government, as they have been practically, and are at present, of no value to them, seeing that they are entirely dependent upon Tanetinorau who is Manager of the Cave business.

The Assistant Surveyor General recommended that the Government should approach the five minority owners about selling their shares to the Crown. In the meantime he did not recommend that the Crown should assert its right to be involved by virtue of the 10 shares (and one-acre land holding) that it held at the cave entrance, "for there is reason to fear that, if the natives should be harshly treated or peremptorily dealt with, they might prove spiteful, and the contention might lead to the destruction of some of the chambers of these magnificent subterranean wonders". He considered that the whole issue required "very judicious handling", as Tanetinorau was apparently "extremely averse to the Government having any hand in the management"[1144].

In his second report, the Assistant Surveyor General forwarded a report from one of his staff surveyors. This explained that Tanetinorau had personally guided visitors through the cave until some six months earlier, when he had moved away and, by way

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[1142] Surveyor General to Commissioner of Crown Lands Auckland, 4 December 1903. Lands and Survey Head Office file 4/156. Supporting Papers #407.

[1143] Robert Arrell examined the district office file of the Department of Lands and Survey, and his research demonstrates that the reports from the Assistant Surveyor General contain comments that are an accumulation of comments that the Assistant Surveyor General received from other subordinate officials. R Arrell, *Waitomo Caves: A Century of Tourism*, Waitomo Caves Museum Society, 1984, pages 20-21.

[1144] Assistant Surveyor General to Surveyor General, 22 January 1904. Lands and Survey Head Office file 4/156. Supporting Papers #408-411.

of a lease arrangement on the adjoining Hauturu East 1A5C block, delegated the guiding task to a European. This European passed all guiding fees, less a portion he retained, to Tanetinorau, so that Tanetinorau retained control of the income from the cave. The visitor facilities were in poor condition, with inadequate yarding for horses, muddy tracks, rotting wooden steps and no lighting. The Assistant Surveyor General repeated his recommendation that the Maori-owned shares to the cave and its entrances should be acquired by the Crown.

> Government could acquire the whole of the land under Section 5 of the Scenery Preservation Act 1903, but I do not think that it would be at all wise to force the sale of the Waitomo Caves land to the Government.
>
> I would, however, strongly recommend that special efforts should be made at once to acquire the remaining shares by purchase. The 10½ shares that we hold were bought at the rate of £18:10:4 per acre by Mr Wilkinson, and I am of opinion that even if we should have to pay £6 to £12 more for the remaining shares it would be wise to acquire them.[1145]

There was, however, a problem with purchasing the shares. Under its taihoa policy, as legislated for in the Maori Land Administration Act 1900, the Government had ceased purchasing Maori land in 1899, the only exception being the completion of transactions already commenced before then. Because of this, the Chief Land Purchase Officer in Wellington recommended that "the proper course in the present instance appears to me is to apply the provisions of the Scenery Preservation Act of last session"[1146]. The matter was therefore referred to the Scenery Preservation Commission[1147], which then made its recommendation in April 1904.

In July 1904 the Commission was invited to reconsider its recommendation, when the Acting Superintendent of the Department of Tourist and Health Resorts drew attention to the Assistant Surveyor General's remarks that "there may be trouble with the natives if a forced sale is pushed, and damage might in the meantime be spitefully

[1145] Assistant Surveyor General to Surveyor General, 21 March 1904. Lands and Survey Head Office file 4/156. Supporting Papers #412-415.
[1146] Chief Land Purchase Officer to Under Secretary for Lands, 2 February 1904, on Assistant Surveyor General to Surveyor General, 22 January 1904. Lands and Survey Head Office file 4/156. Supporting Papers #408-411.
[1147] File note by Surveyor General, 26 March 1904. Lands and Survey Head Office file 4/156. Supporting Papers #416.

done to the caves"[1148]. However, this does not appear to have caused the Commission to change direction, as the following month Hauturu East 1A6, the Maori-owned portion at the entrance to Waitomo Cave, was reserved under the Scenery Preservation Act 1903[1149]. To quote from the wording of the Proclamation, which faithfully followed the wording in the 1903 legislation, reservation meant that:

> Such lands shall be inalienable unless by special Act of Parliament passed in that behalf, and no person shall cut or remove timber or in any way interfere with such lands, or damage the scenic features thereof; and such lands may be fenced, preserved, and conserved intact as and for an inalienable patrimony of the people of New Zealand.

The justification for the reservation was given in the Department of Tourist and Health Resort's annual report.

> At present the Waitomo Limestone Caves, in the vicinity of Otorohanga, King-country, are partly owned by the Natives. It is advisable, for the better preservation and management of these beautiful caves, that the Government should secure sole control. Already they have been greatly disfigured by thoughtless vandals, and if not under proper control at a very early date the caves will be irreparably injured.[1150]

The effect of the Proclamation was to displace a major part of the management rights exercised by the Maori owners, with the Crown setting up its own rangatiratanga over the cave entrances. It is not known if or to what degree this was discussed with the owners.

Based on subsequent events, the Department of Tourist and Health Resorts probably intended that the reservation would actually be a taking of all rights to the land, not just certain management rights. In the Department's annual report for 1904-1905, it was explained that "the area containing the old caves has been acquired under the Scenery Preservation Act"[1151]. However, during 1905, the status of the reservation under the Scenery Preservation Act unravelled. In a subsequent memorandum to the Department of Lands and Survey from the Department of Tourist and Health Resorts,

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[1148] Acting Superintendent to Chairman Scenery Preservation Commission, 8 July 1904, quoted in R Arrell, *Waitomo Caves: A Century of Tourism*, Waitomo Caves Museum Society, 1984, Appendix Two, page 63.
[1149] *New Zealand Gazette* 1904 page 2156. Supporting Papers #3923.
[1150] Annual Report of Department of Tourist and Health Resorts for 1903-1904. *Appendices to the Journals of the House of Representatives* (AJHR), 1904, H-2, page 11. Supporting Papers #3871.
[1151] Annual Report of Department of Tourist and Health Resorts for 1904-1905. *Appendices to the Journals of the House of Representatives* (AJHR), 1905, H-2, page 9. Supporting Papers #3873.

when responsibility for scenery preservation was being transferred to Lands and Survey, the following statement was made:

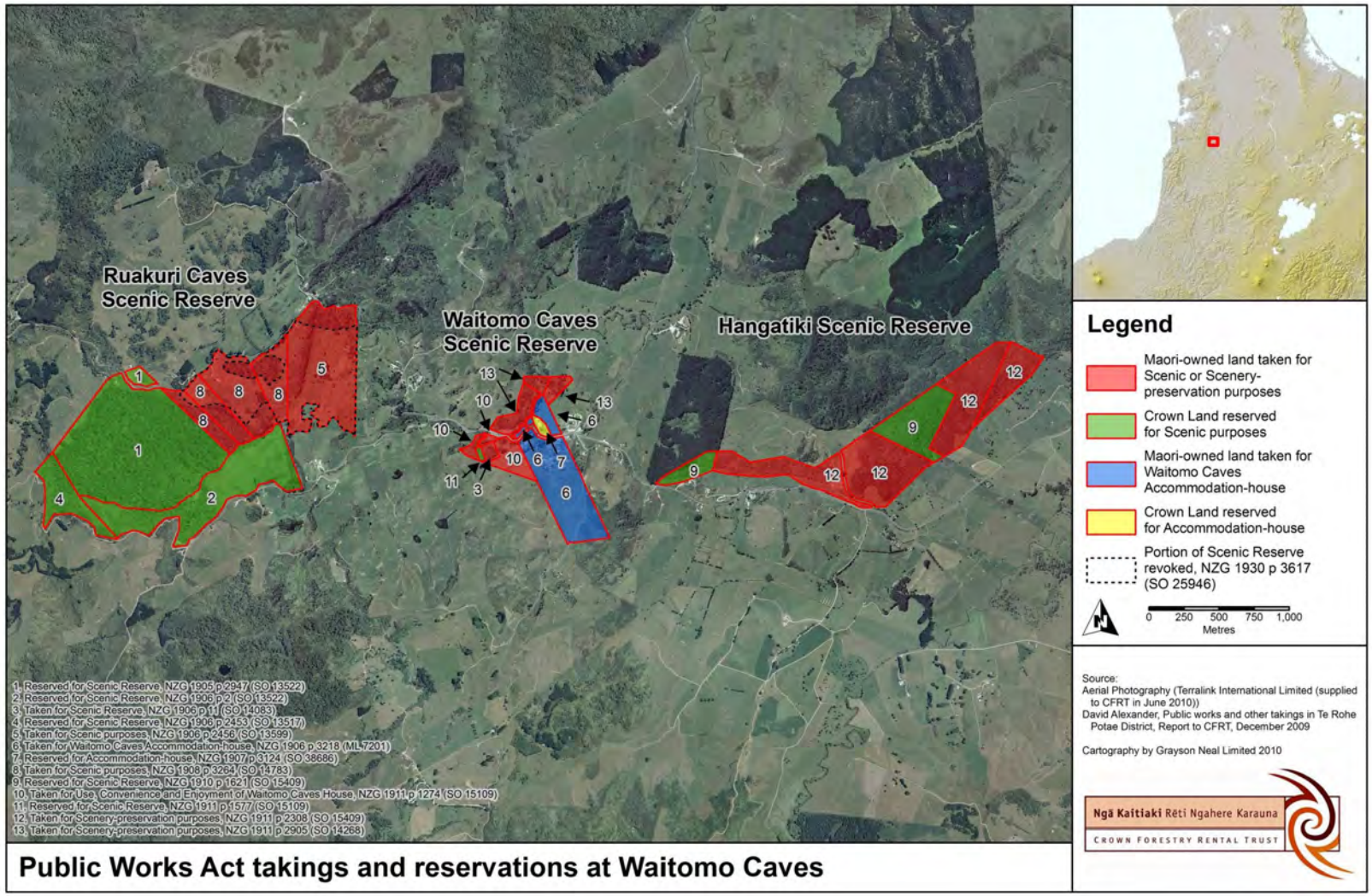
> When compensation came up for consideration, the formula adopted in proclaiming the land as aforementioned was questioned, and on reference to the Solicitor General he ruled that certain sections of the Act were obscure and did not give proper power to take any lands except Crown Lands.[1152]

The implication to be drawn from this statement is that the particular section of the Scenery Preservation Act 1903 was so confiscatory in its effect that it had to be treated as being intended by Parliament to be applicable only to land already owned by the Crown. For privately-owned land, the alternative provisions in the companion Public Works Amendment Act 1903, of taking for scenery preservation under the Public Works Act, would have to be used.

When aware of this interpretation, the Department of Tourist and Health Resorts then opted to use the alternative mechanism. As a result the Maori-owned three acre block at the cave entrance was taken under the Public Works Act 1905 and the Scenery Preservation Act 1903 in December 1905, to take effect from February 1906[1153].

In November 1907 the Native Land Court awarded compensation of £625, basing its award on a capitalisation of the income received from 500 visitors a year paying an entrance fee of 1/3d each[1154]. The payment of the compensation award had to go to Cabinet for approval[1155].

[1152] Acting Superintendent for Tourist and Health Resorts to Under Secretary for Lands, 9 May 1906. Tourist and Publicity Head Office file 1904/191/35. Supporting Papers #1044.
[1153] *New Zealand Gazette* 1906 page 11. Supporting Papers #3925.
South Auckland plan SO 14083. Supporting Papers #2345.
[1154] Maori Land Court minute book 47 OT 125-127. Not included in Supporting Papers.
[1155] Under Secretary for Lands to Minister of Lands, 17 December 1907, approved in Cabinet 19 December 1907. Lands and Survey Head Office file 4/156. Supporting Papers #426.



Map 15 Public Works Act takings and reservations at Waitomo Caves

13.2.2 Ruakuri Cave Scenic Reserve (Lands Taken in 1906)

Ruakuri Cave was located on land that, before its discovery by Europeans, had already become Crown-owned. This land had been acquired by purchase from Maori, and then cut up into sections and leased to European settlers[1156]. The first steps by the Crown to create the scenic reserve therefore did not involve local Maori. Instead they involved resumption of the leases under Section 125 Land Act 1892, so that full control of the land reverted to the Crown, and then reservation of the Crown Land under the Land Act 1892. By this means the Ruakuri Cave Scenic Reserve covered a total of 282 acres by January 1906 (as set out in two gazettals in the table above of reserves in Te Rohe Potae derived from the Crown's own land holdings). These two gazettals, of parts of Section 6 and 7 Block X Orahiri SD, had resulted from the Commission's Recommendation 199.

Recommendation 199 also referred to the reservation of Section 8 Block X Orahiri SD. This was an erroneous appellation, as that section number was instead allocated to another parcel of land, and the Commission was referring to an area that became known as 'Section 9 Block X Orahiri SD', although this too became superseded when the particular appellation was later allocated to another parcel of land. All the land in Recommendation 199 had been chosen by one of the Scenery Preservation Commissioners who had visited Waitomo in early 1905. He had been accompanied by the local roading engineer, and it was the roading engineer who provided the information that allowed what became 'Section 9' to be located on a plan of the district[1157]. This showed that 'Section 9' was not a surveyed section and, despite the appellation, was not at that time derived from the Crown's own land holdings. Instead it was Maori-owned land, being part of Hauturu East 3 block. This block, according to Arrell, was owned largely by Tanetinorau's widow and her children, who "were still smarting at the nationalisation by the Government" of the Waitomo Cave[1158].

[1156] This report looks only at the takings under the Public Works Act at Ruakuri Cave. A summary of events at Waitomo Caves from 1889 to 1935, drawn from an examination of Lands and Survey Hamilton District Office file 13/45, was prepared in 1954. This summary refers to some of the correspondence relied on for this report. Précised Material and Extracts on Waitomo Caves, and E Dellimore to Administration Officer, 11 March 1954. Lands and Survey Head Office file 4/156. Supporting Papers #478-522 and 473-477.

[1157] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 7 February 1905. Lands and Survey Head Office file 4/156. Supporting Papers #417-418.

[1158] R Arrell, *Waitomo Caves: A Century of Tourism*, Waitomo Caves Museum Society, 1984, page 32.

The value of the Maori-owned land, as the Commission saw it, lay in the presence of a small lake surrounded by kahikatea forest. The priority at the time, however, was the reservation of the area immediately around Ruakuri Cave (i.e. Sections 6 and 7). When the Acting Superintendent for Tourist and Health Resorts asked Lands and Survey Department to take steps to implement the Commission's recommendation, he explained:

> The area under action at present is that described as being 218 acres. The other area is a proposed bush reserve, the acquirement of which is held over at present. The reservation of the 218 acres will cover all that is necessary to safeguard the Caves.[1159]

Despite this instruction, the Chief Surveyor in Auckland produced plans showing all three sections. When sending in his plans in September 1905, however, he was obliged to explain that he could not complete a full survey plan of 'Section 9', as "I may possibly have to lay off 3 subdivisions of Hauturu East No.3, which have been lately adjudicated upon by the Court"[1160]. It was not until February 1906 that an approved survey plan of the Maori-owned land in 'Section 9' was completed and forwarded to Wellington[1161]. This showed that 'Section 9', with an area of 97 acres 1 rood 02 perches, was comprised of land from the following blocks:

- Hauturu East B2A 7 acres 1 rood 08 perches
- Hauturu East 3B1 20 acres 0 roods 36 perches
- Hauturu East 3B2 54 acres 1 rood 03 perches
- Hauturu East 3B3 15 acres 1 rood 35 perches

When sending the plan, a report from the surveyor who had carried out the survey was also sent.

[1159] Acting Superintendent of Tourist and Health Resorts to Surveyor General, 24 March 1905. Lands and Survey Head Office file 4/156. Supporting Papers #419-420.

[1160] Chief Surveyor Auckland to Under Secretary for Lands, 26 September 1905. Lands and Survey Head Office file 4/156. Supporting Papers #421.
South Auckland plans SO 13522 and SO 13522/A. Supporting Papers #2341 and 2342.

[1161] Chief Surveyor Auckland to Under Secretary for Lands, 22 February 1906. Lands and Survey Head Office file 4/156. Supporting Papers #422.
South Auckland plan SO 13599. Supporting Papers #2343.

> Mr Galbraith, District Surveyor, reports that the owners intend to erect a house soon, and fall some more of the bush, and suggests that this matter should be expedited.[1162]

The plan showed that large parts of the surveyed area were no longer covered in native forest. It records fences, five areas labelled "cultivation", two areas marked "grassed land", one area of "felled bush", one "fern opening", and four whares. About half of the total area was being occupied and farmed, and no longer contained natural qualities worthy of scenery preservation. However, the survey had faithfully recorded the area that had been identified by the Scenery Preservation Commissioners.

Arrell states that clearing of the land had started, or had intensified, when the owners became aware of the Crown's interest in 'Section 9'. They believed that by clearing the bush, the Crown's justification for nationalisation of their land would be removed[1163].

The change of character of the land from the state it might have been in when viewed by one of the Commissioners at the beginning of 1905 did not cause the Crown to re-examine its proposal. Instead it was the news that further bush might be felled that seems to have alarmed officials, prompting them to ask the Public Works Department to take the land for scenic reserve. It was taken in September 1906[1164].

Fourteen months later, in November 1907, the Department of Tourist and Health Resorts manager at Waitomo, thinking that the taking of 'Section 9' was still just a proposal and had not been taken, asked for a reconsideration of the area to be taken.

> I beg to advise for your immediate consideration that, as part of it is in cultivation, and in the occupation of respectable natives, that a re-survey be considered….
>
> The grass flats and gardens with three whares are of course on open grass and fern land, and this is in full view and close to the road to the Ruakuri Caves.
>
> The flats would also form a pleasing contrast and help to beautify the bush.

[1162] Chief Surveyor Auckland to Under Secretary for Lands, 22 February 1906. Lands and Survey Head Office file 4/156. Supporting Papers #422.
[1163] R Arrell, *Waitomo Caves: A Century of Tourism*, Waitomo Caves Museum Society, 1984, page 33.
[1164] *New Zealand Gazette* 1906 page 2456. Supporting Papers #3929.

> Also the natives are the only Natives in, or near vicinity of the Caves, and if allowed to remain would always prove interesting to visitors.
>
> I beg to submit the above for your careful attention and consideration, and I feel sure that by studying the Natives they will appreciate and be grateful for it.[1165]

While the manager's ideas may seem strange, and condescending towards Maori, they are evidence of the unsuitability of the taking for scenic purposes of the cultivated and occupied land. The Crown's response, however, was unyielding, and demonstrated an unwillingness to contemplate the absurdity of the reservation.

> As there is no power to hand back any portion of a scenic reserve to the original Maori owners of the land, I am unable to take any action as desired by your manager at Waitomo Caves, nor has the Scenery Preservation Board any power to deal with such a reserve.
>
> I do not, therefore, propose to move in the matter unless there are other reasons for so doing.[1166]

Undeterred, the manager tried another tack, offering to lease the cleared part of the reserve.

> It appears to me that unless the cleared land, of which there is a considerable area, is in somebody's hands or occupation, it will become a nursery of noxious weeds and danger by fire to the surrounding bush….
>
> If the Department does not wish to lease the bush part, I shall be willing for it to be a condition of lease of the balance that the bush was to be safeguarded from damage as much as possible.[1167]

This approach does seem to have prompted a review of the boundaries of the reserve, which is discussed later in this chapter in the sub-section on lands taken for Ruakuri Scenic Reserve in 1908.

13.2.3 Kawau Pa Historic Reserve

Recommendation 118 was the reservation of a Ngati Tama fighting pa site, Kawau Pa, on the coast between the Mohakatino and Tongaporutu Rivers. It was taken for

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[1165] Manager Waitomo Caves House to General Manager Tourist and Health Resorts Department, 12 November 1907, attached to General Manager Tourist and Health Resorts Department to Under Secretary for Lands, 18 November 1907. Lands and Survey Head Office file 4/156. Supporting Papers #423-424.
[1166] Under Secretary for Lands to General Manager Tourist and Health Resorts Department, 20 November 1907. Lands and Survey Head office file 4/156. Supporting Papers #425.
[1167] HA Glover, Waitomo, to Under Secretary for Lands, 7 January 1908. Lands and Survey Head Office file 4/156. Supporting Papers #427.

historic purposes in October 1906[1168]. This particular taking has not been researched for this report[1169].

13.3 Scenery Preservation Board

In October 1906 the Scenery Preservation Act 1903 was amended. This was a consequence of a reorganisation within Government. In April 1906 a Government decision had disbanded the Scenery Preservation Commission, and transferred administrative responsibility for the 1903 Act from the Department of Tourist and Health Resorts to the Department of Lands and Survey. In part this was because the Commission was considered to be too costly. Another probable reason was that, while the Commission had been successful in identifying a long list of recommended areas, few of its recommendations had been implemented. Implementation was a matter of reserving Crown Land and acquiring private land, which were tasks more appropriately handled by Lands and Survey, using the skills and expertise that Department had at its disposal.

The Department of Lands and Survey developed the Scenery Preservation Amendment Act 1906 once it had taken over responsibility for the 1903 Act. In place of the disestablished Commission, the Amendment Act established a Scenery Preservation Board. The Board consisted of some permanent members, with the addition of the Commissioner of Crown Lands for a particular Land District whenever a proposed reserve in that Land District was on the agenda for a meeting of the Board. Unlike the Scenery Preservation Commission, the Scenery Preservation Board did not have any Maori representation on it.

In repealing the provisions in the 1903 Act that appointed the Commission, and authorised it to recommend lands that should be reserved for scenic, thermal or historic purposes, all the recommendations made by the Commission legally lapsed,

[1168] *New Zealand Gazette* 1906 page 2721. Supporting Papers #3930.
Taranaki plan ML 257. Supporting Papers #2439.
[1169] Its history, from a Taranaki perspective, is discussed in *Appendices to the Journals of the House of Representatives* (AJHR), 1910, C-6, pages 7-9 at pages 7-8. Not included in Supporting Papers.

and new recommendations by the Scenery Preservation Board were required[1170]. In practice, however, the Commission's recommendations continued as the primary guidance for officials as to what lands were suitable for reservation, and as a proposal initially recommended by the Commission was advanced and developed, it would be taken before the Board and a new recommendation made by the Board.

The amendments in the 1906 Act removed the ability for the Board to recommend the reservation of Maori-owned land. As land could only be taken under the Act if its reservation had been recommended by the Board, the amendment effectively excluded the taking under the Act of Maori-owned land. However, it was possible to by-pass the Board and the Scenery Preservation Act altogether, because the Public Works Amendment Act 1903 had defined the preservation of scenery as one of the purposes that was a public work within the meaning of the Public Works Act 1894, and this provision was carried over into the Public Works Act 1905. The Public Works Act operated irrespective of the Scenery Preservation Act (except to the extent that Scenery Preservation Act funds could not be used to purchase land taken under the Public Works Act[1171]). It meant that land could still be taken under the Public Works Act 1905 (and its 1908 successor) for scenery preservation. The Solicitor General also ruled that if a proposed taking had commenced under the 1903 Act before the 1906 amendment came into force, then it could be continued and completed[1172].

The effect of the 1906 Amendment Act was to severely constrain the Crown in taking Maori-owned land for scenery preservation during the period 1906 to 1910, at which time the ability to take Maori-owned land was restored by another Amendment Act (see below). However, takings did not entirely cease during that short period, and within Te Rohe Potae District there were two takings. The first was of land at

[1170] Under Secretary for Lands to Solicitor General, 15 September 1908, and Solicitor General to Under Secretary for Lands, 24 September 1908. Lands and Survey Head Office Crown Law Opinions Book, Volume 4, page 120. Supporting Papers #86F.
[1171] It is believed that Scenery Preservation Act funds were loan funds, while compensation for a taking under the Public Works Act required Vote funding in the Government accounts. However, this aspect has not been investigated for this report.
[1172] Minister of Lands to Solicitor General, 26 November 1906, S9olictior General to Minister of Lands, 27 November 1906, Minister of Lands to Solicitor General, 6 December 1906, and Solicitor General to Minister of Lands, undated. Lands and Survey Head Office Crown Law Opinions Book, Volume 4, pages 45-48. Supporting Papers # 86A-86D.

Mangaotaki Gorge, while the second was of further land at Waitomo, both in 1908. Each is discussed in its own sub-section later in this chapter.

The passing of the Scenery Preservation Amendment Act 1910 rectified some of the deficiencies that the Crown saw in the 1906 Amendment Act. In particular, it overcame some problems in the 1906 Act concerning the taking of Maori-owned land for scenery preservation purposes, by restoring the ability to make acquisition recommendations for Maori-owned land.

From this point it was possible for the Auckland Scenery Preservation Board to make a number of recommendations for the acquisition of lands. Within Te Rohe Potae District, the Board made use of its powers to recommend the acquisition of Maori-owned land on a number of occasions. Because this land was multiply-owned, recourse to the taking powers of the Public Works Act was invariably relied upon, because its use was so much simpler than the riskier and more lengthy alternative of purchasing from each and every owner of a Maori block (i.e. obtaining each owner's signature). The rest of this chapter examines all of the takings from Maori that occurred during the period 1910-1924. Most of these takings were stand-alone, and each taking represents the history of establishment of a particular scenic reserve. The current name of the scenic reserve is used in each section heading. Where the histories of the various takings are quite complicated, or overlap in time, they have been split for ease of comprehension into a number of different sub-sections.

13.4 Mokau River Scenic Reserve

The Chairman of the Scenery Preservation Commission when it was established in 1904 was the former Surveyor General, Stephenson Percy Smith. He had started his career as a surveyor in Taranaki, and retired to New Plymouth when he left Government service. It was therefore not unnatural that as a Commissioner he should take an interest in the Mokau River.

In June 1904 he wrote to George Wilkinson, the Government Native Agent in Otorohanga, about lands on the north bank of the Mokau River, specifically the Mangaawakino, Mangapapa and Mangoira blocks.

> This Commission is anxious to consider the question of conserving some of the lands which abut on the river, but first we require to know whether these lands are still native, or whether they have passed into the hands of Europeans, or are they in the hands of the Maori Council? If you can supply us with any information on the subject the Commission will be much obliged….
>
> Generally speaking, the Commissioners' idea would be to secure about (say) ½ a mile to a mile width along the [Mokau] River. How would the natives be affected by this?[1173]

Wilkinson replied that he had no details to hand about the state of the titles to the blocks, some of which were the subject of dealings with Europeans. None of the blocks mentioned by Percy Smith had been transferred to the Maori Land Council. As to the last question, he replied:

> They would object, I think, more especially if it was found that the taking of the area you propose decreased the value and usefulness of the unleased portions.[1174]

In July 1904 Percy Smith obtained details about land titles on the north bank of the river, in the Auckland Land District[1175]. He may also have been instrumental in persuading the Department of Tourist and Health Resorts to send its journalist James Cowan on a visit to the Mokau River; Cowan provided a report on his visit in May 1904[1176].

The Commission then passed its Resolution No 323.

> Resolved to recommend the Governor to acquire from the Native and other owners about 12,365 acres of forest clad lands, lying on both banks of the Mokau River, as more particularly shown on map and in the schedule below.

There followed a detailed description of boundaries, which generally were meant to encompass the land on both sides of the river that was visible when travelling by boat on the river. This was thought to require an average width of reserve in the upper reaches of 40 chains [800 metres] on either side of the river, narrowing to 20 chains [400 metres] width in the lower reaches. Within the reserve, rights of way were to be

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[1173] Chairman Scenery Preservation Commission to Government Native Agent Otorohanga, 27 June 1904. Lands and Survey Head Office file 4/985 (Loose Papers). Supporting Papers #766-767.
[1174] Government Native Agent Otorohanga to Chairman Scenery Preservation Commission, 29 June 1904, on Chairman Scenery Preservation Commission to Government Native Agent Otorohanga, 27 June 1904. Lands and Survey Head Office file 4/985 (Loose Papers). Supporting Papers #766-767.
[1175] Chief Surveyor Auckland to Chairman Scenery Preservation Commissioner, 6 July 1904. Lands and Survey Head Office file 4/985. Supporting Papers #643-644.
[1176] J Cowan to Acting Superintendent Tourist Department, 5 May 1904, attached to Minister for Tourist and Health Resorts to Chairman Scenery Preservation Commission, date not legible. Lands and Survey Head Office file 4/985. Supporting Papers #645-652.

provided from the river to the land behind, with landing places and any cultivable flats excluded. The main land blocks that would be affected were Mangaawakino, Mangapapa (A, B1 and B2), Mangaawakino 1, Mangoira (1 and 2), all on the north bank, and Mokau-Mohakatino on the south bank[1177]. A set of plans was produced to illustrate the Commission's recommendations[1178].

Nothing had been done to implement the Commission's resolution prior to the disestablishment of the Commission when the Scenery Preservation Act 1903 was repealed and relaced by the Scenery Preservation Act 1906. Nor could any action be taken under the 1906 Act, because that Act did not allow the acquisition of Native Land[1179].

Renewed interest in the Mokau River commenced during the 1908-1909 summer, when the Inspector of Scenic Reserves and the Secretary of the Scenery Preservation Board were instructed to visit the district, examine the Commission's recommendations, and make their own recommendations about what, if any, modifications were needed[1180]. Their report was published in the Scenery Preservation Board's annual report[1181]. However, there was no immediate follow-up, most probably because of the Crown's inability, under the Scenery Preservation Act 1908 (which was a consolidation of the Scenery Preservation Act 1903 as amended by the Scenery Preservation Amendment Act 1906), to take Native land.

The matter was revived in May 1911, after the passing of the Scenery Preservation Amendment Act 1910, when the Under Secretary for Lands recommended to the Minister in charge of Scenery Preservation that the 1909 report should be referred to the Scenery Preservation Board for its consideration. The trigger for this action was

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[1177] Resolution 323 of Scenery Preservation Commission. Lands and Survey Head Office file 4/985. Supporting Papers #653.
[1178] Annual Report on Scenery Preservation for the year ended 31 March 1909; Four plans, plus index plan, accompanying Appendix D, Report on the Mokau River. *Appendices to the Journals of the House of Representatives* (AJHR), 1909, C-6, following page 16. Supporting Papers #3885-3901 at 3897-3901.
[1179] Under Secretary for Lands to General Manager Tourist Department, 11 January 1907. Lands and Survey Head Office file 4/985. Supporting Papers #654.
[1180] Under Secretary for Lands to Inspector of Scenic Reserves, 2 December 1908. Lands and Survey Head Office file 4/985. Supporting Papers #655.
[1181] Annual Report on Scenery Preservation for the year ended 31 March 1909; Appendix D, Report on the Mokau River. *Appendices to the Journals of the House of Representatives* (AJHR), 1909, C-6, pages 10-16 and plans. Supporting Papers #3885-3901.

that "the Commissioner of Crown Lands New Plymouth telegraphs that bush-felling areas on the River are now being marked off, and if it is desired to secure scenic areas they should be defined at once"[1182]. The Minister gave his approval.

Even before the Board met, the Department of Lands and Survey made efforts to get a surveyor to mark out boundaries on a preliminary basis of areas required for scenic purposes, as a means of preventing the bush-cutting areas from encroaching on the proposed reserve[1183]. Because no Government surveyor was available, the Crown engaged private surveyors who were already working on a survey for the company that held most of the Mokau-Mohakatino Block[1184].

The instructions for the surveyors required some clarification almost as soon as they commenced their work. Initially they thought that the work they were doing for the Government was to survey for reserves "only such areas as are not fit for settlement"[1185]. It was necessary to explain their instructions in finer detail in June 1911.

> The arrangements made with the owners of the Mokau-Mohakatino and other Blocks purchased or leased by them from the Natives, adjoining the Mokau River, is that they will not oppose in any way the wishes of the Government to acquire, under the Scenery Preservation Act, such areas of forest as are considered necessary for the conservation and preservation of the scenic beauties on the Mokau River. It is not for Mr Sladden or any other surveyor to say what areas should or should not be reserved. What has been promised the owners is that the Government will not take for scenery preservation purposes any lands which are fit for settlement, and that only the areas absolutely required for the preservation of the scenic beauties on the River will be taken. If the owners are not agreeable to this course, then it will clearly be our duty to take such lands forcibly under the provisions of the Scenery Preservation Act. No land will be taken beyond that actually required for the purpose referred to.[1186]

[1182] Under Secretary for Lands to Minister in charge of Scenery Preservation, 15 May 1911. Lands and Survey Head Office file 4/985. Supporting Papers #656.
[1183] Telegram Under Secretary for Lands to Chief Surveyor New Plymouth, 17 May 1911. Lands and Survey Head Office file 4/985. Supporting Papers #657.
[1184] Telegram Chief Surveyor New Plymouth to Under Secretary for Lands, 17 May 1911, and Telegram Under Secretary for Lands to Chief Surveyor New Plymouth, 18 May 1911. Lands and Survey Head Office file 4/985. Supporting Papers #658 and 659.
[1185] Chief Surveyor New Plymouth to Under Secretary for Lands, 10 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #660.
[1186] Under Secretary for Lands to Chief Surveyor New Plymouth, 14 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #661-662.

Later that month a crisis, as far as the Crown was concerned, developed. The Chief Surveyor in New Plymouth, who was visiting Mokau at the time, telegraphed to his Head Office that:

> On north bank, … Mangapapa B No 2 block, about sixty bushfellers at work felling on river bank to edge of water, between eighteen and twenty five miles from Mokau. About forty chains already destroyed. Anticipate all down within one week. Cannot action be taken while I am here? Have interviewed manager unsuccessfully. Will now interview member Mokau River Trust here, as navigation of river imperilled if felling on banks allowed. I leave here on Monday. Await reply.[1187]

There was then a flurry of telegrams between the Commissioner, his Head Office and the Minister in charge of Scenery Preservation, who at the time was travelling by train to Dunedin. The Under Secretary for Lands responded to the Commissioner's telegram:

> Before any action can be taken under Scenery Preservation Act to acquire and reserve lands for scenery on banks Mokau River, it is necessary that Scenery Preservation Board should meet and recommend acquisition of specified lands. When recommendation so made and Government approves same, Notice of Intention to Take lands under Public Works Act and Scenery Preservation Act can then issue, after which it will be illegal to interfere with lands to be taken. Board is to meet here when you and Auckland Commissioner visit Wellington on Electoral Representation business next month. Till then no action can be taken by Government, but matter is being reported to Minister with a view to representations being made to owners of land to omit scenic reservation from bush cutting. Am looking into matter of Proclamation under Section 9 Mokau River Trust Act.[1188]

The Minister was informed[1189]. He immediately replied:

> Re Mokau River. I understood that this matter was in hand, and that all was being done that was necessary to preserve bush on river bank, and had assurances to that effect. Mr Johnson, my secretary, rang up your office several times and was told by Mr Jourdain [Secretary to the Scenery Preservation Board] that Crown Commissioner at New Plymouth had been empowered to employ two surveyors, and that these were on ground. Will you please look up records and advise me. I am greatly distressed at steps not having been taken before now to preserve the unique beauty of the river. Have no surveyors been put on the work? I have wired urgently to Mr R

[1187] Telegram Commissioner of Crown Lands New Plymouth to Under Secretary for Lands, 23 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #663-664.
[1188] Telegram Under Secretary for Lands to Commissioner of Crown Lands New Plymouth, 23 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #665.
[1189] Telegram Under Secretary for Lands to Minister in charge of Scenery Preservation, 23 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #666.

> McNab about the matter. I will return to Wellington by tomorrow morning's train.[1190]

The Under Secretary for Lands then advised his Minister:

> Surveyors were instructed some time ago, as advised, in anticipation of Scenic Board's recommendations. The difficulty is that being private land there is no law under which we can stop persons from cutting bush, until plans of areas are actually in hands of Public Works Department for notification. Being winter time, the surveyors will not make much headway until the spring. Two surveyors are at work on the block at the present time. With regard to action under the Mokau River Trust Act, I am in communication with the Native Land Court, Auckland, as to the position of these titles. If transfers have been made to Europeans, then the law is perfectly clear and we cannot touch them under this Act. If the land is Native land, then I think we will be able to proclaim the land a Public Domain. This does not come under scenery preservation. I understood from Mr McNab that he had arranged that no land suitable for settlement purposes should be taken unless it contained cliffs or bluffs of a scenic effect. I understand the land in question has no scenic beauty, but is flat land fit for settlement, and the European owners are therefore quite within their rights in felling the bush for grassing.[1191]

The following day the Under Secretary for Lands sought a legal opinion from the Solicitor General, about the applicability of Section 9 of the Mokau River Trust Act. He thought that this Act authorised proclamation of Crown or Native land as public domain, but (when read together with Section 11) did not allow a similar proclamation of privately owned land[1192]. The Assistant Law Officer, on the other hand, concluded that Section 9 was only relevant to Crown Land, and neither private nor Native land could be the subject of a proclamation. He advised that the Government had "no power to stop the felling of the bush at the present time"[1193].

The only option available to the Crown was to request the Europeans who occupied Mangapapa B2 under a sub-lease arrangement (discussed in a later sub-section of this evidence about takings on the north bank in 1920), to cease felling the bush so close

[1190] Telegram Minister in charge of Scenery Preservation to Under Secretary for Lands, 23 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #667-669.
[1191] Telegram Under Secretary for Lands to Minister in charge of Scenery Preservation, 23 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #670.
[1192] Under Secretary for Lands to Solicitor General, 24 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #671-672.
[1193] Assistant Law Officer to Under Secretary for Lands, 23 [sic, probably should be 24] June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #673.

to the river. An approach of this nature had been commenced when the minister had telegraphed Robert McNab. McNab replied to the Minister:

> It puts me in a delicate position to interfere in the work of Mr Chambers' [sub-lessee's] bushfellers on his own property, though it is what I feared was going to happen, until receipt of your last wire some week or two ago. Our property is untouched. I think Mr Chambers leaves Waitara tonight for Mokau. You should wire him. You need feel no concern about our side if you are not ready. When the date takes place, I will reserve the right of the State to survey off its reserves in a reasonable time, with consequent reduction of rents.[1194]

The emergency, as the Crown saw it, was apparently eased two days later when the Commissioner of Crown Lands telegraphed that he had met one of the sub-lessees of the block, who had "agreed to reserve a considerable area along north bank of Mokau", and who would discuss this with the Under Secretary when he was next in Wellington[1195].

The Minister also met with the Mangapapa B2 sub-lessees.

> I have now seen Mr Chambers and Mr Fraser, and they both blame the Department for the delay. Mr Chambers says that he saw you on the 18th May and urged that you should take matter in hand at once and have areas delineated as he was anxious to get on with the contracts for felling. He added that had this been done, the scenery would have been preserved. He however is seeing that no further damage is being done.[1196]

The criticism of the Under Secretary from someone who had gained the ear of the Minister meant that the Under Secretary felt obliged to respond. He brought forward the meeting of the Scenery Preservation Board from sometime in July to the end of June[1197]. The Commissioners of Crown Lands for both Auckland and Taranaki Land Districts were instructed to attend, but the Auckland Commissioner was unable to be present. This apparently did not affect the quorum for the meeting, so that it was still possible for the Board to make recommendations affecting the north bank (Auckland Land District side) of the river. After hearing from the Taranaki Commissioner and the Inspector of Scenic Reserves, the Board made seven recommendations:

[1194] Telegram Robert McNab, Palmerston North, to Minister in charge of Scenery Preservation, 24 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #674-675.
[1195] Telegram Commissioner of Crown Lands New Plymouth to Under Secretary for Lands, 26 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #676.
[1196] Telegram Minister in charge of Scenery Preservation to Under Secretary for Lands, 27 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #677-678.
[1197] Telegram Under Secretary for Lands to Commissioner of Crown Lands New Plymouth, 27 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #679.

Recommendation No. 206. Recommended that the Mangoira No. 1 Block containing 260 acres, and the Mangoira No. 2 Block, containing 2,690 acres, be acquired and reserved for scenic purposes under Sections 5 and 7 of the Scenery Preservation Act 1908. (Note: the acquisition of the whole of the blocks is recommended, as the cost of the scenic area only would be very heavy, and if the whole of the blocks are acquired, the balance not required can be disposed of under section 7 of the Scenery Preservation Act 1908.)

Recommendation No. 207. Recommended that those areas of land found on survey to contain standing forest, situated between the Manga-Awakino clearing and the Pariwaro clearing at the Coal Mine, and having an average depth of 20 chains from the river, be acquired and reserved for scenic purposes.

Recommendation No. 208. Recommended that Section 12 Block I Awakino S.D. (native land), as shown on accompanying plan, be acquired and reserved for scenic purposes.

Recommendation No. 209. Recommended that Section 9 Block I Awakino S.D. (freehold land), as shown on accompanying plan, be acquired and reserved for scenic purposes.

Recommendation No. 210. Recommended that the Inspector of Scenic Reserves in company with a surveyor, select for surveying for reservation such portions of the following land as are most suitable for scenic purposes. The lands comprise: Mangapapa B Nos. 1, 2 blocks, and Mangapapa A block, situated in Blocks XI, XIII, XIIIA, XIV, XIVA, XV Awakino East [S.D.], with an average depth of 30 chains from the river, and extending up to the skyline, as seen from the river.

Recommendation No. 214. Recommended that the proposals regarding scenery preservation on the south side of the Mokau River, extending between the Haumapu and Mangapohue Streams, as shown on plans attached to C-6 of 1909 [AJHR], be adopted, and the land described therein be acquired and reserved. Provided that the Government, when giving effect to this resolution, takes into consideration the scheme of settlement now being prepared to deal with the lands at the back of the reserve, in the Mokau-Mohakatino Blocks, with a view to modifying these proposals if necessary.

Recommendation No. 215. Recommended that the Inspector of Scenic Reserves, in company with the surveyor who lays off the area, selects such portions of the following land for surveying for reservation as are most suitable for scenic purposes: land between the Mangapohue and Paraheka Streams on the left side of the river in the Mokau-Mohakatino Nos 1G and 1H Blocks, extending an average distance of 30 chains from the river to the skyline, as seen from the river.[1198]

[1198] Extract from Minutes of the Meeting of Scenery Preservation Board, 30 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #680-685.

The Minister also called for a report on the Department's handling of the matter.

> From what I gather, a much larger extent than I was recently given to understand has been destroyed along the river banks. Instead of half a mile only being destroyed, I am informed that the destruction extends over a number of miles, and includes some of the very best of the scenery. I might say that this river when I visited it a few months ago was in its pristine beauty, and it was within our power to preserve it. The opportunity to do so has been neglected, and it is the reason for that neglect I am desirous of obtaining information about.[1199]

Although the Minister wrote the request before the Board meeting, it was not received by the Under Secretary until after the meeting had been held.

The Under Secretary's report to the Minister showed that the Crown had no power to respond immediately, because it was bound by lengthy preliminary processes, including the adoption of a recommendation by the Scenery Preservation Board, and the preparation of survey plans in line with the Board's recommendation.

> The land on the banks of the River being native land, there was no legal power to take any of it for scenic purposes until after the passing of the Scenery Preservation Amendment Act 1910 in last December. At that time, numerous other matters were before the Scenery Preservation Board, and the Board … [intended] to deal with the Mokau River proposals when a joint meeting of the Auckland and Taranaki Boards could be held, which would be attended by the respective Commissioners for each District. Moreover, as you were to inspect the River during March, the Board thought it advisable to await the result of your inspection before holding a meeting….
>
> In anticipation of the Board adopting the proposals that appeared in the report for 1908-9, I personally authorised the employment of Messrs Sladden and Palmer to commence the survey of the scenic areas on the 18th May, so that no delay might take place in gazetting the areas when the survey was completed.
>
> It is to be regretted that the bush-fellers employed by the Messrs Chambers have encroached on the scenic areas, but this Department has no power to prevent the felling of bush until the statutory notice under the Public Works Act can issue in the Gazette, and this cannot be until the surveyors have furnished the necessary plans, which cannot be for some time yet. The Chief Surveyor for Taranaki has instructed Messrs Sladden and Palmer to press on with the scenic surveys and to give them precedence over their other surveys, and I understand this is being done, whilst he has also been authorised to employ an extra survey party to assist in prosecuting the surveys.[1200]

[1199] Minister in charge of Scenery Preservation to Under Secretary for Lands, 27 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #686.

[1200] Under Secretary for Lands to Minister in charge of Scenery Preservation, 8 July 1911. Lands and Survey Head Office file 4/985. Supporting Papers #701-702.

The Under Secretary also made some remarks to the Minister that demonstrate that scenery preservation was the poor relation with respect to priorities in the Department of Lands and Survey.

> I may add that the whole staff of Departmental surveyors is actively engaged on settlement surveys, and the only surveyor that could be spared during the summer for scenic surveys (Mr Phillips Turner [also Inspector of Scenic Reserves]) was hard at work on the Wanganui river banks, the surveys in this locality being deemed of the first importance. It was not until Messrs Sladden and Palmer [private surveyors] obtained the contract for the Mokau lands surveys that we were able to arrange for the scenic surveys at this place.[1201]

When these remarks about the availability of Government surveyors are read in conjunction with other remarks about the agreement with the European owners and lessees that any scenic reserves along the Mokau River would not intrude on to lands fit for settlement, it becomes apparent that the Crown's agenda overwhelmingly favoured settlement on the land. The felling of bush that this involved meant that the two land uses were often mutually exclusive, with the result that scenery preservation on Crown and private lands was pushed into pockets of land that were the most rugged and least accessible.

Upon receipt of the Under Secretary's report, the Minister commented:

> It is to be regretted that active steps were not taken earlier to secure this beautiful scenery. Had Mr Turner been sent from less urgent work, this could have been done.[1202]

When told that Sladden and Palmer were working on the south bank of the river, and the additional surveyor was working on the north bank[1203], the Minister commented:

> The urgent surveys are on the north side of River where Messrs Chambers' land is situated, and our full power should be first centred there. Is Mr Turner not now reporting on the extent of reserves necessary to take?[1204]

[1201] Under Secretary for Lands to Minister in charge of Scenery Preservation, 8 July 1911. Lands and Survey Head Office file 4/985. Supporting Papers #701-702.
[1202] File note by Minister in charge of Scenery Preservation, 12 July 1911, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 8 July 1911. Lands and Survey Head Office file 4/985. Supporting Papers #701-702.
[1203] Under Secretary for Lands to Minister in charge of Scenery Preservation, 10 July 1911. Lands and Survey Head Office file 4/985. Supporting Papers #703.
[1204] File note by Minister in charge of Scenery Preservation, 12 July 1911, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 10 July 1911. Lands and Survey Head Office file 4/985. Supporting Papers #703.

In reply, he was informed that "Mr Stephens [sic – should be Stevens] is surveying on north bank of Mokau, and Mr Turner will supervise his work" [1205], but the Minister was not reassured, writing one week later:

> Information has been sent to me today which conflicts with that of the Department. It is stated that no surveyor is yet on the ground, and that no surveyors were sent by the Department to deal with the land on the south side of the river…. As I stated in a previous communication, Mr Johnson had the assurance of Mr Jourdain quite two months ago that the surveyors were then in the field.[1206]

The Under Secretary was obliged to provide the Minister with further information.

> On the 18th May last the Chief Surveyor New Plymouth was instructed to employ Messrs Sladden and Palmer to undertake the surveys of the scenic reserves on the south [Taranaki] side of the Mokau River….
>
> When the Board met in Wellington [on 30th June] … the Chief Surveyor advised me that he had just been able to secure the services of Mr Stevens – from the Hauraki Plains work – to carry out the surveys on the north [Auckland] bank, and he [the Chief Surveyor] was immediately authorised to equip a survey party to commence operations, and (if possible) to start a second party under Mr Stevens' directions….
>
> I do not interfere with the Chief Surveyor when I have given him instructions to carry out any surveys, leaving it to him to arrange details and to comply with his instructions. The surveyor and Mr Phillips Turner are now on the ground and doing their best to give effect to the wishes of the Government. Very little survey work can be carried on in the winter, and in my opinion it is a great mistake to attempt it, as being so costly. Mr P Turner will be back today, and will tell you the position exactly.[1207]

The Inspector of Scenic Reserves had been rushed to Mokau as a result of the Minister's fumings. No general report from him about his visit has been located during the research for this evidence.

The meeting of the Scenery Preservation Board, and the work underway to survey the boundaries of the proposed scenic reserves, meant that the preliminaries had been completed in preparation for the taking of lands under the Public Works Act and

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[1205] File note by Under Secretary for Lands 14 July 1911, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 10 July 1911. Lands and Survey Head Office file 4/985. Supporting Papers #703.
[1206] Minister in charge of Scenery Preservation to Under Secretary for Lands, 21 July 1911. Lands and Survey Head Office file 4/985. Supporting Papers #704.
[1207] Under Secretary for Lands to Minister in charge of Scenery Preservation, 24 July 1911. Lands and Survey Head Office file 4/985. Supporting Papers #705.

Scenery Preservation Amendment Act. The takings themselves can be divided into three categories:

- Those takings on the north bank of the Mokau River in 1912
- Those takings on the north bank of the Mokau River in 1920, and
- Those takings on the south bank of the Mokau River, all in 1920

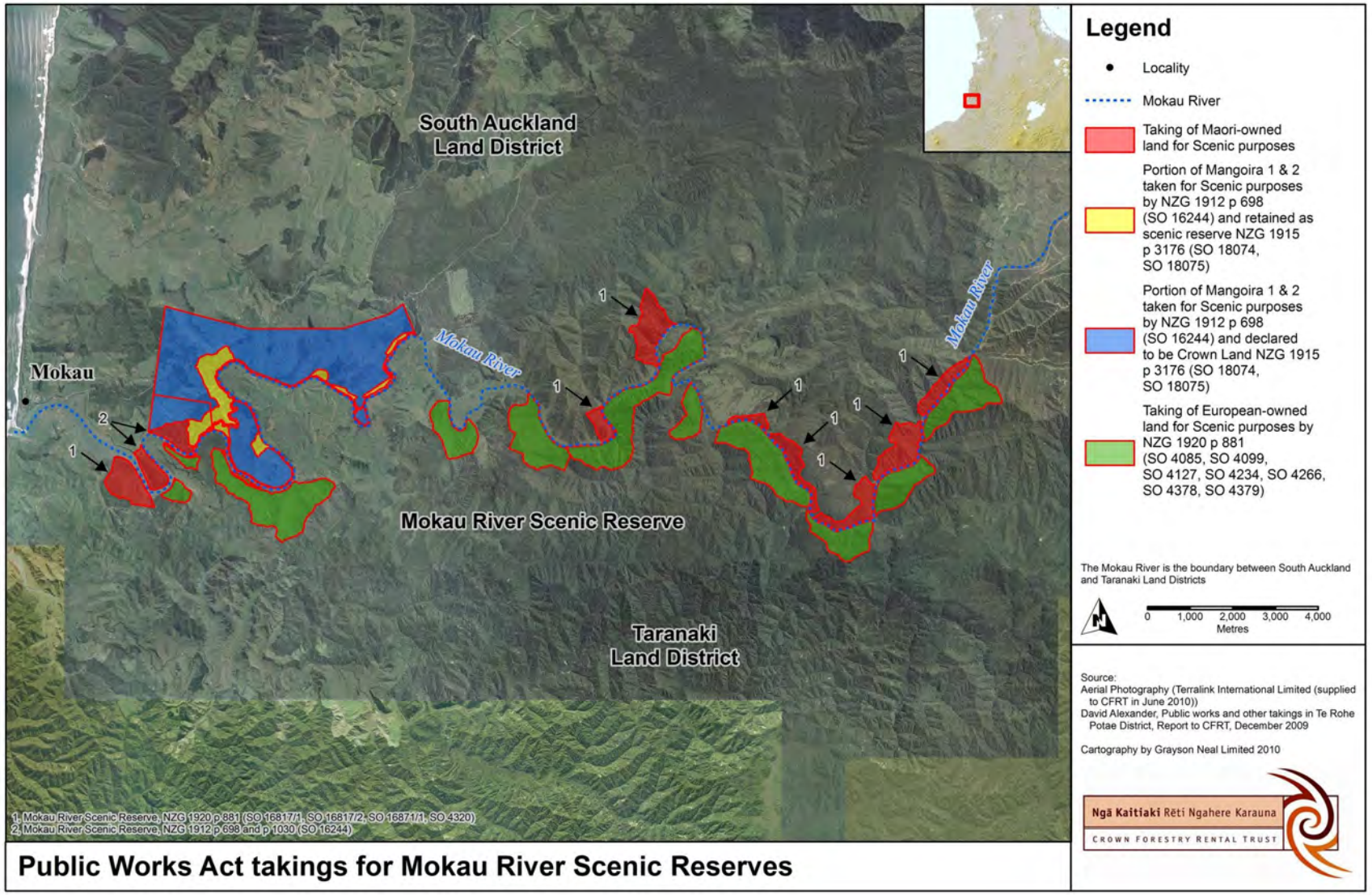
Because work on all these sets of takings was occurring simultaneously it is more convenient, for an understanding of each set of takings, that they are discussed individually in separate sub-sections in this evidence.

13.4.1 Mokau River Scenic Reserve North Bank (Lands Taken in 1912)

A survey plan covering Recommendations 206, 208 and 209 (i.e. showing lands in the Mangoira blocks and in the Maori-owned sections of Awakino Survey District required to be taken for scenic purposes), was compiled in August 1911[1208]. The speedy completion of this plan was because no new survey work was required. It was immediately sent on to the Public Works Department, with a request that the necessary action be taken under the Public Works Act[1209].

As set out in Recommendation 206 of the Scenery Preservation Board, the Crown wanted to take the whole of Mangoira Block for scenic purposes, even though only part would actually be required for those purposes. Mangoira had an area of 2950 acres[1210], so this would represent one of the largest single areas to be taken under the Public Works Act. It was Maori-owned, subject to a 30 year lease (from 1905) of all surface and mineral rights, and with a royalty to be paid for any timber removed[1211]. The lease was held by three Europeans (Fraser, Barber and Loughnan) as a result of a transfer registered in November 1911[1212].

[1208] Chief Surveyor Auckland to Under Secretary for Lands, 29 August 1911. Lands and Survey Head Office file 4/985. Supporting Papers #706-707.
South Auckland plan SO 16244. Supporting Papers #2370.
[1209] Under Secretary for Lands to Under Secretary for Public Works, 1 September 1911. Works and Development Head Office file 52/7. Supporting Papers #1469.
[1210] Both the Crown's survey plan and the taking Proclamation refer to Mangoira 1 and Mangoira 2. However, a partition by the Native Land Court into these two blocks had not been perfected because the Native Minister had declined to give his approval, so that the title in the Native Land Court remained for the whole of the Mangoira Block (Chief Surveyor Auckland to Under Secretary for Lands, 29 August 1911. Lands and Survey Head Office file 4/985 - Supporting Papers #706-707).
[1211] Title Search of Mangapapa B2, attached to Chief Surveyor Auckland to Under Secretary for Lands, 29 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #687-700.
[1212] Memorandum of Transfer 62500. Copy on Works and Development Head Office file 52/7. Supporting Papers #1473-1475.



Map 17 Public Works Act takings for Mokau River Scenic Reserves

The Inspector of Scenic Reserves provided an explanation for the decision to acquire the whole of the block in November 1911.

> Along the easy parts of the block we are cutting off the river frontage to a depth of about 5 or 6 chains, but frequent gaps are being left to afford access to the land at the rear. To the west of Trig Pukewhero, however, the land is very steep and makes a very fine sight from the river, and to secure this with a fenceable boundary it is necessary to go back from 20 to 30 chains. As Mr Loughnan says, this practically cuts the block in two near Pukewharo. It was decided by the S.P. Board to take the whole of Mangoira Block, and I am told that the preliminary Gazette notice is now waiting for the Minister's (Public Works) signature. I am not aware what price Mr Loughnan has paid for the land, but to take the whole lot, and then dispose of the balance would, I think, be the best way to settle the matter. It would make about four decent farms, and should carry quite two sheep to the acre.[1213]

Such cavalier use of the Public Works Act is completely contrary to any principle that its confiscatory powers should only be used to the minimum extent absolutely necessary, even though it was sanctioned in this case by the provisions of Section 7 Scenery Preservation Act 1908. A taking of this type might be acceptable if it had the consent in advance of the private parties who would be affected. It would seem that the lessee was informed and was not averse to the taking, provided he was properly compensated. However the Maori owners were never directly consulted.

Sections 9 and 12 Block I Awakino Survey District, the subject of Recommendations 209 and 208 respectively, were both Maori customary land, whose ownership had not been determined by the Native Land Court[1214]. Why they had been surveyed into blocks of survey districts is not known.

A Notice of Intention to Take the lands shown on the survey plan was published in November 1911[1215]. This allowed for forty days within which objections could be lodged. None was received. In view of the circumstances this is hardly surprising. The Public Works Department asked the Department of Lands and Survey to serve the notice on the owners[1216], but there is no record in the Lands and Survey papers

[1213] Inspector of Scenic Reserves to Under Secretary for Lands, 25 November 1911. Lands and Survey Head Office file 4/985. Supporting Papers #708.
[1214] Under Secretary for Lands to Under Secretary for Public Works, 26 January 1912. Works and Development Head Office file 52/7. Supporting Papers #1472.
[1215] *New Zealand Gazette* 1911 page 3407. Supporting Papers #3960.
[1216] Under Secretary for Public Works to Under Secretary for Lands, 27 November 1911. Works and Development Head Office file 52/7. Supporting Papers #1470.

that this occurred. In the case of the papatupu (customary) land there were no owners determined by the Court who could be directly notified. The closest that the notice of intention would have got to any of the Maori owners, if they happened by chance to see it, was the posting of the notice at the Awakino Post Office.

When the lands were ready to be taken, the Public Works Department queried the description of part of the papatupu land as Section 12 Block I Awakino Survey District, which was additionally described as a native reserve[1217]. This query held up the taking of the papatupu blocks. The taking of Mangoira went ahead, with the Proclamation issued in February 1912[1218]. The following month, after it had been confirmed that the papatupu land was correctly described (although it had never been declared a native reserve), it too was taken[1219].

The next step for the Crown was to prepare for the hearing of the Native Land Court where compensation would be determined. This involved obtaining valuations, and with the size of the takings involved it was felt necessary to obtain more than one valuation. In all eight different land valuations, plus a timber appraisal and a coal seams appraisal, were obtained[1220].

The Public Works Department also grappled with the effects of the taking of the whole Mangoira block, when only part was required for scenic purposes, in part because it was conscious that the amount of compensation likely to be awarded for the whole block could be substantial. The Department's Land Purchase Officer had been informed by August 1912 that surveys of the boundaries of the portion of Mangoira required for scenic reserve had identified only some 460 acres of the total area of the block of 2950 acres. He queried whether the Proclamation over the remainder of the block might not be revoked[1221]; this was an option open to the Crown so long as no

[1217] Assistant Under Secretary for Public Works to Under Secretary for Lands, 16 January 1912. Works and Development Head Office file 52/7. Supporting Papers #1471.
[1218] *New Zealand Gazette* 1912 pages 698-699. Supporting Papers #3962-3963.
[1219] *New Zealand Gazette* 1912 pages 1030-1031. Supporting Papers #3967-3968.
[1220] Valuations of James Wall; Crown Lands Ranger Jordan; CK Wilson; Valuer General; Walter Jones; District Valuer; James Rattenbury and John Heslop; Timber Appraisal of Jonathon McGregor; and Coal Seams Appraisal of ND Cochrane; all attached to Notes for Crown Solicitor, undated (May or June 1913). Works and Development Head Office file 52/7. Supporting Papers #1499-1517.
[1221] Land Purchase Officer Bold to Under Secretary for Public Works, 29 August 1912. Works and Development Head Office file 52/7. Supporting Papers #1476.

compensation had been paid. The Lands and Survey Department was asked this question[1222], to which it replied:

> Although the whole of the land in the blocks has been taken, it is not intended to retain possession of more than the scenic reserves which have recently been surveyed along the river bank, and plans of these reserves are now being checked in the Auckland office and will be available next week. The balance of the blocks can then be disposed of either under Section 8 of the Scenery Preservation Act 1908, or else before the sitting of the Compensation Court the acquisition of the surplus land can be discontinued by the revocation of the proclamation taking it. The latter course is, I think, preferable.[1223]

It was then thought that it might be a cleaner administrative procedure if the February 1912 Proclamation was revoked altogether, and a fresh Proclamation then issued for the land actually required for scenic reserve[1224]. The Solicitor General was asked if this would be legally appropriate[1225]. He advised that Section 3 Public Works Amendment Act 1909 provided the power to either revoke the whole Proclamation and then issue another one affecting part of he land, or revoke it with respect to the part no longer required[1226]. At this stage the decision to be made on this matter was overtaken by another event, a proposal from the European lessees (see below).

By October 1912 the surveys of the areas on Mangoira required for scenic reserve had been completed, and showed that the 460-acre figure quoted by the Land Purchase Officer was an over-statement, as only 427 acres of the 2950-acre block was required, leaving a balance of 2523 acres available for disposal. The 427 acres were in eight separate parcels[1227].

[1222] Assistant Under Secretary for Public Works to Under Secretary for Lands, 31 August 1912. Lands and Survey Head Office file 680. Supporting Papers #229-230.
[1223] Under Secretary for Lands to Under Secretary for Public Works, 4 October 1912. Works and Development Head Office file 52/7. Supporting Papers #1480-1481.
[1224] Land Purchase Officer Bold to Assistant Under Secretary for Public Works, 4 October 1912, on Under Secretary for Lands to Under Secretary for Public Works, 4 October 1912. Works and Development Head Office file 52/7. Supporting Papers #1480-1481.
[1225] Assistant Under Secretary for Public Works to Solicitor General, 11 October 1912. Works and Development Head Office file 52/7. Supporting Papers #1482-1483.
[1226] Solicitor General to Assistant Under Secretary for Public Works, 17 October 1912. Works and Development Head Office file 52/7. Supporting Papers #1488-1491.
[1227] Under Secretary for Lands to Minister in charge of Scenery Preservation, 8 November 1912. Lands and Survey Head Office file 680. Supporting Papers #231-232.
Areas of 282 acres 2 roods 04 perches and 27 acres 0 roods 16 perches shown on South Auckland plan SO 16901. Supporting Papers #2391.
Areas of 6 acres 2 roods 24 perches, 14 acres 1 rood 16 perches, 21 acres 2 roods 24 perches, 18 acres 2 roods 24 perches, 34 acres 2 roods 08 perches, and 23 acres 0 roods 08 perches, shown on South Auckland plan SO 16871/2. Supporting Papers #2389.

Besides the land not actually required for scenic reserve, another aspect of the compensation case that had been concerning the Public Works Department was getting some indication from the European lessees in advance of the hearing as to how much compensation they would be claiming. In reaching agreement with European owners of taken land, it was usual to receive a claim from the affected owner, counter that with an offer from the Crown, and then negotiate an agreement from those two starting points. Although it could not legally force the lessees of Mangoira to put in a claim in advance of the compensation hearing before the Native Land Court[1228], it nevertheless approached them. In September 1912 their solicitor (Loughnan, who was one of the registered lessees) lodged a claim for £2 per acre[1229]. The following month Loughnan sought a meeting with the Minister in charge of Scenery Preservation[1230]. Rather than meet with the Minister, he met with the Under Secretary for Lands, after which he put some proposals in writing. The details of Loughnan's offer, delivered in the form of a draft agreement between the Crown and the lessees, have not been discovered during research for this report, but apparently involved disposal of the area not required for scenic reserve under the provisions of Section 30 Public Works Act 1908, on special terms suggested by Loughnan. Those special terms included a proposed sequence of events based around offering to sell the unwanted land first to the Native owners and adjoining owners, and then, if the offer had not already been taken up, to the lessees.

The Land Purchase Officer in the Public Works Department considered the proposals offered "very substantial advantages" for the Crown. If the taking Proclamation were revoked totally (with the scenic reserves then retaken), or was revoked in part so that only the scenic reserves remained taken, then not only would the Crown have to pay compensation for the land that became scenic reserve, but it would also have to pay additional compensation based on damage due to severance of parts of the lands not taken by the parts that were taken, and the loss of occupation and use of the land between the date of taking and the date of revocation. This additional compensation

[1228] Land Purchase Officer Bold to Under Secretary for Public Works, 29 August 1912. Works and Development Head Office file 52/7. Supporting Papers #1476.
[1229] Loughnan and Jacobs, Barristers and Solicitors, Palmerston North, to Land Purchase Officer Bold, 11 September 1912. Works and Development Head Office file 52/7. Supporting Papers #1477-1479.
[1230] Loughnan and Jacobs, Barristers and Solicitors, Palmerston North, to Land Purchase Officer Bold, 10 October 1912, attached to Land Purchase Officer Bold to Under Secretary for Public Works, 14 October 1912. Works and Development Head Office file 52/7. Supporting Papers #1484-1487.

might double the amount that would have to be paid. On the other hand, retaining the whole of Mangoira block in the Crown estate, paying compensation on a land value basis only for the whole block, and then selling to the former owners or the former lessees the non-reserve balance, was likely to involve a lower net cost for the Crown. He added one caution to his remarks:

> Whether [the Loughnan proposal] should be agreed to or not, however, seems to be a matter of policy for your Department to decide, as it appears to me to make possible a suggestion of connivance between the lessees and the Department, by which the former may advantageously acquire the freehold interest now belonging to the Natives. The position as it stands, however, would seem to justify the Department in agreeing to the principle of the proposal as a matter of economy.[1231]

Despite the attractiveness of the proposal to the Crown, the Under Secretary for Lands felt that its legality had to be checked by the Solicitor General[1232]. The Assistant Law Officer who responded found the whole proposal completely offensive, using terminology such as "immoral", "illegal", "tainted with fraud", and "contrary to fair dealing and equity".

> I have carefully considered the draft agreement submitted by Mr CA Loughnan in this matter, and have read through his letters and the correspondence on the file, and I am convinced that the agreement would not only be illegal, but would be a most improper agreement for the Minister or the Crown to enter into. It may be of monetary advantage to the Crown to enter into it, and it is certainly of great monetary advantage to Mr Loughnan and his co-lessees, but it is an advantage gained by both parties at the expense of the Native owners, and quite apart from its illegality it is an agreement contrary to fair dealing and equity.
>
> The Scenery Preservation Act 1908, Sections 7 and 8, expressly provides, it is true, that more land than is required for scenery preservation may be taken, but all land taken under that Act and not required for scenery preservation can only be disposed of as Crown Land under the Land Act, and there is no power to dispose of it under the Public Works Act, as provided by the agreement. Even, however, if the agreement had provided for the disposal of the land not required for scenery under the Land Act, I should still be clearly of the opinion that it would be illegal to make any a priori agreement with any person as to the mode of its disposition.

[1231] Land Purchase Officer Bold to Under Secretary for Lands, 8 November 1912. Works and Development Head Office file 52/7. Supporting Papers #1492-1494.

[1232] Under Secretary for Lands to Minister in charge of Scenery Preservation, 8 November 1912, Telegram Minister in charge of Scenery Preservation to Under Secretary for Lands, 25 November 1912, and Assistant Under Secretary for Lands to Solicitor General, 28 November 1912. Lands and Survey Head Office file 680. Supporting Papers #231-232, 233 and 234.

In my opinion, moreover, it is just as illegal to take land under the Public Works Act with a knowledge that it is not required for any public work, and with an a priori agreement as to the disposition of most of it with one only of the parties interested. This draft agreement sets out clearly that the land is not required for the purpose for which it is taken, and therefore the Minister has decided to revoke the proclamation. It then goes on to provide that in order to save the Crown from having to pay for its mistake, it shall take the land from one of the parties interested (the Native owners) and then practically give it to the other party (the lessees), and that without so much as consulting the Native owners, and even without their knowledge, much less with their concurrence and consent. If such an agreement were entered into it would be in the nature of a conspiracy between two parties to plunder a third, and it would not stand the test of scrutiny in any Court. In my opinion it would be a scandal for any Government to accept such a proposal or to make any such agreement. I understand the lease is for 30 years at a rental of 5 per cent on the then valuation. It will easily be seen therefore that the amount of compensation payable to the Natives would be very small, a good deal less probably than the lessees would be prepared to pay to acquire the freehold if they could legally do so.

Then the agreement goes on to provide that the land not required for scenery shall be valued by valuers practically appointed by the lessees (for the valuer appointed by the Minister has first to be approved of in writing by them), and offered first to the Native owners from whom it has just been taken, and then in turn to the adjoining owners, and if it is not taken at that valuation, it shall be put up at auction. It is clear that Mr Loughnan believes – as indeed is quite evident from a consideration of the circumstances – that the offering of the land at a valuation to the late Native owners and the adjoining owners would be a mere farce. By practically appointing both valuers the lessees could manage to have a value fixed which would make it quite certain that neither the Native owners nor the adjoining owners (who are all probably Natives) would accept the offer, and then it is to be put up to auction, the lessees agreeing to pay at least as much for it as the compensation to the Natives. It is quite clear that Mr Loughnan's scheme is for the lessees to acquire the freehold of a large block of land apparently containing valuable timber and deposits of coal which they could probably not acquire by contract from the Natives, and for all the Crown knows could not legally hold, under the sanction and cloak of the Crown, and at the small value at which a Native Land Court would probably assess the compensation due to the Native owners.

For the Crown to adopt the proposed agreement would be for it to lend itself to this scheme, for the consideration that it should take a small share of the plunder, and thus save itself some hundreds of pounds loss which it would have to pay to the lessees it if revoked the proclamation. Whatever the loss might otherwise be, I am of opinion that it would be both immoral and illegal for the Crown to lend itself to such a scheme.

There are several provisions in the agreement, such as that relating to the appointment of valuers and the non-liability for fire, which are in themselves distinctly illegal, but quite apart from that the whole scheme is, in my opinion,

tainted with fraud, and the whole agreement illegal. I therefore strongly advise that it be abandoned at once.

The Crown has three courses open to it, all of which are in my opinion perfectly valid:

(1) To let the proclamation stand, and take all the land, with a view to disposing of what is not required under the Land Act.
(2) To revoke the proclamation and pay the lessees' claim for loss caused by it, which in my opinion would not be very excessive.
(3) To revoke the Proclamation, and issue a new one taking only the land required for scenery, and to pay compensation for that as well as the compensation for loss caused by the proclamation to the lessees.[1233]

The Under Secretary for Lands informed the Public Works Department that: "Crown Law Office advises Mangoira agreement, Mokau River, quite illegal"[1234].

The Crown was back to considering revocation in whole (and retaking of the scenic reserves), or revocation in part of the Proclamation. The Land Purchase Officer had no strong view on this, while viewing both alternatives as likely to be costly for the Crown because of the additional compensation costs that had been identified during the consideration of the Loughnan proposal[1235]. This may have influenced the Under Secretary for Lands in recommending to the Minister in charge of Scenery Preservation in December 1912 to push ahead with the earlier intention of having compensation awarded for the taking of the whole block, after which 2523 acres would be available for settlement[1236]. The Minister gave his approval, and the Public Works Department was informed[1237]. Loughnan was told that his arrangement "would be contrary to law", and compensation "would be assessed in the ordinary manner", with any surplus area disposed of in accordance with Section 8 Scenery Preservation Act 1908[1238].

[1233] Assistant Law Officer to Under Secretary for Lands, 7 December 1912. Lands and Survey Head Office file 680. Supporting Papers #235-237.
[1234] Telegram Under Secretary for Lands to Land Purchase Officer Bold, 10 December 1912. Works and Development Head Office file 52/7. Supporting Papers #1495.
[1235] Telegram Land Purchase Officer Bold to Under Secretary for Lands, 10 December 1912. Works and Development Head Office file 52/7. Supporting Papers #1495.
[1236] Under Secretary for Lands to Minister in charge of Scenery Preservation, 11 December 1912, approved by Minister 13 December 1912. Lands and Survey Head Office file 680. Supporting Papers #238.
[1237] Under Secretary for Lands to Under Secretary for Public Works, 17 December 1912. Works and Development Head Office file 52/7. Supporting Papers #1496.
[1238] Under Secretary for Lands to CA Loughnan, Barrister and Solicitor, Palmerston North, 23 December 1912. Lands and Survey Head Office file 680. Supporting Papers #239.

With all preliminaries completed, the taking process now moved to the hearing of compensation cases by the Native Land Court. The hearing of the cases for the two papatupu blocks had actually been heard in October 1912, because those two blocks were ready for hearing even while the handling of the Mangoira taking was under consideration. Two valuers appeared for the Crown, and both valued Section 9 at £2-5-0d per acre and Section 12 at £3 per acre. Anaru Eketone appeared on behalf of the prospective owners. He offered no valuation evidence, but accepted that Section 9 was worth £2-5-0d per acre, while regarding Section 12 as worth £6 per acre. The Court reserved its decision[1239]. It was not until April 1913 that it gave its decision, awarding compensation of £211 for Section 9 (i.e. £2-5-0d per acre), and £228 for Section 12 (i.e. £3 per acre)[1240].

The hearing of the compensation case for Mangoira was held in June 1913. Prior to the hearing, the lessees had increased their claim for the lessees' interest to £3-5-0d per acre[1241]. A Crown Solicitor, rather than the Public Works Department's land purchase officer, conducted the case on behalf of the Crown. Because of the extensive valuation evidence, the hearing lasted one week[1242]. At the end of that time the Court (comprising two Land Court judges sitting together) reserved its decision. It would seem that the Court was able to decide relatively easily the total amount of compensation that should be awarded, but found it less easy to allocate the proportions to go to the Native owners and the European lessees[1243]. The Judges visited the block, accompanied by a surveyor, before issuing the Court's decision in August 1913. It awarded total compensation of £8,050, plus £650 interest to cover the period between taking in February 1912 and date of award. In the split between owners and lessees, the Maori owners were awarded £4290, while the European lessees were awarded £4410. Costs of nearly £295 were also awarded against the Crown[1244].

[1239] Maori Land Court minute book 55 OT 81-83. Supporting Papers #3656-3658.
[1240] Maori Land Court minute book 55 OT 264-265. Supporting Papers #3663-3664.
[1241] Loughnan and Jacobs, Barristers and Solicitors, Palmerston North, to Land Purchase Officer Bold, 15 April 1913. Works and Development Head Office file 52/7. Supporting Papers #1797-1798.
[1242] Maori Land Court minute book 8A APAD 73-190. Not included in Supporting Papers.
[1243] Presiding Judge MacCormick to Land Purchase Officer Bold, 18 July 1913. Works and Development Head Office file 52/7. Supporting Papers #1518.
[1244] Maori Land Court minute book 8A APAD 317-318. Copy on Lands and Survey Head Office file 680. Supporting Papers #240-243.

There was a brief examination by the Crown as to whether the award of costs should be challenged, but it was found that there was no legal provision in the Public Works Act for lodging an appeal of this nature[1245]. Commenting on the Court's award, the Under Secretary for Lands noted that it could be considered "satisfactory to the Government, seeing that the amount claimed was some £15,000"[1246].

Between 1913 and 1915, while the Crown was preparing for settlement the lands not required for scenic reserves, the area of the scenic reserves got whittled down still further from the 427 acres identified on survey plans in October 1912. The manner of this reduction in the area of the scenic reserves has not been examined for this report. In a notice published in September 1915, it was stated that just 365 acres 2 roods 16 perches of the Mangoira Block was being retained as scenic reserve, while 2571 acres 2 roods could be disposed of as Crown Land[1247]. The end result, therefore, was that only 12% of the block, compulsorily acquired from the Maori owners for scenic purposes in 1912, was actually used for the purpose for which it was taken.

13.4.2 Mokau River Scenic Reserve North Bank (Lands Taken in 1920)

After the takings on the north bank in 1912, there was still one block on that side of the river that was affected by the Crown's ambitions to acquire land for scenic reserve. This was Mangapapa B2.

Mangapapa B2 was a large block of 12,407 acres. It was primarily Maori Land leased to pakeha, although 400 shares (out of the 12,407 shares in the block) had been alienated. These 400 shares, equivalent to 400 acres worth of land, had not been separately defined on the ground. The Maori owners of the other 12,007 shares had entered into four separate leases, of different portions of the block, from 1893 onwards, each for terms of 60 years (including renewals). Prior to 1911, however, all four leases had passed into the hands of one European individual and had then been

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Order of the Court, 25 August 1913. Copy on Lands and Survey Head Office file 680. Supporting Papers #244-246.

[1245] Land Purchase Officer Bold to Assistant Under Secretary for Public Works, 26 August 1913. Works and Development Head Office file 52/7. Supporting Papers #1519.

[1246] Under Secretary for Lands to Minister in charge of Scenery Preservation, 29 August 1913. Lands and Survey Head Office file 680. Supporting Papers #247.

[1247] *New Zealand Gazette* 1915 page 3176. Supporting Papers #3997.

merged. In 1911 this European, who had been interested in the block because of the coal it contained, and who also owned the 400 alienated shares, sub-leased the whole block for the remainder of the leases' term (i.e. until 1953) to two brothers, Mason and Bernard Chambers, who intended to farm it. To do so, they had first to clear the bush on the property, and the sub-lease (of all rights except mines and minerals) granted them the right to do so[1248].

From the Crown's point of view, the party it had the greatest and most immediate requirement to deal with, if the scenic qualities of the block were to be preserved, was the sub-lessee, the Chambers brothers. The history of the taking of lands for scenic purposes from Mangapapa B2 is characterised by a complete absence of contact by the Crown with the Maori owners, and an almost complete absence of contact with the lessee (and owner of 400 shares). The lessee was the least affected, because he had passed across almost all his interests into the sub-lease. However, the Maori owners should not have been ignored by the Crown. While their interest in the block had, if rendered into land valuation financial terms, been diluted on account of the existence of a lease with 42 years to run as at 1911, and 33 years to run as at 1920, as owners they deserved greater respect from the Crown.

In May 1912 the local manager for the Chambers brothers requested two or three access ways through the proposed scenic reserves so that the farmed country behind the reserves would have access to the riverbank. He was advised that easements might be the appropriate type of provision, and asked to indicate on a plan where he wished the routes to be located[1249]. The plan was returned in July 1912, with an additional comment by one of the Chambers brothers:

> With regard to payment for the reserves, I do not know what you propose, but on our part we are willing to sell at Government price plus the cost of fencing of the reserves. This I think is a fair offer. If you had not taken the scenic reserves we should not have had any fencing to do on that side, because the river is quite a good boundary. No fencing could be done until the bush alongside of the reserves is felled and burnt.[1250]

[1248] Title Search of Mangapapa B2, attached to Chief Surveyor Auckland to Under Secretary for Lands, 29 June 1911. Lands and Survey Head Office file 4/985. Supporting Papers #687-700.
[1249] Note for file, 23 May 1912. Lands and Survey Head Office file 4/985. Supporting Papers #711.
[1250] M Chambers, Havelock North, to Under Secretary for Lands, 22 July 1912. Lands and Survey Head Office file 4/985. Supporting Papers #720-721.

They were told that, while it seemed possible to meet their request, it would first be necessary for the Inspector of Scenic Reserves to view the proposal on the ground. The Under Secretary for Lands' reply did not comment on the matter of compensation[1251].

The Crown's intentions to take further land for scenic reserves had been stalled in August 1912 by a Cabinet decision in relation to reserves on the south bank (see section of this evidence about the south bank). In seeking to revive the proposals, the Minister asked for a report about all the Mokau River reserve proposals, and this was provided by the Inspector of Scenic Reserves in January 1913. Of the north bank reserves still to be taken, he wrote:

> Recommendation No. 207 A
> Part of the Mangapapa B No.2 Block. Area 64 ac. 2 r. 16p.
> This reservation is about 23 miles from Mokau Heads, on the right bank of the river. It is very steep hillside, liable to slip if cleared. The chief timbers are tawhero, red beech, rata, etc. The soil is of a stiff clayed nature on sandstone. The lessees of the Mangapapa B No.2 Block (Messrs Chambers) do not object to this acquisition.
>
> Recommendation No. 207 B
> Part of the Mangapapa B No.2 Block. Area 224 ac. 2r. 32p.
> This reservation is 25 miles from the Mokau Heads, on the right bank of the Mokau River, just below the coal-mine. It is a mere succession of very steep spurs and deep gullies. The soil is of a stiff clayey nature overlying sandstone. The forest is principally tawhero, with red beech on spurs. The land is of little value for farming purposes, and if cleared would slip very badly. Messrs Chambers are not opposed to its reservation.
>
> Recommendation No. 210
> Part of the Mangapapa B No.2 Block. Area 46½ acres.
> This reservation is about 26 miles up the Mokau, on the right bank, about a mile above the coal-mine. It is a sharp bend of the river, and for the most part is a steep though not high spur. It is very well displayed to view from long straight reaches of the river above and below. The soil is of a stiff clayey nature overlying papa. The chief trees are tawhero, hinau, tawa, houhou, etc. The Messrs Chambers are not opposed to the acquisition of the reservation.[1252]

[1251] Under Secretary for Lands to M Chambers, Havelock North, 31 July 1912. Lands and Survey Head Office file 4/985. Supporting Papers #722.
[1252] Report on Reserves on Banks of the Mokau River, undated, attached to Inspector of Scenic Reserves to Under Secretary for Lands, 6 January 1913. Lands and Survey Head Office file 4/985. Supporting Papers #727-735.

This report indicates that by the beginning of 1913 three of the proposed reserves on Mangapapa B2 had been surveyed[1253]. The three blocks totalled some 335 acres. Although not stated in the report, more reserves were still to be surveyed further upstream. These were surveyed later that year[1254]. The surveys showed that a total area of 856 acres 0 roods 28 perches was sought for scenery preservation from the 12,407 acre block.

When the surveys were completed, the Government had still not given approval to take the lands, because of the heavy expense for the acquisition of the Mangapapa B2 lands and the lands for reserve on the south bank of the river. However, this delay was not a pressing problem from the Crown's point of view, because the sub-lessee of Mangapapa B2 had no objection to the reserves, and they were not under any threat of being cleared or damaged.

In June 1916 the Public Works Department was asked to negotiate with the sub-lessees about the price at which the sub-lessees' interest in the reserves could be acquired. Thirteen months later, when a reminder request was sent, the Land Purchase Officer advised that he had not been aware of the June 1916 request, so had done nothing. He added that because of a backlog of work, it would be "some considerable time before I could take up the matter"[1255]. This put the onus back on the Department of Lands and Survey to make some progress.

In January 1919 Lands and Survey advised the Public Works Department that the Commissioner of Crown Lands in Napier had made an approach to the sub-lessees.

> They informed me that the area held by them adjoining the Mokau River is about 12,400 acres under Maori lease, with over thirty years to run, at a rental on capital value of about £1 per acre. They paid £2 per acre for the goodwill of about 1200 acres, and £1 per acre goodwill for the balance, some seven years ago, and are quite willing to sell their interest at £1 per acre for the areas desired by the Crown for scenic purposes, and will accept either war bonds or debentures for the amount.

[1253] South Auckland plans SO 16817/1 and SO 16817/2. Supporting Papers #2386 and 2387.
[1254] South Auckland plan SO 16871/1. Supporting Papers #2388.
[1255] Land Purchase Officer Bold to Assistant Under Secretary for Public Works, 7 August 1917, on Under Secretary for Lands to Under Secretary for Public Works, 1 August 1917. Works and Development Head Office file 52/28. Supporting Papers #1557.

The Valuation Department had valued the sub-lessees' interest in the reserves at £1587 (i.e. an average of about £1-12-0 per acre), and the Maori lessors' interest at £350 (i.e. about 7/- per acre), so the offer from the sub-lessees was regarded as reasonable. The offer was considered to be encouraging enough to justify the acquisition of the Mangapapa B2 reserves being put before the Government for approval to take the land under Public Works Act[1256].

The Public Works Department advised that, in terms of the Public Works Act, the basis for the Valuation Department's valuation had been incorrect, and that there were additional factors to take into account, which would probably increase the amount of compensation that would have to be paid[1257]. As far as the sub-lessees' interest was concerned, of course, this would have made their offer to the Crown seem even more attractive.

The Minister in charge of Scenery Preservation was then asked to approve the acquisition of the Mangapapa B2 lands using the provisions of the Public Works Act rather than negotiating a purchase.

> The Valuer General has supplied particulars of the valuations recently made of the areas involved in the proposed scenic reserves…. The total area covered by the proposed reserves in the Messrs Chambers' property is 857½ acres, and … they have offered the leasehold interest in the same to the Crown at £1 per acre. As the matter of entering into agreements sufficient for the purposes of the Public Works Act 1908 would be a complicated matter in this case, I beg to recommend that the taking be completed under Sections 18 and 19 of the Public Works Act 1908. From the information at present available, I think that the original estimate of £2,000 required to cover compensation will not be exceeded.[1258]

The Minister gave his approval one month later[1259], and the Lands and Survey Department was able to advise the Public Works Department in April 1919 that

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[1256] Under Secretary for Lands to Under Secretary for Public Works, 15 January 1919. Works and Development Head Office file 52/28. Supporting Papers #1558-1563.
[1257] Under Secretary for Public Works to Under Secretary for Lands, 4 February 1919. Lands and Survey Head Office file 4/985. Supporting Papers #747-748.
[1258] Chief Officer to Minister in charge of Scenery Preservation, 14 February 1919, on Under Secretary for Public Works to Under Secretary for Lands, 4 February 1919. Lands and Survey Head Office file 4/985. Supporting Papers #747-748.
[1259] Approval of Minister in charge of Scenery Preservation, 16 March 1919, on Under Secretary for Public Works to Under Secretary for Lands, 4 February 1919. Lands and Survey Head Office file 4/985. Supporting Papers #747-748.

Government approval had been given to the taking of the Mangapapa B2 lands for scenic reserve[1260].

The following month a Notice of Intention to Take the land was published[1261]. When trying to comply with the requirement to serve this notice on the Maori owners of Mangapapa B2, the Public Works Department made a number of efforts. It first sought information about the owners from the District Land Registrar[1262], who replied that his records showed about 60 owners, plus succession orders, and no record of any addresses[1263]. It then tried the Native Land Court[1264], and was provided with a list of owners and successions, but only a few addresses[1265]. Next it contacted the Native Department.

> The Department is required by the Public Works Act to serve Notices upon the owners, many of whom are natives, and it will be impossible to strictly comply with the Act in this respect. It is therefore proposed to place a Notice printed in English and Maori on the various blocks of land to be taken, and in order that this may be done I shall be glad if you will kindly have the enclosed notice translated into Maori. The Notice should be headed "Mokau Scenic Reserve" (in Maori).[1266]

The Notice in English and Maori was printed on linen, for affixing to boards to be staked on to the riverbank.

When the Notices were printed, they were sent to the District Engineer in Stratford.

> Will you please cause a copy of the Notice to be served on each of the owners or other persons having any known interest in the land to be taken, and furnish me with a certificate setting forth the dates when, and names and addresses of the persons on whom service is made, and the name of the server in each case.
>
> As Mangapapa B2 Block is owned by a number of Natives, it will no doubt be impossible to serve a copy of the Notice on each of such Natives. It will therefore be sufficient if a copy is served on twelve of the most important

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[1260] Under Secretary for Lands to Under Secretary for Public Works, 1 April 1919. Works and Development Head Office file 52/28. Supporting Papers #1564.
[1261] *New Zealand Gazette* 1919 page 1602. Supporting Papers #4012.
[1262] Under Secretary for Public Works to District Land Registrar Auckland, 11 June 1919. Works and Development Head Office file 52/28. Supporting Papers #1565.
[1263] District Land Registrar Auckland to Under Secretary for Public Works, 14 June 1919. Works and Development Head Office file 52/28. Supporting Papers #1566.
[1264] Under Secretary for Public Works to Registrar Native Land Court Auckland, 19 June 1919. Works and Development Head Office file 52/28. Supporting Papers #1567.
[1265] Registrar Native Land Court Auckland to Under Secretary for Public Works, 29 July 1919. Works and Development Head Office file 52/28. Supporting Papers #1568-1571.
[1266] Under Secretary for Public Works to Under Secretary Native Department, 11 August 1919. Works and Development Head Office file 52/28. Supporting Papers #1572-1574.

> Native owners, and I enclose herewith a search furnished by the Registrar of the Waikato-Maniapoto District Native Land Court in Auckland, showing the Native owners, and also the names of successors to the deceased owners. You will notice that addresses of only certain of the Natives have been furnished, but I am informed by the Registrar that the addresses given are the only ones of which he has any record….
>
> I also enclose eight linen placards in English and Maori. Please have one of these posted up in some conspicuous place on each Block of land affected, and advise me when this has been done.
>
> Kindly give the matter early attention, as the period of forty days referred to in the Notice runs from the date of first publication in the newspaper, and arrangements for advertising are now being made.[1267]

The District Engineer replied that the linen placards had been put up on the riverbank at the beginning of November 1919[1268], and that notices had been served on 12 Maori owners living at Mokau, Mahoenui and Aria on various dates between mid October and mid November[1269]. The sub-lessees were not served notice until late January 1920[1270]. The length of time it took after the Notice of Intention was first signed in May 1919, and before the notice was served on the various parties, meant that the official 40-day period was not treated by the Department as having been complied with until March 1920. No objections were received, and the land was taken that month[1271].

Compensation arrangements were left in the hands of the Department of Lands and Survey, because the Public Works Department's Land Purchase Officer had too heavy an existing workload to be able to devote the time necessary to resolve Mokau River compensation matters[1272]. In March 1920 there was a discussion with one of the Chambers brothers about compensation for Mangapapa B2.

> Mr Chambers called today and discussed the question of compensation. He and his brother are quite prepared to come to terms with the Government

[1267] Under Secretary for Public Works to District Engineer Stratford, 18 September 1919. Works and Development Head Office file 52/28. Supporting Papers #1575-1576.
[1268] District Engineer Stratford to Under Secretary for Public Works, 13 November 1919. Works and Development Head Office file 52/28. Supporting Papers #1577.
[1269] District Engineer Stratford to Under Secretary for Public Works, 8 January 1920. Works and Development Head Office file 52/28. Supporting Papers #1578.
[1270] Acting Resident Engineer Napier to Under Secretary for Public Works, 5 February 1920. Works and Development Head Office file 52/28. Supporting Papers #1581.
[1271] *New Zealand Gazette* 1920 pages 881-882. Supporting Papers #4017-4018.
[1272] Under Secretary for Public Works to Under Secretary for Lands, 3 March 1920. Lands and Survey Head Office file 4/985. Supporting Papers #752-753.

> somewhat on the lines of the Government Valuation. He asked that an officer from this office should go to Napier with our plans and valuations to meet him there. He would have all his titles and papers ready, and a mutually satisfactory agreement could be entered into. He will write to you to this effect.[1273]

However, any discussions and agreements of this nature could not sidestep the legal requirement that compensation for the taking of Maori-owned land (for both the Maori owners and the European lessees) was a matter to be decided by the Native Land Court. An application was made to the Court in September 1920 for it to assess the amount of compensation that should be paid[1274].

At the Native Land Court hearing in September 1921[1275], the Crown was represented by a Crown Solicitor, and called evidence from the Valuation Department and from two private valuers. The lessee and sub-lessees were represented and called valuation evidence, but the Maori owners were not represented[1276]. The Court accepted a total award for the Mangapapa B2 reserves based on the Government roll valuation of £1107, to which interest would have to be added, and then asked for further submissions to help it decide how to divide this total among the owners, the lessees and the sub-lessees. The Crown was not required to provide any of these further submissions.

A decision and award was given in August 1922[1277]. The total award was increased by the addition of interest to £1200, which was divided among the Maori owners (£554), the lessee, who also owned 400 shares in the block (£130), and the sub-lessees (£516). The amount owed to the Maori owners was to be paid to the District Maori Land Board.

[1273] File note to Under Secretary for Lands, 13 March 1920, on Under Secretary for Public Works to Under Secretary for Lands, 3 March 1920. Lands and Survey Head Office file 4/985. Supporting Papers #752-753.
[1274] Under Secretary for Lands to Registrar Native Land Court Auckland, 14 September 1920. Lands and Survey Head Office file 4/985. Supporting Papers #754.
[1275] Maori Land Court minute books 62 OT 382 and 63 OT 2. Supporting Papers #3684 and 3685.
[1276] Crown Solicitor to Under Secretary for Lands, 29 September 1921. Lands and Survey Head Office file 4/985. Supporting Papers #757-760.
[1277] Maori Land Court minute book 63 OT 340-342. Supporting Papers #3686-3688.
Order of the Court, 16 August 1922. Lands and Survey Head Office file 4/985. Supporting Papers #763-764.

The figures discussed in the Native Land Court are substantially less than those referred to by Lands and Survey Department in January and February 1919. At that stage the Crown was talking about being prepared to pay up to £2000 for the reserves. However, the estimate of the amount to be paid to the Maori owners at that time was £350, so the Court's involvement had been beneficial for the owners.

In April 1922, before the Court had made its order, some of the owners of Mangapapa B2 wrote to the Lands and Survey Department to vent their anger about the delays in receiving payment for the lands that had been taken.

> The Maori Land Court should have no excuse for the delay of award dealing with these reserves. I am writing Registrar Auckland in regard to this matter, and should I fail to receive a reply we are thinking very seriously of falling and clearing a part of this land for the purpose of accommodating stock.[1278]

They were advised not to take matters into their own hands.

> I note that you are urging the Native Land Court to expedite its award, so that the compensation moneys may be duly paid over to the persons entitled thereto.
>
> I need scarcely point out that you would be very ill advised to damage in any way the bush on the scenic reserves referred to, as they are now permanently vested in the Crown and are subject to the provisions of the Scenery Preservation Act 1908. Under this act any person who wilfully damages the bush on scenic reserves is subject to very severe penalties, and I trust that you will realise the seriousness of the position and refrain from taking any steps which might place you within the reach of the law.
>
> I might state that in all cases of damage, the Department immediately takes action against the offenders and presses for the full penalty provided by statute.
>
> This letter is not sent in the spirit of a threat, but I feel it my duty to warn you that prosecution will follow any wilful damage to the bush on these reserves.
>
> I trust that the award of the Native Land Court as to compensation will not be very long in coming to hand, so that the Department may be in a position to make the payments in accordance therewith.[1279]

[1278] Toheroa Marohau and 4 Others, Mokau, to Under Secretary for Lands, 4 April 1922. Lands and Survey Head Office file 4/985. Supporting Papers #761.
[1279] Under Secretary for Lands to Toheroa Marohau and Others, Mokau, 5 April 1922. Lands and Survey Head Office file 4/985. Supporting Papers #762.

13.4.3 Mokau River Scenic Reserve South Bank (Lands Taken in 1920)

These takings form the bulk of the papers in the Crown's records, in part because of the complexity of the land titles. However, only one small part of the land that was taken on the south bank was Maori-owned. This evidence discusses the titles situation, and the taking from the Maori-owned block, but truncates the history of dealings by the Crown about the European-owned blocks between 1911 and 1922.

The initial block on the south bank of the Mokau River is the Mokau-Mohakatino Block, which had a tangled titles history during the nineteenth century that is the subject of separate evidence. This evidence takes as its starting point the state of the titles to the block as at 1911, just after the various dealings referred to in a special report to Parliament that year had been completed[1280].

Of the lands that the Crown was interested in, just one portion, Mokau-Mohakatino 1C, was Maori-owned and not leased. The remainder was nominally owned by Walter Harry Bowler, into whose name the land had been transferred by the Waikato-Maniapoto District Maori Land Board. Bowler had been placed on the title as the legal owner when the Public Trustee had declined to take on the task, but he had few residual rights and powers. His role was strictly limited to supervising the development of the block that was being carried out by various lessees. There were four different lessees of the land that the Crown was interested in. The most substantial of these, and the party which was almost (but not quite) the freehold owner of the block, was the Mokau Coal and Estates Company Limited, which had heavily mortgaged its lease, and subsequently went into liquidation in 1915. The other lessees were Isabella Tiffen, Alfred Cadman and Daniel Berry, and Andrew Kelly. With respect to these lessees, their leases were in fact sub-leases, the head lease being held by the Mokau Company, and when drawn up did not extend to the riverbank, instead excluding a strip 1½ chains (30 metres) wide. Over all the ownership and lease arrangements in connection with the Mokau Company's lease was a caveat placed on the titles by the Waikato-Maniapoto District Maori Land Board, which stated that the Board claimed an interest in the land, because it had established the trust arrangement involving Bowler and the lessee.

[1280] *Appendices to the Journals of the House of Representatives* (AJHR), 1911, I-3A. Not included in Supporting Papers.

The net effect of the titles situation for the leased lands on the south bank was that if the Crown were to enter into a purchase of land, or a compensation arrangement following taking under the Public Works Act, then it needed to obtain the signatures of the Board (as caveator), Bowler (as nominal owner), the lessee and the mortgagors.

A letter from Bowler indicates the minimal nature of his role. Bowler was a Government official, being a native land purchase officer, but the degree to which he was acting on behalf of the Crown in taking on the role he had for the Mokau-Mohakatino is unknown and has not been researched for this evidence[1281]. In 1920 a clerk in the Department of Lands and Survey Head Office wrote to Bowler on a personal basis inquiring about the status of the land.

> The bulk of the land on the southern bank of the river affected by the [taking] Proclamation is, I understand, vested in you by virtue of a deed of trust made when the Company took over the land.
>
> Up to the present time I have been unable to ascertain definitely whether the land is legally "native land" or whether it is ordinary freehold land…. I should be much obliged for any information you can give me.[1282]

The answer to this question would determine whether application for compensation would have to be made to the Native Land Court, or whether a compensation agreement could be worked out directly with the parties named on the titles.

Bowler replied:

> The Mokau Estate acquired by Lewis was transferred to me under a deed of trust, the idea being that, as the Public Trustee would not accept a trust subject to dictation by the Maori Land Board, someone should be placed in the position of dictating to a certain extent with a view to the enforcement of the limitation of area conditions, thus facilitating the early cutting-up of the estate.
>
> Without going into the legal position, I think you will find that the land is ordinary freehold land.
>
> My function was purely a restrictive one as against the company which afterwards purchased from Lewis. Apart from this, I have no interest in the land whatever.[1283]

[1281] It is probable that he had been chosen for the legal owner role because he was a past president of the Waikato-Maniapoto District Maori Land Board.

[1282] S Gambrill, Wellington, to WH Bowler, Auckland, 28 July 1920. Lands and Survey Head Office file 4/985 (Loose Papers). Supporting Papers #768.

Bowler's interpretation was upheld by the Registrar of the Native Land Court in 1920. When an application to determine compensation was lodged with respect to the Mokau Company's leasehold estate lands, the Registrar took the view that the application was invalid, as the fact that the land was stated in the title to be in Bowler's ownership meant that it had been alienated and no longer came within the definition of native land[1284].

Another gauge to help determine where the various rights to the land fell is to examine to whom the compensation money was eventually paid. In the case of the south bank lands under lease, none of it was paid to the former Maori owners, the District Maori Land Board, or Bowler. All of it went to the lessees, or to a mortgage-holder in the case of the Mokau Coal and Estates Company Limited's lease. This was after reasonably comprehensive efforts by the Crown to assess to whom the compensation should be paid.

Returning to the Crown's work in defining the scenic reserves on the south bank, the Scenery Preservation Board had made its broad-brush recommendation in 1911, and a firm of private surveyors (Sladden and Palmer), supervised by the Inspector of Scenic Reserves, interpreted that recommendation on the ground. Survey plans were completed over the period 1912-1913, as the work proceeded.

In June and July 1912, following receipt of the approval of the Minister in charge of Scenery Preservation[1285], requests were made to the Public Works Department to take the steps necessary under the Public Works Act to take those lands whose boundaries had by then been surveyed[1286]. In August 1912, however, Cabinet instructed that taking action be placed on hold. The Under Secretary for Lands was most concerned by this turn of events, and wrote to his Minister.

[1283] WH Bowler, Auckland, to S Gambrill, Wellington, 30 July 1920. Lands and Survey Head Office file 4/985 (Loose Papers). Supporting Papers #769.
[1284] Registrar Native Land Court Auckland to Under Secretary for Lands, 6 October 1920 and 17 November 1920. Lands and Survey Head Office file 4/985. Supporting Papers #755 and 756.
[1285] Under Secretary for Lands to Minister in charge of Scenery Preservation, 27 May 1912 and 19 June 1912. Lands and Survey Head Office file 4/985. Supporting Papers #712-715 and 716.
[1286] Under Secretary for Lands to Under Secretary for Public Works, 28 June 1912, 3 July 1912 and 22 July 1912. Lands and Survey Head Office file 4/985. Supporting Papers #717, 718 and 719.

> When the plans of surveys on the south side of the River were submitted by the surveyors, the question of proclaiming the surveyed areas was again submitted to the Government … and Ministerial authority obtained. The Public Works Department was then asked to take the necessary steps to secure the land, but Cabinet on the 10th instant instructed that no action was to be taken. I therefore deem it my duty to lay the whole of the facts before you prior to the proposed scenic reservation on the river coming to a standstill.
>
> The lands taken are the most picturesque and do not comprise the whole of the river frontage, but only such portions as appear (in the opinion of the Scenery Preservation Board and scenic experts) to be the areas most suitable for reservation. Every care has been taken to interfere as little as possible with the progress of settlement at the back, and plenty of access to the river has been provided….
>
> Personally, I can only say that the beauty of the scenery on the Mokau River is so unique and charming that I feel convinced an irreparable loss would be sustained by the Dominion if no scenic reserves are made along its banks, and, provided that there is no undue interference with settlement, I consider that a certain amount of the land along the river should be preserved in a state of Nature both for scenic purposes, and also to assist in maintaining the banks in a sound state, preventing their caving in at flood times; and should be pleased, if you so direct, to personally, or through the Surveyor General, examine each proposed reservation and certify that in my opinion it is desirable in the public interests that such should be made. This will ensure that no unnecessary reserves are made beyond an irreducible minimum sufficient to retain a certain proportion of the beautiful and fast vanishing characteristic scenery of the Mokau River.[1287]

The Minister did not immediately respond, and later called for further information, which was provided by the Under Secretary in November 1912.

> From my personal knowledge of the country, and from information supplied by Mr E Phillips Turner (Licensed Surveyor) Inspector of Scenic Reserves, who, in company with the Surveyor laying off the land for settlement along the river, inspected every area, and arranged as to the best boundaries, and the minimum area that should be taken, I can unhesitatingly say that if it is desired to maintain as far as practicable the banks of the river in a safe state to ensure the future navigation of the river, and to endeavour to preserve the best parts of the unique scenery of this locality, it is extremely desirable that the reserves shown on the accompanying lithograph should be at once taken.
> The total area that has been taken is about 450 acres. It is desired to take an additional 2,000 acres. Every endeavour has been made to meet the views of the owners of the land, who have been extremely sympathetic in the matter, and are quite satisfied that it is desirable to make adequate scenic reservations along the river.

[1287] Under Secretary for Lands to Minister in charge of Scenery Preservation, 28 August 1912. Lands and Survey Head Office file 4/985. Supporting Papers #723-724.

> The only outstanding feature is the amount of compensation that will be payable. This can only be arrived at at a sitting of the Native Land Court after the land has been taken, when any further adjustments as to necessary rights of way and easements can be agreed to.
>
> I may add that should the areas that have been already surveyed for reservation not be secured at the present time, I think the Government in the future will deeply regret that the chance should have been lost.[1288]

The Minister then asked for "definite recommendations with regard to each area proposed to be taken"[1289]. The Inspector of Scenic Reserves provided a lengthy report in January 1913. He referred first to the Mokau River area in general terms.

> Though the reservations on the banks of the Mokau River are called Scenery Reserves, they are also of great value for the protection of the banks of the river. Already sea-going steamers get up as far as the coal-mine (about 26 miles from the Heads) and as the district advances there will be a considerable launch traffic on the river. Such being the case it is then advisable that the forest growth on the banks of the river should be maintained in order to preserve them from erosion, and to prevent the liability of the river being choked by logs. In this district there is a scarcity of good road making material, and a navigable river is a feature of great economic importance.
>
> Most of the land that has been taken is very steep hilly country and would not be of much value for farming purposes. The reservations have all been made so as not to interfere with access to the rear lands.
>
> As regards the scenery value of the reservations, there can be no question, and many of those who have been up this river consider it surpasses the Wanganui in beauty. A very large area of native land up this river has been sold or leased to Europeans, and already on the north side large areas have been felled; and it is safe to say that within a few years the proposed reservations will be the only native forest left standing.

The Inspector then moved on to consider the individual reserves, using the same numbering as the Scenery Preservation Board had used for its recommendations in 1911.

> Recommendation 214A
> Part of the Mokau-Mohakatino No.1F Block. Area 53¾ acres.
> This reservation is about 3½ miles from Mokau Heads, and on the left bank of the river. The country is steep and hilly. The soil is of a clayey nature overlying sandstone. The chief timbers are tawhero, rata, houhou, hinau and

[1288] Under Secretary for Lands to Minister in charge of Scenery Preservation, 14 November 1912. Lands and Survey Head Office file 4/985. Supporting Papers #725-726.
[1289] File note by Minister in charge of Scenery Preservation, 13 December 1912, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 14 November 1912. Lands and Survey Head Office file 4/985. Supporting Papers #725-726.

tawa. Being in the bottom of a U-shaped bend, this reserve affords a beautiful display of bush both going up and down the river.

Recommendation 214B
Part of the Mokau-Mohakatino No.1F Block. Area 41 acres.
This reservation is on the left bank of the river and about five and a half miles from the Mokau Heads. The soil is of a stiff clayey nature; most of the reserve is hillside, but there is a narrow terrace near the river. The chief timbers are tawhero, rata, hinau, houhou and tawa, etc.

Recommendation 214C
Part of the Mokau-Mohakatino No.1F Block. Area 27ac 0r 16p.
This reservation is on the left bank of the river about seven miles from the Mokau Heads. The land is mostly hilly, but there is a narrow terrace near the river. The soil is of a stiff clayey nature overlying papa. The chief timbers are tawhero, rata, houhou, tawa, etc.

Recommendation 214D
Part of the Mokau-Mohakatino No.1F Block. Area 548 acres.
This reserve stretches from a point about 7 miles from Mokau Heads to about 8½ miles therefrom, on the left bank of the river. The greater part of the land is of a very broken character, but there is an easy but narrow strip along the river banks. The soil is of a clayey nature and overlies papa and sandstone. The chief timbers are tawhero, rata, red beech, houhou, hinau, tawa, etc. From the scenery point of view this is a very picturesque bit of country.

Recommendation 214E
Part of the Mokau-Mohakatino No.1F Block. Area 45¼ acres.
This reserve is a narrow strip extending along the left bank of the Mokau from 12¾ miles to 14 miles from the Heads. It is good easy country, but has been cut out on account of its beauty and value as a protection for the soft banks. The chief trees are tawhero, tawa, pukatea, mahoe, etc.

Recommendation 214F
Part of the Mokau-Mohakatino No.1F Block. Area 33¼ acres.
This reservation is on the left bank of the Mokau River, and starts at about fifteen miles and extends to about sixteen miles from the Heads. The land is a narrow strip of terrace along the river. Besides its scenic value, the reserve is valuable to preserve the banks from erosion.

Recommendation 214G
Part of the Mokau-Mohakatino 1F Block. Area 202 acres.
This reservation is on the left bank of the Mokau at about nineteen miles from the Heads. It is a very steep piece of country and of low value for farming purposes. The soil is a stiff clay overlying sandstone. The chief trees are tawhero, rata, houhou, tawa.

Recommendation 214H
Part of the Mokau-Mohakatino No.1F Block. Area 328 acres.

This reservation is on the left bank of the Mokau and extends from a point 21 to a point 22 miles from the Heads. The country is very steep, the back-line being on the top of a high cliff. Limestone was once got out from this land, but the workings were abandoned as being profitless. The soil is of a clayey nature on sandstone and shell-rock. The chief timbers are tawhero, rata, houhou, red beech, hinau, tawa, etc. The reserve is a fine piece of scenery.

Recommendation 214J
Part of the Mokau-Mohakatino No.1F Block. Area 600 acres.
This reserve is on the left bank of the Mokau River and extends from a point about 22 miles to a point 26½ miles from the Heads. With the exception of two narrow and quite small isolated terraces it is all very steep and broken country rising about a thousand feet in about half a mile from the river. The soil is of a stiff clayey nature, overlying sandstone. The chief timbers are tawhero, red beech, houhou, rata, tawa, etc. This reserve would have very small farming value.

Recommendation 214K
Part of the Mokau-Mohakatino No.1F Block. Area 159 acres.
This reserve is on the left bank of the Mokau River and about 27 miles from the Heads. Nearly the whole of the area is very steep and broken country. The soil is of a stiff clayey nature overlying sandstone. The chief timbers are tawhero, red beech, houhou, rata, tawa, etc. This reserve would have very small value for farming purposes.[1290]

The Inspector's report shows that the surveys of the reserves had only extended as far as about 27 miles up the river, approximately near the coal mine's loading wharf. Above there were four further areas with a combined estimated area of 948 acres, which had not yet been surveyed[1291]. The plans for these areas were drawn up during 1913.

Armed with this report, the Under Secretary for Lands saw the Prime Minister, who wanted to know what financial commitment the Crown would be entering into if it took all the proposed reserves[1292]. The Inspector of Scenic Reserves consulted with

[1290] Report on Reserves on Banks of Mokau River, undated, attached to Inspector of Scenic Reserves to Under Secretary for Lands, 6 January 1913. Lands and Survey Head Office file 4/985. Supporting Papers #727-735.
[1291] Under Secretary for Lands to Minister of Lands, 1 March 1913. Lands and Survey Head Office file 4/985. Supporting Papers #736-737.
[1292] File note by Under Secretary for Lands 9 January 1913, on Inspector of Scenic Reserves to Under Secretary for Lands, 6 January 1913. Lands and Survey Head Office file 4/985. Supporting Papers #727-735.

the Public Works Department's Land Purchase Officer, and came up with an estimate of an average of £1-15-0 per acre, or a total of £4153 for the 2373 acres[1293].

Throughout 1913 and 1914 the Government declined to make a decision about whether to proceed with taking the proposed reserves. The cost was clearly of concern. During 1913 an alternative of an exchange of land with the Mokau Company was explored, but eventually found not to suit the Crown's needs. Cabinet approval to resurrect the proposal was given in January 1915, but this was on the basis that the Mokau Company would be paid for its land in wartime debentures. The negotiations then lost momentum when the Company sought additional access points from the river to its lands at the rear of the proposed reserves, the Crown agreed to this, and further survey of the revised reserve boundaries was required.

In 1919 approval was given, at two separate Cabinet meetings, for the taking of land on the south bank of the river. At one meeting, the approval was for the lands of the Mokau Company, while at a second meeting the approval was for the three other leased blocks and the Maori-owned land[1294]. The Public Works Department was immediately advised[1295]. A Notice of Intention to Take the lands was issued in May 1919[1296]. This was the same Notice as for the north bank reserves to be taken from the Mangapapa B2 block, and the same comments apply as for the north bank takings with respect to the serving of the notice on interested parties. There was a difference, however, in connection with the Maori-owned land on the south bank; because the title to Mokau-Mohakatino 1C2 was not registered in the Land Registry (being only recorded on the Provisional Register) there was no requirement under the Public Works Act to serve notice on the owners of that block[1297], even though they could have been identified in the same manner as the owners of Mangapapa B2 were, by obtaining the details from the Native Land Court.

[1293] File note by Inspector of Scenic Reserves, 14 January 1913, on Inspector of Scenic Reserves to Under Secretary for Lands, 6 January 1913. Lands and Survey Head Office file 4/985. Supporting Papers #727-735.
[1294] Under Secretary for Lands to Minister in charge of Scenery Preservation, 14 April 1919, approved by Cabinet 24 April 1919. Lands and Survey Head Office file 4/985. Supporting Papers #750.
[1295] Under Secretary for Lands to Under Secretary for Public Works, 1 April 1919 and 5 May 1919. Lands and Survey Head Office file 4/985. Supporting Papers #749 and 751.
[1296] *New Zealand Gazette* 1919 page 1602. Supporting Papers #4012.
[1297] Under Secretary for Public Works to District Engineer Stratford, 18 September 1919. Works and Development Head Office file 52/28. Supporting Papers #1575-1576.

The European parties with interests in the land on the south bank were served notice in January and February 1920[1298]. There were no objections, and the south bank lands were taken in March 1920[1299]. In terms of the areas referred to in the Proclamation, the lands taken on the south bank of the river were as follows:

[1298] District Engineer Stratford to Under Secretary for Public Works, 4 February 1920, Acting Resident Engineer Napier to Under Secretary for Public Works, 5 February 1920, and District Engineer Stratford to Under Secretary for Public Works, 1 March 1920. Works and Development Head Office file 52/28. Supporting Papers #1579-1580, 1581 and 1582-1586.
[1299] *New Zealand Gazette* 1920 pages 881-882. Supporting Papers #4017-4018.

Table 13.3 Lands Taken for Scenic Purposes on South Bank of Mokau River

Leased / Owned By	Block	Area (ac-r-p)	Plan Number[1300]
Mokau Coal and Estates Company Limited (in liquidation) (lessee)	Mokau-Mohakatino 1F	327-0-00	SO 4085
	Mokau-Mohakatino 1F	41-0-00	SO 4085
	Mokau-Mohakatino 1F	53-3-00	SO 4085
	Mokau-Mohakatino 1F	53-3-00	SO 4127
	Mokau-Mohakatino 1F	0-2-00	SO 4234
	Mokau-Mohakatino 1F	10-1-00	SO 4234
	Mokau-Mohakatino 1F	1-1-00	SO 4234
	Mokau-Mohakatino 1F	42-0-00	SO 4234
	Mokau-Mohakatino 1F	26-0-00	SO 4234
	Mokau-Mohakatino 1F	134-2-00	SO 4099
	Mokau-Mohakatino 1F	593-0-00	SO 4099
	Mokau-Mohakatino 1F	1-2-00	SO 4099
	Mokau-Mohakatino 1G	425-0-00	SO 4379
	Mokau-Mohakatino 1G & 1H	212-0-00	SO 4378
	Mokau-Mohakatino 1H	221-0-00	SO 4266
	Mokau-Mohakatino 1H	322-0-00	SO 4266
	Total	2464-2-00	
AJ Cadman & D Berry (lessees)	Mokau-Mohakatino 1F	3-2-00	SO 4099
	Mokau-Mohakatino 1F	22-0-00	SO 4034
	Mokau-Mohakatino 1F	208-0-20	SO 4234
	Mokau-Mohakatino 1F	19-0-20	SO 4234
	Mokau-Mohakatino 1F	2-3-00	SO 4234
	Total	255-2-00	
A Kelly (lessee)	Mokau-Mohakatino 1F Sub 13	148-1-00	SO 4127
I Tiffin (lessee)	Mokau-Mohakatino 1F Sub 9	221-0-00	SO 4085
Maori (owners)	Mokau-Mohakatino 1C2	178-1-14	SO 4320
	Overall Total	3267-2-14	

Source: Taranaki SO Plans and *New Zealand Gazette* 1920 pages 881-882.

The Maori-owned land had been known as Mokau-Mohakatino 1C when it was first surveyed in 1912, and the survey had defined an area of 272 acres (out of the block area of 615 acres) as proposed to be taken for scenic reserve[1301]. In July 1913,

[1300] All plans are Taranaki SO plans. Supporting Papers #2442-2449.
[1301] Chief Surveyor New Plymouth to Under Secretary for Lands, 9 January 1913. Lands and Survey Head Office file 4/985. Supporting Papers #738-739.

however, the Chief Surveyor advised that in drawing up the survey plan, the existence of a partition order for this block had been overlooked. This partition order was an award to the Crown of 93 acres 2 roods 26 perches in satisfaction of a survey lien.

> We were instructed on the 18/5/11 … that lands set apart in the Mokau-Mohakatino Block in satisfaction of liens, which had not been surveyed, were to be foregone, but I do not think this was meant to apply to the No.1C Block.
>
> I therefore propose to ask the Native Land Court to agree to an amendment to the Crown Order so as to have the Crown award within the proposed scenic area, and thus leave access to the Native Land at the back which was cut out for that purpose by the Scenery Inspector….
>
> The Mokau River is the legal access to the lands in question, as the Clifton County Council under Section 10 of the Public Works Amendment Act 1911 has by resolution agreed thereto.[1302]

The Court agreed to the relocation of the Crown's acreage in the block in July 1915, and the survey plan was amended to show that 93 acres 2 roods 26 perches of the 272 acres proposed for scenic reserve would be the Crown's Mokau-Mohakatino 1C1 block, while the remaining 178 acres 1 rood 14 perches would come out of the Maori-owned Mokau-Mohakatino 1C2 block[1303].

The only area on the south bank for which compensation had to be assessed by the Native Land Court was Mokau-Mohakatino 1C2. In August 1922 the Court fixed the compensation at £280, based on the Government Valuation of £267 (i.e. £1-10-0d per acre) and interest of £13[1304].

13.5 Mangaotaki Gorge Scenic Reserve

Mangaotaki Gorge (Recommendation 80) is adjacent to State Highway 3. The Commissioners' interest in this land would have been prompted by its location beside the road, but also possibly by threats to the scenic character of the area from the

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[1302] Chief Surveyor New Plymouth to Under Secretary for Lands, 23 July 1913 and 15 April 1914. Lands and Survey Head Office file 4/985. Supporting Papers #740-742 and 743-744.

[1303] Chief Surveyor New Plymouth to Under Secretary for Lands, 23 March 1916. Lands and Survey Head Office file 4/985. Supporting Papers #745.
Taranaki plan SO 4320. Supporting Papers #2447.

[1304] Maori Land Court minute book 63 OT 340-342. Supporting Papers #3686-3688.
Crown Solicitor to Under Secretary for Lands, 29 September 1921. Lands and Survey Head Office file 4/985. Supporting Papers #757-760.
Order of the Court, 16 August 1922. Lands and Survey Head Office file 4/985. Supporting Papers #765.

felling of native vegetation. In June 1904 the Chairman of the Commissioners had written to George Wilkinson, Government Native Agent at Otorohanga.

> We would also like to secure a strip, say 10 chains or so wide, all the way along the Manga-o-Taki gorge, from the northern boundary of Te Karu-o-te-whenua to the Mokau River. Do you know of any difficulty? I understand Julian has some kind of lease of part of it, but no doubt he could be bought out.[1305]

Wilkinson replied:

> None of the land taking in any part of the Manga-o-taki gorge has been transferred to the Maori Council. The restrictions against private dealings with Karu-o-te-whenua B No.2 No.5 (about 2640 acres) have been removed by Order in Council to enable leases of same to take place, to Mr Alfred Julian of Te Kuiti of 931 acres, and to Mr NA Robinson of 1800 acres. Julian is in occupation of his portion, and has cut some timber. He is willing to treat for the scenery portion. I think you should get into communication with him without delay…. I understand he is only staying further clearing operations until he hears from you as to what you want. I do not think you will find him unreasonable.[1306]

Events between 1904 and 1907 have not been researched. In May 1907 155 acres was taken for scenery preservation[1307]. However, this Proclamation was found to have an incorrect description of the land, and was replaced by a further Proclamation in January 1908[1308].

13.6 Marokopa Valley Scenic Reserves

The first Government interest in the scenic features along the Marokopa[1309] River was in May 1904, when the Minister in charge of the Tourist and Health Resorts Department wrote to the Chairman of the Scenery Preservation Commission shortly after the Commission had been appointed.

[1305] Chairman Scenery Preservation Commission to Government Native Agent Otorohanga, 27 June 1904. Lands and Survey Head Office file 4/985 (Loose Papers). Supporting Papers #766-767.
[1306] Government Native Agent Otorohanga to Chairman Scenery Preservation Commission, 29 June 1904, on Chairman Scenery Preservation Commission to Government Native Agent Otorohanga, 27 June 1904. Lands and Survey Head Office file 4/985 (Loose Papers). Supporting Papers #766-767.
[1307] *New Zealand Gazette* 1907 page 1657. Supporting Papers #3932.
South Auckland plan SO 14036. Supporting Papers #2344.
[1308] *New Zealand Gazette* 1908 pages 356-357. Supporting Papers #3933-3934.
[1309] Some early reports use the spelling Marakopa, while others use Marokopa. The spelling Marokopa has been adopted for this evidence, although Marakopa is used when reports are being quoted that use that spelling.

> I wish to bring under your notice the desirability of preserving the native forest on the banks of the Marakopa River, King Country, about 12 miles south of Kawhia Harbour.
>
> It is reported to me that this river runs through a deep and very picturesque limestone gorge with high bluffs topped by beautiful bush, and that at present native birds are plentiful in the locality.
>
> I understand there are limestone caves known as Piripiri, said to be much larger than the Waitomo Caves, on the banks of the river. It is very desirable that these caves should be preserved.[1310]

There was no immediate response from the Commission (presumably because it was busy in other parts of the country) until one of the Scenery Preservation Commissioners visited the district in March 1906. He wrote:

> Proceeded to Marakopa River to inspect falls, caves, and Native Reserve at junction of Marakopa and Manga-o-hine Rivers. The caves are of little importance. There are two fairly well stalactited caves, especially on the roof, but the vandal has injured them. The caves are very dirty and the best chamber is difficult of access, visitors having to crawl on hands and knees over dirty rocks to see it. They are about 2½ chains in length, are high open chambers, and are not in any way attractive.
>
> The two falls of the Marakopa are situated about 15 chains down river from the caves. They are very fine and being on Crown land, near to the newly surveyed road, they need not be reserved.
>
> The magnificent slope clad in forest situated at the junction of the Marakopa and Manga-o-hine Rivers should be urgently reserved. It is quite equal to any portion of the Wanganui River. The land south of this N.R. is now cleared. An area half a mile long, and extending from the river to the high range, would probably suffice.[1311]

When the responsibility for scenery preservation was passed from the Tourist and Health Resorts Department to the Department of Lands and Survey in March 1906, the Tourist Department also handed over all its correspondence on the subject. Part of this was the Minister's letter to the Chairman of the Scenery Preservation Commission. This resulted in the Commissioner of Crown Lands in Auckland being asked for a report and recommendations.

[1310] Minister in charge of Tourist and Health Resorts Department to Chairman Scenery Preservation Commission, 2 May 1904, attached to Acting Superintendent Tourist and Health Resorts to Under Secretary for Lands, 28 May 1906. Lands and Survey Head Office file 159. Supporting Papers #136-137.

[1311] Notes of Visit, 6 March 1906. Lands and Survey Head Office file 159. Supporting Papers #135.

> The caves referred to are, I understand, on Crown land (area of block 200 acres) on the S.E. boundary line of Section 3 Block X Kawhia South S.D.; the falls are apparently close to the Stock Reserve immediately north of Section 7; and the forest is the north portion of "6640, No.4 Kinohaku West Block (Marakopa)", as shown on Kawhia County lithograph, sheet 1….
>
> If it is considered advisable to acquire any of the native land, this could be done through the president of the Maniapoto-Tuwharetoa Maori Land Council, whom you might consult on the subject.[1312]

The report was provided in July 1906, and recommended a number of reserves. The caves were on Crown leasehold land (Section 4 Block X Kawhia South SD), leased to a settler named Armitage, rather than unoccupied Crown Land.

> Four or five acres [of reserve] should cover these [caves]. Mr Armitage is preserving these as much as possible. A reserve of 5 chains on both sides of the river above and below the Falls should be enough to preserve these, while at [Ngahuinga Bluffs] it would take from 10 to 20 chains to preserve bush above limestone bluffs, say 50 acres in all.
>
> I would strongly advise a reserve of 10 or 15 acres being made at [Mangapohue River]. This is a natural bridge 80 feet in height in two arches composed of solid limestone with rata etc growing above. I consider this is the most picturesque spot in the district. This is a boundary between Taumatatotara Block and L No.2B Block XI Kawhia South.
>
> There are some more caves that should be kept in mind if the Taumatatotara Block is cut up by the Government; these are [further] up the Marokopa River.[1313]

Following up the Ranger's report, the Chief Surveyor in Auckland approached the President of the local Maori Land Council.

> [I] asked him if he would consult the Natives interested and make arrangement for acquiring these reserves. As these proposed reserves will require survey, it will be better to wait until the matter is arranged with the Natives and then the whole of them, together with roads of access, could be surveyed at the same time.[1314]

The ranger's report was considered by the Auckland Scenery Preservation Board at a meeting in January 1907, and three reserves were recommended.

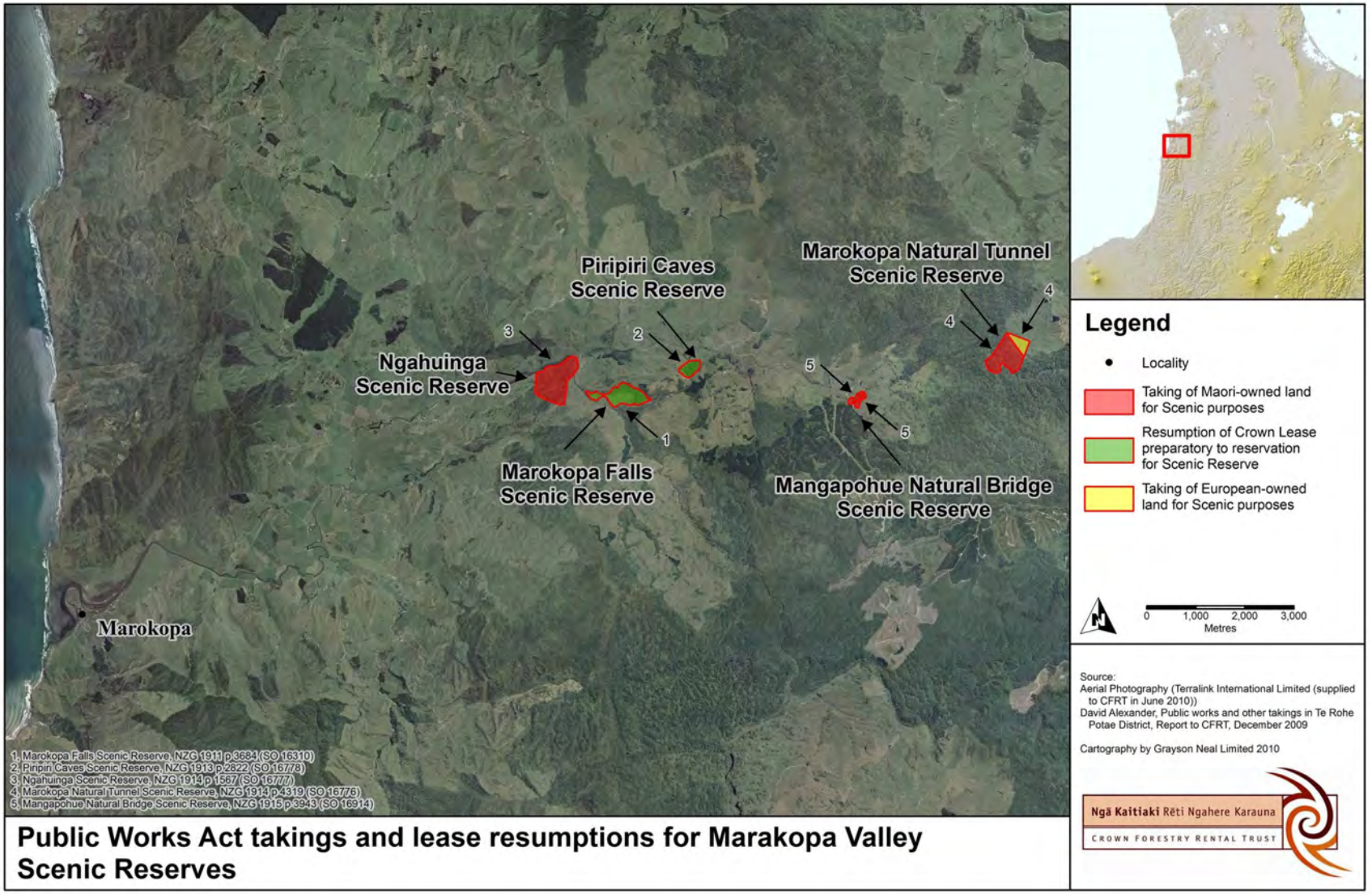
[1312] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 30 May 1906. Lands and Survey Head Office file 159. Supporting Papers #137A.
[1313] Crown Lands Ranger Mountford to Chief Surveyor Auckland, 17 July 1906, attached to Chief Surveyor Auckland to Under Secretary for Lands, 28 July 1906. Lands and Survey Head Office file 159. Supporting Papers #138-140.
[1314] Chief Surveyor Auckland to Under Secretary for Lands, 28 July 1906. Lands and Survey Head Office file 159. Supporting Papers #138-140.

Recommendation No.2
Section 4 Block X Kawhia South SD (5 acres) – Recommended that an area of about five acres be resumed out of the Lease in Perpetuity held by Mr L Armitage, and reserved for scenic purposes.

Sections 4 and 7 of same Block – Recommended that an area of about 5 chains in width on both sides of the [Marakopa] River, above and below the waterfalls on the boundary of these sections, be reserved for scenic purposes.

Kinohaku West No.4 block (Marakopa) (50 acres) – Recommended that a strip of land from 10 to 20 chains in width along the bank of the Marokopa River, at the extreme north of the block, adjoining the Ngahuinga Bluff, be reserved for scenic purposes.[1315]

[1315] Resolution of Auckland Scenery Preservation Board, 16 January 1907. Lands and Survey Head Office file 159. Supporting Papers #141.



Map 19 Public Works Act takings and lease resumptions for Marakopa Valley Scenic Reserves

A note in the margin of the resolution, added in September 1907, stated:

> Before dealing with [the proposed Ngahuinga Bluff reserve], consult Mr Moerua, Chairman of the Maniapoto Maori Council, Te Kumi, who has an interest in the land, and interviewed Mr Kensington [Under Secretary for Lands] in company with Mr Ormsby.[1316]

The Commissioner of Crown Lands was instructed to survey the proposed reserves on Crown-owned land[1317], but was given no instructions about the Maori-owned land at Ngahuinga Bluff and Mangapohue Natural Bridge. This presumably was because the Scenery Preservation Act 1906 did not have provision for acquiring Maori-owned land. There was, however, no progress with any of the proposed recommendations, on either Crown or Maori owned land, over the next four years.

In March 1908 a further scenic attraction in the Marokopa Valley was brought to the attention of the Lands and Survey Department. This was the Marokopa Natural Tunnel. The local Road Engineer reported:

> Last week I visited the tunnel mentioned by Mr SH Carr and found that it is situated on a branch of the Marokopa River about three miles from Te Kuipu and 3½ from the Mangapohue Road. The tunnel itself is about 13 chains long, and from 40 to 60 feet high, and is wide enough for two vehicles to travel side by side. It runs through a big hill in the heart of the bush, and at least 100 acres should be reserved round it so that the beauty of the whole cannot be destroyed in the future. Near the commencement of the proposed track to the tunnel is a natural bridge over the Mangapohue Stream, and about three miles down the beautiful Marokopa Falls are situated close to the Mangapohue Road.[1318]

This recommendation was accepted by the Auckland Scenery Preservation Board at its meeting in October 1908.

> Recommendation No.81

[1316] File note, 30 September 1907, on Resolution of Auckland Scenery Preservation Board, 16 January 1907. Lands and Survey Head Office file 159. Supporting Papers #141.
[1317] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 28 January 1907. Lands and Survey Head Office file 159. Supporting Papers #142.
[1318] District Road Engineer Te Kuiti to Chief Engineer of Roads, 13 March 1908, attached to General Manager Tourist and Health Resorts to Under Secretary for Lands, 25 March 1908. Lands and Survey Head Office file 156. Supporting Papers #93-94.

> Resolved that an area of about 100 acres around the tunnel in Block XI Kawhia South S.D., part of the Taumatatotara Block, … be acquired and reserved for scenic purposes.[1319]

As with the other proposed reserves in the valley, the Commissioner of Crown Lands was instructed to survey the area at the Natural Tunnel[1320], but no progress was made during the next two years.

In 1910 there was an attempt to revive the proposals for the various reserves in response to information provided by the local roading officer that bush was being felled in the valley. He wrote:

> Along the route of the [Mangapohue Road] there are four or five beautiful bits of scenery, namely the natural tunnel, which is about 3 miles off the road and around which 100 acres reserve should be made; the Natural Bridge over the Mangapohue Stream; the Piripiri Caves; and the upper and lower Marokopa Falls. I hear that the Maoris are now falling the bush round the natural bridge, and if this is done it will spoil the effect of the whole thing.
>
> The Hon Mr Carroll should be requested to wire Jimmy Whitenui at Te Kuiti and request him to cease operations, otherwise the whole thing will be ruined if once the bush is felled. Some years ago I reported on these beauty spots and sent a book of photos to the Tourist Department in order that the Hon Minister might see the necessity of having reserves made at once, but up to the present nothing has been done.[1321]

It was not until April 1911 that the matter was reviewed by the Auckland Scenery Preservation Board. This was after the Scenery Preservation Amendment Act 1910 had been passed, and legal provision had been made to allow the taking of Maori-owned land for scenic purposes. For the meeting the Inspector of Scenic Reserves prepared a short report.

> The Marakopa Valley is a locality of very great scenic attraction, and when the communication is improved many tourists are sure to resort there. At present the best way to get there is to take a launch from Kawhia to Kinohaku Inlet, and then ride 15 miles by a road (which in winter is a continuous quagmire) to Marakopa. In summer this road would be in good order. There is also a road from Waitomo, and when this is improved it will be the best means of access. The tourist will then be able to leave the train at Hangatiki, drive to Waitomo

[1319] Resolution of Auckland Scenery Preservation Board, 1 October 1908. Lands and Survey Head Office file 156. Supporting Papers #95.
[1320] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 3 October 1908. Lands and Survey Head Office file 156. Supporting Papers #96.
[1321] Assistant Road Engineer Hamilton to District Engineer Auckland, 11 July 1910, attached to Assistant Under Secretary for Public Works to Under Secretary for Lands, 16 July 1910. Lands and Survey Head Office file 156. Supporting Papers #97-99.

> Caves, from there to Marakopa Valley, from there to Kawhia, and from there to Te Awamutu Railway Station. In addition to the beautiful sights, there is very good trout fishing in the Marakopa Stream. There is not, however, a regular accommodation house there, and visitors have to put up at Wratten's (a settler, who is not always at home).
>
> The Natural Bridge and the Natural Tunnel are both wonderful and beautiful features, and in their way unique. The Piripiri Caves, though less extensive (as far as they are yet explored) than Waitomo, are not much inferior in interest. The Marakopa Falls are a remarkably fine sight, and the towering wooded bluffs are very imposing.
>
> There are already the trout in the Marakopa, and when the river is better stocked it will be a resort for anglers as well as sightseers.
>
> The Maoris have already felled a good deal of the bush around the Natural Bridge, and Mr Carrol is shortly starting the survey of the Taumatatotara subdivisions so that the block may be leased. While here (if it could be arranged) it would be as well if Mr Carrol could survey off the proposed reservations at the Natural Tunnel, Natural Bridge, and the Piripiri Caves, as the European lessees are not likely to respect their beauty.[1322]

At its meeting the Board confirmed and amended the recommendations made in 1907 for Ngahuinga Bluff and Marokopa Falls, and in 1908 for the Natural Tunnel. It also passed additional resolutions about the Natural Bridge and Piripiri Caves.

> Recommendation No.16 (formerly Recommendation No.2 [of 1907])
> Ngahuinga Bluff. Part of the Kinohaku West No.4 Block in Block X Kawhia South SD.
> This is a very fine wooded bluff overhanging the Marokopa River on the southern side; it is altogether too rocky and rough to be of value for farming purposes, and its acquisition would be most advisable to ensure the preservation of a very grand sight. It would be advisable to take from the eastern boundary of Section 4 Block IX Kawhia South SD, to a point about 70 chains up the river, with a width of about 20 chains, to ensure the inclusion of the top of the Bluff. The area would be about 140 acres.
>
> Recommendation No.17 (formerly Recommendation No.2 [of 1907])
> Marokopa Falls. Parts of Sections 4 and 7 of Block X Kawhia South SD.
> About 28 chains above the junction of the Marakopa and Tawarau Rivers are the magnificent Kaikai Falls; and above this again extending about 20 chains up the Marakopa River are very fine cataracts. In this distance of 48 chains there is a total fall of about 420 feet. On the south side of the river there towers above the Falls a magnificent wooded bluff, and the whole locality makes a scene of remarkable grandeur. To preserve the beauty of this spot there should be acquired about 30 acres of the detached part of Section 4,

[1322] Report of Inspector of Scenic Reserves, undated (presented to Auckland Scenery Preservation Board 5 April 1911). Lands and Survey Head Office file 159. Supporting Papers #143-147.

between the road and the river (Armitage's L.I.P. [Lease in Perpetuity]) and about 90 acres of Section 7 (Wratten, late Carr). The piece from Section 7 should start 25 chains up the Tawarau River (from its junction with the Marakopa) and extend fifty chains up the Marakopa River from the junction, with a width enough to take in the top of the cliff (about 15 chains).

Recommendation No.18 (Recommendation No.195)[1323]
Piripiri Caves. Part of Section 4 Block X Kawhia South SD.
To take in the Piripiri Caves, it would be advisable to run 15 chains north-westerly from peg LXXX of Marakopa Valley Road, and then parallel to the road for a distance of 22 chains, and then about ten chains to road peg LXXXVI, including a strip of land about 25 acres in area. The strip is a rocky, wooded and picturesque bluff, and below are the many beautiful and wonderful caverns known as the Piripiri Caves. Mr GL Armitage has Section 4 under L.I.P. tenure, but has no objection to the acquisition of the proposed area. As soon as possible a gate should be put up at the entrance to the caves, as many people now go in and destroy the stalactites and otherwise damage the caves. The features in the caves are similar to those at Waitomo, but not quite so varied. There are several apertures leading to caverns which would probably reveal more interesting features if opened out.[1324]

Recommendation No.19 (Recommendation No.194)
Mangapohue Natural Bridge. Part of the Kinohaku West L No.2B Block, and part of the Taumatatotara 1A Block, in Block XI Kawhia South S.D.
This double-arched natural bridge is a feature of very great interest and remarkable beauty. Already the Natives have cleared off some of the bush surrounding the bridge, and about 12 acres should be at once acquired to save this wonderful feature from further damage. About five chains frontage to the Mangapohue road, with about 8 chains along the Mangapohue River below the bridge, and 10 chains along the river above the bridge, would be enough land to acquire.

Recommendation No.20 (formerly Recommendation No.81 [of 1908])
Marakopa Natural Tunnel. Part of the Taumatatotara Section 1D Block, Block XI Kawhia South S.D.
This wonderful feature is situated about 6 chains from the Marakopa and about 3 miles up the Marakopa from its junction with the Mangapohue. The tunnel has been eroded through a hill about fourteen chains long by a small stream. The roof of the tunnel is about 70 feet high in some places, and is ornamental with wonderful coral-like formations of calcite (pure lime carbonate). About ½ way through there is a large side-chamber somewhat resembling a church transept, with a calcite formation somewhat resembling a pulpit. When our lamp was extinguished, the roof of the cavern was illuminated by thousands of glow-worms which shone like stars on a frosty night. Where not covered by the secondary formation of calcite, the rock is seen to be composed almost

[1323] The first number is the number of the recommendation made at the April 1911 meeting. The second number is the number in a cumulative sequence of recommendations for all Scenery Preservation Boards.
[1324] Recommendations of Auckland Scenery Preservation Board, 5 April 1911. Lands and Survey Head Office file 159. Supporting Papers #145-147.

> entirely of oyster shells as large as those from which pearl-shell is obtained in the South Sea Islands. To ensure the future safety of this unique feature a piece of land extending 40 chains from the Marakopa River up the stream flowing through the Tunnel, by about 25 chains wide should be taken, or about 100 acres.[1325]

The Board's recommendations were put before the Minister in charge of Scenery Preservation over the next two months. He approved the surveys of the Natural Tunnel and Natural Bridge reserves in June 1911[1326], and of the Ngahuinga Bluff, Piripiri Caves and Marokopa Falls reserves in July 1911[1327]. Instructions were then sent to the Chief Surveyor[1328].

Of the proposed reserves in the Marokopa Valley, three (Ngahuinga Bluff, Marokopa Natural Tunnel and Mangapohue Natural Bridge) involved the taking of land under the Public Works Act from Maori owners, while the other two (Piripiri Caves and Marokopa Falls) involved the Crown resuming parts of long-term leases it had issued to European settlers. The establishment of each reserve is discussed separately below, with a lesser emphasis on the two reserves that did not involve any interaction between the Crown and Maori.

13.6.1 Ngahuinga Bluff Scenic Reserve

The arrival of the surveyor at Ngahuinga Bluff would have been the first intimation to the Maori owners of Marokopa 4 Block that the Government intended to take some of their land. They immediately wrote to the Native Minister.

> We are in great trouble with our land Marokopa No.4E and No.4D. We want you to look into the matter for it really is troubling us very much.
>
> The Government has taken our land for "Cynical Serve" [sic], and we don't mind if he took the rocky places, for we wanted the good places to work on, as we are now intending with the farming business. He has taken 136 acres already, and 20 acres in grass. He can have the upper and lower part of the

[1325] Recommendations of Auckland Scenery Preservation Board, 5 April 1911. Lands and Survey Head Office file 156. Supporting Papers #100-101.
[1326] Under Secretary for Lands to Minister in charge of Scenery Preservation, 19 June 1911. Lands and Survey Head Office file 156. Supporting Papers #102.
[1327] Under Secretary for Lands to Minister in charge of Scenery Preservation, 27 July 1911. Lands and Survey Head Office file 159. Supporting Papers #148.
[1328] Under Secretary for Lands to Chief Surveyor Auckland, 24 June 1911. Lands and Survey Head Office file 156. Not included in Supporting Papers.
Under Secretary for Lands to Chief Surveyor Auckland, 9 August 1911. Lands and Survey Head Office file 159. Supporting Papers #149.

> rocky hills, and let us have the good places. We are now working on this land for farming business, at least for keeping animals. Will you please kindly help us in this matter as we do earnestly pray you to do it. We are wishing to settle this business.[1329]

They were told that the Inspector of Scenic Reserves would visit the Bluffs to "inspect the land in question so as to arrange on mutually satisfactory boundaries as far as practicable"[1330]. When he visited in March 1912, he reported that after walking the boundaries he had found that perhaps half an acre of land in grass, rather than the 20 acres claimed, had been included in the proposed reserve; meaning in his opinion that "the natives in this case have nothing to complain of"[1331]. A reply was sent to the owners that "your fear … is, I am glad to say, quite unfounded", and a Notice of Intention to Take the land would shortly be issued, at which point they could if they wished make representations to the Minister of Public Works[1332].

By October 1913 the survey plan for Ngahuinga Bluff had been completed[1333]. The Minister approved the taking of 128 acres 0 roods 24 perches for scenic purposes[1334], and the Public Works Department was asked to arrange the taking[1335]. Notice of Intention to Take the land was published in January 1914[1336]. No objections were received, and the land was taken in May 1914[1337].

The application for assessment of compensation was first heard by the Native Land Court in November 1914.

> This Department's Land Purchase Officer attended the Native Land Court at Te Kuiti a few days ago, and offered the amount of the Government valuation

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[1329] Koroheke Parinui and 4 Others, Marokopa, to Native Minister, 8 November 1911. Lands and Survey Head Office file 159. Supporting Papers #153.
[1330] Under Secretary for Lands to Koroheke Parinui, Marokopa, 6 December 1911. Lands and Survey Head Office file 159. Supporting Papers #154.
[1331] Inspector of Scenic Reserves to Under Secretary for Lands, 25 March 1912. Lands and Survey Head Office file 159. Supporting Papers #155-156.
[1332] Under Secretary for Lands to Koroheke Parinui, Marokopa, 2 April 1912. Lands and Survey Head Office file 159. Supporting Papers #157.
[1333] Chief Surveyor Auckland to Under Secretary for Lands, 16 October 1913. Lands and Survey Head Office file 156. Supporting Papers #103.
[1334] Under Secretary for Lands to Minister in charge of Scenery Preservation, 12 November 1913, approved 14 November 1913. Lands and Survey Head Office file 156. Supporting Papers #104.
[1335] Under Secretary for Lands to Under Secretary for Public Works, 18 November 1913. Works and Development Head Office file 52/24. Supporting Papers #1551.
[1336] *New Zealand Gazette* 1914 page 161. Supporting Papers #3986.
[1337] *New Zealand Gazette* 1914 page 1567. Supporting Papers #3988.
South Auckland plan SO 16777. Supporting Papers #2384.

> as compensation for the land taken, but the representative of the owners was unwilling to accept, and the case was adjourned to allow more evidence to be produced.[1338]

The hearing resumed in March 1915[1339], on the same date that compensation for the taking of Maori-owned land for Marokopa Natural Bridge Scenic Reserve was also considered. The argument at the hearing was focused on the differing opinions of different valuers. The Government Valuation was 10/- an acre, but the Crown's valuers gave the taken land an even lower value, of 7/6d or 9/4d an acre, because in their opinion it was so unsuitable for farming. Valuers for the Maori owners gave various values ranging from £3 to £6 an acre. At the end of the hearing, the Court reserved its decision. Six weeks later, its decision was that compensation of £1 per acre (i.e. £128-3-0d) would be awarded[1340]. The taken land was in Marokopa 4D and 4E blocks, but since these partition blocks had not been surveyed the Court did not know how much of the taken area was in each block; it therefore ordered the compensation to be paid to the Public Trustee, who would hold it until an application for its apportionment was considered.

When the decision was received, the Public Works Department's Land Purchase Officer, who had represented the Crown at the hearing, expressed his disagreement, arguing that the decision had found the valuers for the Maori owners to be unreliable, and the valuers for the Crown to be competent, but had then ignored the Crown's valuations in favour of the most recent roll valuation (in 1911) which had been based on the whole of the two partition blocks (which included land in grass). In his opinion the rocky limestone bluff nature of the taken land meant that the 1911 valuation was not a relevant basis for valuation of the taken land[1341]. However, the time to apply for a rehearing of the Court's decision had passed.

[1338] Assistant Under Secretary for Public Works to Under Secretary for Lands, 6 November 1914. Lands and Survey Head Office file 156. Supporting Papers #111.
[1339] Maori Land Court minute book 57 OT 108-118. Supporting Papers #3665-3675.
[1340] Maori Land Court minute book 57 OT 147-148. Copy attached to Registrar Native Land Court Auckland to Land Purchase Officer Bold, 20 May 1915. Works and Development Head Office file 52/24. Supporting Papers #1552-1555.
[1341] Land Purchase Officer Bold to Assistant Under Secretary for Public Works, undated, on Registrar Native Land Court Auckland to Land Purchase Officer Bold, 20 May 1915. Works and Development Head Office file 52/24. Supporting Papers #1552-1555

There was, nevertheless, some discussion on the Public Works Department file about promoting a law change. The Assistant Under Secretary argued:

> This case with other similar ones shows, I think, the necessity for our getting an amendment to the law, whereby we can appeal to the Supreme Court, as it is quite clear that the judgements of the Native Land Court are sometimes open to serious objection.
>
> It seems to be a very strange thing that a Court calling itself a Court of law can decide cases on evidence which is not produced before it by the parties when the case is heard.[1342]

Allowing appeals to the Supreme Court would probably favour the Crown, because of the more legalistic arguments that would be debated, the lesser part that fairness for Maori landowners would play in proceedings, and the high costs that the Crown could weather more easily than Maori parties. However, as the Under Secretary for Public Works pointed out, a right of appeal was also a two-edged sword.

> I should like you to consider this point fully and to advise me later of the result of such consideration. My own impression is that we should lose more than we should gain by providing for an appeal. Although some of the judgements of the Native Land Court are not satisfactory, I think the bulk of them are all right, but if it were possible to appeal the Natives would probably appeal in nearly every case.[1343]

The Assistant Under Secretary responded:

> I have discussed this matter with [the Land Purchase Officer] and find that in his opinion there are a few cases where we have been unjustly treated, but the amount involved has not been very great.
>
> He states moreover that when the natives had the right of appeal they exercised it only on very rare occasions.
>
> The trouble in his opinion is that there are two of the Native Land Court judges whose decisions are sometimes open to serious question, and we never know when some important case may come along in which we may not be properly treated.

[1342] Assistant Under Secretary for Public Works to Under Secretary for Public Works, 8 June 1915, attached to Registrar Native Land Court Auckland to Land Purchase Officer Bold, 20 May 1915. Works and Development Head Office file 52/24. Supporting Papers #1552-1555.

[1343] Under Secretary for Public Works to Assistant Under Secretary for Public Works, 9 June 1915, attached to Registrar Native Land Court Auckland to Land Purchase Officer Bold, 20 May 1915. Works and Development Head Office file 52/24. Supporting Papers #1552-1555.

> Seeing, however, the difficulty there will be in getting legislation passed this session, I think the matter might remain in abeyance for the present, and if necessary we could try and get an amendment next year.[1344]

No Judges were named, and the matter was not, so far as is known, raised again.

13.6.2 Marokopa Natural Tunnel Scenic Reserve

In November 1913 the survey plan of the proposed reserve came to hand. It showed that 84 acres 3 roods 35 perches of Taumatatotara 5 and 21 acres 0 roods 05 perches of Subdivision 2 of Section 3 Block XII Kawhia South SD would be required[1345].

> Subdivision 2 is a portion of a block of land vested in the Kawhia County Council as an endowment for the Kawhia Harbour Board under Section 13 of the Reserves and Other Lands Act 1907, and is leased to WH Crookshank of Mt Roskill, Auckland, and Henry Hunt, Putaruru. Subdivision 5 is a portion of a block of land vested in the Waikato-Maniapoto Maori Land Board under the Native Land Act 1909, and is not yet disposed of. With the remaining portion of the block it was offered for sale or lease in May at an upset price of £2 an acre. The land to be taken, being part of the back portion of the section, is not I think worth more than 30/- at the most.[1346]

For reasons that are not explained on the Government file, it was not until July 1914 that the Minister in charge of Scenery Preservation was asked to approve the taking of the land under the Public Works Act[1347]. When approval was given, the Public Works Department was instructed to carry out the taking[1348]. Notice of Intention to Take the land was issued in September 1914[1349], no objections were received, and the taking was proclaimed in December 1914[1350].

The Native Land Court in March 1915 heard the application for assessment of compensation for the 84 acres taken from Taumatatotara 5, on the same date that it considered compensation for the taking of Ngahuinga Bluff Scenic Reserve. At the end of the hearing it reserved its decision[1351], and later fixed it at £95-11-10d[1352].

[1344] Assistant Under Secretary for Public Works to Under Secretary for Public Works, 7 August 1915. Works and Development Head Office file 52/24. Supporting Papers #1556.
[1345] South Auckland plan SO 16776. Supporting Papers #2383.
[1346] Chief Surveyor Auckland to Under Secretary for Lands, 25 November 1913. Lands and Survey Head Office file 156. Supporting Papers #105-106.
[1347] Under Secretary for Lands to Minister in charge of Scenery Preservation, 16 July 1914, approved 22 July 1914. Lands and Survey Head Office file 156. Supporting Papers #107-109.
[1348] Under Secretary for Lands to Under Secretary for Public Works, 25 July 1914. Lands and Survey Head Office file 156. Supporting Papers #110.
[1349] *New Zealand Gazette* 1914 page 3630. Supporting Papers #3990.
[1350] *New Zealand Gazette* 1914 page 4319. Supporting Papers #3993.
[1351] Maori Land Court minute book 57 OT 118-119. Supporting Papers #3675-3676.

13.6.3 Mangapohue Natural Bridge Scenic Reserve

The survey plan for the proposed reserve was sent to Wellington in April 1915[1353]. The area proposed to be taken from Kinohaku West L2B was 8 acres 2 roods 16 perches, while the area to be taken from Taumatatotara 1A2 was 5 acres 1 rood 14 perches. The Minister approved the taking of these areas under the Public Works Act[1354], and the Public Works Department was asked to take the necessary action[1355].

A Notice of Intention to Take the land was issued in September 1915[1356]. No objections were received, and the taking for scenic purposes was proclaimed in November 1915[1357].

In February 1916 the Government was advised that bush on the Natural Bridge Scenic Reserve had been felled and burnt[1358]. A Crown Lands Ranger investigated, and reported that the damage had been done before the land had been taken.

> Notice of Intention to Take the land was issued on 23rd September 1915, and was published in the Maori Kahiti of the same date. Proclamation was issued 2nd December 1915. No notice was sent to Native owners because the land was not registered in the Land Transfer Office. From the evidence given in Court today, it appears that the bush was felled on this reserve some time about June last [1915]; that would be about three months prior to the notice of intention being issued, therefore the natives were within their rights in falling the bush, and proceedings cannot be taken under the Scenery Preservation Act 1915.[1359]

[1352] Maori Land Court minute book 57 OT 357. Supporting Papers #3679.
Order of the Court, 29 March 1915, attached to Assistant Under Secretary for Public Works to Under Secretary for Lands, 16 November 1915. Lands and Survey Head Office file 156. Supporting Papers #115-116.
[1353] Chief Surveyor Auckland to Under Secretary for Lands, 21 April 1915. Lands and Survey Head Office file 156. Supporting Papers #112.
South Auckland plan SO 16914. Supporting Papers #2392.
[1354] Under Secretary for Lands to Minister in charge of Scenery Preservation, 20 July 1915. Lands and Survey Head Office file 156. Supporting Papers #113-114.
[1355] Under Secretary for Lands to Under Secretary for Public Works, 27 July 1915. Works and Development Head Office file 52/36. Supporting Papers #1630.
[1356] *New Zealand Gazette* 1915 page 3297. Supporting Papers #3998.
[1357] *New Zealand Gazette* 1915 pages 3943-3944. Supporting Papers #3999-4000.
[1358] Telegram HG Ell MHR to Prime Minister, 10 February 1916. Lands and Survey Head Office file 156. Supporting Papers #117.
[1359] Crown Lands Ranger Te Kuiti to Commissioner of Crown Lands Auckland, 21 March 1916, attached to Commissioner of Crown Lands Auckland to Under Secretary for Lands, 3 May 1916. Lands and Survey Head Office file 156. Supporting Papers #118-120.

A hearing to determine how much compensation should be paid for the land taken from Kinohaku West L2B and Taumatatotara 1A2 was held in March 1916. The Court's decision was reserved, and was not given until November 1916, when it ordered that £52 be paid for the land taken from Kinohaku West, and £19 be paid for the land taken from Taumatatotara[1360].

Vouchers were prepared and sent out for the payment of the amounts ordered by Court. It was only at this point that an error was identified. The taking from Kinohaku West L2B had ignored the fact that this block had been partitioned in 1907. This was because the two partition blocks had not been surveyed. The taken land was wholly in Kinohaku West L2B1, but owners in both L2B1 and L2B2 had been sent vouchers. When the error was discovered, three vouchers addressed to the owners of L2B2 were returned unpresented[1361], but two had been presented and the money paid out to those owners[1362]. The owners of L2B1 were also affected, as they had not received their full share of the compensation money.

There were some recriminations within Government. Lands and Survey held that the Native Land Court was at fault in providing an incorrect list of owners and the amounts owed to them[1363]. The Court, however, argued that as the Proclamation and survey plan referred to the taking being from L2B, the error arose with the wording of the Proclamation and the plan; it declined to take responsibility for recovery of the incorrectly paid out monies[1364]. It was left to Lands and Survey to write to the two owners in L2B2 who had been paid incorrectly, asking them to refund the money to the local Post Office[1365]. They acted honourably and made the refunds[1366]. Vouchers were also prepared for the payment to the owners of L2B1 of additional money[1367].

[1360] Maori Land Court minute book 59 OT 79. Supporting Papers #3681.
[1361] Hine, Vernon and Howarth, Barristers, Solicitors and Notaries Public, Te Kuiti, to Paymaster General, 30 April 1917, attached to Paymaster General to Under Secretary for Lands, 10 May 1917. Lands and Survey Head Office file 156. Supporting Papers #121-126.
[1362] Under Secretary for Lands to Hine, Vernon and Howarth, Barristers and Solicitors, Te Kuiti, 14 May 1917. Lands and Survey Head Office file 156. Supporting Papers #127.
[1363] Under Secretary for Lands to Registrar Waikato-Maniapoto District Maori Land Board, 30 May 1917. Lands and Survey Head Office file 156. Supporting Papers #128.
[1364] Registrar Waikato-Maniaptoto District Maori Land Board to Under Secretary for Lands, 8 June 1917. Lands and Survey Head Office file 156. Supporting Papers #129.
[1365] Under Secretary for Lands to Poutu Hihiti, Oparure, 21 June 1917, and Under Secretary for Lands to Tuhau Hihiti, Oparure, 21 June 1917. Lands and Survey Head Office file 156. Supporting Papers #130 and 131.

There was a postscript to this mix-up in 1927. Although the District Maori Land Board had declined to accept responsibility for the recovery of the monies incorrectly paid out to the two owners of L2B2, it had held back from one of those owners the amount due to be refunded, when paying out to that owner monies it held from other transactions. The Board sent that held back money to the Public Works Department[1368]. Because the refund had already been received in 1917, it was then necessary to pay the held back money to the owner[1369].

13.6.4 Piripiri Caves and Marokopa Falls Scenic Reserve

This scenic reserve did not involve taking from Maori-owned land. Instead it was already Crown land, although the Crown had issued long term leases to European farmers. The Land Act 1908 had a provision (Section 144) that allowed the Crown to retake possession, or resume from the lease, land that was required for a public purpose. When this happened, the lessee would have his rental reduced correspondingly.

There was one part of the Marokopa Falls proposed reserve that was already surveyed, because it lay between the road and the river, and when it was reported that a start had been made by the lessee on felling bush within this portion[1370], steps were immediately taken to resume it from the Crown lease. An area of 76 acres was resumed in November 1911[1371]. It was known at the time that less than the full area resumed would be required for scenic reserve, and that part would eventually be added back into the lease; the resumption's purpose was to give the Government the

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[1366] Under Secretary for Lands to Postmaster Te Kuiti, 23 July 1917. Lands and Survey Head Office file 156. Supporting Papers #133.
[1367] Under Secretary for Lands to Hine, Vernon and Howarth, Barristers and Solicitors, Te Kuiti, 25 June 1917. Lands and Survey Head Office file 156. Supporting Papers #132.
[1368] Registrar Waikato-Maniapoto District Maori Land to Under Secretary for Public Works, 17 February 1927. Works and Development Head Office file 52/36. Supporting Papers #1631.
[1369] Assistant Under Secretary for Public Works to Te Poutu Hihiti, Te Kuiti, 12 March 1927. Lands and Survey Head Office file 156. Supporting Papers #134.
[1370] H Ellmers, Kinohaku, to Minister of Internal Affairs, 20 August 1911, and Inspector of Scenic Reserves to Under Secretary for Lands, 29 August 1911. Lands and Survey Head Office file 159. Supporting Papers #150.
[1371] Under Secretary for Lands to Minister of Lands, 27 September 1911. Lands and Survey Head Office file 159. Supporting Papers #152.
New Zealand Gazette 1911 page 3684. Supporting Papers #3961.

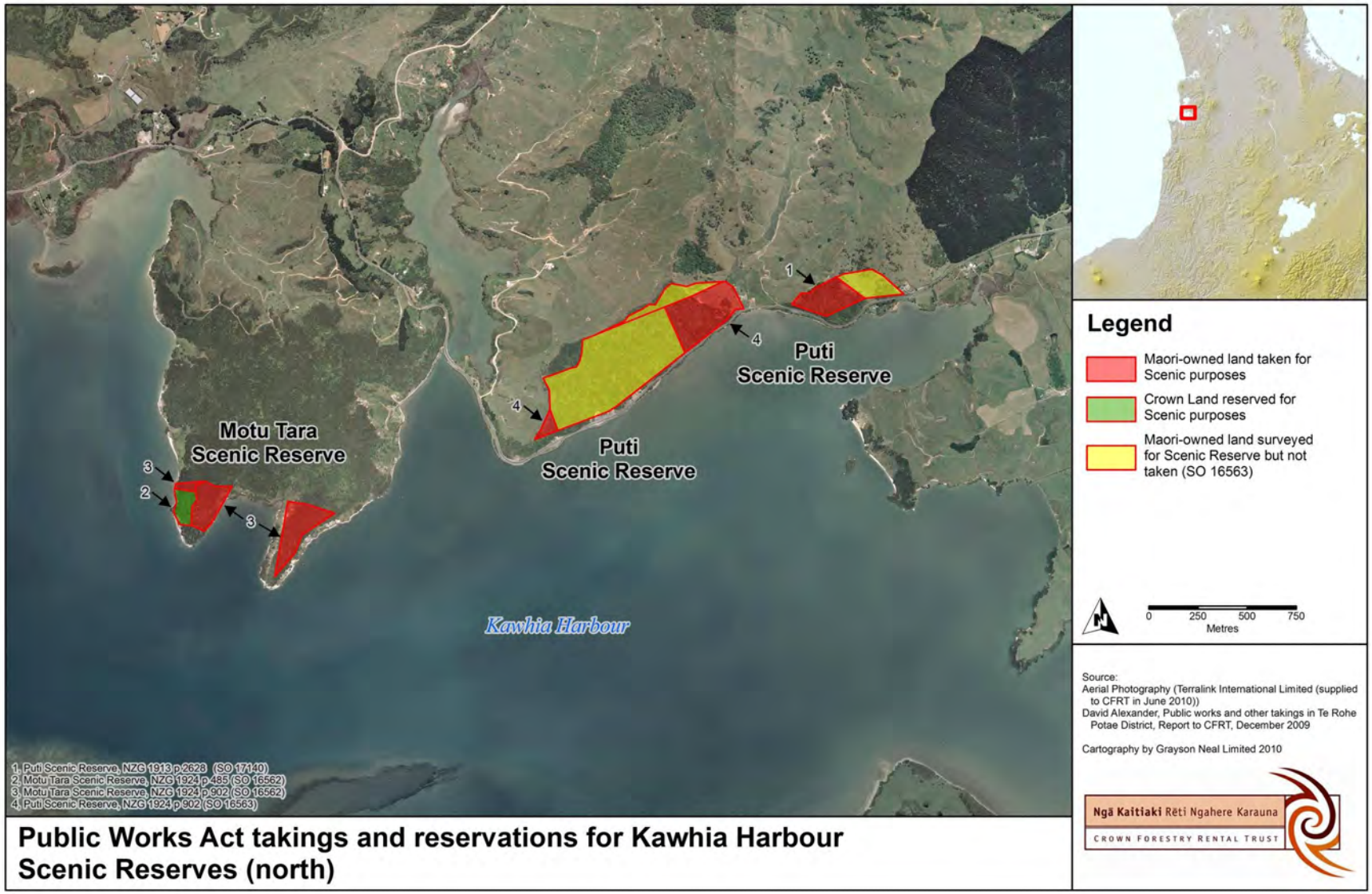
power to require that the European lessee stop felling bush anywhere within the 76 acres.

A portion of another Crown lease on the opposite bank of the river was resumed in September 1913, once it had been surveyed[1372]. This portion had an area of 25 acres 2 roods.

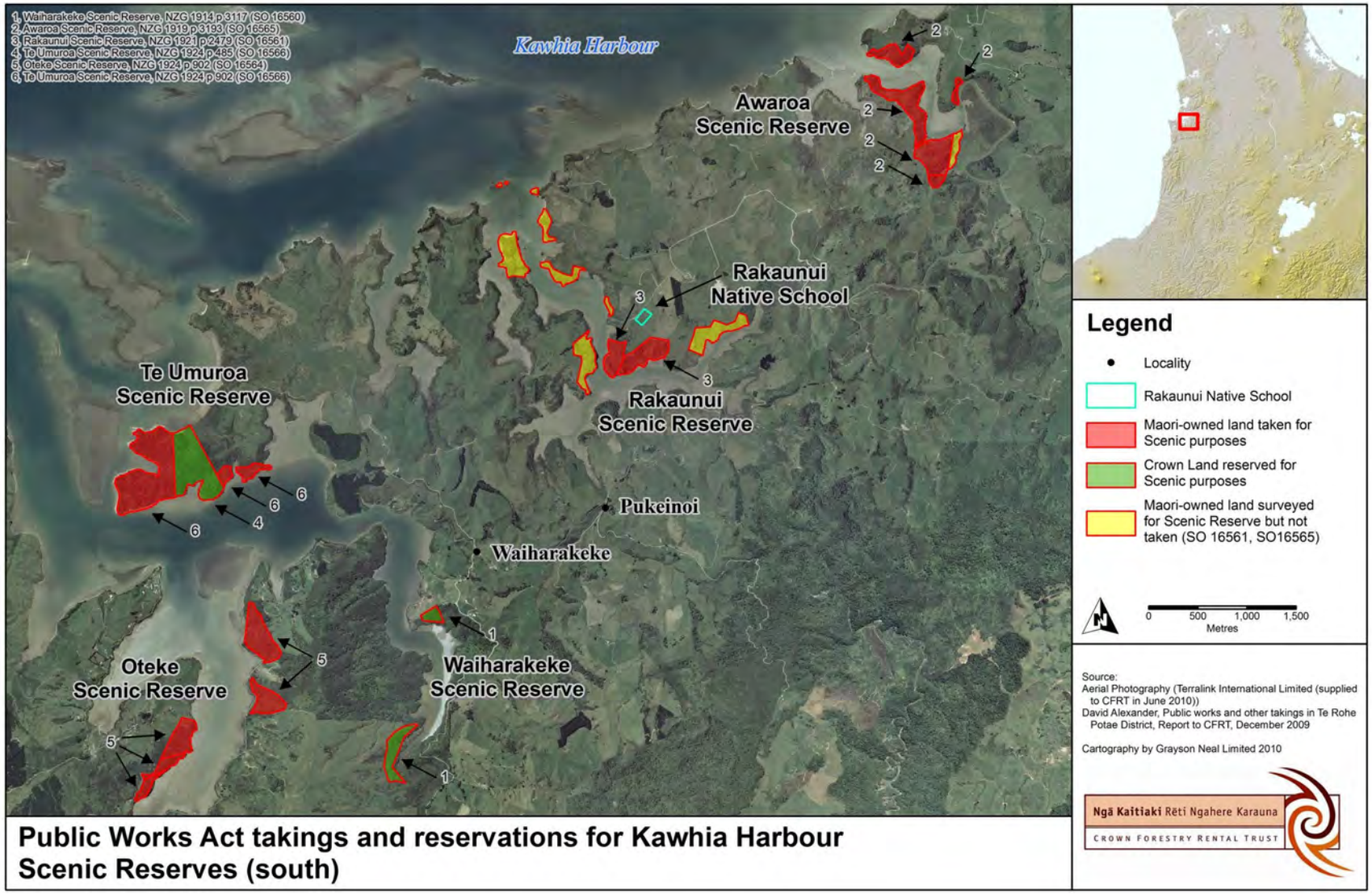
13.7 Kawhia Harbour Scenic Reserves

In December 1910 the Chairman of the Kawhia County Council alerted the Department of Lands and Survey to bush felling taking place on the edge of Kawhia Harbour, along the frontage of the Awaroa Block[1373]. He was told that the Crown had no power to interfere with the cutting of timber on private land; the steps it needed to take to obtain such powers were that the Scenery Preservation Board had to recommend acquisition and reservation, the proposed reserve had to be surveyed, and the land had to be taken under the Public Works Act[1374].

[1372] *New Zealand Gazette* 1913 page 2822. Supporting Papers #3984.
South Auckland plan SO 16778. Supporting Papers #2385.
[1373] Telegram Commissioner of Crown Lands Auckland to Under Secretary for Lands, 14 December 1910. Lands and Survey Head Office file 541. Supporting Papers #162.
[1374] Telegram Under Secretary for Lands to Commissioner of Crown Lands Auckland, 15 December 1910, and Under Secretary for Lands to Chairman Kawhia County Council, 23 February 1911. Lands and Survey Head Office file 541. Supporting Papers #163 and 164.



Map 21 Public Works Act taking and reservations for Kawhia Harbour Scenic Reserves (north)



Map 24 Public Works Act takings and reservations for Kawhia Harbour Scenic Reserves (south)

Perhaps spurred on by the approach from the local authority, identification of reserves around the fringe of Kawhia Harbour began in 1911. This was at a time when the harbour itself was the main communication highway for the district, and views of bush and bluffs from boats on the harbour and its inlets were deemed the most important features to protect. The Inspector of Scenic Reserves wrote a report for the meeting of the Auckland Scenery Preservation Board in April 1911.

> The Kawhia Harbour is a large sheet of water extending generally in an east and west direction for a length of about 9 miles, and with a breadth of about 4 miles. From the main harbour there extend inland several large tidal creeks with steep wooded slopes to the water's edge; and in many places this quiet beauty is emboldened by the presence of craggy limestone bluffs, and occasionally huge monoliths worn into fantastic shapes by the erosion influence of weather.
>
> The chief of these creeks are the Rakaunui, Te Awaroa, Waiharakeke and Kinohaku, all navigable at flood tide for three or four miles from their mouths. In parts they are all beautiful, and the Rakaunui (between the island and the eastern shore) is equal to the Wanganui at its best. Even now a good many resort to this spot for picnics.
>
> Te Awaroa has been a good deal depreciated by cutting down in many places of the bush on the banks. In the same way also, but to a lesser extent, the Waiharakeke has suffered. However there are still parts of great beauty, and on account of their easy access Kawhia is likely to become a place of considerable attraction to pleasure-seekers. Pakarikari Lake is pretty, but a patch of scrub and a few pohutukawa trees are all that remain of the native bush, and as the lake will be the future water supply of the township it seems to me that the town should acquire it. Sand is fast encroaching on the west side; the eastern side is in grass and leased to a European.[1375]

At its meeting the Board passed a series of resolutions (numbered 181 to 193) to do with proposed reserves around Kawhia Harbour. The wording of only four of these resolutions, concerned with Te Awaroa inlet and numbered 184 to 187, has been located during the research for this report (see sub-section of this evidence concerned with Awaroa reserves). The other resolutions can be inferred from subsequent surveys, and a lithograph showing the location of proposed reserves. The lithograph was prepared by the Inspector of Scenic Reserves in July 1911[1376]. He also visited

[1375] Report on Kawhia Harbour, undated (presented to Auckland Scenery Preservation Board meeting on 5 April 1911). Lands and Survey Head Office file 4/378. Supporting Papers #588.
[1376] Inspector of Scenic Reserves to Under Secretary for Lands, 27 July 1911. Lands and Survey Head Office file 4/378. Supporting Papers #589-590.

Kawhia again in September 1911, and pointed out the proposed reserves to a surveyor[1377].

The surveys were prepared over the next eight months, as follows:

Table 13.4 Proposed Scenic Reserves around Kawhia Harbour

Location[1378]	Plan Number	Area to be Taken	Block to be Taken from
Motu Tara	SO 16562	22-0-32	Kawhia B2A & B2B Kawhia C4 Sec 2B
Puti	SO 16563	98-2-00	Mangaora 1, 3 & 4 Pirongia West 3B2E2D
Awaroa	SO 16565	80-0-00	Awaroa A2
Rakaunui	SO 16561	118-3-38	Awaroa A3B2 & A8 Hauturu West 3A & 3B2B
Te Umuroa	SO 16566	80-0-00	Hauturu West 2A1, 2A3, 2A4 & 2A5
Waiharakeke	SO 16560	21-3-24	Sec 4 Blk II Kawhia South SD Sec 4 Blk XIV Kawhia North SD
Oteke	SO 16564	78-2-00	Kinohaku West 11D3A &11D3B Kinohaku West 12B2B Hauturu West 2B4C

Source: South Auckland SO Plans

When received in Wellington, the Inspector of Scenic Reserves commented:

> I think these plans represent all the lands that remain of scenic value, except up the Waiharakeke River where it seems [the surveyor] has not taken all I directed. With regard to this, however, he formerly wrote me to the effect that the road line along the coast took so much of the bush that the balance left would not be worth taking.
>
> Since my first visit to Kawhia, some of the pieces I first recommended should be taken have been damaged by fire and clearing; and also Mr Booker finds that there are roads surveyed along the coast-line which are not shown on the county map; in these instances the road reservations take so much that the very narrow strip left is not worth taking.
>
> I do not see any reason for objection to what is done; but, when able, I will go there again to be sure that no omission has been made. I have great reliance

[1377] Inspector of Scenic Reserves to Under Secretary for Lands, 10 September 1911. Lands and Survey Head Office file 4/378. Supporting Papers #591.
[1378] The location names are those used in LW McCaskill, *Scenic Reserves of South Auckland: Book Two, East of Waikato River*, Government Printer, 1979, pages 14-15.

> on Mr Booker's judgement and reliability, and do not think he is likely to have omitted anything worth taking.[1379]

The Scenery Preservation Board's recommendations, and the survey plans, were then placed before the Minister, with a note that:

> You will notice that a comparatively small area is recommended for acquisition, so that settlement in this district is practically unaffected, but Mr Turner states that the best of the scenery is included in the surveyed areas.

The Minister approved the taking of the surveyed lands under the Public Works Act 1908 and the Scenery Preservation Amendment Act 1910[1380], and the Public Works Department was asked to take the necessary action[1381].

The Public Works Department discovered that the survey plans did not show all the partitions of the various Maori-owned blocks. Until that was done it was not prepared to proceed with the takings[1382]. The failure to show the partition boundaries was because those boundaries had not been surveyed[1383]. Waiting for those surveys to be completed before the plans of the proposed takings could be updated meant that the momentum for the acquisition of reserves around Kawhia Harbour was lost, and then when the plans were updated, the war and shortage of funds prevented any progress being made[1384].

At this point the history of the various proposed reserve areas diverges from one another, and is discussed in individual sub-sections below, based on the locations identified in the table above.

[1379] Inspector of Scenic Reserves to Under Secretary for Lands, 7 May 1912. Lands and Survey Head Office file 4/378. Supporting Papers #592.
[1380] Under Secretary for Lands to Minister in charge of Scenery Preservation, 8 May 1912, approved by Minister 18 May 1912. Lands and Survey Head Office file 4/378. Supporting Papers #593.
[1381] Assistant Under Secretary for Lands to Under Secretary for Public Works, 27 May 1912. Works and Development Head Office file 52/10. Supporting Papers #1520.
[1382] Assistant Under Secretary for Public Works to Chief Surveyor Auckland, 19 June 1912. Works and Development Head Office file 52/10. Supporting Papers #1521.
[1383] Chief Surveyor Auckland to Under Secretary for Public Works, 12 July 1912. Works and Development Head Office file 52/10. Supporting Papers #1522.
[1384] File note by Minister, 18 August 1915, on Under Secretary for Lands to Minister of Lands, 16 August 1915, and Under Secretary for Lands to Commissioner of Crown Lands Auckland, 6 March 1916. Lands and Survey Head Office file 4/378. Supporting Papers #594 and 595.

13.7.1 Motu Tara

The survey plan for Motu Tara showed that the Crown wanted to reserve land on two headlands, made up of the following parcels[1385]:

- Kawhia B2B 1 acre 0 roods 16 perches Maori-owned
- Kawhia B2A 3 acres 3 roods 08 perches Crown-owned
- Kawhia C4 Section 2B 17 acres 1 rood 08 perches Maori-owned

In November 1922 the Under Secretary for Lands made a first step towards reviving the taking of the lands for scenic purposes. He wrote to the Commissioner of Crown Lands in Auckland:

> I shall be much obliged if you will look carefully into the question of the Kawhia Harbour Scenic Reserves, and furnish a schedule and rough tracing showing the areas still to be acquired for scenic purposes.
>
> The question of acquiring the whole of the areas which were originally surveyed around the various bays and inlets of this harbour has been brought forward for consideration from time to time, but has been postponed on account of the financial stringency.
>
> It is desirable, however, that the matter should be again revived, and if you can supply the information asked for above, together with particulars as to whether the bush on the areas is still intact, and the latest particulars as to the approximate values of the land involved, a further memorandum will be placed before the Hon Minister in charge of Scenery Preservation to ascertain whether funds can now be authorised to acquire the balance of the areas originally laid out in connection with the scheme of scenery preservation.[1386]

However, this step proved stillborn when the Commissioner replied that as the instruction involved a lot of work, perhaps it would be best to first establish that there would be funds available for purchase[1387], and a decision was then made in March 1923 that the matter would have to be held over until the following financial year[1388]. The next revival was triggered by advice received from the Commissioner in July 1923. He wrote that the Kawhia County Council had approached him about timber cutting on Mangaora 2 (see sub-section on Puti). In response the Under Secretary for

[1385] South Auckland plan SO 16562. Supporting Papers #2376.
[1386] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 16 November 1922. Lands and Survey Head Office file 4/378. Supporting Papers #610.
[1387] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 29 November 1922. Lands and Survey Head Office file 4/378. Supporting Papers #611-612.
[1388] File note, 8 March 1923. Lands and Survey Head Office file 4/378. Supporting Papers #614.

Lands felt that this damage to one of the proposed reserves could only be addressed by examining the future of the whole scheme of reserves around Kawhia Harbour.

> As you are aware, funds for the acquisition of areas of Native lands under the provisions of the Scenery Preservation Act have been very restricted during the past few years, and it has not been possible up to the present to give effect to the whole of the scenic proposals originally schemed in connection with the Kawhia Harbour.
>
> … I propose to place the whole matter before the Minister in charge of Scenery Preservation as soon as possible, to ascertain whether the government will now approve of the acquisition of the remaining lands, so as to permanently preserve the pieces of picturesque bush surrounding the harbour and the various inlets.

He asked the Commissioner to supply a plan showing areas already acquired, and areas still to be acquired, together with a schedule of descriptions and areas about the lands still to be acquired, "so that the Minister may be in a position to see what expenditure will probably be involved"[1389].

The plan and schedule were provided in September 1923[1390]. In total 444½ acres of Maori-owned land and 77¾ acres of Crown-owned land were identified around the harbour as lands that should be reserved. They showed the area required at Motu Tara as unchanged from that shown in the survey plan prepared in 1912. The Minister in charge of Scenery Preservation was asked to approve the takings at Motu Tara, Puti, Te Umuroa and Oteke, on the grounds that there was a need for urgency.

> As you are aware, the funds available for the acquisition of scenic reserves have been very limited in recent years, and having regard to the instructions issued by the Right Hon Minister of Finance that no further liabilities are to be incurred on the Scenery Preservation Account during the current year, I would not again revive the question of acquiring these lands at the present moment, except that from telegraphic advice received from the Commissioner of Crown Lands Auckland I gather there is grave danger of the bush on some of the areas being destroyed by the Native owners.[1391]

[1389] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 6 September 1923. Lands and Survey Head Office file 4/378. Supporting Papers #617-618.
[1390] Chief Surveyor Auckland to Under Secretary for Lands, 20 September 1923. Lands and Survey Head Office file 4/378. Supporting Papers #619-621.
[1391] Under Secretary for Lands to Minister in charge of Scenery Preservation, 28 September 1923. Lands and Survey Head Office file 4/378. Supporting Papers #622.

The Minister sought and received the consent of the Minister of Finance[1392], and then gave his approval. The Public Works Department was immediately informed[1393]. It issued a Notice of Intention to Take the two Maori-owned portions of Motu Tara, plus other lands around the harbour, in January 1924[1394]. Because the two blocks were not registered in the Land Registry, there was no requirement to serve a copy of the Notice on the owners; the only way the owners could have known out about the Notice was by reading the *Gazette* or *Kahiti*, or by seeing the Notice and plan displayed at Kawhia Post Office. No objections were received, and the two Maori-owned portions were taken in April 1924[1395].

A hearing of the Native Land Court to consider compensation to be paid was held in January 1926. Compensation of £1 for the taking from Kawhia B2B, and £19 for the taking from Kawhia C4 Section 2B, was awarded[1396].

Dealing with the Crown-owned portion at Motu Tara was a matter for Lands and Survey acting alone. Kawhia B2A (renamed Section 2 Block X Kawhia North SD) was reserved under the Land Act for scenic purposes in February 1924[1397].

13.7.2 Puti

The proposed reserves shown on the survey plan for this location involved intended takings as follows[1398]:

- Pirongia West 3B2E2 — 16 acres 3 roods
- Mangaora 1 — 1 acre 2 roods 17 perches
- Mangaora 2 — 55 acres 0 roods 18 perches
- Mangaora 3 — 18 acres 0 roods 02 perches
- Mangaora 4 — 6 acres 1 rood 03 perches

[1392] Secretary to the Treasury to Minister of Finance, 3 October 1923, approved by Minister 3 October 1923. Lands and Survey Head Office file 4/378. Supporting Papers #623.
[1393] Under Secretary for Lands to Under Secretary for Public Works, 13 October 1923. Works and Development Head Office file 52/32. Supporting Papers #1619.
[1394] *New Zealand Gazette* 1924 page 205. Supporting Papers #4031.
[1395] *New Zealand Gazette* 1924 page 902. Supporting Papers #4033.
[1396] Maori Land Court minute book 66 OT 112-113. Supporting Papers #3693-3694.
[1397] *New Zealand Gazette* 1924 page 485. Supporting Papers #4032.
[1398] South Auckland plan SO 16563. Supporting Papers #2377.

The intended taking from Pirongia West 3B2E2 was a matter of dispute even before the surveyor had completed his work. The European lessees of this Maori-owned block wrote to the Tourist Department in December 1911 that they had been served notice that the surveyor intended to enter on to their property in order to undertake the survey. They most strongly objected to the taking of the bush.

> In the first place we have only forty chains frontage to the harbour, and now that Booker, acting under your instructions, has cut off thirty chains this only leaves us with a miserable ten chains frontage to a large block of land running back for nearly four miles, and naturally adds to the difficulty of working stock, and we consider it is most unfair and unwarranted that we should thus be deprived of practically all our frontage.
>
> Secondly, should we desire at any time to sell [our lease of] the property, the fact of our frontage being so curtailed would prevent our making a good sale.
>
> Thirdly, we can make £25 a year off the piece of land proposed to be taken, have also paid the natives six years rent on it, and other sundry expenses in connection with obtaining the lease. We have no doubt your Department is prepared to pay compensation for this land, but whatever this might be assessed at we do not expect it would compensate us for losing nearly all our frontage.[1399]

The reply to this complaint came from the Lands and Survey Department. Because the plan had not been completed, it was not possible to respond in any detail, though the lessees were told of the objection procedures that could be activated once the Notice of Intention to Take the land under the Public Works Act had been issued. The reply then noted:

> I desire, moreover, to point out to you that on the 16th July 1909 you wrote me a letter strongly urging that "the water frontage of a piece of native land called the Mangaora Block should be reserved". You also stated that "for about a mile the native bush is growing on a very steep face down to high water mark. It would be a thousand pities if this be destroyed, as the land itself is far too steep for any profitable use to be made of it, and this is as fine a bit of scenery as there is in any harbour in the Dominion".
>
> If this area is the same that you now write about, I do not understand your present attitude. The only other areas of land to be reserved on the north side of the harbour are the two points between the Mangaora Block and Point, and Kawhia, and on the other side a small area of about 25 acres lying in a gully about half a mile east of the Mangaora Point, near the Kawarau Stream. Perhaps it is this latter area you write about, as I understand it is on land leased

[1399] CR Morris and Co, Oparau Ferry, to Secretary Tourist Department, December 1911, attached to CR Morris, Oparau Ferry, to Minister of Public Works, 7 July 1913. Works and Development Head Office file 52/10. Supporting Papers #1524-1540 at 1528-1529.

> by Mr McAlister and you, but the Inspector of Scenic Reserves advises me that you do not object to its acquisition.[1400]

The lessees acknowledged that it was the gully area east of the Mangaora Block that was on their property, but disputed the Inspector's understanding of the conversation he had with them.

> The information our Mr Morris gave you in his letter of the 16th July 1909 still holds good as far as we are concerned. We certainly did not lead the Inspector of Scenic Reserves to believe, or it was not our intention to do so, that we did not object to the acquisition of the land referred to, but told him that we did not intend to fall the bush until we found that it interfered with the working of the property, and which it now does.[1401]

The Under Secretary for Lands replied:

> It has always been the aim of the Department to prejudicially affect as little as possible lands required for settlement purposes, and the proposed scenic reservations around the Kawhia Harbour have already been cut down to extreme limits on account of objections from settlers and landowners, but unless the intention to reserve the well known beauty spots around the Harbour is completely abandoned, it will be necessary to secure land owned by persons who object to the taking. The utmost consideration will, however, be paid to all bona fide representations, and in your case it is quite possible that a satisfactory arrangement may be come to as to enable the best of the scenery to be preserved, and to afford you due access to the road and harbour.[1402]

In August 1912, after apparently having seen the survey plan, one of the lessees asked for an alteration of the boundaries, which would "allow the reservation of the clump of fern trees and at the same time relieve me of great inconvenience in getting from my homestead to the back of the farm"[1403]. That same month, the lessee apparently had an interview with a Lands and Survey Department official in Wellington, which he referred to in a March 1913 letter.

[1400] Under Secretary for Lands to CR Morris and Co, Oparau Ferry, 29 January 1912, attached to CR Morris, Oparau Ferry, to Minister of Public Works, 7 July 1913. Works and Development Head Office file 52/10. Supporting Papers #1524-1540 at 1530-1532.
[1401] CR Morris and Co, Oparau Ferry, to Under Secretary for Lands, 15 February 1912, attached to CR Morris, Oparau Ferry, to Minister of Public Works, 7 July 1913. Works and Development Head Office file 52/10. Supporting Papers #1524-1540 at 1533-1534.
[1402] Under Secretary for Lands to CR Morris and Co, Oparau Ferry, 1 March 1912, attached to CR Morris, Oparau Ferry, to Minister of Public Works, 7 July 1913. Works and Development Head Office file 52/10. Supporting Papers #1524-1540 at 1535-1536.
[1403] CR Morris, Oparau Ferry, to Under Secretary for Lands, 15 August 1912, attached to CR Morris, Oparau Ferry, to Minister of Public Works, 7 July 1913. Works and Development Head Office file 52/10. Supporting Papers #1524-1540 at 1537.

> In the interview … you finally agreed that upon my undertaking to do certain fencing I could retain a portion of the land proposed to be taken so as not to hamper me quite so much in working the place. As negotiations were then proceeding for the purchase of the property from the Maori owners, I agreed to let the Department have the piece of land proposed to be taken at what it cost to obtain, which value was not to exceed £2-10/-. These propositions were to have been placed before the Minister for his approval and signature, but as I have had no advice whatever on the subject I presume nothing has been done in the matter. The position is now somewhat altered, for although the Government Valuation is 30/- per acre, the natives require £3 per acre for their interest, and I have therefore broken off negotiations with them, so that you will now have to deal with the Maoris direct as far as their interest is concerned. In view of the price required by the Natives, I have determined to sell my interest, and the property is at present under offer at £3-5/- per acre. I should be obliged if you could kindly inform me what the Department intends doing in this matter, and what is the present position.[1404]

The Under Secretary replied:

> It was proposed to take an area of 16¾ acres fronting the road reserve along the shore of Kawhia Harbour, immediately to the west of your house. As, however, you objected to the whole of this area being taken, it was agreed with you last August that the five acres nearest to the house should not be taken, and I regret that the matter has not been able to be completed hitherto, owing to there being no proper survey of the block, but steps are now being taken to have the area surveyed off at an early date, and I am asking the Chief Surveyor Auckland to expedite the matter.[1405]

The new survey showed that the area to be taken from Pirongia West 3B2E2 was 10 acres 3 roods 38 perches[1406]. The Public Works Department was informed of the revised area and plan, and asked to proceed with the taking[1407].

A Notice of Intention to Take the land from Pirongia West 3B2E2 was issued in May 1913[1408]. The lessee who had engaged in the earlier correspondence lodged an objection.

> Last August I agreed if it was impossible, which I understood was the case, to prevent a portion being taken as a scenic reserve, to be satisfied if I could

[1404] CR Morris, Oparau Ferry, to Under Secretary for Lands, 20 March 1913, attached to CR Morris, Oparau Ferry, to Minister of Public Works, 7 July 1913. Works and Development Head Office file 52/10. Supporting Papers #1524-1540 at 1538-1539.
[1405] Under Secretary for Lands to CR Morris, Oparau Ferry, 4 April 1913, attached to CR Morris, Oparau Ferry, to Minister of Public Works, 7 July 1913. Works and Development Head Office file 52/10. Supporting Papers #1524-1540 at 1540.
[1406] South Auckland plan SO 17140. Supporting Papers #2394.
[1407] Assistant Under Secretary for Lands to Under Secretary for Public Works, 30 April 1913. Works and Development Head Office file 52/10. Supporting Papers #1523.
[1408] *New Zealand Gazette* 1913 page 1796. Supporting Papers #3981.

> retain five acres of the land proposed to be taken, so as to allow of easier access to the property, and to lessen the difficulties of working it with such a confined frontage; but I still object to the area gazetted being taken as the total frontage is only forty chains which is very small for a block of nearly 2000 acres, so that the fact of decreasing the frontage makes the working of a property this size still more difficult; and I therefore respectfully request that the area gazetted be not taken.[1409]

The Government response to this objection was that, at the time of his interview with the Lands and Survey official, the lessee had signed a written agreement to allow the taking of the proposed reserve once the five acres or so had been excluded. He could not be expected to renege on that agreement[1410]. As a result the objection was not sustained, and the land was taken for scenic purposes in August 1913[1411].

A hearing to assess compensation was held by the Native Land Court in January 1914. No Maori owners or their representatives were present, so the Court heard the Crown's valuation evidence, and then adjourned the hearing[1412]. Later the Court ordered that compensation was to be set at £27-10-0d, of which £22 would be paid to the Maori owners, and the remainder to the European lessee[1413].

The small amount paid to the lessee brought yet another objection from him.

> I have duly received the cheque and have signed the receipt under protest as the compensation awarded to me is absurd.
>
> In the first place I was never advised as to when the Native Land Court was going to hear the case so that I could be present in support of my claim.
>
> Secondly the amount of £5.10. as awarded to me does not cover the amount of rent paid, namely £7.8.6d which does not include rates, nor £8 expenses incurred in resisting the taking of the above-mentioned land for scenic purposes.

[1409] CR Morris, Oparau Ferry, to Minister of Public Works, 7 July 1913. Works and Development Head Office file 52/10. Supporting Papers #1524-1540.
[1410] Under Secretary for Lands to Under Secretary for Public Works, 30 July 1913, and Under Secretary for Public Works to CR Morris, Oparau Ferry, 2 August 1913. Works and Development Head Office file 52/10. Supporting Papers #1541 and 1542.
[1411] *New Zealand Gazette* 1913 pages 2628-2629. Supporting Papers #3982-3983.
[1412] Land Purchase Officer Bold to Assistant Under Secretary for Public Works, 19 January 1914, on Land Purchase Officer Bold to TB Scott, Oparau Ferry, 9 January 1914. Works and Development Head Office file 52/10. Supporting Papers #1543.
[1413] Assistant Under Secretary for Public Works to Under Secretary for Lands, 6 April 1915. Works and Development Head Office file 52/10. Supporting Papers #1544.

> Thirdly twenty chains out of forty chains frontage to the road access have been taken, which adds to the difficulties of working a long narrow block such as this is.
>
> How is this compensation of £5.10. assessed? Has a Native lease duly registered with 34 years still to run no goodwill? Or are these leases looked on as worthless, although passed by the N.L. Court and duly stamped?[1414]

The Public Works Department advised the Lands and Survey Department about the complaint.

> This Department of course cannot explain the reasons which influenced the Judge in making his award….
>
> As to Mr Morris' statement that he was never advised as to when the Court was going to hear the case, I have to state that although not legally required to do so, the Land Purchase Officer on 9th January 1914 specially advised Mr Morris that the case would be taken on the 14th idem, the receipt of which was acknowledged and acted upon by Mr Morris. I understand further that the Native Land Court delayed making its award for about a year, to give Mr Morris or any of the Native owners a further opportunity of presenting their side of the case, which they apparently did not avail themselves of.[1415]

This still left the taking of the proposed reserves on the Mangaora partition blocks to be completed. The proposed reserve on Mangaora 2 was the subject of some correspondence in 1919. Rihi Te Rauparaha, one of the owners of the block, wrote to the Native Minister inquiring what was happening about the reserve. The advice from the Lands and Survey Department was that the matter had been shelved during the war but was "still under consideration", and taking the land for reserve remained the "ultimate object"[1416]. This was not satisfactory to Rihi, and she wrote to Maui Pomare.

> I want you to have that law waived from this land of my children and my relatives. I am neither in favour of a sale, nor of an exchange of it for other land. Let me have my land as I wish and, although it has pretty trees in the way of karakas and tree-ferns and puriris, I myself can take care of these. You know yourself how Maoris prize these karaka trees and tree-ferns, which is their best source of food when there are available some relishes (fish and shell fish) from the sea; and that the taste for these will continue through our

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[1414] CR Morris, Oparau Ferry, to Under Secretary for Lands, undated, attached to Under Secretary for Lands to Under Secretary for Public Works, 27 May 1915. Works and Development Head Office file 52/10. Supporting Papers #1545-1547.
[1415] Assistant Under Secretary for Public Works to Assistant Under Secretary for Lands, 5 June 1915. Works and Development Head Office file 52/10. Supporting Papers #1548.
[1416] Under Secretary for Lands to Under Secretary Native Department, 1 July 1919. Lands and Survey Head Office file 4/378. Supporting Papers #596.

> coming generations. It is on this account that I had this partition made, and secured the seaside piece….
>
> So you exert yourself to have this land removed from the operations of that Act. It is the only piece we have that is exactly suitable for our support and occupation. It was leased for occupation.[1417]

The Minister in charge of Scenery Preservation replied to Pomare that further action to take the various reserves around the Kawhia Harbour could not be taken until the Government had made a decision, adding:

> The scenery around Kawhia Harbour is particularly fine, and it would be a pity to see the bush destroyed on the areas recommended for reservation by the [Auckland Scenery Preservation] Board.[1418]

Rihi Te Rauparaha repeated her objections to the taking of any of her land in a second letter to Pomare in August 1922.

> This is a request to you in regard to our interests (mine and my children's) in Mangaora No.2. I have been living on it and I am being intimidated by the Pakeha and the Maoris by saying that I would be imprisoned in jail if my children and I continued to live there. My desire is that the land be declared no longer a scenic reserve. This is the only land we have. I will not agree to an exchange or to be paid for it in money. Do your utmost to prevent the operation of that Act, though it might be passed for you are the member for the West Coast. It is for you to save the Maoris from the injustice caused by this Act.[1419]

Investigation by the Commissioner of Crown Lands disclosed how severe would be the impact of any taking for scenic purposes on the owners of Mangaora 2. The block had an area of 63½ acres, of which 55 acres was proposed to be taken for reserve. The Commissioner still felt that scenic protection was a worthy cause, though adding that, because all the proposed takings for Kawhia Harbour scenic reserves were in abeyance, "the Natives on this site need not be disturbed at present"[1420]. The Minister replied to Pomare that "so long as your correspondent is in occupation of the land and

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[1417] Rihi Te Rauparaha, Pirongia, to M Pomare MHR, 25 July 1919. Lands and Survey Head Office file 4/378. Supporting Papers #597.
[1418] Under Secretary for Lands to Minister of Lands, 25 August 1919, and Minister in charge of Scenery Preservation to M Pomare MHR, 8 September 1919. Lands and Survey Head Office file 4/378. Supporting Papers #598 and 599.
[1419] Rihi Rauparaha Penetana, Pirongia, to M Pomare MHR, 4 August 1922. Lands and Survey Head Office file 4/378. Supporting Papers #603.
[1420] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 6 September 1922. Lands and Survey Head Office file 4/378. Supporting Papers #604.

cultivates it for his [sic] own use, it is not proposed to interfere with his [sic] occupation"[1421].

It seems that Rihi had invited the ire of others in the local community when she had started cutting timber in the proposed reserve. In July 1923 the Commissioner of Crown Lands wrote that he had been approached by Kawhia County Council.

> I have received a letter from the Clerk to the Kawhia County Council in regard to the question of acquiring for scenic purposes a portion of the Mangaora Block in Block VI Kawhia North S.D. The County Council states that the Natives are at present removing puriri timber for posts and destroying the bush, and as this is stated to be the only piece of scenic bush on the north side of the harbour, it appears to be a matter for regret that it cannot be preserved.[1422]

This advice prompted a review of the state of all the proposed scenic reserves around Kawhia Harbour (see sub-section on Motu Tara).

As a result of the review the Minister approved the taking of the proposed scenic reserves around the harbour, and the Public Works Department was asked to carry out the steps necessary to take the land. The request to Public Works applied to Mangaora 1, 3 and 4, but not to Mangaora 2, because of the promise made earlier to Rihi Te Rauparaha that she would not be disturbed while in occupation and cultivation. The Commissioner of Crown Lands was, however, asked to confirm that this was the case[1423]. He obtained a report about the block.

1. This area is absolutely unoccupied and no cultivation of any sort is being done or has been done.
2. This is a beautiful piece of Native Bush right on foreshore, consisting principally of black manuku, silver ditto, karaka, whaiangi, kowhai and akeake; a few chains back from the waterfront it works into heavy bush, rata, rimu, tawa, puriri, etc.
3. A few weeks ago some natives cut down and took away 200 puriri posts and a good number of black ponga (manuku) for the purpose of building a native meeting house further down the Harbour. These Natives had no colour of right, and when the woman Ritie (Lizzie) Rauparaha, who lives near Pirongia, heard of it she sent a native agent over to look after things, and now a law case is pending between the two sets of natives.

[1421] Minister in charge of Scenery Preservation to M Pomare MHR, 19 September 1922. Lands and Survey Head Office file 4/378. Supporting Papers #605.
[1422] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 19 July 1923. Lands and Survey Head Office file 4/378. Supporting Papers #616.
[1423] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 15 October 1923. Lands and Survey Head Office file 4/378. Supporting Papers #624.

4. This area of 53 [sic] acres should certainly be reserved for scenic purposes. The steep faces on waterfront if ever cut or burnt will in time slip down on the roadway. I recommend this area be secured and gazetted as a Scenic reserve.[1424]

Because Mangaora 2 was not occupied or cultivated, Lands and Survey considered that the promise made earlier no longer applied. The Minister was asked to approve of the taking of 55 acres from Mangaora 2. He asked Pomare for his comments, and was told that "I cannot see why this land should be taken from the Native owners"[1425]. The Minister then decided, "no action meantime; bring up in six months"[1426].

As a result of this decision it was only the areas in Mangaora 1, Mangaora 3 and Mangaora 4 that were referred to in a Notice of Intention to Take lands for scenic purposes, issued in January 1924[1427]. Because the three blocks were not registered in the Land Registry, there was no legal requirement to serve a copy of the Notice on the owners; the only way they could have known about the Notice was by reading the *Gazette* or *Kahiti*, or by seeing the Notice and plan displayed at Kawhia Post Office.

No objections were received by the Public Works Department, and these three areas were taken in April 1924[1428]. Separately, however, Rihi Te Rauparaha had written to Pomare objecting to any taking from Mangaora 1 or 2, claiming it was the only land remaining to her and her family[1429]. An investigation showed that Rihi and her family did own Mangaora 2, but had no shares in Mangaora 1, and Rihi herself owned part-interests in two other blocks in the district. There was still strong interest from the Crown in acquiring the bush on Mangaora 2, with the Commissioner of Crown Lands commenting:

[1424] Honorary Inspector of Scenic Reserves Rose to Commissioner of Crown Lands Auckland, 4 November 1923, attached to Commissioner of Crown Lands Auckland to Under Secretary for Lands, 14 November 1923. Lands and Survey Head Office file 4/378. Supporting Papers #625-626.
[1425] M Pomare MHR to Minister in charge of Scenery Preservation, 27 November 1923, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 21 November 1923. Lands and Survey Head Office file 4/378. Supporting Papers #627-628.
[1426] File note by Minister, 14 December 1923, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 8 December 1923. Lands and Survey Head Office file 4/378. Supporting Papers #629.
[1427] *New Zealand Gazette* 1924 page 205. Supporting Papers #4031.
[1428] *New Zealand Gazette* 1924 page 902. Supporting Papers #4033.
[1429] M Pomare MHR to Minister in charge of Scenery Preservation, 3 April 1924. Lands and Survey Head Office file 4/378. Supporting Papers #630.

> In view of the fact that the land is not suitable for farming, and that the native owners are not using the land and are living elsewhere, I do not think the taking of the block for scenic purposes will prejudicially affect them from an economic point of view. It is largely I think a question of sentiment. It is possible however that the fact that there is a supply of puriri and pungas for fencing and building may be responsible for Te Rihi Rauparaha being anxious to secure the bush for her own purposes.[1430]

Pomare was asked whether his earlier advice that the land should not be taken still applied, in light of the new ownership information[1431], but he replied:

> The Natives concerned object very strongly to the land being taken. As they have such small holdings, the taking of this area would practically make them landless.[1432]

In response to this reply, the Minister of Lands suggested that an exchange of lands should be examined in order to be able to acquire the bush on Mangaora 2[1433]. This is despite Rihi Te Rauparaha clearly stating in earlier correspondence that she had no interest in an exchange. The Commissioner of Crown Lands supplied details of Crown-owned lands in the district[1434], but a Field Inspector felt that none were suitable to offer in exchange, and in any case Rihi was interviewed and again refused to consider any exchange[1435].

With the difficulties in obtaining the bush area on Mangaora 2, the taking of the smaller adjoining areas of bush on Mangaora 1, 3 and 4 had been questioned, to the extent that the taking of those areas might have to be revoked[1436]. However it was considered that the taken areas should be retained, "because no doubt in the future

[1430] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 10 April 1924. Lands and Survey Head Office file 4/378. Supporting Papers #631.
[1431] Minister of Lands to M Pomare MHR, 28 April 1924. Lands and Survey Head Office file 4/378. Supporting Papers #632-634.
[1432] M Pomare MHR to Minister of Lands, 6 May 1924. Lands and Survey Head Office file 4/378. Supporting Papers #636.
[1433] Minister of Lands to Under Secretary for Lands, 13 May 1924, on M Pomare MHR to Minister of Lands, 6 May 1924. Lands and Survey Head Office file 4/378. Supporting Papers #636.
[1434] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 28 May 1924. Lands and Survey Head Office file 4/378. Supporting Papers #637-639.
[1435] Field Inspector Cleverdon, Te Kuiti, to Commissioner of Crown Lands Auckland, 11 December 1925, attached to Commissioner of Crown Lands Auckland to Under Secretary for Lands, 23 December 1925. Lands and Survey Head Office file 4/378. Supporting Papers #640-641.
[1436] Under Secretary for Lands to Under Secretary for Public Works, 1 May 1924. Works and Development Head Office file 52/32. Supporting Papers #1623A-1623C.

there will be a prospect of the Crown acquiring Block No.2, [as] Rihi is an elderly person and when she dies the next owners will probably sell"[1437].

A hearing of the Native Land Court to consider compensation to be paid for the areas taken for scenic purposes was held in January 1926, but was adjourned to Auckland with respect to the takings from the three Mangaora blocks. Another hearing was held in Auckland in March 1926[1438], but the hearings were not completed until February 1928 when compensation of £5, £50 and £15 was awarded for the takings from Mangaora 1, 3 and 4 respectively[1439].

13.7.3 Awaroa

In April 1911 the Scenery Preservation Board made four recommendations for land that should be acquired for scenery preservation purposes:

> Recommendation No.4 (Recommendation No.184)[1440]
> Part of Te Awaroa A No.2 Block in Block XI Kawhia North S.D.
> This is a strip of land at the north head of the Awaroa Stream, it is well-wooded and makes a very picturesque feature when going up and down the Awaroa River. A piece about 20 chains long and 10 chains wide should be acquired, say 20 acres.
>
> Recommendation No.5 (Recommendation No.185)
> Part of Te Awaroa No.2 and part of Section 7 Block XI Kawhia North S.D.
> This piece of land is the frontage of Section 7 Block XI Kawhia North S.D., and about 10 acres of the river frontage of the native land adjoining on the north-west. Section 7 is leased for coal mining purposes, but nothing is yet being done. About 10 chains wide would be sufficient width of the strip it is advisable to acquire.
>
> Recommendation No.6 (Recommendation No.186)
> Part of Section 8 Block XI Kawhia North S.D.
> This is a beautiful wooded bank forming the frontage of Section 8 to the Awaroa Stream. The section is under L.I.P. [Lease in Perpetuity] tenure, but the frontage ought to be preserved on account of both the beauty of the bank

[1437] Field Inspector Cleverdon, Te Kuiti, to Commissioner of Crown Lands Auckland, 11 December 1925, attached to Commissioner of Crown Lands Auckland to Under Secretary for Lands, 23 December 1925, and Under Secretary for Lands to Minister in charge of Scenery Preservation, 15 February 1926, approved by Minister 17 February 1926. Lands and Survey Head Office file 4/378. Supporting Papers #640-641 and 642.
[1438] Land Purchase Officer Brosnan to Under Secretary for Public Works, 1 April 1926. Works and Development Head Office file 52/32. Supporting Papers #1624.
[1439] Maori Land Court minute book 24 M 222. Supporting Papers #3633.
[1440] The first recommendation number is the number of the recommendation made at the April 1911 meeting. The second recommendation number is the number in a cumulative sequence of recommendations made by all Scenery Preservation Boards.

> and the steepness of the banks. A width of about ten chains should be acquired, taking in about 40 acres.
>
> Recommendation No.7 (Recommendation No.187)
> Part of Te Awaroa A No.2 Block, Block XI Kawhia North S.D.
> The bush on the left bank of the Awaroa River is very beautiful, and I recommend that the frontage of Te Awaroa No.2 Block be reserved for a distance of about 120 chains from the sharp bend near the entrance to the river. The width required would be about 15 chains, or say 150 acres.[1441]

These recommendations show that the Board was addressing the acquisition of land regardless of status or ownership. However, the proposals put to the Scenery Preservation Boards were shaped around what was possible and, within a wider context of a bias towards allowing land settlement, what was practicable. Because of the powers available to the Crown under the Scenery Preservation Amendment Act 1910, there was no effort to avoid recommending the acquisition of Maori-owned land.

Surveyors were instructed to survey the recommended reserves, at which point Eugene Thom, a Maori and one of the owner occupiers of Awaroa A2, expressed his concern.

> My farm has had a line cut through the centre of it and the bush has all been taken by the Tourist Department as a scenic reserve. It now is cut into three sections as the scenic reserve runs across the centre. As it was, I intended to leave a portion of the bush as a reserve for myself, because of its beauty, and also because it has a lot of timber suitable for fencing etc, and also I was going to transplant puriri trees in it and have been looking out for young plants for the purpose. It seems very hard when one is trying to make a home for it to be snatched away from him like this, especially after he has laid out all his plans for the future in beautifying the farm and have it laid out so as to be a credit to him.[1442]

He was told in reply that it was too early to be alarmed. The survey still had to be completed and the survey plans drawn up. At that point Thom would have an opportunity to object to the taking; this presumably is a reference to the Notice of Intention to Take under the Public Works Act. Thom was also told that the Scenery

[1441] Recommendations of Scenery Preservation Board, 5 April 1911. Lands and Survey Head Office file 541. Supporting Papers #158-161.
[1442] EA Thom, Hauturu, to Under Secretary for Lands, 18 November 1911. Lands and Survey Head Office file 541. Supporting Papers #165-166.

Preservation Board's recommendation was for a river frontage strip, which would not suggest that the farm would be as detrimentally affected as he feared[1443].

The Thom family continued to be concerned, and nearly one year later, in October 1912, Henry Thom, a brother of Eugene Thom, wrote to the Minister in charge of Scenery Preservation. This was after the Minister, in May 1912, had approved the taking of all the surveyed areas around Kawhia Harbour (see earlier section on Kawhia Harbour Scenic Reserves generally). Thom wrote:

> In the surveying of the said piece of land [for scenic reserve] it happens that a strip has been taken right through the centre of our section, which makes it very awkward as it cuts the section into three smaller sections without any means of communication from the front section to the back, and also it will leave one of the sections without any access (road).
>
> Our section, by the way, is only five chains wide or thereabouts, and it will practically be useless for farming purposes, on account of no communication from one section to the other. At the south end is the only place where it is possible to make a road through the "scenic", and at the north end it is an old burial ground which we wish to keep for sentimental reasons, and in the centre is the only place where water is obtainable that is not swampy.
>
> We do not wish in any way to wantonly destroy the scenery, and do ourselves wish to reserve it wherever possible for shelter, etc.
>
> In years gone by there was a big flood in the Awaroa, and should it happen again there would be no means of taking the cattle to higher country, as it will be all in the scenic.[1444]

Thom wrote to the Minister a second time about one week later offering a solution that he felt would be fair to both his family and to the Government.

> I have given the matter careful consideration, and believe that it would come to the same thing as far as we are concerned if an alteration was made in the positioning of the block, also if a small alteration was made in the survey of the proposed reserve, running the line back in one place so as to include an urupa into our section.

The alteration of "the positioning of the block" was not so much to do with the Crown as a request that the Native Land Court rehear an application for partitioning of Awaroa A2, and order some revised boundaries of the partition blocks. Thom wanted

[1443] Under Secretary for Lands to EA Thom, Hauturu, 2 December 1911. Lands and Survey Head Office file 541. Supporting Papers #167.
[1444] HE Thom, Hauturu, to Minister in charge of Scenery Preservation, October 1912 (received 29 October 1912). Lands and Survey Head Office file 541. Supporting Papers #168-169.

the Court to take into account in its partition decision that the Crown wanted to acquire some of Awaroa A2 as a scenic reserve, and rearrange the boundaries with that in mind[1445].

The Inspector of Scenic Reserves was asked for his opinion. His memorandum is written in the margin of a letter on file, and large parts of it have become lost by fraying of the paper edge. He regarded the partitioning as a matter for the Native Land Court, and noted that the legislation allowed for urupa to be located on scenic reserves and for special arrangements to be made regarding further burials and access. He concluded that "I think his objections trifling, but will (if so desired) make a visit to the ground"[1446].

Replying to Thom, the Under Secretary explained the provisions of Section 7 Scenery Preservation Amendment Act 1910, which made provision for burials in ancestral burial grounds on scenic reserves to continue, and noted that only 3 acres of land were proposed to be taken from Thom's farm[1447]. This did not appease Thom, who replied at length. First, he said, it was not just 3 acres that would be taken; "in reality I find that the area to be taken exceeds what I estimated by about three times". Second, the Thom family[1448], all siblings, were only half-owners in Awaroa A2E, one of the partition blocks of Awaroa A2, which meant that the five members of the family had to share about 70 acres, or about 14 acres each, making every acre of land in the block valuable to them. Third, if land was to be taken for scenic reserve, the family wanted land in return rather than monetary compensation. Fourth, caves existed on the land, which they planned to open to visitors, so the taking of land would deny them a future income. Fifth, he objected to the inclusion of about 3½ acres of flat land in the

[1445] HE Thom, Hauturu, to Minister in charge of Scenery Preservation, 1 November 1912. Lands and Survey Head Office file 541. Supporting Papers #170-171.
[1446] Inspector of Scenic Reserves to Under Secretary for Lands, 12 November 1912, on Under Secretary for Lands to HE Thom, Hauturu, 8 November 1912. Lands and Survey Head Office file 541. Supporting Papers #172.
[1447] Under Secretary for Lands to HE Thom, Hauturu, 16 November 1912. Lands and Survey Head Office file 541. Supporting Papers #173.
[1448] Eugene Albert Thom, George Augustus Thom, Henare Edward Lawlor Thom, Isabel Josephine Thom, and William Napier Reeves Thom.

proposed reserve, which he was cultivating. Sixth, he needed to retain some of the bush-covered land as shelter for stock.[1449]

It was clear that the Inspector of Scenic Reserves needed to visit Awaroa in order to understand the situation on the ground, and to see if a solution could be agreed. He paid his visit there in February 1913.

> I find the complainant has a grievance, as the balance of land left to him is all subject to flood, and has no site safe to build on; without high land, also, there would be danger of his stock being drowned.
>
> Along the eastern boundary of the Scenic Reserve there is a small flat at the base of a limestone cliff, and Mr Thom wishes to have this cut off for his use. If the bush on this flat be cut and burned off, it is likely to kill the vegetation on the cliff; and if possible it is desirable to satisfy Mr Thom in another way. The alternative proposed by Mr Thom is that we should take the whole of his interest in this part of Awaroa A No.2, amounting to about 70 acres (including the swampy part) and give him as payment a part of Section 7 Block XI Kawhia S.D. equal in value to the part taken; the balance of Section 7 he might get as an O.R.P. [Occupation Licence with Right of Purchase] or renewable lease. Section 7 has been reserved from disposal as a coal-seam was found on it, but it has not so far been found payable to work.
>
> The [partition] subdivision had not been determined when Mr Booker made his survey….
>
> Any measures decided on will have to be put into operation promptly, as Mr Thom has built a whare on the flat part of the Scenic Reserve, and has cleared a small part as garden.[1450]

The Chief Surveyor agreed with the Inspector's recommendation[1451].

Thom was not written to after the Inspector's visit, and he concluded that the lack of communication meant that the matter had been shelved. He complained to the Minister that he had been left in limbo by the negligence of Crown officials, and asked the Minister to "have more consideration for a settler's welfare than evidently your officials have"[1452]. What seems to have been part of the reason for a delay was

[1449] H Thom, Hauturu, to Minister in charge of Scenery Preservation, 16 December 1912. Lands and Survey Head Office file 541. Supporting Papers #174-179.
[1450] Inspector of Scenic Reserves to Under Secretary for Lands, 3 February 1913. Lands and Survey Head Office file 541. Supporting Papers #180-183.
[1451] Chief Surveyor Auckland to Under Secretary for Lands, 12 May 1913. Lands and Survey Head Office file 541. Supporting Papers #186.
[1452] HE Thom, Hauturu, to Minister in charge of Scenery Preservation, 30 April 1913. Lands and Survey Head Office file 541. Supporting Papers #184-185.

that the Native Land Court's partition of Awaroa A2 was holding up the completion of the plans showing the proposed scenic reserve. The Chief Surveyor, in surveying the partitions, was having difficulty following the Court's description of boundaries while still meeting the Court's requirements as to what should be the area of each partition section; as a result he had asked the Chief Judge to amend the Court's instructions to make the two matters come into line with one another[1453].

It was not until December 1914 that the survey plan of the proposed reserves in Awaroa A2 was amended to show the partition boundaries and the exclusion of the terrace flat[1454]. The Minister approved the taking of the land under the Public Works Act the following month[1455]. The plan showed that the following areas would be taken from the various Awaroa A2 partition blocks:

- Awaroa A2C 32 acres 2 roods 27 perches
- Awaroa A2D 4 acres 0 roods 11 perches
- Awaroa A2E 26 acres 2 roods 02 perches
- Awaroa A2H1 13 acres 3 roods
- Awaroa A2H2 3 acres

The request to the Public Works Department to carry out the steps necessary for the taking was made in May 1915[1456], and a Notice of Intention to Take the land was issued in July 1915[1457].

The Notice of Intention attracted four objections from Maori owners of the land. Three of the objections, from Rangi Tuataka, Hua Terohe and Poari Wetere, were telegrams notifying their objection, but without providing any reasons or indicating

[1453] Chief Surveyor Auckland to Under Secretary for Lands, 27 May 1913. Lands and Survey Head Office file 541. Supporting Papers #187-188.
[1454] Chief Surveyor Auckland to Under Secretary for Lands, 4 December 1914. Lands and Survey Head Office file 541. Supporting Papers #189-191.
South Auckland plan SO 16565. Supporting Papers #2379.
[1455] Under Secretary for Lands to Minister in charge of Scenery Preservation, 4 January 1915, approved by Minister 6 January 1915. Lands and Survey Head Office file 541. Supporting Papers #192.
[1456] Under Secretary for Lands to Under Secretary for Public Works, 7 May 1915. Works and Development Head Office file 52/32. Supporting Papers #1587.
[1457] *New Zealand Gazette* 1915 page 2289. Supporting Papers #3994.

which partition block they were owners in[1458]. The fourth was from Eugene Thom, one of the owners in Awaroa A2E, who wrote:

> 1st It spoils the section as it lies across the centre of the section and divides it into two, and I have not access to the back portion at all now.
>
> 2nd I have not any dry land to speak of in the frontage for preserving my stock in flood times.
>
> 3rd It has spoiled the value of the property as it will be so awkward to work.
>
> 4th We have no property anywhere else and am landless.

He sought an exchange of land.

> If the Government take the land, I haven't sufficient land to make a living off. I need every acre to do my requirements. I am not one of the sort that are satisfied so long as they get a belly full of pork and spuds. What I want is to work the land and go in for dairying. I started milking last season and packed my cream to Oparau, and have shares in the Factory, which will prove that I am not a waster and am only writing just to try and make a fuss. I want the land to keep me, not me keep the land.[1459]

The Inspector of Scenic Reserves was sympathetic to Thom's objection[1460], and the Commissioner of Crown Lands was asked if alternative land was available on which the Thom family could be settled. He replied that Section 7, which had earlier been identified as suitable by Henry Thom, was no longer available[1461]. Section 8, however, was still available[1462]. A Crown Lands Ranger discussed this with Thom.

> Mr Thom is quite agreeable for the Department to take the 26a 2r 2p for scenic purposes, also the area cut off in the western side of his section, … approximately 15 acres, and will not claim any compensation for these areas, provided the Department will grant him an O.R.P. [Occupation Licence with Right of Purchase] lease of Section 8 Block XI Kawhia North S.D. after all necessary reserves have been cut off in the southern end.
>
> You will see by attached sketch that the scenic reserve is cut out of the middle of Thom's section, and the [15-acre western portion] is useless to him, as there

[1458] Telegram Rangi Tuataka, Hauturu, to Minister of Public Works, 10 August 1915; Telegram Hua Terohe, Hauturu, to Minister of Public Works, 10 August 1915; and Telegram Paari Wetere, Hauturu, to Minister of Public Works, 10 August 1915. Works and Development Head Office file 52/32. Supporting Papers #1588, 1589 and 1590.
[1459] EA Thom, Hauturu, to Minister of Public Works, 3 August 1915. Lands and Survey Head Office file 541. Supporting Papers #193-195.
[1460] File note by Inspector of Scenic Reserves, 20 August 1915, on EA Thom, Hauturu, to Minister of Public Works, 3 August 1915. Lands and Survey Head Office file 541. Supporting Papers #193-195.
[1461] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 28 August 1915. Lands and Survey Head Office file 541. Supporting Papers #196.
[1462] Telegram Commissioner of Crown Lands Auckland to Under Secretary for Lands, 9 September 1915. Lands and Survey Head Office file 541. Supporting Papers #197.

> is no way of getting from the balance of his section other than through the scenic reserve.

He provided valuations showing that Thom's land to be exchanged was worth £68, while the freehold of the 90 acres of Section 8 was worth £2 an acre.

> I would beg to recommend that the exchange as suggested be agreed to, as the proposition is all in favour of the Department. Mr Thom is giving approximately 40 acres of land for an ORP lease of Section 8.[1463]

While the proposal might be beneficial to both parties, there was still the question of whether the law allowed the Crown to undertake such an exchange[1464]. A written agreement was obtained from three of the five Thom siblings that they would not claim compensation if their land was taken and they were awarded an ORP licence for Section 8[1465].

With respect to the three telegraphed objections, there was initially some thought that they should be ignored because the grounds for objection had not been stated, and the Minister of Public Works was prepared to proceed with the taking if the Lands and Survey Department had no objection[1466]. However, when the Under Secretary for Lands felt that a statement of objection should be obtained from the objectors[1467], the Resident Engineer was instructed to see the objectors and find out their reasons for objecting. An overseer accompanied by an interpreter obtained signed statements from the objectors. Te Puhi Paeturi, on behalf of the owners of Awaroa A2C and Awaroa A2H1, wanted to be able use the timber for fencing and other purposes, and also wanted to be able to use stone on the foreshore[1468]. Poari Wetere, occupier of Awaroa A2C because the other three owners had given him the right to use and reside

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[1463] Crown Lands Ranger Jordan to Commissioner of Crown Lands Auckland, 8 November 1915, attached to Commissioner of Crown Lands Auckland to Under Secretary for Lands, 22 November 1915. Lands and Survey Head Office file 541. Supporting Papers #198-202.
[1464] Assistant Under Secretary for Lands to Commissioner of Crown Lands Auckland, 25 November 1915. Lands and Survey Head Office file 541. Supporting Papers #203.
[1465] Agreement of Eugene Albert Thom, William Napier Reeve Thom and Henry Edward Lawlor Thom, 30 December 1915, attached to Under Secretary for Lands to Under Secretary for Public Works, 4 April 1917. Works and Development Head Office file 52/32. Supporting Papers #1604-1605.
[1466] Assistant Under Secretary for Lands to Minister of Public Works, 3 September 1915, and file note by Minister of Public Works, 4 September 1915. Works and Development Head Office file 52/32. Supporting Papers #1591.
[1467] Under Secretary for Lands to Assistant Under Secretary for Public Works, 17 September 1915. Works and Development Head Office file 52/32. Supporting Papers #1591.
[1468] Objections of Te Puhi Paeturi, 20 November 1915, attached to District Engineer Auckland to Under Secretary for Public Works, 26 November 1915. Works and Development Head Office file 52/32. Supporting Papers #1592-1597 at 1593.

on the section, objected that he would be left landless if the reserve was taken. In addition, he objected on behalf of Wenuku Tuwhatu, an owner of Awaroa A2H, that the proposed reserve on that section contained a tapu rock and burial place[1469]. Taka Taiharuru, on behalf of the owners of Awaroa A2D and A2E, stated that a burial ground was included in the land to be taken, which he wanted reserved under the native lands legislation[1470]. There was no explanation given as to why the names of those who signed objection statements varied from the names of those who had earlier telegraphed their objections.

The objections were passed to the Commissioner of Crown Lands for his comments. In December 1915 he reported:

> The objections raised do not appear to me to be sufficient grounds for preventing the completion of the acquisition by the Crown. As far as the burial ground is concerned, this would of course be respected, and the suggestion that the available timber should be used for fencing and other purposes would of course destroy the scenery whose preservation is the object of the proposed acquisition.[1471]

The following month he added:

> Poari Wetere is not an owner in Awaroa 2H, as stated. He has, however, an undivided interest amounting to 31 acres 3 roods 15 perches in Awaroa A No.2C. [If the taking proceeds] his interest in the Block will be diminished to 21 acres 3 roods 7 perches.[1472]

The Inspector of Scenic Reserves also provided his comments:

> As a scenic reserve the burial ground will be better protected than in its present state, and the natives will retain the right of burial there. The subdivisions of the A2 block have been made since the scenic surveys were done. The bush here should be preserved and I think the CCL should be asked if he can offer another area in the locality as compensation. The whole area of Awaroa A No.2C is not enough for the support of one family.[1473]

[1469] Objection of Poari Wetere, 26 October 1915, attached to District Engineer Auckland to Under Secretary for Public Works, 26 November 1915. Works and Development Head Office file 52/32. Supporting Papers #1592-1597 at 1595.
[1470] Objection of Taka Taiharuru, 26 October 1915, attached to District Engineer Auckland to Under Secretary for Public Works, 26 November 1915. Works and Development Head Office file 52/32. Supporting Papers #1592-1597 at 1596.
[1471] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 14 December 1915. Lands and Survey Head Office file 541. Supporting Papers #204.
[1472] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 18 January 1916. Lands and Survey Head Office file 541. Supporting Papers #205.
[1473] Inspector of Scenic Reserves to Mr Gambrill, 21 January 1916, on Commissioner of Crown Lands Auckland to Under Secretary for Lands, 18 December 1915. Lands and Survey Head Office file 541. Supporting Papers #205.

These comments were passed on to the Public Works Department, with an additional note:

> The areas proposed to be taken contain very picturesque scenery and bush, and should be preserved if possible. It may be possible to arrange for Crown land to be given in lieu of monetary consideration, if you consider the objections raised render such a course advisable and there is power under the Public Works Act to give effect to such arrangements.[1474]

This comment put any exchange arrangement as clearly within the Public Works Act procedures. The Solicitor General was asked if this was allowed.

> From Section 91 of [the Public Works Act] it would appear that monetary compensation should be paid for Native land taken under the provisions of the Act; but Section 86 provides that Crown land may be granted in payment or part payment of compensation payable for any land acquired for a public work.
>
> Will you kindly advise whether Crown land might be granted to Native owners in lieu of paying them compensation for the portions of their land taken under the Public Works Act 1908.[1475]

The Solicitor General replied that there were two mechanisms by which Crown land could be granted in lieu of compensation for taken land.

> The first is by an exercise of the powers conferred upon the Governor by Section 11 of the Scenery Preservation Amendment Act 1910. Under this section, the Governor has power for the purposes of that Act to effect an exchange of Crown land for Native land. The machinery for effecting that exchange is that which is set out in Sections 380 to 386 of the Native Land Act 1909. The Crown land so granted in exchange would become Native freehold land (see Section 384). Any such exchange would, however, require the consent of all the Native owners, and as I understand that some of the owners object to the taking of their land, it may be impracticable to effect such an exchange.
>
> The second possible method is by the grant of Crown land in satisfaction of compensation under Section 86 of the Public Works Act 1908. This arrangement also however would require the consent of all the Native owners. They are not bound to accept Crown land, but are entitled to insist on payment of pecuniary compensation. Moreover, it would be necessary for the Native Land Court in the first place to assess the amount of compensation so payable. A further serious objection to this course is that the Crown land so granted would not become Native land, but would become European land granted to Natives for pecuniary consideration (see paragraph (b) of the definition of

[1474] Under Secretary for Lands to Under Secretary for Public Works, 24 January 1916. Works and Development Head Office file 52/32. Supporting Papers #1598-1599.
[1475] Under Secretary for Public Works to Solicitor General, 27 January 1916. Works and Development Head Office file 52/32. Supporting Papers #1600.

> "Native freehold land" in Section 2 of the Native Land Act 1909). It may be found impracticable therefore to carry out any such arrangement as is suggested, and if so the question of going further with this matter is one for serious consideration as a matter of public policy, for the present does not seem to be a proper time for the expenditure of public money in acquiring scenic reserves.[1476]

The Solicitor General's opinion reinforces how biased the legislation was in favour of the proponent of the public work. With multiply-owned Maori land, the great advantage for the Crown was that it was not necessary to obtain the agreement of each and every owner to part with their land to the Crown. Yet when it came to a matter of great potential benefit to Maori owners, that land might be granted in place of land taken, all the beneficial owners had not only to agree, but also apparently withdraw any objections they had lodged to a taking. It would require a major commitment by both the Maori owners and the Crown, plus a major element of trust in one another, for a land exchange to succeed. The Crown was unlikely to favour such a protracted administrative mechanism, when the alternative was to just pay monetary compensation. In addition, on the basis of the Solicitor General's opinion, it would appear that only one Maori owner had to refuse to participate in an exchange, and insist on receiving monetary compensation, for any exchange arrangement to collapse.

When the Solicitor's General's opinion was received, the whole taking proposal was placed before the Minister of Public Works. He was told that Lands and Survey did not believe the objections were such as to prevent the land being taken, as it was prepared to grant Crown land in lieu of the land taken. He was also given the Solicitor's General's opinion that land could be granted in lieu under certain defined circumstances, but that it did not make sense to expend so much energy on this during wartime. Finally, he was offered the option of arranging for a formal hearing of the objections by a Ministerial representative, such as a Judge of the Native Land Court. The Minister's decision, in February 1916, was "no further action at present"[1477].

[1476] Solicitor General to Under Secretary for Public Works, 3 February 1916. Works and Development Head Office file 52/32. Supporting Papers #1601-1602.
[1477] File note by Minister of Public Works, 28 February 1916, on Assistant Under Secretary for Public Works to Minister of Public Works, 17 February 1916. Works and Development Head Office file 52/32. Supporting Papers #1603.

This decision was not communicated to the Lands and Survey Department, and it only found out one year later, in March 1917[1478]. At that time it forwarded the agreement arranged with the Thom family, and asked that the taking proceed with respect to Awaroa A2E[1479], but was told that the proposed exchange did not fit within the prescribed circumstances outlined by the Solicitor General; the only option open to Lands and Survey was to arrange for special legislation to be passed to enable that individual exchange arrangement to be authorised[1480].

Lands and Survey made one further attempt to get the exchange with the Thom family resurrected. The Native Minister was asked if he would give his approval to the exchange, but he replied to the Minister of Lands advising "holding this over till after the war"[1481]. The Minister of Lands agreed[1482].

In January 1919, the armistice having been signed in November 1918, the matter was again put in front of the Minister in charge of Scenery Preservation. He instructed his Department to "take the necessary steps to secure the reserves"[1483]. The Public Works Department was informed[1484], although no reference was made to the agreement with the Thom family; this had presumably been abandoned because it did not comply with the circumstances outlined in the Solicitor General's opinion. The operative period for the 1915 Notice of Intention to Take had expired, so it was necessary to issue another Notice. This was done in May 1919[1485]. The Notice referred to the same areas to be taken as in the 1915 Notice, though the land referred to in 1915 to be taken

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[1478] Under Secretary for Lands to Under Secretary for Public Works, 14 March 1917, and Under Secretary for Public Works to Under Secretary for Lands, 19 March 1917. Lands and Survey Head Office file 541. Supporting Papers #206-207 and 208-209.
[1479] Under Secretary for Lands to Under Secretary for Public Works, 4 April 1917. Lands and Survey Head Office file 541. Supporting Papers #210.
[1480] Under Secretary for Public Works to Under Secretary for Lands, 14 April 1917. Lands and Survey Head Office file 541. Supporting Papers #211.
[1481] Native Minister to Minister of Lands, 26 September 1917, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 17 September 1917. Lands and Survey Head Office file 541. Supporting Papers #212-213.
[1482] File note by Minister of Lands, 6 December 1917, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 17 September 1917. Lands and Survey Head Office file 541. Supporting Papers #212-213.
[1483] File note by Minister in charge of Scenery Preservation, 16 February 1919, on Under Secretary for Lands to Minister in charge of Scenery Preservation, 15 January 1919. Lands and Survey Head Office file 541. Supporting Papers #214.
[1484] Under Secretary for Lands to Under Secretary for Public Works, 24 April 1919. Works and Development Head Office file 52/32. Supporting Papers #1606.
[1485] *New Zealand Gazette* 1919 page 1381. Supporting Papers #4011.

from Awaroa A2E was now to be taken from Awaroa A2E2, because of an intervening partition. The owners of Awaroa A2E2 were the five Thom siblings, and copies of the Notice were sent to them or their agents[1486].

Yet again the Thom family was obliged to write to Wellington to protect their interests. Henry Thom explained how he had written in earlier years, and how he wanted excluded from the proposed reserve some of the higher ground to which their stock could retreat at times of flood, and the site of a spring[1487], although he later withdrew his objection[1488]. This was presumably because the Thoms' solicitors had separately written saying they had no objection to the taking provided that the Crown honoured the agreement that had been signed in 1915[1489].

Another objection came from the Public Trustee, who managed the interests of two Thom siblings who were mental hospital patients. The Trustee complained that the taking would interrupt a proposed intra-family arrangement whereby the interests of the two patients were transferred to the three other siblings[1490]. This objection was not deemed to have any merit, as it could be met by the payment of compensation monies[1491].

With this latter objection rejected, there was nothing to stop the land being taken, and the taking for scenic purposes was proclaimed in November 1919[1492].

[1486] District Engineer Auckland to Acting Under Secretary for Public Works, 24 June 1919, Acting Under Secretary for Public Works to District Engineer Auckland, 28 June 1919, and District Engineer Auckland to Acting Under Secretary for Public Works, 4 July 1919. Works and Development Head Office file 52/32. Supporting Papers #1607-1608, 1609 and 1610.
[1487] HEL Thom, Waitara, to Minister of Public Works, 20 July 1919. Works and Development Head Office file 52/32. Supporting Papers #1611.
[1488] HEL Thom, Waitara, to Under Secretary for Public Works, 23 September 1919. Works and Development Head Office file 52/32. Supporting Papers #1612.
[1489] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 26 July 1919; and District Engineer Auckland to Under Secretary for Public Works, 4 August 1919, attached to Under Secretary for Public Works to Under Secretary for Lands, 11 August 1919. Lands and Survey Head Office file 541. Supporting Papers #215 and 216-217.
[1490] Deputy Public Trustee Auckland to District Engineer Auckland, 25 September 1919, attached to District Engineer Auckland to Under Secretary for Public Works, 26 September 1919. Works and Development Head Office file 52/32. Supporting Papers #1613-1614.
[1491] Under Secretary for Public Works to Under Secretary for Lands, 11 October 1919. Lands and Survey Head Office file 541. Supporting Papers #218.
[1492] Under Secretary for Public Works to Minister of Public Works, 16 October 1919. Works and Development Head Office file 52/32. Supporting Papers #1615.
New Zealand Gazette 1919 pages 3193-3194. Supporting Papers #4015-4016.

The Crown was still willing to honour the agreement with the Thom family[1493]. That agreement had been signed in December 1915 by three members of the family, but not the two members who were mental hospital patients. The agreement fell apart, however, when the Public Trustee advised that those two other members, who were deemed to be capable of making of such decisions, declined to sell their shares to the other family members, and asked on their behalf that they be compensated in money for the land taken for scenic purposes[1494].

The application to the Native Land Court for the assessment of compensation had been lodged, but not proceeded with while waiting to see if the agreement with the Thom family might proceed. The Under Secretary for Lands agreed that compensation should be assessed by the Court "in the ordinary way"[1495]. The application was heard in September 1920, and compensation was awarded as follows[1496]:

• Awaroa A2C	32 acres 2 roods 27 perches	£98
• Awaroa A2D	4 acres 0 roods 11 perches	£8
• Awaroa A2E2	26 acres 2 roods 02 perches	£54
• Awaroa A2H1	3 acres	£6
• Awaroa A2H2	13 acres 3 roods	£27

This is a total of £193 for 80 acres.

13.7.4 Rakaunui

The survey plan showing proposed reserves at Rakaunui identified eleven different areas, all Maori-owned[1497]:

• Awaroa A8	3 roods
	6 acres 0 roods 16 perches
	8 acres 0 roods 32 perches

[1493] Under Secretary for Lands to Under Secretary for Public Works, 14 January 1920, and Under Secretary for Public Works to Under Secretary for Lands, 4 February 1920. Lands and Survey Head Office file 541. Supporting Papers #219 and 220-221.
[1494] Assistant Deputy Public Trustee Auckland to District Engineer Auckland, 26 July 1920, attached to District Engineer Auckland to Under Secretary for Public Works, 28 July 1920. Works and Development Head Office file 52/32. Supporting Papers #1616-1617.
[1495] Under Secretary for Lands to Under Secretary for Public Works, 17 August 1920. Works and Development Head Office file 52/32. Supporting Papers #1618.
[1496] Maori Land Court minute book 62 OT 182-183. Supporting Papers #3682-3683.
[1497] South Auckland plan SO 16561. Supporting Papers #2375.

- Awaroa A3B2 2 acres 0 roods 16 perches
  36 acres 1 rood 08 perches
  24 acres
- Hauturu West 3A 2 roods 32 perches
  20 acres 0 roods 32 perches
- Hauturu West 3B2B 20 acres
- Islands (customary) 1 rood
  30 perches

There had been no updating of the plan showing the reserves on Awaroa A3B2. It was only in 1921 that the matter was urgently revived, when a solicitor informed the Lands and Survey Department that the block was the subject of a partition application to the Native Land Court[1498]. The Chief Surveyor made inquiries and found the application was for the partition of Awaroa A3B2A. He argued that the Crown should actively disclose its interest, as that might affect how the Maori owners proceeded with their partition.

> The Crown should, I think, proceed with the acquisition of the scenic area, as the only effect a partition would have, as far as the Crown is concerned, would be the payment of compensation to two or more parties instead of one. However, the fact of the Crown's intention to proceed would influence the owners in the location of their areas on partition, as a large portion of the sea frontage would be taken for scenic purposes. It would simplify the situation if the scenic area could be proclaimed before the partition is dealt with by the Native Land Court [in September].[1499]

Of the proposed reserves in Awaroa A3B2, only one, the area of 36 acres 1 rood 08 perches, involved Awaroa A3B2A. The earlier partition of A3B2 had split this 36 acre area between A3B2A and A3B2C, requiring areas of 17 acres 0 roods 16 perches and 19 acres 0 roods 32 perches respectively from those two blocks. Despite the impending partition affecting only Awaroa A3B2A, the Crown felt that both the 17 acre and 19 acre areas (i.e. the whole 36 acre area) should be taken.

[1498] F Phillips, Solicitor, Otorohanga, to Under Secretary for Lands, 4 July 1921. Lands and Survey Head Office file 4/378. Supporting Papers #600.
[1499] Chief Surveyor Auckland to Under Secretary for Lands, 27 July 1921. Lands and Survey Head Office file 4/378. Supporting Papers #601.

The proposal that the circumstances justified urgency ahead of dealing with the other proposed reserves around Kawhia Harbour was put to the Minister, who approved the taking of the combined area of 36 acres[1500]. The Public Works Department was then asked to arrange the taking of the land[1501]. In its instruction to the Public Works Department, the 36 acres had been split in a different fashion, with 22 acres 2 roods 13 perches to come out of Awaroa A3B2A and 13 acres 2 roods 35 perches to come out of Awaroa A3B2C. These different areas are shown on the survey plan[1502], and are explained by a redrawing of the partition boundary between A3B2A and A3B2C.

A Notice of Intention to Take was issued in August 1921[1503]. No objections were received and the land was taken in October 1921[1504]. An area of 22 acres 2 roods 13 perches was taken from Awaroa A3B2A, and 13 acres 2 roods 35 perches was taken from Awaroa A3B2C[1505].

In May 1922 the Native Land Court assessed compensation. It awarded £10 for the area taken from Awaroa A3B2A, and £2 for the area taken from Awaroa A3B2C[1506].

The survey plan showed other areas proposed to be taken around Rakaunui Inlet. These were referred to in a review of the proposed scenic reserve areas in September 1923, and were included in the total area of reserves for which approval was sought and obtained from the Minister in charge of Scenery Preservation for their taking (see sub-section on Motu Tara). However they do not appear to have been included in the schedule of proposed reserves to be taken that was sent to the Public Works Department in October 1923. This meant that they were not included in the Notice of Intention to Take lands for scenic purposes that was issued in January 1924, nor were they subsequently taken with the other areas around the harbour in April 1924.

[1500] Under Secretary for Lands to Minister in charge of Scenery Preservation, 2 August 1921, approved by Minister 4 August 1921. Lands and Survey Head Office file 4/378. Supporting Papers #602.
[1501] Under Secretary for Lands to Under Secretary for Public Works, 5 August 1921. Works and Development Head Office file 52/10. Supporting Papers #1549.
[1502] South Auckland plan SO 16561. Supporting Papers #2375.
[1503] *New Zealand Gazette* 1921 page 2115. Supporting Papers #4022.
[1504] *New Zealand Gazette* 1921 page 2479. Supporting Papers #4023.
[1505] South Auckland plan SO 16561. Supporting Papers #2375.
[1506] Assistant Under Secretary for Public Works to Under Secretary for Lands, 31 May 1922. Works and Development Head Office file 52/10. Supporting Papers #1550.

13.7.5 Te Umuroa

The survey plan for Te Umuroa peninsula shows that the proposed reserve enclosed four parcels of land[1507]:

- Hauturu West 2A1 — 68 acres 2 roods 24 perches — Maori-owned
- Hauturu West 2A5 — 74 acres — Crown-owned
- Hauturu West 2A4 — 4 acres 2 roods 16 perches — Maori-owned
- Hauturu West 2A3 — 7 acres 1 rood — Maori-owned

The taking of these areas was revived in September 1923 when the Minister in charge of Scenery Preservation was asked for and gave his approval to the takings at Motu Tara, Puti, Te Umuroa and Oteke, following which the Public Works Department was informed (see section on Motu Tara). It issued a Notice of Intention to Take the three Maori-owned portions of Te Umuroa peninsula in January 1924[1508]. Because the three blocks were not registered in the Land Registry, there was no requirement to serve a copy of the Notice on the owners; the only way they could have known about the Notice was by reading the *Gazette* or *Kahiti*, or by seeing the Notice and plan displayed at Kawhia Post Office. No objections were received, and the three Maori-owned portions were taken in April 1924[1509].

A hearing of the Native Land Court to consider compensation to be paid was held in January 1926. Compensation of £99 for the taking of Hauturu West 2A1, £7 for the taking from Hauturu West 2A3, and £4 for the taking from Hauturu West 2A4, was awarded[1510].

Dealing with the Crown-owned portion was a matter for Lands and Survey acting alone. Hauturu West 2A5 (renamed Section 16 Block XIV Kawhia North SD) was reserved under the Land Act for scenic purposes in February 1924[1511].

[1507] South Auckland plan SO 16566. Supporting Papers #2380.
[1508] *New Zealand Gazette* 1924 page 205. Supporting Papers #4031.
[1509] *New Zealand Gazette* 1924 page 902. Supporting Papers #4033.
[1510] Maori Land Court minute book 66 OT 112-113. Supporting Papers #3693-3694.
[1511] *New Zealand Gazette* 1924 page 485. Supporting Papers #4032.

13.7.6 Waiharakeke and Te Mahoe

In April 1911 the Scenery Preservation Board made recommendations about areas to be acquired for scenic reserve in Te Mahoe Inlet (Recommendation 191 in the Board's cumulative numbering system) and Waiharakeke Inlet (Recommendation 192). The Inspector of Scenic Reserves in reporting to the Board had described them as follows:

> Recommendation No.11 [Te Mahoe Inlet]
> Part Section 2 Block XIV Kawhia North SD, and part of the Waipuha (subdivision of Ohura) Block
> This is a beautifully wooded little bay just below the bridge over the Waiharakeke Inlet. The total area would be not more than 10 acres. Section 2 is a L.I.P. to D'Arcy Hamilton.
>
> Recommendation No.12 [Waiharakeke Inlet]
> Part Section 4 Block XIV Kawhia North SD, and part of the Hauturu West No.2 Section 1
> This is a beautiful wooded slope; there is a road above high water mark, but to protect the bush about 10 chains wide from the shore should be acquired along the whole frontage of the Native block, and for about 2 chains along Section 4 (which is a L.I.P.). Total area about 100 acres.
>
> Recommendation No.13 [Waiharakeke Inlet]
> Part Hauturu West part No.2B, part Section 4 Block II Kawhia South SD, and Crown Land
> From the piece of Crown Land near the bridge and along the western shore of the Waiharakeke Inlet are some very picturesque bushy slopes that ought to be acquired; the bush is not continuous but the patches would be about 100 chains long by about 10 chains wide, or say 100 acres. Section 4 is a L.I.P. section.[1512]

When the surveyor went on to the ground later in 1911, the Maori owners of Hauturu West 2B became aware of the Crown's intentions. Wirireka Rokena immediately wrote to the Native Minister.

> I apply that the survey be not approved by the Surveyor General, on the grounds herewith submitted for your favourable consideration:
> 1. Our ancestor who died in the year 1869 is buried there and we are prepared to point out the spot to a responsible official if approved.
> 2. That place is being worked by my nearest-of-kin who reside on the block (so surveyed) and they two have fenced. Not only so but they own only 40 acres altogether, that is 5 acres in the block under notice, and 35 in the Awaroa A No.3 block.

[1512] Recommendations 11, 12 and 13 to Auckland Scenery Preservation Board meeting, 5 April 1911. Lands and Survey Head Office file 546. Supporting Papers #222-224.

> Now, sir, please reflect that the balance is not sufficient for a substantial home (papakainga) for them and us, and we are being arbitrarily deprived of it – and it is rocky.
>
> Sir, leave us our rocks as land for us and other landless ones.[1513]

The letter was passed to the Lands and Survey Department, and the Under Secretary for Lands replied:

> Although a Government surveyor is now engaged on the survey of the most beautiful portions of the land bordering Kawhia Harbour for permanent reservation as scenic reserves, yet no land can be taken from the Maoris for scenic purposes until after a plan of such land has been exhibited at the nearest Post Office, and every Maori who has an interest in the land has been notified of the proposed taking, so that he may forward his objections, if any, to the Minister taking the land. Until the surveyor furnishes me with the plan, I cannot say how far the land you speak of is affected, but what you say will be very carefully considered before any reservation is made, in addition to any further objections you may make after the plan has been exhibited at Kawhia.
>
> I may state that when a Native burial ground is situated upon any scenic reserve, there is power under the law to fence off such burial place, so that it cannot be interfered with, but will at all times be open for a visit from the Maoris concerned. Although it is desired to preserve all the beautiful scenery, yet it is not intended to take land from any Maoris whereby they will be left in possession of a lesser area than is necessary for the maintenance of themselves and their families.[1514]

When the survey plan of proposed reserves was received[1515], it did not include the Te Mahoe Inlet area recommended area by the Auckland Scenery Preservation Board at all, and showed a lesser area than that recommended in Waiharakeke Inlet. The Inspector of Scenic Reserves commented:

> I think these plans represent all the lands that remain of scenic value, except up the Waiharakeke River where it seems [the surveyor] has not taken all I directed. With regard to this, however, he formerly wrote me to the effect that the road line along the coast took so much of the bush that the balance left would not be worth taking[1516].

The areas shown on the plan were as follows:

- Section 4 Block XIV Kawhia North SD 5 acres 1 rood 24 perches

[1513] Wirireka Rokena to Native Minister, 23 December 1911. Lands and Survey Head Office file 546. Supporting Papers #225-226.
[1514] Under Secretary for Lands to Wirireka Rokena, Te Hirua, 19 January 1912. Lands and Survey Head Office file 546. Supporting Papers #227-228.
[1515] South Auckland plan SO 16560. Supporting Papers #2374.
[1516] Inspector of Scenic Reserves to Under Secretary for Lands, 7 May 1912. Lands and Survey Head Office file 4/378. Supporting Papers #592.

- Section 4 Block II Kawhia South SD 16 acres 2 roods

Neither of these areas was Maori-owned, being Crown Land leased to European settlers. Both areas were first resumed from their leases[1517], and were then reserved for scenic purposes in August 1914[1518].

13.7.7 Oteke

The survey plan showing proposed reserves at Oteke showed lands taken from four different blocks[1519]:

- Hauturu West 2B4C 26 acres 3 roods, and 17 acres
- Kinohaku West 12B2B 18 acres 1 rood 16 perches
- Kinohaku West 11D3B2 8 acres 2 roods 18 perches
- Kinohaku West 11D3A 7 acres 0 roods 06 perches

The taking of these areas was revived in September 1923, when the Minister in charge of Scenery Preservation was asked for and gave his approval to the takings at Motu Tara, Puti, Te Umuroa and Oteke, following which the Public Works Department was informed (see sub-section on Motu Tara). It issued a Notice of Intention to Take the Oteke reserves in January 1924[1520]. Because three of the blocks were not registered in the Land Registry, there was no requirement to serve a copy of the Notice on their owners; the only way they could have known about the Notice was by reading the *Gazette* or *Kahiti*, or by seeing the Notice and plan displayed at Kawhia Post Office.

With respect to the fourth block, Kinohaku West 11D3A, a copy of the Notice was personally served on J Hughes, a European who owned one acre of the block[1521], but no notice was served on the Maori owners who owned the remainder of the block. Hughes objected if his section was to be taken, as he had built a house on the land he

[1517] *New Zealand Gazette* 1913 pages 1351-1352 (amended at page 1589), and *New Zealand Gazette* 1913 page 2926. Supporting Papers #3978-3979 and 3980.
[1518] *New Zealand Gazette* 1914 page 3117. Supporting Papers #3989.
South Auckland plan SO 16560. Supporting Papers #2374.
[1519] South Auckland plan SO 16564. Supporting Papers #2378.
[1520] *New Zealand Gazette* 1924 page 205. Supporting Papers #4031.
[1521] District Engineer Auckland to Under Secretary for Public Works, 25 February 1924. Works and Development Head Office file 52/32. Supporting Papers #1620.

had purchased, and had cleared the bush around it[1522]. It was confirmed that his land was not part of the lands in the block to be taken for scenic purposes[1523].

There were no other objections, and the Oteke reserves were taken in April 1924[1524].

A hearing of the Native Land Court to consider compensation to be paid was held in January 1926. Compensation of £18 for the taking from Kinohaku West 11D3A, £21 for the taking from Kinohaku West 11D3B2, £81 for the taking from Kinohaku West 12B2B, and £54 for the taking from Hauturu West 2B4C, was awarded[1525].

13.8 Ruakuri Cave Scenic Reserve (Lands Taken in 1908)

The taking of land in 1906 for Ruakuri Cave Scenic Reserve has been discussed in an earlier sub-section of this case study[1526]. That taking had involved land that had been cleared and was being occupied by its Maori owners. Early in 1908 the manager for the Department of Tourist and Health Resorts at Waikato had offered to lease the cleared part of the reserve. This seems to have prompted a wider review of the boundaries of the scenic reserve generally. The land taken in 1906 was a 97-acre block that was separated from the rest of the scenic reserve by other Maori-owned land, and the question arose whether that intervening land should not also be part of the reserve. The manger was told in reply to his request that a lease of the 97-acre block was not intended.

> As it is probable that it may be necessary to re-adjust some of the boundaries of the present scenic reserves in this locality by taking an additional area of native land between this reserve and Section 7 Block X Orahiri SD, on the same side of the Waitomo Stream but nearer the Ruakuri Caves, and possibly to dispose of some of the cleared land both in the reserve in question and in

[1522] JF Hughes, Kinohaku, to Minister of Public Works, 25 February 1924. Works and Development Head Office file 52/32. Supporting Papers #1621.
[1523] Chief Surveyor Auckland to Under Secretary for Lands, 18 March 1924. Works and Development Head Office file 52/32. Supporting Papers #1622-1623.
[1524] *New Zealand Gazette* 1924 page 902. Supporting Papers #4033.
[1525] Maori Land Court minute book 66 OT 112-113. Supporting Papers #3693-3694.
[1526] This report looks only at the takings under the Public Works Act at Ruakuri Cave. A summary of events at Waitomo Caves from 1889 to 1935, drawn from an examination of Lands and Survey Hamilton District Office file 13/45, was prepared in 1954. This summary refers to some of the correspondence relied on for this report. Précised Material and Extracts on Waitomo Caves, and E Dellimore to Administration Officer, 11 March 1954. Lands and Survey Head Office file 4/156. Supporting Papers #478-522 and 473-477.

> the reserve leading to these caves, it is not advisable at present to deal with the land in any way….[1527]

In February 1908 the Auckland Scenery Preservation Board held a meeting, and resolved:

> Recommendation No.63
> That the land included in Hauturu East 3B3, Hauturu East 3B4, Hauturu East 3B5, [and Section] 8 (native reserve), all in Block X Orahiri S.D., be acquired and reserved for scenic purposes, so as to complete the existing scenic reserves around the Ruakuri Caves.[1528]

The Commissioner of Crown Lands, who would have been involved in making that recommendation, was asked to provide a plan and obtain a local inspection report[1529]. When supplying a sketch plan, the Commissioner explained that no departmental officer was available to provide a report, but that he had asked the Tourist Department's manager "to inform me at once if the bush on the above blocks is interfered with"[1530].

A report from the manager in April 1908 indicated that the bush on the proposed extension was not being touched but that on the block taken in 1906 ('Section 9') "a large area was felled last season, and a fire has swept through all the fallen bush, as well as burning parts of open fern". His report continued in a manner that suggested that local residents at Waitomo were unaware that 'Section 9' had been taken eighteen months earlier.

> I would like to mention that the moment the native owners hear that the above lands are to be taken, I believe they would do immense harm and damage, as the native feeling is somewhat against reserves, although the land is no use to them as it is at present.[1531]

In August 1908 the Inspector of Scenic Reserves visited Waitomo, and provided a report about 'Section 9'.

[1527] Under Secretary for Lands to HA Govier, Waitomo, 4 February 1908. Lands and Survey Head Office file 4/156. Supporting Papers #428.
[1528] Recommendation of Auckland Scenery Preservation Board, 17 February 1908. Lands and Survey Head Office file 4/156. Supporting Papers #429.
[1529] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 2 March 1908. Lands and Survey Head Office file 4/156. Supporting Papers #430.
[1530] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 31 March 1908. Lands and Survey Head office file 4/156. Supporting Papers #431-432.
[1531] Manager Waitomo Caves House to Commissioner of Crown Lands Auckland, 8 April 1908, attached to Commissioner of Crown Lands Auckland to Under Secretary for Lands, 24 April 1908. Lands and Survey Head Office file 4/156. Supporting Papers #433-434.

> It is mostly hilly country, but along the Waitomo Stream there are some good grass flats. Since the acquisition of the land was first decided on, the previous owners (Maoris) have cut down several areas of bush. There are three patches of bush remaining, containing in all about 37 acres. There are about 17 acres of good grass land, 30 acres of fern, and the balance is burnt bush. None of the boundaries are fenced, and cattle have free access to the bush. The grass parts will be a source of danger to the bush if not kept short, so I would suggest that sheep should be run on the open parts to keep the grass short. It might be let at a small sum (say £2 a year) with the right to abrogate the lease at a month's notice, in case it be found that the bush is being damaged.[1532]

Yet again there was no thought of giving up the parts of the taken land that no longer fitted the scenery preservation purpose.

Six weeks later the manager at Waitomo reported that "Natives cutting this morning on Hauturu East 3B3 Block"[1533]. The reaction to this news was that the forested land that had been identified by the Scenery Preservation Board should be taken for scenery preservation purposes, and a paper seeking Government approval for the taking of the land under the Public Works Act was immediately prepared. This stated:

> The area tinted green represents a lovely area of forest land that forms an important link in the scenic reservations. It was recommended for acquisition and reservation by the Scenery Preservation Board in February last, but no action was taken at the time as it was native land, and it was not thought that it was likely to be destroyed.
>
> However a telegram has just been received from the manger of the Waitomo Accommodation House stating that the native owners are commencing to fell the bush upon the green area.
>
> As the destruction of the bush in this place will materially spoil the appearance of the scenery around the Ruakuri caves, and endanger the preservation of the adjoining scenic reserves forest, I would strongly recommend that the land in question, containing about 100 acres, be taken under the Public Works Act, and reserved for scenic purposes, to prevent irreparable injury being sustained by the forest in the locality.[1534]

The Minister of Lands then put the recommendation before Cabinet, which approved the taking in October 1908.

[1532] Report by Inspector of Scenic Reserves, 18 August 1908. Lands and Survey Head Office file 4/156. Supporting Papers #435.
[1533] Telegram Commissioner of Crown Lands Auckland to Under Secretary for Lands, 30 September 1908. Lands and Survey Head Office file 4/156. Supporting Papers #441.
[1534] Under Secretary for Lands to Minister of Lands, 1 October 1908, approved by Cabinet 26 October 1908. Lands and Survey Head Office file 4/156. Supporting Papers #442-443.

When a plan showing the area to be taken was received[1535], the Public Works Department was instructed to take the land under the Public Works Act 1908[1536]. Using the provisions in this Act got around the restrictions on the taking of Maori-owned land under the Scenery Preservation Act 1908. The land was taken in December 1908[1537].

The following year, in order that the former Maori owners "may be apprised of the taking of the land", a calico notice was printed, for posting "in a conspicuous position on the ground", announcing that the land had been taken. This was because "there are a fairly large number of Native owners interested in the land", and "their addresses are not precisely known"[1538].

The poor quality of the Crown's decision-making about the taking of the lands from Maori owners in 1906 and 1908, and of its subsequent management of the reserves, became apparent in 1929. The open areas of the taken lands had been leased for some time, and that year Waitomo County Council wrote to the local Member of Parliament suggesting that the leased area be sold.

> At the last meeting of the Council reference was made to the portions of the scenic reserves at Waitomo that are at present under temporary lease. It was pointed out that these portions are of no value from a scenic point of view, and that it was desirable that provision be made for the occupiers or others acquiring the freehold. This would not prejudice the surrounding bush that is reserved for scenic purposes but would tend, rather, to improve the situation as it would enable the occupiers to put in some permanent work in clearing the grazing area.[1539]

The Commissioner of Crown Lands was asked for his opinion, and replied that, of the 197 acres comprised in the 1906 and 1908 takings, some 93 acres, or nearly half the area, was "not suitable for scenic purposes in that the area is open grassed land and

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[1535] South Auckland plan SO 14783. Supporting Papers #2353.
[1536] Under Secretary for Lands to Under Secretary for Public Works, 5 November 1908. Lands and Survey Head Office file 4/156. Supporting Papers #451.
[1537] *New Zealand Gazette* 1908 page 3264. Supporting Papers #3936.
[1538] Assistant Under Secretary for Public Works to Under Secretary for Lands, 4 October 1909, and Under Secretary for Lands to Commissioner of Crown Lands Auckland, 5 October 1909. Lands and Survey Head Office file 4/156. Supporting Papers #458 and 459.
[1539] County Clerk Waitomo County Council to WJ Broadfoot MP, 24 May 1929, attached to WJ Broadfoot MP to Minister of Lands, 29 May 1929. Lands and Survey Head Office file 4/156. Supporting Papers #466-467.

contains no bush or other growth of scenic value"[1540]. The Minister of Lands approved the uplifting of the scenic reservation[1541]. When surveyed, however, the cleared area no longer required for the purpose for which it had been taken was found to have an area of 138 acres, i.e. 70% of the taken area[1542]. This demonstrates that the Crown had presided over a progressive and substantial deterioration in the quality of the reserve for over twenty years.

When the reservation was uplifted[1543], the status of the area became Crown Land. Rather than consider offering this substantial area of semi-developed land back to the former Maori owners, it was already earmarked for offering to the Crown tenants who were in occupation. This required a recommendation from the Auckland Land Board, which was given in December 1930[1544], and the approval of the Governor General, which was given in February 1931[1545].

13.9 Waitomo Cave Scenic Reserve (Lands Taken in 1911)

The taking of the three acres around the cave entrance in 1906 has been referred to earlier in this evidence. This initial reservation was added to in two further takings of Maori-owned land in 1911, one for scenic purposes, and the other for the "use, convenience or enjoyment of Waitomo Caves House".

13.9.1 Waitomo Cave Bush Reserve

Recommendation 331 of the Scenery Preservation Commission read:

> Resolved to recommend the Governor to acquire from the Native owners about 40 acres of forest and scrub land lying along the Waitomo Stream, and being part of Hauturu B No.A [sic] and Hauturu East No.3 Blocks, both in Block X Orahiri Survey District, as shewn on sketch, boundaries to be run so

[1540] Certificate of Commissioner of Crown Lands Auckland, 10 June 1930. Lands and Survey Head Office file 4/156. Supporting Papers #468.
[1541] Under Secretary for Lands to Minister in charge of Scenery Preservation, 14 June 1930, approved by Minister 17 June 1930. Lands and Survey Head Office file 4/156. Supporting Papers #469.
[1542] South Auckland plan SO 25946. Supporting Papers #2406.
[1543] *New Zealand Gazette* 1930 page 3617. Supporting Papers #4038.
[1544] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 4 December 1930. Lands and Survey Head Office file 4/156. Supporting Papers #470-471.
[1545] Approval of Governor General, 6 February 1931. Lands and Survey Head Office file 4/156. Supporting Papers #472.

> as to secure the piece of forest fronting Waitomo House. For scenic purposes.[1546]

This recommendation was clearly motivated by a desire to protect the views northwards across the valley from the old accommodation-house purchased by the Crown in 1905, and from the site of the intended new accommodation-house to be located on the land that was subsequently taken for that purpose in 1906. It demonstrates how the Crown's ambitions spread outwards on a step-by-step basis from the initial decision to become involved in the tourism industry at Waitomo.

Nothing had been done to implement the recommendation while the Commission remained the responsibility of the Tourist and Health Resorts Department. It was only after the responsibility was transferred to the Department of Lands and Survey in April 1906 that the Commissioner of Crown Lands was asked to review the boundaries of the recommendation[1547]. The Commissioner misinterpreted the request, and reported on the 67 acres of Hauturu East 1A5C that was taken for Waitomo Caves Accommodation-House later in 1906 (see discussion of this taking in the chapter on Other Central Government Takings). It was necessary to send him a second request in September 1906[1548]. A surveyor then reported on the bush area opposite the accommodation-house, with a strong recommendation that it be acquired.

> I have inspected the proposed Scenic Reserve adjacent to the Waitomo Caves, and consider that it is absolutely necessary to acquire the land in question as a reserve in order to conserve as much as possible the natural bush around the site of the Caves and the Caves House.
>
> There is a Native called Whau who has a house situated on top of a hill, he has also sawn timber on the ground to do further building with. The boundary of the Reserve could come below his house. Starting from a point on the Waitomo Road, it could follow the lower side of the road to Whau's house as a boundary leaving him access. Then I assume the object is to just take in the bush in view from the Caves house, and a portion of the tall kahikateas on the river bank. This could be done by running straight lines as about shewn, and avoid leaving irregular boundaries and useless corners in the hands of the adjoining owners.

[1546] Recommendation 331 of Scenery Preservation Commission. Lands and Survey Head Office file 4/155. Supporting Papers #378.
The sketch referred to in this recommendation has not been located.
[1547] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 14 May 1906. Lands and Survey Head Office file 4/155. Supporting Papers #379.
[1548] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 25 September 1906. Lands and Survey Head Office file 4/155. Supporting Papers #384.

> The hillside where I have marked the bush in Hauturu East No.3 is very steep, and is of no value except as a scenic reserve or very rough grazing country, but the land marked off in Hauturu East No.1F and B No.2A has good river flats in it and valuable kahikatea timber.
>
> If this bush was destroyed, it would certainly spoil the outlook from the Caves House, and it is with the intention of saving it from destruction that the Tourist Department wish to get possession of it.[1549]

The Minister of Lands was asked to approve the taking of the bush area.

> From the accompanying report … it will be seen that [the Government surveyor] strongly recommends the acquisition of the area included in Recommendation 331, and the Superintendent of the Tourist Department also desires the reservation of this beautiful area of native bush, which will greatly add to the charm of the locality and improve the outlook from the new Waitomo House under the control of the Government. The block of 67 acres acquired by the Tourist Department is valued at about £500, so that the approximate value of the area now recommended is about £300 for about 40 acres.[1550]

The Minister took the proposal to Cabinet, which approved the acquisition of 40 acres for about £300 in November 1906.

When asking for a survey plan to be prepared showing the area to be taken, comment was made that "native land cannot at present be acquired under the Scenery Preservation Act except in transactions already partly completed". This impediment could be avoided, however, by taking the land under the Public Works Act, and including an amount ["a vote"] in the Government Estimates to pay the costs of compensation for the taking of lands under that Act for scenic purposes[1551].

A plan was prepared in August 1907 showing the land to be taken[1552]. This identified an area of 21 acres 3 roods 02 perches, rather than the 40 acres initially being referred to, made up as follows:

[1549] Assistant Surveyor Wilson to Chief Surveyor Auckland, 27 June 1906, attached to Chief Surveyor Auckland to Under Secretary for Lands, 19 October 1906. Lands and Survey Head Office file 4/155. Supporting Papers #385-388.
[1550] Under Secretary for Lands to Minister of Lands, 27 October 1906, approved by Cabinet 26 November 1906. Lands and Survey Head Office file 4/155. Supporting Papers #389.
[1551] Under Secretary for Lands to Accountant, 12 December 1906, on Under Secretary for Lands to Commissioner of Crown Lands Auckland, 12 December 1906, and Under Secretary for Lands to Mr Jourdain, 17 December 1906, on WR Jourdain to Under Secretary for Lands, 17 December 1906. Lands and Survey Head Office file 4/155. Supporting Papers #390 and 391.
[1552] South Auckland plan SO 14268. Supporting Papers #2347.

- Hauturu East 3B1 12 acres 3 roods
- Hauturu East B2 Section 2A 3 acres 2 roods 20 perches
- Hauturu East 1E5C2C2 5 acres 1 rood 22 perches

Once the plan was received, however, there was no further action undertaken to take the land, despite the use of the Public Works Act having been clearly flagged earlier. It was not until February 1910 that the Public Works Department published a Notice of Intention to Take the 21 acres[1553]. This notice, however, was incorrect in that it described the area to be taken from Hauturu East 1E5C2C2 as 1 rood 22 perches rather than 5 acres 1 rood 22 perches.

Before the Crown's intention to take could be advanced to a taking of the land, the Minister of Tourist and Health Resorts put forward a proposal for a larger area. He made a visit to Waitomo in July 1910, and then asked that the proposed reserve be extended to the north.

> What the Minister wishes is that the reserve be extended to take in the tops of four bush-clad hills immediately facing the [accommodation] house and beyond the present reserve, and the boundary to be extended on the right from the top of the hill on the right-hand side along the top of a hill covered with manuka and bush, connecting with the road to the right of the house. Any cleared land in the area is not to be taken in.[1554]

The Inspector of Scenic Reserves was instructed to visit Waitomo and report. The Inspector (who was a surveyor by profession) went to Waitomo in August 1910 and found that to take in the four hilltops would involve an extension of about 70 acres. The second proposed extension, referred to as being on the right-hand side and connecting with the road, would be another 41 acres, consisting of "a swampy flat and the slope of a low ridge, mostly covered in manuka", which he considered had "no scenic value" and "would not be worth taking". He added:

> I must call attention to the destruction of the bush that is occurring on these reserves through cattle having free access. All the patches of bush should be fenced off, or in a few years there will only be the largest trees left.[1555]

The legal descriptions had to be amended in 1908 to those referred to here. Chief Surveyor Auckland to Under Secretary for Lands, 12 December 1908. Lands and Survey Head Office file 4/155. Supporting Papers #392.

[1553] *New Zealand Gazette* 1910 page 533. Supporting Papers #3938.

[1554] Secretary for Agriculture, Commerce and Tourists to Under Secretary for Lands, 18 July 1910. Lands and Survey Head Office file 4/155. Supporting Papers #393-394.

[1555] Inspector of Scenic Reserves to Under Secretary for Lands, 31 August 1910. Lands and Survey Head Office file 4/155. Supporting Papers #395-396.

Separately, the Inspector reported that the manager of the accommodation house had suggested that the 41-acre swamp and manuka portion might "be made ornamental by planting"; he commented that if that was so, then the "Tourist Department … might acquire it under the Tourist Resorts Act"[1556].

By December 1910 circumstances had changed. The bush on the four hilltops had been felled, so that the land was "valueless" for scenic purposes. The Minister of Tourist and Health Resorts was most unhappy, and wanted a report on the "neglect which has resulted in the destruction of the bush", including why the matter had not been placed before the Scenery Preservation Board as a consequence of his request in July[1557].

The Under Secretary for Lands provided an explanation, which was also a justification for the lack of action.

> As the land was native land, there was no power for the Board to deal with it, nor was there any legal power to take it for scenic purposes. The matter was noted for the next meeting of the Scenery Preservation Board, in anticipation that by the time a meeting was held the Scenery Preservation Amendment Bill would have been passed by Parliament. This did not take place till the 3rd December, and between that date and this it has not been practicable to hold a meeting of the Auckland Scenery Preservation Board.
>
> A variety of matters have been noted for the next meeting, which it is intended to hold immediately after the return of the Surveyor General from the Surveyor's Conference at Hobart.
>
> I may point out that most of the scenic reserves at Waitomo are vested in the Tourist Department, and that as your manager at Waitomo acts as local caretaker, it was naturally thought that he would immediately report any interference with an existing or suggested reserve. No such notice has, however, been received from him, and as the Department has not a member of its staff resident at Waitomo, it relied entirely upon your manager for such notice. Although there was no legal power to stop the natives from dealing as they chose with their own property, yet if the felling had been reported as soon as it commenced, an endeavour would have been made to represent the matter to the owners with a view to stopping the destruction of the bush. Apparently, however, the felling had been completed by the date that the Scenery Preservation Amendment Bill had become law.

[1556] Inspector of Scenic Reserves to Under Secretary for Lands, undated (31 August 1910). Lands and Survey Head Office file 4/155. Supporting Papers #397-398.
[1557] Secretary for Agriculture, Commerce and Tourists to Under Secretary for Lands, 29 December 1910. Lands and Survey Head Office file 4/155. Supporting Papers #399.

> You will recognise, therefore, that there was no neglect on the part of this Department, as neither the Department nor the Scenery Preservation Board had any power to prevent the natives from felling the bush on their own land until after the passing of the Bill, and even then the steps required to be taken under the Public Works Act would have precluded any prevention of the felling up to now, even had a meeting been held within a few days of the passing of the Bill.[1558]

Apparently in order to rectify the error in the earlier Notice of Intention to Take[1559], a fresh Notice was issued in July 1911[1560]. The land was taken two months later[1561].

Shortly after the taking, the owners approached the manager of the accommodation-house, and told him that they would accept compensation of "£5 per acre for the 16 acres of rough hill side, and £10 per acre for the river flat, together with 9d per 100 [super feet] for any milling timber such as rimu, kahikatea, etc"[1562]. However, compensation was a matter for the Native Land Court to determine, rather than a matter for direct negotiation between the owners and the Crown. The Court assessed compensation of £70, £20 and £46, for Hauturu East 3B1, B2 Section 2A and 1E5C2C2 respectively, in March 1912.

13.9.2 Access to Waitomo Cave Entrance

In August 1908 the Inspector of Scenic Reserves visited Waitomo, and reported on the area surrounding the 3-acre taken block and the one-acre Crown Land section at the cave entrance. He was concerned about lack of legal access to the cave entrance, and about how the cave itself lay beneath Maori-owned land that was not part of the reserved land at the entrance.

> Hauturu East 1A Section 2 (1 acre) … and Hauturu East 1A Section 6 are separated from the road by native land, so there is really no legal access to the caves. Some of the best caves are situated under the Hauturu East No.1A Section 5B native land. The Waitomo Stream emerges from the caves in the Hauturu East No.3 Block (which is Native Land); so the Natives could stop people from seeing some of the best caves, or could themselves take people into the caves from where the stream emerges. That part of the Hauturu East

[1558] Under Secretary for Lands to Secretary for Agriculture, Commerce and Tourists, 31 December 1910. Lands and Survey Head Office file 4/155. Supporting Papers #400-401.
[1559] Under Secretary for Lands to Secretary for Agriculture, Commerce and Tourists, 12 July 1911 and 24 July 1911. Lands and Survey Head Office file 4/155. Supporting Papers #402 and 403.
[1560] *New Zealand Gazette* 1911 page 2343. Supporting Papers #3956.
[1561] *New Zealand Gazette* 1911 page 2905. Supporting Papers #3959.
[1562] Under Secretary for Lands to Under Secretary for Public Works, 10 November 1911. Lands and Survey Head Office file 4/155. Supporting Papers #404.

> No.3 Block lying between the main road and the Hauturu East No.1A Sections 2 and 6, and that part of the Hauturu East No.1A Section 5 lying to the west of Hauturu East No.1A Section 2, together with the above-mentioned pieces of Native Land, should all be acquired as necessary to secure the balance of the caves and a good road frontage. The total area is about ten acres.[1563]

A locally-based surveyor was asked to identify exact boundaries of the Maori-owned land that should be acquired "and report as to the necessity for doing so"[1564]. His plan identified about 16 acres that would protect the caves and allow public access from the road.

> I beg to state that the best way to provide access to the Caves is to acquire the adjoining lands from the Native owners, as a road laid out from the main road to the caves would leave useless corners [of remaining Maori-owned land]….
>
> Another matter, the adjoining Native land is covered with high fern and scrub, and there would be no security against fire as long as it remained in its native state. The Natives are not likely to improve it, so it would be better for the Tourist Department to acquire the portion coloured green on tracing, making the ridge the boundary. The basin shown could be planted with ornamental trees which would add greatly to the beauty of the surroundings.[1565]

The Commissioner of Crown Lands agreed with this proposal. Because the proposal was that the area be developed as a park or ornamental gardens, rather than maintaining the native vegetation cover, the Under Secretary for Lands forwarded it to the Tourist and Health Resorts Department for its consideration, expressing the view that "it had better be taken by your Department and added to the accommodation house site already belonging to you."[1566]. That Department agreed[1567].

A survey plan showing the area to be taken was prepared, and showed that the following areas would be required[1568]:

- Hauturu East 1A5B 15 acres 2 roods 20 perches
- Hauturu East 3B1 1 acre 2 roods 13 perches

[1563] General Report on Waitomo Caves Reserves by Inspector of Scenic Reserves, undated (August 1908). Lands and Survey Head Office file 4/156. Supporting Papers #436-438.
[1564] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 8 September 1908 and 19 September 1908. Lands and Survey Head Office file 4/156. Supporting Papers #439 and 440.
[1565] Report by Surveyor A Wilson, quoted in Commissioner of Crown Lands Auckland to Under Secretary for Lands, 23 October 1908. Lands and Survey Head Office file 4/156. Supporting Papers #444-448.
[1566] Under Secretary for Lands to General Manager Tourist and Health Resorts Department, 28 October 1908. Lands and Survey Head Office file 4/156. Supporting Papers #449.
[1567] General Manager Tourist and Health Resorts Department to Under Secretary for Lands, 31 October 1908. Lands and Survey Head Office file 4/156. Supporting Papers #450.
[1568] South Auckland plan SO 15109. Supporting Papers #2354.

The Public Works Department was then asked to take the land "as an addition to the present Accommodation House site at Waitomo"[1569]. However, it queried whether the land could be taken.

> Will you kindly let me know whether this land is to be taken for the use, convenience or enjoyment of the Waitomo Accommodation House, or for scenery preservation purposes.
>
> The schedule is headed "Land required for Scenery Preservation purposes".
>
> If it is to be taken for the former purpose, I should like to know whether an appropriation exists, as if not the taking will have to stand over until a vote is passed therefore by Parliament, so as to make it a "Public Work" within the meaning of the Public Works Act 1908.[1570]

The Under Secretary for Lands was obliged to admit that no money had been committed by Government for the proposed work, but would be included in the next appropriation[1571]. The Public Works Department then replied that:

> Under the circumstances … the requisite steps to take the additional land required for the above purpose will have to be deferred until an appropriation to cover the cost of the land is passed by Parliament, as until this is done, or the work is otherwise made a public work within the meaning of the Public Works Act 1908, the land cannot be legally taken.[1572]

Further inquiry, however, showed that there might be a way around this.

> It has now been ascertained that there is an item of £2500 for the erection of a new accommodation house at Waitomo Caves in the existing appropriations, and which by the heading of the appropriations includes sites.
>
> It would therefore seem that the purpose for which the land under notice is required to be taken is a public work within the meaning of the Public Works Act 1908, and that the land can be legally taken at once for the use, convenience and enjoyment of such public work.
>
> Under these circumstances, therefore, if the matter of taking the land is one of urgency, the requisite formalities to that end will be duly carried out.[1573]

The need for urgency was confirmed.

[1569] Under Secretary for Lands to Under Secretary for Public Works, 7 August 1909. Lands and Survey Head Office file 4/156. Supporting Papers #452.
[1570] Assistant Under Secretary for Public Works to Under Secretary for Lands, 14 August 1909. Lands and Survey Head office file 4/156. Supporting Papers #453.
[1571] Under Secretary for Lands to Under Secretary for Public Works, 7 September 1909. Lands and Survey Head Office file 4/156. Supporting Papers #454.
[1572] Assistant Under Secretary for Public Works to Under Secretary for Lands, 8 September 1909. Lands and Survey Head Office file 4/156. Supporting Papers #455.
[1573] Assistant Under Secretary for Public Works to Under Secretary for Lands, 16 September 1909. Lands and Survey Head Office file 4/156. Supporting Papers #456.

> As the Government has no legal access to Waitomo Caves, … it is very necessary that the land in question should be taken at an early date. Should any trouble occur with the Natives, they could prevent visitors from obtaining access to the Caves. As the matter is very urgent, I shall be glad if you will take the requisite steps to obtain the necessary land without delay.[1574]

Before the land could be taken a Supreme Court decision made taking of Maori-owned land more complicated, and all takings were put on hold pending the passing of the Public Works Amendment Act 1909[1575]. Only when the amending legislation came into effect was the proposal revived, and a Notice of Intention to Take the land was published in February 1910[1576].

One response was received, from a European settler who was leasing the land proposed to be taken. He asked for his concerns to be considered, without identifying what those concerns were, and asked for a site inspection to be held with him[1577]. When the inspection was held in May 1910, it emerged that the land to be taken included a fence that he had recently erected. If the boundary was adjusted to follow the line of the fence, rather than cut across it, he would be happy. This was recommended by the inspecting official, as "the alteration improves the appearance of the Scenic Reserve [sic] slightly, adding a steep face covered with light bush, and further increases the area of the Reserve"[1578].

The boundary alteration was agreed to, but this required further survey work, which was not completed until February 1911. The alteration removed one portion of the land to be taken, and added another portion, which had a net effect of slightly increasing the area to be taken from Hauturu East 1A5A to 16 acres 1 rood 32

[1574] Under Secretary for Lands to Under Secretary for Public Works, 30 September 1909. Lands and Survey Head Office file 4/156. Supporting Papers #457.
[1575] Under Secretary for Lands to Secretary for Agriculture, Commerce and Tourists, 2 December 1909. Lands and Survey Head Office file 4/156. Supporting Papers #460.
[1576] *New Zealand Gazette* 1910 page 534. Supporting Papers #3939.
[1577] JC Davis, Waitomo Caves, to Under Secretary for Public Works, 8 April 1910, attached to Assistant Under Secretary for Public Works to Under Secretary for Lands, 12 April 1910. Lands and Survey Head Office file 4/156. Supporting Papers #461-462.
[1578] Surveyor HF Edgecumbe, Te Awamutu, to Chief Surveyor Auckland, 17 May 1910, attached to Chief Surveyor Auckland to Under Secretary for Lands, 23 May 1910. Lands and Survey Head Office file 4/156. Supporting Papers #463-464.

perches[1579]. The plan was forwarded to the Public Works Department the following month[1580], and the land was then taken in April 1911[1581].

13.10 Hangatiki Scenic Reserve

On the side of the road between Hangatiki Railway Station and Waitomo Caves, just before entering Waitomo Caves township, is an area of native forest on northern uphill side. This was earmarked by the Scenery Preservation Commission at the same time as it identified other areas of potential scenic reserves in the district. Recommendation 329 of the Commission was:

> Resolved to recommend the Governor to acquire from the Native owners about 30 acres of forest land lying along the north side of the Hangariki – Waitomo Road, and being a strip from 5 to 7 chains wide in Hauturu East 1E Section 5 in Block XI Orahiri Survey District; boundaries on the north to run so as to include the forest, and as shown on sketch. For scenic purposes.[1582]

When the Department of Lands and Survey took over responsibility for scenic reserves in 1906, it ordered a survey of the proposed reserve. In July 1907 this survey was completed, but the Commissioner of Crown Lands reported that "natives felling timber as protest; can you suggest any method for stopping them?"[1583] He was told to arrange for the survey plan to refer to a taking under the Public Works Act rather than under the Scenery Preservation Act, which would allow the taking to proceed. In the meantime he should "send written notice to Maoris warning them not to interfere with bush as land about to be taken for scenery preservation purposes"[1584]. The following day the surveyor sent fresh information that "seven natives chopping, have given them written notice to stop, they say if Henare Kaihau advises them to stop they will do so, suggest you communicate with him"[1585].

[1579] South Auckland plan SO 15109. Supporting Papers #2354.
[1580] Under Secretary for Lands to Under Secretary for Public Works, 1 March 1911. Lands and Survey Head Office file 4/156. Supporting Papers #465.
[1581] *New Zealand Gazette* 1911 page 1274. Supporting Papers #3952.
[1582] Recommendation 329 of Scenery Preservation Commission. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #793-794.
[1583] Telegram Commissioner of Crown Lands Auckland to Under Secretary for Lands, 29 July 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #795.
[1584] Telegram Under Secretary for Lands to Commissioner of Crown Lands Auckland, 30 July 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #796.
[1585] Telegram Chief Surveyor Auckland to Under Secretary for Lands, 1 August 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #797.

The matter was put before the Minister of Lands, with a recommendation that he see Henare Kaihau, a Member of the House of Representatives, "and request him to notify the natives to refrain from the destruction of the bush in question, pending satisfactory arrangements being made with the interested parties"[1586]. The Minister sought the advice of James Carroll, the Native Minister, who replied:

> I am communicating with Mr Kaihau on the matter. Expect him in Wellington shortly. The objection and dissent of the natives is a wholesale one owing to the taking of their lands for scenic purposes in large areas without consulting them in any way, or making provision for prompt payment.[1587]

The Minister arranged for his officials to provide him with a response to Carroll's comments.

> I have to inform you that in all cases where native lands have been acquired under the Scenery Preservation Act, they have been previously recommended by the late Scenery Preservation Commission, of whom Major Tunui-a-rangi of Wairarapa was a member representing the native race. It will, therefore, be seen that as the Commission personally inspected all areas prior to recommending their acquisition, the natives were to some extent consulted, and the Chairman in all cases took the greatest pains to ensure that their cultivations and memorials etc should be protected, and their wishes and feelings given effect to as far as possible.
>
> With regard to the delay in payment of compensation for land taken from the natives, I desire to point out that this is not due to any action on the part of this Department, but that such delay has arisen entirely through the Native Land Court not promptly assessing such compensation….
>
> As you are aware, an amending Bill to the Scenery Preservation Act is about to be introduced into Parliament, by which a member of the native race is to act [sic – should be sit?] on the Scenery Preservation Board in all cases where it is proposed to take native land, and it is hoped that such member will, in communicating with the owners of the land, ensure that their consent is obtained to the proposals of the Board. It was not intended that the natives should in any way be detrimentally affected by the taking of land for scenic purposes, and as far as I am in a position to judge, in most of the cases where the reserves have been acquired, such action merely forestalled the intention of the owners to sell the land privately to Europeans, who would have proceeded to destroy the forest growing thereon, and so injure the scenery at such place. Wherever practicable, the feelings of the natives have been respected.
>
> I trust, therefore, that you may see your way, in this instance, to suggest to Mr Kaihau MHR the advisability of sending a telegram to the native owners of

[1586] Under Secretary for Lands to Minister of Lands, 2 August 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #798.
[1587] Native Minister to Minister of Lands, 8 August 1907, on Under Secretary for Lands to Minister of Lands, 2 August 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #798.

> Hauturu 1E Section 5, at the earliest available opportunity, to prevent the destruction of the bush along the Waitomo Caves Road, one of the most popular tourist resorts in the Auckland District.[1588]

The Minister's statement does not properly reflect the reality of the situation. Only one of the four Scenery Preservation Commissioners (Mr Smith) had visited Waitomo, and, so far as is known, he did not contact the Maori owners of the land which he recommended to the Commission should be acquired for reserve. The Maori member of the Commission had not been involved. Maori were occupying the lands at Waitomo, and were extending their cleared areas into portions that the Crown wanted to acquire; there was no effort made by the Crown to reach an accommodation with those owners so that both the owners' and the Crown's viewpoints could be reconciled.

The survey plan of the proposed reserve alongside the Hangatiki – Waitomo Road was forwarded to Wellington in August 1907. It showed that, rather than the 30 acres that had been identified by the Scenery Preservation Commission, a reserve of 225½ acres was required[1589]. The Under Secretary for Lands strongly recommended to the Minister of Lands that the area be acquired "so as to complete the scenic reservations in this locality, which is now so largely frequented by visitors and tourists". The Minister took the proposal to Cabinet, which gave its approval in October 1907[1590].

After the submission had been made, but before Cabinet approval was given, the Chairman of the Maniapoto Maori Council, Moerua Natanahira, saw the Under Secretary for Lands in Wellington. He claimed to be an owner of part of the land proposed to be taken.

> He states that when Mr Wilson was surveying the boundaries of the intended reserve, he requested that he might be allowed to go over the land with him so as to amicably arrange on the best boundaries, but that Mr Wilson declined, and as a consequence some of the natives at once commenced felling the bush by way of retribution.

The Under Secretary commented:

[1588] Minister of Lands to Native Minister, August 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #799-800.
[1589] Chief Surveyor Auckland to Under Secretary for Lands, 9 August 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #801-803.
South Auckland plan SO 14251. Supporting Papers #2346.
[1590] Under Secretary for Lands to Minister of Lands, 17 August 1907, approved by Cabinet 28 October 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #804-805.

> I very much regret that any friction should have taken place in this manner. When taking native lands for scenery preservation, it is always desirable to consult the owners' wishes as far as possible, and to arrange matters amicably, and by ignoring their representations (as stated by them) a most unfortunate state of affairs has arisen. I deprecate very much acting in the reported high-handed manner, and trust that in future cases of the kind the surveyor will endeavour to conciliate the native owners.
>
> I will now ask you to instruct Mr Wilson to call upon Mr Moerua and arrange to go over the ground with him, in order that a re-adjustment of the boundaries may be made in a more suitable way. What is chiefly desired is that one, or possibly two, roads should be laid off from the main road so as to give access to the back portions of Hauturu East No.1E, the places to be chosen so as to least interfere with the bush or scenery, and sufficiently well graded to be practicable for use….
>
> I understand the natives will not now fell any more bush pending the settlement of the difficulty, and cannot help thinking that a little tact at the outset might have obviated whatever trouble has occurred.[1591]

In January 1908 the Chief Surveyor reported back.

> Mr Wilson reports that the boundaries cannot be altered to any extent and still include the bush; also that it is impossible to lay out roads through the reserve as the strip of bush is on a steep hill side, the only road that will be required to open up the land at the back of the reserve must go up the Orahiri Valley along the stream. Mr Wilson also reports that he saw Mr Moerua Natanahira and arranged with him as above reported.[1592]

In reply he was told to modify the survey plan, removing reference to a small outlier of 15 acres 1 rood 23 perches, and adding one proposed road giving access to the land behind the proposed reserve[1593].

At this time the Crown's Land Purchase Officer in Te Rohe Potae district, WH Grace, became aware that some of the owners of partition blocks out of which the proposed reserve would come were willing to sell their interests in those blocks. He was aware of the reserve proposal, and asked what its status was, and whether he should angle his purchasing activities towards acquiring the land required for reserve.

[1591] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 30 September 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #806-807.
[1592] Chief Surveyor Auckland to Under Secretary for Lands, 8 January 1908. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #812-813.
[1593] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 3 February 1908. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #814.

> The owners say that the piece for scenic reserve has not yet been gazetted, and that I should pay them in full, not deducting anything for portion to be set apart for scenic purposes.
>
> I understand in all cases of taking land for scenery that the Maori owners have to be compensated. If therefore the piece you propose to take for scenic purposes has not yet been gazetted, would it not be better for me to buy and afterwards you can set a part aside as a reserve, etc?[1594]

He was told to direct his inquiry to the Under Secretary for Lands[1595], to whom he then wrote:

> I would be glad to receive your instructions in the matter. The blocks I refer to should be purchased for settlement purposes, and in the very block in which a number of owners wish to sell I am stopped owing to the proposal to take a large portion for scenic purposes.[1596]

The Under Secretary told him to carry on purchasing interests in the block, ignoring the proposed reserve; if he failed to acquire all the land proposed for reserve, the remaining area still in Maori ownership could be taken later under the compulsory purchase provisions[1597].

The Crown purchased interests in Hauturu East 1E5C2A and 1E5C2C. Once purchasing had finished, the Crown applied to the Native Land Court to have its interests in those two blocks partitioned out as separate parcels. The result was that in April 1908 the Crown was awarded Hauturu East 1E5C2A1 of 197 acres, and Hauturu East 1E5C2C1 of 171 acres, leaving the remainder of the block, still owned by Maori, as Hauturu East 1E5C2A2 (566 acres) and Hauturu East 1E5C2C2 (763 acres). By this means the Crown had become the owner of part of the land that it had earlier sought for scenic reserve. This, however, was not communicated to the Public Works Department, which in February 1910 issued a Notice of Intention to Take under the Public Works Act some 207 acres (i.e. the 225½ acres surveyed in 1907, less the 15 acre outlier and the road access that were excluded in 1908)[1598].

[1594] Native Land Purchase Officer Grace, Kihikihi, to Commissioner of Crown Lands Auckland, 19 October 1907, attached to Native Land Purchase Officer Grace, Kihikihi, to Under Secretary for Lands, 6 November 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #808-810.
[1595] Commissioner of Crown Lands Auckland to Native Land Purchase Officer Grace, Kihikihi, 31 October 1907, attached to Native Land Purchase Officer Grace, Kihikihi, to Under Secretary for Lands, 6 November 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #808-810.
[1596] Native Land Purchase Officer Grace, Kihikihi, to Under Secretary for Lands, 6 November 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #808-810.
[1597] Under Secretary for Lands to Native Land Purchase Officer Grace, Kihikihi, 13 November 1907. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #811.
[1598] *New Zealand Gazette* 1910 pages 533-534. Supporting Papers #3938-3939.

It was not until March 1910 that a new survey plan was prepared and sent to Wellington[1599]. By this time the partition blocks of Hauturu East 1E had been surveyed, and the plan showed that the proposed reserve now had a total area of 205 acres 2 roods 31.5 perches, made up of the following parts:

- Hauturu East 1E5C2C1 11 acres 0 roods 03 perches Crown-owned
- Hauturu East 1E5C2B5 88 acres 2 roods Maori-owned
- Hauturu East 1E5C2A1 35 acres 1 rood 34 perches Crown-owned
- Hauturu East 1E5C2A2 48 acres 1 rood 24 perches Maori-owned
- Hauturu East 1E3 22 acres 1 rood 10.5 perches Maori-owned

The Crown-owned portions were dealt with first, being reserved for scenery preservation in May 1910[1600]. The following year, after the Scenery Preservation Amendment Act 1910 had been passed, and there was legislative authority to take Native Land for scenery preservation purposes, the Department of Lands and Survey was asked if it still wished to proceed with the taking of the Maori-owned portions[1601]. It told the Public Works Department that it did wish the taking of the Native land in question to proceed[1602]; one week later it had that decision formalised when the Auckland Scenery Preservation Board passed as Recommendation 197 a resolution recommending that the Maori-owned portions be acquired. A fresh Notice of Intention to Take the Maori-owned land was issued in May 1911[1603]. No objections were received, and the land was taken in July 1911[1604].

The intended taking for scenic reserve had been incorporated into a partition of Hauturu East 1A5C2B5 ordered by the Naïve Land Court in May 1911[1605]. One of the partition blocks, Hauturu East 1A5C2B5C of 91 acres, comprised the area surveyed for scenic reserve (88 acres 2 roods), plus the area of proposed road through the reserve (2 acres 2 roods). The area of proposed road that was not taken under the

[1599] Commissioner of Crown Lands Auckland to Under Secretary for Lands, 12 March 1910. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #815.
South Auckland plan SO 15409. Supporting Papers #2356.
[1600] *New Zealand Gazette* 1910 page 1621. Supporting Papers #3944.
[1601] Assistant Under Secretary for Public Works to Under Secretary for Lands, 29 March 1911. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #816.
[1602] Under Secretary for Lands to Under Secretary for Public Works, 31 March 1911. Lands and Survey Head Office file RES 3/3/22. Supporting Papers #817.
[1603] *New Zealand Gazette* 1911 page 1627. Supporting Papers #3953.
[1604] *New Zealand Gazette* 1911 page 2308. Supporting Papers #3955.
[1605] Maori Land Court minute book 53 OT 122-123. Supporting Papers #3654-3655.

Public Works Act still remains in Maori ownership today as the balance area of that partition block.

13.11 Mangaokewa Gorge Scenic Reserve

The preservation of scenery visible from the Main Trunk Railway was a strong focus of the Scenery Preservation Commission, in particular the railway south of Taumarunui, where a special investigation was undertaken. North of Taumarunui there was no comparable special investigation, but the Minister of Tourist and Health Resorts did draw the Commission's attention to the Mangaokewa Gorge in August 1904. The Minister referred to "the advisableness of taking steps to reserve the beautiful scenery in the Te Kuiti Gorge, near the Waiteti Viaduct"[1606].

A report was called for from the Commissioner of Crown Lands, but nothing was received from him until August 1905, when he sent a telegram to the effect that the Government would have competition from private purchasers for some of the land.

> Re Pukenui No 2M, 180 acres, under offer of lease to Wlliam Lovett through Native Council. Strongly advise that restrictions be not removed, as portion required for scenic reserve and contains valuable limestone. I went over it yesterday.[1607]

The Justice Department, which was responsible for removing restrictions on alienation that had been applied to Maori-owned blocks by the Native Land Court, was asked to take "any action you deem necessary", but the Under Secretary for Justice replied:

> If the Crown wants the land it should take it at once, as it is not fair to the Native owners to prevent them from leasing.[1608]

The following month the Commissioner (who was also Chief Surveyor) provided his report.

> When in the King Country some 6 weeks ago, I went up the valley of the Mangaokewa River accompanied by District Road Engineer Burd, and I was

[1606] Minister for Tourist and Health Resorts to Chairman Scenery Preservation Commission, 23 August 1904. Lands and Survey Head Office file 4/302. Supporting Papers #523.
[1607] Telegram Commissioner of Crown Lands Auckland to Under Secretary for Lands, 11 August 1905. Lands and Survey Head Office file 4/302. Supporting Papers #524-526.
[1608] Under Secretary for Justice to Under Secretary for Lands, 14 August 1905, on Telegram Commissioner of Crown Lands Auckland to Under Secretary for Lands, 11 August 1905. Lands and Survey Head Office file 4/302. Supporting Papers #524-526.

> very much struck with the splendid scenery and bold limestone cliffs rising to a height of several hundred feet, interspersed with native bush, and I understood that Mr MW Smith, Scenery Commissioner, had expressed a wish that the valley should be preserved at all hazards. In addition to this there are millions of tons of limestone easily workable. Of course I am aware that making it a scenic reserve introduces the difficulty of utilising the stone for commercial purposes. At any rate it might be arranged by and by to effect an exchange, but there is no doubting in my mind that we should have the area reserved for scenic purposes alone.
>
> Mr Burd estimates the value at £2-10/- an acre…. The land comprises the whole of the Pukenui 2M block, and portions of Te Kuiti No.2B No.5; No.2B No.4; Rangitoto-Tuhua No.64; and Pukenui No.2U Blocks. I may mention that a tram has been laid up to about the centre of the ballast pit reserve, and in years to come if lime is needed it might be continued right into the cliffs…. Area 319 acres approx.[1609]

The report was passed to the Tourist and Health Resorts Department, which at that stage was responsible for the Scenery Preservation Commission. The Superintendent of the Department replied that the report would be referred to the Commission, adding:

> It is of the greatest importance, of course, that all desirable bush lands along the route of the Main Trunk Railway should be reserved, and I would be glad therefore if you would arrange that the restrictions on this land be not removed in the meantime.[1610]

The Commission passed a resolution (its Recommendation 332):

> Resolved to recommend the Governor to acquire from the native owners about 13 acres of Te Kuiti No.2B No.5; about 15 acres of Te Kuiti No.2B No.4; about 43 acres of Rangitoto-Tuhua No.64; about 32 acres of [Pukenui] No.2U; and about 36 acres Pukenui No.2M; through which runs the beautiful Manga-o-kewa Gorge, seen from the Wai-te-ti Viaduct on the North Island Main Trunk Line, the boundaries on top of cliffs (where not otherwise defined on map) to follow the line of cliffs.[1611]

This was a total of 138 acres.

When the affairs of the Scenery Preservation Commission passed to the Department of Lands and Survey in March 1906, the priority for that Department does not appear

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[1609] Chief Surveyor Auckland to Under Secretary for Lands, 14 September 1905. Lands and Survey Head Office file 4/302. Supporting Papers #527-528.
[1610] Superintendent Tourist and Health Resorts to Under Secretary for Lands, 26 September 1905. Lands and Survey Head Office file 4/302. Supporting Papers #529.
[1611] Resolution of Scenery Preservation Commission, undated, quoted in Under Secretary for Lands to Under Secretary Native Department, 13 July 1906. Lands and Survey Head Office file 4/302. Supporting Papers #530-531.

to have been the establishment of the reserve, but rather measures to forestall limestone quarrying in the gorge. This was probably because institution of such measures had been talked about since 1905. In July 1906 the Under Secretary for Lands wrote to the Native Department.

> The Pukenui Block contains a quantity of valuable limestone, and Mr William Lovett has applied for a lease of the land to enable him to take out limestone for a contract. This, I understand, has not been finally approved pending satisfactory arrangements being made as to the reservation. Cabinet, however, on the 15th December [1905], decided that he should be allowed to take out limestone.
>
> If you see no objection, I think it would be best to place the matter before Cabinet for their decision as to whether the land should be taken under the provisions of the Public Works Act 1905 and the Scenery Preservation Act 1903. If they approve the proposal, the necessary proceedings could be taken, and the lease to Mr Lovett could issue with the portion required for scenic purposes excluded from the area of the Block leased.[1612]

The Under Secretary for the Native Department responded that a firm decision was needed first as to whether land in the gorge was to be taken for scenic purposes[1613]. This depended in part on whether any land in the gorge was needed for limestone quarrying, or whether other limestone outcrops in the Te Kuiti district would meet local needs. The District Road Engineer in Te Kuiti was asked for his opinion[1614]. He replied:

> I certainly think that the whole of the gorge from the lower end to the Waiteti Viaduct, and also about 20 chains of the Mangaokewa Gorge above the junction of the latter with the Waiteti Stream, should be reserved for scenery, as it is a most beautiful spot and so easy to get at from the township of Te Kuiti. The portion W Lovett has leased from the natives includes one side of the proposed reserve between the railway and Mangaokewa Stream, but there is plenty of limestone for him to work for years without interfering in any way with the proposed reservation. I think it would be advisable to cut out a quarry reserve at the big bluff on the east side of the stream at the lower end of the gorge, alongside the Railway ballast pit, to be made use of for metalling roads etc, irrespective of the portion that Mr Lovett is now working, and this is also included in the proposed scenic reserve at present….

[1612] Under Secretary for Lands to Under Secretary Native Department, 13 July 1906. Lands and Survey Head Office file 4/302. Supporting Papers #530-531.
[1613] Under Secretary Native Department to Under Secretary for Lands, 17 July 1906. Lands and Survey Head Office file 4/302. Supporting Papers #532.
[1614] Under Secretary for Lands to Resident Road Engineer Te Kuiti, 20 July 1906. Lands and Survey Head Office file 4/302. Supporting Papers #533.

> Where Mr Lovett is now working is outside the proposed reserve, but should he get his lease from the natives it might be difficult to obtain the reserve afterwards.[1615]

A proposal was then put to the Minister of Lands, recommending the acquisition of "about 138 acres of native land" for scenic purposes, plus land for a Government quarry, and Cabinet gave its approval in October 1906[1616]. With the passing of the Scenery Preservation Act 1906, it was not possible to compulsorily acquire the land, so William Grace, the Government's Land Purchase Officer[1617], was instructed to negotiate with the owners for the purchase[1618]. Instructions were also given for survey plans to be prepared.

The moves being made by the Government became known to the Maori owners of Pukenui 2M, Te Kuiti 2B4 and Rangitoto-Tuhua 64, and in February 1907 their solicitor wrote to the Minister of Public Works, as the owners believed that their land had already become a reserve.

> Although it is generally known that the land has been reserved, yet the owners, who are most interested, have not been consulted in any way.
>
> I understand surveys have been made on these lands, also without any permission from the owners, and it appears to me to be a very high-handed method of going to work, as you are doubtless aware that under the Public Works Act you have to give the owners notice.
>
> I have therefore to request that you will inform me at your early convenience what steps have been taken, or are intended. And I may mention that as the land contains very valuable limestone upon which, I understand, the Government have already cast what may be termed "greedy eyes", and have surveyed with a view of utilising this material, this will have to be taken into consideration.[1619]

[1615] District Road Engineer Te Kuiti to Under Secretary for Lands, 8 August 1906. Lands and Survey Head Office file 4/302. Supporting Papers #534.
[1616] Under Secretary for Lands to Minister of Lands, 13 August 1906, approved by Cabinet 13 October 1906. Lands and Survey Head Office file 4/302. Supporting Papers #535-538.
[1617] Grace had been appointed a land purchase officer when the Crown recommenced purchasing in 1905 (after the taihoa policy had put a stop to purchasing in 1899). In this capacity he reported to the Under Secretary for Lands.
[1618] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 15 October 1906, and Chief Surveyor Auckland to Under Secretary for Lands, 1 November 1906. Lands and Survey Head Office file 4/302. Supporting Papers #539 and 540.
[1619] WR Franklin, Barrister and Solicitor, Te Kuiti, to Minister of Public Works, 15 February 1907. Lands and Survey Head Office file 4/302. Supporting Papers #541.

He was told that Grace had been instructed to negotiate with the owners, and that the Chief Surveyor had been instructed to survey the proposed scenic and quarry reserves, but not "until April next, by which time it is hoped Mr Grace will have concluded negotiations".

> You will see, therefore, that the owners of the land in question are being consulted before the Government have taken any steps to reserve the same, so that their wishes may be fully considered and given effect to as far as possible.[1620]

In March 1907 the solicitor wrote again, advising that Grace had told him that as "he has no power to purchase any land for scenery purposes under the Native Lands Settlement Act, he has abandoned negotiations"[1621]. Grace had not informed Wellington of his action, and as far as the Under Secretary for Lands was concerned he was in error, because the Public Works Act 1905 authorised the acquisition of land for scenery preservation by negotiation[1622]. Grace was instructed to resume negotiations[1623], and it was only then that he communicated with Wellington on the subject for the first time.

> Pressure of business prevented me from reporting earlier as to progress of negotiations, but when I was at Te Kuiti lately I interviewed most of the owners and I feel confident that the Gorge can be acquired for £1-0-0 to £1-10-0 per acre, but of course you know that the Natives through contact with Europeans get sentimental ideas as to the value. Whilst at Te Kuiti I consulted Mr Hardy, the surveyor, and the result being that he supplied me with a tracing showing what he considers the area that should be acquired, which is in excess of what was proposed by the Chief Surveyor, and shown on tracing supplied me by him. Both tracings I herewith send you, so as to give you a better idea of how matters stand. Mr Hardy says that the land to be taken as shown on the tracing supplied me by Survey Office is too narrow and will not extend to top of the cliffs, besides does not extend far enough up the Gorge, he states it should extend to Mr Price's property. Mr Hardy's tracing shows everything very plainly.
>
> One difficulty to get over as to Pukenui No.2M, containing 180 acres, on which the proposed quarry site is situated, Mr Hardy considers that 12 acres

[1620] Acting Premier to WR Franklin, Solicitor, Te Kuiti, 21 February 1907. Lands and Survey Head office file 4/302. Supporting Papers #542.
[1621] WR Franklin, Barrister and Solicitor, Te Kuiti, to Minister of Public Works, 5 March 1907. Lands and Survey Head Office file 4/302. Supporting Papers #543.
[1622] File note by Under Secretary for Lands, 22 March 1907, on Minister of Lands to WR Franklin, Te Kuiti, 13 March 1907, Minister of Lands to WR Franklin, Te Kuiti, 22 March 1907, and Under Secretary for Lands to Minister of Lands, 26 April 1907. Lands and Survey Head Office file 4/302. Supporting Papers #544. 545 and 547.
[1623] Under Secretary for Lands to Native Land Purchase Officer Otorohanga, 23 March 1907. Lands and Survey Head Office file 4/302. Supporting Papers #546.

> should be taken instead of six acres as proposed by Chief Surveyor. But Mr Lovatt, contractor of Auckland, has a lease over this block and his solicitor Mr Franklin informs me that there is a condition in the lease giving Mr Lovatt the right to quarry at a certain price per cubic foot (I think one penny). You will notice from the tracing supplied by Mr Hardy many blocks are involved and therefore many owners to be dealt with. When negotiating with natives, they asked me to definitely state how many acres I intended to buy in each block. Of course I could not give them a definite answer. They therefore considered that the land proposed to be acquired should be surveyed, and I agreed with them. I understand that it has been practically arranged with Mr Hardy to make the survey, if so I would suggest that, after your examining his tracing herewith and reading his letter to me, that you communicate your instructions to Mr Mackenzie, Chief Surveyor Auckland.[1624]

The surveyor's plan showed an enlarged reserve of approximately 500 acres; this was a substantial increase on the Scenery Preservation Commission's 138 acre proposal. The recommendation that a larger area be acquired for scenic reserve required fresh approval from the Government. A submission to the Minister of Lands was prepared, and Cabinet gave its approval in May 1907[1625]. Grace was told that the surveyor would be instructed to survey the enlarged area of about 500 acres, and was himself instructed to negotiate a purchase price with the owners, which the Compensation Court could be invited to order as its award after the land had been taken under the Public Works Act[1626]. However, there was no further communication on the subject from Grace before his contract with the Crown expired sometime in 1908. It is likely that he had done little in the way of negotiating with the owners, because he would have been waiting for the survey plan to tell him how many acres were involved. But the surveyor was having difficulty drawing up the plan, due to the survey definition of the various partition blocks of Rangitoto-Tuhua 64 being held up by appeals[1627]. This prevented him from calculating how many acres would be taken from each partition block.

[1624] Native Land Purchase Officer Otorohanga to Under Secretary for Lands, 14 May 1907. Lands and Survey Head Office file 4/302. Supporting Papers #548-553.
[1625] Under Secretary for Lands to Minister of Lands, 17 May 1907, approved by Cabinet 27 May 1907. Lands and Survey Head Office file 4/302. Supporting Papers #554.
[1626] Under Secretary for Lands to Native Land Purchase Officer Kihikihi, 28 May 1907. Lands and Survey Head Office file 4/302. Supporting Papers #555.
[1627] EH Hardy, Te Kuiti, to Chief Surveyor Auckland, 5 April 1909, attached to Chief Surveyor Auckland to Under Secretary for Lands, 20 April 1909. Lands and Survey Head Office file 4/302. Supporting Papers #556-557.

It was not until May 1910 that the surveyor advised that "time is ripe for Grace negotiate with natives for purchase of scenic reserve" from Rangitoto-Tuhua 64[1628]. The Land Purchase Officer then reported the following month.

> The proposed scenic reserve [on Rangitoto-Tuhua 64] is in two pieces – one of 200 acres and the other 109a. 3r. 11p. It is a long narrow strip, commencing about one mile from the town of Te Kuiti, and has been laid off by Mr Hardy in conjunction with the whole of the Native owners so as to take in practically the whole of the bush and the wooded cliffs along the Mangaokewa River. It is also situated immediately behind the Railway Department's quarry, and access is at present obtained through that reserve.
>
> It is a suitable piece to have for scenic purposes. After talking the matter over with Mr Hardy, I came to the conclusion, and he agrees with me, that from 30/- to £2 per acre would be a good price to give in the event of acquiring the land. Certainly £2 would be the outside.
>
> I saw the Native owners in connection with the matter, and as they would not consider the matter under £15 per acre, I let the matter drop. The land is not much use for any other purpose, and I would advise that at the present time it be held in abeyance, as I have not the slightest doubt that before very long the owners will be quite prepared to come down and make an offer on the lines that I have stated, when negotiations can then be taken in hand.[1629]

It was agreed that the matter would have to stand over, but this was only until the following year, as the passing of the Scenery Preservation Amendment Act 1910 allowed for compulsory taking of Maori-owned land for scenic purposes, and this provided a fresh opportunity to obtain a reserve at Mangaokewa Gorge. The matter was considered by the Auckland Scenery Preservation Board at its meeting in April 1911, when it

> recommended that the land should be taken, but were unaware of the exact area, so recommended that a total area of 500 acres should be acquired. It is, however, only intended to acquire such land as will adequately preserve the scenery, and the Board does not desire the whole of the 500 acres to be taken, if a smaller area is sufficient, which it thinks is probably the case.[1630]

[1628] Telegram EH Hardy, Te Kuiti, to Under Secretary for Lands, 5 May 1910. Lands and Survey Head Office file 4/302. Supporting Papers #558.
[1629] Native Land Purchase Officer Wellington to Under Secretary for Lands, 15 June 1910. Lands and Survey Head Office file 4/302. Supporting Papers #559-561.
[1630] Under Secretary for Lands to Commissioner of Crown Lands Auckland, 7 April 1911. Lands and Survey Head Office file 4/302. Supporting Papers #562.

Hardy's survey plan was completed in September 1911[1631]. It showed that the proposed reserve would require land from six different blocks:

- Pukenui 2M 49 acres
- Pukenui 2U1 85 acres 2 roods 21 perches
- Pukenui 2U2 64 acres 2 roods 08 perches
- Pukenui 2U3 53 acres 0 roods 16 perches
- Rangitoto-Tuhua 64I 107 acres 2 roods 13 perches
- Rangitoto-Tuhua 64J 179 acres 2 roods
- Mangaokewa River 24 acres

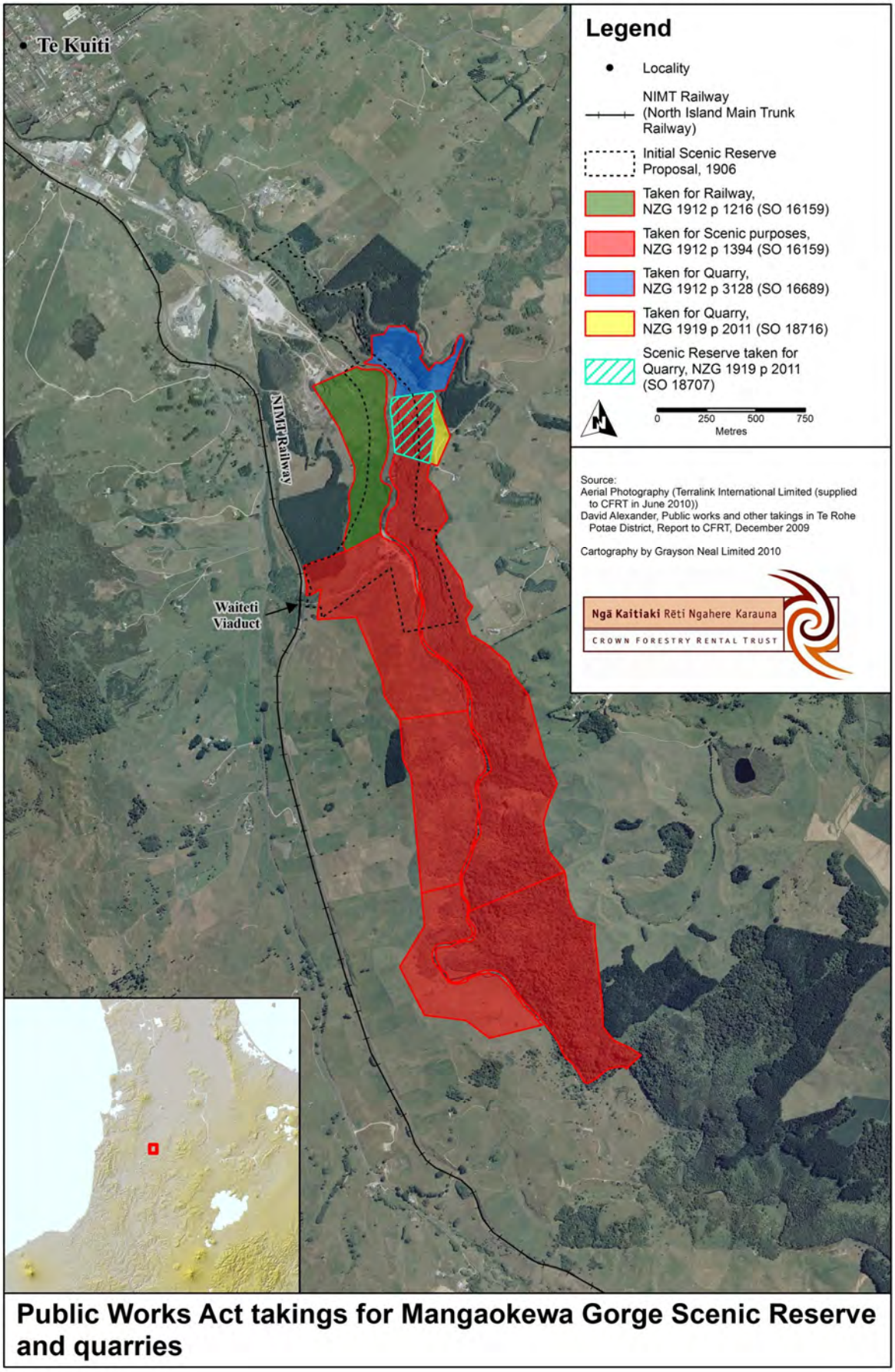
This is a total of 563 acres 1 rood 18 perches, and shows that there had been no reduction in area to meet the recommendations of the Scenery Preservation Board.

As soon as the plan was received in Wellington, it was forwarded to the Public Works Department, with a request that steps be taken to take the land under the Public Works Act for scenic purposes[1632]. Before the Notice of Intention to Take could be issued, however, the Railways Department alerted Lands and Survey to its own ambitions in the gorge, which clashed with the scenic reserve proposal. It had asked the surveyor Hardy to survey 60 acres at the lower end of the gorge as an extension to its ballast pit, and he had replied that it was part of the area he had already surveyed for scenic reserve. Railways told Lands and Survey:

> It may not be too late even now to have the [scenic reserve] plan so altered as to define this piece of land and have it gazetted for Quarry.
>
> The land is a series of bare limestone bluffs, and I am sure the Scenic Commissioners will have no objection to such a piece of land being excluded from the reserve. My Department requires the land for immediate extension of our quarrying operations.[1633]

The Under Secretary for Lands, while surprised by the request, was prepared to consider accommodating it.

[1631] Chief Surveyor Auckland to Under Secretary for Lands, 14 September 1911. Lands and Survey Head Office file 4/302. Supporting Papers #568.
South Auckland plan SO 16159. Supporting Papers #2369.
[1632] Under Secretary for Lands to Under Secretary for Public Works, 20 September 1911. Works and Development Head Office file 52/33. Supporting Papers #1625-1626.
[1633] District Engineer Ohakune to Under Secretary for Lands, 19 October 1911. Lands and Survey Head office file 4/302. Supporting Papers #569-570.



Map 25 Public Works Act takings for Mangaokewa Gorge Scenic Reserve and quarries

> This area was laid off by Mr Hardy as being attractive from a scenic point of view, and recommended for reservation by the Scenery Preservation Board, and it seems somewhat unusual that the whole of the 60 acres should now be required for quarry purposes in addition to the adjoining ballast and quarry reserve.
>
> If however, your Department cannot do with less than the full area, an endeavour will be made to meet their wishes, although such alteration will need approval of the Minister before it can be effected. When the report of the Chief Surveyor on the matter is received, the matter will receive immediate attention.[1634]

The Chief Surveyor reported that "I know of no objection to exclusion of proposed area"[1635], the survey plan showing the proposed scenic reserve was amended, and the Public Works Department was told of the amended boundaries[1636]. Despite the remark by the Under Secretary for Lands that Ministerial approval would be required, there is no record of Ministerial approval of the amendment. The land excluded from the scenic reserve proposal, in order to provide for the Railways quarry, was the 49 acres proposed to be taken from Pukenui 2M.

The Notice of Intention to Take the remainder of the land was issued in February 1912[1637]. No objections were received, and the land was taken in April 1912[1638].

The Native Land Court hearing to consider the assessment of compensation was held at the end of October 1912[1639]. The Public Works Department's Land Purchase Officer reported that he had been able to obtain a reduction on the values determined by the Valuation Department, "after conference and arrangement with the representatives of the owners".

[1634] Under Secretary for Lands to District Engineer Ohakune, 26 October 1911. Lands and Survey Head Office file 4/302. Supporting Papers #571.
[1635] Telegram Chief Surveyor Auckland to Under Secretary for Lands, 26 October 1911. Lands and Survey Head Office file 4/302. Supporting Papers #572.
[1636] Chief Surveyor Auckland to Under Secretary for Public Works, 23 January 1912. Works and Development Head Office file 52/33. Supporting Papers #1627.
[1637] *New Zealand Gazette* 1912 page 729. Supporting Papers #3964.
[1638] *New Zealand Gazette* 1912 page 1394. Supporting Papers #3970.
[1639] Maori Land Court minute book 55 OT 88-89. Supporting Papers #3959-3960.

Table 13.5 Mangaokewa Gorge Scenic Reserve Compensation Awards

Block	Area Taken (ac-r-p)	Valuation Department's Valuation[1640]	Court Award
Pukenui 2U1	85-2-21	£383	£171-5-3d (£2 per acre)
Pukenui 2U2	64-2-08	£201	£129-2-0d (£2 per acre)
Pukenui 2U3	53-0-16	£159	£106-4-0d (£2 per acre)
Rangitoto-Tuhua 64I	107-2-13	£236	£161-7-6d (£1-10-0 per acre)
Rangitoto-Tuhua 64J	179-2-00	£493	£224-7-6d (£1-5-0 per acre)
Mangaokewa Riverbed	24-0-00		Nil
Total	514-1-18	£1472	£792-6-3d

Source: Maori Land Court minute book 55 OT.

The Land Purchase Officer had also negotiated some partial exchanges of land.

> In lieu of £60 of the compensation awarded for Pukenui 2U Sec 1, the owner is to receive a Certificate of Title for Sec 1A, 10a 0r 15p, and the owner of Pukenui 2U Sec 2 is to receive a Certificate of Title for Section 2A, 10a 2r 9p, in lieu of a similar amount of compensation. These two areas were awarded to the Crown in satisfaction of survey liens. The Crown Lands Ranger places a value of £4 per acre on them, and the Commissioner of Crown Lands Auckland approved of the exchange being made.[1641]

These exchanges had been raised earlier. In March 1911 Hiri Wetere Kareti wrote to the Chief Surveyor in Auckland that he had "grubbed, cleared, ploughed and cleaned" some land awarded by the Native Land Court to the Crown in lieu of payment of a survey lien. He offered 30 acres of his interest in the lands surveyed and to be taken for scenic reserve in lieu of the 10 acres of Crown Land that he was occupying[1642]. The Chief Surveyor recommended acceptance of the exchange offer, which was legally possible under Section 11 Scenery Preservation Amendment Act 1910[1643] or

[1640] Valuer General to Under Secretary for Public Works, 7 June 1912. Works and Development Head Office file 52/33. Supporting Papers #1628.
[1641] Land Purchase Officer Bold to Assistant Under Secretary for Public Works, 4 November 1912, on Valuer General to Assistant Under Secretary for Public Works, 9 October 1912. Works and Development Head Office file 52/33. Supporting Papers #1629.
[1642] Hiri Wetere Kereti, Te Kuiti, to Chief Surveyor Auckland, 20 March 1911, attached to Chief Surveyor Auckland to Under Secretary for Lands, 22 April 1911. Lands and Survey Head Office file 4/302. Supporting Papers #563-564.
[1643] Under Secretary for Lands to Chief Surveyor Auckland, 5 May 1911. Lands and Survey Head Office file 4/302. Supporting Papers #565.

Sections 380-386 Native Land Act 1909[1644]. An inspection of the Crown Land revealed that 3½ acres had been cleared[1645].

When the Minister in charge of Scenery Preservation was briefed about the compensation award, he was told that the lower award as compared to the Government Valuation "must be regarded as highly satisfactory". Cabinet gave its approval to make the payments that had been awarded[1646].

The rationale for the reduced values accepted by the owners before the Court hearing, and by the Native Land Court when ordering its compensation awards, is not known. Neither the Crown files, nor the Court minutes, provide any explanation.

13.12 Concluding Remarks

The evidence set out above shows only limited use of the compulsory taking powers provided by the Scenery Preservation Act 1903, before that power was removed with respect to Maori-owned land by a rewriting of the Act in 1906. However, it was during the period 1903-1910 that the preliminary steps were taken that allowed an explosion of taking activity when the right to recommend the taking of Maori-owned land was reinstated in the Scenery Preservation Amendment Act 1910.

It was compulsorily taken Maori-owned land that provided most of the first foundations for the present-day scenic reserves network in Te Rohe Potae District, much as compulsorily taken Maori-owned land provided the initial roading framework in the region. Although not a solid statistical analysis of the actual dates of establishment of all scenic reserves in the major part of Te Rohe Potae District, the following statistics are drawn from an analysis of the information in Lance McCaskill's booklet on South Auckland scenic reserves produced in 1979[1647]:

[1644] Under Secretary for Lands to Chief Surveyor Auckland, 19 June 1911. Lands and Survey Head Office file 4/302. Supporting Papers #566-567.
[1645] Chief Surveyor Auckland to Under Secretary for Lands, 24 August 1912. Lands and Survey Head Office file 4/302. Supporting Papers #573.
[1646] Under Secretary for Lands to Minister in charge of Scenery Preservation, 9 November 1912, approved by Cabinet 27 November 1912. Lands and Survey Head Office file 4/302. Supporting Papers #580.
[1647] LW McCaskill, *Scenic Reserves of South Auckland; Book Two, East of Waikato River*, Government Printer, Wellington, 1979.

- Number of Scenic Reserves established 1903-1920[1648] 17
- Number of Scenic Reserves established 1921-1945 10
- Number of Scenic Reserves established 1946-1975 27

Of the 17 reserves established during the 1903-1920 period, 11 can be linked to the compulsory takings from Maori-owned land under the Public Works Act. The majority of the other scenic reserves during that time period seem to have been created out of the Crown's own estate. Thus, of the private landowners at the time, Maori were disproportionately affected. It is clear that the availability of the legislation making compulsory acquisition of Maori-owned land for scenic purposes possible encouraged the Crown to direct its efforts in that direction.

Another gauge of the prevalence of compulsorily acquired Maori-owned land among the foundations of today's suite of scenic reserves in Te Rohe Potae District can be found in correspondence in 1922-23 about appointing Kawhia County Council to have authority to police and protect the scenic reserves in its county area. Combining a schedule of reserves in Kawhia County produced at this time[1649] with the reserves taken around Kawhia Harbour in 1924[1650] shows the following information:

- Derived from the Crown's estate 8 parcels 482 acres 2 roods 39 perches
- Taken from Maori ownership 25 parcels 556 acres 1 rood 31 perches

The County Council had applied for authority to deal with trespassers and generally "keep an eye on these reserves" in October 1922[1651]. The Commissioner of Crown Lands recommended that it be appointed as a controlling body for the reserves[1652], but in Wellington this was amended to the appointment of named Council employees as

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This booklet does not cover all of Te Rohe Potae District, only that part in South Auckland Land District, i.e. north of the Mokau River and east of the Ongarue River.

[1648] This time period 1903-1920 includes the Kawhia Harbour reserves taken in 1921 and 1924, because the Kawhia Harbour suite of reserves are treated in McCaskill's book as a reserve that was first established in 1914.

[1649] Schedule of Areas within the Kawhia County set apart as Scenic Reserves, attached to Commissioner of Crown Lands Auckland to Under Secretary for Lands, 29 November 1922. Lands and Survey Head Office file 4/378. Supporting Papers #611-612.

[1650] *New Zealand Gazette* 1924 pages 485 and 902. Supporting Papers #4032 and 4033.

[1651] County Clerk Kawhia County Council to Commissioner of Crown Lands Auckland, 12 October 1922, attached to Commissioner of Crown lands Auckland to Under Secretary for Lands, 20 October 1922. Lands and Survey Head Office file 4/378. Supporting Papers #606-607.

[1652] Under Secretary or Lands to Commissioner of Crown Lands Auckland, 28 October 1922, and Commissioner of Crown Lands Auckland to Under Secretary for Lands, 8 November 1922. Lands and Survey Head Office file 4/378. Supporting Papers #608 and 609.

honorary Inspectors of Scenic Reserves[1653]. Of the three persons appointed[1654], not one was Maori, despite the contribution that Maori had made.

Government officials expressed their concern that Maori would clear their land of its forest cover, and used this as justification for taking action that deprived Maori of their land. There is no doubt that Maori were willing to clear their land of forest, as part of the development of that land. However, any efforts by Maori to clear land, have to be viewed in the context of what was happening around them. The Crown's weak restrictions on alienation encouraged the purchase and leasing of Maori land by private individuals during the early decades of the twentieth century, and one of the first actions of the private settlers who occupied those lands was to seek to clear the land to make way for farms. In a similar fashion, the Crown had purchased large areas of Te Rohe Potae District, and cut that land up for occupation by more settlers, who also engaged in land clearance as a first step to farming. Maori landowners were therefore acting no differently from the Pakeha who were all around them.

A major theme that emerges from Crown correspondence about establishing scenic reserves was that these reserves should not displace farm settlement activity. Officials bent over backwards to ensure that settlement would not be hindered. This stance undoubtedly reflected cultural attitudes of the time, although it was perhaps more sharply expressed than it might have been because the Department of Lands and Survey, responsible for scenery preservation from 1906 onwards, was also the Government agency responsible for land settlement. The evidence has identified a number of occasions where scenery preservation work was very much the poor relation to land settlement work, particularly in the allocation of surveyors to survey scenic reserve boundaries.

How Maori viewed the scenery preservation efforts of the Crown is not clear, as only a few glimpses of Maori attitudes are discernable from the Crown records. Many of the Notices of Intention to Take land for scenic reserves did not attract any objections.

[1653] Under Secretary for Lands to Minister in charge of Scenery Preservation, 7 December 1922, approved by Minister 9 December 1922. Lands and Survey Head Office file 4/378. Supporting Papers #613.
[1654] *New Zealand Gazette* 1923, 17 May. Copy on Lands and Survey Head Office file 4/378. Supporting Papers #615.

However, this is not necessarily a good gauge of Maori feeling, because of the difficulties that Maori had in finding out about the Crown intentions, and also because silence is known to be one way in which Maori can express their opposition. Where Maori made a definite statement, there are sometimes expressions of absolute disagreement, such as with respect to the Puti sub-section of the Kawhia Harbour Scenic Reserves, while at other times there are statements of support for the principle of reserves (while objecting to specifics of boundaries), such as with respect to the Awaroa sub-section of the Kawhia Harbour Scenic Reserves, and Ngahuinga Bluff in the Marokopa Valley. When Maori did express an opinion by writing letters to the Crown, they were being put to considerable trouble and effort to defend their property.

The Crown often had a more sympathetic relationship with the European lessees of Maori-owned lands than it did with the Maori landowners. This may well have been a consequence of the use of the Public Works Act, where objections are given short shrift if they are capable of being overcome by a monetary payment. That Maori landowners had entered the commercial world and accepted monetary payments for the use of their land by lessees seems to have been interpreted by the Crown to mean that historical and cultural factors had been put into second place. Maori owners were relegated to arguing compensation amounts before the Native Land Court, although the compensation hearings were very much Pakeha dominated, as European valuers were used by both sides to argue how much should be paid by the Crown. Nowhere was this attitude of excluding Maori from discussions and negotiations more apparent than on the Mokau River, and with the Mangoira Block, where some 2900 acres was taken, with the connivance of the European lessee, but less than 400 acres was needed for scenic reserve, the remainder becoming available for land settlement as Crown-owned land. The provision of the Scenery Preservation Act 1908 that allowed this Crown action to occur was heavily biased in favour of the Crown at the expense of the Maori landowners.

14 TOKANUI MENTAL HOSPITAL AND WAIKERIA PRISON

14.1 Introduction

This case study was chosen because the taking it describes has been the subject of specific claims to the Waitangi Tribunal, and because it examines the largest (by area) of the takings under the Public Works Act during the early years of the twentieth century. In all some 2948 acres of Maori-owned land was taken for Tokanui Mental Hospital in 1910-1911, and a further 541 acres adjoining the mental hospital site was taken for a "reformatory farm" in 1910. The "reformatory farm" later became Waikeria Borstal, and then became Waikeria Prison.

The process of taking the two sites, which proceeded in parallel with each other, was characterised by multiple and consistent objections from the Maori landowners, nearly all of which were rejected on the grounds that a monetary payment by the Crown to the owners would be suitable and acceptable compensation. The taking illustrates how use of the Public Works Act 1908 failed to have regard for the possibility that a taking might leave the Maori owners with insufficient land for their support and livelihood, even while the contemporary Native Land Act 1909 stipulated that one of the protections insisted upon by the Crown in the event of a sale or lease of Maori-owned land was that Maori owners should not be left landless or with insufficient land.

This case study also examines, in lesser detail, what has happened to the land since it was taken. Large portions have been put to alternative uses, and some has been sold to private owners. With the exception of one exchange of lands between the Crown and Maori, the original Maori owners and their descendants were not given any opportunity to comment on these arrangements, and were not offered the land back.

14.2 The Choice of the Site

The Mental Hospitals Department focused on the Tokanui block as a suitable site for a mental hospital in late 1908. Just why that was so has not been fully discovered during the research for this evidence, as Crown records from the date (during 1908) of

the decision about the siting of the mental hospital have not been located. Annual reports of the Department at the time indicate a rising demand nationally for mental hospital beds, and a shortage of supply in the northern half of the North Island[1655]. However, that does not explain the thinking behind what is presumed to have been a narrowing down of possible sites to a preferred single site at Tokanui.

The only reference to the choice of Tokanui located during research for this case study is a report by the Inspector General of Mental Hospitals five years later, in March 1913. The Inspector General was the Crown official who had been instrumental in the choice of location during 1908. He wrote:

> It was part of the policy in selecting a site to get sufficient land to make the population as nearly as possible self-supporting in the matter of rations – a most important matter with the increasing cost of the mentally defective.
>
> Also, in framing the Act of 1911, different classes were introduced (non-violent epileptic, imbeciles, feebleminded) which are best provided for at some distance from the institution for the insane, but on the same estate, so that expenses for supervision etc may be reduced, while the necessary segregation is accomplished. This fact was studied in selecting the area.
>
> The site at Tokanui was chosen because it is well situated for the future. When the railway is through from Stratford and the Napier – Gisborne district, the institution will admit cases from Taranaki and Hawkes Bay and Poverty Bay. Its admission area will also include the Waikato etc, and thus relieve Porirua on the one hand, and Auckland on the other.[1656]

While proximity to the Main Trunk Railway, and sufficient size, were major factors, there are likely to have been many other sites besides Tokanui that would have been equally suitable. Probably Tokanui's advantage over other sites further north and closer to Auckland was that the land to the north would have been more developed (having been in Crown and European ownership for 40 years), and therefore more expensive to acquire. If that is so, then the undeveloped nature of Maori-owned land, as compared to more developed European-owned land, made it more attractive and more likely to be targeted for acquisition.

[1655] For example, *Appendices to the Journals of the House of Representatives* (AJHR), 1909, H-7, page 6, and 1910, H-7, page 7. Not included in Supporting Papers.

[1656] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 31 March 1913. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #21-23.

The first reference located concerning the mental hospital is to a Cabinet decision in December 1908, authorising "5000 acres including Crown lands to be acquired"[1657]. This reference does not state that the area to be acquired should be at Tokanui, although its statement that the acquisition would include Crown-owned land, which was the case at Tokanui, makes this likely.

If the Cabinet decision authorised the acquisition of Maori-owned land at Tokanui, then it had been made without informing or consulting the Native Department. It was not until the following month, January 1909, that the Native Department was approached and asked to take measures to prevent the Tokanui site falling into private hands. The Under Secretary for the Department responded:

> I very much doubt if the District Maori Land Board could refuse to approve of a document by way of lease unless satisfied that
> (1) the rent is inadequate,
> (2) the lessor has not sufficient other land for his maintenance,
> (3) the lease is not beneficial to the owner's interests.
>
> Looking into the question, I find that the Tokanui Block is partitioned into about 31 subdivisions, which, of course, means distinct titles. The block contains an area of 8,655 acres, of which an area of 1,818 acres was acquired by the Crown about 18 months ago, while an area of 210 acres was then under negotiations for lease to Europeans, but it is very probable that a number of transactions may have been effected in the interval.[1658]

The Under Secretary also assessed possible methods by which the Crown might be able to purchase the land it required. These included:

- The purchase of individual interests.

  > This course would probably occupy some considerable time, and would involve partitioning by the Native Land Court in cases where the whole of the interests were not acquired. In addition to this the matter would probably, later on, be the subject of appeals, which would mean prolonged delay.

- Exchange with other land.

  > It is possible that many of the owners possess no other lands, in which case their interests could not be acquired, but exchanges might be

[1657] Cabinet decision of 16 December 1908, referred to in Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals Department, 12 October 1909. Works and Development Head Office file 24/721. Supporting Papers #1196-1197.
[1658] Under Secretary Native Department to Inspector General of Mental Hospitals, 7 January 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #818-819.

effected with Crown lands, so as to allow of a consolidation of interests acquired in one holding.

- Proclamation under the Native Land Settlement Act 1907, which was described as "the simplest way".

  The land could be brought under Part I of the Act, and arrangements made for the Government to acquire it direct from the Maori Land Board, without the usual land purchase procedures.[1659]

The Under Secretary did not identify the use of the Public Works Act 1908 as another of the acquisition options. Nevertheless, his reply was clearly aimed at being as helpful as possible to the Mental Hospitals Department, while the needs and welfare of the Maori owners appears to have been a secondary consideration.

One week after providing this advice to the Mental Hospitals Department, the Under Secretary wrote to the Registrar of the Native Land Court, enclosing a plan showing the area of interest by the Crown for the hospital site, and asking for information about the titles, ownership, and whether approval had been sought for any alienations. While noting that his request was "of a confidential nature at present", he also provided a clue about the Crown's possible motivation for the choice of Tokanui.

> It would appear that the Crown owns a large area of the land proposed to be utilised, and it would seem that the [Mental Hospitals] Department is anxious to augment this area by the acquisition of Native land.[1660]

The plan showed that all the land required, with one exception, lay to the east of the main road. In the north-west corner the land required fronted on to the main road, with the note,

> 2¾ miles from Te Puhi [Railway Station]. The sections adjoining the main road at this point should be acquired. Access to the main road here essential.

The one area to the west of the main road was described as "Hill. Required for water supply and for stone"[1661].

[1659] Under Secretary Native Department to Inspector General of Mental Hospitals, 7 January 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #818-819.
[1660] Under Secretary Native Department to Registrar Native Land Court Auckland, 13 January 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #820-821.
[1661] Plan attached to Under Secretary Native Department to Registrar Native Land Court Auckland, 13 January 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #820-821.

The Registrar's reply indicated that the Crown already owned over 40% of the area of interest, as follows[1662]:

Table 14.1 Tokanui Blocks and Ownership, 1909

Block	Crown-Owned Area (ac-r-p)	Maori-Owned Area (ac-r-p)	Number of Maori Owners
Tokanui 1A1	66-3-07		
Tokanui 1A2		223-0-33	27
Pt Tokanui 1B2B		140-0-00 (approx)	51
Tokanui 1D1	227-1-14		
Tokanui 1D2		1063-1-00	93
Tokanui 1E	76-1-00		
Tokanui C12A	231-2-33		
Tokanui C12B		187-3-13	4
Tokanui C14A	94-1-19		
Tokanui C14B		252-0-09	3
Tokanui C15A	158-3-21		
Tokanui C15B		217-2-27	4
Tokanui C16A	115-2-26		
Tokanui C16B		193-0-18	3
Tokanui C17A	61-2-01		
Tokanui C17B		58-3-38	1
Tokanui C18A	56-0-23		
Tokanui C18B		531-1-05	16
Tokanui C19A	136-1-39		
Tokanui C19B		44-1-00	1
Tokanui C20A	462-2-38		
Tokanui C20B		39-1-13	2
Tokanui C21A	782-2-35		
Tokanui C21B		501-3-25	10
TOTAL	2470-2-16 (42%)	3462-3-21 (58%)	

Source: Native Land Court Auckland[1663].

[1662] Registrar Native Land Court Auckland to Under Secretary Native Department, 20 January 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #822-824.
[1663] Registrar Native Land Court Auckland to Under Secretary Native Department, 20 January 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #822-824.

The partitions which had split various Tokanui blocks into those portions to be awarded to the Crown (the A blocks), and those portions to be awarded to Maori owners (the B blocks) were the result of purchasing of interests by the Crown under the Maori Land Settlement Act 1905 during 1907, plus awards of land to the Crown in lieu of payment of survey liens. These partitions had been ordered by the Native Land Court in April 1908. Thus, less than one year earlier some Maori owners had been given the option of selling their land to the Crown, but had declined and opted to retain their interests in a residue portion of each block. The Crown's ambitions to acquire land for a mental hospital effectively ignored and showed no respect for the wishes of those owners. The Crown's determination to acquire further land also meant that the Maori owners of Tokanui were to be affected by loss of land for a second time, thereby compounding the consequences for them.

It was as a result of receiving this information that the Under Secretary of the Native Department introduced the option of taking the land under the Public Works Act.

> I find that the numbers of owners in some of the blocks partitioned run from twenty-seven to ninety-three. As you require to obtain early possession of the land, I do not see how you can readily complete the matter in the ordinary way by purchase. The difficulties in the way of such a course being adopted will probably be increased by the fact that in all likelihood some of the owners will have died and successors will not yet have been appointed to their interests.
>
> It would probably be preferable, so far as your Department is concerned, for the land to be taken under the Public Works Act. The Hon the Native Minister would no doubt satisfy himself that the Natives suffered no injustice in being deprived of land required for their own use and occupation.[1664]

These remarks demonstrate that the Under Secretary considered the needs of the Crown to be more important than the alternative of the Maori owners retaining their lands. His attitudes in his two letters about the difficulties surrounding purchase of Maori land are significant in a wider context, as it was at this time that the alienation regime subsequently set out in the Native Lands Act 1909 was being formulated.

[1664] Under Secretary Native Department to Inspector General of Mental Hospitals, 29 January 1909. Maori Affairs Head office file 1913/2898. Supporting Papers #825.

The Under Secretary was also using his influence to gain the Crown an advantage over private purchasers of Maori land. He wrote to the Maniapoto-Tuwharetoa District Maori Land Board, which was responsible for consenting to alienations of Maori land:

> I understand that there is before your Board a pending application for recommendation of removal of restrictions to permit of the sale of a portion of [Tokanui C18B] to a Mr Elmsly….
>
> I may state, confidentially, that the area in question forms a portion of a large area which the Mental Hospitals Department is anxious to acquire as a site for a large mental hospital in the locality, and any private alienation will complicate matters from that Department's point of view.[1665]

In early February 1910 the Under Secretary briefed James Carroll, the Native Minister. His concern was that it would be necessary to have a full inquiry to ascertain if the Maori owners would be adversely affected, either because they occupied the lands the Mental Hospitals Department was interested in, or because they had insufficient other lands for their wellbeing. Only if this inquiry had a "satisfactory" result could the proposed acquisition proceed. He recommended that the President of the District Maori Land Board make the necessary inquiries "at once, and furnish a report"[1666].

While there was no written response from Carroll to the briefing paper, he and the Under Secretary discussed the matter verbally towards the end of the month, with the result that the Under Secretary himself visited Kihikihi in early March 1909.

> I ascertained that the old home of Rewi Maniapoto is situated on the portion (145 acres) of subdivision 1B No 2 which is proposed to be acquired by the Mental Hospital authorities, and that his widow is still in occupation. On No 1A No 2 the old meeting-house is still standing. Also the north-eastern portion of No 1D Sec 2 is still occupied and worked by some of the owners.
>
> Apart from the objection of the Natives from having the meeting-house interfered with, I see no reason why the Department should not be allowed to take say 75 acres of No 1A No 2, on a line running parallel with the northern boundary of No 1A No 1, and striking the Puniu River at a point somewhere near the mouth of the Moeriki Stream. This would leave the northern portion of 1D Sec 2 to the Native owners.

[1665] Under Secretary Native Department to President Maniapoto-Tuwharetoa District Maori Land Board, 4 February 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #826.
[1666] Under Secretary Native Department to Native Minister, 4 February 1909. Maori Affairs Head office file 1913/2898. Supporting Papers #827-828.

> When looking into the matter I went over the southern portion of the Tokanui Block, but had no information as to the lands on the southern side of the road leading to Kawa Railway Station, as I had noticed in the report to the Hon. Mr Fowlds of the 29th January last that this was described as European land. This is I think incorrect, and the error has probably arisen owing to the fact that the owners have married Europeans, viz Messrs Grace, Ellis and others. But the land is, I think, still Native land.
>
> If general convenience is to be considered I do not see any objection to this land being dealt with, and if such a course was decided upon, the mental hospital property would come within 1½ miles, or less, of Kawa Railway Station. However this is a matter for the Mental Hospitals Department to consider.
>
> If, however, it is necessary that the Department should take the land originally suggested, I see no objection, provided that steps be taken to safeguard the interests of the owners at present in occupation and above referred to.
>
> The land being Native Land, I presume that any proceedings in regard to assessment of compensation will require to be conducted by the Native Land Court.[1667]

The report to Mr Fowlds, the Minister in charge of Mental Hospitals, referred to in the Under Secretary's report, has not been located during research for this evidence.

The Under Secretary in his report did not state that while in Kihikihi he had discussed the proposal with William Grace, whom he had referred to in his report as being married to one of the owners of Tokanui land. Grace was a former Crown official, his most recent work for the Crown having been the purchase of Te Rohe Potae lands (including Tokanui lands) under the Maori Land Settlement Act 1905. Notwithstanding its previously confidential nature, the Under Secretary may have also discussed the proposed mental hospital with at least one of the Maori owners. Alternatively Grace revealed to the local Maori community that the Crown contemplated acquiring the land. However it was that the local community became aware of the proposal, one week after the Under Secretary's visit Raureti Te Huia wrote to the Native Minister.

> This is to notify you of the distress we are in about our land, which it is proposed to take for Mental Hospital purposes.

[1667] Under Secretary Native Department to Native Minister, 13 March 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #829-830.

> Now, friend, this land is a residue of confiscated land, it is near the Puniu, Kihikihi, and it is known as Tokanui No 1.
>
> I ask that the proposal be not agreed to, for if it is I shall cause trouble.[1668]

Te Huia was referring to the lands north of the Puniu River, which had been confiscated in 1864. The hapu with ownership interests in Tokanui Block had also held interests north of the Puniu River. Any further acquisition of land by the Crown for a mental hospital would therefore be the third major impact on the land holdings of the hapu, after the 1860s raupatu and the 1907 purchasing.

Grace also wrote to the Under Secretary with information he had been able to gather about registered owners, including whether they were still alive, whether they occupied the land, and whether they had other lands.

> The owners reside here, are reluctant as to giving me much information as to the whereabouts of various owners, and their other lands. I hear it is their intention to write to the Native Minister on the matter. They do not like the proposal that certain of the lands should be taken for Mental hospital purposes, and for that reason they keep silent. No doubt should they be writing to the Minister, you will see their letter or letters. If you would excuse me, I might suggest from my knowledge of Maoris that they would sooner sell of their own accord rather than the land be taken from them. It is my belief that if this course was followed, a great number of shares could be acquired at a lesser price than by the other process. You will excuse me for expressing the above opinion.[1669]

While there was an element of self-interest in Grace's opinion, because he would undoubtedly have been chosen to be the Crown's land purchase agent if voluntary purchase of shares became the chosen acquisition method, he was almost certainly correct in his analysis about the Maori viewpoint. Te Huia Raureti's reference to confiscated lands meant that raupatu was very much at the forefront of his mind, and taking of the land using the Public Works Act would have been seen by all the owners as another form of raupatu.

After this the Native Department file is silent until September 1909, beyond receipt of a list of owners for Pokuru 1, sent at the end of March 1909 in response to a

[1668] Te Huia Raureti, Kihikihi, to Native Minister, 10 March 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #831-832.
[1669] WH Grace, Kihikihi, to Under Secretary Native Department, 12 March 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #833-843.

telegraphed request[1670]. This would suggest that the Mental Hospitals Department at this time had broadened its search for suitable land to include areas to the west of the main road.

In terms of the surviving correspondence that has been researched for this evidence, the focus next shifted to the choice of Tokanui as the site for a reformatory farm. In July 1909 the Inspector of Prisons wrote to the Minister of Justice discussing the pros and cons of two sites, one at Moumahaki (in southern Taranaki), and the other at Tokanui.

> We do not consider [the experimental farm at Moumahaki] suited for the varying needs of a reformatory. It is completely fenced and too highly cultivated, is situated in too closely settled a district, and in about the centre of the property is the school house and a public hall. Further the farm buildings are scattered and unsuitable for our purpose, and it would be unwise and expensive to attempt to adapt these or the dwellings for the accommodation of the prisoners.[1671]

It was the settled nature of the district and the developed nature of the farm that were seen as the major disadvantages of Moumahaki. Moumahaki land had a higher value, with Tokanui land being able to be purchased outright for about the same price as Moumahaki district land could be leased. Prisoners would have a wider variety of farm work offered to them at Tokanui, as they would also be involved in the initial development of the property, including tasks such as scrub clearing, fencing, draining and initial cultivation. Co-location of the hospital and the reformatory was also considered to be advantageous.

> Mr Waldegrave [Under Secretary for Justice] and myself place great emphasis on a prisoner acquiring a smattering of trades as part of his education for a handy man on a farm or station, and by working in with the Mental Hospitals Department these can be acquired in their workshops without reduplicating cost. Furthermore the Medical Superintendent of the Mental Hospital would have the institution under supervision.[1672]

The Inspector of Prisons wrote that the site suitable for the reformatory farm "would give a more satisfactory boundary" to the Crown's mental hospital land holdings if it

[1670] Registrar Native Land Court Auckland to Under Secretary Native Department, 26 March 1909. Maori Affairs Head Office file 1913/2898. Supporting Papers #844-845.
[1671] Inspector of Prisons to Minister of Justice, 2 July 1909. Justice Head Office file 5/3/15. Supporting Papers #39-41.
[1672] Inspector of Prisons to Minister of Justice, 2 July 1909. Justice Head Office file 5/3/15. Supporting Papers #39-41.

was acquired, which would allow expenditure on rabbit fencing to be reduced. He concluded in his report:

> I would therefore strongly recommend that the farm should be in the Tokanui District, as indicated, and that the land should be acquired at the same time and in the same manner as the Mental Hospital property.[1673]

The Minister of Justice took this recommendation to Cabinet, which decided that

> Prison Reform Farm at Moumahaki being unsuitable, the site of this prison to be changed from Moumahaki to Tokonui [sic] on site shown within red outline on map attached. Approved.[1674]

On this matter of the co-location and working in with one another of the mental hospital and the reformatory farm, it is a pertinent fact that the same person, Dr Frank Hay, held the positions of Inspector General of Mental Hospitals and Inspector of Prisons.

Hay wrote a report in 1913 in which, looking back, he commented on the selection of the site.

> When the site was originally selected for the Mental Hospitals Department, the whole of it lay on one side [i.e. to the east] of the main road.
>
> A part of the scheme was a light tramway from the nearest railway station (Te Puhi) about 2½ miles off from the Main Road, and about 4 [miles] from the heart of the estate. It was intended to bring building material etc by this tramway, and also make it the means of communication between the separate buildings, of which the ultimate institution would be made up.
>
> Foreseeing however, that there might be difficulty and delay in getting the tramway, I cut off a portion of the furthest part of the estate [on its eastern side] and took an equal area on the other side of the main road to the nearest point to which we could get to the Railway Station (Te Puhi), because we could build there to begin with, there being an indifferent road but at any rate a road from the station about 1½ miles off.
>
> Incidentally, I may mention that the tramway is still a necessary part of the scheme and has to be surveyed.
>
> In selecting the estate originally, though assured on every hand that the country was full of springs, and water could be had anywhere on sinking a bore, I thought it wise to include as much as possible of the sources of the

[1673] Inspector of Prisons to Minister of Justice, 2 July 1909. Justice Head Office file 5/3/15. Supporting Papers #39-41.
[1674] File note by Secretary to the Cabinet, 2 July 1909, on Inspector of Prisons to Minister of Justice, 2 July 1909. Justice Head Office file 5/3/15. Supporting Papers #39-41.

> Waikeria Stream and its whole course till it falls into the Puniu River, in order to prevent its pollution in the event of our having to fall back on it for a water supply. In this connection a site was fixed for the pumping station and the main reservoir. When the section was cut off from the site as originally projected, in order to get nearer the Te Puhi Station, the boundary was so drawn as to leave ourselves in full possession of both banks of the Waikeria Stream, with a sufficient margin beyond the Stream for our outer boundary to ensure the water not receiving the drainage from manures etc.
>
> Later, when the project of a Reformatory Farm was started and I was asked where a suitable site could be found with a fair area of land, I suggested the taking of the 1200 acres which I had cut off from the Mental Hospital estate as originally projected – a line of hills hid it from view from the road and the Mental Hospital property, and effected as good a separation as if the reformatory were miles away; and the Prisons Department would not be put to any great expense for medical services, as an arrangement could be made for our medical officers to visit. The prisoners would probably manufacture concrete blocks for building material (from gravel in the Maungatutu Stream and Puniu River), and we could purchase that commodity from the Justice Department. Also, once we had got abreast with buildings, prisoner-labour could be utilised in building in anticipation, as well as in making roads through the estate and constructing the tramway which would be useful for both institutions. The suggestion was accepted and the block of 1200 acres taken over.[1675]

Hay had assumed he had a blank canvas to work with in designing and drawing up land requirements for cooperating hospital and prison communities. What he failed to mention, however, was that someone else owned much of the land.

14.3 Notification of an Intention to Take the Lands, and Receipt of Objections

During 1909, surveyors were active on the Tokanui Block. This may have been in order to define on the ground the partitions ordered by the Court in April 1908, by which the Crown had obtained large parts of the block as a result of its land purchase programme. But the surveyors would also have been required to survey additional boundary lines associated with the area to be taken for the mental hospital, because only parts of Tokanui 1A2, Tokanui 1B2B and Tokanui 1D2 blocks were wanted by the Crown. The activities of the surveyors prompted letters to the Native Minister from one of the Maori owners, on behalf of the local community, asking him to

[1675] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 31 March 1913. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #21-23.

explain why lines were being surveyed across their lands. Raureti Te Huia wrote in September 1909:

> There are visible evidences and reports that difficulties are cropping up in regard to the lands of these parts. It is reported that the Surveyor is laying off a line to cut off the Government men, known as 'Porangi' (from other owners). Therefore we object to this (proposed) survey line; that is to these acts of Government. The reason why our lands have not been further developed is that, unlike the Pakeha, we cannot get enough money to develop the lands in grass…. Government helps the Crown lands (? settlers) by advances of from £25 to £2500. If such advances were available to us, there would be no reason for the kind of (survey) action under notice; that is, the arbitrary cutting up of the lands.
>
> Now, be good enough to inform us as to the position of our lands, Tokanui No.1 and No.1B, because we do not approve of the survey-line affecting these. Do not delay in replying, because if your letter of explanation is deferred too long, and the position is not made clear to us before the surveyors start in, there will certainly be trouble. Some have already declared that if the (proposed) line is insisted upon (by the surveyors), man himself will have to be the payment for such action.[1676]

Te Huia wrote a second time one week later.

> Once again I ask you to inform me as to the (proposed) survey line crossing the lands, and now coming upon our three blocks, namely Tokanui Nos.1B, 1C and 1D. We strongly object to such line, because we have quite decided upon these acres as a permanent home for ourselves, and here the line of the Government is coming along to run through our fences.
>
> We have no objection to roading, but we object to a system of land-taking.[1677]

He was not given a reply to either request for an explanation.

By August 1909 survey plans had been drawn up showing the location of the mental hospital and reformatory farm lands[1678], and ministerial approval was given to instruct the Public Works Department to take the necessary steps to take the Maori-owned land[1679].

[1676] Raureti Te Huia, Kihikihi, to Native Minister, 3 September 1910. Maori Affairs Head Office file 1913/2898. Supporting Papers #846-849.
[1677] Raureti Te Huia, Kihikihi, to Native Minister, 10 September 1910. Maori Affairs Head Office file 1913/2898. Supporting Papers #850-851.
[1678] Under Secretary for Lands to Under Secretary of Justice, 9 August 1909 and 6 October 1909. Justice Head Office file 5/3/15. Supporting Papers #42 and 43.
[1679] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 12 October 1909, approved by the Minister 12 October 1909. Works and Development Head Office file 24/721. Supporting Papers #1196-1197.

The site for the mental hospital had an area of 4985 acres 3 roods 13 perches, which put it just within the maximum allowance of 5000 acres prescribed by the Cabinet decision in December 1908. Of this area, just over 2000 acres was already Crown-owned, while nearly 3000 acres would need to be acquired from Maori owners[1680]. The land for the reformatory farm had a total area of 1333 acres 0 roods 15 perches, made up of 792 acres of Crown-owned land and 541 acres of Maori-owned land[1681].

Upon receipt of the twin instructions to take the land, the Public Works Department identified some preliminary legal matters. It wrote to the Mental Hospitals Department seeking confirmation that Government funding had been set aside for the erection of hospital buildings, as only if there was provision in the Estimates would the hospital qualify as a public work within the meaning of the Act[1682]. Apparently £1000 had been provided for "expenses towards the establishment of new mental hospitals", but the Department still had doubts whether this was sufficient to qualify as a public work. The Solicitor General was therefore asked for his opinion.

1. Whether or not the appropriation mentioned is sufficient to enable the land to be taken for a public work under "The Public Works Act 1908".
2. Which procedure should be followed in taking the land for a public work in terms of "The Public Works Act 1908"; that is to say, whether under Part II or Part IV of that Act.[1683]

This second question arose because the Native Land Court had ordered the various partitions, although the titles had not yet been issued because no plans had been drawn up to complete the partition order titles for the blocks.

The Solicitor General replied:

1. The appropriation referred to was for the financial year ending 31 March 1909. It has therefore expired and cannot now be invoked to enable land to be taken as for a public work.

Inspector of Prisons to Minister of Justice, 12 October 1909, approved by the Minister 15 October 1909. Justice Head Office file 5/3/15. Supporting Papers #44.

[1680] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 12 October 1909, approved by the Minister 12 October 1909. Works and Development Head Office file 24/721. Supporting Papers #1196-1197.

[1681] Inspector of Prisons to Minister of Justice, 12 October 1909, approved by the Minister 15 October 1909. Justice Head Office file 5/3/15. Supporting Papers #44.

[1682] Assistant Under Secretary for Public Works to Inspector General of Mental Hospitals, 29 October 1909. Works and Development Head Office file 24/721. Supporting Papers #1198.

[1683] Assistant Under Secretary for Public Works to Solicitor General, 1 November 1909. Works and Development Head Office file 24/721. Supporting Papers #1199.

2. [Given the answer to question 1] It is not necessary to answer this question.[1684]

By January 1910 the lack of a current appropriation had been overcome, presumably in Supplementary Estimates, and the Solicitor General was again asked his opinion on the second question.

> It would appear from Judge Edwards' similar decision in the Taheke case[1685] that if the Partition Orders … had been made subsequent to the passing of the Native Land Court Act 1894, the procedure would be under Part II of the Public Works Act; but in the present case some of the Orders were made prior to the passing of the Native Land Court Act 1894.
>
> It would save a good deal of reference to you in connection with these Native land matters if you could also state whether the effect of the alteration of the definition of "Native Land" in the Public Works Amendment Act 1909 will be that we must take all Native land under Part II of the Act, unless it be Native land held under the customs and usages of the Natives, which will, it is presumed, have to be taken under Part IV of the Act.
>
> This is a very urgent matter, as the Hospital authorities are extremely anxious to enter upon the ground.[1686]

The Solicitor General, John Salmond, who had been the main author of the rewriting of the native lands legislation the previous year (Native Land Act 1909), in the process of which he had had to get to grips with the intricacies of the nineteenth century native land legislation, responded:

> This land must be taken under Part II of the Public Works Act. It is not native land within the meaning of that Act. Since, however, it is owned by Natives, the ordinary procedure under Part II is modified in accordance with Section 4 of the Public Works Amendment Act 1909, to which your attention is directed. The notice required by that section to be published in the Maori Gazette must be in the Maori language.
>
> As to the general question submitted by you, the only land which can be taken under Part IV of the Public Works Act is land which is still held by the Natives under their customs and usages, that is to say, land which has never passed through the Native Land Court. This class of land is that which will in future be known as "customary land" as opposed to Native freehold land, in accordance with the Native Land Act 1909. In all cases, however,

[1684] File note by Solicitor General, 24 November 1909, on Assistant Under Secretary for Public Works to Solicitor General, 1 November 1909. Works and Development Head Office file 24/721. Supporting Papers #1199.
[1685] Concerning a proposed taking for a hydro-electric power development at Okere Falls at the outlet to Lake Rotoiti.
[1686] Assistant Under Secretary for Public Works to Solicitor General, 28 January 1910. Works and Development Head Office file 24/721. Supporting Papers #1200.

compensation for land owned by Natives is assessed by the Native Land Court under Section 91 of the Public Works Act.[1687]

The way was now clear for the Crown to issue Notices of Intention to Take the land. Within a week the Notices were published. The lands to be taken for "the use, convenience or enjoyment of the Tokanui Mental Hospital" were as follows[1688]:

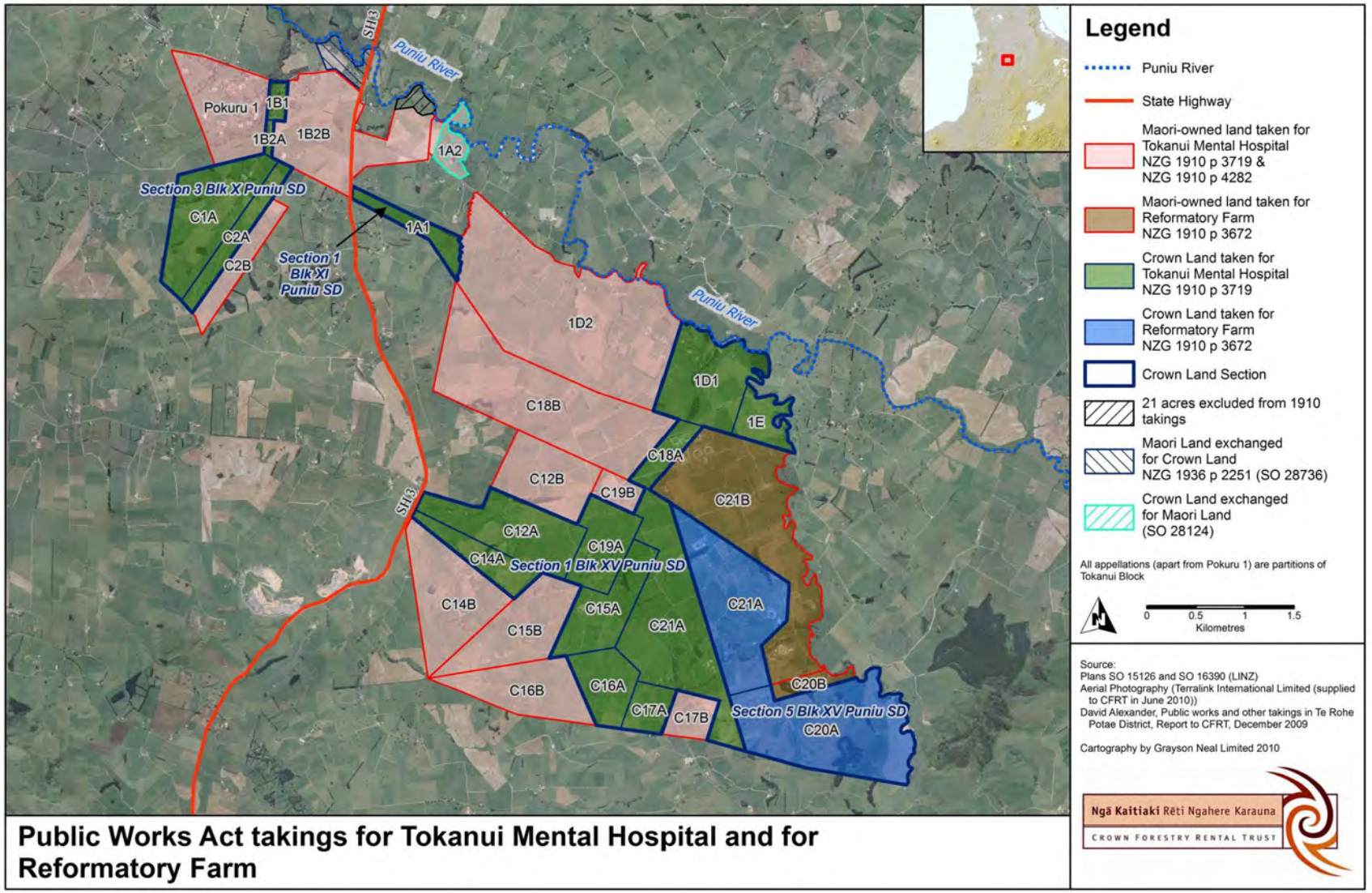
Table 14.2 Land Proposed to be Taken for Tokanui Mental Hospital

Block	Area (ac-r-p)	Ownership
Pokuru 1 (part)	214-2-36	Maori
Tokanui 1B2B (part)	361-0-00	Maori
Tokanui C2B (whole)	88-3-03	Maori
Tokanui 1A2 (part)	52-0-00	Maori
Tokanui 1D2 (part)	783-2-00	Maori
Tokanui C18B (whole)	531-0-05	Maori
Tokanui C19B (whole)	44-1-00	Maori
Tokanui C12B (whole)	187-3-13	Maori
Tokanui C14B (whole)	244-2-13	Maori
Tokanui C15B (whole)	215-0-02	Maori
Tokanui C16B (whole)	191-1-34	Maori
Tokanui C17B (whole)	57-0-38	Maori
Section 3 Block X Puniu SD (whole)	365-2-16	Crown
Section 1 Block XI Puniu SD (whole)	66-3-07	Crown
Section 1 Block XV Puniu SD (whole)	1530-0-00	Crown
Total Area	4931-3-07	

Source: *New Zealand Gazette* 1910 pages 716-717.

The Crown-owned portions of the Tokanui block were the A partitions ordered in 1908, which had been amalgamated and given new appellations. This Crown Land, representing 40% of the total to be taken for the mental hospital, was valued at £2177[1689].

[1687] Solicitor General to Assistant Under Secretary for Public Works, 3 February 1910. Works and Development Head Office file 24/721. Supporting Papers #1201.
[1688] *New Zealand Gazette* 1910 pages 716-717. Supporting Papers #3940-3941.
South Auckland plan SO 15126. Supporting Papers #2355.
[1689] Voucher 7915 dated 5 March 1910. Works and Development Head Office file 24/721. Supporting Papers #1206.



Map 26 Public Works Act takings for Tokanui Mental Hospital and for Reformatory Farm

For the Reformatory Farm, the lands to be taken were as follows[1690]:

Table 14.3 Land Proposed to be Taken for Reformatory Farm

Block	Area (ac-r-p)	Ownership
Tokanui C21B (whole)	501-3-25	Maori
Tokanui C20B (whole)	39-1-13	Maori
Section 5 Block XV Puniu SD (whole)	742-0-00	Crown
Total Area	1283-0-38	

Source: *New Zealand Gazette* 1910 page 717.

The Crown-owned land represented 58% of the total to be taken.

Both Notices of Intention to Take were published in the English-language *New Zealand Gazette* and the Maori-language *Kahiti*, and were displayed for forty days at Kihikihi Post Office.

On 9 February 1910, after the notice had gone to the Minister of Public Works for his approval to its publication, but one day before he signed his approval, the Inspector General of Mental Hospitals sent a telegram to the Under Secretary for Public Works, asking him to defer publication as "some minor alteration" to the boundaries of the land to be taken needed to be made[1691]. The telegram did not prevent the publication of the notice, which went ahead, probably because the taking itself was still some months away, and "minor alterations" could be made to the area that was actually taken without requiring re-notification of the intention to take. The Inspector General wrote later that same month to explain why he had sent the telegram. It arose from a visit he had made to the site.

> The road surveyed to junction the Kihi Kihi main road and the building sites in the heart of the estate is graded for a driving road, the hollows and heights being circumvented instead of being filled or cut through. We will be able to provide prison labour for this work, and would prefer as direct a course as

[1690] *New Zealand Gazette* 1910 page 717. Supporting Papers #3941.
South Auckland plan SO 15223. Not included in Supporting Papers.
[1691] Telegram Inspector General of Mental Hospitals to Under Secretary for Public Works, 9 February 1910. Works and Development Head Office file 24/721. Supporting Papers #1202.

> possible with the intention of running a light railway (gauge same as Railway) with the driving road alongside as much as possible.[1692]

He asked for the assistance of the Public Works Department in the laying out of this light railway route, and this was approved[1693]. So far as is known, this is the explanation for the straightness of Waikeria Road between State Highway 3 and the prison.

A report on the extent of occupation of the land to be taken, to determine whether any of the land required the consent of the Governor to it being taken, was provided in March 1910.

> With the exception of two or three small huts, deserted and of practically no value, and some cultivation in the northern part from which an oat crop has been taken this year, there are no improvements such as you mention on the land proposed to be taken for Hospital and Reformatory.[1694]

No mention is made in this report of burial places on the land.

During March and April 1910 the Maori owners of the Pokuru and Tokanui lands lodged a number of objections to the proposed taking. They were as follows:

- Raureti Te Huia, writing for himself and others, lodged a pro forma objection in connection with Tokanui 1D and Tokanui 1B2, promising to provide details at a court of inquiry[1695].
- Whakataute Te Huia and four others objected to the taking of Tokanui 1D2, Tokanui 1B2 and Pokuru 1, because they were not willing to part with the lands of their ancestors, and instead wished to work those lands themselves[1696].

[1692] Inspector General of Mental Hospitals to Under Secretary for Public Works, 15 February 1910. Works and Development Head Office file 24/721. Supporting Papers #1203-1204.
[1693] Under Secretary for Public Works to Minister of Public Works, 23 February 1910, approved by Minister 26 February 1910, on Inspector General of Mental Hospitals to Under Secretary for Public Works, 15 February 1910, and Under Secretary for Public Works to District Engineer Auckland, 28 February 1910. Works and Development Head Office file 24/721. Supporting Papers #1203-1204 and 1205.
[1694] District Surveyor to Chief Surveyor Auckland, 14 March 1910, attached to Chief Surveyor Auckland to Assistant Under Secretary for Public Works, 23 March 1910. Works and Development Head Office file 24/721. Supporting Papers #1212-1213.
[1695] Raureti Te Huia "me etahi atu", Kihikihi, to Minister of Public Works, 8 March 1910. Works and Development Head Office file 24/721. Supporting Papers #1207-1208.
[1696] Whakataute Te Huia and 4 Others, Kihikihi, to Minister of Public Works, 8 March 1910. Works and Development Head Office file 24/721. Supporting Papers #1209-1211.

- Whete Manga and others objected to the taking of Tokanui 1B2B, Tokanui 1A2B, Tokanui 1D2, Tokanui C18B and Tokanui 1C1 (also known as Waiwherowhero). Their reasons for objecting to the taking of Tokanui 1B2B were that they regarded it as a papakainga, it contained urupa and their meeting house Te Hui te Rangiora, it had been deliberately retained when the balance of Tokanui 1B2 had been sold to the Crown and awarded to the Crown on partition in 1908, many of the owners were otherwise landless, and the greater part of the block was fenced and grassed. Their reasons for objecting to the taking of the other blocks were that they were fenced and grassed. In addition Tokanui 1D2 had houses on it[1697].
- Earl and Kent, solicitors of Auckland, lodged seven objections on behalf of owners against the taking for mental hospital, one for each of the blocks Pokuru 1, Tokanui 1B2B, Tokanui 1A2, Tokanui 1D2, Tokanui C14B, Tokanui C15B and Tokanui C16B. They also lodged one objection against the taking for reformatory farm, on behalf of owners in Tokanui C21B. The various grounds for objection were that the owners had insufficient other lands and those other lands would not provide an adequate means of support, that some of the lands were being farmed, and that they relied on these lands for their own needs when agreeing to lease other lands. Additional reasons were put forward in connection with Tokanui 1A2, that the lands to be taken would cut off the balance to be retained from the Puniu River, whose fish and eels provided "no inconsiderable part of their food", and that there were strong historical and cultural associations with this block because Rewi Maniapoto had lived on the block with his hapu. "It was during the time he lived on this block that he crossed over the river and met Sir George Grey in conference with a view to the settlement of the Maori trouble"[1698].
- Te Whiwhi Mokau and others objected to the taking of Tokanui 1B2B and Tokanui 1D2, because of ancestral association, existence of urupa, choice of these lands as papakainga, current cultivation, and lack of other lands[1699].

[1697] Whete Manga and Others, Kihikihi, to Minister of Public Works, 2 April 1910. Works and Development Head Office file 24/721. Supporting Papers #1214-1218.
[1698] Earl and Kent, Barristers and Solicitors, Auckland, to Minister of Public Works, 2 April 1910. Works and Development Head Office file 24/721. Supporting Papers #1219-1228.
[1699] Te Whiwhi Mokau and Others, undated (translation requested 10 April 1910), to Minister of Public Works. Works and Development Head Office file 24/721. Supporting Papers #1229-1233.

The references to papakainga in Whete Manga and Te Whiwhi Mokau's objections may be related to the inquiries and recommendations of the Stout-Ngata Commission in 1907, as retention of lands for papakainga purposes was some of the terminology used by that Royal Commission.

Upon receipt, the Public Works Department characterised these objections as being "of a very serious nature, although it is probable that they may have been made with the view of subsequently obtaining large compensation". It asked Frank Hay, its point of contact in both the Mental Hospitals Department and the Justice Department, if, in the light of the objections, these Departments still wished to pursue the taking. If so, then it would be necessary to appoint someone to hold an inquiry and hear the objections; it asked him if he had any views on who should be appointed to hold the inquiry[1700]. Dr Hay, after consulting with the Under Secretary for Justice (who in turn consulted with the Under Secretary of the Native Department)[1701], and after obtaining the approval of the Minister in charge of Mental Hospitals[1702], recommended that a Judge of the Native Land Court should undertake the inquiry[1703]. Judge Rawson was appointed[1704].

After the lodging of objections, but before they had been heard, the owners of Pokuru 1A wrote to the Prime Minister, pointing out that the proposed taking for mental hospital was just one of the pressures being placed on them by the actions of the Crown and local authorities.

> This is an appeal to you from the unfortunate position in which Government has placed us…. Our misfortunes are brought about by:
>
> 1. The Road Board,
> 2. The railway line, and
> 3. The resumption of part for Mental Hospital purposes.

[1700] Assistant Under Secretary for Public Works to Inspector General of Mental Hospitals, 18 April 1910. Works and Development Head Office file 24/721. Supporting Papers #1234.
[1701] Inspector of Prisons to Under Secretary for Justice, 7 June 1910. Works and Development Head Office file 24/721. Supporting Papers #1235-1237.
[1702] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 8 June 1910. Works and Development Head Office file 24/721. Supporting Papers #1238-1242.
[1703] Inspector General of Mental Hospitals to Under Secretary for Public Works, 13 June 1910, on Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 8 June 1910. Works and Development Head Office file 24/721. Supporting Papers #1238-1242.
[1704] Under Secretary Native Department to Under Secretary for Public Works, 14 June 1910, Assistant Under Secretary for Public Works to Minister of Public Works, 23 June 1910, and Warrant issued by Minister of Public Works, 23 June 1910. Works and Development Head Office file 24/721. Supporting Papers #1243, 1244 and 1245-1258.

> Therefore do we now most earnestly entreat of you to favourably look into the matter of this our petition to you, because this is the only block which we own of a sufficient size to work as a Papakainga and as a farm, for ourselves and our children after us.[1705]

The Prime Minister passed the petition on to the Native Minister[1706], who in turn passed it to the Minister of Public Works[1707].

14.4 Hearing of Objections

The ability for the Minister of Public Works to appoint someone to hear objections was set out in Section 18(f) Public Works Act 1908. The person appointed provided a report to the Minister to assist the Minister in making a decision whether to accept or reject each objection. Consideration of whether to accept or reject an objection was constrained by the wording of the legislation, which required the Minister to have regard to whether any objection could be overcome by the payment of monetary compensation. This meant the inquiry was similarly constrained. In his warrant of appointment, Judge Rawson was directed to

> Report your opinion as to whether or not any private injury will be done by the taking … for which due compensation is not provided by the said Act.[1708]

Judge Rawson held his inquiry in Kihikihi on 26 and 27 July 1910[1709]. A solicitor (Mr Kent) appeared for those objectors whose objections had been lodged by Earl and Kent, and Raureti Te Huia appeared for the objectors to the taking of Tokanui 1D and 1B2 which he had lodged on their behalf. A land purchase officer of the Public Works Department appeared for the Department.

In his opening remarks Mr Kent argued that there were matters where monetary compensation would not be appropriate. These were that some of the owners would

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[1705] Te Manu Te Haate and Others, Kihikihi, to Prime Minister, 5 July 1910, attached to Native Minister to Minister of Public Works, 9 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1259-1270.
[1706] Prime Minister to Te Manu Te Haate and Others, Kihikihi, 25 July 1910, attached to Native Minister to Minister of Public Works, 9 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1259-1270.
[1707] Native Minister to Minister of Public Works, 9 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1259-1270.
[1708] Warrant issued by Minister of Public Works, 25 June 1910. Works and Development Head Office file 24/721. Supporting Papers #1245-1258.
[1709] A typewritten copy of the minutes of the hearing are attached to Report of Judge Rawson, undated (received 17 August 1910). Maori Affairs Head Office file 1913/2898. Supporting Papers #852-865.

be left landless, they would be deprived of fishing rights, and there were strong historical and traditional associations with the lands.

> One of blocks connected with Rewi Maniapoto's meeting with Sir George Grey. Maoris place great stress on this. Look on this taking as a desecration. No money would compensate them for this.

Manawa Hinewai gave evidence about Rewi Maniapoto's occupation of Tokanui 1A2. He added:

> The taking of this land for a Mental Hospital would never have been allowed by the old people at that time [when Rewi met Grey]. They would have felt more pain than I do now. We all think the same about this. We object very strongly, and we would be very sorry indeed if it were taken from us.

William Grace supported him.

> They all regard this place as a sanctuary for them to return to…. There is, I think, no other land that has the same sentimental value to them in this locality.

Other witnesses spoke about their potential landlessness if the land was taken. However, all were obliged to admit that, though the lands had been cultivated in the past, there was no one living on them at the present time. Evidence was also given about two burial sites, one on Tokanui 1B2B and the other on Tokanui 1D2.

In closing arguments, Mr Kent referred to what he called the "essential principle".

> Land is taken compulsorily against will of owners for a public purpose. Right of Government to take should be strictly construed. Owners strenuously object. Statute to be strictly looked at. Objections to be heard but Minister sole arbiter. Unless procedure a mere farce, fair consideration should be given to objections.
>
> Objections other than those that can be compensated by money are the ones meant. Difference between European and Maori. Two main objections – Tokanui 1A2, 52 acres, shown to be connected with tradition and associations of Maoris. Objectors are people who are well off and of high standing.
>
> Other objections: that if land is taken Natives will be landless – against the policy of all the Native Land Acts. Courts also strongly indicated on this. Surely not fair to get round a statute by taking the land under the Public Works Act, when they could not purchase.
>
> Strong point of landless condition of natives. Ask full stress be laid on this in report.

In his own closing remarks, the Department's land purchase officer argued:

> Act does not provide for provisions contained in Native Land Acts as to landless Natives. Public Works Act is a special statute and must, in cases like this, overrule Native Land Court provisions. Sole authority to be sought and found in Public Works Act. Needs of community must override private interests. No difference between pakeha and Maori. No objections produced here which in case of Europeans would hold water. The Minister sole arbiter after considering report. Even in Maori custom the needs of the tribe overrule the rights of the individual where they conflict.
>
> What compensation provided by Act. See Section 35. Includes loss of frontage to the River. See [Section] 86, land may be given. I submit compensation is provided to meet all cases brought forward here. European cemeteries have been moved in some instances. Necessary at times to push sentiment to one side.
>
> As to landless Natives: if Natives are left impoverished it is duty of the Government to look after them, as they do in the case of Europeans. Their being landless should not bar public works of colony. It is a matter for Minister's consideration. Another source of support is provided by the compensation paid. Department has considered interests of natives as far as possible. Land has been left to owners which Department would have very much liked to have taken. Amount taken minimum to meet the case. Under Secretary of Native Department has already concerned himself in seeing that native residences and area surrounding them has not been taken. We had no knowledge of two of burial places mentioned here. Burial places we had been informed of were omitted from portion taken. As to these two the Department will look after them in such a way as not to offend Natives' feelings. Provision can be made for them and for their care.

Following the hearing, Judge Rawson visited Tokanui and Pokuru blocks. It is also possible that he encouraged some of the Maori owners to write to the Native Minister, as they sent a letter dated the last day of the hearing. This letter was signed by Te Whakataute Raureti and 16 others, all of Ngatitaohua and Ngatituwhakataha hapu, and set out that "these further objections are supplemented, as advised by the Judge". The implication to be drawn is that this letter contained matters that the Judge, constrained by the terms of his letter of appointment, perhaps felt he was unable to consider as part of an inquiry under the Public Works Act. It was written by the owners as a statement of intent about their resolve to retain their land.

1. We, the persons who permanently occupy this land, desire most emphatically to assure the Commissioner that if this land be taken by Government, very serious consequences will result, as between Government and the Maori (owners).
2. It should be stated that in the days of the old people, our dwelling-place was a Kihikihi, the Marae being Hui te Rangiora. You the Government

came along and took it from us. We then moved our Marae to Tokanui No 1B No 2, and we named the Marae Hui te Rangiora (in remembrance of the former home). Now the Government comes along again to take the land from us.

3. This is the land whereon our ancestors have moved, worked and struggled, from old times down to ourselves the descendants, and we continue to occupy these lands.
4. The Marae which they (our ancestors) occupied, from old time, are still occupied by us their lineal descendants, who continue to take care thereof. It being the Marae whereon they discussed their great undertakings, and whereon they invited and welcomed the representatives of the leading tribes. Therefore the name "Hui te Rangiora" (or the assemblage of life). So it is that we have continued to use this Marae for the same purposes.
5. The houses which they have occupied are revered by us as heirlooms, and we value and regard them accordingly.
6. Our forefathers have not only occupied these lands, but they are buried here at the burial-places of Pukekawakawa, Waiaruhe and Pukahu, in short all over this land.
7. Their (fighting) Pas are on these lands, one at Pukahu, and another at Pukekawakawa.
8. Their cultivations, from of old, are still being worked by us their descendants.
9. This is the only land which has been actually bequeathed to us by our forefathers verbally. It has held their Marae, houses, and so on, and holds their bones as evidence that they desired to retain it for themselves and their descendants. It was their wish, and we their descendants naturally desire it to be carried out.
10. They held this land to themselves (and for us) by saying:

    Mokau is at the south, Tamaki is at the north, and Mangatoatoa is in the centre.

    This then is Mangatoatoa with its Marae and its house.

    (a) A tribe is nothing without a Marae.
    (b) A Marae is nothing without a house.
    (c) A house is nothing without a man.
    (d) A man is nothing without land.

    Therefore:

    (a) The tribes here are Ngatitaohua and Ngatituwhakataha.
    (b) and (c) Hui te Rangiora is the name of the Marae and its house.
    (d) This land belongs to the Ngatitaohua and Ngatituwhakataha.

    This land has been held fast by our forefathers from old time to this day, and we the descendants intend to still hold fast to it.[1710]

The Native Minister, without making any comment, forwarded this letter to his colleague the Minister of Public Works. There was no response to the Maori owners

[1710] Te Whakataute Raureti and 16 Others, Kihikihi, to Native Minister, 27 July 1910, attached to Native Minister to Minister of Public Works, 9 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1259-1270.

from the Minister of Public Works, although he did write back to the Native Minister stating his opinion that

> I think it probable that some arrangement will have to be made in the case of some of the Natives to exchange the land required from them for other lands.[1711]

This, however, was before the Judge's report was received.

Judge Rawson's report to the Minister was completed two weeks later[1712]. He first noted that no objections had been lodged by the owners of Tokanui C2B, C12B, C17B and C19B, while the objections to the taking of C14B and C16B were withdrawn at the hearing, and the objection to the taking of C18B "was not sustained in any way". This left objections to the taking of Pokuru 1, and Tokanui 1A2, 1B2B, 1D2, C15B, C20B and C21B.

Of the specific reasons for not taking land, he made the following comments.

- Deprivation of fishing rights. Noting that there was still access to the river via the road, and that loss of fishing rights was capable of being compensated by payment of money, he felt that this objection was not "a well-founded objection within the meaning of Section 18 of the Act".
- Strong historical and cultural associations with Tokanui 1A2. While accepting what was said in evidence, the Judge also noted that William Grace in his evidence and under cross-examination had referred to possible sale of the block to the Government, and to any purchase of this land being a matter of a "bigger price".
- Burial places. If the lands were taken, then the two burial places would need to be "treated as reserves, and fenced and cared for". He thought one-eighth of an acre in each case would be sufficient.
- Occupation. Based on evidence given and his own site inspection, he considered that the only significant occupation of the lands (apart from the burial places) was a small cultivation on Tokanui 1B2B adjacent to the burial

[1711] Minister of Public Works to Native Minister, 16 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1282.
[1712] Report of Judge Rawson, undated, attached to Judge Rawson, Wanganui, to Under Secretary Native Department, 9 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1271-1280.
A typewritten copy of the report is on Maori Affairs Head Office file 1913/2898. Supporting Papers #852-855.

> place there. He concluded from his inquiries that "the owners genuinely desired to retain this urupa and cultivation", and "if this could be done without interfering unduly with the Department's plans, it would be as well to grant their request – not as a right but as a favour".

Of the more generalised landlessness argument, he was not impressed.

> I would point out that none of them are living now on the lands taken, nor do they derive any income from it. A great number of the owners appear to have left this locality altogether, and with some of those who have remained the only question is the amount of compensation….
>
> No income being derived from, and no one living on, these lands, I think they cannot be regarded as such an important factor in the owners' support as to render it inadvisable to take them for an important public work. That, however, is a matter for the Minister to decide, but in my opinion, none of the objectors have well-grounded objections within the meaning of Section 18 of the Public Works Act 1908.

On receipt of Judge Rawson's report, and before it was put in front of the Minister of Public Works, the Assistant Under Secretary of the Public Works Department asked the Inspector General of Mental Hospitals for his opinion.

> [I] shall be much obliged if you will say whether or not your Department can so far meet the wishes of the Natives as to agree to the giving up of the two small areas used as burying places, and also the small area marked G on the plan which is under cultivation.
>
> If you will agree to this, I will recommend the Minister to issue a Proclamation taking the remainder of the land.[1713]

The Inspector General briefed his own Minister.

> You will note that Judge Rawson's report shows that the objections have not been sustained by the Natives. He advised our consideration with respect to two burial grounds marked respectively E and H on the accompanying plan. He also suggests as a favour that a small area marked G should be excluded.
>
> I recommend that one-eighth acre, more or less, should be fenced in by us at E and H, and that the contained land should be held sacred. Also that a portion of land at G, to be determined by survey as to area and boundaries, should be omitted from the Proclamation.

[1713] Assistant Under Secretary for Public Works to Inspector General of Mental Hospitals, 19 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1281.

> The way is clear now, I understand, for the Proclamation being proceeded with.[1714]

The Minister agreed. Although not located during the research for this evidence, a similar approval from the Minister of Justice to the taking for reformatory farm is also likely to have been obtained.

14.5 Taking the Land

Having received the go-ahead from the Departments for whom the taking was to be undertaken, the Minister of Public Works was briefed. The Assistant Under Secretary made a passing reference to the letter sent earlier to the Native Minister in which the need for an exchange of land was suggested, but only in the context of making an alternative recommendation that did not involve any exchange. In connection with the taking for mental hospital the Minister was told:

> Judge Rawson has now reported on the matter and advises that none of the objections of the Natives have been sustained, but he recommends that a small area marked G (which is a little river flat near the Natives' kainga, and which is required to grow food for them) should be excluded from the Proclamation, and also that two little areas of about 1/8 of an acre each on which the dead are buried should also be set aside as reserves. The Judge reports that, with [the exception of] the little piece of river flat above mentioned, the Natives are not making any use of the land, and neither is it being leased by them, and under these circumstances there does not appear to be any reason why the Proclamation with the exception of the above mentioned land should not at once be issued, and Hon Mr Fowlds asks that this be done.
>
> I recommend therefore that you decide in terms of Section 19 of the Public Works Act that you are of opinion that the proposed works should be executed, and that no injury will be done thereby and by the taking of the land for which due compensation is not provided by the Public Works Act.[1715]

The Minister apparently agreed with the recommendation, as he took it to Cabinet, which approved the issue of the Proclamation[1716]. A similar approval process is likely to have been followed for the taking for reformatory farm. The objectors were then advised of the decision. They were told that "as a matter of grace to the Maoris

[1714] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 23 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1283.
[1715] Assistant Under Secretary for Public Works to Minister of Public Works, 25 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1284.
[1716] Cabinet decision, 6 September 1910, on Assistant Under Secretary for Public Works to Minister of Public Works, 25 August 1910. Works and Development Head Office file 24/721. Supporting Papers #1284.

concerned" the cultivation would not be taken, and that, although the two burial places would still be taken as originally intended, they would be set aside and fenced, and "hereafter to be held by the Government as sacred"[1717].

The Cabinet decision meant that all the takings for mental hospital could proceed immediately, apart from that for Tokanui 1B2B, whose area to be taken had first to be amended by a survey to exclude the river flat cultivation. The Proclamation taking 2608 acres 1 rood 24 perches of Maori-owned land, and 1962 acres 1 rood 23 perches of Crown-owned land, for Tokanui Mental Hospital was issued in October 1910[1718]. A separate Proclamation taking 541 acres 0 roods 38 perches of Maori-owned land, and 742 acres of Crown-owned land, for the reformatory farm was issued the same month[1719]. Both takings took effect from the following month.

An amendment to the survey plan to exclude the cultivated river flat and show the reduced portion of Tokanui 1B2B to be taken for mental hospital, was prepared in December 1910[1720]. This showed that 340 acres would be taken, which by deduction meant that the cultivated river flat had an area of 21 acres. The 340 acres was taken that month[1721], to have effect from January 1911.

There is evidence that the effect and consequences of the taking of the land by the Crown were not fully understood by at least some of the Maori owners, or alternatively that they were not aware that the Proclamation taking Tokanui 1B2B had been issued in December 1910. In April 1911 Raureti Te Huia wrote to the Native Minister asking whether the Maori owners could lease out Tokanui 1B2B to others.

> My object in asking is that these lands are being taken as "Land proposed to be taken for Tokanui Mental Hospital". Owing to this one fears either to work

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[1717] Assistant Under Secretary for Public Works to Earl and Kent, Solicitors, Auckland, 9 September 1910, and Assistant Under Secretary for Public Works to Whete Manga and Others, Kihikihi, 9 September 1910. Works and Development Head Office file 24/721. Supporting Papers #1285-1286 and 1287.

[1718] Assistant Under Secretary for Public Works to Minister of Public Works, 5 October 1910. Works and Development Head Office file 24/721. Supporting Papers #1288-1289.
New Zealand Gazette 1910 page 3719. Supporting Papers #3949.
South Auckland plan SO 15126. Supporting Papers #2355.

[1719] *New Zealand Gazette* 1910 page 3672. Supporting Papers #3948.
South Auckland plan SO 15223. Not included in Supporting Papers.

[1720] South Auckland plan SO 15126. Supporting Papers #2355.

[1721] *New Zealand Gazette* 1910 pages 4282-4283. Supporting Papers #3950-3951.

> the land or to lease it to others, lest a difficulty arise with Government about the matter….
>
> The area which we desire either to work ourselves or to lease to others is 250 acres or so….[1722]

The letter was forwarded to the Public Works Department, which replied to Raureti Te Huia that 340 acres of Tokanui 1B2B had been taken, rather than the 361 acres identified in the intention to take notification.

> The piece containing 21 acres was excluded from the Proclamation as a matter of grace to the Native owners, as it was a small cultivation which they were particularly anxious to retain. It is situated on the eastern side of the main road in the bend of the river. The owners may therefore work this piece of land, but not any of the land taken for the Hospital.[1723]

It is also possible that the Mental Hospitals Department had not commenced using the land it had acquired in Tokanui 1B2B, and seeing it still idle may have created confusion in the minds of the former owners.

14.6 Assessment of Compensation by the Native Land Court

Shortly after the Proclamations were issued, applications were sent to the Native Land Court for it to assess how much compensation should be paid for the Maori-owned land that was taken[1724]. At about the same time the Valuation Department and local valuers were asked to indicate values for the lands that were taken[1725]. The Public Works Department tried to talk down the likely value of the land, when it referred in its letter to the Valuer General to him fully considering "any difficulties or disabilities which a buyer would have to contend with in acquiring the interests of each separate

[1722] Raureti Te Huia, Kihikihi, to Native Minister, 18 April 1911. Maori Affairs Head Office file 1913/2898. Supporting Papers #866-868.
[1723] Assistant Under Secretary for Public Works to Raureti Te Huia, Kihikihi, 18 May 1911. Works and Development Head Office file 24/721. Supporting Papers #1303.
[1724] Assistant Under Secretary for Public Works to Registrar Native Land Court Auckland, 25 October 1910 and 9 January 1911. Works and Development Head Office file 24/721. Supporting Papers #1295 and 1300.
[1725] Assistant Under Secretary for Public Works to Valuer General, 19 October 1910, Assistant Under Secretary for Public Works to W Barrett, Auckland, and J McCaw, Matamata, 19 October 1910, Assistant Under Secretary for Public Works to JB Teasdale, Te Awamutu, 29 October 1910, and Assistant Under Secretary for Public Works to CK Wilson, Te Kuiti, 27 April 1911. Works and Development Head Office file 24/721. Supporting Papers #1290-1291, 1292-1293, 1296-1297 and 1301-1302.

set of owners, and also in providing means of access to any land acquired"[1726]. However, the Valuer General responded:

> With regard to ["difficulties or disabilities"], I have to state that such a consideration is not a factor in assessing the value of land – it is properly a matter for the discretion of the tribunal which determines the compensation which shall be paid to the owners of the land. This Department must value on the basis of the definition contained in the Valuation Act. If there be no road access to the land or indifferent road access thereto, these are properly factors in determining the value thereof.[1727]

Two valuers provided written replies to the Department[1728]. They, plus a third valuer, and the District Valuer of the Valuation Department, subsequently appeared before the Court to give valuation evidence in support of the Crown (see below).

The Public Works Department also sought help from the Lands and Survey Department, seeking the assistance of an officer of that Department who had been involved in the purchase of Tokanui lands during 1907 to provide evidence about prices paid for the land at that time[1729]. The Under Secretary for Lands replied that William Grace, the land purchase officer involved in 1907, was no longer employed by the Department, and he would need to be subpoenaed if his evidence were required[1730].

The Court hearing was held over two and a half days at the beginning of August 1911[1731]. This was after a deferral for one and a half days, when no solicitor for the Maori owners appeared, and a replacement solicitor required some time to become acquainted with the issues[1732]. The Judge used some of that deferral time to make a

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[1726] Assistant Under Secretary for Public Works to Valuer General, 19 October 1910. Works and Development Head Office file 24/721. Supporting Papers #1290-1291.
[1727] Valuer General to Assistant Under Secretary for Public Works, 21 October 1910. Works and Development Head Office file 24/721. Supporting Papers #1294.
[1728] J McCaw and W Garrett, Te Awamutu, to Assistant Under Secretary for Public Works, 18 November 1910, and CK Wilson, Te Awamutu, to Assistant Under Secretary for Public Works, 19 May 1911. Works and Development Head Office file 24/721. Supporting Papers #1298-1299 and 1304-1305.
[1729] Assistant Under Secretary for Public Works to Under Secretary for Lands, 6 July 1911. Works and Development Head Office file 24/721. Supporting Papers #1306.
[1730] Under Secretary for Lands to Under Secretary for Public Works, 11 July 1911. Works and Development Head Office file 24/721. Supporting Papers #1307.
[1731] Maori Land Court minute book 35 W 22-50. Supporting Papers #3738-3766.
[1732] Maori Land Court minute book 35 W 1-2 and 13. Supporting Papers #3734-3735 and 3737.

half-day visit to the Tokanui and Pokuru blocks[1733]. For the Court hearing a survey plan was specially compiled showing the location of the lands that had been taken[1734].

The hearing was primarily a matter of the presentation of competing valuation evidence from European witnesses. The valuations were almost exclusively of the value of the land, as there were few improvements on the blocks. In opening submissions, the Crown's lawyer played down the values, arguing that the compensation had to be related to the value of the land at the time of the notification of the intention to take the land (i.e. February 1910), thereby disregarding a rise in land values in the district that had occurred in the intervening 18 months. He insisted that the land was of poor quality, much of it had no road access, and it was "overridden" with rabbits.

The five valuers for the Crown (two of whom had worked together on jointly agreed values) appeared to arrive at a value based on the discounting of costs of development from the value of developed dairy land. To them, the heavy development costs involved made the bare land state of the blocks of low worth. The presence of blackberry, gorse and rabbits indicated an additional cost for eradication, moss was a sign of "sourness", and heather a sign of poor land, while the soils were shallow. They also looked at recent sales in the district, many of which they believed were for high prices as the sold land was better quality than the taken land, and land values were on the rise, with a particularly sharp rise in the preceding twelve months.

Eight witnesses, six of them local farmers (including William Grace) and two of them valuers, appeared for the Maori owners. They disputed the Crown's characterisation of the land and estimated costs of development, arguing instead that it was average Waikato country of good quality, as evidenced by the Crown's intention to farm what it had acquired, that any perception of poor quality was a reflection of repeated burning of the surface vegetation rather than of the land's underlying attributes, and that if they themselves were to farm the land they would be able to quickly produce a return from it.

[1733] Maori Land Court minute book 35 W 12. Supporting Papers #3736.
[1734] South Auckland plan SO 16390. Supporting Papers #2371.

At the end of the presentation of the valuation evidence, both solicitors, for the Maori owners and for the Crown, made closing addresses, the contents of which are not recorded in the Court minutes. Te Matengaro Te Haate also appeared and gave evidence, which was recorded in the minutes as "simply states that he does not wish to give up his land".

The Court gave its decision two weeks later. After concurring with the Crown submissions that as a matter of law the compensation had to reflect the value of the land at the time of notification of the intention to take in February 1910, it described the valuation evidence it heard as "of a very conflicting nature".

> The witnesses for the natives [placed] in some instances a value double and treble that placed by the witnesses for the Crown. The land itself is of a somewhat variable nature, the river flats as is natural being of a greater value than the higher parts. There are practically no improvements upon the land to be taken into consideration. It is admitted that there is some fencing, but this fencing is of little value. The Court however has taken it into consideration in assessing the compensation. The Court is acquainted with the land, and at the request of the parties has recently re-visited it.
>
> A careful consideration of the evidence of the valuers, and a review of the recent transactions affecting lands in the immediate vicinity of the blocks before the Court, leads the Court to the conclusion that the values placed upon some of the blocks by the witnesses for the Crown are rather low, while on the contrary those placed by some of the valuers for the natives are exceptionally high. It is a well known fact that a considerable increase in land values has taken place throughout the district, but this increase has been of a gradual nature, and the Court does not concur with the statement of some of the witnesses that there has been a much sharper increase during the past year than during preceding periods. The following assessment is one which the Court considers equitable, and one that should meet with the approval of all parties.
>
> To the owners of
> Tokanui C No 21B will be awarded the sum of £1003-16-0
> Tokanui C No 20B will be awarded the sum of £ 90-00-0
> Tokanui C No 2B will be awarded the sum of £ 155-00-0
> Tokanui C No 18B will be awarded the sum of £ 929-05-0
> Tokanui C No 19B will be awarded the sum of £ 77-10-0
> Tokanui C No 12B will be awarded the sum of £ 305-05-0
> Tokanui C No 14B will be awarded the sum of £ 733-15-0
> Tokanui C No 15B will be awarded the sum of £ 430-00-0
> Tokanui C No 16B will be awarded the sum of £ 335-00-0
> Tokanui C No 17B will be awarded the sum of £ 71-10-0
> Tokanui No 1A No 2 will be awarded the sum of £ 156-00-0
> Tokanui No 1D No 2 will be awarded the sum of £1665-00-0
> Tokanui No 1B No 2B will be awarded the sum of £1020-00-0

Pokuru No 1 will be awarded the sum of £ 430-00-0

These amounts, with the exception of that awarded in Pokuru No 1B, will be subject to a payment in proportionate shares to the Crown of costs to the extent of £15-15-0, being the costs agreed upon by both parties.

The Court cannot entertain the claim by the owners of No 1A No 2 for compensation on the ground of severance from the Puniu River. A careful personal inspection of this block revealed the fact that a small stream at least 2ft 6in deep and proportionately wide runs through one side of the blocks. There are also two wet swamps on the block which could be so manipulated to provide ample water irrespective of the stream already alluded to. [1735]

The Court's award for all blocks totalled £7402-8-0d, as compared to the Government Valuation of £6661-4-3d[1736]. The costs of £15-15-0d were awarded to the Crown on account of an adjournment requested by counsel for the Maori owners[1737].

There was one appeal against the Court's awards, from the owners of Tokanui C15B, on the grounds that the land in this block was of the same quality as land in the adjoining Tokanui C14B. The Court had assessed compensation for C15B at £2 per acre, and for C14B at £3 per acre. In June 1913 the Native Appellate Court partially upheld the appeal and increased the amount of the award for Tokanui C15B from £430 to £483-15-6d (i.e. £2-5-0d per acre)[1738].

An examination of the evidence shows that the Court has made a bigger difference between its awards for Sections 15B and 14B than any witness either for the Crown or the Natives. Therefore, while giving due weight to the fact that the Court itself viewed the land, we think its decision cannot be supported in the face of the whole of the expert evidence. We fix £2-5-0 per acre as the compensation for 15B.[1739]

A schedule of payments to the owners of all the blocks, setting out who had been paid and who had not been paid as at September 1914, was prepared in response to a query

[1735] Maori Land Court minute book 35 W 108-111. Supporting Papers #3767-3770.
[1736] Land Purchase Officer Bold to Assistant Under Secretary for Public Works, 26 August 1911. Works and Development Head Office file 24/721. Supporting Papers #1308-1312.
[1737] Land Purchase Officer Bold to Assistant Under Secretary for Public Works, 26 August 1911. Works and Development Head Office file 24/721. Supporting Papers #1308-1312.
[1738] Order of the Court, 18 June 1913. Works and Development Head Office file 24/721. Supporting Papers #1319-1321.
[1739] Maori Land Court minute book 8A APAK 234. Supporting Papers #3625.

from Earl and Kent[1740]. The reasons for not having immediately paid out the compensation monies to some of the owners are not known. Choosing not to claim monies owed to them could have been a refusal by some of the former owners to accept the taking of their land. However, a more mundane reason could be that some owners were deceased, and successors to their interests in the land had not been ordered.

14.7 Crown Interaction with Former Maori Owners after the Takings

There were a number of instances in the years shortly after the taking when former Maori owners wrote to the Crown. There was also one petition to Parliament. Together these communications, discussed in the following paragraphs, point to continued dissatisfaction with the Crown's actions in taking the land.

In August 1911 Te Whiwhi Mokau and Wiripene Te Whiwhi, father and daughter, wrote to the Minister of Public Works about their land Tokanui 1B2B. They had fenced, cleared, ploughed, cropped, and sown down in grass 10 acres of the block, incurring costs of £34-14-5d, in addition to their own labour.

> The position is now that I find that I and my father have brought the land into such a condition that we can make a living from it. That being so I ask you to leave us the land, that is to say the whole of our interests here.[1741]

There is no record of any reply from the Minister.

In February 1912 Wiripene Te Whiwhi wrote again, asking why she had received compensation of £22-7-4d for her interest in Tokanui 1B2B, while Te Whiwhi Mokau, with a similar sized shareholding, received £24-17-6d[1742]. The Court's compensation order showed that both owners were entitled to £24-17-6d, so the

[1740] Earl and Kent, Barristers and Solicitors, Auckland, to Under Secretary for Public Works, 16 July 1914, and Under Secretary for Public Works to Earl and Kent, Solicitors, Auckland, 7 September 1914. Works and Development Head Office file 24/721. Supporting Papers #1322-1323 and 1324-1333.
[1741] Wiripene Te Whiwhi and Te Whiwhi Mokau, Kihikihi, to Minister of Public Works, 31 August 1911. Works and Development Head Office file 24/721. Supporting Papers #1313-1318.
[1742] Wiripene Te Whiwhi, Kihikihi, to Native Minister, 26 February 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #869-870.

reason for underpayment was unclear, and Wiripene was advised to check with the paying officer how the difference had come about[1743].

In June 1912 Matengaro Te Haate and 36 others, on behalf of Ngatipaia, Ngatiterahurahu and Ngatituwhakataha hapu, sent a petition to the Native Minister, although it was largely framed in the language of being a petition to Parliament. After describing how their lands on either side of the Puniu River had been split in two by the Crown's confiscation of all the land on the north bank of the river, they then described what had happened to the lands left to them on the south bank.

> In the year 1909 the Law was directed against the owners of these lands. In the year 1911 it was announced that our lands were taken and we would be paid compensation money for the same. As a result we were deprived of 1,338 acres and 36 perches. The consequence is that each owner has either 3 or 2 acres left to him with which to provide a family living; this is altogether insufficient, and Government cannot expect us to provide for our families from these moieties of land. In our opinion it is as if we were being cast out by distant acts, instead of being forcibly expelled, for we are as pigs hemmed in within small enclosures (and unable to procure food).
>
> On these grounds, we ask you all to review our disabilities, those disabilities being:
> (a) Confiscation following upon fighting the Pakeha.
> (b) Appropriation following conflict with the Act of 1908.
> (c) Lands lost through floods carrying it off.
>
> Therefore, o ye who administer and assist in affairs of fallen estates, we earnestly ask you to conscientiously consider the disabilities to which this section of your people have become subjected as above set forth.
>
> We entreat of you to remedy our distresses, distresses which you alone can properly heal and which in the meantime gravely afflict us.[1744]

In a follow-up letter two months later, sent to Maui Pomare MHR rather than to the Minister, but which Pomare forwarded to the Minister, Matengaro explained how they had not wanted to lose their land.

> When the Commissioner's Court sat on 19th July 1911 [sic, should be 1910], the people said that they did not wish the land to be taken by the Government for the imbeciles, because we have no other lands remaining intact near the

[1743] Under Secretary Native Department to Mr Grace, 13 March 1912, and Under Secretary Native Department to Wiripene Te Whiwhi, Kihikihi, 19 March 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #871 and 872.
[1744] Matengaro Te Haate and 36 Others, Kihikihi, to Native Minister, 22 June 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #873-877.

> Puniu River and near our burial grounds, cultivations and fences. On 27th [sic, should be 2nd to 4th] August 1911 the Compensation Court sat at Kihikihi. They submitted that they would not agree to a valuation of the land, that they will not sell, and that they had no other land upon which they and their children and future generations could live upon, but these pleadings the Government did not listen to.[1745]

There was some debate among officials and with the Minister as to whether the grievances of the three hapu had been presented or were to be presented as a petition to Parliament. The Minister decided they would be handled by his Department and himself[1746], and in September 1912 he sent two replies. The first was in response to the second letter sent in August 1912 to Pomare, in which he stated that "this land was taken under the law, and if you are aggrieved you could petition [Parliament]"[1747]. The second response was sent in relation to the letter sent in June 1912. For this the Under Secretary had briefed his Minister with details of what had been stated about the three blocks to Judge Rawson's inquiry, and what Judge Rawson had concluded. On the basis of what had been said to the inquiry, the Under Secretary concluded that "I am of opinion that the petition is of little merit"[1748]. The Minister agreed, as he replied to Matengaro to the same effect[1749].

Faced with a negative reaction from the Executive, the only option remaining to the Tokanui and Pokuru owners was to petition Parliament directly. There were two petitions lodged. The first was by Hoone Warena, lodged in October 1912, who complained that he had not received the compensation owed to him, because, according to him, it had been paid instead to someone else with a similar name, Hone Warana of the Hauraki district[1750]. Inquiries showed that this was so[1751], and he was

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[1745] Te Matengaro Te Haate and Others, Kihikihi, to Maui Pomare MHR, 18 August 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #878-881.
[1746] File note by Native Minister, 6 September 1912, on Under Secretary Native Department to Private Secretary to Native Minister, 3 September 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #882-884.
[1747] Native Minister to Te Matengaro Te Haate, Kihikihi, 4 September 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #885-886.
[1748] Under Secretary Native Department to Native Minister, 12 September 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #887-888.
[1749] Native Minister to Matengaro Te Haate and Others, Kihikihi, 25 September 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #889-890.
[1750] Petition 361/1912 of Hoone Warena. Legislative Head Office file 1912/19. King Country Petitions Document Bank #1464-1465.
[1751] Under Secretary Native Department to WH Grace, Kihikihi, 11 October 1912, and WH Grace, Kihikihi, to Under Secretary Native Department, undated. Maori Affairs Head Office file 1912/3621. King Country Petitions Document Bank #1475 and 1476.

immediately paid what he was owed, £46-7-4d[1752]. Because the matter had been resolved, the Native Affairs Committee decided the following month that it had no recommendation to make about the petition[1753].

The second petition was drawn and signed by Raureti Te Huia and 47 others in December 1912, and was more a direct follow-on from the June 1912 letter. Referring to the June 1912 letter as an earlier petition, they again focused on the landlessness of the hapu members, the matter that Judge Rawson's inquiry and the Crown's decision to take such a large area under the Public Works Act had failed to address. It repeated how a large proportion of the hapu estate had been lost in the raupatu of the 1860s, and how so much of the balance south of the Puniu River had then been taken to provide for the mental hospital and the reformatory farm.

> So far as we can see, the practices and system followed by the present Government are the same as those of former Governments which – ignoring the right courses – were principally engaged in suppressing the propositions put forward by the people.
>
> We concluded that it was a desirable thing to hold our lands and to work these ourselves.
>
> We may here exclaim that if we ourselves had sold these lands to the Crown, we should not have subsequently taken action in the matter.[1754]

The petitioners explained that the owners had not appreciated the significance of Judge Rawson's inquiry, "so that few attended", and "only two owners appeared before him, and the Judge Rawson apparently decided that these had no great mana to hold the land". Commenting on the Judge's finding that the unused and idle nature of the land ran counter to the claims of landlessness, the petitioners noted that "the Government has not arranged to advance Maoris funds to enable them to properly work their lands". The 21 acres left to the owners in Tokanui 1B2B was on the riverbank, and would be under water when the river flooded. The Compensation

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[1752] Under Secretary Native Department to Chairman Native Affairs Committee, 30 October 1912. Legislative Head Office file 1912/19. King Country Petitions Document Bank #1463.
[1753] Report of Native Affairs Committee on Petition 361/1912 of Hoone Warena, 6 November 1912. *Appendices to the Journals of the House of Representatives* (AJHR), 1912, I-3, page 23. Supporting Papers #3902.
[1754] Petition 35/1913 of Raureti Te Huia and 47 Others, 4 December 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #891-893.

Court was only concerned with land values, "so that we had no idea whatever as to what to do for ourselves".

> After [the Compensation Court hearing] Mr Paterson came along – a delegate from Government – to pay us the monies for the lands. That man stated that if we did not take the monies there and then, the land would go and we would not get the money afterwards. So some accepted the money and others did not. From those who accepted the monies, Anaru Eketone and Mr Paterson took £40, £20, or £5, individually. What could be done in such cases of Government beguiling (whakawai, to tempt, beguile).
>
> So it is that this has been an act of the deepest injustice (kohuru, cold-blooded murder) on the part of the Government, against the Maori owners, who have thus been deliberately defrauded (tahea, theft) of their lands by the Pakehas….[1755]
> [Words in round brackets are from the contemporary English translation of the Maori language original]

Referring to the Public Works Act taking as a confiscation, against which "we did not know what guns to carry to meet this attack", the petitioners concluded:

> From this confiscation there has remained to some of us the very small area of 4 acres, and this a holding for a family comprising twenty members. If this be deemed to be sufficient for the purpose, then we declare that the best places for us are apparently the open spaces of the public roads (as wanderers and vagrants).[1756]
> [Words in round brackets are from the contemporary English translation of the Maori original]

In its report to the Native Affairs Committee on the petition, the Native Department traversed the written record of Judge Rawson's inquiry, as it had earlier in its briefing to the Native Minister about Matengaro's June 1912 letter, and relied on the Judge's findings to reiterate that there were no reasonable grounds for objection to the taking of the lands, as long as the 21 acres of river flat and two burial places were protected. The Department, in support of its concluding view that the petition was of little merit, drew attention to the Judge's conclusion that landlessness did not seem to be an issue, because no one was living on the lands to be taken, no income was being derived from those lands, many of the owners had left the district, and how much

[1755] Petition 35/1913 of Raureti Te Huia and 47 Others, 4 December 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #891-893.
[1756] Petition 35/1913 of Raureti Te Huia and 47 Others, 4 December 1912. Maori Affairs Head Office file 1913/2898. Supporting Papers #891-893.

compensation would be received was the only matter of concern to some of those who did remain in the district[1757].

The Native Department's briefing to the Native Affairs Committee was made in July 1913. However, it was not until July 1915 that the Committee decided that it had no recommendation to make[1758]. The reasons for the delay are not known. Most petitions were dealt with speedily, so the tardy handling of this petition by the Committee was unusual. It is possible that there was disagreement among the Committee members about the appropriate response to give.

Having received a negative response from the final option open to them to express their grievances, the Tokanui and Pokuru owners seem to have given up. No further expressions of grievance have been located during research of Crown records for this case study.

Ten years later, in 1923, Raureti Te Huia wrote to the Native Minister about the two burial grounds that the Crown had promised to protect. They had apparently not been fenced, and were therefore "in a bad state of disorder from want of attention and protection"[1759]. The matter was referred to the Medical Superintendent at Tokanui Hospital. His reply showed that the promise made by the Crown in September 1910, that the burial grounds would be set aside and fenced, and "hereafter to be held by the Government as sacred"[1760], had not been honoured.

> I have to say that we have no record of the cemeteries mentioned by Raureti Te Huia. One of these burial grounds has been located and I intend having this plot of less than an eighth of an acre fenced off in compliance with the wishes of the Maori people.
>
> With regard to the second cemetery, Raureti Te Huia has been unable to locate it for me. He stated that only one native was buried in this particular one some considerable time ago, and he intended communicating with some of the older

[1757] Under Secretary Native Department to Chairman Native Affairs Committee, 11 July 1913. Maori Affairs Head Office file 1913/2898. Supporting Papers #894-897.
[1758] Report of Native Affairs Committee on Petition 35/1913 of Raureti Te Huia and 47 Others, 20 July 1915. *Appendices to the Journals of the House of Representatives* (AJHR) 1915, I-3, page 11. Supporting Papers #3903.
[1759] Raureti Te Huia, Kihikihi, to Native Minister, 29 October 1923. Maori Affairs Head Office file 1913/2898. Supporting Papers #898-899.
[1760] Assistant Under Secretary for Public Works to Earl and Kent, Solicitors, Auckland, 9 September 1910, and Assistant Under Secretary for Public Works to Whete Manga, Kihikihi, 9 September 1910. Works and Development Head Office file 24/721. Supporting Papers #1285-1286.

> Maori people who might be able to definitely locate the spot. As all the land in the locality of where he thought it was situated has been ploughed and grassed, it seems doubtful as to whether it can be accurately located now.[1761]

He added five days later that he had still not heard back from Raureti Te Huia about the second burial place, and "I am inclined to think that they will let the matter drop with the fencing of the located cemetery"[1762].

The Native Minister decided that, because the Medical Superintendent had communicated with Raureti Te Huia, there was no need for a written reply, and "no further action" was required[1763]. Meanwhile the Inspector General of Mental Hospitals advised his Minister that "if the Maoris are able to locate any other burial plots, the Department will see that they are duly cared for"[1764].

14.8 Portions Allocated to Other Public Uses, Sold or Exchanged

Once the Crown had acquired the Tokanui and Pokuru lands, it demonstrated no further regard (with the exception of the fencing of one burial ground, as described above) for the fact that Maori owners had previously owned those lands.

In particular, the Crown showed no regard for the concept of offering to return any of the land taken from Maori owners where that land ceased to be required for its taken purpose. Nor did it consider consulting with the former owners when it wished to change the purpose for which it held the taken land.

One early instance of land taken for Tokanui Mental Hospital being put to other purposes occurred in 1914, when two acres of the formerly Maori-owned Tokanui 1B2B block were revoked[1765], and then reserved under the Land Act 1908 as a

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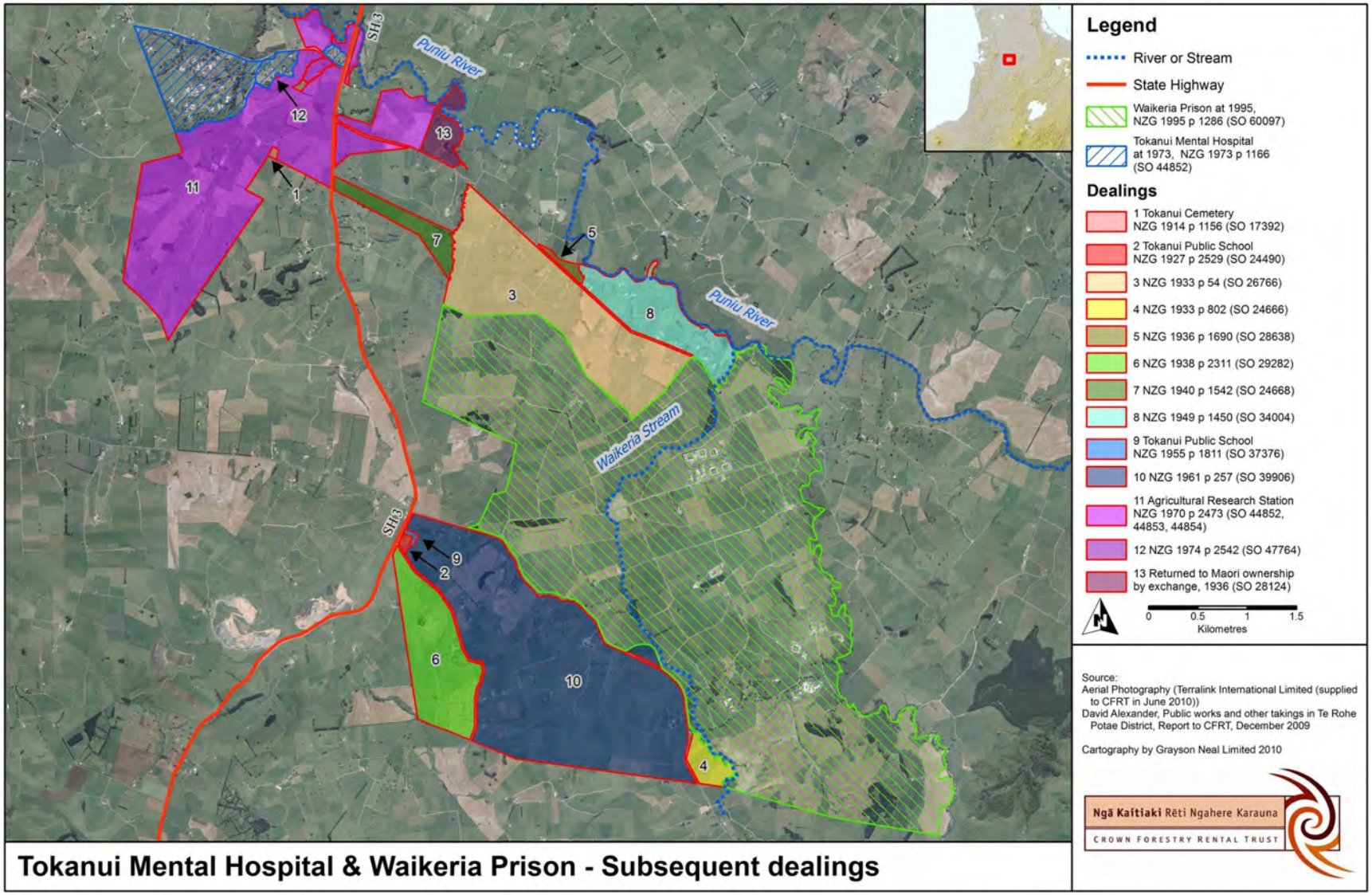
[1761] Acting Medical Superintendent Tokanui to Inspector General of Mental Hospitals, 5 March 1924, attached to Inspector General of Mental Hospitals to Under Secretary Native Department, 7 March 1924. Maori Affairs Head Office file 1913/2898. Supporting Papers #900-901.
[1762] Acting Medical Superintendent Tokanui to Inspector General of Mental Hospitals, 10 March 1924. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #1.
[1763] Native Minister to Under Secretary Native Department, 11 March 1924, on Inspector General of Mental Hospitals to Under Secretary Native Department, 7 March 1924. Maori Affairs Head Office file 1913/2898. Supporting Papers #900-901.
[1764] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 12 March 1924. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #2.
[1765] *New Zealand Gazette* 1914 page 1156. Supporting Papers #3987.
South Auckland plan SO 17392. Supporting Papers #2395.

cemetery reserve[1766]. This was for a European cemetery, not to protect pre-existing Maori burials.

Another instance, this time using some of the Crown Land and some of the former Maori-owned land taken for the Mental Hospital, was the establishment of Tokanui Public School. In 1927 an Order in Council directed the sale of four acres of Tokanui C12A, C14A and C14B by the Public Works Department[1767]. This was to allow the Auckland Education Board to purchase a public school site. The four acres was declared to be Crown Land in 1954[1768], at about the same time that a further 2 acres 2 roods 24 perches of Mental Hospital land was declared surplus and to be Crown Land in 1955[1769]. Of the combined area, 5 acres 3 roods 20 perches was then set apart for a public school in 1957[1770].

In later years a number of situations arose where the land taken for mental hospital became no longer required by the hospital, and was transferred from the Health Department's jurisdiction into the administrative hands of another Government Department. These other Departments included the Prisons Department (in 1927), the Public Works Department (in 1933, 1936, 1938 and 1940), the Department of Lands and Survey (in 1933, 1949 and 1961), and the Department of Agriculture (in 1970, 1974 and 1993). There were also exchanges or proposed exchanges in the 1930s. Each of these transfers is discussed below in time sequence. A common feature of all the transfers examined during the research for this case study is that the Crown treated each transfer as an matter of concern only to itself. There was no consideration of any obligations the Crown might have to former Maori owners, primarily because the legislation was silent on this aspect.

[1766] *New Zealand Gazette* 1914 page 2859. Not included in Supporting Papers.
[1767] *New Zealand Gazette* 1927 page 2529. Supporting Papers #4037.
South Auckland plan SO 24490. Supporting Papers #2403.
[1768] *New Zealand Gazette* 1954 page 573. Not included in Supporting Papers.
[1769] *New Zealand Gazette* 1955 page 1811. Supporting Papers #4070.
South Auckland plan SO 37376. Supporting Papers #2423.
[1770] *New Zealand Gazette* 1957 page 529. Supporting Papers #4075.
South Auckland plan SO 36878. Supporting Papers #2421.



Map 28 Tokanui Mental Hospital & Waikeria Prison - Subsequent dealings

14.8.1 Transfer of Land from Tokanui Mental Hospital to Waikeria Borstal, 1927

The official responsible for establishing Tokanui, Frank Hay, had grandiose plans for the use of the site for a wide range of mental institutions, all located far enough from each other to be able to operate independently and keep patients with different types and degrees of mental illness separate from one another, yet close enough to allow shared supervision and other services. As he saw it, the hospital buildings constructed on Pokuru 1 block, on the western edge of the acquired site, were either temporary to take advantage of proximity to Te Puhi railway station, or just one of a number of building sites on the hospital property[1771]. The main building site would be in the centre of the property, to the east of the main road. Until that was constructed, however, the Mental Hospitals Department was unable to demonstrate that it needed the whole of the land that it had acquired. Throughout the 1910s and 1920s there was constant pressure from the European settlers of the district to open up the site by turning it over to settlers. The response of the Crown to this pressure was to make an arrangement with the adjoining reformatory farm.

> The Justice Department consider that they have too little land, and I have arranged with them, when they have their area under cultivation, to give them work for the prisoners to bring in our land to the west. This includes one of the best pieces of land on the estate. Our present working is in the vicinity of the present buildings, because we have, so to speak, just started, but the estate is <u>not</u> too large for us to tackle successfully and expeditiously.[1772]
> [Underlining in original]

In 1925 the Reformatory Farm at Tokanui was converted into a Borstal institution for young offenders. Arrangements for the use of the adjoining mental hospital property were re-examined, and Cabinet approved the transfer of some of the mental hospital land to the Prisons Department in April that year[1773]. Officials had agreed between themselves that the boundary between the two properties should be the Waikeria

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[1771] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 31 March 1913. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #21-23.
[1772] Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 21 July 1913; and Minister in charge of Mental Hospitals to Prime Minister, 29 August 1913, attached to Inspector General of Mental Hospitals to Minister in charge of Mental Hospitals, 9 August 1913. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #24 and 25-27.
[1773] Minister of Justice to Minister in charge of Mental Hospitals, 12 March 1925 and 20 April 1925, and Minister in charge of Mental Hospitals to Minister of Justice, 22 April 1925, approved by Cabinet 23 April 1925. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #28-29, 30 and 31.

Stream, which they understood to represent a transfer of control of between 500 and 600 acres, although it was subsequently discovered that the area of the mental hospital land to the east of the Waikeria Stream was 738 acres[1774]. The two Ministers involved agreed that, rather than arrange the transfer by Proclamation, an exchange of letters would be sufficient[1775]. This area was increased following a further request from the Prisons Department in May 1926, on the grounds that drainage was the key to bringing the land into production, and heavy work of this nature was more suited to prison labour than mental hospital patients[1776].

In 1927 some 2758 acres of Tokanui Mental Hospital land was transferred to the Prisons Department for Waikeria Borstal. This represented all the land to the east of the main road, except for some 150 acres of Puniu River flats to the north of the access road to the prison property. Although held by the Mental Hospitals Department since 1910, only one-ninth of the area transferred in 1927 had been sown down in permanent pasture, while one-half was in temporary pasture, and the balance was described as "swamp, scrub and uncleared"[1777]. The addition of this 2758 acres meant that the Borstal property had a total area of 4815 acres. The implication to be drawn from the Crown's failure to develop the land between 1910 and 1927, and from the transfer itself, is that considerably more land was taken from Maori owners in 1910 than was actually needed for the running of a mental hospital.

The transfer was never formalised at the time by any Proclamation or Order in Council. During the lead-up to the transfer of control, the Public Works Department had queried whether any legal transfer of title to the land was required.

> In order to complete this matter from a legal point of view, it would be necessary to declare the land Crown Land, and then set it apart for the purposes of the Waikeria Reformatory [sic], and for this purpose a plan and schedule certified as correct by the Chief Surveyor would be necessary. In order to supply such a plan, it seems that a survey would be necessary, and it is doubtful whether this expense is warranted. The position is that the Mental

[1774] Surveyor General to Inspector General of Mental Hospitals, 5 August 1925. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #33.
[1775] Minister in charge of Mental Hospitals to Minister of Justice, 18 September 1925, and Minister in charge of Prisons to Minister in charge of Mental Hospitals, October 1925. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #34-35 and 36.
[1776] Controller-General of Prisons to Minister of Prisons, 27 May 1926. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #37-38.
[1777] Controller-General of Prisons to Minister of Justice, 12 February 1929. Justice Head Office file 5/3/15. Supporting Papers #45-46.

> Hospital's land and the Reformatory grounds are both vested in the Crown, but the former was taken for the purposes of the Tokanui Mental Hospital and the latter was taken for Reformatory Farm purposes. Seeing that both are at present vested in the Crown, the legal status does not appear to be very material, and I think it would probably be just as satisfactory if you were to arrange the matter with the Prisons Department by letter. The area could be computed from the plan in your possession, and this would be quite sufficient for balance sheet purposes.[1778]

Instead of being set apart for Borstal purposes, the 2758 acres continued to be shown in land records as having been taken for mental hospital purposes.

14.8.2 Transfer to Department of Lands and Survey, 1933

In January 1933 484½ acres of Tokanui 1D1, 1D2 and C18B was declared to be Crown Land[1779].

14.8.3 Transfers to the Public Works Department in the 1930s

Other transfers in the 1930s were not intended to enable the Public Works Department to use the land for a public purpose. Instead they were to enable that Department to sell the land to private farmers. The transfers were authorised by the issue of an Order in Council directing the sale of land. In each case the sale to a named farmer had been agreed in advance, and the purchase price had already been received by the Crown. The Order in Council was therefore a tidying-up action near the end of the release and transfer process, to enable a title to be issued to the new owner.

In 1933 an area of 36 acres was said to be no longer required by either the Mental Hospitals or Prisons Departments. A direction to sell the land was issued in April 1933[1780], after the farmer had already paid the purchase price of £400-2-8d[1781]. Much of the land had been purchased by the Crown in 1907, being portions of Tokanui C17A, C20A and C21A, while another portion was closed road. However, it did include a part of Tokanui C17B, which had been taken from Maori owners in 1910.

[1778] Assistant Under Secretary for Public Works to Inspector General of Mental Hospitals, 28 July 1925. Health (Mental Health Division) Head Office file 13/1/6. Supporting Papers #32.
[1779] *New Zealand Gazette* 1933 page 54. Supporting Papers #4040.
South Auckland plan SO 26766. Supporting Papers #2407.
[1780] *New Zealand Gazette* 1933 page 802. Supporting Papers #4041.
South Auckland plan SO 24666. Supporting Papers #2404.
[1781] Assistant Under Secretary for Public Works to Minister of Public Works, 20 April 1933. Works and Development Head Office file 25/247. Supporting Papers #1355.

In 1936 an area of 9 acres 3 roods 16 perches of Tokanui 1D2 (i.e. taken from Maori owners in 1910) was directed to be sold[1782].

In 1938 an area of 224 acres 0 roods 22 perches of Tokanui C14B, C15B and C16B (i.e. all taken from Maori owners in 1910) was directed to be sold[1783]. The Prisons Department had advised that "it is not possible with the available labour at Waikeria to make full use" of this area[1784]. After a public tender process, the land was sold to an adjoining owner for £1900; this amount had been paid to the Crown before the notice directing sale was issued[1785].

In 1940 an area of 59 acres 3 roods 10 perches of the Crown Land purchased in 1907 was directed to be sold[1786].

14.8.4 Exchange of Land, 1936

In May 1935 an agreement was signed between the Crown and some local Maori about an exchange of lands. The Maori owners of Tokanui 1B2B3B agreed to part with 53 acres 1 rood of their land, and receive in exchange a similar area of the mental hospital site that had formerly been in Tokanui 1A2. The Maori-owned land was adjacent to the main road and the bridge over the Puniu River, and was surrounded by the mental hospital site. The land that the Maori owners would receive in exchange was on the edge of the hospital site and adjoined land that was still Maori-owned (Tokanui 1D2A1 and 1B2B1B). As part of the agreement the Crown also promised to be responsible for the costs of moving a whare, and the costs of fencing of the area to

[1782] *New Zealand Gazette* 1936 page 1690. Supporting Papers #4045.
South Auckland plan SO 28638. Supporting Papers #2411.
[1783] *New Zealand Gazette* 1938 page 2311. Supporting Papers #4049.
South Auckland plan SO 29282. Supporting Papers #2413.
[1784] Controller-General of Prisons to Under Secretary for Public Works, 22 March 1938. Works and Development Head Office file 25/247. Supporting Papers #1356-1358.
[1785] District Engineer Auckland to Under Secretary for Public Works, 29 August 1938, Controller-General of Prisons to Under Secretary for Public Works, 6 September 1938, and Assistant Under Secretary for Public Works to Minister of Public Works, 13 October 1938. Works and Development Head Office file 25/247. Supporting Papers #1359-1360, 1361 and 1362.
[1786] *New Zealand Gazette* 1940 page 1542. Supporting Papers #4050.
South Auckland plan SO 24668. Supporting Papers #2405.

be granted to Maori[1787]. When surveyed, the mental hospital land to be provided in exchange was found to have an area of 51 acres 0 roods 31.5 perches[1788].

The exchange was arranged by taking under the Public Works Act for Tokanui Mental Hospital the Maori-owned land alongside the main highway in November 1936[1789], and then asking the Native Land Court to agree to the vesting of the Crown-owned land in the Maori owners as the compensation to be paid for the taking. In April 1937, the Court concurred with this procedure, and ordered compensation to be nil, on condition that the Crown-owned land was vested in the Maori owners[1790].

Probably encouraged by the reaching of the agreement, Raureti Te Huia suggested another exchange in June 1936, whereby about 17 acres of Maori-owned Tokanui 1B2B2C would be exchanged for a similar area of the mental hospital site[1791]. The Maori-owned land adjoined the land that the Crown was acquiring under the 1935 exchange. Investigations by officials at Tokanui found that the adding of 17 acres to the mental hospital site would be "satisfactory", but that adding some 67 acres of Maori-owned land (of which the 17 acres was part) would be a "better arrangement", because it was adjacent to the hospital farm entrance and was therefore easily accessible[1792]. Further discussion with Raureti, however, brought the proposed exchange back to the originally offered 17 acres, to be exchanged for a paddock of 28 acres of hospital land. The exchange would be on a value for value basis, and Raureti agreed that he would be willing to pay the difference between the values[1793].

[1787] Agreement dated 1 May 1935, attached to Under Secretary for Public Works to Director General of Mental Hospitals, 2 May 1935. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #3-6.
[1788] South Auckland plan SO 28124. Supporting Papers #2409.
[1789] New Zealand Gazette 1936 page 2251. Supporting Papers #4046.
South Auckland plan SO 28736. Supporting Papers #2412.
[1790] Order of the Court, 27 April 1937. Te Rohe Potae Block Research Narratives and Document Bank, Doc #14094.
[1791] Raureti Te Huia, Kihikihi, to Director General of Mental Hospitals, 10 June 1936. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #7.
[1792] Farm Manager Tokanui to Medical Superintendent Tokanui, 29 June 1936, attached to Medical Superintendent Tokanui to Director General of Mental Hospitals, 8 July 1936. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #8-9.
[1793] D Riddle, Tokanui, to Director General of Mental Hospitals, 24 July 1936. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #10.

The Mental Hospitals Department had no experience in land acquisition, and asked the Department of Lands and Survey to arrange the exchange[1794]. When, eighteen months later, nothing had happened, a request for assistance was made to the Public Works Department[1795]. Only then did it become apparent that there were 16 owners of Tokanui 1B2B2C, Raureti Te Huia was not one of them, and it would be necessary to approach all the owners to gain their consent to the proposed exchange.

> Alternatively, if your Department wishes, we could issue a Proclamation under the compulsory provisions of the Public Works Act, but it would I think be desirable for further negotiations to be arranged in this particular case.[1796]

Raureti Te Huia was seen and he agreed to consult the owners; after intervention by the Medical Superintendent at Tokanui, this was to be about the larger 66 acre exchange rather than the smaller 17 acre proposal[1797]. However, the proposed exchange was abandoned when Raureti was unable to obtain agreement from the owners[1798].

14.8.5 Transfers to Department of Lands and Survey, 1949 and 1961

In 1947 the Mental Hospitals Department decided that an area of approximately 168 acres known to hospital staff as "The Camp", was too far way from the main hospital property, and therefore presented "many difficulties in management". It decided that the property should be disposed of. The Minister agreed, and instructed that it be passed to the Department of Lands and Survey for disposal[1799]. That Department took possession in October 1948 and worked the land as the Puniu Farm Settlement, eventually establishing two dairy farms[1800]. The land was formally declared to be

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[1794] Director General of Mental Hospitals to Under Secretary for Lands, 31 July 1936, Under Secretary for Lands to Director General of Mental Hospitals, 25 September 1936, and Director General of Mental Hospitals to Under Secretary for Lands, 29 September 1936. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #11, 12-14 and 15.
[1795] Director General of Mental Hospitals to Under Secretary for Public Works, 1 March 1938. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #16.
[1796] Under Secretary for Public Works to Director General of Mental Hospitals, 23 March 1938. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #17.
[1797] Medical Superintendent Tokanui to Director General of Mental Hospitals, 12 April 1938. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #18.
[1798] Medical Superintendent Tokanui to Director General of Mental Hospitals, 26 April 1938. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #19.
[1799] Acting Director General of Mental Hospitals to Minister in charge of Mental Hospitals, 21 October 1947, approved by Minister 28 October 1947. Health (Mental Health Division) Head Office file 13/1/1. Supporting Papers #20.
[1800] District Engineer Hamilton to Under Secretary for Public Works, 10 June 1949. Works and Development Head Office file 24/721. Supporting Papers #1334-1337.

Crown Land, and thereby transferred to Lands and Survey, in July 1949[1801]. Of the total area, 132½ acres was formerly part of Tokanui 1D2, which had been taken from Maori owners, while the remaining 40½ acres had been purchased by the Crown in 1907.

In 1951 the Department of Lands and Survey made arrangements with the Justice Department, whereby nearly 1000 acres of the Waikeria property (which was still formally part of the lands taken for mental hospital) would be transferred to become part of Te Kau Farm Settlement. Lands and Survey took possession in July 1952[1802]. However, it was not until the end of that decade that steps were taken to formalise the transfer. Although the Minister of Justice had approved the transfer in 1952[1803], it was not until 1960 that the Minister of Health gave his approval for the transfer of 960 acres 1 rood 1 perch to the Department of Lands and Survey[1804]. The land was declared to be Crown Land in January 1961[1805]. The transferred land included portions of Tokanui C14B, C15B, C16B and C17B, all taken from Maori owners in 1910, as well as some land purchased by the Crown in 1907.

14.8.6 Transfers to Department of Agriculture, 1970, 1974 and 1993

In the mid 1960s the Government made a policy decision to dispose of lands farmed by mental hospitals. In the case of Tokanui, this was not by sale on the open market, but instead involved a transfer to the Department of Agriculture. The Tokanui farm was found on survey to have an area of 838 acres 3 roods 01.8 perches[1806], and possession was taken by the Ruakura Agricultural Research Centre of the Agriculture Department from April 1970. The Order in Council formally carrying out the transfer

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[1801] *New Zealand Gazette* 1949 page 1450, as amended at *New Zealand Gazette* 1949 page 2403. Supporting Papers #4059 and 4061.
South Auckland plan SO 34004. Supporting Papers #2420.
[1802] Commissioner of Crown Lands Hamilton to District Commissioner of Works Hamilton, 15 July 1959. Works and Development Hamilton file 36/15/1/1/0. Supporting Papers #3198.
[1803] Secretary for Justice to Director General of Lands, 19 March 1952, attached to Commissioner of Crown Lands Hamilton, 7 November 1960. Works and Development Hamilton file 36/15/1/1/0. Supporting Papers #3199-3200
[1804] Director of Mental Hygiene to District Commissioner of Works Hamilton, 12 December 1960, attached to District Commissioner of Works Hamilton to Commissioner of Works, 20 January 1961. Works and Development Head Office file 24/721. Supporting Papers #1338.
[1805] *New Zealand Gazette* 1961 page 257. Supporting Papers #4088.
South Auckland plan SO 39906. Supporting Papers #2427.
[1806] South Auckland plans SO 44852, SO 44853, and SO 44854. Supporting Papers #2434, 2435 and 2436.

was issued in December 1970, when it was set apart under the Public Works Act for agricultural research purposes[1807].

There was a further transfer of mental hospital land to the Agriculture Department in 1974. This occurred after the balance of the mental hospital site after 1970 had itself been transferred from the Health Department to Waikato Hospital Board responsibility (see next section). This second transfer to the Agriculture Department was of two housing sections in the staff village at Tokanui[1808].

A third transfer occurred in 1993, when 1 acre 3 roods 05 perches of the land surveyed for the 1970 transfer was set apart for agricultural research[1809]. This area was two thin strips, which had been identified on the survey plan as water supply and drainage easements, both easements being designed to serve the mental hospital. The underlying title to those lands followed by the easements had not been transferred to the Agriculture Department in 1970, as the laying off of easements in favour of the hospital would have intended.

14.8.7 Transfer of the Balance of the Mental Hospital Site to Waikato Hospital Board, 1973

In 1973 a policy decision was taken that the future running of the mental hospital would be by the local Hospital Board, rather than by the Department of Health. The assets of the hospital site were transferred from the Crown to Waikato Hospital Board. As far as the land was concerned, this involved a vesting of the site in the Hospital Board under powers provided in the Hospitals Act 1957, which took place in February 1973[1810]. The total area vested was 229 acres 1 rood 15 perches.

[1807] *New Zealand Gazette* 1970 page 2473. Supporting Papers #4102.
[1808] *New Zealand Gazette* 1974 page 2542. Supporting Papers #4114.
South Auckland plan SO 47764. Supporting Papers #2437.
[1809] *New Zealand Gazette* 1993 pages 1972-1973. Supporting Papers #4130-4131.
South Auckland plan SO 44852. Supporting Papers #2434.
[1810] *New Zealand Gazette* 1973 page 319-320. Supporting Papers #4104-4105.
South Auckland plan SO 44852. Supporting Papers #2434.
This notice had to be revoked and substituted by another notice in June 1973 (*New Zealand Gazette* 1973 page 1166 - Supporting Papers #4106).

14.8.8 Setting Apart Waikeria Prison Site for Justice Purposes, 1995 and 2001

The land used as the site of Waikeria Prison had continued to be set apart for either reformatory farm or Tokanui Mental Hospital. In 1995 the various blocks were consolidated into two parcels, with an area of 1278.3900 hectares[1811], which was then set apart for Justice purposes[1812].

In 2001 further land at Waikeria was set apart for Justice purposes[1813]. It is not known if this was land formerly taken for reformatory farm in 1910, or was additional land acquired by the Justice Department at some other date.

14.9 Concluding Remarks

Neither the mental hospital nor the reformatory farm needed to be located at Tokanui. The site criteria for each were such that the Crown had choices about where they would be established. In choosing Tokanui as the site, it demonstrated an insensitivity to the circumstances of the hapu whose land it was, as these people had already been doubly-affected, by raupatu in the 1860s, and by aggressive land purchasing in 1907. When this was brought to its attention by objections to the taking, the Crown compounded its insensitivity by refusing to deviate from its intentions, making only minor adjustments to the area to be taken. The loss of nearly 3500 acres in one bite would have had a major impact on the local Maori community.

The taking at Tokanui demonstrates how different pieces of legislation about alienation of Maori-owned land were not congruent. The Native Land Act 1909 required any alienation to be examined by the District Maori Land Board to ensure that the Maori owners were left with sufficient land for their needs. The Public Works Act 1908, governing alienation by compulsory acquisition, had no such requirement. The response of a Public Works Department official, in declining to accept that sufficiency of land was a matter to be considered when taking Maori-owned land, shows that the Crown deliberately aimed to avoid its ability to take land

[1811] Section 1 SO 60097 (1276.4200 hectares), and Section 2 SO 60097 (1.9700 hectares). Supporting Papers #2438.
[1812] *New Zealand Gazette* 1995 page 1286. Supporting Papers #4132.
[1813] *New Zealand Gazette* 2001 page 3283. Supporting Papers #4133.
Lot 3 DPS 45006, Lot 1 DPS 10284, Lot 1 DPS 18591 & Lot 1 DPS 49015, total area 138.2707 hectares.

becoming fettered by an obligation of this nature. As in so many other matters, the Crown was averse to anything that might be an impediment to achieving its aims.

When determining compensation, the rich Maori history of the land, and its importance to its Maori owners as a source of traditional foods, was accorded no value whatsoever. Instead the debate turned around the costs of development for grassland farming. The Crown's narrow interpretation of what constituted compensation worked to the disadvantage of the former Maori owners.

Despite the high hopes of the Crown official responsible for determining the size of the site to be taken, it became apparent soon after the taking that the Crown had extravagantly taken considerably more land than it needed for the Tokanui Mental Hospital. This was overcome not by returning land to its former Maori owners, but by allocating the unused land to an alternative public use, or by selling it to local European farmers. Once the Crown had acquired the land, the circumstances of the former Maori owners were not considered.

When discussing the taking with the owners, at the objections stage, the Crown had promised to protect two burial places on the land to be taken. Within 15 years only one of the burial places could be located; the location of the other site had been ploughed up, and it could no longer be identified. While the second site would have been fenced if it could have been located in 1924, that it had been possible for the Crown's promise to protect the burial places to be lost sight of in such a short period of time after the promise was made is an indication of a systemic failure in the Crown's internal processes. There was no secure mechanism for a promise made by one official to be made binding on all other officials.

15 TE KUITI AERODROME

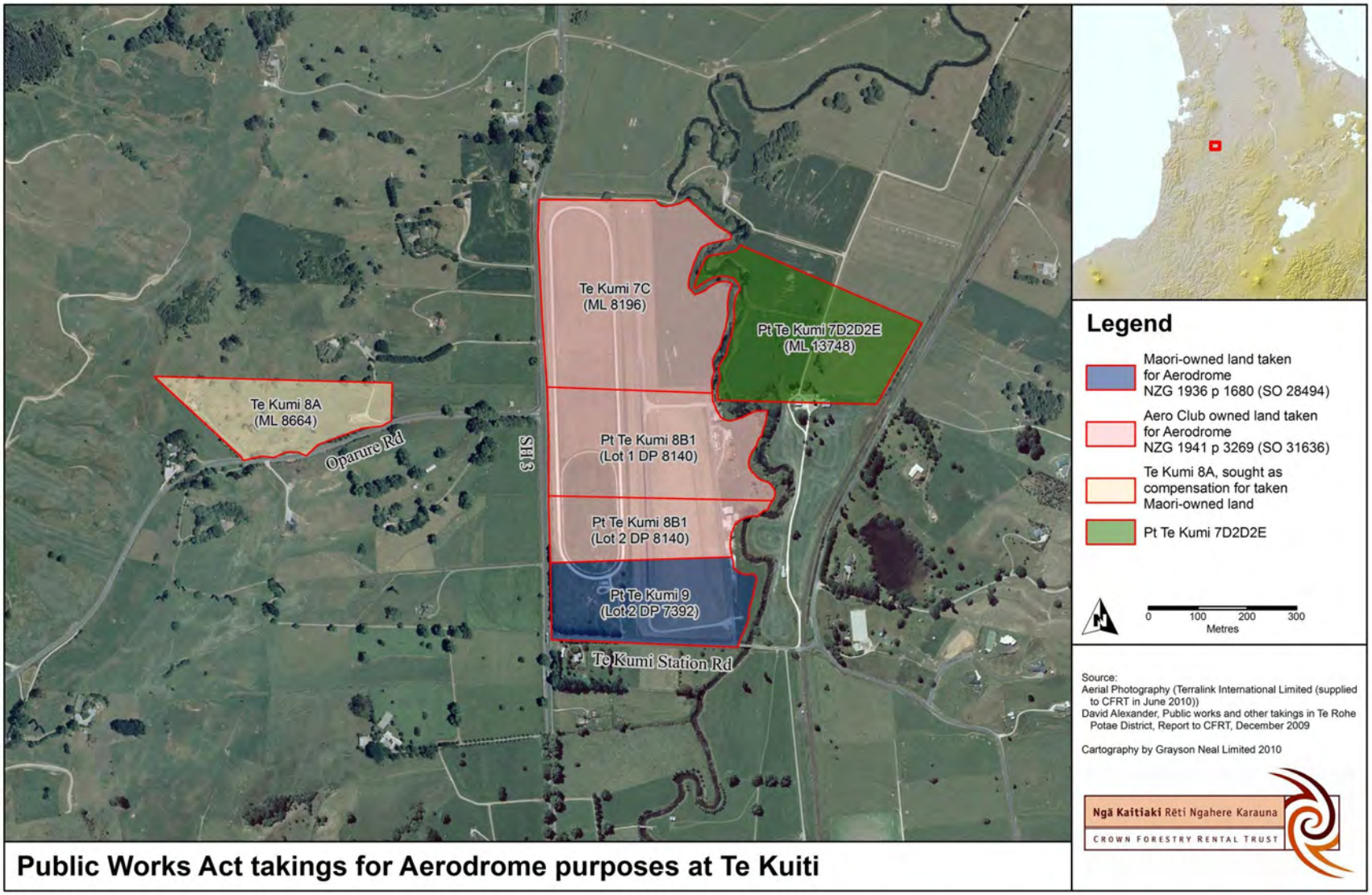
15.1 Introduction

This case study has been chosen for close examination because it is the subject of a specific claim to the Waitangi Tribunal (WAI-1190). The claim alleges wrongful acquisition of part of the aerodrome land by the Crown.

The study examines the taking under the Public Works Act of Maori-owned land for the newly established Te Kuiti Aerodrome in 1936. The taking took place without proper consideration of alternatives to the use of the Public Works Act, and in the face of continually expressed objections from the sole Maori owner. While he may or may not have been willing to allow his land to be used as an aerodrome (this cannot be resolved either way with any certainty from the historical documents), he was adamant that he wanted to be compensated by being provided with alternative land. The Crown was impervious to his pleas.

Associated with the establishment of the aerodrome was the removal of trees on another block of Maori-owned land adjoining the aerodrome, which were regarded as an obstruction to aircraft. Removal was carried out without consideration for the needs of the owner of that land, and without payment of compensation. Appeals to obtain compensation were made to the Crown, and while natural justice demanded that there be an opportunity to determine whether compensation was or was not appropriate, the Crown declined to intervene to protect the Maori owner's rights.

The Maori-owned land taken in 1936 was only a part of the aerodrome site. The remainder of the site, owned by the local Aero Club, was taken by consent in 1941. The whole site was declared to be Crown Land in 1960, as part of a transfer of control of the aerodrome to Te Kuiti Borough Council. The following year the site was reserved under the Land Act for aerodrome purposes, and vested in the Borough Council, which remains its status today. No consideration was given to any obligations the Crown may have had to the former Maori owner when the taken land ceased to be held under the Public Works Act, and became subject first to the Land Act, and then to the Reserves and Domains Act.



Map 30 Public Works Act takings for Aerodrome purposes at Te Kuiti

15.2 Establishment of the Aerodrome

The aerodrome was established on the former Te Kuiti racecourse, and was the brainchild of a group of local enthusiasts who formed themselves as the Te Kuiti Aero Club. Their president was a local solicitor, who became an assiduous correspondent with the Public Works Department during the 1935-1941 period.

The initial involvement of the Crown was by way of the provision of unemployed labour for the clearing and levelling of the proposed aerodrome during the Depression. The Unemployment Board provided the finance, while the Public Works Department provided the technical engineering supervision. It was the President of the Club who initially arranged for the use of unemployed labour, supplied through the Waitomo County Council and Te Kuiti Borough Council[1814]. The Public Works Department becoming involved in October 1934, when an engineering inspection identified a number of works that needed to be carried out before the site could be licensed for use by aircraft. These works were primarily aimed at improving drainage, although they did also include the removal of kahikatea trees to the north of the site[1815], a matter discussed later in this chapter. The Department took over supervision of the works in December 1934[1816], and thereafter the Crown found itself injecting, and being lobbied by the Club to inject, an increasing amount of public funds[1817]. It was not long before the Crown made inquiries about the land titles foundation upon which this increasing expenditure was based.

In June 1935 the Head Office of the Public Works Department asked its Taumarunui local office for "full accurate particulars" about the aerodrome site, because the "Minister enquiring"[1818]. It was told in a telegram in reply:

[1814] Engineer in Chief to Commissioner of Unemployment, 5 September 1934. Works and Development Head Office file 23/381/43. Supporting Papers #1089.
[1815] Engineer in Chief to Director of Air Services, 16 October 1934. Works and Development Head Office file 23/381/43. Supporting Papers #1090-1091.
[1816] Although there is no contemporary evidence on the Public Works Department file for this takeover date, authority was given in December 1934 for an immediate start to work on the airfield. Engineer in Chief to District Engineer Taumarunui, 4 December 1934. Works and Development Head Office file 23/381/43. Supporting Papers #1092.
December 1934 was also referred to in the Native Land Court hearing in April 1937 as the date of entry by the Crown, for the purposes of determining at what point compensation became due.
[1817] President Te Kuiti Aero Club to Under Secretary for Public Works, 14 June 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1093-1094.
[1818] Telegram Engineer in Chief to District Engineer Taumarunui, 17 June 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1095.

> Te Kuiti Aero Club Incorporated holds grounds under agreement for sale by Te Kuiti Racing Club. Title expected to be completed about tenth proximo.[1819]

This rather sparse information was deemed to be sufficient at that time.

However, by October 1935, when the transfer of title from the Racing Club to the Aero Club had not materialised, further concern was apparently being expressed. The President of the Aero Club wrote to the Public Works Department:

> I understand that the question of the title to the Te Kuiti Aerodrome is causing some trouble with your Department in Wellington. I have reason to believe that the matter has been brought to your notice by parties who are not in any way interested in aviation, and are under the foolish and quite unjustifiable impression that some people are making a profit out of the sale of the Racing Club's property.
>
> Some two years ago the Te Kuiti Aero Club agreed to take over the Racing Club's property when the Racing Club finally went out of business. The Racing Club have not in any way gone back on their agreement, and a joint meeting of the two Clubs was held last night, and the difficulties which have arisen were discussed.
>
> The Racing Club's property has always been in the name of two trustees, Messrs Lusk and Steel. Mr Lusk, one of the trustees, has so far refused to sign the transfer, although he has been directed so to do by the Racing Club. He will not definitely say one way or the other whether he will ultimately sign or not, and the matter has been dragging on for some months past.[1820]

It emerged that there was considerable local debate about which body should hold the title to the aerodrome. The Aero Club held the view that it had an agreement to purchase from the Racing Club, and that agreement should be completed. Other local people, however, considered that the Racing Club's assets had been built up by the local community, that the aerodrome would be a local community asset, and that it would therefore be better if title to the aerodrome was held by a local public body, Te Kuiti Borough Council, rather than by a semi-private incorporated society like the Aero Club. If the Borough Council held title, it could then be leased to the Aero Club. If, in future, use as an aerodrome ceased, the site could then be put to other public uses. The District Engineer supported this second point of view.

[1819] Telegram District Engineer Taumarunui to Engineer in Chief, 19 June 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1096.
[1820] President Te Kuiti Aero Club to Under Secretary for Public Works, 1 October 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1097-1098.

> In my opinion it is most desirable that the aerodrome grounds be owned by the Borough Council, and then leased to the Aero Club under certain safeguards. It is most probable that a request on these lines from a Minister of the Crown to both parties, i.e. the Borough Council and the Aero Club, would bring about the desired result; but it is essential that very early action be taken.[1821]

When asked for his opinion, the Land Purchase Officer in the Public Works Department expressed another point of view.

> I can see no good reason why the Crown should get mixed up in this matter. It appears that under the recent provisions of the Public Works Amendment Act 1935, a Borough Council or an Incorporated Aero Club both have power to take land under the Public Works Act for an Aerodrome, and I am not sure that an Aero Club, which apparently exists for one purpose only, would be a less efficient body than a Borough Council, which has many irons in the fire.[1822]

The Controller of Civil Aviation was asked for his opinion by the head of the Public Works Department.

> As I understand the Te Kuiti Aero Club Incorporated is not a recognised aviation authority, I should be glad to hear whether your Department considers that any action should be taken on behalf of the Crown to assist the Te Kuiti Borough Council to become the controlling authority of the Aerodrome in preference to the Te Kuiti Aero Club incorporated, or whether the Crown should allow the Borough Council and the Aero Club to settle the matter without interference.[1823]

The Controller's response was to ask for a report from the Public Works Department's Aerodrome Engineer. This was because the Borough Council had been in direct contact with him, and had asked what the status of the aerodrome would be if its development was completed[1824].

In mid December 1935 a public meeting was held at Te Kuiti to discuss the future ownership and control of the aerodrome. Despite an offer from the Aero Club to sell the aerodrome to the Borough Council if the Council wanted to buy it, Council representatives wanted more information, and the meeting therefore ended without

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[1821] District Engineer Taumarunui to Under Secretary for Public Works, 10 October 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1099.
[1822] Land Purchase Officer Brosnan to Mr McKenzie, 11 November 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1100.
[1823] Engineer in Chief to Controller of Civil Aviation, 14 November 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1101.
[1824] Controller of Civil Aviation to Engineer in Chief, 25 November 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1102.

any resolution of the disagreement[1825]. Three days after the meeting, the Aerodrome Engineer arrived in town to carry out his inspection, and succeeded in breaking one aspect of the impasse.

> While in Te Kuiti a conference was held with Mr Morton [President of the Aero Club] and the trustees of the Racing Club over the question of tenure, and I advised Mr Morton that, until the question of tenure was settled definitely, I personally would not recommend any expenditure of any further unemployed labour or other funds on the ground.
>
> As a result of the conference, the parties in dispute settled their differences, and I understand from Mr Morton that the purchase of the ground by the Aero Club has now been satisfactorily completed.[1826]

The President of the Aero Club confirmed this[1827].

The Aerodrome Engineer also commented on the place of the Te Kuiti aerodrome in the national aviation picture.

> While Te Kuiti will be used largely as an aerodrome to serve local requirements, it will also be used as a very valuable emergency ground for the Main Trunk Air Route, and, in fact, is the last possible emergency ground before entering the very broken country in the central region.[1828]

15.3 The Crown Commits to Acquiring the Maori-Owned Land

Throughout 1935 the Crown had an incomplete understanding about the land titles situation at the aerodrome, believing the site to be owned by the Racing Club. It was only in January 1936 that full information was obtained, when the titles themselves were viewed at the Bank of New Zealand in Wellington (to whom they had been sent as the bank held a mortgage over the site). This inspection revealed that the site was in three titles, two of them owned freehold by the Aero Club, and one held under leasehold[1829]. Running from north to south these were:

[1825] *King Country Chronicle*, 14 December 1935, attached to District Engineer Taumarunui to Under Secretary for Public Works, 16 December 1935, and *King Country Chronicle*, 17 December 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1103-1105 and 1106.
[1826] Aerodrome Engineer to Engineer in Chief, 10 January 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1109-1110.
[1827] President Te Kuiti Aero Club to Under Secretary for Public Works, 20 December 1935. Works and Development Head Office file 23/381/43. Supporting Papers #1107-1108.
[1828] Aerodrome Engineer to Engineer in Chief, 10 January 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1109-1110.
[1829] File note by Search Clerk, 25 January 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1111-1119.

• Te Kumi 7C	35 acres 3 roods 04 perches	Freehold[1830]
• Lots 1 & 2 DP 8140, being part of Te Kumi 8B1	36 acres 0 roods 23 perches	Freehold[1831]
• Lot 2 DP 7392, being part of Te Kumi 9	17 acres 0 roods 06 perches	Maori Freehold subject to Lease[1832]

The lease was for 42 years from 1 December 1908, and had been entered into with the Racing Club's two trustees by its two Maori owners, Whitinui Hohepa and Kiore Pakoro. As a result of viewing the lease document, the Crown was immediately aware of certain problems with the lease arrangement, and wrote to the new lessees, the Aero Club, about them.

> 17 acres and 6 perches is held under lease from natives, which expires in 1950. There is no right of renewal under the lease, nor any compensation payable to the lessee for improvements to the land.
>
> It appears, therefore, that, at the expiration of the lease, the Club will be faced with the necessity of acquiring the land, possibly under the provisions of the Public Works Amendment Act 1935, in which case it will probably have to pay to the natives the amount of the land with the improvements carried out by the Department.
>
> The lease also contains certain clauses (Nos 10 and 11) giving the lessors the right to graze stock on the land, and providing that the boundary fences shall not be removed. These provisions are inconsistent with the use of the land as an aerodrome, and it appears that modification of these clauses will be required. It appears, therefore, that your Club should endeavour to enter into an agreement with the native owners agreeing that, in the event of the Club acquiring the freehold of the land for the purposes of an aerodrome at any time in the future, no compensation shall be payable to the natives for improvements carried out by the Club or by the Crown, and also cancelling Clauses 10 and 11 of the lease. This agreement would require confirmation by the Native Land Court.
>
> If the Club is unable to obtain such an agreement with the natives, and have it confirmed by the Court, it appears that the only alternative is to take the land

[1830] South Auckland Land Registry Certificate of Title SA214/52. Not included in Supporting Papers.
[1831] South Auckland Land Registry Certificate of Title SA211/104. Not included in Supporting Papers.
[1832] South Auckland Land Registry Provisional Register SAPR35/10. Not included in Supporting Papers.
South Auckland Land Registry Lease 7265. Copy attached to File note by Search Clerk, 25 January 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1111-1119 at 1113-1117.

> now for the purposes of an aerodrome, so that the Club will not have to pay the natives for the improvements which are being carried out.[1833]

The President of the Aero Club responded:

> The question of the 17 acres of native lease is certainly not as we should desire, and I have given this matter considerable thought. Undoubtedly the sooner the land is freeholded the better, and the natives are quite willing, I understand, to sell.
>
> At the present time, however, it is a question of finance, and my Club has not the money available to acquire the freehold.
>
> The question is possibly not as serious as it would seem, as the land can always be acquired under the Public Works Amendment Act 1935, as outlined by you. However, if it is possible to acquire the freehold within the next year or two, you may rest assured that the Club will immediately do so.[1834]

The Club's President also queried whether the 17 acres of Maori-owned land, which was at the southern end of the north-south runway, was essential to the operation of the aerodrome, but the Aerodrome Engineer was in no doubt that it was "essential that some arrangement be made with owners of 17 acres to avoid subsequent payment having to be made on improvements now being made by Department"[1835].

The Land Purchase Officer for the Public Works Department visited Te Kuiti in early March 1936, and discussed the situation with the President of the Aero Club. Describing the nature of the lease as "very unsatisfactory" in the circumstances of establishing and operating an aerodrome, he recommended intervention by the Crown.

> As this aerodrome will be an emergency landing ground, the Crown has an interest therein. The Aero Club's financial resources are so limited that taking the reversion of the lease under the Public works Act is quite beyond it….
>
> No grassing should be done until after the land is acquired, otherwise it would have to be twice paid for.
>
> The natives will receive the benefits of improvements already made in the preparation of the ground for an aerodrome, but that appears to be unavoidable.

[1833] Assistant Under Secretary for Public Works to President Te Kuiti Aero Club, 27 January 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1120.
[1834] President Te Kuiti Aero Club to Assistant Under Secretary for Public Works, 28 January 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1121.
[1835] Aerodrome Engineer to Land Purchase Officer Brosnan, 25 February 1936, on President Te Kuiti Aero Club to Assistant Under Secretary for Public Works, 28 January 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1121.

> It is not anticipated that compensation will exceed £200.
>
> This appears to be a case in which the reversion of the lease and the lessors' interests should be immediately taken by the Crown under the compulsory provisions of the Public Works Act, and grassing held over in the meantime.[1836]

The President of the Aero Club confirmed that the Club was unable to find the money to acquire the Maori-owned interest in the 17 acres itself.

> It does seem to me to be very bad business to keep on spending money on improvements on this leasehold property.
>
> The law in New Zealand with regard to native land is not very kind under such circumstances. If the land is freeholded before any improvements are made by the lessee, the Native Land Board will sanction a sale at the Government valuation, which in 1929 stood at £8-7-0 per acre.
>
> When improvements are effected, a fresh valuation is, under the Native Land Act, required, and the lessee is virtually compelled to pay twice over for his improvements. This has happened again and again.
>
> I merely write to point out the unfortunate position in which the Aero Club is placed. Had we sufficient funds we would, as a matter of policy, set about purchasing the land now, before the grass seed is sown. I think the natives would probably sell for the Government valuation without very much trouble.
>
> Unfortunately, however, the recent purchase from the Racing Club has taken all our funds, and we find ourselves quite unable to meet the purchase money required to freehold the 17 acres.
>
> We are at the present, however, paying to the natives £10 per year rent[1837], and we would be only too glad to pay the interest on the purchase if the Public Works Department could find the necessary capital expenditure.[1838]

The option of the Crown compulsorily taking the Maori interest in the 17 acres was put up to the Minister of Public Works.

> The position briefly is that the Aero Club undertook to obtain a title of this land, and the Department proceeded with its construction. The local Committee now find that they have not sufficient funds to acquire a Native

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[1836] Land Purchase Officer Brosnan to Under Secretary for Public Works, 10 March 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1122-1125.
[1837] The amount of rent due was 5% of unimproved valuation as set in 1929, which amounted to £12-10-0d per annum, but this had been reduced by 20% under legislation passed during the Depression.
[1838] President Te Kuiti Aero Club to Land Purchase Officer Brosnan, 6 March 1936, attached to Land Purchase Officer Brosnan to Under Secretary for Public Works, 10 March 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1122-1125.

> lease of 17 acres, and it is suggested that this land be taken under the Public Works Act, and compensation paid by the Department, which is estimated at £200….
>
> The only way in which the matter can satisfactorily be adjusted now is by the acquisition of the area by the Crown, and a lease arranged between the Crown and the Aero Club.
>
> If you approve, the necessary notice of intention to take the land will be issued.[1839]

The Minister gave his approval. When relaying this information to the Aero Club the Assistant Under Secretary for Public Works referred to the "exceptional circumstances" of the case, and explaining that

> The Government is prepared to waive its usual policy and to acquire the land from the natives, provided the Te Kuiti Aero Club Incorporated agrees to rent the land from the Crown at a rental equivalent to interest at 5% on the cost of acquisition of the land.[1840]

This was accepted by the Club[1841].

Throughout the numerous steps taken prior to a decision being made to take the land, there had been no consultation with the Maori owner. Indeed, all correspondence continually assumed that there was more than one owner, and no one seems to have been aware that the land to be taken had a single owner[1842]. Although negotiation with the owner had been identified as one option, it was not pursued, because the Aero Club had no funds to offer the owner in exchange for him agreeing to give up his interest in the land, or agreeing to alter the terms of the lease. The Public Works Department was not itself prepared to negotiate acquisition on a 'willing buyer – willing seller' basis because, having the legislative power at its disposal, it viewed the

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[1839] Assistant Under Secretary for Public Works to Minister of Public Works, 13 March 1936, approved by Minister 24 March 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1126.

[1840] Assistant Under Secretary for Public Works to President Te Kuiti Aero Club, 17 April 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1127.

[1841] President Te Kuiti Aero Club to Assistant Under Secretary for Public Works, 1 May 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1130-1131.

[1842] The Public Works Department only became aware of this in November 1936, after the land had been taken, when the Registrar of the Native Land Court provided details of the Te Kumi 9 title, showing that the block had been partitioned and the taken land had become Te Kumi 9A owned solely by Kiore Pakoro (also known as Kiore Tuariri Hohepa). By that stage there had been a consolidation of titles and the aerodrome leasehold block was known as Te Kumi A16. Registrar Native Land Court Auckland to Under Secretary Native Department, 22 October 1936, attached to Under Secretary Native Department to Under Secretary for Public Works, 17 November 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1143-1147.

compulsory provisions of the Public Works Act as an option of first resort rather than of last resort.

15.4 Taking the Land

A plan showing the land to be taken was prepared[1843], and a Notice of Intention to Take the 17 acres of Lot 2 DP 7392 was issued at the end of May 1936[1844].

There was no statutory requirement that the Crown serve a copy of the Notice on the owners "as the land is native-owned and is not registered under the Land Transfer Act"[1845]. Perhaps unsurprisingly, even though the Notice was displayed at the Te Kuiti Post Office for forty days, and was published in a local newspaper, no objections were received to the taking in the time prescribed in the legislation. The Aerodrome Engineer stated that no burial grounds, gardens or buildings were located on the block[1846], which was a prerequisite for a taking. One day after this formality (as the Crown saw it) was completed, the Minister was told that "the matter is in order for signature"[1847], and the land was taken at the end of August 1936[1848].

While the sole owner, Kiore Tuariri, may not have seen the Notice of Intention, he did see a notice in the local paper announcing that his land had been taken. This notice was published on 12 September 1936, and four days later Tuariri, signing himself Kiore Tuariri Hohepa, and declaring himself to be member of the Maori Labour Representative Committee for Maniapoto, wrote to the Native Minister (who was also the Prime Minister).

> The Maori lives on in ignorance, but on turning round finds the European moving a great distance ahead. As you are the Native Minister, the parent of the widow, the poor and the orphan, I pray to you, O father, to assist me, as I do not want money for my land, but want payment in land.

[1843] PWD Plan 92222, attached to Chief Surveyor Auckland to Under Secretary for Public Works, 30 April 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1128-1129.
[1844] *New Zealand Gazette* 1936 page 975. Supporting Papers #4042.
[1845] Assistant Under Secretary for Public Works to District Engineer Taumarunui, 25 May 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1132.
[1846] File note by Aerodrome Engineer, 25 August 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1133.
[1847] Assistant Under Secretary for Public Works to Minister of Public Works, 24 August 1936, sent to the Minister 26 August 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1134.
[1848] *New Zealand Gazette* 1936 page 1680. Supporting Papers #4044.
South Auckland plan SO 28494. Supporting Papers #2410.

> There is a block of land near my home – Te Kumi No 8B1 lot 3 and No 11A No B3, containing 14 acres. The owner of this land is G White, a European and single. Although this area is smaller, the main thing is to settle the matter. This land is available for purchase at all times.[1849]

From this letter, it is not clear if Tuariri was against the taking of his land or not. Because the opportunity to object had already passed, he may have pragmatically put any possibility of objection to one side, and instead concentrated on trying to get compensation that suited his needs.

Tuariri also enlisted the help of a local interpreter, who wrote to the Public Works Department at the end of September 1936, asking "by what means the section is to be acquired by your Department".

> He is not opposed to this, but will of course be entitled to full compensation. It was expected that an application to determine the amount payable would be gazetted for hearing at the sitting of the Native Land Court….
>
> The Gazette for [the next] sitting has now come to hand, but there is no application relative to this.
>
> The owner is highly concerned about the whole matter, as it can be appreciated that he would like to be heard or represented when the fixing of compensation in gone into.[1850]

Again, the lack of objection to the taking in this letter may have been because it was seen as a fait accompli. The Assistant Under Secretary for Public Works in reply provided no reasons why the land had to be taken, but was obliged to admit that no application had been sent to the Native Land Court asking it to determine compensation[1851]. The application was made in mid October 1936.

Meanwhile the Registrar of the Native Land Court had been asked to report on the background to Tuariri's letter to the Native Minister. He advised:

[1849] Kiore Tuariri Hohepa, Te Kuiti, to Native Minister, 16 September 1936, attached to Under Secretary Native Department to Under Secretary for Public Works, 17 November 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1143-1147 at 1144.
[1850] TM Hetet, Licensed Interpreter, Te Kuiti, to Under Secretary for Public Works, 29 September 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1135-1136.
[1851] Assistant Under Secretary for Public Works to TM Hetet, Licensed Interpreter, Te Kuiti, 5 October 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1137.

(1) The area of 17 acres 0 roods 06 perches is part of Te Kumi 9A block, which is owned solely by the abovenamed [Kiore Tuariri Hohepa] under the name of Kiore Pakoro….
(2) The above area of 17 acres 0 roods 06 perches is subject to Lease 7265 to (now) Te Kuiti Aero Club, for 42 years from 1/12/1908 at 15/- per acre per annum [for] first 21 years, 5% U.V. for remainder of term….
(3) Intention to take land under the Public Works Act 1928 for the purposes of an aerodrome is published in the New Zealand Gazette, 21/5/1935, page 975.
(4) The area referred to by Kiore in the third paragraph of his letter was formerly known as Te Kumi 8A – 13 acres 0 roods 21 perches. This block is one of the farms administered by the Small Farms Board but at present without an occupier. This area … adjoins the area (Te Kumi 7A) owned by Kiore's children on the north…. Kiore also owns land to the west of both Te Kumi 8A and 7A….[1852]

The Under Secretary for the Native Department forwarded the letters from Tuariri and the Registrar to the Public Works Department, and asked for that Department's comments[1853]. He was told in reply:

> The Government is expending a large sum of money in developing the [Te Kuiti] Aerodrome, and it is therefore necessary that the land be held on a permanent tenure. Also the lease from the natives contained provisions inconsistent with the use of the land as an aerodrome. Under the circumstances, it was decided to take the land under the Public Works Act.[1854]

On the matter of compensation being in the form of alternative land, the Under Secretary was told that this would have to run its normal course of being assessed by the Native Land Court. A monetary compensation figure would be decided upon by the Court, and it was open to the Court for it to order that the money be paid to the District Maori Land Board, and for the Board to use the money to purchase other land for Tuariri[1855]. Effectively the Crown was declining to accept any responsibility for providing other land as a substitute for the land that was taken.

[1852] Registrar Native Land Court Auckland to Under Secretary Native Department, 22 October 1936, attached to Under Secretary Native Department to Under Secretary for Public Works, 17 November 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1143-1147.
[1853] Under Secretary Native Department to Under Secretary for Public Works, 17 November 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1143-1147.
[1854] Under Secretary for Public Works to Under Secretary Native Department, 19 November 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1148-1149.
[1855] Under Secretary for Public Works to Under Secretary Native Department, 19 November 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1148-1149.

15.5 Assessment of Compensation by the Native Land Court

The compensation hearing was not held until the end of April 1937[1856]. The Land Purchase Officer represented the Crown, while Kiore Tuariri (Pakoro) was also present, although not represented by counsel. At the outset, Tuariri repeated his request for "an exchange for some land nearer his house and belonging to one White (which however is well improved and White is asking £30 per acre)". The Land Purchase Officer is recorded as saying that "we cannot make an exchange in respect of land which we do not own", and "I am not prepared to consent to depart from the usual procedure". The Court was then obliged to explain to Tuariri that "it has not power to adopt this suggestion, but he can make it to the Minister again later on".

The hearing then moved on to address the value of the taken land. The Crown was anxious to explain how the land was in poor condition prior to work on the aerodrome commencing, and how it had spent a considerable amount of money (£900, it claimed) on draining and grassing since the effective date of entry of December 1934. These aspects had been highlighted prior to the hearing when the Valuation Department had been asked to prepare a valuation of the taken land as at December 1934[1857]. When the District Valuer for the Valuation Department gave his evidence on value, in accordance with the instructions he had received from the Public Works Department, there was no counter-evidence put forward by Tuariri. Instead, Tuariri "repeats his previous suggestion", and "does not claim for the improvements mentioned by witness"[1858].

At the end of the hearing the Court granted an adjournment to give Tuariri an opportunity to consult a valuer, but later that day

> PH Jones on behalf of Kiore Pakoro refers to latter's proposal of exchange. Correspondence between Departments read by Mr Brosnan [to the effect that] purchase money may be used to buy other land of equal value.[1859]

After further evidence from the Crown about a suitable apportionment of the compensation award between the Maori lessor and the lessee (the Aero Club), the Court reserved its decision.

[1856] Maori Land Court minute book 71 OT 15-17. Supporting Papers #3702-3704.
[1857] Under Secretary for Public Works to Valuer General, 5 November 1936. Works and Development Head office file 23/381/43. Supporting Papers #1141-1142.
[1858] Maori Land Court minute book 71 OT 16. Supporting Papers #3703.
[1859] Maori Land Court minute book 71 OT 19. Supporting Papers #3705.

The Court gave its decision the following week. It did not refer to the exchange possibility, instead confining itself to the monetary value of the taken land. Total compensation was fixed at £265, with the Maori lessor (Tuariri) awarded £170, and the lessee (the Aero Club) awarded £95, this latter amount including the value of all the improvements on the block[1860].

In accordance with the Court's direction, the £170 due to Tuariri was paid to the Waikato-Maniapoto District Maori Land in September 1937[1861]. There was no allowance made for the delay between the effective date of entry (December 1934) and September 1937, presumably because the Native Land Court had not ordered that the award should be subject to interest during the non-payment period. Meanwhile the £95 due to the Aero Club was paid to the Bank of New Zealand as mortgagee[1862].

There is no record of any further complaint by Tuariri.

15.6 Felling of Trees

Besides the acquisition of the aerodrome site itself, the Crown also concerned itself with the existence of "obstructions" on surrounding land that could affect taking off and landing by planes. Power and telephone lines alongside roads at the southern end of the site were some of the "obstructions". Another "obstruction" was trees beyond the northern end of the site.

In October 1936 Tahiopipiri Moerua, owner of Te Kumi 7D2D2E, wrote to the Minister of Public Works.

> I object strongly to the removal of trees from [my land], which I consider valuable and an asset on the property.

[1860] Maori Land Court minute book 71 OT 34. Supporting Papers #3706.
[1861] Voucher dated 22 July 1937 (unapproved), Voucher dated 5 August 1937 (approved 13 September 1937), and Under Secretary for Public Works to Registrar Native Land Court Auckland, 30 September 1937. Works and Development Head Office file 23/381/43. Supporting Papers #1150, 1152 and 1153.
[1862] Voucher dated 22 July 1937 (unapproved), and Voucher dated 5 August 1937 (approved 13 September 1937). Works and Development Head Office file 23/381/43. Supporting Papers #1150 and 1151.

However I learned per the attached [letter] that the Te Kuiti Aero Club has resorted to Section 5 of the Public Works Amendment Act 1935 to have my valuable trees removed.

I appeal to you, Sir, as Minister of this destructive Act (as far as this matter is concerned) to view it in the interest of the owners. I pray to you, Sir, to order the Aero Club to refrain from removing or destroying my property.

Further, Sir, I have received unanimous support from the local branch of the Maori Labour Committee. The Committee considers the actions taken by the Aero Club rather harsh and uncalled for.

> "The Branch strongly supports T Moerua in his appeal for what is really his own".

In conclusion, sir, I sincerely trust that you will give my appeal serious consideration, and urgently.[1863]

The Minister replied:

The local Aero Club has the power under Section 5 of the Public Works Amendment Act 1935 to require the removal of any tree, building, pole, etc, which interferes in any way with the use by aircraft of any aerodrome. In order that this power might be regulated to prevent any arbitrary use thereof, the section provides that within twenty-eight days after the service of a notice on the owner or occupier requiring such removal, such owner or occupier may complain to a Magistrate with a view to having the notice set aside.

It would appear from the notice which you forwarded to me, and which I return herewith, that you have allowed the twenty-eight days to elapse without taking the necessary action to question the validity of the notice, and I would suggest, therefore, that you interview the Aero Club with a view to having the work carried out in such a way as to cause as little damage to your property as possible.

I assume you are aware that the local body is liable to pay compensation for any damage, expense or loss occasioned by you through the exercise of its powers in this connection, and that if the compensation is not agreed upon it shall be ascertained in accordance with the provisions of the Public Works Act.

The matter is, however, one between yourself and the Aero Club, and I have no power to order the Aero Club to refrain from interfering with your property, as you request.[1864]

[1863] T Moerua, Hangatiki, to Minister of Public Works, undated (received 22 October 1936). Works and Development Head Office file 23/381/43. Supporting Papers #1138-1139.
[1864] Minister of Public Works to Tahiopipiri Moerua, Hangatiki, 5 November 1936. Works and Development Head Office file 23/381/43. Supporting Papers #1140.

This, however, was not the end of Moerua's protests. In December 1936 he wrote to the Native Minister that he had been unable to obtain compensation from the Aero Club. The Registrar of the Native Land Court was instructed to write to the Aero Club asking when an application would be made to the Court for the assessment of compensation, but the Aero Club denied that any valid claim for compensation existed, telling the Registrar:

> Our Club is unable to regard the natives' claim seriously. All that was cut was a few score of quite worthless kahikatea striplings. In no case were the trees more than 6 inches in diameter, although some of them were 40 feet high.
>
> They had been a menace to the safety of aircraft for some years, and various efforts had been made to sell the young trees for mining props to firms in the Waikato. After inspection, however, each firm had turned down the trees as not being suitable.
>
> Moerua has been told in no uncertain language that his claim is a ludicrous one, and that the whole of the land on which the trees were growing could have been bought under the Public Works Act for about £200 odd. The trees, as above explained, were of no marketable value, and my Club can recognise no claim whatever, therefore.[1865]

In the absence of any application to it, the Court was legally powerless to get involved.

The Native Department raised the matter with the Public Works Department.

> It seems equitable, however, that even if only a few score trees were cut, the owner should be entitled to some measure of compensation. In view of the fact that the Aero Club apparently does not intend to file an application for assessment of compensation, I should be pleased if you would advise whether your Department can assist in having the matter brought before the Native Land Court for the purpose of determining what compensation, if any, ought to be paid to the Native owner of the land affected.[1866]

However, the Public Works Department queried whether the Native Land Court would have jurisdiction.

> It does not appear to me that the Native Land Court would have jurisdiction to hear a claim for compensation for injurious affection, as no land has been taken (vide Section 104 of the Public Works Act), but even if it had, I do not see how this Department could apply to the Court, as it was the Club and not

[1865] President Te Kuiti Aero Club to Registrar Native Land Court Auckland, 6 September 1937, attached to Under Secretary Native Department to Under Secretary for Public Works, 24 January 1938. Works and Development Head Office file 23/381/43. Supporting Papers #1154-1155.
[1866] Under Secretary Native Department to Under Secretary for Public Works, 24 January 1938. Works and Development Head Office file 23/381/43. Supporting Papers #1154-1155.

> the Department which served the notice upon Moerua in terms of section 5 of the Public Works Amendment Act 1935.
>
> If no satisfaction can be obtained from the Club, Moerua's remedy is to have a Compensation Court set up in terms of the Public Works Act 1928.[1867]

The Native Department disputed this legal interpretation.

> I think the Native Land Court is the appropriate tribunal to hear any claim for compensation, as Section 104(c) of the Public Works Act 1928 provides that that Court shall have all of the powers and authority of a Compensation Court under Part III….
>
> From the information before me, the present amount of the claim does appear to be extravagant and fanciful, but on the other hand there is every possibility that some compensation, however small, is payable. There is no doubt that part of the property has been removed and some damage has been done, and I am definitely of the opinion that it is not for the Aero Club to say whether or not such damage is assessable in terms of a money payment. This is purely the function and duty of the proper tribunal (to my mind the Native Land Court), and I think it is the duty of the Aero Club to take the necessary steps to have the matter decided by the Court.
>
> If the matter is allowed to stand as it is at present, the Native will develop a sense of injustice and grievance which may have unpleasant repercussions both against this Department, your Department and the Aero Club. These consequences are avoidable if the Court decides the matter, and, even if the Court orders that no compensation is payable, I am quite sure the Native will be satisfied to leave the matter there.
>
> As this Department has been unsuccessful with the Aero Club, I shall be glad if you will take the question up with the Club and strongly urge it to make the necessary application to the Court.[1868]

Because of its ongoing legal relationship with the Aero Club (referred to in the next section of this case study), the Public Works Department was in a strong position to take up the matter with the Aero Club and encourage the Club to resolve it. However, instead, it declined to get into an argument with the Native Department about legal interpretation of the provisions of the Public Works Act, and it washed its hands of the matter.

> I have given careful consideration to the matter, but cannot see any respect in which the Department can assist you. The matter appears to this Department

[1867] Under Secretary for Public Works to Under Secretary Native Department, 31 January 1938. Works and Development Head Office file 23/381/43. Supporting Papers #1156.
[1868] Under Secretary Native Department to Under Secretary for Public Works, 17 June 1938. Works and Development Head Office file 23/381/43. Supporting Papers #1157.

> as being one for the Native to take up with the Aero Club, and if he is unable to settle it amicably, then he should be guided by his legal advisers as to the form of proceedings which he should take.[1869]

As at August 1941 there had been no agreement reached between Moerua and the Aero Club. That month Moerua spoke to a Public Works Department land purchase officer, who made a file note:

> Yesterday I was approached by a Native, Tahi o Pipiri Moerua, who stated that he is the sole owner of Te Kumi 7D2D2E, and that about 36 acres of trees have been felled by the Aero Club, who refuse to make application to the NLC. His address is Ratana.[1870]

However, nothing further was done in response to this approach, apart from a further file note that recorded:

> See correspondence on file re this Native claim. Last one dated 2/8/38 to Native Department.[1871]

Two months later the aerodrome site became the sole responsibility of the Crown, as the title to the site passed from the Aero Club to the Crown (see next section of this chapter). Any resolution of the matter after the transfer would have required the Crown's involvement. However, there is no mention in the Crown's records of the failure to pay compensation to Moerua coming up again.

15.7 Taking by the Crown of the Remainder of the Aerodrome Site, 1941

Although not a part of Maori involvement with the aerodrome site, the nature of the relationship between the Crown and the Te Kuiti Aero Club between 1936 and 1941 is summarised in this section[1872].

The Aero Club was acknowledged as the operator of the aerodrome when it was constituted a Recognised Aviation Authority in July 1936[1873]. This meant that, once the Crown was the owner of the land it had taken under the Public Works Act in 1936,

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[1869] Under Secretary for Public Works to Under Secretary Native Department, 2 August 1938. Works and Development Head Office file 23/381/43. Supporting Papers #1158.
[1870] Land Purchase Officer Carter to Mr Wakelin, 21 August 1941, on Assistant Under Secretary for Public Works to HT Morton, Solicitor, Te Kuiti, 19 August 1941. Works and Development Head Office file 23/381/43. Supporting Papers #1159.
[1871] File note, undated, on Assistant Under Secretary for Public Works to HT Morton, Solicitor, Te Kuiti, 19 August 1941. Works and Development Head Office file 23/381/43. Supporting Papers #1159.
[1872] This section is based on a perusal of Works and Development Head Office file 23/381/43.
[1873] *New Zealand Gazette* 1936 page 1411. Supporting Papers #4043.

it entered into an arrangement to lease the 17 acres to the Aero Club. This lease, which recognised the use of the land as an aerodrome, was more suitable than the grazing-focused lease that the Club had previously had with Kiore Tuariri. While it might seem that the land ownership situation was little different to that existing before the taking, with the Aero Club owning some four-fifths of the aerodrome site, and leasing the remaining one-fifth, an agreement entered into by the Aero Club with the Crown gave the Crown some additional rights. This agreement provided that, if the aerodrome ceased to operate and the freehold titles to the site were sold, then the Aero Club would repay to the Crown two-thirds of the value of all expenditure by the Crown on the construction and development of the aerodrome. The agreement was lodged as a caveat on the two freehold titles.

By April 1940, with many of its members having joined the Armed Forces and left the district, the Club was having difficulty servicing the loan it had with the Bank of New Zealand. It asked the Public Works Department if the Crown would take over the ownership of the aerodrome site. Because of the amount of public money that had been spent on the aerodrome, the Crown was keen that it should remain open, although its primary interest was in the aerodrome as an emergency landing ground rather than as a local or district airfield for general use. When no local authority offered to take over the aerodrome, and when the President of the Aero Club[1874], who had personally guaranteed the loan by the bank, threatened to withdraw that guarantee and precipitate a distressed sale of the Club's freehold lands, Cabinet agreed to the Club's freehold lands being acquired under the Aviation Emergency Regulations 1939. The Land Purchase Officer for the Public Works Department was instructed to negotiate the purchase. He reached agreement with the Club in October 1941, on the basis that the acquisition would be achieved by a taking under the Public Works Act. The purchase price was £1750 for 71 acres 3 roods 27 perches. The land was taken for aerodrome purposes the same month[1875].

[1874] At this time the President of the Aero Club was also the Mayor of Te Kuiti.
[1875] *New Zealand Gazette* 1941 page 3269. Supporting Papers #4052.
South Auckland plan SO 31636. Supporting Papers #2416.

15.8 Aerodrome Declared to be Crown Land, and then Reserved

Crown ownership of a small local aerodrome such as that at Te Kuiti appears to have been an anomaly even when it was acquired in 1936 and 1941. It would have become progressively more so as time went on. In October 1958 the Crown decided that a change was necessary, and the Director of Civil Aviation wrote to Te Kuiti Borough Council suggesting that the local authority should take control of the aerodrome's operation.

> Since the war the Crown has developed the airfield and until 1953 maintained the airfield at an annual cost of approximately £250. Crown capital expenditure on the aerodrome has been almost £12,000.
>
> Since 1953 the maintenance of the aerodrome has been carried out by the Waitomo Aero Club, who have maintained the airfield in return for grazing rights. Although the Aero Club have attempted to look after the aerodrome, the results of floods and the general wet season last year, together with the possible lack of suitable engineering advice, has resulted in the Club spending a considerable amount of money in ineffective attempts to improve the aerodrome. The Club's financial position is not good, and they feel that they cannot carry on the present arrangement any longer.
>
> The Crown has little requirement for an aerodrome at Te Kuiti, and unless some local support is forthcoming for the aerodrome it may be necessary to consider closing it. Furthermore as you are no doubt aware, it is Government policy that the local authority should control the aerodrome serving its district, and in this respect I would like to know whether or not your Council would be prepared to accept the control of the Te Kuiti aerodrome.

The Crown's proposal was that the land and buildings would be vested in the Council, at no cost to the Council, all income would go towards the aerodrome's maintenance, and any excess of costs of maintenance over income would be shared equally between the Crown and the Council[1876].

The Borough Council convened a public meeting in December 1958, which was unanimous in agreeing that the Council should accept the offer to take over control of the aerodrome[1877]. There was further negotiation between the Air Department and the Borough Council, before agreement was reached for the Council to take over control and administration of the aerodrome in May 1960. The agreement provided for the

[1876] Director of Civil Aviation to Town Clerk Te Kuiti Borough Council, 20 October 1958. Lands and Survey Head Office file 6/11/133. Supporting Papers #773-774.
[1877] *King Country Chronicle*, 12 December 1958, attached to District Commissioner of Works Hamilton to Commissioner of Works, 6 January 1959. Works and Development Head Office file 23/381/43. Supporting Papers #1160-1162.

Crown to make the aerodrome site available free of charge, and for it to be vested in trust in the Borough Council, subject to existing leases, "for such time as it is used for an aerodrome and ancillary aviation purposes". If it ceased to be used for these purposes, then the land would revert to the Crown[1878].

The legal mechanisms to achieve this outcome were twofold. First, the land would be declared to be Crown Land, which would have the effect of the Public Works Act provisions ceasing to apply, and the administrative responsibility for the land transferring from the Air Department to the Department of Lands and Survey. Second, the land would be reserved for aerodrome purposes under the Reserves and Domains Act 1953, and vested in trust in Te Kuiti Borough Council.

The Minister of Works approved the land being declared to be Crown Land in October 1960[1879], and the notice was issued that month[1880]. The Minister of Lands then approved the reservation and vesting under the Reserves and Domains Act 1953 in May 1961[1881].

With changes in legislation and local government reorganisation, the aerodrome site is today a reserve for aerodrome purposes under the Reserves Act 1977, vested in trust in Waitomo District Council. It has not been classified under the Reserves Act. If it was, the most likely classification would be "local purpose (aerodrome)".

Because there were no offer-back requirements operating in 1960, no consideration was given at that time to whether the Crown had any consultation or land return obligations to the Maori owner whose freehold interest in the former Te Kumi 9 land had been compulsorily taken in 1936. Given that the land is still in use today for the

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[1878] Agreement dated 1 May 1960, attached to Commissioner of Crown Lands Hamilton to Director General of Lands, 9 June 1960. Lands and Survey Head Office file 6/11/133. Supporting Papers #775-780.
The agreement is registered as Auckland Crown Purchase Deed 5462. Not included in Supporting Papers.
[1879] Commissioner of Works to Minister of Works, 26 October 1960, attached to District Commissioner of Works Hamilton to Commissioner of Works, 3 October 1960. Works and Development Head Office file 23/381/43. Supporting Papers #1163-1166.
[1880] *New Zealand Gazette* 1960 page 1776. Supporting Papers #4086.
[1881] Director General of Lands to Minister of Lands, 8 May 1961. Lands and Survey Head Office file 6/11/133. Supporting Papers #781.
New Zealand Gazette 1961 page 712. Supporting Papers #4089.

purpose for which it was originally taken, it is perhaps arguable whether any such obligation dating from 1960 represents outstanding and unfinished business of the Crown. Less need for argument would apply to the notion that, if the airfield closes in the future, then an offer-back of the land to its former owner would need to be made, even though it has ceased to be administered under the compulsory taking legislation.

15.9 Concluding Remarks

It was perfectly feasible for the aerodrome to be established and become operational in the mid 1930s on the current land titles then existing. The Aero Club owned the freehold of about four-fifths of the site, and leased the remaining one-fifth from a Maori owner. Only when the Crown foresaw potential problems with the lease, because it had been drawn up with farming use rather than aerodrome use in mind, was intervention considered necessary.

Having identified a problem, it was also the Crown that suggested the solution, the compulsory taking of the land under the Public Works Act. This was because the Public Works Department was responsible for the development of airfields, and was also responsible for administration of the Public Works Act. The ready availability of the legislation to officials encouraged its use. Renegotiating the lease was not considered. Encouraging a local solution involving local government was considered, but quickly discarded in favour of central government intervention. Use of the Public Works Act instead became treated as the sole option.

The wishes of the Maori landowner were ignored. He identified what he saw as a solution that benefited both parties, the Aero Club and himself, but the Public Works Department was totally averse to his proposal that he be granted other land closer to his home in exchange. The legislation, in providing for the payment of monetary compensation, gave the Crown a convenient mechanism to speedily complete the taking, and the Crown considered that was preferable to a more complicated purchase of alternative land, followed by its transfer to the Maori owner in exchange for the taken land.

The land the Maori owner wanted in exchange was, on the face of it, of greater value than the value of the lessor interest in the taken land. That, however, was before any negotiations took place over transfer values, and a different picture may have emerged if those negotiations had occurred. Because the land identified by the Maori owner was closer to his home, the extra convenience may have made him willing to bear the cost of any difference in finally negotiated values. Such possibilities were never explored, because the Crown's intransigence precluded them from being considered.

16 RAGLAN AERODROME AND GOLF COURSE

16.1 Introduction

This case study has been included because of the severe impact it had on Maori, both at the time of taking and in relation to efforts to get it returned. The Raglan golf course was specifically referred to in the project brief as a case study.

The study examines the taking of land at Raglan for an aerodrome in 1941. Although stated in the Proclamation to be "taken for defence purposes", at a time when New Zealand was officially at war, the aerodrome had its genesis in peacetime in 1936, for civil aviation use, so that whether the land had to be taken because of national security concerns is questionable.

The taking caused considerable disruption to living patterns for the Maori community resident on the land. Buildings (including a meeting house) had to be removed to make way for the aerodrome, and the obligations on the Crown to rectify the disruption that it had caused were a source of continuing friction between the Crown and the owners. In its haste to take the land and commence construction of the aerodrome's runways, the Crown made a series of promises about how it would remedy the damage it was causing to the local Maori community. These promises, concerned with relocation of a meeting house and access road, provision of new housing, protection of burial places, and continued use of cultivated areas, were poorly recorded at the time, and were incompletely fulfilled in later years. Most of the Crown's obligations were ultimately translated into monetary payments, rather than being in the form of more practical assistance that would have ensured the continued vibrancy of the community.

The boundaries of the taken land were adjusted in later years. Further land was taken in 1955, while taken land ceased to be required for aerodrome and was declared to be Crown Land, or was taken for roads, in 1957, 1959 and 1963.

The need for so much land for an aerodrome diminished in the 1950s, and the rationale for an aerodrome at Raglan also largely disappeared. Instead of being

offered back, the land was transferred to the local County Council, in the form of a vesting as an aerodrome reserve, in 1969. More than half the taken land was then converted into a golf course.

This case study is as much concerned with the struggle to have the taken land returned, as it is with the initial taking. That struggle started in the mid 1970s. Although the Crown made a decision in principle to offer the golf course portion back in 1976, this offer was so hedged with conditions that it took a concerted campaign extending over the next eleven years, before the land was finally returned. The remainder of the taken land, set out as an airstrip, still remains Crown-owned land, vested as a reserve in the local authority.

The return of the Raglan golf course was a trailblazer. That, in part, explains why it took so long, as the Crown grappled with new concepts, settings of precedent, and the development of a coherent policy. 'Doing the right thing' was accompanied by a great deal of nervousness on the Crown's part, and some missteps.

Raglan also provided the motivation for an expansion of the Waitangi Tribunal's powers to consider historic grievances. Two weeks after the occupation of the golf course in February 1978 (discussed later in this case study), Matiu Rata, Member of Parliament for Northern Maori, called for the establishment of an impartial tribunal to hear disputes over Maori land.

> "The recent disputes over Bastion Point and the land at Raglan are only two examples of the problem that runs right through New Zealand – from the far north, Orakei, Thames, Taranaki, through to Southland.
>
> "These long standing grievances can no longer be ignored. The Government must realise it can no longer continue to act as both interested party, and judge and jury."
>
> Mr Rata said many of these cases represented a genuine "debt of honour" to the Maori people, and must be handled in the best spirit of natural justice, and in a way which would restore faith in the judicial system.
>
> The only possible answer is an impartial independent tribunal, able to hear submissions from the Maori people, from the Crown, or from any other interested party, and recommended appropriate settlements.

> "I am deeply concerned that unless this is done, the relationship of New Zealanders could be needlessly aggravated over the coming years.
>
> "We are all victims of our own history. The challenge is for present generations to rectify past mistakes and to build for the future on a relationship of mutual respect", Mr Rata said.[1882]

Rata was in opposition at this time, and had to wait until after the Labour Party became the Government in 1984 before his ideas could be implemented in the Treaty of Waitangi Amendment Act 1985.

It is not usual to highlight individuals in examining the interaction between Maori and the Crown. However, the return of the Raglan golf course is inextricably linked with the leader of the struggle to get the land returned, Tuaiwa Eva Rickard. A theme running through this study about the return of the land is the growing political awareness she experienced.

16.2 A Note on Sources

With respect to the taking in 1941, records were created in the Public Works Department Head Office, the Public Works Department Auckland District Office, and the Public Works Department Hamilton Residency Office. The Head Office and the Hamilton Residency Office records still exist, and are relied on for this case study[1883]. The Auckland District Office records have not been located. The Public Works Department records are supplemented by Air Department, Native Department and Maori Land Court records.

Records about the return of the land, during the 1976-1990 period, were primarily created in the Department of Lands and Survey Head Office, and the Department of Lands and Survey Hamilton District Office. Records from Head Office were not located during the research for this case study, and the primary source relied on has been the District Office records. This covers the interaction between Maori and officials at the local level quite intensively, and Head Office was reasonably comprehensive in sending to the District Office copies of its briefings papers to the

[1882] *Waikato Times*, 25 February 1978. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2685.

[1883] For practical and logistical reasons associated with the carrying out of the research, the Hamilton records are the primary source for this case study's narrative on the taking of the land, with the Head Office records relied on to augment the Hamilton records and fill any gaps.

Minister of Lands, so that a well-balanced understanding of events can be gained from the District Office records.

16.3 Taking the Aerodrome for Defence Purposes

16.3.1 Choosing the Site for the Aerodrome, 1936-1940

The need for an aerodrome in the Raglan district was first identified in 1936, although the sand spit opposite Raglan township was not then the first choice as the site for it. Two central government officials visited Raglan by seaplane in February 1936, and spoke to the County Council's Engineer[1884]. They were looking for an emergency landing ground that could be laid out along the air route between Auckland and New Plymouth. In the local newspaper, the visit was characterised as an effort by central government to encourage the local authority to take an active interest in the development of civil aviation. Meetings were held with Raglan Town Board and the Raglan County Council Engineer, at which the local representatives were asked to consider establishing an aerodrome in the district. After the meeting "the party motored out to inspect the area lying between Te Uku, Waitetuna and Te Mata", and "several likely places were given a cursory inspection by the party"[1885].

In a report on the visit written by the head of the Public Works Department to the Controller of Civil Aviation, it was stated that three possible sites had been identified[1886]. Later the Council Engineer identified a further two possible sites[1887]. European farmers owned all five sites. A request was made for the sites to be examined further to see if they could satisfy the main site-suitability parameters at that time. These were:

- a site of about 40 acres able to allow a layout of two runways 400 metres long at an angle between one another of at least 60 degrees,
- minimal need for levelling of the site, and

[1884] Acting Engineer in Chief to Controller of Civil Aviation, 27 February 1936. Works and Development Hamilton file 44/4. Supporting Papers #3313.
[1885] *Raglan Chronicle*, 20 February 1936. Copy on Works and Development Head Office file 23/381/154. Supporting Papers #1167.
[1886] Acting Engineer in Chief to Controller of Civil Aviation, 27 February 1936. Works and Development Hamilton file 44/4. Supporting Papers #3313.
The plan attached to this letter has been located on Transport Head Office file 76/50/251. Supporting Papers #1045.
[1887] County Engineer Raglan County Council to Resident Engineer Hamilton, 7 May 1936. Works and Development Hamilton file 44/4. Supporting Papers #3314-3315.

- absence of obstructions (particularly hills and ridges) at each end of the proposed runways[1888].

While the further examination was carried out in June 1936, with two of the five sites recommended for further consideration[1889], there was no follow-up. This was because the Controller of Civil Aviation advised that, "as the only site worthy of consideration is some distance off any direct main air route", it was not immediately necessary to do any further detailed inspections[1890].

In October 1938 another engineer visited Raglan to look for a site for an emergency landing ground. He identified just one site, the sand spit opposite Raglan township, which he considered satisfied the site requirements. The other five sites first examined in 1936 had apparently been looked at, but were discarded as not suitable or less suitable than the spit.

> I have to advise having searched the locality of Raglan with a view to locating a site for an emergency landing ground for aircraft on the west coast between Auckland and New Plymouth.
>
> The country is mostly hilly, and there are no really satisfactory sites; therefore the search was reduced to a choice of the least unsuitable site available. After three separate investigations and comparison of the sites which might be developed into suitable grounds, I am of the opinion that there is only one area which really merits further consideration. That is a narrow crescent-shaped tongue of low land on the south shore of Raglan Harbour between the Harbour entrance and Raglan Town District.
>
> This tongue is approximately one mile in length, and varies from 400 yards wide at the root to 200 yards near the tip, and as it curves through approximately 50 [degrees] of arc considerable diversity of direction of landing strips could be developed on it. The direction of landing strips in which it would be most difficult to get a good strip is north and south. To make up for this there is a flat bottomed valley flanked by low hills in which it would be possible to get the required length of run. The hills at the end are approximately ¾ mile away, and in normal circumstances an aeroplane would not have difficulty in climbing out.
>
> The surface of the site is generally level and at the worst covered with hummocks 5 to 6 feet in height. The subsoil is largely sand, but in several places outcrops of clay were observed. There is not much topsoil over most of

[1888] District Engineer Auckland to Resident Engineer Hamilton, 15 May 1936. Works and Development Hamilton file 44/4. Supporting Papers #3316-3317.
[1889] Resident Engineer Hamilton to District Engineer Auckland, 25 June 1936. Works and Development Hamilton file 44/4. Supporting Papers #3318-3319.
[1890] Controller of Civil Aviation to Engineer in Chief, 23 July 1936. Transport Head Office file 76/50/251. Supporting Papers #1046.

> the area, except in the mouth of the valley referred to, but an abundance of porous friable clay is available close to the site.[1891]

In an accompanying inspection form, he noted that the ownership of the land was "Native (undeveloped) and recreation reserve".

The Resident Engineer provided further details about the site in December 1938. This included information about the land titles. Five parcels were identified:

- Papahua 2 34 acres Owned by Raglan Town Board
- Papahua 1 10 acres 1 rood Maori-owned
- Te Kopua 1 31 acres 2 roods Maori-owned
- Te Kopua 2A 3 acres Maori-owned (Meeting House)
- Te Kopua 2B 103 acres 2 roods 10 perches Maori-owned

Land use was said to include "patches in potatoes and kumaras"[1892]. Therefore, right from the start, the Crown was aware that part of the site was used by Maori as a papakainga. However, this made no difference to the course of the Crown's investigations.

In December 1938 the Raglan County Council became aware of the aviation interest in the sand spit. At the tip of the spit was the Papahua 2 block, which had been gifted to the Raglan Town Board in 1923 by Ngati Mahanga, and the Council asked if it was intended to take the land for a landing ground[1893]. Use of Papahua 2 as an emergency landing ground was confirmed, but this did not necessarily require that the land be taken.

> With regard to the use of the area by the Raglan County Council after its establishment as a landing ground, any activities which the Council propose to carry out would be restricted by the fact that the ground must at all times be available for use by aircraft. It is usual in establishing emergency landing grounds for the Government to obtain a long term lease of the area from the owner at a nominal rental, and allow the owner to use the area for grazing sheep only. Improvements and grassing carried out in the course of

[1891] Engineer Haskell to Engineer in Chief, 14 October 1938, attached to Engineer in Chief to District Engineer Auckland, 13 October 1938. Works and Development Hamilton file 44/4. Supporting Papers #3320-3323.
[1892] Resident Engineer Hamilton to District Engineer Auckland, 13 December 1938. Works and Development Hamilton file 44/4. Supporting Papers #3324-3325.
[1893] County Clerk Raglan County Council to Director of Civil Aviation, 7 December 1938. Transport Head Office file 76/50/251. Supporting Papers #1047.

> development generally greatly improve the land, and this procedure is often quite favourable from the point of view of the owner.
>
> If alternatively as a result of negotiations it is found to be more satisfactory for the Government to purchase the property, then arrangements are made for the original owner or other persons to lease the area for grazing purposes as mentioned previously.[1894]

When this advice was communicated to the County Council[1895], it replied that Maori had gifted the land for the purpose of a recreation reserve only, other sites in the district had been identified as suitable in 1936, and the use of Papahua 2 block should be reconsidered[1896]. The Council's stance had considerable local support. The local Member of Parliament (who was also the Minister of Agriculture) expressed his concern that Papahua 2 ("this fine reserve") might be "taken from the residents"[1897], and the Raglan Improvement Society collected signatures during Carnival Week on a petition against the use of the sand spit reserve[1898]. In the letter attached to the petition, when it was sent to Wellington, was a statement from the County Clerk that:

> The Maoris who gave the area originally for a recreation ground, and one of their chiefs is buried on the reserve, are very perturbed at the proposed action, and I understand are sending the Government a separate petition of their own.[1899]

No petition from Ngati Mahanga has been located during the research for this evidence. However, faced with this determined local opposition, the Controller of Civil Aviation promised further investigations "with a view to the development of a satisfactory ground without the necessity of taking in the Papahua Block"[1900].

In August 1939 the Public Works Department reported back to Civil Aviation that it had been unable to find any alternative site. The other sites it had looked at were all

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[1894] Engineer in Chief to Controller of Civil Aviation, 12 December 1938. Transport Head Office file 76/50/251. Supporting Papers #1048.
[1895] Controller of Civil Aviation to County Clerk Raglan County Council, 12 December 1938. Transport Head Office file 76/50/251. Supporting Papers #1049.
[1896] County Clerk Raglan County Council to Controller of Civil Aviation, 14 December 1938. Transport Head Office file 76/50/251. Supporting Papers #1050-1051.
[1897] Minister of Agriculture to Minister in charge of Civil Aviation Department, 19 December 1938. Transport Head Office file 76/50/251. Supporting Papers #1052-1053.
[1898] Petition of RHG Cushman and 243 Others, undated, attached to Minister of Agriculture to Minister of Civil Aviation, 17 January 1939. Transport Head Office file 76/50/251. Supporting Papers #1054-1062.
[1899] Minister of Agriculture to Minister of Defence, 17 January 1939. Transport Head Office file 76/50/251. Supporting Papers #1054-1062.
[1900] Controller of Civil Aviation to County Clerk Raglan County Council, 20 January 1939. Transport Head Office file 76/50/251. Supporting Papers #1063.

in "inaccessible localities, some distance inland, and land-locked or swampy and difficult of drainage". The sand spit at Raglan overcame these difficulties and could be developed as an emergency landing ground, although it was "hardly satisfactory, particularly in view of the direction of the prevailing wind"[1901]. The following month the Public Works Department became aware that Raglan County Council was anxious to continue the development of the recreation reserve, and had applied to the Local Government Loans Board for a loan to enable it to subdivide part of the block for the leasing of small sections for camping and holiday homes. Yet Papahua 2 would be needed for the length of runway that was then being contemplated.

> An early decision is required relative to the adoption or otherwise of an emergency landing ground on this site, and if necessary the Raglan County Council should be advised whether their subdivision scheme can proceed.[1902]

Further study, however, showed that the intentions of both parties could be accommodated. In March 1940 the Engineer in Chief of the Public Works Department in Wellington stated:

> As far as investigations have gone, this site is the only one likely to provide a satisfactory emergency landing ground on the New Plymouth – Auckland route.
>
> The proposal by the Raglan County Council to subdivide the land adjoining the proposed site was referred to this Office by the Local Government Loans Board, and in reply the Board was advised inter alia:
>
> > "The actual camping site would not be required for aerodrome purposes, but this Department considers that a small corner [of Papahua 2] should be kept free from buildings and that the layout for residential sections, camp sites and picnic grounds should be slightly amended as is also shown on sketch plans attached.
> >
> > There would be no great interference with the County Council proposal beyond cutting out a number of residential sites."[1903]

The area to be kept free of buildings was in the southwestern corner of the reserve.

Designing the layout for the aerodrome was probably not sufficiently advanced to conclude that this decision meant that more land in Te Kopua Block would be needed

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[1901] Engineer in Chief to Controller of Civil Aviation, 18 August 1939. Transport Head Office file 76/50/251. Supporting Papers #1064.
[1902] Resident Engineer Hamilton to District Engineer Auckland, 20 September 1939. Works and Development Hamilton file 44/4. Supporting Papers #3326.
[1903] Engineer in Chief to District Engineer Auckland, 27 March 1940. Works and Development Hamilton file 44/4. Supporting Papers #3327-3328.

for the aerodrome than had been contemplated prior to March 1940. However, what the decision did mean was that the Crown had imposed on itself a limit to how far towards the northeast the proposed aerodrome could extend, and this would have consequences for how much Maori-owned land from Te Kopua partition blocks would be required.

It was not until October 1940 that it was decided to proceed with the establishment of the emergency landing ground at Raglan. In a note to the Aerodrome Engineer to the Air Department[1904] at the beginning of the month, the Air Secretary recorded:

> Emergency grounds between Auckland and New Plymouth will be urgently necessary as long as the T'moth [Tiger Moth] Service continues to run. The use that is made of this route by service [military] aircraft also appears to warrant some action even during war. It is fairly obvious that we cannot get an ideal ground anywhere on this route, so we will have to take the best of the sites available. From my knowledge of the route, it appears that Raglan and Whareorino offer best prospects, and are worth full investigation. Before deciding on Raglan site recommended by Engineer in Chief PWD, I would like comparison of this and Site No.1 recommended by County Engineer in July 1936. Would you discuss with RNZAF officers concerned and let me have your recommendation.[1905]

The investigation was either not undertaken at all or carried out quickly. No report was located during research for this evidence, but by the end of the month a decision had been made, and the Public Works Department was told to "proceed with the construction of an emergency land strip on the spit adjoining the town"[1906].

It was only then that design work on layout and construction plans was authorised to identify where the runways would be located, and what lands would be required. An engineering and topographical survey was also authorised, to enable the designers to identify how much cut and fill of the undulating ground would be required to lay out the runways[1907].

[1904] Wing Commander EA Gibson, whose name reappears in the history of the Raglan Aerodrome in 1979 (see later section of this case study).
[1905] Air Secretary to Engineer to Air Department, 4 October 1940, on Engineer in Chief to Controller of Civil Aviation, 7 October 1940. Transport Head Office file 76/50/251. Supporting Papers #1065.
[1906] Air Secretary to Engineer in Chief, 31 October 1940. Transport Head Office file 76/50/251. Supporting Papers #1066.
[1907] Engineer in Chief to District Engineer Auckland, 4 November 1940. Works and Development Hamilton file 44/4. Supporting Papers #3329.

16.3.2 Negotiations with the Maori Owners

The arrival of the surveyors on Te Kopua block to carry out the topographical survey brought the Crown's intentions to the attention of the Maori owners for the first time. Rev Manihera telegraphed the Minister of Public Works in November 1940:

> We Maoris of Raglan object to the surveying and pegging of our land for emergency landing ground without permission. After presenting twenty acres to the township for park, your Department now encroaching on our homestead properties.[1908]

The Minister replied:

> Whole of area which might be of use as an emergency landing ground is being surveyed, but in final selection of the actual area to be developed very careful consideration will be given to your interests and homestead properties. The development of a landing ground in this situation is vitally necessary in the interests of aviation and defence, and to prevent loss of life and of aircraft on the West Coast route.[1909]

Rev Manihera also wrote to the Native Minister one week after telegraphing the Minister of Public Works, and before he received the Minister's telegraphed reply.

> On behalf of my Maori people, the Tainui tribe as a whole, I am writing to say that our Homestead properties at our Kopua Reserve No 2A has been surveyed and pegged by workers under the engagement of the Public Works, in planning out for a Land Ground for planes – without our permission. We are asking you to make immediate inquiries regarding this surveying. Why is it that they can do such things on Maori lands without asking permission? We cannot help looking back to the Commission that was set up to look into the matter of confiscation of lands – as to this the pakeha admitted that he was in the wrong. Today as it seems, the same thing has occurred, but we look forward to you as our guidance in this matter, and trust that [confiscation of] our Reserve or plantation grounds will not be tolerated any more. If it is to be an Emergency Ground for planes for the duration of the War, surely we would get to some agreement as long as we can see who is in charge.
>
> A few years ago my people presented over 20 acres to the Town Board of Raglan to be turned into a Park, and we feel that our European brethren should be more than thankful for such a gift, yet the few acres we hold as a reserve or kumara plantation all fenced in have been surveyed and pegged without making inquiries or permission.

[1908] Telegram Rev Manihera, Raglan, to Minister of Public Works, 19 November 1940. Works and Development Head Office file 23/381/154. Supporting Papers #1168.
[1909] Telegram Minister of Public Works to Rev Manihera, Raglan, 28 November 1940. Works and Development Head Office file 23/381/154. Supporting Papers #1169.

> As a Minister and part owner of the said land, I and my people will look to you, and hope that this incident will be solved without legal action.[1910]

The Resident Engineer was of the opinion that Manihera's letter amounted to "a formal objection". He felt that it was necessary that "negotiations should be opened up by the Land Purchase Officer, or through the usual channels for dealing with the taking of Native Land". This was particularly so as the Maori owners would suffer considerable disruption.

> The Landing Ground will destroy Native houses and cultivations, and there will definitely be strong objections, with a probable repetition of the trouble experienced at Orakei, Auckland. The engineering survey has been carried out … and, in addition to the two local Natives being employed on the survey, the local Natives generally were informed of what was going on. The fact that all owners were not contacted has led to the letter to the Hon Minister for Native Affairs, and this is the general experience, as the multiplicity of owners of even small sections always results in some owners being left out. However, divorced from personal grievance at not being personally consulted, the letter amounts to a formal objection to the taking…. Personally I anticipate serious trouble in dealing with the Natives and all acquisition details should be disposed of before any construction is put in hand.[1911]

After receiving the Resident Engineer's advice, the head of the Public Works Department advised the Under Secretary to the Native Department that an aerodrome at Raglan was very necessary, but that planning and design was not sufficiently advanced to determine how much land was required.

> It has been appreciated for some years past that the establishment of one or more emergency landing grounds on the coastal air route between New Plymouth and Auckland is essential, and investigations have been in progress for the location of a suitable site. This matter has been brought to a head by the recent fatal crash of an Air Force plane in this locality. The whole strip of country along this coast is 'inhospitable' from an air pilot's viewpoint, and great difficulty has been experienced in locating any suitable site. The area on the Spit at Raglan at present under survey is considered to be the only area in the vicinity at all suitable for a landing ground. Further investigations are being made for a site between Raglan and New Plymouth on the coast as an additional emergency land ground, covering the southern portions of the air route.

[1910] Rev T Manihera, Raglan, to Native Minister, 25 November 1940, attached to District Engineer Auckland to Resident Engineer Hamilton, 17 December 1940. Works and Development Hamilton file 44/4. Supporting Papers #3330-3331.

[1911] Resident Engineer Hamilton to District Engineer Auckland, 18 December 1940. Works and Development Hamilton file 44/4. Supporting Papers #3332.

> Although the present survey covers all the Spit area, and takes in the Native Meeting House and the Reserve at the northern end of the Spit, it does not necessarily follow that the landing ground as constructed will include the whole of the area surveyed. As soon as the survey plans are received, the layout of the landing ground will be decided on, and I will be pleased to forward to you plans showing the layout, and the land which it will be necessary to acquire, so that the matter may be fully discussed with the native owners. Although a considerable area of the Spit will be required for a landing ground, this area would still be available for grazing purposes.
>
> It must be again stressed further that very extensive investigations have shown that the Raglan site is the only one in any way suitable for a landing ground, and secondly that the establishment of a landing ground in this locality is essential to ensure the safety of aircraft operating on this air route.[1912]

Despite the Engineer in Chief agreeing that "no construction work will be put in hand until the question has been finalised with the Native owners"[1913], the Crown was otherwise not deflected from its course. In fact, greater urgency was called for due to the demands of the war. In March 1941 the aviation authorities asked the Public Works Department to urgently bring the landing ground into commission, as "the Whenuapai Station have advised that it will be essential for light aircraft from there to use this ground in the course of cross country flying"[1914]. This appears to be a reference to the training of Air Force pilots at Whenuapai for the war in Europe[1915]. In May 1941 the Public Works Department was told that the Raglan emergency landing ground was more important than an aerodrome at Rukuhia[1916]. A few days later the design work for Raglan was completed, and an area of approximately 93½ acres that would have to be taken was identified[1917]. This showed that the worst fears of local Maori had been well-founded, as the area required included at one end part of the land gifted for recreation reserve in 1923, and at the other end the meeting house, four whares, and two areas under cultivation.

[1912] Engineer in Chief to Under Secretary Native Department, 23 December 1940. Works and Development Head Office file 23/381/154. Supporting Papers #1170.
[1913] Engineer in Chief to District Engineer Auckland, 15 January 1941. Works and Development Hamilton file 44/4. Supporting Papers #3333.
[1914] Air Secretary to Engineer in Chief, 3 March 1941. Transport Head Office file 76/50/251. Supporting Papers #1067.
[1915] Air Secretary to Minister of Defence, 21 May 1941, attached to Secretary to the Treasury to Minister of Finance, 26 May 1941. Transport Head Office file 76/50/251. Supporting Papers #1069-1070.
[1916] Air Secretary to Engineer in Chief, 9 May 1941. Transport Head Office file 76/50/251. Supporting Papers #1068.
[1917] Engineer in Chief to Mr Wakelin, 13 May 1941. Works and Development Head Office file 23/381/154. Supporting Papers #1171-1172.

At the end of May 1940 the War Cabinet approved spending of £16,170 on the work at Raglan, which included estimated costs of "land acquisition and compensation, etc"[1918]. The Resident Engineer's advice, given earlier in the year, that local opposition could be expected, was brought to the Minister's notice shortly after the Cabinet approval had been given. He was told:

> The land … is partly owned by natives and partly by the local body….
>
> I am bringing the matter to your attention as considerable opposition on the part of the native owners is anticipated, the land being partly occupied by a meeting house and native whares, and parts are also under cultivation.
>
> The land owned by the local body is held as a reserve, and was apparently donated to the local body by the natives for that express purpose….
>
> An exhaustive search for a ground in this vicinity has been made, and that now chosen appears to be the only practicable solution of the problem, but I have deemed it advisable to advise you of the objection that is likely to be made by the natives, as it appears likely that vigorous representations will be made to you on the matter.[1919]

In July 1941 the Public Works Department passed on to the Air Department its concern that "the possibility of considerable opposition on the part of the native owners to the acquisition of the land may be expected". This advice was referred to in the context of suggesting a faster method of taking that was less capable of being upset by opposition.

> In order to expedite, if necessary, the acquisition of the land and the commencement of construction work, I would be pleased to receive a definite indication that the work is required for defence purposes, and your concurrence in the taking of the land for defence purposes under Section 252 [sic] of the Public Works [Act], or under the Defence Emergency Regulations.[1920]

The Air Secretary replied that "the work, and the acquiring of the land mentioned therein, are definitely required for defence purposes"[1921].

[1918] Secretary to the Treasury to Minister of Finance, 26 May 1941, approved by War Cabinet 27 May 1941, and Air Secretary to Engineer in Chief, 4 June 1941. Transport Head Office file 76/50/251. Supporting Papers #1069-1070 and 1071.

[1919] Engineer in Chief to Minister of Public Works, undated (15 July 1941). Works and Development Head Office file 23/381/154/1. Supporting Papers #1174.

[1920] Engineer in Chief to Air Secretary, 1 July 1941. Transport Head Office file 76/50/251. Supporting Papers #1072.

[1921] Air Secretary to Engineer in Chief, 15 July 1941. Transport Head Office file 76/50/251. Supporting Papers #1073.

The background to this exchange of correspondence is to be found in Part IX of the Public Works Act 1928. Ordinarily, for any land to be taken from Maori owners, it would be necessary to first publish a Notice of Intention to Take the land; this Notice would give objectors 40 days within which to send in objections to the Minister of Public Works. If there were many objections or they were deemed substantial, then the Minister could appoint someone (usually a Native Land Court judge in the case of objections from Maori) to hear and report to him on the objections, before he (the Minister) made a decision whether to accept or reject them. Only then, if he found the objections had no merit, could the land be taken. This ordinary procedure would apply if the land was to be taken for aerodrome purposes. However, if the land was to be taken for defence purposes, then Section 254 Public Works Act 1928 would apply. This section specified that for takings for defence purposes no Notice of Intention to Take needed to be published, and there was no provision for the lodging of objections; instead the Crown could proceed straight to the taking action once it had received a survey plan showing the land to be taken. It also avoided the need for the consent of the Governor to be obtained to the taking of lands with buildings, cultivations and burial places on them (as was the case at Raglan). Furthermore, Section 252 of the Act allowed construction work for defence purposes to be started even before the land was taken. Anyone who obstructed the Crown taking possession of or entering on to privately-owned land for defence purposes could be arrested (Section 257). The Act allowed both urgency and a truncating of the otherwise-applicable taking procedure, thereby giving the Crown additional benefits, and an additional advantage over the private landowners it was dealing with.

Once the construction plans were drawn up, the Lands and Survey Department was asked to survey the boundaries of the land to be taken under the Public Works Act. In July 1941 the Lands and Survey surveyor contacted the Public Works Department, apparently seeking instructions on certain matters. The file note records:

1. House on Raglan Aerodrome near south west boundary property [belongs to] Mrs Kereopa, who is main owner of Kopua block. Removal necessary?
2. Flat available for removal of meeting house is very wet. Health Department moved some houses from it some years ago.
3. Maori burial ground near south west boundary, ½ chain in. Not taken.

4. 12 – 15 feet sand drift in 17 years at boundary of motor camp.[1922]

[Underlining in original]

What instructions he was given in reply are not known, although not taking the burial ground may have been part of the Public Works Department's response to his inquiry.

That same month the District Engineer was told to prepare documents for the tendering of the construction work. He was also told that "the Land Purchase Officer is at present completely [sic] negotiating for the acquisition of the land at Raglan, and right of entry for construction purposes should be available at an early date"[1923]. On this basis tenders were called on 25 July 1941, closing 3½ weeks later[1924]. Apparently the urgency was based around a desire that the aerodrome be available for use during the 1941-42 summer.

Meanwhile the Land Purchase Officer had been considering how to go about acquiring the land in the face of local opposition. At the end of June 1941 he wrote:

> I looked at this land last Sunday, and consider that it will cost considerably more that the District Valuer figures. The natives will undoubtedly desire a subdivision value.
>
> I consider that the Resident Engineer should interview the native minister [Reverend Manihera] who has written to District Office [sic] on behalf of the native owners, and inform him that the land is definitely required permanently, but that it may be possible to let certain grazing rights to the natives, and that the buildings will be shifted. I would suggest that the Department might consider erecting farm cottages (without washhouse) to get natives to move out of whares, otherwise delays will occur. This could possibly be offered when discussing with the native representative. There would seem to be ample land left for cottages.
>
> I think it particularly desirable that the land should be acquired outright, and paid for without leaving any rights in the natives. Any question of grazing should be on the ordinary contract basis.[1925]

[1922] File note re phone call with Surveyor Lynch, 7 July 1941. Works and Development Hamilton file 44/4. Supporting Papers #3334.
[1923] Engineer in Chief to District Engineer Auckland, 16 July 1941. Works and Development Hamilton file 44/4. Supporting Papers #3335.
[1924] District Engineer Auckland to Advertising Manager *New Zealand Herald*, 25 July 1941. Works and Development Hamilton file 44/4. Supporting Papers #3336.
[1925] Land Purchase Officer Carter to Under Secretary for Public Works, 24 June 1941, on District Engineer Auckland to Under Secretary for Public Works, 18 June 1941. Works and Development Head Office file 23/381/154/1. Supporting Papers #1173.

However, there is no record of any contact with Reverend Manihera as a follow-up to the Land Purchase Officer's suggestion.

Four days after the calling of tenders for the construction of the aerodrome, the Land Purchase Officer, accompanied by an interpreter and two local Public Works Department staff, met the Maori owners at Te Kopua for the first time. The purpose of the meeting, as outlined by a Native Department official (an Assistant Field Supervisor) who was also in attendance, was "to explain to the principal owners the necessity for taking the land as an emergency landing ground, and if possible to get an opinion from the Natives as to their wishes regarding an alternative site for the marae and for those dwellings which will be moved in the course of construction work". This description of the meeting's purpose makes no mention of the Crown's haste to establish the aerodrome, and the pressure the Land Purchase Officer must have been under to gain the owners' approval. About 25 Maori were present at the meeting; they included, as far as the Native Department official could gather, "the principal owners"[1926].

The main discussion at the meeting, or certainly the matter that the officials devoted most of their attention to in their subsequent reports, was about the fate of the buildings. There were said to be six buildings on the land to be taken, although one, a dance hall, had recently been purchased by the Native Department for removal. This left a meeting house, a cookhouse, two small "shacks" and a "larger cottage". The value of the materials with which these five buildings were built was not great, but the Land Purchase Officer could see no alternative to paying substantially more than their value for the construction of replacements, "if we are to get actual possession of the land at an early date and without waiting for the normal Native Land Court procedure". The subsequent discussion indicates that replacement was seen as the solution for the cookhouse, the "shacks" and the "cottage", while it was accepted that the meeting house would be relocated and re-erected outside the boundaries of the land to be taken.

The Land Purchase Officer set out his understanding of the results of the meeting.

[1926] Assistant Field Supervisor Hamilton to Registrar Native Land Court Auckland, 30 July 1941. Works and Development Hamilton file 44/4. Supporting Papers #3338.

> The Natives, after some opposition, agreed, subject to the Health Department's approval, to a site for the meeting house and cookhouse. A certain amount of drainage will be necessary. The owners of the two small shacks seemed agreeable to a site in the same vicinity, but nothing was decided about a site for the other cottage if it has to be removed.
>
> The site chosen is the same Native Block which at present contains the cottages, but as the meeting house is at present on a separate 3 acre Block the new area to contain these buildings will have to be surveyed. In the meantime I think the buildings can safely be erected in anticipation of the survey and the Court's approval. A short length of road construction will probably be necessary to give access to the meeting house and cottages.[1927]

In his own report, the Native Department's Assistant Field Supervisor described what he thought had been achieved at the meeting.

> After discussion, it was agreed that, subject to the Health Department's approval, the marae should be moved to a site approximately 200 yards in a south-westerly direction from the present location. The Public Works Department is to provide adequate drainage for the land, and road access. The marae buildings, which now comprise only the meeting house and cook house on 2A, will be moved and re-erected in good order….
>
> Failing approval by the Health Department, an alternative site will, if necessity arises, be provided by the Public Works Department…. Alternative housing adjacent to the marae will be provided in the case of two small occupied whares on 2B, and the site for the larger dwelling now occupied by Honehone Kereopa and wife will be determined by agreement later.
>
> The two urupas will not be interfered with in any way.
>
> A point raised by the Natives was the loss of their kumara planting ground, but the Public Works Department has agreed to allow the use of approximately 4 acres between the proposed taxi runway and the Pokohue River for the coming season, and probably arrangements can be made for this to continue.[1928]

Upon returning to Hamilton after the meeting, arrangements were made for a Health Department inspection of the alternative site. The Medical Officer of Health turned this site down.

> The proposed site is very wet, almost amounting to swamp land, and there is considerable seepage from the hillside. The site is quite unsuitable for building purposes in its present state.

[1927] Land Purchase Officer Carter to Under Secretary for Public Works, 30 July 1941. Works and Development Hamilton file 44/4. Supporting Papers #3337.
[1928] Assistant Land Supervisor Hamilton to Registrar Native Land Court Auckland, 30 July 1941. Works and Development Hamilton file 44/4. Supporting Papers #3338.

> If the proposed drainage works are carried out, I understand that the ground water level would still be within 18 inches or 1 foot of the surface. Even with this improvement it could not be considered suitable as an area for the erection of dwelling houses, and I would recommend that some other site be chosen for the purpose.[1929]

This negative opinion meant that the Native Department's Assistant Field Supervisor, and one of the local Public Works Department officials, returned to Te Kopua for another meeting early in August 1941. There is no record of how many of the owners were present at this second meeting. The Assistant Field Supervisor reported:

> The whole question was again discussed with the Native owners, and, in order to allow work to proceed, it was agreed that the marae buildings should be dismantled and the material stored until the marae site could be determined by the Court.
>
> Two sites have been proposed – one is in the S.W. corner of the Block and would incorporate an area of 3 acres which was set aside as a school site, but there is no likelihood that this area will ever be used for that purpose. The other site suggested is on Rakaunui No 2 (18.0.00), north side of the road, where the owners are prepared to set aside 3 acres for a marae. This area is the better one of the two, although the Health Department could have no objections to either of them.
>
> There are at present three whares on Kopua 2B, which will be removed:
>
> 1. Hemohaere Hika, f. pensioner, will go and live with her brother Whare Paekau until the new marae site is fixed, when she will be provided with a new cottage thereon.
> 2. Whatau [sic] Pahi, m. pensioner, will be provided immediately with a Public Works Department cottage on Rakaunui No 2, where he is an owner.
> 3. Huamatai Hounuku, m. married with family, who works outside most of the time, will be provided with equivalent housing on the new marae.[1930]

The Public Works Department official provided his own report.

> The terms of the verbal arrangement are:
>
> 1. All buildings on the site can be dismantled or demolished immediately. Temporary accommodation for one Maori (hutment) is to be provided by the Department. The remaining occupiers will remove themselves and provide their own accommodation at three days notice.
> 2. The selection of a permanent site for a marae is to be made by the Native Land Court, who will also decide the basis and amount of

[1929] Medical Officer of Health Hamilton to District Engineer Hamilton, 4 August 1941. Works and Development Hamilton file 44/4. Supporting Papers #3339.
[1930] Assistant Field Supervisor Hamilton to Registrar Native Land Court Auckland, 6 August 1941. Works and Development Hamilton file 44/4. Supporting Papers #3340.

compensation. The Public Works Department, on advice of the Court's decision, will re-erect the meeting houses where directed, and will provide residential accommodation of the same floor space for individual occupiers who own residences on the site. (Certain of the natives who do not own residences on the site wish the Department to erect accommodation for them. They have been informed that the Native Land Court may at their wish utilise their portion of the compensation money to erect residences for them. It is probable that the Public Works Department will be required to carry out their erection, if necessary).

3. All endeavours will be made to obtain an early sitting of the Native Land Court.

Three sites are available for use for the marae.

1. S.W. corner of the block, including portions of the three acre Education Reserve.
2. On gently sloping ground on the hill immediately above and west of the existing site in the Kopua Block. This will entail an access road, a preliminary estimate for which is £1800. A survey of this will be put in hand, and a detailed estimate will be available for the court.
3. On Rakaunui No 2 block (18.0.00), the owners are prepared to set aside three acres for a marae.

All these three sites are satisfactory from the health viewpoint. I consider that the adoption of site No 2 is most likely. The present cookhouse on the marae is privately owned, and the owners wish the Department to provide a jointly-owned cookhouse in its place. This will involve the Department in extra expenditure, but in view of the helpful attitude of the natives, I would recommend that this be provided.[1931]

The remarks about the "helpful attitude" of the Kopua owners at the end of the second meeting, after "some opposition" at the beginning of the first meeting, indicates that Crown officials thought the meetings had gone well. The Crown would have faced a major battle if the meetings had not agreed to relocation of the heart of their papakainga. Unfortunately for this case study, there is no contemporary comment from the Maori owners themselves, while a glaring omission in the consultation and negotiations process is a lack of any written agreement between the parties about what was decided. Nor is it clear how representative the two meetings were of the owners of the blocks that were to be affected. It is therefore not possible to say to what extent the owners might have felt browbeaten by the Crown having already made up its mind

[1931] Resident Engineer Hamilton to District Engineer Auckland, 6 August 1941. Works and Development Hamilton file 44/4. Supporting Papers #3341-3342.

to construct the aerodrome and take the land under the Public Works Act, or to what extent they were sidelined by the process that the Crown adopted.

Once the second meeting had been held, the Crown acted swiftly. The same day of the meeting, 5 August 1941, the owners were given seven days notice that the buildings would be demolished[1932], and demolition commenced on 12 August.

The Minister was briefed on 8 August 1941. This paper contains additional information about the meeting to that contained in the Land Purchase Officer's written report, and it seems likely that it was written in part by, or after further consultation with, the Land Purchase Officer, following that individual's return to Wellington.

> Further to my minute of 15th [July 1941] advising you that considerable opposition is likely to be received from the Native owners, I have to advise that there are three families living on the land and there is also a large Meeting House and separate Cookhouse.
>
> The Land Purchase Officer has interviewed the Native owners, who at first took a firm stand that they wish the Meeting House left where it is, and they object to the proposal pointing out that their burial grounds are affected as well as gardens, etc. They finally agreed to a new site for the Meeting House and other buildings, provided new buildings are erected.
>
> The position is that the present buildings are too old to shift, although they probably have many years' life if left undisturbed. Generally their attitude is this: "We will not object to the scheme because it is a war necessity, but you are taking our homes and gardens, and therefore you must erect new homes for us".
>
> The position is that the new buildings will probably cost about £1,500, whereas the Government value of the existing buildings is under £400. It is considered, however, that the government value is far too low for compensation purposes.
>
> If we take the land and then tell the natives that they will be compensated in money, and that they must vacate immediately, finding other accommodation for themselves, I am afraid they will simply refuse to move, and hold the work up indefinitely.
>
> Tenders have been called for the construction of the work, and I should be glad if you would approve of the erection of new buildings at a cost of

[1932] Resident Engineer to T Kereopa, Te Akau, 6 March 1942. Works and Development Hamilton file 44/4. Supporting Papers #3356.

> approximately £1,500, notwithstanding that the existing buildings are probably not worth more than half that figure.[1933]

The Minister referred the matter to Cabinet, which approved the expenditure at the end of August 1941[1934].

The amount seems to have been an underestimate. During the two weeks after the second meeting, attempts were made to determine in greater detail a more complete costing of what the Crown had committed itself to. The estimate was as follows[1935]:

Demolish and re-erect meeting house	£220
Demolish and re-erect Kereopa cottage	170
Demolish cookhouse and compensate owner	53
Build new cookhouse	243
Demolish and replace Hounuku hut	65
Demolish and replace Pahi lean-to hut	165
Demolish and replace Hika cottage	269
Erect new fencing	150
Compensate for land and improvements taken (i.e. Capital Value)[1936]	1090
Access road to new papakainga	900
Temporary accommodation	70
Survey and legal expenses	50
Contingencies	205
TOTAL	£3650

This indicates that the promises the Crown had made to relocate, replace and re-erect various buildings were about 2½ times the value of the existing land and improvements on a valuation basis. It is possible that the Crown officials, while not

[1933] Under Secretary for Public Works to Minister of Public Works, 8 August 1941. Works and Development Head Office file 23/381/154/1. Supporting Papers #1175.
[1934] Under Secretary for Public Works to Minister of Public Works, 8 August 1941, approved by Cabinet 29 August 1941. Works and Development Head Office file 23/381/154/1. Supporting Papers #1175.
[1935] Resident Engineer Hamilton to District Engineer Auckland, 14 August 1941. Works and Development Hamilton file 44/4. Supporting Papers #3344.
[1936] This item was based on an estimate of double the capital value (less the value of improvements already provided for in other items) contained in a valuation obtained by the Public Works Department earlier that month. Valuation, undated. Works and Development Hamilton file 44/4. Supporting Papers #3343.

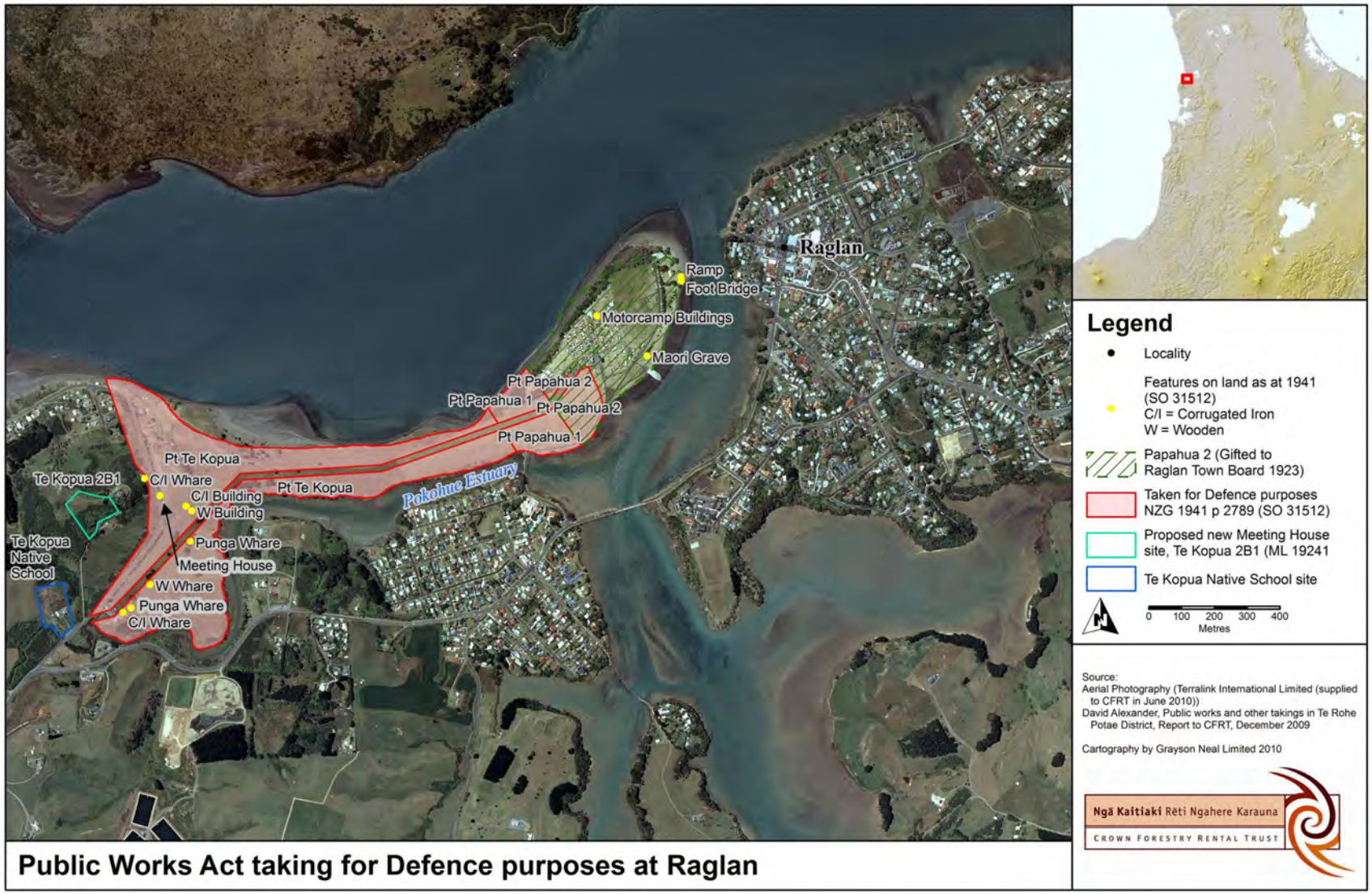
using particular figures, had described the Crown's promises as generous at the meetings held with the Maori owners, as an inducement to get the owners to agree to what the Crown was proposing.

At some stage after the meetings were held, but before the land was taken, the Kereopa cottage was excluded from the land to be taken. This meant that the Crown did not have to re-erect or replace the cottage. However, the Kereopa family were still heavily affected by the proposed taking, as they lost the access track to their cottage, and also land adjacent to their cottage that they were using and cultivating.

Early in September 1941 the Registrar of the Native Land Court reported that, although construction work had started, the land had still not been taken.

> Some time ago the Departmental officials met the natives at Raglan and made arrangements concerning the matter. Mr Palmer of this Department's staff was present, and assisted in placing the Native viewpoint before the officers of the Public Works Department. This assistance was, I understand, very helpful, and enabled the natives to see the Works' viewpoint, and also enabled the views of the Maoris to be placed before the Department. The construction proposals involved, I understand, the moving of certain Maori buildings, which the Public Works Department, I am told, proposed to replace on other lands.
>
> In the meantime the construction of the aerodrome is proceeding, but the Maoris have had no indication that anything is being done in the direction of compensation. It has been reported to me that this is causing considerable unrest among the Natives concerned, and that unless something definite is done that this unrest may lead to disturbances….
>
> The matter is one of some urgency, and I would recommend that it be taken up with the Public Works Department at once, with a view to the necessary legal preliminaries to the placing of the matter before the Native Land Court being put in hand at once.
>
> I would then recommend that the Chief Judge be asked to sanction a special sitting of the Native Land Court at Raglan, so that the question of compensation may be dealt with without delay.[1937]

[1937] Registrar Native Land Court Auckland to Under Secretary Native Department, 8 September 1941, attached to Under Secretary Native Department to Under Secretary for Public Works, 12 September 1941. Works and Development Head Office file 23/381/154/1. Supporting Papers #1176-1177.



Map 32 Public Works Act taking for Defence purposes at Raglan

16.3.3 Taking the Land, 1941

The survey plan was completed in August 1941[1938]. It contained an amendment to the boundaries that the surveyor had been instructed to make by Public Works Department officials in Hamilton[1939]. This is believed to be a reference to an amendment, that is apparent on the plan, whereby the Kereopa homestead (a "corrugated iron whare") and an adjoining urupa ("graves") were excluded from the land originally surveyed as to be taken. The plan shows within the boundaries of the land to be taken:

- A meeting house
- One corrugated iron building and one wooden building associated with the meeting house
- Two punga whare
- One wooden whare
- One corrugated iron whare
- Maori graves (marked by an 'X') near the coast

The site of the aerodrome was taken for defence purposes in mid September 1941[1940]. In seeking approval for the taking, officials advised the Minister that "there do not appear to be any objections to the issue of the Proclamation"[1941]. The area taken, based on the Lands and Survey Department's survey, totalled 89 acres 3 roods 30 perches, and comprised:

- Papahua 1 (whole) 9 acres 0 roods 00 perches
- Papahua 2 (part) 5 acres 2 roods 30 perches
- Te Kopua (part) 75 acres 1 rood 00 perches

Although the taking was of all of Te Kopua 1 (31 acres 2 roods) and Te Kopua 2A (3 acres) and part only (40 acres 3 roods) of Te Kopua 2B, this was not referred to in the taking Proclamation as none of the Te Kopua partition blocks, although created by the Native Land Court, had been surveyed. A title to the original Te Kopua block existed

[1938] South Auckland plan SO 31512. Supporting Papers #2414.
[1939] Chief Surveyor Auckland to District Engineer Auckland, 21 August 1941. Works and Development Hamilton file 44/4. Supporting Papers #3345.
[1940] *New Zealand Gazette* 1941 page 2789. Supporting Papers #4051.
[1941] Assistant Under Secretary for Public Works to Minister of Public Works, 16 September 1941. Works and Development Head Office file 23/381/154/1. Supporting Papers #1178.

in the Land Registry Office, and to enable the taking Proclamation to be registered on that title, the survey plan and the Proclamation referred to the original block.

The taking occurred eight days after the successful tenderer for the construction of the aerodrome was formally notified that his tender had been accepted[1942].

16.3.4 Award of Compensation for Taking, 1941

The Court hearing was held in Raglan at the beginning of October 1941[1943], just two weeks after the taking Proclamation was published in the *New Zealand Gazette*.

The alacrity with which the Native Land Court considered and awarded compensation was testament to what could be achieved when all parties were in agreement. The short period of time between gazettal of the taking Proclamation and the award of compensation was not usual, and reflected in large part the great interest the Crown had in finding out what the Court's decision would be.

The hearing addressed three matters, the location of the alternative papakainga, the monetary compensation to be paid, and the replacement work to be undertaken by the Crown. As to the site that the meeting house was to be relocated to, a location at the top of a hill on the portion of Te Kopua 2B that remained in Maori ownership was stated to have been chosen by the owners.

Monetary compensation, according to the minutes of the meeting, had been agreed on in advance. It was fixed at £60 for Papahua 1 land taken, £565 for Te Kopua land taken (including £10 for loss of the old cookhouse)[1944], £10 payable to Tuwhatau Pahi for additions to temporary accommodation, and £100 payable to Riria Kereopa "to cover all matters of damage arising out of severance, access, or otherwise", a monetary total of £735. With respect to the compensation for land, it would seem that the Native Department's Assistant Field Supervisor, who had attended and facilitated

[1942] District Engineer Auckland to AA Monk, Mission Bay, 8 September 1941. Works and Development Hamilton file 44/4. Supporting Papers #3346-3347.
[1943] Maori Land Court minute book 28 M 310-312. Supporting Papers #3634-3636.
[1944] These figures are to be compared with the Unimproved Valuations of £40 for Papahua 1, and £420 for Te Kopua 1, 2A and 2B combined, obtained by the Public Works Department prior to the taking. Valuation, undated. Works and Development Hamilton file 44/4. Supporting Papers #3343.

the two hui held prior to the taking, was actively involved, as he wrote in December 1941:

> The compensation agreed on [for Te Kopua], £555, was a compromise, approximately halfway between the Government Valuation and my own estimate. In this connection, I was influenced by the substantial improvements which the resident owners of 2B were receiving by way of improved housing.[1945]

His apportionment of the £555 was £194 to the owners of Te Kopua 1, £40 to the owners of Te Kopua 2A, and £321 to the owners of Te Kopua 2B. The Field Supervisor's remarks add credence to a supposition that at the hui held before the taking the Crown had 'sold' the taking to the Maori owners on the basis of the benefits that the relocated community would receive from the Crown's offer to rebuild the meeting house and build new residences.

The work to be carried out by the Crown was itemised in the Court's award:

> As to Meeting House – Government Valuer valued building at £50. The cost of demolition and re-erection on agreed site is £220. The Department will demolish and re-erect on agreed site, but owners agree to remove and re-erect the existing fencing.
>
> As to cook-house used in conjunction with old Meeting House – Government Valuation £10. Department agrees to erect new cook-house building without floor on new Meeting House site at cost of £110.
>
> As to dwelling occupied by Hua Matai Hounuku – Valuation £10. Department agrees to erect small dwelling at cost of £65, but if owner has compensation moneys from general compensation fund, Department will increase size of dwelling to extent of her share in compensation. Site to be on Rakaunui 1C2B.
>
> As to lean-to hut owned by Tuwhatau Pahi – Government Valuation £10. He has been given temporary accommodation in new hut of value of £45 to £50. He is to have this permanently, plus £10 to provide increased accommodation.
>
> As to hut owned by Hemo Haere Hika – Government Valuation £30. She is occupying temporarily Departmental cottage. This must be temporary as site not satisfactory. Department is to erect new dwelling at cost of £120 on site on part of Rakaunui Block (intended to become Native reservation), to be indicated by Rev. Manihera.

[1945] Assistant Field Supervisor Hamilton to Registrar Native Land Court Auckland, 11 December 1941, attached to Submission to Land Settlement Board, 16 March 1971. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2501-2513 at 2512.

> In addition, Department is to construct road from present road south of new Meeting House site up hill to new site, to be formed and graded at not more than 1 in 10, and to have 10 foot [wide] metal surface….
>
> N.B. All foregoing building work and road work to be proceeded with without delay.[1946]

These commitments amounted to £565 plus the cost of new roading. The roading cost was assessed at £600 (a reduction from the pre-taking estimate of £900, which meant a total cost to the Crown in monetary terms of £1900. This figure has to be compared with the pre-taking estimate by the Crown of an all-up cost of £3480 (being £3650 less £170 for replacement of the Kereopa cottage)[1947].

The Land Purchase Officer's assessment of the Court's award was:

> With regard to the compensation generally, I am of the opinion that although the provision of new accommodation has been generous, the real selling value of the land is above the values awarded, and that the whole is fair compensation for the owners' loss.[1948]

The Minister of Public Works was informed of the Court's award, and the Land Purchase Officer's opinion, at the end of October 1941, and gave his approval for the Crown to accept the award[1949].

The compensation provided to the Maori owners also has to be related to what was promised by the Crown to the Raglan County Council, which lost just over 5 acres of its camping ground site on Papahua 2. The Minister of Public Works wrote to the Council at about the same time as the Native Land Court was considering its award.

> In reference to the representations which you made to me concerning the question of alternative access to the motor camp and reserve at Raglan, I have to advise that it has been decided that the Government will provide £1,220 towards the cost of this alternative access, and will agree to the road being formed round the end of the east-west landing strip of the aerodrome.

[1946] Order of the Court, 2 October 1941, attached to Registrar Native Land Court Auckland to Under Secretary for Public Works, 19 January 1942. Works and Development Head Office file 23/381/154/1. Supporting Papers #1180-1182.
[1947] Resident Engineer Hamilton to District Engineer Auckland, 14 August 1941. Works and Development Hamilton file 44/4. Supporting Papers #3344.
[1948] Land Purchase Officer Carter to Under Secretary for Public Works, 3 October 1941. Works and Development Hamilton file 44/4. Supporting Papers #3348.
[1949] Assistant Under Secretary for Public Works to Minister of Public Works, 30 October 1941, approved 5 November 1941. Works and Development Head Office file 23/381/154/1. Supporting Papers #1179.

> This money will be made available to your Council on the understanding that the Council undertakes the construction of the work, and provides whatever balance money is required to complete the work in accordance with proposals which would be approved by the District Engineer at Auckland in the usual way.
>
> Your Council would also have to provide the cost of land compensation, legalisation and fencing, and also agree to the closing of the road along the Spit. It is understood that your Council will also give approximately five acres of reserve which is required for aerodrome purposes free of charge.[1950]

In addition to its formal award of compensation, the Court also issued some informal advice to the Public Works Department. Two weeks after the hearing the Registrar of the Court relayed some comments from the Judge.

> Judge Beechey has asked me to mention to you that during excavation work on the Raglan Aerodrome, there is a possibility that ancient Maori relics might be uncovered. If this proves to be the case, I shall be glad if you will instruct the workmen to hand such relics over to the responsible Maoris at Raglan. You will appreciate that these will be of great sentimental value to the Native people concerned, and therefore great care should be taken to see that their susceptibilities are not offended by any failure to hand over these things to them.[1951]

16.3.5 Fulfilling the Crown's Compensation Obligations

The monetary amounts were paid in January 1942[1952], following receipt of the Court's signed and sealed order.

The two temporary residences for Tuwhatau Pahi and Hemohaere Hika had already been provided prior to the Court hearing. In the months immediately after the award was made, the only physical works carried out by the Public Works Department in fulfilment of the award conditions was to partially construct the road to the proposed new meeting house site. In February 1942 it was stated that the road works could not be completed because the layout of buildings at the new site had not been decided.

> The Native Land Court met at Raglan last week, and although I have no information regarding decisions which may have been reached, I understand from some of the Natives concerned that they have not yet come to a decision

[1950] Minister of Public Works to County Engineer Raglan County Council, undated (received 3 October 1941). Works and Development Hamilton file 44/4. Supporting Papers #3349.
[1951] Registrar Native Land Court Auckland to Resident Engineer Hamilton, 17 October 1941. Works and Development Hamilton file 44/4. Supporting Papers #3350.
[1952] District Engineer Auckland to Resident Engineer Hamilton, 28 January 1942. Works and Development Hamilton file 44/4. Supporting Papers #3351-3353.

> regarding the location of at least some of the buildings. In the circumstances it appears that the wisest thing for us to do is to mark time until we can be quite sure that a definite understanding has been reached as to the sites upon which the several buildings are to be erected.[1953]

A further handwritten note on the Public Works Department file indicates that the road works up to February 1942 included formation but not metalling of the new access road, and that the formation was metalled by April 1942[1954].

In February 1942 Turanga Kereopa wrote to the Minister of Public Works about the cook-house, which he stated was his property.

> I understand your Department took the house in pieces away from the section, and is somewhere near its original site. It had certain furniture – double bed, mirror, table and other things. If that is the cook house valued by your Department at £10, and for which you had made an offer to re-erect on top of the hill, I ask that it be re-erected on the site agreed by most of the owners on Rakaunui No 2, where they desire the Meeting House to be. The land has been given by the Newton and Wahanga families, whose parents erected the old Meeting House at Kopua.[1955]

Before a reply could be prepared, Kereopa spoke to a local officer of the Public Works Department, with a different complaint about the cook-house. On the grounds that it was his private property, he asked that it be rebuilt for his own use on his land. He also complained that he had not been notified when the building was to be demolished, with the result that a number of kitchen items in the building had been left outside on the side of the road by the workmen demolishing the building, and had since disappeared[1956]. In response to the locally-lodged complaint, the Public Works Department denied that it had been at fault. It stated that any claim to ownership would have to be referred to the Native Land Court, which had already received payment from the Crown for onward transmission to whoever it decided was the owner of the cookhouse.

[1953] Resident Engineer Hamilton to District Engineer Auckland, 19 February 1942. Works and Development Hamilton file 44/4. Supporting Papers #3354.
[1954] Handwritten note on Order of the Court, 2 October 1941, attached to District Engineer Auckland to Resident Engineer Hamilton, 28 January 1942. Works and Development Hamilton file 44/4. Supporting Papers #3351-3353.
[1955] Turanga Kereopa, Auckland, to Minister of Public Works, 18 February 1942. Works and Development Head Office file 23/381/154/1. Supporting Papers #1183.
[1956] File note, 4 March 1942. Works and Development Hamilton file 44/4. Supporting Papers #3355.

> As to chattels alleged to have been lost after demolition of the cookhouse, I have to inform you that you were notified on 5th August that the Department would commence demolishing these buildings on 12th August.
>
> Had you placed any value on these chattels, the onus was on you to remove them before this date.
>
> The contents of this cookhouse were stacked adjacent to the private road through the property, awaiting removal by the owner.
>
> Failure to take delivery and subsequent loss of these chattels cannot be accepted as a liability by this Department, and I suggest that enquiries made among the local Natives may result in recovery of same.[1957]

The Department alerted the Native Land Court that Kereopa had been advised to obtain a ruling from the Court about the ownership of the cookhouse[1958]. The reply that was sent to Kereopa was deemed to also be an answer to the letter he had written to the Minister[1959]. There was no further correspondence from Kereopa.

In June 1942 the Registrar of the Native Land Court asked on behalf of Hemohaere Hika whether she could be paid £120 cash rather than have a house built by the Crown, as set out in the Court award[1960]. Before a reply could be sent, however, another alternative was proposed, that the Crown build the house on a section owned by Hemohaere's daughter near Raglan, rather than on Te Kopua block[1961]. A check was made with the Native Land Court, which had no objection to this arrangement, provided Hemohaere personally requested this in writing[1962]. However, when the matter was put to the Head Office of the Public Works Department, it asked whether a house could be erected for less than the £120 value referred to in the compensation award, or whether Hemohaere would accept £120 cash payment as an alternative to the Department building her a new house[1963]. Calculations showed that £120 would

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[1957] Resident Engineer Hamilton to T Kereopa, Te Akau, 6 March 1942. Works and Development Hamilton file 44/4. Supporting Papers #3356.
[1958] Resident Engineer Hamilton to Registrar Native Land Court Auckland, 6 March 1942. Works and Development Hamilton file 44/4. Supporting Papers #3357.
[1959] Resident Engineer Hamilton to District Engineer Auckland, 12 March 1942. Works and Development Hamilton file 44/4. Supporting Papers #3358.
[1960] Registrar Native Land Court Auckland to Engineer in Chief, 30 June 1942. Works and Development Head Office file 23/381/154/1. Supporting Papers #1184.
[1961] File note, 15 July 1942. Works and Development Hamilton file 44/4. Supporting Papers #3361.
[1962] Registrar Native Land Court to District Engineer Auckland, 20 July 1942. Works and Development Hamilton file 44/4. Supporting Papers #3362.
[1963] District Engineer Auckland to Resident Engineer Hamilton, 10 August 1942. Works and Development Hamilton file 44/4. Supporting Papers #3363.

pay for only a one-roomed cottage[1964], considerably smaller than the three-roomed cottage ("cheese worker's" model) that she had been provided with as temporary accommodation. In September 1942 the Head Office of the Public Works Department belatedly replied to the Registrar's request made in June, and agreed that Hemohaere could be paid the £120 cash equivalent of the alternative housing[1965], and the following month Hemohaere opted to live with her married sister at Te Akau and to accept the £120 cash payment[1966]. In November 1942 the Judge added a margin note in the Court minute book where the 1941 compensation award was recorded[1967].

Also in November 1942 Tumu Paekau and Te Mira Tuteao Manihera wrote to PK Paikea MLC, the Minister in Charge of the Maori War Effort, asking for the return of the aerodrome site.

> It is our desire that you present before the Government our wishes with regard to our land which has been taken over by the Raglan County Council [sic]. Let it be known that the karaka tree on our settlement, the house that is known as Te Kopua, has been felled. An area of 84 acres has been taken over for an Aerodrome at a low value.
>
> The Pakehas do not realise that these lands have been taken for soldiers of other places, when those soldiers to whom these lands belong are fighting in the Middle East.
>
> It is our desire that you make investigations into the matter, as we had planned that this land be utilised to assist to rehabilitate the men on their return from overseas, and also those serving in Home Defence.[1968]

The Minister of Public Works rebuffed the request, in doing so providing erroneous and misleading information about the Crown's efforts to fulfil the terms of the Court's compensation award.

> I have to advise that the land in question was taken under the Public Works Act for defence purposes by proclamation in September 1941.

[1964] Resident Engineer Hamilton to District Engineer Auckland, 20 August 1942. Works and Development Hamilton file 44/4. Supporting Papers #3364.
[1965] Assistant Under Secretary for Public Works to Registrar Native Land Court Auckland, 2 September 1942. Works and Development Head Office file 23/381/154/1. Supporting Papers #1185.
[1966] Field Supervisor Native Department Hamilton to Resident Engineer Hamilton, 16 October 1942, and Resident Engineer Hamilton to District Engineer Auckland, 19 October 1942. Works and Development Hamilton file 44/4. Supporting Papers #3368 and 3369.
[1967] Maori Land Court minute book 28 M 312. Supporting Papers #3636.
[1968] T Paekau and Te MT Manihera, Raglan, to Minister in Charge of Maori War Effort, 30 November 1942. Works and Development Head Office file 23/381/154/1. Supporting Papers #1186.

> Before the matter was proceeded with, the owners concerned were met by a representative of the Native Department together with a representative of my department, and the question of removal and re-erection of buildings was generally agreed to, the work to be done and compensation payable to be decided by the Native Land Court. As a matter of fact, in practically every case new buildings were erected, as the existing ones were too old to shift.
>
> Although your correspondent states that the land was taken at a very low valuation, this value was considered by experts to be the full value of the land, and in addition considerable sums spent on erecting new buildings and constructing a road to the site chosen by the Natives for the new Meeting House, which was on the top of a hill. Although it is unfortunate that defence requirements necessitated the taking of this land for Aerodrome purposes, everything reasonably called for by way of compensation has been done.
>
> At Raglan on the 2nd October 1941, the Court made an award detailing the work to be carried out by my Department, and also setting out the amount of compensation to be paid. The terms of this award have been fully complied with, and it is regretted that there is now no power to have the matter reopened.[1969]

News that the Crown was prepared to make a cash payment as an alternative to building a replacement house must have got around, as in January 1943 the Native Department relayed a message from Hua Matai Hounuku that he would accept £65 in cash instead of having the dwelling promised to him built[1970]. While it transpired that Hounuku had not agreed to accept money at that time[1971], in July 1943 he did sign a written request for the cash payment[1972], which was accepted by the Crown[1973] and by the Court[1974].

Inquiries were also made about the meeting house in January 1943. The Public Works Department wrote to the Native Land Court asking for some finality as to the

[1969] Minister of Public Works to Minister in Charge of the Maori War Effort, 21 January 1943. Works and Development Head Office file 23/381/154/1. Supporting Papers #1187.
[1970] Resident Engineer Hamilton to Registrar Native Land Court Auckland, 20 January 1943. Works and Development Hamilton file 44/4. Supporting Papers #3371.
[1971] Registrar Native Land Court Auckland to Resident Engineer Hamilton, 15 March 1943. Works and Development Hamilton file 44/4. Supporting Papers #3374.
[1972] Hua Matai Hounuku to District Engineer Auckland, 28 July 1943 attached to Registrar Native Land Court Auckland to Engineer in Chief, 23 August 1943. Works and Development Head Office file 23/381/154/1. Supporting Papers #1188-1189.
[1973] Assistant Under Secretary for Public Works to Registrar Native Land Court Auckland, 25 August 1943. Works and Development Head Office file 23/381/154/1. Supporting Papers #1190.
[1974] Commissioner Native Land Court Auckland to Assistant Under Secretary for Public Works, 2 September 1943. Works and Development Head Office file 23/381/154/1. Supporting Papers #1191.

choice of the new site, and pointing out that materials from the old building had gone missing.

> When this building was demolished [in August 1941] the timber was stacked adjacent to the Aerodrome ready for removal to the new site when chosen. Upon recent inspection, the quality [sic] of timber was found to be seriously depleted, the best of it having apparently gone into additions to Native dwellings in the vicinity.
>
> With these discrepancies in materials, it will now be impossible for this department to re-erect the Meeting House unless further materials and money are made available for re-erection.
>
> I should be glad if you would forward me your view on this subject.[1975]

The Native Department called a meeting at Te Kopua in February 1943, which was attended by 11 members of the local community. The main purpose of the meeting was to decide on the site for the meeting house. A majority decision was reached.

> The meeting agreed. That the meeting house be built on the area to be set aside as a marae on Te Kopua 2B. I understand that an application for the marae is set down for hearing at the Ngaruawahia Court sitting next week. Wetekia Tamihana alone, on behalf of her family, objected to the site being on Te Kopua 2B.[1976]

The matter of the building materials from the old meeting house was also discussed, and the pile of what remained was examined by the Native Department official. He described the timber as white pine, about 30 years old, and so badly affected by borer that "it is difficult to see to what extent the Public Works Department expected to use it again in the re-building". He considered that the value of £50 placed on the old building at the time of the compensation hearing was mainly represented in the value of the sheets of roofing iron. Four of these sheets of iron, according to the people at the meeting, had been taken away from the pile by building contractors to cover their stores, and never returned. With respect to the timber taken from the pile and incorporated into local homes, he reported:

> It was freely admitted by Honehone Kereopa that he used certain of the timber for an addition of approximately 6 feet by 24 feet to the front of his dwelling, but I examined this timber and it appears to me to be all affected with borer.

[1975] Resident Engineer to Registrar Native Land Court Auckland, 13 January 1943. Works and Development Hamilton file 44/4. Supporting Papers #3370.

[1976] Field Supervisor Hamilton to Registrar Native Land Court Auckland, 16 February 1943, attached to Registrar Native Land Court Auckland to Resident Engineer Hamilton, 12 March 1943. Works and Development Hamilton file 44/4. Supporting Papers #3372-3373.

> The Public Works Department dismantled the old building, but apparently there was no arrangement about moving the material out of the way of the contractors, pending a decision as to the new site. Honehone states that an officer of the Public Works Department (Mr Whiting) [name crossed out and replaced by "Mr Wightman"] arranged to pay him £1 per day for moving the timber and iron, but that the promise was not kept, the amount claimed being £7….
>
> Honehone seems to have regarded the timber that he used in his house as an off-set against the wages he was to have received for moving and stacking the material. I nevertheless pointed out to him that he had attempted to repay an alleged P.W.D. debt with material belonging to the Maori people. I have been unable to [refer] the matter to Mr Whiting [sic], who is at present away on leave, but if the amount owing to Kereopa is acknowledged, it would no doubt be … by the latter towards replacing the timber.[1977]

When this record of the meeting was received by the Public Works Department, an effort was made to follow up the claim, with an official reporting:

> On making enquiries from Kereopa, he stated that arrangements were made by Mr Wightman for two boys to do work at £1 per day for both.[1978]

However the whole claim was disputed by Mr Wightman when he returned from leave, and the file was referred to him for comment.

> Definitely no arrangement to pay Kereopa £1-0-0 per day to remove timber from dismantled meeting house made by me.[1979]

This denial is not conclusive, as there was apparently a Mr Whiting employed by the Public Works Department. An overseer reported in March 1943 on his inspection of the meeting house materials.

> Further to my visit to Raglan with Mr Whiting in connection with the timber from the old meeting house, I have to report that the timber is absolutely not fit to be used in the re-erection of building, it being partially decayed and badly infested with borer. The only material fit to be used again is the roofing

[1977] Field Supervisor Hamilton to Registrar Native Land Court Auckland, 16 February 1943, attached to Registrar Native Land Court Auckland to Resident Engineer Hamilton, 12 March 1943. Works and Development Hamilton file 44/4. Supporting Papers #3372-3373.
[1978] File note, 24 February 1943, on Field Supervisor Hamilton to Registrar Native Land Court Auckland, 16 February 1943, attached to Registrar Native Land Court Auckland to Resident Engineer Hamilton, 12 March 1943. Works and Development Hamilton file 44/4. Supporting Papers #3372-3373.
[1979] File note by Mr Wightman, 15 March 1943, on Field Supervisor Hamilton to Registrar Native Land Court Auckland, 16 February 1943, attached to Registrar Native Land Court Auckland to Resident Engineer Hamilton, 12 March 1943. Works and Development Hamilton file 44/4. Supporting Papers #3372-3373.

> iron, sufficient to cover roof of a building approximately 56 foot by 22 foot.[1980]

There is no record on the file by Mr Whiting as to what he had or had not agreed.

Because the site for the meeting house, although chosen, had not been confirmed by the Native Land Court, it was not possible to immediately do anything with the old meeting house materials. In March 1946 the Court agreed to a partition of Te Kopua 2B, cutting out as Te Kopua 2B1 three acres for a meeting house reserve[1981]. Once the site had been agreed, there is no record of the Department re-examining what could be done about re-erecting the meeting house.

After the war, in August 1946, it was admitted that nothing had been done about fulfilling the Crown's commitment to re-erect the meeting house since the February 1943 meeting. The Resident Architect in Hamilton estimated that the cost of building a meeting house on the new site would be £1500, a substantial increase on the £220 re-erection cost estimated in 1941, for which a financial authority had been issued at that time. He asked for advice on whether an authority for the additional cost would be issued. He also noted that the 1941 authority of £243 to build a replacement cook house was still sufficient to enable the work to be done[1982]. This new information was quite alarming to officials in Wellington, who replied:

> It is noted that the original Meeting House was valued at £50, and that the Department agreed to demolish and re-erect the building on agreed site at an estimated cost of £220. That appears to be somewhat generous [replacing the crossed-out word 'extravagent'], but the proposal to spend £1,500 plus the cost of the access road as compensation for a building worth £50 seems difficult to credit. If the old Meeting House is, as stated by the Resident Architect, built of white pine, is partially decayed, is badly infested by borer, and unfit to be used for re-erection, this condition must surely have been known when the original arrangements were made.[1983]

A full report was ordered.

[1980] File note by Overseer King, undated (acknowledged 24 March 1943). Works and Development Hamilton file 44/4. Supporting Papers #3375.
[1981] Maori Land Court minute book 30 M 40. Not included in Supporting Papers.
[1982] Resident Architect Hamilton to Under Secretary for Public Works, 2 August 1946. Works and Development Hamilton file 44/4. Supporting Papers #3376.
[1983] Under Secretary for Public Works to District Chief Clerk Auckland, 3 September 1946. Works and Development Hamilton file 44/4. Supporting Papers #3377.

The Land Purchase Officer who had negotiated the agreement with the Te Kopua community in 1941 wrote the report.

> I have to advise that had the Meeting House been re-erected at the time it was demolished, the estimate supplied by the Resident Engineer at that time would no doubt have been sufficient. At any rate, it was then considered sufficient, and compensation based accordingly.
>
> It is unfortunate that due to difference of opinion among the Maoris as to the new site, it was not possible to re-erect it then, and the material was stored in the locality and has since "walked". No doubt the Maoris have had the use of it, but if we try to sheet it home to them, they will reply that we should have stored it more securely.
>
> With regard to the condition of the timber, I think I made it clear at the time that all the buildings were old and of little value, but if left alone would last a long time in position. It was imperative to start construction urgently, whereas great trouble was expected from the occupiers. On this account the Judge made a special visit to endeavour to persuade the Maoris to vacate quietly and quickly.
>
> You will note that the Cookhouse was too old to shift, hence the agreement to erect a new one as there was no alternative. The Meeting House was then fit to be shifted, but it is easy to imagine the effect of 5 years stacked out in the weather.
>
> Another reason why the timber now seems so bad is that I think the best would be taken, and only the useless portion left.
>
> I can see no alternative but to face the position, or else put the matter to the Native Department to endeavour to persuade the Natives to accept a smaller Meeting House, but it is not likely to succeed.[1984]

The Resident Architect added three further points to the Land Purchase Officer's report.

1. The Meeting House was dismantled in 1940 [sic] to make way for the runways, and was stacked on the site.
2. In 1943 an inspection was made of the material, when it was found to consist of white pine, in poor condition, and roofing iron. It was apparent at that time that some of the timber and roofing iron had been removed, while the remaining timber was unfit for use.
3. An inspection was made in July of this year. The only material remaining was a stack of corrugated iron, rusted through where the laps had occurred, and insufficient in quantity to cover a building of the size of the original Meeting House. This iron is of very little value.

[1984] Land Purchase Officer Carter to Under Secretary for Public Works, 8 October 1946. Works and Development Hamilton file 44/4. Supporting Papers #3378.

> There is now no trace of any timber, which consisted originally, I believe, of framing, flooring, matchlining and joinery.[1985]

Head Office asked whether a surplus wartime building could be obtained and re-erected as a meeting house[1986], but nothing was available at that time[1987]. In January 1947 a surplus mess hall at Patumahoe was identified[1988], but it was then discovered that it had been allocated to the State Hydro-electric Department for that department's use[1989]. No progress was made on the matter during the rest of 1947.

In October 1947 Riria Kereopa and others spoke to the Prime Minister (who was also the Minister of Maori Affairs) about the Crown's failure to re-build the meeting house and cook house, which had resulted in them being put to "great inconvenience in not having a marae for their tribal gatherings"[1990]. Head Office asked the local office for its recommendations as to how the impasse could be resolved[1991].

In his report the Resident Architect summarised the history of the Crown's obligation to provide a meeting house and cook house on a new site. He identified three options:

1. To re-erect a surplus building, if one can be located. This may or may not be acceptable to the Maoris.
2. To erect a new building along traditional lines. Here, again, the Maoris apparently expect to receive totara slabs, ready for the whakairo rakau, for use in assembling the maihi and tautiaki, complete with tekoteko at the apex.
3. To erect some form of hall or communal centre, in collaboration with the Native Advisory Committee, with proper toilet facilities and a small kitchen incorporated, in lieu of the earth-floored cookhouse.

> If the terms of the compensation award are to be carried out, it is apparent that the expenditure of a considerable sum will now be involved, and I feel that consideration should be given as to whether a Meeting House will best serve

[1985] Resident Architect Hamilton to Under Secretary for Public Works, 11 October 1946. Works and Development Hamilton file 44/4. Supporting Papers #3379.
[1986] Telegram Under Secretary for Public Works to Resident Engineer Hamilton, 7 November 1946. Works and Development Hamilton file 44/4. Supporting Papers #3380.
[1987] Telegram Resident Engineer Hamilton to Under Secretary for Public Works, 22 November 1946. Works and Development Hamilton file 44/4. Supporting Papers #3381.
[1988] District Chief Clerk Hamilton to Under Secretary for Public Works, 21 January 1947. Works and Development Hamilton file 44/4. Supporting Papers #3382.
[1989] Resident Architect Hamilton to Government Architect, 24 April 1947. Works and Development Hamilton file 44/4. Supporting Papers #3383.
[1990] Minister of Maori Affairs to Minister of Public Works, 23 October 1947. Works and Development Head Office file 23/381/154/1. Supporting Papers #1192.
[1991] Under Secretary for Public Works to District Engineer Hamilton, 8 December 1947. Works and Development Hamilton file 44/4. Supporting Papers #3388.

> the interests of the Maoris in the district. It appears to me that the award can be legitimately varied to this end, as the Natives themselves violated the decision of the Native Land Court when they disputed the site selected and, but for the delay thus involved, there is little doubt that the Meeting House would have been re-erected early in 1942, when the materials were still intact.
>
> By 1943, when the final decision regarding site was made, insufficient materials remained to enable this work to proceed; furthermore, these materials doubtless deteriorated considerably in that time.
>
> Cognisance should also be given of the fact that the native population of Raglan is now considerably reduced, many of the young people having left the district, and it is difficult to see how the Marae, in the traditional sense, can be re-established.[1992]

These options were not particularly palatable to Head Office officials. They drew up a letter which their Minister sent to the Minister of Maori Affairs in response to the request for comment on Riria Kereopa's complaint. This response started with a very partial explanation for the delay that absolved the Crown and placed all the responsibility on Te Kopua Maori.

> This case presents considerable difficulty, but the crux of the matter appears to be that the timber etc, which was stacked by my Department following demolition of the meeting-house as agreed to by the owners, was used by some of the local Maoris for other purposes, and my Department was therefore unable to comply with the Court Order to re-erect the meeting-house with the old materials on a new site.

Later in the letter, the failure by local Maori to choose a site for the new meeting house was highlighted as another reason why the Crown had been unable to rebuild.

The Minister was, however, very aware that the circumstances in 1947 were different from those in 1941, because the materials no longer existed for re-erection of the old meeting house, and because the Maori population in the Raglan district was considerably reduced. He asked the Minister of Maori Affairs for his comments on three possible courses of action:

1. Erect a new meeting-house, etc, at an estimated cost of £1,500 at least. (Efforts to provide a surplus building for removal and conversion have proved fruitless.)
2. Decline to accept responsibility on the grounds that it is a fact that the Maori people have used the materials for other purposes, and have thereby prevented the Department complying with the court's award.

[1992] Resident Architect Hamilton to Under Secretary for Public Works, 11 December 1947. Works and Development Hamilton file 44/4. Supporting Papers #3389-3391.

3. Apply to the Maori Land Court for reconsideration of the Order made in 1941, with a view to an amended award.[1993]

The Minister of Maori Affairs favoured referral to the Maori Land Court for further inquiry[1994]. Judge Beechey, who had made the Compensation Order in 1941, provided his comments.

> I remember this matter quite well, and after compensation had been assessed and the Public Works Department, as part of its work, had constructed a road along the side of a hill to the spot where the meeting-house was to be re-erected, the Court partitioned out the area required for the meeting-house, and made a recommendation that it be set aside as a Marae site. Since then nothing has been done by way of survey to identify the land, and the recommendation has not therefore been sent forward.
>
> In the course of its work, the Court discovered that there were two factions at Raglan. One headed by Riria Kereopa and her husband desired the re-erection of the meeting-house on the site already referred to, and another suggested that the site should be nearer to Raglan. I inspected the second site referred to, and it seemed to me that it might have offered a better Marae site than the one on the hill referred to. It would certainly have been more central and nearer to the community it was intended to serve. The site on the hill, on the other hand, is on tribal land which may have special significance to the Maoris interested, particularly the Kereopa family. There was no necessity for two meeting-houses, and I remember feeling, at the time, that there was a possible prospect that after the meeting-house had been re-erected on the hill site, difficulty would arise as to the care and maintenance of the buildings and the Marae. The Works Department has proper cause to complain, and one of the principal offenders in the removal of materials to be employed in the re-erection was one of the principal parties interested in the re-erection. I regard it as quite impossible that this man could make compensation for material taken by him, but the Department is entitled to see that its liability should not be increased as a result of his action….
>
> The Maori community in Raglan is not an increasing community, and in all the circumstances I think it might be helpful, before any Court sitting is held to discuss the matter in any way, for Mr Turei to be employed by the Department to go to Raglan and discuss the question of alternative sites with the people there. It would be a pity to spend money on the erection of a meeting-house on the hill site referred to, and then to see the building neglected because the community was too small to keep it in proper repair and condition. Mr Turei retired from the service of the Department at the end of last year, but he knows the circumstances relating to this matter, and he knows the people living at Raglan much better than anybody now in the Department.

[1993] Minister of Works to Minister of Maori Affairs, undated (received 20 December 1947). Maori Affairs Head Office file 19/1/671. Supporting Papers #931-933.
[1994] Minister of Maori Affairs to Under Secretary for Maori Affairs, 14 January 1948, on Minister of Works to Minister of Maori Affairs, undated (received 20 December 1947). Maori Affairs Head Office file 19/1/671. Supporting Papers #931-933.

> If the people were able to agree with him as to some course of action, then possibly the Works Department liability might be reduced to the extent to which the Department has been prejudiced by the removal of materials. It might be suggested, of course, that the Department should have taken greater care of the materials, but its action in completing the terms of the award was necessarily delayed until the new Marae site had been partitioned and proclaimed.[1995]

The Judge's recommendation was accepted, and in May 1948 Mr Turei convened a meeting at Raglan. Fifteen people were present, which Turei, in the notes he wrote of the meeting, described as "quite a representative gathering". Each of those present stated whether they preferred Te Kopua or Poihakena (a site on Rakaunui 2B block) for a marae, though the notes record the reasons for their choice given by only four of those present. Riria Rapana (Kereopa) supported the Kopua site as it was ancestral land and would better maintain the link with the previous meeting house. She believed that when built the meeting house would attract people back to Te Kopua. However, she also stated that she would abide by whatever decision was made by the Court. Riria's husband Honehone Kereopa also supported the Kopua site, although he regarded Poihakena as an acceptable alternative. Tuhoea Wahanga and Wetekia Tamihana supported Poihakena, as it was better located to where most people lived, and was better situated for provision of water supply, firewood and electricity. Wetekia was prepared to abide by whatever decision was made by the Court. On a show of hands, eight of those present were in favour of Te Kopua, while seven supported Poihakena. Before the meeting Turei had received phone calls from three people unable to attend the meeting who supported the Poihakena site[1996].

Turei reported the results of the meeting to the Native Land Court (Judge Beechey) at Ngaruawahia one week later[1997]. Riria Rapana and Tuhoea Wahanga were both present, and repeated their views. Others to speak at the hearing were Wetini Tuteao, Turanga Kereopa, Te Uira Tuteao and Terepo Hounuku. Possibly the most telling

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[1995] Judge Beechey, Auckland, to Under Secretary for Maori Affairs, 30 January 1948. Maori Affairs Head Office file 19/1/671. Supporting Papers #934-935.
[1996] Notes of Meeting, 12 May 1948, attached to Registrar Maori Land Court Auckland to Under Secretary for Maori Affairs, 9 June 1948. Maori Affairs Head Office file 19/1/671. Supporting Papers #936-941.
[1997] Maori Land Court minute book 30 M 381-384. Copy attached to Registrar Maori Land Court Auckland to Under Secretary for Maori Affairs, 9 June 1948. Maori Affairs Head Office file 19/1/671. Supporting Papers #936-941.

statements made were one by Turei that "the people must rely on Te Puea for assistance in building new house", and another by Te Uira Tuteao:

> Rakaunui was Marae intended to come under control of [King] Koroki. Have heard it said Te Puea favoured Poihakena. She has spoken to Mr Turei. I feel that she will assist in establishment of marae.

Just how influential these statements were is not known, as the Court gave no reasons when it declared "that Poihakena is the site, and that former recommendation [for a marae reserve on Te Kopua] cancelled". It then partitioned out 2 acres of Rakaunui 2B as Rakaunui 2B1, to be reserved as a marae site[1998].

As a consequence of this decision, the Under Secretary for Maori Affairs prompted Judge Beechey to recommend what the Public Works Department should do next[1999]. The Judge replied:

> It seems to me that the best solution will be that the Public Works Department should now commute its service in building to a money sum, and pay it to the [District Maori Land] Board for application towards the cost of the proposed meeting house at Poihakena. The figures appear to be:
>
> | | |
> |---|---|
> | Demolition and re-erection of meeting house | £220 |
> | Cost of new cook house | £110 |
>
> I can see no reason why the cost to the Works Department should be increased beyond the amount provided in the award, except to the extent to which costs may have since risen. That might result in a small increase in the figures above, but this of course has been brought about by the Kopua people themselves in delaying execution of the work.[2000]

This rather unsympathetic response placed all the blame for the delays on the Maori people of Te Kopua, with no regard for the failure of the Crown to be pro-active, or for wartime difficulties.

The Minister of Maori Affairs passed this recommendation on to the Minister of Works, with the comment that "in the circumstances, this appears to be a reasonable solution of the difficulty"[2001]. The making of a cash payment of £330 in lieu of the

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[1998] Maori Land Court minute book 30 M 381-384. Copy attached to Registrar Maori Land Court Auckland to Under Secretary for Maori Affairs, 9 June 1948. Maori Affairs Head Office file 19/1/1671. Supporting Papers #936-941.
[1999] Under Secretary for Maori Affairs to Judge Beechey, Auckland, 28 June 1948. Maori Affairs Head Office file 19/1/671. Supporting Papers #942.
[2000] Judge Beechey, Auckland, to Under Secretary for Maori Affairs, 9 July 1948. Maori Affairs Head Office file 19/1/671. Supporting Papers #943.
[2001] Minister of Maori Affairs to Minister of Works, 14 July 1948. Maori Affairs Head Office file 19/1/671. Supporting Papers #944.

Crown's obligations towards the meeting house and cookhouse was accepted, while the Judge's suggestion of a small increase in the amount to cover cost increases during the intervening period was either not accepted or was ignored. The Ministry of Works asked for the amendment of the Court's 1941 Order to be officially confirmed by the Court[2002], and the Judge directed that this could be done[2003]. He made a margin note in the Court minute book where the 1941 compensation award was recorded[2004]. Payment of £330 was then sent to the Waikato – Maniapoto District Maori Land Board in March 1949[2005].

With the abandonment of a marae base on Te Kopua block, the need for an access road to be provided to the site became redundant. Apart from the formation and metalling done between November 1941 and April 1942, nothing further was done to complete the access road. The 1949 payment therefore effectively meant that the Crown had fulfilled its compensation obligations as required by the Native Land Court in 1941, albeit in modified form.

16.3.6 Concluding Remarks

The taking was for defence purposes. There had been no indication of this purpose in the lead-up to the taking. The aerodrome at Te Kuiti was taken for aerodrome purposes one month later in October 1941 (see separate chapter in this report), so it was not a nationwide policy decision at the time to take the Raglan Aerodrome for defence purposes as a result of New Zealand being at war.

Rather than being a national security matter, the taking for defence purposes seems to have been a by-product of the haste with which the taking was being pursued by the Crown. In the normal course of events, if the taking had been for aerodrome purposes, two additional steps would have been required. The first was a Notice of Intention to Take the land, with an opportunity allowed for making and hearing

[2002] Acting Commissioner of Works to Under Secretary for Maori Affairs, 7 September 1948. Maori Affairs Head Office file 19/1/671. Supporting Papers #945.
[2003] Under Secretary for Maori Affairs to Judge Beechey, Auckland, 17 September 1948, and Registrar Native Land Court Auckland to Under Secretary for Maori Affairs, 22 December 1948. Maori Affairs Head Office file 19/1/671. Supporting Papers #946 and 947.
[2004] Maori Land Court minute book 28 M 311. Supporting Papers #3635.
[2005] Voucher dated 22 March 1949, attached to District Engineer Auckland to District Engineer Hamilton, 7 April 1949. Works and Development Hamilton file 44/4. Supporting Papers #3396.

objections before deciding whether or not to proceed with the taking. The second, because the Raglan taking was of land occupied by buildings or cultivations, was the Proclamation of a consent by the Governor General to the taking. These additional steps were not required for takings for railways or for defence. Although the procedures adopted by the Crown for obtaining the Governor General's consent had turned it into a toothless protective mechanism (see discussion in main section of this report), reliance on defence as the purpose for the taking had the effect of hiding the Crown's actions from additional scrutiny.

The Waitangi Tribunal in its Orakei report discussed the relationship between the Crown's use of its extraordinary power to compulsorily take privately-owned land and the necessity in the public interest for the Crown to be able to obtain the land. It postulated that taking land for defence purposes might be an indication of high necessity, providing some justification for use of the Public Works Act[2006]. However, the Raglan Aerodrome taking demonstrates that takings for defence purposes may not always be what they seem, and it is necessary to look behind the use of the term to examine the local circumstances of each case.

When the Crown demolished the meeting house, its associated cookhouse, and three adjacent dwellings in 1941, it tore the heart out of the Kopua community. Whatever agreement the community gave at the time to allow this to happen would have been on the basis that the community facilities and the residences would be quickly restored. They were probably hoping that the community would come out better off, with a new cookhouse and new dwellings. Instead, the arrival of the aerodrome set off a downward spiral from which the Kopua community was unable to recover.

The community's hopes were dashed by an inactive Crown that failed to take any initiatives of its own, and instead grasped opportunities to fulfil its obligations in monetary rather than practical form. The result was that, not only was the community disrupted in 1941, but it remained disrupted for the rest of the decade. In reducing the worth of individual assets to a series of monetary values, the Crown lost sight of, and

[2006] *The Orakei Report*, Waitangi Tribunal, 1987, page 166.

therefore failed to compensate in practical fashion for, the loss of community at Te Kopua.

16.4 Use of the Aerodrome Site, 1941-1976

16.4.1 Leasing of Part of the Aerodrome Site

At the first meeting between the Kopua owners and the Crown immediately prior to the taking of the land in 1941, there had been some discussion about the future of the cultivations and gardens (described as a kumara planting ground) on the taken land. The Native Department official at the meeting recorded that "the Public Works Department has agreed to allow the use of approximately 4 acres … for the coming season, and probably arrangements can be made for this to continue"[2007]. While nothing is recorded on the Crown file about the gardens during the 1941-42 season, the use of the aerodrome land for cultivations did arise later in the 1940s.

The aerodrome was grassed in the autumn of 1942, and this must have led to a rumour circulating in the district that the sward would be maintained by sheep grazing. When a local farmer made an inquiry in May 1942, asking in particular whether the former Maori owners had any preferential rights to the grazing[2008], he was told by the Public Works Department that, while occasional sheep grazing was contemplated, "the Maoris do not have a preference over grazing rights"[2009]. However, a separate development meant that by the following spring there had been a change of mind about the use of sheep.

In May 1942, the same month as the local farmer wrote to the Public Works Department, Riria Kereopa wrote to PK Paikea, her local Member of Parliament for Western Maori, asking for grazing rights on the aerodrome.

> I am writing re our land, Kopua Raglan, which has been taken over by the Government for an aerodrome. I desire that you assist me to obtain the grazing rights of this land. For 20 years my family and I have milked cows on that area, and at present I am on the portion that is not wanted for the aerodrome….

[2007] Assistant Field Supervisor Hamilton to Registrar Native Land Court Auckland, 30 July 1941. Works and Development Hamilton file 44/4. Supporting Papers #3338.
[2008] R Cowley, Raglan, to Resident Engineer Hamilton, 11 May 1942. Works and Development Hamilton file 44/4. Supporting Papers #3359.
[2009] Resident Engineer Hamilton to R Cowley, Raglan, 13 May 1942. Works and Development Hamilton file 44/4. Supporting Papers #3360.

> I have now lost the land where I used to graze my cattle. I have not asked for payment for this land, so therefore I desire that I have the grazing rights. I would graze sheep on it.
>
> I am the only one left on the remainder of the land, therefore I thought it only right that I have the grazing rights[2010]

She was told that the grazing of cattle on the aerodrome would require the erection of fences, and there was insufficient land at Raglan to allow any fences to be erected without obstructing aircraft use. However, sheep could be grazed, and if she formally applied for this permission would be granted[2011]. When her solicitor applied on her behalf[2012], approval was granted by the Air Department[2013]. However, the Public Works Department investigated, and decided that the ground was too soft, and the grass not sufficiently well established, to allow grazing to commence immediately. When reporting this finding, the Resident Engineer added that he had heard locally that "Mrs Kereopa is desirous of subletting these grazing rights when procured"[2014]. Head Office instructed that this latter matter was not relevant, and that Kereopa's solicitor could be advised that when the grass was suitable to be grazed he would be contacted again[2015]. This instruction was carried out[2016], but there is no record of any subsequent follow-up by either the Crown or the solicitor.

In 1947 a market gardener who had had some dealings with the Kopua Maori community asked if he could make use of the right (which he thought existed) that Maori had to use two acres of the aerodrome land.

> The old Maori folk [have] suggested to go and use it, but are not quite aware if they have jurisdiction to give me authority.

[2010] R Kereopa, Raglan, to PK Paikea MP, 5 May 1942. Transport Head Office file 76/50/251. Supporting Papers #1074.
[2011] Minister of Defence to PK Paikea MP, 8 June 1942. Transport Head Office file 76/50/251. Supporting Papers #1075.
[2012] WH Adams, Barrister and Solicitor, Hamilton, to Air Secretary, 5 August 1942. Transport Head Office file 76/50/251. Supporting Papers #1076.
[2013] Air Secretary to WH Adams, Barrister and Solicitor, Hamilton, 19 August 1942. Transport Head Office file 76/50/251. Supporting Papers #1077.
[2014] Resident Engineer Hamilton to District Engineer Auckland, 14 September 1942. Works and Development Hamilton file 44/4. Supporting Papers #3365.
[2015] District Engineer Auckland to Resident Engineer Hamilton, 25 September 1942. Works and Development Hamilton file 44/4. Supporting Papers #3366.
[2016] Resident Engineer Hamilton to WH Adams, Barrister and Solicitor, Hamilton, 29 September 1942. Works and Development Hamilton file 44/4. Supporting Papers #3367.

Alongside the two acres, apparently, was further land covered in lupins and blackberries that was not being used by the aerodrome, and which was all suitable for the growing of strawberries[2017].

The Under Secretary for Public Works asked for an explanation of this use arrangement, and was told:

> No signed agreement with the natives exists concerning a lease of 2 acres of land at Raglan Aerodrome.
>
> It seems that the area in question had been cultivated for a number of years, and as it was not required for runway purposes, the natives were given permission verbally to continue to use the ground for gardens. No definite period was stated.[2018]

Although matters did not progress quickly, by September 1948 an area of approximately 5½ acres was jointly identified by the market gardener and a local Ministry of Works official[2019]. The following month the Minister of Defence consented to a two-year lease[2020]. A licence agreement was signed between the market gardener's business partner and the Ministry of Works in April 1949[2021]. Rental of £27-10-0d a year was payable.

The use by the market gardener of the land that had previously been used by local Maori was a matter of concern to the local community. Honehone and Riria Kereopa contacted a local Maori Affairs Department official.

> It is alleged that [the market gardener] has put up notices around the 5 acre plot in question, where already the following people have their kumara and kamokamo plots: Mrs Waata Rongo (old age pensioner), Mrs Riria Kereopa (old age pensioner), Mrs Hautai Rickard (Riria's daughter).

[2017] M Noda, Auckland, to B Roberts, 25 January 1947, attached to Under Secretary for Public Works to District Chief Clerk Hamilton, 29 May 1947. Works and Development Hamilton file 44/4. Supporting Papers #3384-3386.
[2018] District Chief Clerk Hamilton to Under Secretary for Public Works, 18 June 1947. Works and Development Hamilton file 44/4. Supporting Papers #3387.
[2019] District Engineer Hamilton to Acting Commissioner of Works, 3 September 1948. Works and Development Hamilton file 44/4. Supporting Papers #3392-3393.
[2020] Minister of Defence to JB Donald, Auckland, 13 October 1948, attached to MA Noda, Raglan, to Mr R Purdie, 22 October 1948. Works and Development Hamilton file 44/4. Supporting Papers #3394-3395.
[2021] District Engineer Hamilton to JB Donald, Auckland, 12 April 1949, attached to JB Donald, Auckland, to District Engineer Hamilton, 22 April 1949. Works and Development Hamilton file 44/4. Supporting Papers #3397-3398.

> Mrs Kereopa informs me that [the market gardener] has taken a portion of Mrs Rongo's kumara harvest, and has threatened to bulldoze the remaining crops.
>
> Legally, these people have no right on the property as it has been taken over by the Public Works Department, but morally they have some grounds for complaint as this area has been cultivated by them for many years past. Mrs Kereopa states that a verbal agreement had been made between the Maori people concerned and [the Public Works Department], that they should use this area … until such time as this portion was required for Air Department use….
>
> Mrs Rongo will be particularly hard hit at the loss of this piece, as her land interest has apparently been used up as a housing site, and she is dependent on the section for her kumara and other vegetables[2022]

A meeting was then held on the aerodrome site between Mrs Rongo, Mr and Mrs Kereopa, Mrs Rickard, a Public Works Department official, and the Maori Affairs Department official. The lease to the market gardener seems to have been treated as having higher priority than the informal arrangement allowing continued cultivation by the former Maori owners. After the meeting the local District Engineer reported to his Head Office:

> The Maoris have no tenancy of any area, but they have up to the present been using odd areas for growing kumaras.
>
> The area now leased to J.B. Donald includes these areas, and the Maoris are anxious to obtain the use of an alternative site.[2023]

The Maori gardens were occupying about one acre of the 5½ acre leased area, and an alternative was agreed to that would allow use of an area of that size on the western edge of the aerodrome land[2024]. The District Engineer in his report stated:

> It would be desirable to prepare an agreement setting out conditions of tenancy and charge a rental.
>
> I recommend that the Maoris be given favourable consideration….[2025]

This was agreed to[2026], and a one-year licence with right of renewal was issued to Riria Kereopa in August 1949[2027]. It provided for a rental payment of £1 a year. The District Engineer reported after the tenancy was signed:

[2022] Maori Welfare Officer Hamilton to Controller of Maori Social and Economic Advancement, 9 May 1949. Maori Affairs Head Office file 19/1/671. Supporting Papers #948.
[2023] District Engineer Hamilton to Commissioner of Works, 20 May 1949. Works and Development Hamilton file 44/4. Supporting Papers #3399.
[2024] Maori Welfare Officer Hamilton to Controller of Maori Social and Economic Advancement, 16 May 1949. Maori Affairs Head Office file 19/1/671. Supporting Papers #949.
[2025] District Engineer Hamilton to Commissioner of Works, 20 May 1949. Works and Development Hamilton file 44/4. Supporting Papers #3399.

> This site is much better than previously recommended, as it obviates the necessity of crossing the runway, and is adjoining land occupied by Kereopa.[2028]

Riria Kereopa renewed her tenancy for two further years 1950-51 and 1951-52. She did not renew it for the following year, and in March 1953 told the aerodrome's caretaker that she was "no longer using the land"[2029]. The market gardener also seems to have vacated his licence area in 1952.

16.4.2 Access Roading and Aerodrome Boundary Adjustments

In 1954 Eva Rickard wrote to the District Commissioner of Works in Hamilton about legalising the road to the houses on Te Kopua block.

> Sometime ago I came to see you about a road, part of the compensation for Te Kopua 2B1 Block, Raglan, taken for an aerodrome under war Emergency Regulations in 1941. The information I wanted to know was whether the road was a dedicated road, and if not what procedure would have to be undertaken to do [so]. You told me you would find out from your chief surveyor at Wellington. As there are several families with children residing here, and as the electricity and telephone are hard to obtain unless we have a roadway, I hope I have an early reply so we know where we are. It was suggested to write to the Minister of Maori Affairs, as they thought the road was dedicated according to the promises made during that time, but they may have been only verbal promises, which means nothing to you white people, but to the Maori everything.[2030]

This letter prompted a chain of events over the following five years, before the road was legalised. Its most immediate result, however, was that the Crown discovered that an already existing legal road, along the southern edge of the aerodrome land, had been identified in 1941 at the time of the aerodrome taking as a road to be closed and added to the aerodrome land. However, this had never happened. The legal road provided access to the Raglan camping ground, and the grant provided by the Crown to Raglan County Council in October 1941 (referred to earlier in this case study) had

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[2026] Commissioner of Works to District Engineer Hamilton, 24 June 1949. Works and Development Hamilton file 44/4. Supporting Papers #3400.
[2027] District Engineer Hamilton to Riria Kereopa, Raglan, 4 August 1949. Works and Development Hamilton file 44/4. Supporting Papers #3401-3402.
[2028] District Engineer Hamilton to Commissioner of Works, 8 September 1949. Works and Development Hamilton file 44/4. Supporting Papers #3403.
[2029] E Leathes, Raglan, to Mr Duncan, 24 March 1953. Works and Development Hamilton file 44/4. Supporting Papers #3404.
[2030] E Rickard, Raglan, to District Commissioner of Works Hamilton, 27 January 1954. Works and Development Hamilton file 44/4. Supporting Papers #3405-3406.

been for an alternative road route to take its place, and thereby allow the legal road to be closed. This alternative route had not been legalised, despite that being a condition of the Crown's grant to the Council. That the new road had not been legalised, and the old road had not been closed, was communicated to Eva Rickard in an interim reply[2031].

Ministry of Works followed up with the County Council the outstanding requirement to legalise the new access road[2032]. Local officials felt that, while the compensation order of the Native Land Court in 1941 referred only to the formation of a new access road to the meeting house site, there was "a moral obligation to legalise the road, although the new meeting house has not been built", which could best be met if the Maori Land Court made a recommendation for a roadway across Maori Land to be declared a public road. Legal access would then be provided to the two houses adjacent to the meeting house site, belonging to Mrs Kereopa and Eva Rickard[2033].

In July 1954 approval was sought from Head Office for the legalisation of the new road and the closing of the old road[2034]. The consent of the Air Department to the closing of the old road, and its addition to the aerodrome, was obtained[2035]. However, with respect to legalisation of the new road, it was thought that the Crown's responsibility had ended with the construction work undertaken in 1941-42. Despite this, legalisation was approved, on the understanding that the road became the County Council's responsibility once it was legalised[2036]. At this point (September 1954) Eva Rickard was told that approval to legalise the new road had been obtained and, because the new road ran across Maori Land, this was being discussed with the Maori Land Court[2037]. She replied:

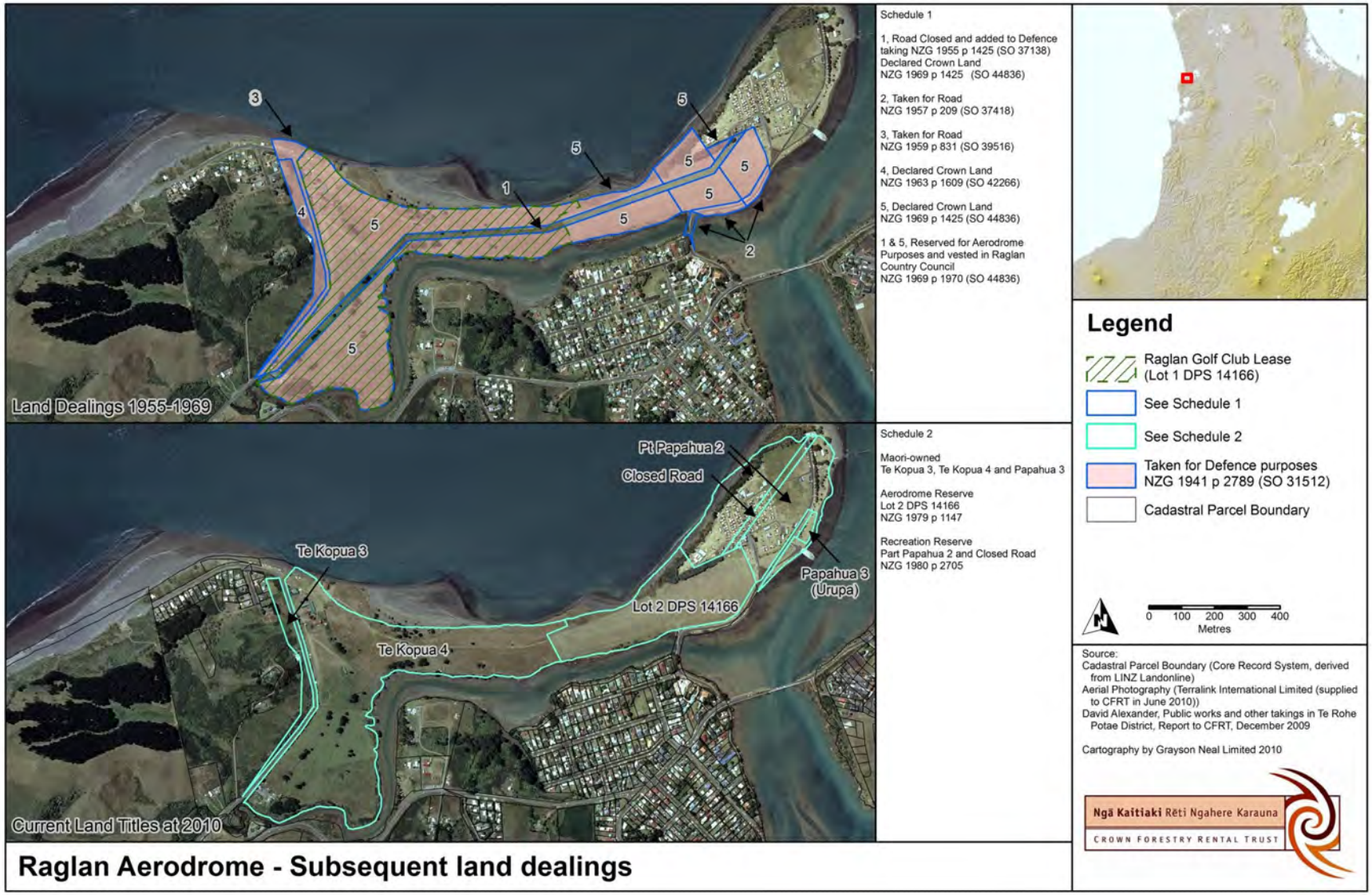
[2031] District Commissioner of Works Hamilton to E Rickard, Raglan, 1 March 1954. Works and Development Hamilton file 44/4. Supporting Papers #3407.
[2032] District Commissioner of Works Hamilton to County Clerk Raglan County Council, 7 April 1954. Works and Development Hamilton file 44/4. Supporting Papers #3408.
[2033] File notes, 29 June 1954 and 6 July 1954. Works and Development Hamilton file 44/4. Supporting Papers #3409-3410.
[2034] District Commissioner of Works Hamilton to Commissioner of Works, 14 July 1954. Works and Development Hamilton file 44/4. Supporting Papers #3411.
[2035] Commissioner of Works to District Commissioner of Works Hamilton, 2 September 1954. Works and Development Hamilton file 44/4. Supporting Papers #3413.
[2036] Commissioner of Works to District Commissioner of Works Hamilton, 20 August 1954. Works and Development Hamilton file 44/4. Supporting Papers #3412.
[2037] District Commissioner of Works Hamilton to E Rickard, Raglan, 3 September 1954. Works and Development Hamilton file 44/4. Supporting Papers #3415.

> I received your letter about the legalising of road, and I must say it is good news. All the homes along the road have young children going to school, and we cannot get electricity until the road is legalised, at present we use candles and kerosene lamps, which is dangerous to our homes.[2038]

In response to the approach made to him, the Registrar of the Maori Land Court explained that the Court was unable to act without first receiving an application from the Minister of Works for a recommendation under Section 422 of the Maori Affairs Act 1953[2039]. This in turn required that a survey plan was first prepared which, in terms of the agreement between the Crown and the County Council made in 1941, was the responsibility of the County Council. The Council agreed to get the plan drawn up[2040]. The Ministry of Works then had a change of heart, and decided that it did not need to be involved any further in the legalising of the new road, considering instead that this was a matter for either the County Council or the Court[2041]. Even when the County Council had second thoughts about taking over the responsibility for a road "in a very poor state"[2042], the Ministry declined to be involved, considering that it had fulfilled its obligations under the 1941 compensation award[2043].

Meanwhile the Ministry was pursuing the closing of the old road. A plan was prepared showing the road to be closed, and it was closed and set apart for defence purposes (i.e. added to the aerodrome land) in September 1955[2044]. The area of closed road was 8 acres 2 roods 39 perches.

[2038] E Rickard, Raglan, to District Commissioner of Works Hamilton, 11 September 1954. Works and Development Hamilton file 44/4. Supporting Papers #3416.
[2039] District Commissioner of Works Hamilton to Registrar Maori Land Court Auckland, 3 September 1954, and Registrar Maori Land Court Auckland to District Commissioner of Works Hamilton, 15 September 1954. Works and Development Hamilton file 44/4. Supporting Papers #3414 and 3417.
[2040] County Clerk Raglan County Council to District Commissioner of Works Hamilton, 30 November 1954. Works and Development Hamilton file 44/4. Supporting Papers #3418.
[2041] District Commissioner of Works Hamilton to County Clerk Raglan County Council, 18 January 1955. Works and Development Hamilton file 44/4. Supporting Papers #3419.
[2042] County Clerk Raglan County Council to District Commissioner of Works Hamilton, 11 March 1955. Works and Development Hamilton file 44/4. Supporting Papers #3420.
[2043] District Commissioner of Works Hamilton to County Clerk Raglan County Council, 15 July 1955. Works and Development Hamilton file 44/4. Supporting Papers #3421.
[2044] *New Zealand Gazette* 1955 page 1425. Supporting Papers #4069.
South Auckland plan SO 37138. Supporting Papers #2422.



Map 34 Raglan Aerodrome - Subsequent land dealings

Because of the poor state of the access road to the meeting house site, and because it was also looking for a road to provide access to some holiday cottages at Ocean Beach, Raglan County Council examined an alternative route for a new access road. This would run along the edge of the aerodrome, on aerodrome land. The Council asked the Air Department if it was willing to release a 30 – 40 foot strip of aerodrome land along the boundary, with a new fence to be erected on the new boundary between the road and the aerodrome[2045]. This was agreed to[2046]. However, no immediate action was taken by the County Council, apparently because of other higher priorities.

In September 1956 another of Riria Kereopa's daughters, Rebecca Kereopa, wrote to the Minister of Works asking for continuation of the access road constructed in 1941-42 to her mother's house, as alternative access to the house across aerodrome land, which had been used informally, had been prevented by newly-erected fencing[2047]. The intention of the County Council to construct a new access road along the edge of the aerodrome land was considered to be a reason why the 1941-42 access road to the meeting house site should not be extended to the Kereopa house, and she was encouraged to contact the Council about her plight[2048].

It was not until 1959 that the new access road to Ocean Beach was legalised[2049]. It meant that 3 acres 2 roods 00.5 perches of the aerodrome land was set apart for road.

Of higher priority to Raglan County Council had been provision of an access road to the camping ground at the tip of the spit. This involved construction of a causeway across the Pokohue River estuary, then a crossing of the edge of the aerodrome to

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[2045] County Clerk Raglan County Council to Director of Civil Aviation, 12 September 1955, attached to Commissioner of Crown Lands Hamilton to District Commissioner of Works Hamilton, 25 November 1955. Works and Development Hamilton file 44/4. Supporting Papers #3422-3424.
[2046] Director of Civil Aviation to Director General of Lands, 5 October 1955, attached to Commissioner of Crown Lands Hamilton to District Commissioner of Works Hamilton, 25 November 1955. Works and Development Hamilton file 44/4. Supporting Papers #3422-3425.
[2047] R LeP Kereopa, Raglan, to Minister of Works, 4 September 1956, attached to Commissioner of Works to District Commissioner of Works Hamilton, 13 September 1956. Works and Development Hamilton file 44/4. Supporting Papers #3425-3426.
[2048] District Commissioner of Works Hamilton to Commissioner of Works, 27 September 1956, and Minister of Works to R LeP Kereopa, Raglan, 29 October 1956. Works and Development Hamilton file 44/4. Supporting Papers #3427 and 3428.
[2049] *New Zealand Gazette* 1959 page 831. Supporting Papers #4083.
South Auckland plan SO 39516. Supporting Papers #2426.

reach the camping ground. 1 acre 2 roods 26 perches of aerodrome land was set apart for public road in 1957[2050].

The access road to Ocean Beach along the western edge of the aerodrome, that was set apart in 1959, had not faithfully followed the edge of the aerodrome land. Instead the new road had left a thin strip of aerodrome land between the road and the Maori Land that had been severed by the road from the aerodrome itself. In 1962 the Committee of Management for the Incorporation that administered the Maori Land asked if the severance could be acquired.

> Section 267 of the Maori Affairs Act 1953 provides that, with the consent of the Minister of Lands, any interests in Maori land which has been acquired by the Crown may be sold to a body corporate of owners established under Part XXII of the Act.
>
> The Incorporated owners of Te Kopua 2B2B2B Block contend that the portion severed by the Ocean Beach Road is no longer required by the Crown for the purpose for which it was originally taken, and should rightly be sold back to them.
>
> Application is therefore made to your department, as the controlling authority, to obtain the consent of the Minister of Lands to the proposed sale.[2051]

Apparently it was because the ground in the severance was swampy that the road had been formed away from the aerodrome boundary. It was agreed that the severance was no longer required[2052], and approval was given for its disposal[2053]. The severance was surveyed and found to have an area of 4 acres 0 roods 33 perches[2054]. It was declared to no longer be required for the purpose for which it had been taken, and to become Crown Land for disposal, in October 1963[2055].

[2050] *New Zealand Gazette* 1957 page 209. Supporting Papers #4074.
South Auckland plan SO 37418. Supporting Papers #2424.
[2051] Chairman Proprietors of Te Kopua 2B2B2B Incorporation to District Commissioner of Works Hamilton, 25 September 1962. Works and Development Hamilton file 44/4. Supporting Papers #3429.
[2052] District Commissioner of Works Hamilton to Commissioner of Works, 22 November 1962. Works and Development Hamilton file 44/4. Supporting Papers #3430.
[2053] Director of Civil Aviation to Commissioner of Works, 13 December 1962. Works and Development Head Office file 23/381/154/1. Supporting Papers #1193.
Commissioner of Works to District Commissioner of Works Hamilton, 10 January 1963. Works and Development Hamilton file 44/4. Supporting Papers #3431.
[2054] South Auckland plan SO 42266. Supporting Papers #2430.
[2055] *New Zealand Gazette* 1963 page 1609. Supporting Papers #4091.

Nothing had been done about transferring the severance strip to the Incorporation before 1966. In April of that year the Incorporation wrote to the Lands and Survey Department, which administered the Crown Land, to negotiate a sale price for the four acres, offering a sum in proportion on an area basis to the compensation paid by the Crown for the aerodrome taking in 1941. This was on the grounds that the severance area did not contain any improvements added by the Crown during the 1941-1963 period[2056].

Raglan County Council was also interested in the Crown Land, although only in about ¾ of an acre at the northern end closest to Ocean Beach, for use as a parking area[2057]. However, when an inspection was made by both Lands and Survey Department and County Council officials in May 1967, a further Council interest in the land was identified when a strip alongside the Ocean Beach access road was sought for road widening. This road had been surveyed in 1957 with a width of only 60 links, while 100 links (i.e. 1 chain, or 20.12 metres) has traditionally been the standard width for public roads in New Zealand. Writing about the four acres generally following the inspection, the Lands and Survey official noted:

> The northern end, roughly rectangular, is elevated from the [Ocean Beach access] roadway by some 3 to 4 [feet], but the balance is at or below road level, and is wet and floodable. The western boundary with the Te Kopua Block is fenced, and the area is in rough grass, rushes, etc.

In connection with the proposed parking area, he stated:

> The rectangular area at the northern end is sought by the County Council to be vested in the Council so that it may be used as a public domain. This area is most valuable for the purpose, because the opportunity for providing parking area will probably not arise again. The access to the foreshore at this point is used by many people – up to 400 in a day – and the only present parking area is the road reserve.

Of the road widening proposal, he reported:

> The road was constructed by the County Council for the benefit of the public in getting access to the foreshore, and to discourage their trespass on the aerodrome. The road formation however is not considered wide enough

[2056] Chairman Committee of Management, The Proprietors of Te Kopua Blocks 2B2B2B & 2B1, to Commissioner of Crown Lands Hamilton, 18 April 1966. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2483.
[2057] County Clerk Raglan County Council to Commissioner of Crown Lands Hamilton, 28 April 1966. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2484.

> because of the accelerated use made of it by the general public and by landowners in the new subdivision of the Te Kopua Block to the north and west of this road.
>
> The road is also of poor standard because of inadequate drainage on the western fringe.

The inspecting official acknowledged that the Incorporation had the strongest case for being offered the land.

> The Te Kopua Block [Incorporation] could reasonably claim preference to themselves in the disposal of all this land, as it was originally taken from them. However, the value accruing to them from the construction of Ocean Beach Road in their subdivision to the north and probable future subdivision to the west should not be overlooked. Nor should the added value of the proposed draining be overlooked.

He recommended retention of the proposed parking area in public ownership, by being vested in Raglan County Council as a recreation reserve, granting of a one-chain width for road widening, and granting of the balance of the four acres to the Incorporation[2058].

When disposing of public land, the Lands and Survey Department had a bias towards meeting public needs (such as public reserves and roads) first, before considering sale to private interests. However, delays occurred to the disposal of the four acres over the next three years, not because of the proposed split between public and private uses, but rather because a second private use was identified. In October 1967 the Department of Maori Affairs asked that the portion of the four acres lying between Ocean Beach Road and the Kereopa's homestead property (Te Kopua 2B2B1) be sold to the Kereopa family. The area involved was estimated to be 1 rood 14.5 perches.

> This area would not be suitable for any other purpose than of benefit to the owners of Te Kopua 2B2B1 Block. As shown on the plan, the house encroaches on to Crown Land, and this area of Crown Land is required for septic tank and drainage purposes, and also for much improved access. The Department is prepared to purchase this area from the Crown for additions to the house property owned by the Kereopas, and I shall be glad if you will advise in due course whether the Land Settlement Board is prepared to sell, and if so at what price.[2059]

[2058] Field Officer Gavey to Commissioner of Crown Lands Hamilton, 29 May 1967. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2485-2486.
[2059] District Officer Hamilton to Commissioner of Crown Lands Hamilton, 26 October 1967. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2487.

Subsequent to receipt of this application, which Lands and Survey Department was disposed to agree to, the Department got sidetracked into a debate with Raglan County Council about whether the Council would have to purchase the land it sought, or whether it would be granted it free of charge. During this time the Incorporation was not communicated with. In September 1968 the Chairman of the Incorporation's Committee of Management called in to the local Lands and Survey office to find out the reasons for delay. He was told that he would have to wait until the Land Settlement Board had considered the matter, because "the final approval to the allocation of this land is a matter for the Board to decide"[2060]. In acknowledging receipt of this letter, he pointed out that the Incorporation had been waiting since 1962 for the land to be offered to them.

> What the Maori owners require, reasonably enough, is an assurance that they will be notified of any proposals suggested for the utilisation of the area in question, and that they are afforded adequate opportunity to place their submissions before the Land Settlement Board.[2061]

The Commissioner of Crown Lands repeated that it was up to the Land Settlement Board to make a decision about allocation of the land, adding that any submissions could only be in the form of objections lodged after the Board's decision had been made[2062].

The introduction of the Kereopa application had the following effect on possible areas to be allocated to each use:

Table 16.1 Proposed Allocation of Ocean Beach Road Severance Strip, 1968

Proposed Owner	Area Allocation (ac-r-p)
Raglan CC (Recreation Reserve)	1-3-14.4
Raglan CC (Road Widening)	1-1-30
Kereopa Homestead Block Extension	0-0-29
Incorporation (Balance of the Land)	0-3-00

Source: Valuation Report, 7 October 1968[2063].

[2060] Commissioner of Crown Lands Hamilton to Chairman Committee of Management, The Proprietors of Te Kopua Blocks 2B2B2B & 2B1, 30 September 1968. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2488.
[2061] Chairman Committee of Management, The Proprietors of Te Kopua Blocks 2B2B2B & 2B1, to Commissioner of Crown Lands Hamilton, 3 October 1968. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2489.
[2062] Commissioner of Crown Lands Hamilton to Chairman Committee of Management, The Proprietors of Te Kopua Blocks 2B2B2B & 2B1, 8 October 1968. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2490.
[2063] Valuation Report, 7 October 1968, attached to Branch Manager Valuation Hamilton to Commissioner of Crown Lands Hamilton, 10 October 1968. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2491-2492.

This represented some change from the original concept, whereby the parking area would have an area of some 3 roods, while the Incorporation would be allocated the balance of approximately 3¼ acres.

It was not until March 1971 that the four-way split of the four acres was presented to the Land Settlement Board. The Department recommended that the Incorporation pay $200 for its land, and the Kereopa family $100, while the County Council would receive its areas free of charge[2064]. The $200 proposed cost to the Incorporation has to be compared against its offer to pay the same amount on a proportionate basis as the Crown had paid in compensation in 1941. £555 had been paid in 1941 for 75¼ acres of Te Kopua Block land, making ¾ acre worth $11.

The Incorporation's Committee of Management became aware that the submission to the Land Settlement Board had been forwarded to Wellington, when its Chairman made a telephone call to the Hamilton office of Lands and Survey Department. As a result, at the end of March 1971 the Committee first telegraphed, and then sent its own written submissions to the Minister of Lands. While having no objection to the allocations for road widening and to the Kereopa family, the Committee strongly opposed the allocation to the County Council for public reserve.

> We contend to begin with that it is wrong in principle and morally dishonest that land taken by the Crown for a specific purpose should be diverted to other use without the consent of the original owners, or their successors….
>
> The emergency landing ground is now a golf course…. It is impossible for the Maori people to ask for this land to be returned because of the loading for improvements made by the Crown but, could the cost be met, their moral right to do so cannot be denied. The principle at stake is only partially acknowledged in Section 436 of the Maori Affairs Act 1953.
>
> The severance of 4a. 0r. 33.4p. now before the Land Settlement Board lies between Ocean Beach Road and Te Kopua 2B3. No improvements were made to this portion in the course of airfield construction, and the Incorporation claims that (less the 29 perches [to be allocated to the Kereopa family]) the remainder of 4a. 0r. 04.4p. should be returned to the Te Kopua 2B3 Block either as a gift from the Crown or, at most, at a price proportionate to that paid by the Crown for the whole.

[2064] Submission to Land Settlement Board, 16 March 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2501-2513.

> We further contend that the attitude of the Raglan County Council is unreasonable in seeking more Maori Land in this locality. It has perhaps forgotten that the 28a. 1r. 10p. known as Te Kopua Camping Ground was a gift from the Maori people in 1923. This area has been developed by the Council, and now attracts between 2000 and 3000 campers annually. It is an undoubted asset to the Raglan Town District. Now, we have the former airfield as a golf course controlled by the Council making a total area of 107a. 3r. 20p. approximately, acquired from the Maori people during the past 48 years, and the Council seeks to obtain more of what should rightfully remain Maori land.[2065]

The Committee had asked the Minister of Lands to also consider its submission in his other capacity as Minister of Maori Affairs. The Secretary for Maori Affairs briefed his Minister:

> I must confess that I think there is some merit in the Incorporation's contentions that the land, since it is no longer needed for the purpose for which it was compulsorily taken, ought to be offered back to the owners at a figure related to the compensation paid for it. I am informed that this is the only area suitable and available for parking purposes, but this does not really alter the principle involved.[2066]

Responding to the submissions and the views of the Secretary for Maori Affairs, the Commissioner of Crown Lands continued to support his recommendations to the Land Settlement Board.

> You will no doubt be aware of precedents where European land was compulsorily taken and despite requests from former owners these lands have not been returned to them. It appears the Maori owners were adequately compensated at the time the land was acquired, and they should not be treated any differently to Europeans in the same circumstances.
>
> The Maori owners appear to be overlooking the fact that the road to the foreshore, constructed by the County subsequent to its acquisition by the Crown, severed the land under consideration from the remainder of the aerodrome, and that this road gives access to the Maori owners' subdivision. Without this road they would have been unable to subdivide. It does seem reasonable therefore that the County should be able to get the land required for road widening, to provide a road of reasonable width to serve the subdivision and as access to the foreshore.

[2065] Chairman and Secretary, Committee of Management, The Proprietors of Te Kopua 2B3 Block, to Minister of Lands, 31 March 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2514-2518.
[2066] Secretary for Maori Affairs to Minister of Maori Affairs, 20 April 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2519.

> As far as the public parking area is concerned, if the recommendation in my submission is approved, the Crown will be vesting this area in the County free of charge and therefore is not getting any monetary return for the area.
>
> Circumstances have changed so much since 1941 that it is considered unreasonable for the total surplus area to be returned to the original owners, especially as the areas not being returned are required for public purposes.[2067]

In Lands and Survey Head Office, however, the views of the Secretary for Maori Affairs seem to have influenced officials to reach different conclusions. The committee of officials that had delegated authority from the Land Settlement Board to make decisions in the Board's name about the allocation of the Crown Land met in June 1971.

> The Head Office Committee has tentatively considered this matter, and is not finally decided about the disposal of the 1 acre 3 rood 14.4 perch area to the Raglan County Council for use as a car park. In fact the Committee is inclined to the view that it should be returned to the Maori owners on the basis of Current Market Valuation, or calculation based on proportion of compensation plus compound interest and rates.

In view of this stance it asked whether there was any alternative site for a car park, perhaps in the subdivision, or on Te Kopua 2B3 land that could be exchanged for the Crown Land[2068].

The Commissioner reported that an area of about 2¼ acres on Te Kopua 2B3 between the subdivision and the coastal frontage would be "a desirable acquisition" as a reserve, although he doubted that the Incorporation would support an exchange on a value basis[2069]. Head Office officials then agreed that "the surplus Defence land should go to the Incorporation", and the transfer of part of Te Kopua 2B3 into public ownership should be investigated and discussed with the Incorporation[2070].

The Crown had some leverage over the Incorporation about making some of Te Kopua 2B3 available, because there was apparently some unfinished business

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[2067] Commissioner of Crown Lands Hamilton to Director General of Lands, 5 May 1971. Works and Development Hamilton file 8/5/270. Supporting Papers #2520.
[2068] Director General of Lands to Commissioner of Crown Lands Hamilton, 15 June 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2521.
[2069] Commissioner of Crown Lands Hamilton to Director General of Lands, 29 July 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2522.
[2070] Director General of Lands to Commissioner of Crown Lands Hamilton, 4 August 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2523.

between the Incorporation and the County Council as subdivision approver. Apparently when the Incorporation had subdivided part of its coastal frontage for leasing as holiday cottage sites, the reserve contribution on subdivision had not been fully provided, and the Council had only approved the subdivision and allowed titles to issue on condition that the Incorporation entered into a $3000 bond as a record of its unfulfilled obligation. The value of any land provided by the Incorporation for reserve could be deducted from the amount owed to the County Council under the bond. When the Commissioner of Crown Lands met the Committee of Management's Chairman, these matters were discussed, and there seemed the possibility of some agreement being reached[2071].

Any agreement would necessarily involve the County Council, which was written to two days after the meeting[2072]. It agreed to the proposal[2073]. The 2¼ acres was valued by the Valuation Department at $5000. The area intended to be allocated to the Council for car park was valued at $700, so offsetting this and cancelling the bond meant that $1300 would be payable to the Incorporation for the foreshore reserve. In September 1971 the Commissioner asked the Incorporation if it too would agree to the proposal[2074], and the Minister of Lands, in response to the Incorporation's submission sent to him in March 1971, urged the Incorporation to consider it as a possible solution[2075].

Discussion with the Incorporation's Chairman resulted in him provisionally agreeing to provide the coastal frontage reserve as two separate transactions. As one transaction it would meet its requirement to provide an esplanade reserve as part of the subdivision it had developed, while as a second transaction it would increase the size of the esplanade reserve by 3 roods 12 perches, provided in exchange for receiving a greater area of the severance strip of Crown Land. This would still require

[2071] File note, 17 August 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2524-2525.
[2072] Commissioner of Crown Lands Hamilton to County Clerk Raglan County Council, 19 August 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2526-2527.
[2073] County Clerk Raglan County Council to Commissioner of Crown Lands Hamilton, 25 August 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2528.
[2074] Commissioner of Crown Lands Hamilton to Chairman, Committee of Management, the Proprietors of Te Kopua 2B3 Block, 7 September 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2529.
[2075] Minister of Lands to Chairman, Committee of Management, The Proprietors of Te Kopua 2B3 Block, 13 September 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2530-2531.

a payment to the Incorporation of $1100 in equality of exchange, as the area to be provided by the Incorporation was valued at $1800[2076].

At this point the Incorporation's chairman resigned, and a new Committee of Management was elected. It was not until March 1972 that the approval of the Maori Land Court to the new Committee was obtained, and it was able to consider the exchange proposal. In an interim response, the new Committee had concerns about the bond that the County Council had encumbered it with, and about the area of 3 roods 12 perches that the Department of Lands and Survey claimed adjoined the proposed esplanade reserve to be provided as part of the subdivision approval. There was a dispute over possible accretion along the foreshore, and the Committee felt that the area was greater than quoted by Lands and Survey[2077].

It was not until April 1975 that the Incorporation formally responded to the Crown's exchange proposal. This followed a meeting of the shareholders (i.e. the owners of Te Kopua 2B3), at which

> [it] was finally agreed that the foreshore should not be sold or exchanged. Re Part Te Kopua Block, formerly part Raglan Emergency Airfield, they state that this area was never grassed or levelled, it has always been separated from the rest of the airfield by a deep drain. As this land was taken under the War Emergency Regulations Act as part of an Emergency Landing Field, and not used for that purpose, the Shareholders feel that they should have preference in the event of disposal.[2078]

Lands and Survey Department did not immediately give up on the idea of linking return of the Crown Land to Maori ownership with obtaining esplanade Maori Land for public reserve. It wrote to the Incorporation pointing out that the bond could only be cancelled by transferring the esplanade land to the Council as a reserve, and suggesting that disposal of the Crown Land should await resolution on the esplanade

[2076] Commissioner of Crown Lands Hamilton to Chairman, Committee of Management, The Proprietors of Te Kopua 2B3 Block, 12 October 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2532.
[2077] Secretary, Committee of Management, The Proprietors of Te Kopua 2B3, to Commissioner of Crown Lands Hamilton, 28 March 1972, and file note, 10 October 1972, on Commissioner of Crown Lands Hamilton to GHC Corbett, Barrister and Solicitor, Hamilton, 5 September 1972. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2536 and 2537.
[2078] Secretary, Committee of Management, The Proprietors of Te Kopua 2B3, to Commissioner of Crown Lands Hamilton, 4 April 1975. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2538.

matter[2079]. Untested was the implication that the Crown Land could still be involved in any agreement that resolved the dispute between the Incorporation and the County Council. The Incorporation, however, was unmoved, firmly believing that the disposal of the Crown Land and the dispute over the esplanade reserve were two separate matters.

1. The question of the Bond and the laying off of the esplanade reserve is a matter that should be dealt with between the Incorporation and the Raglan County Council.
2. The area of 1 acre 3 roods 14.4 perches [the formerly proposed car park public reserve] which borders our property is a separate issue and should be dealt with accordingly. This land was taken when the country was in a state of emergency, which ended thirty years ago and was not used for that purpose, the Proprietors are emphatic that this land be returned to them.[2080]

A new submission was then sent to Wellington in March 1976 recommending the disposal of the four-acre Crown Land severance strip. The road widening strip would be set apart as road by Proclamation under the Public Works Act, 733 square metres (29 perches) would be offered for sale to the Kereopa family, and the balance of 1.0481 hectares (the formerly proposed car park reserve and the area formerly offered to the Incorporation) would be offered for sale to the Incorporation. It was proposed that sale prices of the land would be unchanged from those proposed in 1971, i.e. the Kereopa family would pay $100 and the Incorporation would pay $900 ($700 plus $200). The Head Office Committee of the Land Settlement Board approved the submission in May 1976[2081].

May 1976 was the same month that the Crown offered back the golf course site (see later section of this case study), and the future of the severance strip became subsumed in the debate over the future of the golf course land. It is appropriate at this stage to address the events leading up to that wider offer back, which had occurred during the ten years while the disposal of the severance strip was being considered.

[2079] Commissioner of Crown Lands Hamilton to The Proprietors of Te Kopua 2B3 Block, 27 June 1975. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2539.
[2080] Secretary, Committee of Management, The Proprietors of Te Kopua 2B3, to Commissioner of Crown Lands Hamilton, 19 February 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2540.
[2081] Case No. 76/178 to Head Office Committee Land Settlement Board, approved 13 May 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2546-2547.

16.4.3 Vesting the Aerodrome in Raglan County Council

From 1953 the aerodrome had been maintained by Raglan Carnival Club, because at that time it had been the only organisation interested in doing so. The local maintenance arrangement had relieved central government of the expense[2082].

In July 1968 the civil aviation authorities proposed to hand over control of the aerodrome to Raglan County Council, and vest control of the land in the Council. The Secretary for Civil Aviation wrote to the County Council:

> Over the years the Carnival Club have done an excellent job of maintaining the airport, and in this respect special mention must be made of their efforts in the provision of the sand groynes, fencing repairs and clearance of the lupins. It is not because of dissatisfaction with the Club's efforts that an approach was made to your Council, but because it is Government policy that local authorities should contribute towards the maintenance of aerodromes within their district. Local authorities are also better organised to carry out these functions as they have the personnel, plant, machinery and the necessary financial backing to control and maintain an aerodrome.

The Council had informally indicated a willingness to take over control of the aerodrome, provided the area dedicated to aviation was reduced and the remainder was used to establish a golf course. Civil Aviation had examined this proposal, and concluded that two of the three runways could be closed, leaving just the northernmost runway in operation, and thereby allowing space for the golf course.

> On the assumption that your Council will take over the control, maintenance and management of the airport, arrangements will be made to vest the 89 acres 1 rood 09.1 perches in your Council under the terms of the Reserves and Domains Act 1953. At the same time it will be necessary for your Council to be gazetted under Section 3 of the Airport Authorities Act 1966 as having the power to establish, operate and maintain an airport, and in this respect the application should be made to this Department….
>
> I shall be glad to receive your comments on these proposals, and an indication of when you would be willing to take over the control and management of the airport.[2083]

In response to this offer, the County Council convened a meeting at Raglan in September 1968. The Council's thinking behind the reduction in area devoted to

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[2082] Director of Civil Aviation to Minister in charge of Civil Aviation, 27 August 1953, approved 28 August 1953, and Director of Civil Aviation to Secretary Raglan Carnival Club, 7 September 1953. Transport Head Office file 76/50/251. Supporting Papers #1078 and 1079.

[2083] Secretary for Civil Aviation to Chairman Raglan County Council, 22 July 1968, attached to County Clerk Raglan County Council to Commissioner of Crown Lands Hamilton, 30 January 1969. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3113-3115.

aviation was that leasing of the balance would provide an income to pay for the running costs of the airstrip. The only body interested in leasing the surplus land was the Raglan Golf Club, so the meeting was called to discuss the specific proposal to lease the area to the Golf Club. There was unanimous support for the proposal. The minutes of the meeting record one matter that was discussed subsequently:

> Mrs Rickard enquired if there had been any request placed before the Council for a waterfront road from the Proprietors of the Te Kopua 2B3 Block, and was advised that no application had been received in recent years. She also enquired if the children could continue to cross the aerodrome on their way to school, as this saved a walk of three-quarters of a mile. She was advised that there would be no restriction in regard to this matter.[2084]

In later years, during the dispute over return of the land, the Raglan Golf Club in particular argued that her attendance at the meeting, the unanimous support recorded for a golf course, and the recording of access for schoolchildren across the course as the only matter of concern, demonstrated that Eva Rickard, known to be an enthusiastic golfer, had supported the establishment of the golf course on the land that had been taken from Maori in 1941. Running counter to this argument, however, is a letter from Eva Rickard to the Minister of Maori Affairs, written about one week before the meeting was held, in which she asked why the aerodrome land could not be offered back.

> I have enclosed a copy of a dispute over 89 acres of land. Originally it was Maori Land taken under Public Works Act for an emergency landing field during the war. It has now been handed back to the County Council. Some of the owners would not accept money for their shares, and they claim they still own the land. However, I don't know enough about Maori Land laws to form an opinion, but one would think as a matter of justice and respect to my people we would at least be offered or asked our views on deciding the future of this land. Some lands have been taken under certain Maori Land acts, this was taken in an emergency. There is to be a public meeting within a month and I would like your opinion, and I would convey your answer to my Maori people. We have used the aerodrome as a road to town and for our children to go to school.[2085]

The Minister replied:

> Legally, any land taken under the Public Works Act – whether it was once Maori land or not – can be disposed of as the appropriate arm of Government sees fit. Seeing that compensation has been paid to the former owners, I do

[2084] Minutes of Meeting, 5 September 1968. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2834-2835.
[2085] Tuaiwa Rickard, Raglan, to Minister of Maori Affairs, 27 August 1968. Maori Affairs Head Office file 19/1/671. Supporting Papers #950-953.

> not think that I should interfere with what has already been decided about the airport. This is really a matter for my colleague the Minister of Civil Aviation, who I am sure did not make his decision lightly.[2086]

After the meeting Rickard wrote again to the Minister of Maori Affairs.

> At the public meeting the County Council made it clear that negotiations had been made between the Raglan Golf Club to lease the area. However the Maori owners were quite satisfied that it was still Government land, and had to be opened to the public, and at any time the land was required the Government would take it.
>
> Part of the aerodrome is a burial ground, and I have requested that this area be cleared, grassed and a memorial plaque erected; this the County has agreed to do.[2087]

The proposed establishment of the golf course came to the notice of the Department of Lands and Survey in November 1968, as a result of an article in the local newspaper, announcing that construction of the new golf course had commenced[2088]. Its first reaction was one of concern that such a development could occur so close to the coast, given that it was the Government agency with responsibility for safeguarding public rights, particularly access, in coastal areas. However, on inquiry of Civil Aviation's Regional Superintendent, Lands and Survey was told that Civil Aviation regarded Raglan Aerodrome as a liability for central government, that policy was to get the local authority to take responsibility, that airport authorities had powers of leasing aerodrome land for any purpose whatsoever, that Civil Aviation had no concerns about the proposal, and that Lands and Survey was too late to do anything[2089].

A second concern identified by Lands and Survey was that due process within Government had not been followed. If the aerodrome were surplus to Civil Aviation requirements, then it should have been declared by Ministry of Works to be no longer required for the purpose for which it was taken, at which point it would have become

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[2086] Minister of Maori Affairs to T Rickard, Raglan, undated. Maori Affairs Head Office file 19/1/671. Supporting Papers #954.
[2087] Tuaiwa Eva Rickard, Raglan, to Minister of Maori Affairs, 6 October 1968. Maori Affairs Head Office file 19/1/671. Supporting Papers #955-956.
[2088] *Waikato Times*, 28 November 1968. Copy on Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3112.
[2089] Note for File, 2 December 1968. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3116-3117.

Crown Land, for which administrative responsibility lay with Lands and Survey. By agreeing to the lease before a transfer of responsibility, Civil Aviation had virtually agreed to an alienation of the land that would tie it up for the term of the lease. In doing so, the option that Lands and Survey might have chosen, of reserving it as a public reserve "as part of the coastal reserve requirements for the west coast", was prevented[2090].

A short reference in a longer report at the time identifies a third matter of concern, although it was perhaps not fully appreciated what consequences would develop from it in the following decade. That the land had been taken from Maori ownership for defence purposes in 1941 was noted, and was sufficient for an additional comment to be recorded about the public meeting.

> [The President of the Golf Club] confirmed that a public meeting had been held in Raglan to ensure that there was support for the proposal. The Maori people, to whom the land originally belonged, were represented at the meeting, and voiced no objection to the Golf Club being established on the area.[2091]

In December 1968 the Commissioner of Crown Lands in Hamilton wrote up the results of his inquiries in a memorandum to his Head Office.

> Mr Holsworth, Regional Superintendent of Civil Aviation at Auckland, informed me that the Raglan airfield was a liability to his Department, and that an offer had been made to the Raglan County Council to take over the administration of the whole 89 acres. In making the offer, it was a condition that the Council would maintain one 700 yard emergency landing strip and become the airport authority, while the balance could be leased by the Council as a means of obtaining revenue. Mr Holsworth said that the Council has not confirmed in writing that it will accept the administration of the land, but the County Clerk had indicated verbally that the Council would accept the proposal, and wanted to lease the balance area to the Raglan Golf Club.
>
> After speaking with Mr Holsworth, I discussed the proposal with Mr Tyler, the County Clerk, and he confirmed the approach that had been made to his Council. He said, however, that the Council had been asked to arrange a lease to the Golf Club, and that the initiative had not been taken by his Council. What had apparently transpired was that the local Town Committee had approached Civil Aviation asking that the land be made available for a golf

[2090] Note for File, 3 December 1968. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3118.
[2091] Note for File, 10 December 1968. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3119-3120.

course, and that this suggestion had been passed on to the Council when the offer for future control had been made.

[An inspection of the land was made by departmental officials in the company of the President of the Raglan Golf Club.] Mr Banks explained that a public meeting had been held in Raglan to discuss the possibility of establishing a golf course in the Raglan area, but with the aerodrome land particularly in mind. The Maori people to whom the land originally belonged were represented at the meeting, and it was unanimously agreed that the aerodrome would be particularly suitable for a new eighteen-hole golf course. The Golf Club, which at present operates on a private farm some distance from Raglan, approached the Council when it knew the Council had been offered control of the aerodrome, and Council has tentatively agreed to a 33 year lease from 1 April 1969 at an annual rental of $358. The Club would have a right of renewal for a similar term, and a special condition would be that the Club maintain the 700 yard emergency strip for the Council. The $358 is the same amount that Civil Aviation Department formerly paid to the Council in lieu of rates.

The inspection revealed that the Club has commenced development of the first nine holes of its course…. It is expected that by 1 April 1969 … the Club will have nine holes ready for playing (possibly half these holes will be temporary ones just to enable Club members to commence playing).

Mr Banks was told that the [Lands and Survey] Department had not received any prior information about the golf course, and he was very surprised as he had been led to believe that all Crown requirements had been met. It was made clear that the Department's main concern was to ensure the public had adequate access along the foreshore, and that the public be protected from the very real danger of golf balls straying on to or near the beach. Fortunately the development that has commenced is for the first nine holes of the course, and these are well away from the foreshore, so that there is still opportunity for the last nine holes to be replanned to meet the Department's requirements….

The inspecting officers firmly recommend that at least one chain along the foreshore be excluded from any lease that is granted to the Club. In addition to this it may be desirable to require the Club to erect a fence, five or six feet high, as an additional precaution for the protection of the public….

The above information is rather detailed, but I feel you should be fully informed about the events to date. I am particularly concerned about the offer made by the Ministry of Transport to the Raglan County Council, and the fact that development of the golf course had commenced before the Department was informed. The District Commissioner of Works was asked at the beginning of this month if he knew anything about the aerodrome being declared surplus, but he had no information about this. As the Minister of

> Defence has now agreed to the aerodrome being declared Crown Land, I feel that the situation has, in part, been retrieved.[2092]

In a separate memorandum in February 1969, he added:

> It is indeed unfortunate that a definite offer was made by the then Civil Aviation Department, as the County Council has accepted the offer and expects the Crown to comply with the terms of it. As far as reservation and vesting is concerned, I do not think there is any difficulty with this, but the lease to the Golf Club will certainly be subject to any terms and conditions that the Minister may require.[2093]

The following month the County Council approached Lands and Survey for assistance in drawing up a suitable lease document. A draft lease was provided "only as a suggestion to Council"[2094].

However, in all other respects the hands of the Department of Lands and Survey were tied until after the formal transfer to its administration. It was obliged to accept whatever arrangements were already in place at the time of the transfer. These included the conditions imposed on the transfer by the Ministry of Transport, and whatever agreements existed between the Ministry of Transport, Raglan County Council, and Raglan Golf Club. The Director General of Lands discussed the terms of the handover with Civil Aviation authorities in March 1969.

> The matter has been discussed with the Ministry of Transport, which advises that it is intended that all the area which is being declared Crown Land is to be reserved for aerodrome purposes and vested in the Raglan County Council for this purpose.
>
> Since 1954 the former Civil Aviation Department in accordance with Government policy has been endeavouring to get the local body to take over the responsibility for maintaining the aerodrome. It has now only succeeded on the basis of vesting the whole area in the Council so that it can lease the area not being used as the actual aerodrome, and using the income in maintaining the airfield, which costs approx $1,000 per annum. It is essential that the aerodrome be maintained, because it is used by the Hamilton Aero Club, particularly at weekends, and as well for cases of emergency, because it

[2092] Commissioner of Crown Lands Hamilton to Director General of Lands, 20 December 1968, on Commissioner of Crown Lands Hamilton to County Clerk Raglan County Council, 19 December 1968. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2493-2495.
[2093] Commissioner of Crown Lands Hamilton to Director General of Lands, 10 February 1969. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2496.
[2094] Commissioner of Crown Lands Hamilton to County Clerk Raglan County Council, 27 March 1969. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3121.

> is the only airfield on the west coast between New Plymouth and Auckland. The Crown has spent $48,000 in developing the airfield.
>
> The question of reserving the whole area, or only that part which is to be used as a golf course, for recreation purposes was put to the Ministry of Transport. It is not in favour of this as reserving the whole area for aerodrome purposes will enable the Council to use the proceeds from leasing in maintaining the aerodrome, while at the same time the Crown will have some control to ensure that the airfield is maintained.
>
> In the circumstances it is considered that we should fall into line with the wishes of the Ministry of Transport, particularly as it is proposed that the public's right of access to the foreshore will be preserved, and this is essentially what we desire.
>
> Ministry of Transport have no objections to the lease to the Golf Club….[2095]

Local officials tried one more time to get the golf course reserved as a recreation reserve[2096], but were told:

> When this matter was discussed with the Ministry of Transport, it was adamant that it would not agree to any of the aerodrome being released for reservation for recreation purposes, and in fact indicated that if the issue was pressed the Ministry itself would retain control of the land.[2097]

Probably inadvertently, the Ministry was in effect claiming that the purpose for which the land had been taken in 1941 had not disappeared or been altered as a consequence of the intention to have the aerodrome declared to be Crown Land. This was, of course, a fiction, as development of a golf course over a large part of the land prevented that part's use as an aerodrome. The golf course was only included in the aerodrome reservation so that the rental received from the lease of the golf course could be tied to expenditure on the airfield, rather than going into the County Council's general funds.

The procedure to transfer responsibility involved a number of steps. As the land had been taken for defence purposes and then had come under the control of the Department of Civil Aviation, the approval of both the Minister of Defence and the

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[2095] Director General of Lands to Commissioner of Crown Lands Hamilton, 12 March 1969. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3122.
[2096] Commissioner of Crown Lands Hamilton to Director General of Lands, 31 March 1969. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3123.
[2097] Director General of Lands to Commissioner of Crown Lands Hamilton, 24 April 1969. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3124.

Minister of Civil Aviation to this change had to be obtained[2098]. Then the Minister of Works was asked to declare that, in terms of the Public Works Act, the land was no longer required for the purpose for which it was taken, and in doing so would have its status changed to Crown Land[2099]. After a survey plan was prepared showing the land to be declared to be Crown Land (i.e. the land still held for defence purposes after the boundary adjustments described in the previous section of this chapter)[2100], a notice changing the status of the land was signed in July 1969[2101]. The Crown Land had a total area of 89 acres 1 rood 07.1 perches. Once the land was Crown Land, responsibility passed from the Ministry of Defence and the Ministry of Transport to the Department of Lands and Survey.

Lands and Survey tried to see if the 89 acres could be treated in two parts, the airstrip to be reserved for aerodrome purposes, and the golf course to be reserved for recreation purposes[2102], but the Ministry of Transport insisted that the whole area was still required for an airfield; as the Ministry saw it, declaring the land to be Crown Land was a convenient mechanism to facilitate reservation of the whole area for aerodrome purposes, and its vesting in the Council[2103].

The lease to the Golf Club was for an area of 63 acres 3 roods 20 perches (25.8493 hectares)[2104], with the remainder of the 89 acre aerodrome reserve being the single emergency runway at the northern end of the reserve. It was entered into between Raglan County Council and Raglan Golf Club (Incorporated), with a start date of 1 April 1969, even though the Council had no lawful authority on that date, as the land was not vested in it until October 1969. The lease document was signed in November 1970, at which time the Council did have lawful authority to enter into a lease arrangement. The lease was for a term of 33 years with one right of renewal.

[2098] Deputy Secretary for Defence (Air) to Secretary for Civil Aviation, 26 November 1968, and Acting Secretary for Transport to Commissioner of Works, 4 December 1968. Works and Development Head Office file 23/381/154/1. Supporting Papers #1194-1195.
[2099] Acting Secretary for Transport to Commissioner of Works, 4 December 1968. Works and Development Head Office file 23/381/154/1. Supporting Papers #1194.
[2100] South Auckland plan SO 44836. Supporting Papers #2433.
[2101] *New Zealand Gazette* 1969 page 1425. Supporting Papers #4096.
[2102] Commissioner of Crown Lands Hamilton to Director General of Lands, 31 March 1969. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2497.
[2103] Submission to Minister of Lands, 22 September 1969, approved 1 October 1969. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2498-2500.
[2104] South Auckland plan DPS 14166 (Lot 1). Supporting Papers #2324.

Although a lease of a public reserve, it was entered into by the County Council using a power granted to it by Section 6 Airport Authorities Act 1966. An amendment to the Reserves and Domains Act 1953 (Section 3 Reserves and Domains Amendment Act 1965) had allowed such leases by airport authorities to be issued wherever a reserve was vested in a local authority for aerodrome purposes.

At no stage during this change of status was any thought given to the interests of the former owners. There was no attempt to contact them, or to consider offering the land back to them. The Ministry of Transport had already made its arrangement with Raglan County Council, and although other parties such as the Ministry of Works and the Department of Lands and Survey were involved, they had no influence to change the course of events.

Local Maori were aware of what was happening at about this time, although this may have been after the reservation and vesting, rather than at an earlier stage when any complaint they had might have received a hearing. In his submissions to the Minister of Lands about the allocation of the severance strip of Crown Land, made in March 1971 (five months after the reservation and vesting), the Chairman of the Incorporation noted:

> The emergency landing ground is now a golf course believed to be controlled by or vested in the Raglan County Council. It is impossible for the Maori people to ask for this land to be returned, because of the loading for improvements made by the Crown, but could the cost be met, their moral right to do so cannot be denied. The principle at stake is only partially acknowledged in Section 436 of the Maori Affairs Act 1952 [sic].[2105]

He made these remarks in the context of bolstering his case for return of the severance strip, arguing that the severance strip might be the only aerodrome land Te Kopua Maori might hope to get returned to them.

The transfer of administrative responsibility to the Department of Lands and Survey made the Minister of Lands the ministerial contact for anything to do with the aerodrome. In October 1971 the Minister visited Raglan, and was spoken to by Te Kopua Maori.

[2105] Chairman, Committee of Management, The Proprietors of Te Kopua 2B3 Block, to Minister of Lands, 31 March 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2514-2518.

> The Maoris showed me a small raised area within the golf course which is an old Maori burial ground. They do not necessarily want this area fenced off, but would like it marked in some way to record the presence of this burial ground.[2106]

The matter was referred to Raglan County Council[2107], which reported back in March 1972.

> Discussions have taken place between Councillor Snowden [local Riding member], the Golf Club and certain Maoris living in the area, and as a result a plaque is to be installed on ground level so that the mowing machine can mow same. This satisfies the Golf Club and the Maori people concerned.[2108]

The intrusion of the golf course on to the burial areas amounted to a failure by the Crown to fulfil an obligation it had committed itself to in 1941. At the first of the two hui, it apparently promised that the two urupa would not be interfered with in any way. The exact nature of the promise is not known, as it was not made in writing to the Maori owners; it is referred to only in a report of the meeting prepared by a Crown official who attended[2109]. The promise was apparently upheld when the Public Works Department supervised the construction of the runways during 1941-42. However, during subsequent transitions and transfers of responsibility (Public Works to Defence, to Civil Aviation, to Transport, to Raglan County Council, to Raglan Golf Club), the existence of the promise was not communicated to the new administrators of the land. The absence of a written agreement in 1941 between the Crown and the Maori owners meant that the Golf Club was never made aware of the particular responsibility for the urupa that it would be taking on, and the Maori campaigners for the return of the land could only talk in generalities about what their forebears had negotiated and agreed to.

There were the glimmerings of a shift in Crown attitudes about taken lands during the early 1970s, that were to be further developed as the decade wore on. Eva Rickard wrote to her local Member of Parliament in October 1973 in connection with the proposed taking of Maori-owned land for oxidation ponds at Raglan. She listed all

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[2106] Minister of Lands to Director General of Lands, 21 October 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2533.
[2107] Commissioner of Crown Lands Hamilton to County Clerk Raglan County Council, 5 November 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2534.
[2108] County Clerk Raglan County Council to Commissioner of Crown Lands Hamilton, 1 March 1972. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2535.
[2109] Assistant Land Supervisor Hamilton to Registrar Native Land Court Auckland, 30 July 1941. Works and Development Hamilton file 44/4. Supporting Papers #3338.

the other losses of land for various public uses that had occurred over the years, including the aerodrome. Her letter was forwarded to the Minister of Maori Affairs[2110]. In briefing the Minister, the Secretary for Maori Affairs repeated the remarks made in the letter from the Minister to Eva Rickard in 1968[2111], that legally the Crown could deal with taken land as it saw fit. He then added, with respect to the aerodrome:

> I must confess that there seems to be some merit in the former owners' contentions that the land, since it was no longer required for the purpose for which it was compulsorily taken, ought to have been offered back to the owners in the first instance. Perhaps the matter could again be taken up with the Hon Minister of Lands.[2112]

These additional remarks were a slight rephrasing of similar remarks made two years earlier in connection with the request of Te Kopua 2B3 Incorporation that the severance strip alongside Ocean Beach Road be returned to Maori ownership[2113]. They represent the first tentative steps towards developing a Crown policy that eventually made return of the golf course possible.

16.5 The Crown Agrees to the Return of the Golf Course, with Conditions, 1976

The Maori Land March, from Te Hapua to Wellington, which had taken place in March 1975, had fired the imagination of Maori to both retain the land they still held, and to get back some of the land they had lost. Eva Rickard, a daughter of Riria Kereopa, had been inspired by this call for the return of lost land, and it became her personal goal to get the aerodrome land handed back.

The Land March had been organised by Te Matakite o Aotearoa, and Eva Rickard founded a Tainui Branch of the organisation, based at Raglan. Its first action seems to have been a letter to the Minister of Maori Affairs at the end of January 1976, asking that he receive a deputation seeking return of the golf course site.

[2110] T Rickard, Raglan, to KT Wetere MP, 3 October 1973, attached to KT Wetere MP to Minister of Maori Affairs, 10 October 1973. Maori Affairs Head Office file 19/1/671. Supporting Papers #957-959.
[2111] Minister of Maori Affairs to T Rickard, Raglan, undated. Maori Affairs Head Office file 19/1/671. Supporting Papers #954.
[2112] Secretary for Maori Affairs to Minister of Maori Affairs, 7 December 1973. Maori Affairs Head Office file 19/1/671. Supporting Papers #964-965.
[2113] Secretary for Maori Affairs to Minister of Maori Affairs, 20 April 1971. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2519.

> We are not asking for the return of one acre, but the return of 63 acres 3 roods 20 perches now used by the Raglan Golf Club. The 25 acres 1 rood 25 perches is still used by the Aero Clubs and topdressing planes.[2114]

The deputation met the following month with the Minister and presented him with a submission asking for return of the golf course[2115]; he referred the request to the Minister of Lands. Subsequently Eva Rickard spoke to the news media about a possible sit-in at the golf course and the fencing off of a grave on the tenth green "where graves had been bulldozed up during the war"[2116].

Eva Rickard followed up her meeting with the Minister of Maori Affairs early in March 1976, when she sent him more detailed submissions[2117]. Included among the submissions was the following statement:

> We contend that it is wrong in principle and morally dishonest that land forcibly taken by the Crown for a specific purpose be vested in another person or body without first offering those lands to the original owners or their legal successors, on the termination of the specified use.

Signing herself as "Chairman Tainui Matakite Committee", Rickard also wrote later that month to the Commissioner of Crown Lands asking about the ownership and status of the aerodrome[2118]. She was told that it was reserved for aerodrome purposes and vested in trust in the Raglan County Council[2119]. Although not stated in the reply, the "vesting in trust" meant that the Council had full powers of ownership while the land was used for its reserved purpose, subject to the provisions set out in the Reserves and Domains Act 1953. These provisions meant that the Council could not sell it, and if the reservation were cancelled and the vesting were revoked the land would revert to being Crown Land.

[2114] E Rickard to Minister of Maori Affairs, 30 January 1976, quoted in Minister of Lands to Minister of Maori Affairs, 20 May 1976. Maori Affairs Head Office file 19/1/671. Supporting Papers #974-975.
[2115] Statement by TE Rickard, undated. Maori Affairs Head Office file 19/1/671. Supporting Papers #966.
[2116] *Waikato Times*, 24 February 1976, and *New Zealand Herald*, 25 February 1976. Copies on Lands and Survey Auckland file 8/5/270. Supporting Papers #2541 and 2542.
[2117] TE Rickard, Raglan, to Minister of Maori Affairs, 4 March 1976. Maori Affairs Head Office file 19/1/671. Supporting Papers #967-971.
[2118] Chairman, Tainui Matakite Committee, to Commissioner of Crown Lands Hamilton, 28 March 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2543.
[2119] Commissioner of Crown Lands Hamilton to E Rickard, Raglan, 6 April 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2544.

In April 1976 Te Matakite o Aotearoa staged a one-day occupation of the golf course, focussed on the burial ground, as a means of applying pressure on the Minister of Maori Affairs to respond to the submissions presented by the deputation two months earlier[2120].

For the Crown at this time, the foremost issue to consider in response to the request of Te Matakite o Aotearoa (Tainui Branch) was whether the golf course was still required for aerodrome purposes. If it was no longer required, wrote the Minister of Lands to his colleague the Minister of Maori Affairs,

> in the first instance it will be offered back to the original owners in accordance with Government policy. I would make it clear, however, that any such return of the land would be subject to payment by them on the same basis by which they were originally compensated for loss of the area, and to the existing lease between the Raglan County Council and the Raglan Golf Club.[2121]

Whether or not it was still required was a question addressed to the Minister of Civil Aviation, who replied that Raglan was a small airfield used by light aircraft for general aviation activity, and that the need for such airfields could best be gauged by whether a local authority was willing to meet the costs of maintaining such an airfield[2122]. The Minister's reply failed to specifically address the role of the golf course at Raglan, so further discussions were held with the Secretary for Transport, which were later summarised in a letter from the Minister of Lands to the Minister of Maori Affairs.

> The contents of [the Minister of Civil Aviation's] reply can best be summarised by saying that from a national point of view the Raglan aerodrome has little or no significance except possibly as an emergency airstrip. From a local point of view he can only suggest that the local authority's willingness to meet the costs of maintaining the aerodrome is evidence that there is a need for it. The Secretary for Transport has subsequently recorded his view that the airstrip serves predominantly a local need, and that no Government subsidy could be justified to keep it in operation. He further advises that if I decide that the area on which the Golf Course is located should be released, it would have no direct effect on the aerodrome. It may in his opinion have an indirect effect in that the Raglan

[2120] *New Zealand Herald*, 26 April 1976. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2545.
[2121] Minister of Lands to Minister of Maori Affairs, 22 March 1976. Maori Affairs Head Office file 19/1/671. Supporting Papers #972-973.
[2122] Minister of Civil Aviation to Minister of Lands, 29 March 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583 at 2580.

> County Council may then decide that it would be unable to meet the cost of maintaining it. A point to note is that when the County agreed to take over the aerodrome the surplus land was included in the transaction to serve as an endowment for the cost of maintaining the airstrip.[2123]

Meanwhile Raglan County Council passed a resolution leaving the decision about return of the land up to the Ministers of Lands and Civil Aviation, implying that it would agree to whatever decision was made when it added that the final decision of the Ministers should be binding on all parties[2124].

In May 1976 the Minister of Lands made his decision, leaving it to his colleague the Minister of Maori Affairs to publicly announce the decision in a press statement.

> Government has decided that 25.8491 hectares of land near Raglan that was taken by the Crown for aerodrome purposes during the Second World War is to be returned to the original Maori owners.
>
> This decision by the Minister of Lands, Mr Venn Young, was announced today by the Minister of Maori Affairs, Mr Duncan McIntyre, during a visit to Raglan….
>
> "The reservation over the land occupied by the Golf Club is to be revoked, and the vesting in the Raglan County Council cancelled. The Minister of Lands will then make an application to the Maori Land Court for a revesting order in the local Maoris pursuant to Section 436(1) of the Maori Affairs Act 1953", Mr McIntyre said.[2125]

This decision came with conditions, also referred to in the press release. These were:

- Payment would have to be made for the return of the land, because the former owners had been compensated in 1941.
- The return was only of the area of the Raglan Golf Club's lease, and did not include the rest of the aerodrome land, nor did it include the access road to Raglan Domain.
- The Crown would negotiate to retain in public ownership a 20 metre strip of land along the coastline for public use and enjoyment.

[2123] Minister of Lands to Minister of Maori Affairs, 20 May 1976. Maori Affairs Head Office file 19/1/671. Supporting Papers #974-975.
[2124] County Clerk Raglan County Council to Minister of Lands, 24 March 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583 at 2579.
[2125] Press Statement from the Office of the Minister of Maori Affairs, 21 May 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2548-2549.

- The land when returned would be subject to the existing lease to the Golf Club.[2126]

The day before issuing the press statement, the Minister had written to the Minister of Maori Affairs and to Raglan County Council advising what he had decided[2127]. In his letter to his colleague the Minister of Maori Affairs, he explained that:

> In view of the advice from the Secretary for Transport that the airstrip can continue to function without the land occupied by the Golf Course, it should be possible to meet the request of the original owners. Therefore I have decided that the reservation over the land occupied by the Golf Club (25.8491 ha) is to be revoked and the vesting in the Raglan County Council cancelled. It is then my intention to make an application to the Maori Land Court for a revesting order in the local Maoris pursuant to Section 436(1) Maori Affairs Act 1953.

Of the conditions, he did not believe them to be particularly onerous for the new owners, "as they will derive a rental (reviewable each eleven years) which they can use for any purpose (e.g. servicing a loan to finance the purchase back from the Crown)"[2128].

16.6 The Campaign to Complete the Return of the Land, 1976-1987

The Minister of Maori Affairs had concluded his press release by expressing confidence that all concerned would welcome the decision[2129]. However, this confidence was seriously misplaced, as the decision marked the start of a long campaign that was to last for the next 11 years, before the land was finally returned. Maori disliked the conditions attached to the return, while the Golf Club was fearful that it would be forced off the land by new landlords keen to use any opportunities

[2126] Press Statement from the Office of the Minister of Maori Affairs, 21 May 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2548-2549.
[2127] Minister of Lands to Minister of Maori Affairs, 20 May 1976. Maori Affairs Head Office file 19/1/671. Supporting Papers #974-975.
Minister of Lands to County Clerk Raglan Council, undated (20 May 1976), attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583 at 2578.
[2128] Minister of Lands to Minister of Maori Affairs, 20 May 1976. Maori Affairs Head Office file 19/1/671. Supporting Papers #974-975.
[2129] Press Statement from the Office of the Minister of Maori Affairs, 21 May 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2548-2549.

(such as a forthcoming rent review) provided in the lease document. Almost forgotten in the tumult was that in 1976 Eva Rickard was herself a member of the Golf Club[2130].

The period 1976 to 1987, in connection with the Raglan aerodrome and golf course, was a very active one, generating extensive written records and many volumes of Crown files. Reflecting the role of this case study as potential evidence to be presented to the Waitangi Tribunal, or as support in the event of direct negotiations with the Crown, what follows in this section, while intended to be comprehensive enough to cover every significant twist and turn in the campaign, concentrates on the actions of the Crown, and the interaction between the Crown and Maori. These include the negotiations over the return conducted by the Minister of Lands and the Department of Lands and Survey, the involvement of the Minister of Maori Affairs, and the involvement of the Police in arresting some protesters occupying the golf course. Not covered to the same extent are the manner in which the Raglan golf course became a cause celebre at the national level as a high profile example of bids to get land returned to Maori ownership, the attempts at one-upmanship in a contest for public support for their cases by some Maori groups and by the Golf Club, resulting in a multiplicity of newspaper articles and letters to the editor, the accusations of racism directed at Golf Club members, and the efforts of the Golf Club in the courts. Nevertheless, these other factors are referred to where appropriate in order that a timeline of significant events can be apparent from the narrative.

16.6.1 A Timeline of Events

A summary timeline is set out below, to highlight the most significant events during the eleven-year campaign.

[2130] *Waikato Times*, 25 May 1976. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2550.

Table 16.2 Timeline of Events for the Return of Raglan Golf Course, 1976 -1990

February 1976	Deputation of local Maori meet Minister of Maori Affairs, and ask for return of the 63-acre golf course
May 1976	Crown agrees to return of the golf course, subject to conditions including purchase of the land and honouring of the Golf Club lease
June 1976	Three negotiators (Eva Rickard, Douglas Sinclair and Dan Te Kanawa) appointed by Tainui Awhiro
September – November 1976	Negotiations with Crown representative (Commissioner of Crown Lands). Negotiations unsuccessful, and referred back to Minister of Lands
March 1977	Minister of Lands asks his Department for work to be done on some alternative conditions, including reduced purchase price and corresponding reduction in lease rentals to be paid by Golf Club to new Maori owners
July – August 1977	Crown representative (Commissioner of Crown Lands) puts alternative conditions to Maori negotiators and Golf Club
October 1977	Conditions rejected by both Maori negotiators and Golf Club
November 1977	Maori negotiators and Golf Club separately suggest conditions that they would accept; these are mutually incompatible, and do not draw any response from the Crown
February 1978	Golf course occupied by Maori in order to conduct a service at an urupa located there; police arrest 17 occupiers
March 1978	Minister of Lands visits Raglan, meeting separately with Tainui Awhiro, the Golf Club and Raglan County Council
March 1978	Minister of Lands makes a second visit to Raglan to present further options to the Maori negotiators, the Tainui Trust Board, and the Golf Club; obtains agreement to allow marking out of the urupa on the golf course
June 1978	Urupa delineation shows the extent of golf links encroachment on to the burial site; Minister of Lands asks for investigations into relocation of the Golf Club
June 1978	Magistrate's Court dismisses trespass charges against the 17 occupiers, on the grounds that the Golf Club lease is invalid
July 1978	Maori negotiators and the Golf Club meet with the Minister of Lands in Wellington; the Crown subsequently offers in writing to finance relocation of the Golf Club, although still insisting on the returned land being purchased by its new Maori owners
September 1978	Golf Club rejects offer, while Tainui Awhiro do not respond; Minister of Lands decides to bring matters to a head by making revesting application to the Maori Land Court

October 1978	Crown's application for revesting of the golf course and the severance strip alongside Ocean Beach Road submitted to Maori Land Court; application includes conditions about purchase of the returned land and honouring of the Golf Club lease
April – May 1979	Tainui Awhiro reject conditions in public statements; all three Maori negotiators notify the Court of their intention to appear in opposition to the Crown's application
June 1979	Maori Land Court hearing of application; adjourned because applicant (the Crown) not present
July 1979	Eva Rickard meets Minister of Lands in Wellington; Minister agrees to review conditions
August 1979	Crown representative (Director General of Lands) meets Maori negotiators and Golf Club at Raglan; offers a much reduced purchase price, although subject to a reduced rental amount to be paid by the Golf Club and with no change to the length of its lease
September 1979	Maori Land Court hearing resumes; Crown presents a revised application incorporating the latest offer conditions. Golf Club objects to late revision of application, but Court agrees to order the revesting
October 1979	Golf Club applies for a rehearing of the vesting application, while separately telling the Minister of Lands that it was now prepared to relocate the golf course to another site
November 1979	Crown representative (Commissioner of Crown Lands), Golf Club and Tainui Awhiro meet at Raglan; Tainui Awhiro agrees to the golf course remaining in use until relocation can occur, and Golf Club agrees to respect the urupa
December 1979	Maori Land Court considers application for rehearing, and reserves its decision
December 1979	Golf Club applies to the Supreme Court for a judicial review of the Maori Land Court's revesting order of September 1979, and for a declaration about the validity of the Club's lease
March 1980	Maori Land Court declines the Golf Club's application for a rehearing
March 1980	Supreme Court orders a stay on implementation of the Maori Land Court's revesting order, which is due to take effect on 1 April 1980, pending hearing of the Golf Club's application for judicial review
June 1980	High Court (the Supreme Court renamed) upholds the Golf Club's objections to the Maori Land Court's September 1979 revesting order, and orders the revesting application to be reheard

July 1980	High Court rules that the Golf Club's lease is valid; Tainui Awhiro talk of appealing the decision to the Court of Appeal
July 1980	Crown withdraws its application for revesting, and declines to submit a new application while an appeal to the High Court decision on the validity of the lease might be lodged
October 1980	Appeal against High Court's decision lodged in Court of Appeal; no active measures then taken to prosecute the appeal
May 1981	Alternative golf course site purchased by the Crown
February 1982	Construction of golf course on alternative site commences
June 1983	Eva Rickard meets with the Minister of Lands in Wellington; she agrees to support withdrawal of the appeal in order to allow a new revesting application to be lodged
September 1983	Appeal to the Court of Appeal withdrawn
October 1983	Crown submits new revesting application to the Maori Land Court; the application still seeks the same lower purchase price as had been set out in the September 1979 application, but now makes no mention of the Golf Club lease, except to require that accumulated rents from the 1979-83 period be paid by the Crown to the new Maori owners
November 1983	Golf Club vacates the golf course; Tainui Awhiro take over occupation of the land with the approval of the Crown (still the then-owner)
November 1983	Maori Land Court hears the revesting application on Poihakena Marae, Raglan; revesting ordered in terms of the application
December 1983	Eva Rickard applies for a rehearing of the revesting application, because of her objection to the condition requiring purchase of the returned land
March 1984	Application for rehearing heard and adjourned
September 1984	Application for rehearing heard and adjourned
April 1986	Application for rehearing heard; decision reserved
June 1987	Minister of Lands agrees to revesting of the land without conditions, on the grounds that there are doubts about the Court's legal ability to insist on a payment of accumulated rents, and the purchase price is in any event equivalent to those accumulated rents
June 1987	Crown advises Maori Land Court that the revesting need not now be subject to conditions, and the Court amends its 1983 order; Eva Rickard withdraws her application for a rehearing
June 1990	Maori Land Court staff complete their drawing up of a list of owners, and two revesting orders (one for the former golf course and another for the severance strip alongside Ocean Beach Road) are signed and made final

16.6.2 The First Negotiations, 1976-1977

Eva Rickard's reported initial reaction to the Government decision in May 1976 to return the land was positive.

> Mrs Rickard said she had been "overwhelmed" by the Government's decision. "This is the beginning. At least they have come across and acknowledged us. I am quite happy with the decision", she said.

As to having to pay compensation, she was not against this in principle, but would not want to pay full market value.

> It would be totally unfair to ask the Maori people to pay full market – and speculation – value of the land, especially when part of it was leased, she said.
>
> "The land might be worth $300,000 to a speculator. But no one should have the right to sell it to us at speculation value."[2131]

The Director General of Lands initially thought that the return would not pose too much of a problem. He wrote to the Commissioner of Crown Lands:

> [Following the Minister of Lands' decision] it seems to me that the next step is for you to let me have a short submission recommending to the Minister of Lands a cancellation of the existing vesting in the Raglan County Council, and the revocation of the reservation over the reserve. It is particularly important that the Gazette notice providing for the cancellation of the vesting and the revocation should provide for the continuation of the existing lease to the Raglan Golf Club.
>
> Once this has been done, we will then need to decide on the method of assessing the purchase price to be paid by the Maori owners. Obviously there is going to be some disagreement between the interested parties on this particular point, but my view at this stage is that the Maori owners should pay current market value, particularly as they were compensated when the land was originally taken for aerodrome purposes. To enable negotiations to commence I require a current market value of the total area involved including the 20 metre strip that we propose retaining for reserve purposes, and I also require a separate valuation showing only the land that is to be returned to the Maori owners. You should request these valuations from the district valuer, and ask that they be supplied as soon as possible.[2132]

The Commissioner replied that valuations had been requested, and raised two matters. The first was that retaining 20 metres along the water's edge would include part of the golf course layout. The second was his view that the Crown Land severance strip,

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[2131] *Waikato Times*, 22 May 1976. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2552.
[2132] Director General of Lands to Commissioner of Crown Lands Hamilton, 4 June 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2553.

discussed earlier in this case study, should be included in the negotiations over the return of the golf course[2133].

The valuation came to hand in July 1976, and showed that the Crown's interest in the golf course lease area had a capital value of $47,800, while the Crown's interest in the golf course less 20 metre strips around the water's edge (on both sides of the sand spit) had a capital value of $38,000. However, this valuation was based on the existence of the Golf Club lease, which contained a covenant about the responsibility of the Club to maintain the runway on the existing airfield; this covenant was said by the valuer to have "a substantial bearing on rental levels and on the value of the land to a lessor with no interest in maintaining the airport"[2134]. Three months later a fresh valuation was sought that did not recognise the Golf Club lease, while still taking into account the District Planning Scheme provisions of a Rural zoning overlaid by a notation for Community Use that allowed hotels, motels and camping grounds as conditional uses[2135]. The second valuation assessed the current market value of the golf course (excluding 20 metre strips along water's edge margins) at $61,300[2136]. The Crown relied on this latter figure in all subsequent discussions and calculations. Valuations of the current market value of the airfield ($37,300) and the severance strip to the west of Ocean Beach Road ($9700) were also obtained at this time[2137].

In June 1976 a meeting was held at Tainui Awhiro marae, at which three people were elected to act as negotiators on behalf of the former Maori owners. They were Dr Douglas Sinclair, Mrs Eva Rickard, and Mr Dan Te Kanawa[2138]. The following month these three negotiators met with the Ministers of Lands and Maori Affairs in Wellington. As an opening statement, the deputation challenged the legality of the

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[2133] Commissioner of Crown Lands Hamilton to Director General of Lands, 2 July 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2554.
[2134] District Valuer Hamilton to Commissioner of Crown Lands Hamilton, 19 July 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2555-2557.
[2135] Commissioner of Crown Lands Hamilton to Branch Manager Valuation Department Hamilton, 1 October 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2596.
[2136] District Valuer Hamilton to Commissioner of Crown Lands Hamilton, 11 October 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2602-2603.
[2137] Commissioner of Crown Lands Hamilton to Branch Manager Valuation Department Hamilton, 13 October 1976, and District Valuer Hamilton to Commissioner of Crown Lands Hamilton, 22 October 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2604 and 2607-2610.
[2138] E Rickard, Raglan, to Minister of Lands, 16 June 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583 at 2570.

Golf Club's lease, because of the start date being before the County Council had assumed control of the reserve.

> Dr Sinclair then went on to say that the Maoris are concerned that the Government's proposal may give them the shadow of the land but not its substance, and they are not prepared to accept such a settlement.

They could not accept the conditions set by the Minister as they had "a rightful prior claim" to the land ahead of the County Council and the Golf Club. They felt a court of inquiry would uphold their rights. They also queried the need for payment for the land, with Eva Rickard being recorded as stating:

> The Crown did not pay full compensation for the loss of all Maori rights, they did not get compensated for the loss of their marae and meeting house, they have lost the land for 36 years, and if the Minister's proposal goes ahead they will have lost it for over 100 years. They believe they have the right to negotiate their own terms [with the Golf Club].[2139]

For his part the Minister of Lands was recorded as saying:

> He was aware of the historic importance of the land to the owners, but whatever the rights or wrongs of the past, the clock cannot be turned back. He was sorry if his decision had caused resentment and division in Raglan, but he had been invited to adjudicate and he looked at the history of the land and the fact that a portion of it is not being used for the purpose for which it was taken.
>
> The Minister said he believed it was an act of good faith to return the land, but by doing so he did not wish to create fresh resentments. He therefore decided that the lease should remain intact….
>
> He has insisted on compensation being paid by the Maoris although the amount is negotiable, because the owners were compensated and as a trustee for the Crown he must see that a fair arrangement is made.[2140]

The Minister then proposed that, because of their likely complexity, the negotiations should be conducted at a local level in Raglan or Hamilton, by officials on the Crown side, rather than at ministerial level in Wellington. He indicated that initially those officials should discuss matters individually with each interested party, prior to arranging a round-table conference at which a satisfactory solution might be reached.

[2139] Notes of Meeting, 20 July 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583 at 2561-2563.

[2140] Notes of Meeting, 20 July 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583 at 2561-2563.

This was accepted, "if they take place in a spirit of rapprochement, and provided the discussions are intended to be meaningful"[2141].

After the meeting, one of the first steps taken by the Crown was to examine the claim that the lease to the Golf Club was not legal. A legal opinion was obtained that, regardless of the start date, the lease operated from the date in November 1970 that it had been signed (executed), and since then had been capable of meeting the intentions of both parties to the lease, and so from its execution date was a valid contractual arrangement. In the circumstances the start date was relegated to being the agreed basis for calculating when the lease would expire[2142].

For their part, the first step taken by the Maori negotiators after the meeting with the Minister was to discuss the offer back with the Opposition Members of Parliament for Northern Maori (Matiu Rata) and Western Maori (Koro Wetere). Matiu Rata then wrote to the Minister of Lands that, while the offer back was welcome, the conditions were in his opinion "harsh when closely examined". He described the lengthy period the land would be tied up in a lease to the Golf Club, the setting aside of public reserve, and the payment for return of the land as "lacking in generosity", and concluded:

> I am certain that further negotiations on the return of the land concerned will see the matter suitably resolved, and my purpose for writing is to convey strong support for the representations made to you [by the Maori negotiators] in this matter.[2143]

The local official instructed to undertake the negotiations was the Commissioner of Crown Lands in Hamilton. He was, however, to carry out this task under the active guidance of his Head Office, to the extent that the Director General of Lands advised that he would "personally attend the first round of discussions"[2144].

[2141] Notes of Meeting, 20 July 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583 at 2561-2563.
[2142] File note by Office Solicitor, 22 July 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583 at 2564.
[2143] M Rata MP to Minister of Lands, 29 July 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 18 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2584-2594 at 2593.
[2144] Director General of Lands to Commissioner of Crown Lands Hamilton, 2 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2558-2583.

Before those first discussions could commence, Eva Rickard, on behalf of the Maori negotiators, wrote to the Minister to confirm their understanding of the meeting they had had with him, and to set out their views in more detail than they had been able to do at the meeting. The most significant feature of this letter was a request for the return of the whole former aerodrome site, not just the golf course.

> The Tainui people are very pleased and grateful for your favourable decision to return this land to them. We consider that this … confirms that, as a matter of principle, this land should have been offered back to the original owners after the end of the Second World War.
>
> In your correspondence, you have stated that your decision to return this land was based on the principle that any land which was forcibly acquired by the Crown should be offered back to the original owners if or whenever the use or purpose for which it was taken ceases to apply. We fully agree with the relevance and application of this principle in this case. However, we contend that the spirit of this principle will not be demonstrated or acknowledged unless the total area of land which was originally taken is returned. To this end, we intend to pursue the return of the land which is occupied by the Raglan Golf Club and that which is used for the Aerodrome.[2145]

They also asked that the Crown Land severance strip to the west of Ocean Beach Road should be transferred to Te Kopua 2B3 Incorporation.

The negotiators rejected any conditions that would "prevent the rightful owners from having the full rights, use and benefit of this land". This was particularly applicable at Raglan, where so much land had passed into public ownership, which had "weakened and jeopardised the mana, dignity and standing of the Tainui people of Raglan". The need to pay for the return of the land was also rejected.

> In view of the failure by various Government Departments to honour the assurances and intentions of the agreements made with the original owners, the consequential damage to the tribal entity and the loss of use of the land since the end of the war, we consider that the owners have suffered an immeasurable loss, and that the Government is under a greater moral obligation to compensate the owners than vice versa.[2146]

Finally, the negotiators addressed the Golf Club's lease. Considering that it would be "a gross injustice if the superficial interests of the Club were protected at the expense

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[2145] E Rickard, Raglan, to Minister of Lands, 1 August 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 18 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2584-2594 at 2589-2591.

[2146] E Rickard, Raglan, to Minister of Lands, 1 August 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 18 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2584-2594 at 2589-2591.

of the interests of the Maori people", they argued that it would be better for all concerned if the lease (which they perceived to be a temporary arrangement only for its 33-year lifetime) were terminated sooner rather than later, with the Golf Club establishing a new permanent golf course at another location. That the lease contained a Maori burial site covering some three or four acres was in their opinion a further reason for the course to be relocated[2147].

In response to these representations, the Director General of Lands advised the Commissioner of Crown Lands:

> 1. There is no intention to return the land on which the airstrip is located, however regarding the severance areas it is agreed that these should be included in the revesting order….
> 2. The decision to return the land was subject to certain conditions, including the continuation of the Golf Club lease and the provision of foreshore reserves. There is no intention to waive these conditions at the present time.
> 3. Payment of compensation was also a condition of the Minister's approval and the Minister has made it plain that he expects the Crown to be compensated for the return of the land.
> 4. I understand agreement was reached between the Golf Club and the Maoris as long ago as 1971 regarding the Maori burial grounds, to the effect that a plaque with suitable wording would be installed at ground level to mark the appropriate spot. Apparently the laying of this plaque was held in abeyance pending agreement to the wording of the actual inscription. I therefore see no reason that the agreement should not stand. Certainly the new owners will have to honour their obligations under the lease and compromise with the Club over this matter.[2148]

Throughout these early stages prior to negotiations commencing, the Raglan Golf Club was nervous about the impact on its own activities of the handing back of the land. It expressed this nervousness to Raglan County Council and its local Member of Parliament[2149]. The Member asked the Minister of Lands a question in Parliament in July 1976.

> Marilyn Waring (Raglan) asked the Minister of Lands, In view of his recent decision to return the ownership of land now leased by the Raglan Golf Club

[2147] E Rickard, Raglan, to Minister of Lands, 1 August 1976, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 18 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2584-2594 at 2589-2591.
[2148] Director General of Lands to Commissioner of Crown Lands Hamilton, 27 August 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2595.
[2149] *Rotorua Daily Post*, 29 May 1976. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2551.

to descendants of the original Maori owners, would he confirm that the existing lease provisions, including in particular the term of the lease, will not be interfered with as a result of his decision?

Hon VS Young (Minister of Lands) - Yes, I can assure the honourable member that it was a condition of my approval to return ownership of land now leased by the Raglan Golf Club to the original Maori owners that the lease to the Golf Club would continue on the same terms and conditions as the existing lease. The terms of the lease – namely, 33 years from 1 April 1969 with one right of renewal for a further term of 33 years thereafter - will not therefore be interfered with as a result of my decision.

Marilyn Waring - A prominent leader of the Te Matakite movement in the Waikato, and former Labour Party candidate for Raglan, Dr Sinclair, has stated in public that the new owners will rent the golf club off the land and then subdivide the area. Can the Minister give me an assurance that this will not be possible?

Hon VS Young - I think I have already answered that question adequately in my earlier reply, when I said the existing terms of the lease would continue. I could add that the decision is conditional upon the Crown being compensated for the return of the land, because compensation was originally paid when the land was taken. Details have yet to be finalised, and these will involve negotiations to retain a 20-metre strip of land along the coastline for public use and enjoyment. The access road to the Raglan Domain and the airfield will also be excluded from the land to be revested, and in addition, as I have said, the existing lease agreement with the Raglan Golf Club will continue, but, of course, with a new lessor.

Hon Dr AM Findlay - Does it follow from the arrangements the Minister has disclosed to us that the Maori owners will not enjoy any actual possession of the land until about the year 2020?

Hon VS Young - The decision to return the ownership of the land to the original owners was conditional on the existing terms of the lease being maintained. Any other situation would be quite unfair to the lessees.

Mr Wetere – When is the question of compensation between the Maori owners and the golf club likely to be resolved?

Hon VS Young – I have asked officers of my department to discuss the whole question with those people involved in the transfer.

Hon M Rata – Does the Minister not consider the terms and conditions on which he has approved the return or resale of the land to the descendants of the original owners both unjust and unfair?

Hon VS Young – No. It has been a reversal of the policy of the former Minister of Lands, who took or proposed to take large chunks of land from the

> original Maori owners in North Auckland. I consider this a very worthwhile gesture by the present Government.[2150]

The first round of negotiations took place at the end of September 1976, in three separate meetings with the representatives of the former Maori owners, the Raglan County Council, and the Raglan Golf Club. In each case the Director General of Lands and the Commissioner of Crown Lands represented the Crown, with the Director General recorded as doing most of the talking. The primary purpose of these separate meetings was to see if all parties shared a willingness to search locally for an acceptable solution, and if sufficient support already existed for a combined meeting of all four parties. The Director General told the meeting with the Maori negotiators that "the Minister had stated that in rectifying one injustice he did not wish to create substitute injustices", and added that if the parties could not agree locally among themselves then the Minister was prepared to make a final decision himself about the conditions to be attached to the return. He declared that he was encouraged by what he considered to be a less "hard line" view offered by the Maori negotiators at the meeting, that while the golf club lease was objectionable, a particularly objectionable part was the right of renewal tying up the land until 2035, and if this could be removed from the terms of the lease this might help them agree to a solution[2151].

At the meeting with the County Council, the Council admitted that it was not directly involved, although it was keen that a solution was found, and was willing to participate and assist as much as necessary[2152].

At the meeting with the Golf Club, the Director General stressed that the land would be returned with all leasing rights preserved, and he specifically mentioned the right of renewal that existed. It is not clear from the file notes in which order the meetings were held, and it may be that the meeting with the Golf Club was held before the meeting with the Maori negotiators, so that in making this statement he was not aware

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[2150] *New Zealand Parliamentary Debates*, 8 July 1976, Volume 403, page 394. Supporting Papers #4134.
The Minister of Lands' reference to proposed takings of land in North Auckland is to designations for coastal reserves in the Whangarei County District Planning Scheme (D Alexander, *Land-Based Resources, Waterways and Environmental Impacts*, Evidence for Northland District Inquiry WAI-1040, November 2006, Chapter 21).
[2151] File note, 1 October 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2597.
[2152] File note, 1 October 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2598-2599.

of the strong views against the right of renewal held by the representatives of the Maori owners. The Club representatives expressed their willingness to attend a joint meeting[2153].

With the agreement of all parties, the joint meeting was held at the Golf Club's clubhouse in the middle of the following month. It was apparent from the discussion that the main issue was the Golf Club's lease. The Club wanted the lease to remain unaltered, as promised by the Minister. The Maori negotiators wanted the existing lease to be terminated, so that the land could be returned unencumbered, at which point they would be prepared to enter into a 33 year lease with the Golf Club, with no right of renewal, and with rent reviews every ten years (rather than every eleven years as set out in the existing lease). The rental paid by the Club would be used to pay the Crown for the land. For its part the County Council agreed that if there were to be a new lease it would not contain the requirement that the Golf Club maintain the landing strip, and the Council would accept responsibility for that task itself. At this stage in the meeting Eva Rickard then suggested an alternative proposal, that the golf course remain public reserve (with the Club's lease unchanged), and the former owners have returned to them the airstrip and the Crown Land severance area west of Ocean Beach Road, both at no cost to the former owners. The meeting concluded with all parties agreeing to go away and consider this alternative[2154].

When the next meeting was held in November 1976, it was immediately apparent that this alternative was not suitable. The former owners, while wanting all the land returned, were less interested in the airstrip than the golf course, because the airstrip was less than half of the land that was taken, and because the golf course contained the former site of the marae and two burial grounds. The County Council pointed out that the airstrip was still in use and that there would be considerable local objection if it were to be closed. The Maori negotiators explained that as far as they were concerned, the Minister's original offer back was still on the table, and was the only one to be considered as a basis for negotiation. Return of the whole of the land taken in 1941 was still, for them, an integral part of the matters to be negotiated. Because

[2153] File note, 1 October 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2600-2601.
[2154] Minutes of Meeting, 12 October 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2605-2606.

negotiations over this original offer back had become stalled at the first joint meeting, the Commissioner of Crown Lands felt that the matter had to be reported back to the Minister[2155].

Eva Rickard's alternative suggestion that got around the disagreement over the Golf Club lease had seemed attractive to the Crown, not just because it removed a major stumbling block in the negotiations, but also because it was dawning on the Crown officials that the Golf Club would be seriously disadvantaged at the time of the lease's rental review, due in 1980. Return of the golf course to its former owners would result in the removal of the aerodrome designation in the Raglan County Town and Country Planning Scheme, meaning that the only controls on land use were the standard controls of the Rural zoning. Removal of the designation increased the range of uses to which the land could be put, and thereby increased the value of the land. Although there would still be some use limitations imposed by height restrictions for the airstrip, the increase in value, used for setting the lease rental, would almost certainly be substantial. If the new Maori owners were able to obtain a change of zoning to one that allowed more development than the Rural Zone, then the value of the land, and the rental charged to the Golf Club, would increase even further. As the date of the rental review coincided with the time that the Club was due to pay back some of the money it had borrowed to fund the development of the golf course, the liabilities of the Club at that time would put its whole future at risk[2156].

Despite Eva Rickard's alternative having been the cause of some of the delay, the return of the state of affairs to that existing at the time of the Minister's offer back in May 1976 was causing some frustration among the Maori negotiators. Eva Rickard, backed up by Douglas Sinclair, complained that a continuing trickle of payments of the compensation awarded back in 1941 was an underhand and insensitive attempt by the Crown to strengthen its position in the negotiations over the price to be paid by the former owners for the return of the land[2157]. However, inquiries by the Lands and Survey Department, which had played no part in the payments, showed that the Maori

[2155] Minutes of Meeting, 9 November 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2611-2613.
[2156] Commissioner of Crown Lands Hamilton to Director General of Lands, 15 November 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2614-2616.
[2157] *Rotorua Daily Post*, 10 November 1976. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2617.

Land Board had paid out most of the award money at that time, although a few beneficiaries had not been able to be paid then, due to being deceased and not succeeded to, or due to not being traceable at that time, and it was these owners or their successors who received their shares of the compensation award when the Maori Affairs Department identified them[2158].

There was no further progress in negotiations over the 1976-77 summer, until in March 1977 the Director General of Lands reported that the Minister of Lands indicated his willingness to adjust his stance on the offer back.

> The Minister has requested that I prepare a paper developing a packaged deal on the following basis.
>
> 1. A loan to the Golf Club to assist in the purchase of another site.
> 2. A reduction in price to be paid by the Maoris to, say, half the current market value.
> 3. The Maoris to give reduced rental terms to the Golf Club.
> 4. The County to assist by rate relief.

Until the paper had been prepared and approved, the change of stance was to remain confidential to the Crown, but in preparation for the paper the Commissioner of Crown Lands was asked to make discreet inquiries about the availability of another site in the Raglan district for the golf course[2159].

The Commissioner responded in May 1977. Although identifying two possible sites, he commented that, in a general discussion with Golf Club representatives without mentioning the inquiries he was conducting, the Club was not attracted to the idea of relocation because of the excellent position, relative to the town of Raglan, that the existing course enjoyed. He also queried the logic of the Crown both loaning money to the Golf Club and substantially reducing its income by accepting less than market price from the former Maori owners. His alternatives included reduction of the interest component of any payment in stages by the former Maori owners, and providing a Crown guarantee for any mortgage taken out by the Golf Club to finance its future[2160].

[2158] Commissioner of Crown Lands Hamilton to Director General of Lands, 26 November 1976. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2618.
[2159] Director General of Lands to Commissioner of Crown Lands Hamilton, 28 March 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2619.
[2160] Commissioner of Crown Lands Hamilton to Director General of Lands, 6 May 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2620-2623.

At about this time there seem to have been some differences within Maoridom as to what the next steps to take should be. These are not covered particularly well in the Crown files, although they seem to centre on who should be the beneficiaries of the returned land. Some apparently wanted the returned land to be vested in the more narrowly focused owners of Te Kopua taken blocks, while others preferred any vesting to be in a wider trust for the benefit of Tainui. The Commissioner of Crown Lands made a number of approaches to Eva Rickard, without result, before she referred him to Douglas Sinclair, who was Chairman of the Committee of Management of The Proprietors of Te Kopua 2B3 Incorporated, and who Tainui had asked should act for them in future negotiations. The Commissioner then met Sinclair in July 1977.

> Dr Sinclair said that the Tainui people had not returned to the Minister, taking the view that it was costly to journey to Wellington, and they should not be placed in a position of having to take the initiative, and that it was for the Minister to arrive at a solution to the problem of fulfilling the undertaking given to return the Golf Course area to the original owners.
>
> I asked specifically whether it was the intention that the land revert to the successors of the owners from whom the land had been taken in 1941, and Dr Sinclair said that it was generally accepted that the land would be held in trust by a new incorporation for the benefit of the Tainui people generally, and not merely the descendants of the previous owners. The Tainui people were prepared to let the issue simmer for a year, but Dr Sinclair said that patience would ultimately run out, and the issue could become another Bastion Point.[2161]

Sinclair explained that the Tainui stance in negotiations was that the airstrip and the severance strip beside Ocean Beach Road should be returned immediately, at no cost, with the golf course returned when the lease to the Golf Club expired in 2035. This would also be at no cost, because the Crown would treat the rental received from the Golf Club as advance payment by Tainui for the land. After some further discussion, Sinclair summarised his position as:

> Option One – A straight out return of both the aerodrome and the golf course.
>
> Option Two – Transfer of the matter to the Maori Land Court.

[2161] Note for file, 15 July 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2624-2625.

> Option Three – Immediate return of the aerodrome as a gift with title to the golf course to vest in the Incorporation at the expiry of the renewed lease in the year 2035.[2162]

The Commissioner provided an initial response. The return of the airstrip had "considerable difficulty", as the land was still being used for the purpose for which it was taken. In any event, five acres of the airstrip had been taken from Raglan County Council, being part of Papahua 2 gifted to the Council, and would if surplus to requirements be returned to the Council. Current market value for the golf course could be paid off over a 30-year term, with the rent from the Golf Club paying the interest component. Both parties agreed to have a further discussion[2163], and the Commissioner reported to the Director General on his meeting[2164].

The Commissioner put his proposals in writing to Douglas Sinclair at the beginning of August 1977. Stressing that they were his own, did not have Ministerial approval, and were to be treated as a basis for discussion, these proposals did not include the airstrip, as it had not been part of the Minister's offer back, and instead were aimed at finalising the future of the golf course. He proposed that the golf course (less foreshore reserves) be purchased at current market value, with principal repaid over a thirty-year term and no interest charged. Title to the severance strip beside Ocean Beach Road would be handed over after five years, while title to the golf course would issue after thirty years. The Golf Club would be asked to surrender its existing lease and enter into a new lease for the thirty-year period, the attraction for the Club in doing so being that the Crown would charge a rental at a rate less than one based on current market value of the land. The deal the Commissioner proposed relied on concessions being made by all parties.

1. Tainui people wait 30 years before the return of the course. NOTE: This is better than waiting for the full term of the Golf Club lease to run to expiry in 2035.
2. Tainui people pay $61,300 for the land. NOTE: This reflects the rise in values for coastal areas. The value will continue to rise and in 30 years will be many times this figure. No interest or rates are payable by Tainui during this period.

[2162] Note for file, 15 July 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2624-2625.
[2163] Note for file, 15 July 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2624-2625.
[2164] Commissioner of Crown Lands Hamilton to Director General of Lands, 15 July 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2626-2627.

3. The Crown would forego $101,274 in interest, less any sum received by way of rent from the Golf Club.
4. The Club would face the loss of the existing very favourable terms of occupation in order that the land be returned to the Tainui.[2165]

In a telephone conversation with the Commissioner, Sinclair advised that he was discussing the matter with his two fellow negotiators, but that the Commissioner's proposal had not been received with "waves of enthusiasm", considering that the Maori side was making all the concessions, due to the time it would take to have the golf course returned, and because the airstrip was not included[2166]. The written response from the three negotiators came from Eva Rickard in mid September 1977[2167]. They believed the proposals were a basis for a settlement, supported the interest-free nature of any payment to the Crown, and reiterated their request that the airstrip be included in the offer back. They also sought a full reply from the Minister to the matters they had raised in their initial response to the offer back[2168].

The Commissioner interpreted the negotiators' response as "general acceptance … to the proposal conveyed to Dr Sinclair". He felt that as a result he could now present his proposal to the Golf Club and the County Council for their reaction[2169].

In discussions with the Golf Club, the Commissioner firmed up what a non-market rental might mean, when he said he would expect some $50,000 of rent to be paid over 30 years, this being less than half the amount that the Crown would forego in interest on the principal loaned to Tainui. Although the Club representatives were pleased with this part of the offer, they had serious objections to being limited to a 30

[2165] Commissioner of Crown Lands Hamilton to Dr D Sinclair, Hamilton, 2 August 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2628-2630.
[2166] Commissioner of Crown Lands Hamilton to Director General of Lands, 1 August 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2631.
[2167] TE Rickard, Raglan, to Commissioner of Crown Lands Hamilton, 15 September 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2632-2640.
[2168] The written response referred to these submissions being in a letter to the Minister dated 14 May 1976. However, this seems to be an error, as the only 14 May 1976 letter located among Crown records during research for this evidence was one sent to the Secretary for Maori Affairs. 14 May was six days before the Minister of Lands first committed to writing his offer-back and its associated conditions. It would be more consistent with the historical correspondence, and this was the conclusion reached by the Commissioner at the time, if the negotiators were seeking a response to their submissions to the Minister of Lands dated 20 July 1976, and their letter to the Minister of Lands dated 1 August 1976. Both these items were attached to Eva Rickard's letter of 15 September 1977.
[2169] Commissioner of Crown Lands Hamilton to Director General of Lands, 26 September 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2641-2642.

year right of occupation, rather than the 58 years their existing lease allowed them, even though they might be forced to leave the site early if market rents were charged by Tainui. They considered the golf course to be an asset to the community, and were concerned about the racial bitterness that they thought would arise if forced to leave. They suggested that, as Tainui were intent on getting a commercial return on the aerodrome site in the form of a market rental for the lease to the Golf Club, the iwi should instead be offered an opportunity to acquire an alternative area with subdivision potential, so that Maori could obtain an immediate economic benefit. The Club would be prepared to contribute towards the Crown's costs of purchasing such an alternative site.

The Commissioner could see some advantages in this alternative.

> It did seem to me that if we could get the agreement of the Maori people we could ensure that the Club remained in possession by reserving the Golf Course for recreation, giving the public full free rights of access, which would protect the Club from rating liability.[2170]

However, the alternative proved to be stillborn, when the Commissioner discussed it with Sinclair.

> He has advised, however, that unless an offer was very very generous indeed, it could not be accepted by the Tainui people, who would need to be able to demonstrate that they had not created an undesirable precedent for settling Maori claims of the [Matakite] Movement elsewhere, and had not lost face in parting with a traditional area.[2171]

In discussing the alternative with Sinclair, the Commissioner had also gained a greater understanding of the mandate that the people had given to the negotiators.

> I have asked Dr Sinclair for the authority that his negotiating committee has to act for the descendants of the former owners of the golf course area. He has assured me that a substantial majority of these descendants have agreed along with the rest of the Tainui people that the area would be returned to the descendants, with the modification that instead of them receiving shares based on their lineal entitlement they would take title in common and in equal shares. Whether this would be acceptable to the Maori Land Court I am unable to say, but it does indicate that meetings and discussions on this point have been held, and presumably one of the considerations in such an agreement is the funding of the annual payment of $2,000.

[2170] Note for file, 28 September 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2643-2644.

[2171] Commissioner of Crown Lands to Secretary Raglan Golf Club, 3 October 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2645-2646.

He envisaged that the Maori Land Court would not be asked to decide in whom to revest the land until after thirty years, when full payment had been made[2172].

The Golf Club replied in writing that the proposal agreed upon between the Commissioner and the Maori negotiators as a basis for discussion was "unacceptable", as it was "imperative that any settlement protects the long-term interests of the club"[2173]. The Commissioner was then obliged to report to his Head Office in October 1977 that his second attempt at negotiating a settlement had failed.

> The Minister may be prepared to authorise a further approach to the Maori claimants offering definite monetary inducement. If on the other hand he feels that the stage has been reached where a decision must be made, I would strongly recommend that both parties be given an opportunity to make final submissions. This would be seen by the Tainui people as accepting the Minister's original offer to go back to him, and it follows that the Golf Club should be given identical access.[2174]

One month later, the Golf Club came back with another alternative. The golf course would be returned to Tainui without payment, "to satisfy the question of mana", the Golf Club would be granted rights in perpetuity to continue its occupation of the golf course, and the Club would make payments to the Crown to cover occupation and the lack of payment for the land. The Commissioner's response was that this package was unlikely to be acceptable for three reasons; it prevented the Maori owners from enjoying the use of the land that was returned to them, the Minister's stated stance was still that payment for return of the golf course had to be made, and the Crown stood to lose heavily in both a financial sense and in terms of the precedent a free return of land would create. However the Golf Club advised that it was taking its case to two local Members of Parliament in one week's time. Both Members were from the governing National Party[2175].

[2172] Commissioner of Crown Lands Hamilton to Director General of Lands, 3 October 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2647.
[2173] Honorary Secretary Raglan Golf Club to Commissioner of Crown Lands Hamilton, 9 October 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2648.
[2174] Commissioner of Crown Lands Hamilton to Director General of Lands, 12 October 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2649.
[2175] Commissioner of Crown Lands Hamilton to Director General of Lands, 10 November 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2650-2651.

While the Commissioner was having his discussions with the Golf Club, the Maori negotiators were writing directly to the Minister of Lands. In a letter headed by Eva Rickard's postal address, but signed by Douglas Sinclair, they told him:

- The golf course should be returned at no cost, in the same way as the Education Department returned lands gifted for schools.
- The airstrip was taken for a national need, but no such need still exists, so it should be returned, also at no cost.
- The whole of the aerodrome land should be the subject of an application to the Maori Land Court for revesting in "the Tainui ownership group" under Section 436 Maori Affairs Act 1953.
- Any 20 metre esplanade strip, and the Ocean Beach Road severance strip should be dealt with "at the same time", presumably a reference to the Maori Land Court sitting.
- Because the Minister insisted on payment for the land returned, the negotiators were "resigned" to payment of "fair compensation", despite that being contrary to "the Maori value system". The Te Kopua Incorporation would agree to pay $2000 a year for 30 years for the golf course, based on a current market value in 1976 of $61,300.
- The Golf Club would be allowed to remain in occupation until the end of 2007 "at the latest". The Club would pay an increased rental to the Crown, as compensation for loss of interest foregone under the terms of sale to "the Tainui people".
- Title to the golf course would pass to the Incorporation when the first payment of $2000 was made. The Incorporation would hold the title on behalf of the former owners of the taken land, as well as the current owners of the Incorporation. It would negotiate a new lease with the Golf Club.
- The airstrip would continue as an aerodrome "for a restricted period in order to enable an alternative site to be developed". A ten-year period was offered. The portion of the airstrip taken from Raglan County Council (the five acres of the gifted Papahua 2 camping ground) would be revested in the Te Kopua Incorporation, so that it could be used by

> "the Tainui people" for revenue production and cultural development.[2176]

With respect to "the Maori value system" referred to in the letter, the negotiators expanded:

> The negotiators are concerned that the Minister does not acknowledge the traditional Maori values that Maoris associate with the ownership of their lands. The Minister has announced his decision to return the land, but the Crown must be compensated for the value of the land. A fairer evaluation would have been based upon more liberal sentiments that would have taken Maori values and sentiments into account. What is more relevant than the material values expressed in an inflated government valuation is recognition of the long years of separation from the land endured by elders such as Herepo Rongo, the desecration of the cemeteries, the manner of enforced dispossession, the destruction of humble homes, the loss of the cultivations, orchards, access to the sea and shellfish grounds, the destruction of the ordered communal pattern of their lives as a favoured hapu of the Tainui tribe, the manipulation of the legal system to enforce the long planned separation, have all contributed to the discontent felt by the Tainui people.[2177]

The letter from the negotiators concluded by urging the Minister to give their proposals his "careful and urgent attention".

> The above scheme is presented as offering the most reasonable course of action open to the Minister, that of returning the land without any strings, and allowing the Tainui people to conduct meaningful negotiations with the Golf Club and the Raglan County Council.

He was told that the other alternatives placed before him were "likely to produce far more problems than they solve"[2178].

At the end of November 1977, Douglas Sinclair, signing himself as Chairman of Te Kopua Incorporation and as Chairman of Te Matakite o Aotearoa, sent a further letter to the Minister. He advised that the negotiators' stance had been endorsed by the Tainui Awhiro hapu, and by the annual conference of Te Matakite o Aotearoa. He added that Te Matakite was concerned at the delay in the return of the land, and had

[2176] D Sinclair, Raglan, to Minister of Lands, 5 October 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2652-2654.
[2177] D Sinclair, Raglan, to Minister of Lands, 5 October 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2652-2654.
[2178] D Sinclair, Raglan, to Minister of Lands, 5 October 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2652-2654.

suggested an occupation of the golf course and airstrip, either at Christmas 1977 or on Waitangi Day in early February 1978.

> The negotiators, however, feel that such a course should not be necessary, as the case for the early return of the land has been made out with sufficient clarity to warrant the uncomplicated return of the land, unencumbered by outlandish claims for compensation created by inflationary pressures only.[2179]

To summarise events to this point, the Crown had offered to return the golf course only, subject to conditions, in May 1976. While Tainui negotiators had responded to the Minister of Lands in writing in August 1976, that response had got caught up in local negotiations involving the Commissioner of Crown Lands, the Maori negotiators, the Raglan Golf Club and the Raglan County Council. Since those local negotiations had not achieved any final resolution, it was necessary to refer the matter back to the Minister for him to decide what the next steps might be. The letters from the negotiators in October and November 1977 were the latest version of the Maori response to the Crown's May 1976 offer back. The ball was back in the Crown's court. Little progress had been made on the two main sticking points, the Crown's requirement that it receive payment for the land, and the fate of the golf course. Meanwhile, Maori were becoming frustrated by the delay in the land being returned.

Commenting to the Director General of Lands on the first letter, the Commissioner of Crown Lands said he found it "rather difficult to follow", and described it as "a fair indication of the difficulty in understanding precisely what the Maori people are really seeking". He believed that the claimants were asking firstly for return without payment, and if that was not possible then they would reluctantly accept payment over a 30-year term, without interest, but with the title vested in the Incorporation at an early date. The Commissioner explained that there had been no discussions at a local level about payment for the airstrip. His response failed to identify another potential matter for confusion in the letter, where the negotiators said they would be responsible for issuing a fresh lease to the Golf Club, while at the same time implying that the Club would be paying rental to the Crown to compensate the Crown for loss of interest on the money advanced for purchase of the land. Because of the

[2179] D Sinclair, Hamilton, to Minister of Lands, 30 November 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2655.

difficulties in understanding the proposals, the Commissioner asked if he should be seeking clarification from Sinclair[2180].

There may have been a breakdown in communication between the Minister and his Department at this time. This is because a briefing paper was prepared for the Minister by the Director General of Lands at the end of November 1977, which makes no reference whatsoever to the stance adopted by the Maori negotiators in their letter to the Minister dated the beginning of October 1977. Instead the briefing paper relied on the information provided by the Commissioner of Crown Lands in his reports on the local negotiations. This could suggest that, while the Minister had received the letter, it had not been passed on to officials.

An alternative explanation for the lack of ministerial and Head Office activity in October and November 1977 is that the early October letter from Sinclair to the Minister was only a draft and was never sent to the Minister. It was, however, used as the template for a letter sent by Eva Rickard to the Minister at the beginning of December 1977 (see later in this case study). However, this seems unlikely, because it was entered into the Crown's records in Hamilton in late November 1977, when Douglas Sinclair met the Commissioner of Crown Lands and handed him a copy of the second letter he had sent that day to the Minister, together with a copy of his early October letter.

In the briefing paper, the Director General said that he was "not prepared to recommend" the provision of alternative land to the former Maori owners, as suggested by the Golf Club, because the Crown "must be seen to be looking after the interests of the taxpayer as well as the Maori owners". He recommended instead that the golf course be offered to the former Maori owners for $60,000, to be paid for by annual payments of $2000 over 30 years. There would be no provision for interest to be paid, in return for which the former owners would not be able to gain possession of the golf course until the end of the 30-year period, while the Golf Club remained in occupation. The existing lease to the Golf Club would be terminated, the reservation of the land would be revoked and it would be declared to be Crown Land, and a new

[2180] Commissioner of Crown Lands Hamilton to Director General of Lands, 30 November 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2656.

lease would be issued by the Crown for 30 years, with the Club obliged to vacate the land on expiry[2181].

16.6.3 The Occupation of the Golf Course, 1978

In early December 1977 Eva Rickard, signing as Chairperson of Tainui Awhiro Matakite Committee, wrote to the Minister of Lands. Her letter repeated in part what Sinclair had written in his letter to the Minister in early October 1977, but Rickard added her own personal anger, and that of her organisation, at the injustice felt at the lack of progress in returning the land.

> If all negotiations fail to establish the Tainui Awhiro people back on to their lands, then the Tainui Awhiro people must physically occupy their lands taken during the Second World War.
>
> The Tainui people have suffered the fate of so many other tribes in the constant erosion of the remnants of their lands, culminating catastrophically in the seizure and failure to return to them homes, cultivations, cemeteries and fishing rights involved in the aerodrome block, has destroyed the basis of their culture, their personal affinity with the land and their ancestors. Their standing in the King Movement has been eroded. Their standing in the community has suffered.
>
> History shows that these events were all directly attributable to the inappropriate and insensitive actions on the part of the Crown. Restitution cannot be made by a Mount Taranaki – Mt Taupiri style restitution of title only. The people must be restored to their land with the dignity and the acclamation of the whole people. If this cannot be done, then the claim that we are not two races but one people (he tangata kotahi tatou) is a farce and fabrication. The Tainui people have given too much to Raglan, they have suffered too much for you to talk of compensating the Crown and compensating the people of Raglan. If any compensation is to be made, it must be made the other way.
>
> The government has made an important acknowledgement in its move to return the title. "BUT YOU MUST RETURN THE SUBSTANCE AS WELL AS THE SHADOW". The Tainui people have always been generous, and they will be generous if you return the whole of the land with no strings attached….
>
> It is time to make amends for the injustices of the past.[2182]
> [Capitals in original]

[2181] Director General of Lands to Minister of Lands, 30 November 1977. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2657-2660.

[2182] Tuaiwa Eva, Raglan, to Minister of Lands, 3 December 1977, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 10 February 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2665-2679 at 2666-2671.

Rickard had signed her letter "Tuaiwa Eva", and staff in the Minister's office and/or the Head Office of the Department of Lands and Survey may not have recognised that it had been sent by Eva Rickard. An anodyne response to "Ms T Eva" and opening "Dear Ms Eva" was prepared (probably by officials) and signed by the Minister.

> When this decision [to return the golf course] was made, it was conditional on the Raglan Golf Club retaining its rights to use the land under its existing lease, and some compensation being made to the Crown for the return of the land. The Commissioner of Crown Lands, Hamilton, has been negotiating on this basis, and as you know these negotiations are taking some time to finalise.
>
> I will be endeavouring to make some time available in the New Year to visit Raglan and to discuss the issue with the parties involved.[2183]

This was hardly an appropriate level of response to someone who was one of the Maori negotiators, with whom the Crown was supposed to have a deep and ongoing relationship, and who was waiting for the Crown to come up with some new proposals to break the impasse in negotiations that had developed.

The apparent paralysis on the part of the Minister of Lands from early October 1977 onwards continued through the 1977-78 summer. It is possible that it was contributed to by representations made by one of the two National Party Members of Parliament who had been lobbied by the Golf Club. Of more significance to relations between the Crown and Maori, however, was that the vacuum in policy development increased the frustration felt by Maoridom. There was no counterweight from the Crown to challenge the calls within Maoridom for an occupation of the golf course. Just before the New Year, the *Waikato Times* reported:

> The controversial Raglan land issue threatens to flare up again, as Maori leaders prepare to hold meetings in the New Year to discuss battle tactics.

It quoted Eva Rickard as saying plans for an occupation were being drawn up. Commenting on the Crown proposal that Maori wait until 2007 before taking possession of the golf course, she said "I'll be dead by the time we get our land back". And of the Golf Club's suggestion that alternative land be provided to the former Maori owners, she commented:

> When we started discussions, we wanted to relocate the golf club, but now they want to relocate us. Relocation, no matter how financially attractive,

[2183] Minister of Lands to T Eva, Raglan, 20 December 1977, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 10 February 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2665-2679 at 2665.

> would not be entirely acceptable because the golf course contained a sacred Maori burial ground.[2184]

The occupation of the golf course did not occur on Waitangi Day 1978 itself, but on the weekend following Waitangi Day, when a golf tournament was being held. It was well-signalled in advance that elders planned to hold a ceremony at the burial ground, supported by members of Te Matakite, and three days before it occurred the local newspaper reported:

> A Hamilton police inspector was today talking to the parties involved to determine whether any police action would be required.[2185]

The Minister of Lands sought to take some heat out of the issue by announcing two days before the occupation that he would be visiting Raglan the following month, and hoping that his visit "would resolve any outstanding problems" and "enable the in principle decision of the Government to return the land to the former owners to be implemented, while protecting other interests"[2186].

However, neither the Golf Club nor Te Matakite were in a mood to back down at that late stage. This was apparent from telephone conversations that the Commissioner of Crown Lands had on the Friday before the occupation.

> I asked Dr Sinclair whether in view of [the Minister's intended visit] the proposed ceremony on the Golf Course the following Sunday could not be cancelled. He replied that the various elders were already travelling to Raglan, and that it was too late to alter this…. He said that there were 12 elders, it was the 12th day of the month, and the ceremony was timed for 12 noon.
>
> I then telephoned the Secretary of the Golf Club and informed him also of the Minister's visit. Mr Banks said that the Club had finally come to the end of its tether with the Maori claimants, having lent [sic] over backwards to placate them. However the idea of holding a religious ceremony with a disruption of a tournament, designed to raise funds for the local high school which had a 35 per cent Maori roll, was the last straw. The Club had been informed in a peremptory fashion by Mrs Rickard that the ceremony would be held at the golf course. She had been immediately contacted and told that the Club would oppose this, and in subsequent discussions she had claimed that no one had a

[2184] *Waikato Times*, 29 December 1977. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2661.
[2185] *Waikato Times*, 8 February 1978. Copy attached to Commissioner of Crown Lands Hamilton to Director General of Lands, 9 February 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2662.
[2186] Draft Press Statement, 10 February 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2680.

> right to lease the sites of the graves, that the area was tapu, that every stake which the Golf Club might remove might result in a tree being cut down. The land belonged to the Maoris and they were insisting on their rights, and as for the Raglan Maoris who supported the Golf Club, the future would prove which spirits were strongest.[2187]

With the positions of both sides hardening, the Golf Club called in the Police, on the grounds that a trespass would take place. The Police did not take the Club's word at face value, but made their own inquiries about the legality of the Golf Club's occupation of the land.

> A Police Inspector called [at the Lands and Survey Hamilton office] and was shown plans of the area leased by the Golf Club, and given the Gazette references covering the acquisition of the Maori land for defence purposes, thus rebutting the claim by Mrs Rickard that the graves had been excluded from the land acquired. The Inspector did not want the matter to degenerate to the stage where Maori elders were carried away from a service on a graveyard, but on the other hand they had a duty to do, where their assistance was lawfully requested.[2188]

The Police were the sole Crown representatives present during the occupation. No one from the Department of Lands and Survey attended. Before the ceremony began, the Police asked Te Matakite to leave. On being told that they would not leave, the Police arranged for a Golf Club representative to make one last formal request to leave. When no notice was taken of that request, seventeen people were arrested. There was then a short hiatus, according to a report written by the Commissioner of Crown Lands, who was relying on information passed to him by the Secretary of the Golf Club.

> A Maori Minister asked club officials for a further period of 15 minutes grace, at the end of which he said the demonstrations would terminate. This was agreed, and the protesters vacated at the end of the time allowed.

There was minor damage done to the Club's property.[2189]

Those arrested were charged with wilful trespass, and appeared in Court the following day. They were all remanded on bail, to appear again in early April. Eva Rickard had been the first to be arrested, and the others were all recognised by Rickard as leaders

[2187] Note for file, undated (13 February 1978). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2681-2683.
[2188] Note for file, undated (13 February 1978). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2681-2683.
[2189] Note for file, undated (13 February 1978). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2681-2683.

of the occupation. The other sixteen arrested were named in newspaper reports; all but one of them came from outside the Waikato region[2190].

16.6.4 Further Negotiations, 1978

The occupation and the arrests came close to derailing the negotiations for the return of the land. The Government would not have wanted to be seen to be dealing with people who were prepared to take the law into their own hands as a method for applying pressure on the Crown. According to a report by the Deputy Director General of Lands about a meeting he had with the Minister of Lands on the day after the arrests, it was only the degree of outside involvement that stopped the Crown from withdrawing the offer back.

> [The Minister] had a call from Mr Shadick of the Waikato Times, and told him that CCL [Commissioner of Crown Lands] had been dealing for some time with representatives of the beneficial owners, who were aware of the fact that the Minister was going to Raglan to discuss the situation with them, the golf club and the local authority. The Minister told the reporter that he understood the events had involved a lot of trouble makers from outside the district, and said that his plans to discuss with representatives of the owners would not be affected. He added that, if, however, the owners' representatives supported any proposals to camp on the land or to damage the facilities of the legal lessee of the land, he would have no option but to recommend to the Government that the offer to return the land be withdrawn.
>
> He explained that the Crown's offer was basically to return the land subject to the existing lease, and to satisfactory arrangements for payment by the beneficial owners of a sum to recognise the fact that the Crown paid compensation when it took the land. His planned visit on 10 March would be for the purpose of discussion with people who are directly involved and who want to reach a solution.[2191]

These comments suggest that the Minister was still focused on the May 1976 original version of the offer back, and had not properly taken on board, despite briefings, the matters that had been discussed at local level, and the matters raised as a counter-offer by the Maori negotiators, during the intervening period. His officials, however, were more rigorous in their understanding. The Commissioner of Crown Lands described the offer in Sinclair's October 1977 letter that the Golf Club could remain until 2007, and that the Incorporation would pay the $61,300 current market value, as "important

[2190] *Auckland Star*, 13 February 1978, and *New Zealand Herald*, 5 May 1978. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2684 and 2730.
[2191] Note for file, undated (13 February 1978). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2681-2683.

acceptances". Allowing the Incorporation to negotiate a new lease with the Golf Club to cover its 30-year occupation period, and handing over the title before the Incorporation had finished paying for it, were, however, "unacceptable". He considered that deciding who the land would be returned to did not need to be part of any negotiations with the Crown, as that was a matter for the Maori Land Court in its vesting order. The airstrip could also not be part of any negotiations, as it was not surplus to Crown requirements. He also identified a number of loose ends, such as the need to increase the price paid by the Incorporation if the severance strip alongside Ocean Beach Road was also returned, and how any agreement would have to cover the situations where payment of instalments fell into arrears (in which case interest should be charged), and the Golf Club vacated the land early (in which case interest should be charged on the amount still owing for purchase of the land)[2192].

The Commissioner drew up some notes for the proposed meeting[2193]. Whether these were for his own benefit, or whether for wider distribution, is not known. He even optimistically went a further step, and drew up a draft Heads of Agreement document. Again, how widely this document was distributed is not known[2194].

The Minister of Lands was accompanied by the Director General of Lands and the Commissioner of Crown Lands when he visited Raglan in early March 1978. He met with each party separately, first with the County Council, then with Tainui, and lastly with the Golf Club. The notes of each of the meetings indicate clearly that the Minister was there to listen; he was not there with fresh proposals, nor to respond to the counter-offer put to him by the Maori negotiators the previous year. The Minister's stance, and the separate nature of each of the meetings, meant that there was no possibility of any agreement being reached, nor of any Heads of Agreement being signed.

The meeting with the County Council turned out to be a proxy meeting with the Golf Club. The Council defended its decision to issue the lease to the Club, and insisted

[2192] Commissioner of Crown Lands Hamilton to Director General of Lands, 6 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2686-2687.
[2193] Notes for Minister's Visit, 10 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2688-2690.
[2194] Draft Heads of Agreement. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2691-2696.

that the golf course was essential for the wellbeing of Raglan township. The Club had developed the golf course in good faith, mostly with voluntary labour, and with an expectation of continued occupancy. Because of the benefits to the local community, Council rates owed by the Club had often been written off[2195].

At the meeting with the Maori community, Douglas Sinclair gave a long speech in which he traversed the history of the aerodrome, and urged the Minister to accept the negotiators' proposals. At the end of his speech, he summarised his main points.

1. The land taken had not been suitable for an aerodrome.
2. The compensation had not been accepted by many owners.
3. Oral promises had not been kept.
4. The undertaking to return the land had not been honoured.
5. The compensation was grossly inadequate.
6. No action had been taken to mark the urupas.
7. The vegetable [kumara garden] areas had not been made available.
8. The County Council had planned for the aerodrome by stealth.
9. The Tainui had been told it would be returned after ten years.
10. He claimed that the sum required by the Crown should be based on values ruling at the cessation of hostilities in 1945.
11. That the Crown's claim for improvements should be offset by a counter claim for the loss of possession.
12. The terms for the return of the golf course should be:
    a. The land should be revested in Tainui.
    b. The haste and undisclosed planning should be allowed for.
    c. The lack of communication between the County, the Ministry of Works, and Tainui people in 1941 should be recognised.
    d. The disparity in the oral inducements and the transfer for the war period should be allowed for.
    e. The Crown should acknowledge the inconsistent records of the compensation paid.
13. The loss of urupas, cultivations and the separation from the hereditary land should be given full allowance.

He concluded that the inflammatory relationships presently existing had arisen through the failure of the Crown to keep promises. The Tainui would accept the whole of the aerodrome and would not seek compensation. It would be vested in the descendants of the original owners in equal shares and administered by the Te Kopua Incorporation.

The Tainuis would negotiate a new lease with the golf club for the same term, but excluding urupas, house sites, garden areas, and replace these severances by extensions into the present airstrip. Rent would be subject to negotiation.

[2195] Notes of meeting with Raglan County Council, 10 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2697.

> He concluded that the problems rested only with the Crown and the Tainui people, and with no one else.[2196]

Responding, the Minister spoke about the two main sticking points, of payment for the land and the future of the lease.

> Payment had been made [in the 1940s] and there were no other rules to substitute for this process. It was not unreasonable to ask for compensation. The amount and terms had to be decided, and it may be possible to arrange the return without the payment of cash through a leasing arrangement.
>
> The Minister disagreed that the golf club could be excluded from discussions, and stated that the whole matter was very complex. It was a matter for regret that a small community should be deeply divided, and the issue must be resolved, but this could not be done in one day, particularly as discussions had yet to be held with club representatives. The resource needed to reach a fair decision was a balanced approach, rather than a knowledge of history. He did not want a running sore, but sought a willingness on all sides to make concessions.[2197]

It was left to Eva Rickard to make some final remarks. Her anger and frustration were very apparent, even when her speech was written up by a Crown official.

> Stated that the current hassle was due to loyalty to the County. She had no time for either the club or the County, and referred to the fact that the County had leased portion of golf course area for the grazing of horses, but when she had turned her animals loose she had been unsuccessfully prosecuted for trespass. She hoped to go to jail for her part in the recent disturbance on the course. Mrs Rickard related how the owners had sought return of one acre in 1967. This had been declined, but the golf club had been successful in obtaining its objectives. She wanted the return of the urupa and the cultivation areas before she would join in further talks.
>
> She paid credit to the Minister that he had given a courageous decision within a matter of weeks for the return of the golf course. She referred to the Government action in amending the Comalco agreement, and asked if the same could not be done to the golf lease, and alleged that the club had offered 160 acres of "their" land as substitution.[2198]

At the meeting with the Golf Club, the Minister explained that the decision to return the golf course was Government policy when the land had been compulsorily acquired and was no longer required for its original purpose. He then added that "it

[2196] Notes of meeting on marae, 10 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2698-2700.
[2197] Notes of meeting on marae, 10 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2698-2700.
[2198] Notes of meeting on marae, 10 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2698-2700.

was also the Government's intention to protect the golf club". However, he wanted to examine alternatives with the Club. These included shortening the Club's occupancy to 30 years, and relocation of the golf course. In reply the Club did not accept these alternatives. Return of the land to its former owners should not be at the expense of the Club. It had an existing lease, entered into with goodwill, and any shortening would have to be accompanied by compensation. Relocation would also require compensation, because of abandonment of the existing investment and the need for new investment at the new site. In any continuation of the existing lease, the Club would prefer that the Crown interpose itself as a third party between the Club and the new owners, because of the ill will between the parties.[2199]

In a newspaper report about his visit, the Minister of Lands was quoted as saying:

> I can't resolve this today – but I don't want it to remain as a running sore. I want it all resolved with good will and a reasonable amount of concessions by all sides," he said.
>
> Mr Young said he wanted to continue discussions with the Maori people and with the Golf Club. "I can't tell you when I'll make a decision on the return of the land."[2200]

The Minister's visit had done nothing except allow all parties to restate their positions, which were already well known. There were no fresh ideas from either the local parties or the Crown. The Minister's lack of preparedness had allowed an opportunity to make some progress to be squandered. If nothing else, the day highlighted how necessary it was for the Crown to come up with some fresh ideas. In this regard, the Minister asked his officials for options, and the Commissioner of Crown Lands prepared a paper identifying four options that might be available. These were:

- Sale to the former owners, subject to the existing lease to the Golf Club. The Club would pay rentals to the new owners, with which the owners could pay the Crown. If payment to the Crown was over a period, then interest on the purchase price would also be payable. The biggest risk to the Crown with this option was that the Club would be unable to pay the higher market rentals that

[2199] Notes of meeting with Raglan Golf Club, 10 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2701-2702.
[2200] *Waikato Times*, 11 March 1978. Copy on Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3125.

would be due following rent reviews, and so would vacate the property, then leaving the Maori owners with no income with which to pay the Crown.

- Sale to the former owners, subject to a new 30-year lease to the Crown, with a right for the Crown to sub-lease to the Golf Club for the same term. The Crown's lease would be for a rental similar to the amount of interest charged by the Crown for being paid in instalments, thus effectively making the purchase interest-free to the new owners. The same risk to the Crown of non-payment would apply as with the first option. In addition, the Crown would have to pay compensation to the Golf Club for the breaking of its existing lease.
- Same as the second option, but for the period of the existing lease and its one renewal for a similar term (i.e. until 2035). For this longer period, the annual rental payments by the Crown for its lease would be similar to the annual payments owed by the new owners for purchase of the land in instalments, so that effectively the former Maori owners would have the land returned to them at no cost to them. They would not, however, be able to occupy their land themselves for 57 years.
- Relocation of the golf course. Maori would pay for purchase of the land, plus interest if payment were in instalments. Compensation would be paid by the Crown to the Golf Club for it leaving the existing golf course, and Government finance would be provided for purchase of a new golf course site.

Of the options, the Commissioner considered that the third option had the best prospects, as Maori would not have to pay any money for return of their land, and the Golf Club's interests were protected[2201].

In Wellington a fifth option was identified. This was a variant of the first option, in that it envisaged sale subject to the existing lease. However, the sale price to be paid by the Crown would be at a reduced price, in return for which the new Maori owners would not charge the Golf Club a market rental during the first 30 years of the 57 years that the lease still had to run. Instead the reviews of rental would "take into account the use to which the land is being put and the Club's ability to pay. The

[2201] Draft Paper to Minister of Lands, 13 March 1978, and Commissioner of Crown Lands Hamilton to Director General of Lands, 13 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2703-2707 and 2708.

rental would be fixed by the Crown rather than being subject to arbitration, the Crown having this right because it was effectively funding the concession that was benefiting the Golf Club.

The Minister of Lands presented all five options to the Maori negotiators, and to the Tainui Trust Board, with an invitation to meet him at the end of March 1978 to see if some agreement could be reached. The Trust Board was invited as the Minister considered that it could "play a role in helping us to reach agreement, especially on the question of the urupa sites". The Golf Club was also being invited to the meeting, with the Minister stating:

> As I said on the marae, I do not agree that the Club can be excluded from consideration in this complex matter, but I will see your representatives separately if you wish before meeting yourselves and the Club together[2202].

At the meeting the Maori negotiators offered to enter into a new lease with the Golf Club, but only on condition that the golf course did not include the two urupa, the former cultivations, and the site of the old meeting house. The urupa, which included many re-interments from across the harbour, were on mounds in the eighteenth and tenth fairways. The negotiators envisaged that the golf course would be extended on to the airstrip land to compensate for the loss of land. Later in the meeting they conceded that alternative land could be used for the gardens and meeting house, so it was only the urupa which had to be physically separated from the golf course.

The Golf Club representatives responded that the golf course area was already a restricted one, and eighteen holes were only possible by encroaching on to former seabed in the estuary. The Minister agreed to ask the civil aviation authorities whether any of the airstrip land could be made available for the golf course.

In a separate meeting with the Minister, the Golf Club representatives considered that the option allowing them to sub-lease from the Crown and continue to occupy the land for the remaining 57 years of the term of the existing lease, best met their needs. The option of directly leasing from the Maori owners, but with the Crown interposing

[2202] Minister of Lands to Dr D Sinclair, Hamilton, undated, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 21 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2709-2712.

itself for the first 30 years and fixing the rental for that period, was their second preference.

In a further separate meeting with the Maori negotiators, including the Secretary of the Tainui Trust Board and a number of Tainui elders, the Minister was told that waiting 57 years to obtain occupation of the golf course was too long to wait, and a 30-year period was already accepted as the basis for negotiation. Because the aerodrome should have been returned at the end of the Second World War, the price to be paid by the former owners should be at 1945 valuations. The Minister's response was that any price less than market value should be accompanied by a rental at less than market value for the Golf Club. This statement, however, resulted in the Maori negotiators complaining that Maori were being asked to make sacrifices for the benefit of the Golf Club, when the existence of the lease was entirely a matter brought about by the Crown.

The stances taken by the various parties at the meetings served to highlight the incompatibility of the principal twin aims of the Crown. While it was Government policy to return the golf course land, it was apparently also Government policy to uphold existing legal contracts, especially when as in this case they were for a community recreation purpose.

All that the Minister felt he could do on the day of the meeting, because he was unwilling or unprepared for coming up with any alternatives that might be a real breakthrough, was to return to the issue of the urupa on the golf course. This was clearly for him a potent issue, as the ceremony resulting in arrests six weeks earlier had been about the urupa. He also saw it as potentially making the golf course unusable, which would directly impact on the settlement negotiations. He therefore obtained the agreement of Tainui and the Golf Club that the boundaries of the urupa would be delineated on the ground, so that the Club could see and understand the size of the area involved.[2203]

[2203] Notes of discussions between the Minister of Lands and the Tainui Awhiro Matakite Committee, the Tainui Trust Board, and the Raglan Golf Club, 29 March 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2713-2716.

The marking of the boundaries of the urupa was carried out within a week[2204].

> Something like five or six acres was requested by the Maori elders. The reaction of the Secretary of the Golf Club … is that such an area covering two fairways and encroaching on a third would make it impracticable to continue to maintain an eighteen hole course.[2205]

Nevertheless discussions continued at a local level, in particular over whether all the urupa areas needed to be fenced[2206]. Other action taken following the Minister's meeting was to obtain an up-to-date valuation[2207], and a request for the Director of Civil Aviation to identify how much land was required for the airstrip, and how much might be surplus to requirements[2208].

There was no other progress before the 17 persons arrested on the golf course appeared in the Magistrate's Court in early May 1978. The case of one of those arrested was argued as a test case applying to all the defendants. The validity of the Golf Club's lease was raised, with the claim that it was invalid as it had not been registered. The Magistrate reserved his decision[2209].

Meanwhile Dan Te Kanawa wrote to the Minister about the discussions over the urupa. He explained that the idea of fencing off a lesser area than the extent of the urupa identified by the Maori elders came from the Golf Club, because fencing of the full extent would prevent the golf course continuing as a viable proposition. However, fencing the lesser area "did not receive much favour from the Tainui Awhiro people". Te Kanawa continued that there seemed to be four alternatives:

- If the full area was fenced off, relocate the golf course.
- If the full area was fenced off, extend the golf course on to the airstrip to make up for the loss of fairways and greens.

[2204] TE Rickard, Raglan, to Commissioner of Crown Lands Hamilton, 1 April 1978, President Raglan Golf Club to Commissioner of Crown Lands Hamilton, 4 April 1978, and Secretary Raglan Golf Club to Commissioner of Crown Lands Hamilton, undated (received 17 April 1978). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2719, 2720-2721 and 2727-2728.
[2205] Commissioner of Crown Lands Hamilton to Director General of Lands, 3 April 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2718.
[2206] Note for file, 28 April 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2729.
[2207] Commissioner of Crown Lands Hamilton to District Valuer Hamilton, 31 March 1978, and District Valuer Hamilton to Commissioner of Crown Lands Hamilton, 17 April 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2717 and 2723-2726.
[2208] Director General of Lands to Director of Civil Aviation, 12 April 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2722.
[2209] *New Zealand Herald*, 5 May 1978. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2730.

- If only part of the area was fenced off, the golf course could continue within its present legal boundaries.
- If a larger portion of the urupa, but not the whole area, was fenced off, extend the golf course on to the airstrip.

He concluded that the alternatives should be investigated and negotiations should continue, and told the Minister that "your full participation in this exercise is both necessary and vital"[2210].

By the time the Director General of Lands commented to the Minister on these alternatives, a reply had been received from the civil aviation authorities. He told the Minister:

> I am now able to report that the Ministry of Transport is unable to release any aerodrome land without seriously affecting its use for aircraft and its value as an aerodrome. It comments that at the present time the aerodrome is of minimum size for a public airfield, and with a total runway length of 640 metres, this already makes it restrictive for some light aircraft. The existing width of the runway at each end is also minimal, and although there is some extra width at the centre it is only sufficient to allow two visiting aircraft to park on the northern side and for James Aviation to base one aerial topdressing aircraft on the south side.

This reply eliminated two of Te Kanawa's alternatives. Disregarding relocation of the golf course, the Director General suggested "this then really leaves option three as the most practical from our point of view"[2211]. The Minister replied to Te Kanawa along these lines[2212].

Te Kanawa's reply to the Minister was that a meeting of Tainui Awhiro had resolved that the full area of the urupa had to be fenced, and this meant that the golf course had to be relocated. He added:

> Because feelings are running high over the impending final judicial decision regarding the trespass case on the Raglan Golf Course and other recent events relating to land issues, I don't anticipate that there will be any change to this

[2210] D Te Kanawa, Te Kuiti, to Minister of Lands, 9 May 1978, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, undated (received 2 June 1978). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2731-2737 at 2734-2735.
[2211] Director General of Lands to Minister of Lands, 26 May 1978, on Director General of Lands to Commissioner of Crown Lands Hamilton, undated (received 2 June 1978). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2731-2737 at 2731.
[2212] Minister of Lands to D Te Kanawa, Te Kuiti, 26 May 1978, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, undated (received 2 June 1978). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2731-2737at 2732-2733.

> decision made by the Tainui Awhiro people. Consequently I can see no benefit in arranging another meeting to further discuss [the third option].
>
> In order to maintain the momentum of this initiative, it will be necessary for all parties to concentrate on the relocation option, and assess the full implications and requirements as suggested in my earlier letter.
>
> I once again seek your participation in this respect, and trust you will appreciate the need for urgency in this matter.[2213]

This letter seems to have finally shifted the Minister's mindset. In a note about a telephone call between the Deputy Director General and the Commissioner, it was stated that, "the Minister is now leaning towards finding alternative land for the golf club as a solution"; the Commissioner was asked to make "discrete inquiries" about the availability of other land[2214]. The timeliness of the Minister's change of heart was almost immediately apparent when the Court decision on the trespass case was given the day after the telephone call was made to Hamilton.

The decision of the Court, given in mid June 1978, was that the trespass charges failed because they relied on trespass being committed against the Golf Club, yet the Golf Club's lease was not a valid basis for claiming that the Club was in lawful occupation. This was because the lease did not comply with the Land Settlement Promotion and Land Acquisition Act 1952, as there had been no consent sought from the Land Valuation Tribunal, and no application had been made to have the land declared to not be farmland. Until the lease did comply with the provisions in the Act, it had to be treated as unlawful and having no effect. The charges against all seventeen defendants were dismissed[2215].

By the decision a main plank of the Crown's stance had been undermined. It had severely restricted its options by insisting that the Golf Club had to be protected as part of any handing back of the land, yet now the Club's legal standing had been challenged and found wanting. The Maori campaigners, however, did not

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[2213] D Te Kanawa, Te Kuiti, to Minister of Lands, 9 June 1978, attached to Minister of Lands to D Te Kanawa, Te Kuiti, 14 June 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2731-2737 at 2734-2735

[2214] District Administration Officer Hamilton to Commissioner of Crown Lands Hamilton, 15 June 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2738.

[2215] Decision of AD Richardson SM, 16 June 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2739-2750.

immediately see it as a victory for them, instead feeling that they had been cheated by a legal technicality. To quote from a newspaper report from the day of the decision:

> Dr SI Sinclair, president of Te Matakite, said "What we have received is a purely legal decision – not a just one.
>
> "We are still not in a position of being able to go on the urupa because the golf club can go back to comply with the Land Settlement Act.
>
> "We want a caveat to restrain the granting of an order that would regularise the lease."
>
> Raglan land protest leader Mrs Eva Rickard said the decision was "only a minor victory".
>
> The Raglan Maori protesters seek possession of the land, which was taken compulsorily from local Maori people during the Second World War for use as an aerodrome.
>
> Protesters had organised a rally to take place in Hamilton after the judgement, in anticipation of conviction of the 17 charged.
>
> Although robbed of their main theme by the dismissal, the rally members took the opportunity of explaining to a lunchtime audience of about 200 the feelings of Maori people towards the land and alleged injustices.[2216]

Both the Golf Club and the Crown were left scrambling. The Commissioner of Crown Lands wrote an immediate commentary to the Director General.

> The question of what action, if any, is to be taken to preserve the rights of the Golf Club is now the subject of discussion between the legal advisors to the Club and the County, and the Club Solicitor has undertaken to keep me informed of any proposals….
>
> As I see the situation, the decision does not affect the Minister's position, which rests on the original decision to return the land to the Tainui Maoris provided in so doing the rights of the Golf Club are safeguarded. The defect in the lease is in the nature of a legal technicality – which incidentally must apply to the majority of unregistered leases over reserve land. The Club would be well advised to endeavour to rectify the omission and this could be done by negotiating the exercise of an identical lease for the unexpired term of the lease, followed by deposit of the required statutory declaration in terms of subsection 24(d) [of the 1952 Act].[2217]

[2216] *New Zealand Herald*, 17 June 1978. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2751.
[2217] Commissioner of Crown Lands Hamilton to Director General of Lands, 19 June 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2752-2753.

Meanwhile, a search was made for an alternative site for the Golf Club, resulting in a conditional offer being made and accepted for 36 hectares of land adjacent to Te Uku Domain[2218]. With the Minister's consent[2219], representatives of the Golf Club were shown the proposed new site; they pronounced it suitable for development as a golf course, but anticipated "considerable objections" from many members[2220].

At the beginning of July 1978, the Minister of Lands met with the Maori negotiators (described in the minutes as representing Tainui Awhiro) and the Golf Club in Wellington. There was some initial discussion about the urupa. The Maori negotiators insisted that the boundaries could not be reduced, while the Golf Club felt they were excessive and some compromise should be arrived at. The matter of the urupa, however, only served to emphasise how desirable it would be for both the former owners and the Crown if the Golf Club could be taken out of the picture by being relocated elsewhere. Thus discussion moved on to consider relocation, which the Golf Club representatives stated they were reluctant to accept, because of the distance of Te Uku from Raglan, and the hilly nature of the proposed new site. Another site closer to Raglan was mentioned as more suitable. The Minister accepted that, in addition to providing a new site, the Crown would have to make a contribution towards relocation costs. As far as the former Maori owners were concerned, however, they felt there was little substantive difference. If the Golf Club was relocated, then the former owners would get (not immediately, but in the near future after a handover period) vacant land returned to them, but the Crown still expected to be paid for the land. The Minister indicated he was prepared to re-examine the repayment terms[2221].

In a newspaper report after the meeting, the parties maintained a hard line towards one another. The Minister was quoted:

[2218] Senior Field Officer Millson to Commissioner of Crown Lands Hamilton, 27 June 1978, and Commissioner of Crown Lands Hamilton to Director General of Lands, 27 June 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2756-2757 and 2758.
[2219] File note to Commissioner of Crown Lands Hamilton, 28 June 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2759.
[2220] Commissioner of Crown Lands Hamilton to Director General of Lands, 4 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2760-2761.
[2221] Notes of Meeting, 5 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2765-2768.

> Yes, I am insistent that the $60,000 [actually $61,300] be paid. That is not unreasonable. We have a policy relating to both Maori and European land taken for these purposes.

Eva Rickard was quoted in the same report as describing the Crown's requirement that the land be paid for as "quite ridiculous; I am not happy that the Minister is demanding my people buy our land back"[2222].

The alternative site for the golf course, on part of the former Child Welfare Home property, looked promising, although access might require an expensive bridge and causeway across tidal flats[2223], and was included in the basis for future discussions with the Golf Club as an alternative to the Te Uku property. In mid July 1978 the Minister gave approval for further negotiations on the following basis:

1. Sale to Maoris. The golf course is to be sold to the Maori claimants for $61,300 with a 15% deposit and the balance repayable over a 30 year period with interest at 5%. The disposal is subject to the Maoris accepting these terms and agreeing to lease the course to the Golf Club for a re-establishment period not exceeding ten years, and subject to a reasonable rental being charged acceptable to the Minister of Lands.
2. Relocation of Club. The Raglan Golf Club to agree to relocation [at either of the alternative sites]. The Crown is prepared to consider providing assistance to the Club to meet the cost of re-establishment, and the amount to be provided is to be negotiated and would depend on which site is chosen and the actual costs involved. If the [Child Welfare Home property] is preferred by the Club, the actual area involved is to be decided jointly between the vendor, the Golf Club, the County Council and the CCL, along with the finalisation of the provision of suitable access. No commitment in respect of access is to be made to the Club, but the question of contributing to this item could be considered in relation to re-location assistance provided to the Club.[2224]

Five days later, the Commissioner reported back on his discussions about these terms.

> [Sinclair and Eva Rickard] accepted the conditions, disclosing that the Tainui Corporation [sic, believed to be Te Kopua 2B3 Incorporation] has an annual income of $10,000 from rents, and that both the deposit of $9,915 could be met, along with the half-yearly payments of $1,685.77 on the balance of

[2222] *Waikato Times*, 6 July 1978. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2762.
[2223] Commissioner of Crown Lands Hamilton to Director General of Lands, 7 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2763-2764.
[2224] Note for File, 13 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2768. This note is based on Director General of Lands to Minister of Lands, 12 July 1978, attached to Note for File by Assistant Director General of Lands, 18 July 1978. Lands and Survey Head Office file 8/5/270. Supporting Papers #2772-2777 at 2775-2776.

> $52,105. The representatives made the point that, while accepting as negotiators, they would have to secure the approval of the owners before the matter could be confirmed. They were reminded that we for our part would expect the Tainui people [sic, believed to be a reference to Tainui Awhiro] would pay due regard to the advice of their appointed representatives.
>
> The one question raised was the rent to be paid by the Golf Club during the period of relocation, which was agreed to be a minimum of two years and a maximum of ten, and it was agreed that the rent payable would be between 2½ and 5% based on the purchase price. This could be met either by reducing the interest charged by the Crown, or through a refund of revenue, on the assumption that the Club cannot be forced to pay a higher rental for their unexpired term of the initial ten years. It would be possible, however, to charge this rent direct to the Club, should they still be in a position beyond the first rent review date, 1 April 1980.[2225]

The Commissioner's separate discussions with the Golf Club and the County Council showed that the Child Welfare Home property was the Club's preferred choice of the two alternative sites, although costs of acquisition and development would be high. The Club had also not yet given up on staying on the aerodrome site. However, in response to this, "both the County Chairman and I warned the Club representatives against a short-term attitude involving continued strained relations with the local Maori population and the ultimate disposition in 55 years time". Following the discussions, the Club convened a meeting of its members.

> Telephoned advice of the meeting of the Raglan Golf Club last evening were to the effect that the Club, as predicted, firmly resolved against accepting the Te Uku alternative, and reserved a decision on the Raglan alternative until details were available, with a strong indication that the Club may prefer to stick it out on the aerodrome reserve and run the gauntlet of rental reviews.[2226]

Despite the rejection of the Te Uku property, the Minister decided that it should still be purchased by the Crown, "as a back-stop against all other alternatives coming unstuck"[2227].

[2225] Commissioner of Crown Lands Hamilton to Director General of Lands, 18 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2769-2771.

[2226] Commissioner of Crown Lands Hamilton to Director General of Lands, 18 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2769-2771.
The Club's stance was confirmed in Honorary Secretary Raglan Golf Club to Minister of Lands, 18 July 1978, attached to Honorary Secretary Raglan Golf Club to Commissioner of Crown Lands Hamilton, 27 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2778-2780.

[2227] Note for File by Assistant Director General of Lands, 18 July 1978, and Director General of Lands to Minister of Lands, 21 July 1978. Lands and Survey Head Office file 8/5/270. Supporting Papers #2772-2777 at 2772-2773 and 2774.

16.6.5 The Crown Applies for Revesting of the Golf Course, 1978

Having received the results of the discussions engaged in by the Commissioner of Crown Lands, the Minister of Lands put the Crown's offers in writing to the Maori negotiators and the Golf Club at the end of July 1978. The Maori negotiators were told that if they agreed to the repayment terms, then "I will instruct my officers to proceed with action to arrange for the vesting of the land"[2228]. The Golf Club was told that the two alternative sites were still available, that relocation would provide the Club with secure tenure, and that the Crown would assist with the costs of relocation of the clubhouse, plus in the case of the Child Welfare Home property a contribution towards provision of access. If the Club declined to relocate, then its future would have to rely on its existing lease, and whatever negotiations were held with the future Maori owners so far as rent reviews and protection of the urupa were concerned[2229].

There was no immediate response to the Minister's written offers from either party. In mid September 1978 the Commissioner reported that the Maori negotiators were reluctant to put the matter before a meeting of Tainui Awhiro, because they anticipated that the offer would be rejected. While not wanting to pay anything at all for the return of the land, they did note that land at Bastion Point was being offered back to Ngati Whatua at a substantial discount on its valuation, and expected similar treatment from the Crown. For its part the Golf Club had obtained the opinion of a golf course designer that the Child Welfare Home property was not particularly suited to "veterans" (i.e. retired persons), who comprised a large proportion of the membership[2230]. This was confirmed in a letter from the Golf Club to the Minister[2231].

The Club's effective rejection of relocation meant that the Minister of Lands felt he could proceed, without having any qualms about the consequences for the Golf Club, with the application to the Maori Land Court for the revesting of the golf course in

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[2228] Minister of Lands to D Sinclair, Hamilton, 27 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2781-2785 at 2781.
[2229] Minister of Lands to Honorary Secretary Raglan Golf Club, 27 July 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2781-2785 at 2782-2783.
[2230] Commissioner of Crown Lands Hamilton to Director General of Lands, 11 September 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2786.
[2231] Honorary Secretary Raglan Golf Club to Minister of Lands, 13 September 1978, attached to Honorary Secretary Raglan Golf Club to Commissioner of Crown Lands Hamilton, 13 September 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2787-2789.

Maori ownership. He advised both the Maori negotiators and the Golf Club in the third week of September 1978[2232]. Early the following month, in response to a question put to him in Parliament, the Minister advised:

> Following extensive negotiations with the Tainui representatives and their general acceptance of the Crown's offer, there has been some reluctance by the Tainui people themselves to accept the offer. To resolve the position, it is now intended to lodge a formal application with the Maori Land Court for revesting, and the formalities for this have now been commenced.[2233]

There were, however, a number of preliminary steps that were required. Before the application could be lodged, the golf course land had to be ordinary Crown Land, which the Land Settlement Board had resolved could be disposed of by revesting. To become Crown Land, the reserve status of the land had to be revoked, and the vesting in the Raglan County Council cancelled. And before these steps under the Reserves Act 1977 could be carried out, the reserve had to be classified into one of seven categories set out in the 1977 Act[2234].

These steps were matters that Lands and Survey officials were familiar with, and they moved into motion with alacrity. A recommendation that the whole of the aerodrome reserve (i.e. the golf course and the landing strip) be classified as a Local Purpose (Aerodrome) Reserve was accepted by the Commissioner of Crown Lands, and advertised in the local newspaper[2235]. Two months was allowed for receipt of submissions. However, at the beginning of November 1978, the Minister sought a deferment of the advertising of the classification[2236].

Deferment of the classification notification notwithstanding, the Minister was in a hurry to be seen to be making progress, and it is probably not coincidental that a general election was being held on 25 November 1978. He decided not to wait for all

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[2232] Minister of Lands to D Sinclair, Hamilton, undated, and Minister of Lands to Honorary Secretary Raglan Golf Club, undated, attached to Director General of Lands to Minister of Lands, 22 September 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2790-2794 at 2792-2793 and 2794.

[2233] *New Zealand Parliamentary Debates*, 6 October 1978, Volume 421, page 4397. Supporting Papers #4135.

[2234] Director General of Lands to Minister of Lands, 22 September 1978. Lands and Survey Head Office file 8/5/270. Supporting Papers #2790-2794.

[2235] Case No. R78/149 to Commissioner of Crown Lands Hamilton, approved by Commissioner 25 September 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2795.

[2236] Director General of Lands to Commissioner of Crown Lands Hamilton, 1 November 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2797.

the preliminary steps to be competed before filing the revesting application with the Court, any such application being subject to the reserve status being revoked. The application was signed by the Minister, and sent to the Court, in mid October 1978[2237]. Some thought as to its wording had been given by officials. The salient points of the application were:

- It covered the whole of the golf course leased area plus the Ocean Beach Road severance strip, a total area of 27.5525 hectares. In 1976 the Minister had proposed that a foreshore esplanade strip should be excluded, he had confirmed this in a letter to Sinclair in March 1978, and the intended purchase price was for an area that excluded the strip. However in September 1978 the Director General instructed that no such strip was to be set aside[2238]. No reason was given.
- As applicant the Minister sought the vesting of the land in either the owners from whom it was acquired in 1941, or the Tainui Trust Board, or "such persons as may be found by the Court to be justly entitled thereto".
- The vesting was to be subject to the payment to the Crown of $61,300. This was the 1976 valuation of the golf course excluding 20 metre esplanade strips. The inclusion of the esplanade strips and the Ocean Beach Road severance area had not altered the purchase price.
- The vesting was to be subject to the lease to the Raglan Golf Club for the balance of its term.

On the basis of a legal opinion about who had the statutory authority to make the application, the Land Settlement Board in November 1978 retrospectively approved the revesting, subject to the golf course becoming Crown Land, and appointed the Minister to sign the application on the Board's behalf[2239].

[2237] Application for Order Revesting Land, 19 October 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2940-2942.
[2238] Director General of Lands to Commissioner of Crown Lands Hamilton, undated, on Director General of Lands to Minister of Lands, 22 September 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2790-2794.
[2239] Director General of Lands to Commissioner of Crown Lands Hamilton, 19 October 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2796.
Case No. 9309 to Land Settlement Board, approved 8 November 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2798.

In keeping with the Minister's request for deferment of advertising of the classification, he agreed at the end of November 1978 to the classification being readvertised[2240]. This took place the following month, accompanied by a press release[2241]. No submissions were received, and the aerodrome was classified as a local purpose (aerodrome) reserve in April 1979[2242].

In March 1979 officials realised that they did not have the formal written agreement of the Raglan County Council to the cancellation of the vesting and the revocation of the reservation[2243]. This was requested[2244], and the Council provided its written agreement[2245]. The cancellation and revocation was approved the following month[2246]. Subsequently the notice in the Gazette was found to be defective, and a substitute notice had to be published[2247]. The cancellation of the vesting and revocation of the reservation had the effect of making the Crown the Golf Club's landlord.

With all the preliminaries out of the way, the next step in the process would be the Maori Land Court hearing. The delays in having a hearing were already the subject of some criticism, with a letter from Sinclair calling on the Minister to honour his commitment[2248], and the Minister insisting that he had no intention of withdrawing from the offer he had made to the Maori negotiators[2249]. However, the Maori

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[2240] Director General of Lands to Commissioner of Crown Lands Hamilton, 30 November 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2799-2801.
[2241] Commissioner of Crown Lands Hamilton to Editor Waikato Times, 8 December 1978. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2802.
[2242] *New Zealand Gazette* 1979 pages 1147-1148. Supporting Papers #4121-4122.
[2243] Director General of Lands to Commissioner of Crown Lands Hamilton, 6 March 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2803.
[2244] Commissioner of Crown Lands Hamilton to County Clerk Raglan County Council, 8 March 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2804.
[2245] Chief Executive Officer Raglan County Council to Commissioner of Crown Lands Hamilton, 27 March 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2811.
Waikato Times, 28 March 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2812.
[2246] Case No. R79/3 to Commissioner of Crown Lands Hamilton, approved by Commissioner 9 April 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2815-2816.
New Zealand Gazette 1979 page 1206. Supporting Papers #4123.
[2247] *New Zealand Gazette* 1979 page 1978. Supporting Papers #4124.
[2248] President Te Matakite o Aotearoa to Minister of Lands, 28 February 1979, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 26 March 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2805-2809.
[2249] Minister of Lands to President Te Matakite o Aotearoa, 19 March 1979, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 26 March 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2805-2809.

negotiators do not appear to have been fully informed of developments over the 1978-79 summer. When a Lands and Survey official met Eva Rickard at the end of March 1979 to explain that Tainui Awhiro would need to have got itself organised for the hearing (for example, organised an entity in whom the land could be vested, be able to confirm that the $61,300 could be paid, arranged with the Golf Club about continuity of the lease and protection of urupa), it emerged that she had not even seen the Minister's application and its conditions[2250]. It was also apparent that the role of the three Maori negotiators would be undergoing some shifts, as neither Douglas Sinclair nor Dan Te Kanawa came within the categories stated in the application, of being owners of the land in 1941 or their descendants, or of being representatives of the Tainui Maori Trust Board[2251].

Once aware of the conditions set by the Minister in the application, Eva Rickard was not slow in complaining in local newspapers.

> Raglan Maoris are furious at the latest move by the Minister of Lands, Mr VS Young, to settle the Raglan Golf Course dispute.
>
> He had directed the Maori Land Court to let him nominate to whom the golf course will be returned, and to set his own conditions for that return. And he wants the nominated owners to pay $61,000 for land which they won't be allowed to occupy till the year 2035. This is the date of expiry for the Raglan Golf Club's lease of the land, which the Minister is demanding the owners validate as a condition of a proposed vesting order….
>
> If the Tainui Awhiro people refuse to validate the lease, the golf course land could be offered to the Tainui Trust Board, and, failing that, to any other party that the Minister nominates.
>
> Tainui Awhiro spokesperson Mrs E Rickard has begun preparing a major battle to contest the terms of the proposed vesting order, but warns that failing this there will be larger-scale confrontation than any yet held over a land issue. "I'm having difficulties restraining the young people from acting now," she said.
>
> Te Matakite o Aotearoa chairman Dr D Sinclair promised to take the issue to a World Court if the Tainui Awhiro people did not get justice in their own country. "We are going to make this into a case why New Zealand shouldn't be allowed to compete at the next Olympic Games," he vowed. "They're using the Maori Land Court to rubbish the Maori people – the only difference

[2250] File note, 30 March 1979, on Commissioner of Crown Lands Hamilton to Director General of Lands, 26 March 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2810.
[2251] Commissioner of Crown Lands Hamilton to Director General of Lands, 5 April 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2813-2814.

> between what is happening in New Zealand and South Africa is that here they do things under a cloak of goodwill, equity and conscience," Dr Sinclair said.
>
> Mrs Rickard said she discovered only recently the Minister's intention to have the lease validated. This was a complete "about-face" to his offer in July to relocate the golf course, she said.
>
> She is furious that the Minister chose to stipulate the conditions of return, when the Maori Affairs Act empowered him to put the matter entirely in the hands of the Maori Land Court judge. She would have been quite happy to "battle it out with the judge", but instead her hands were tied as the Minister had directed the Court to "rubber-stamp" his vesting order application when it next sits in June.
>
> She said it was the Tainui Awhiro who should be paid $61,000 in compensation for damage caused by delinquent tenants and the loss of use of ancestral lands over 35 years which scattered her people away from Raglan.[2252]

The Minister issued his own statement to the local newspaper. Accusing Rickard and Sinclair of "recreating an unnecessary division in the community", and being "entirely emotive", he argued that both leaders had been aware of the conditions under which the land would be offered back, that compensation had to be paid for the land's return because it had been paid by the Government when it was taken, and that specifying that the land be returned to its original owners was the proper course of action.

> It was now in the hands of the Tainui Awhiro people to "make their case" to the Court. "My first preference was to have the Maori Land Court identify the beneficial owners, if they - the owners - were willing to accept the Government's offer to return the land and pay $61,000 in compensation to the Government," Mr Young said. "If they aren't prepared, then it is for the Court to decide whether the Tainui Trust Board or some other body could properly represent the interest of the Maori people in that piece of land."[2253]

In a letter to Eva Rickard, however, the Minister was less combative. Anxious to encourage her to prepare for the Court hearing, he offered to hold off prosecuting his application to give her time to set up an entity in whom the land could be vested, and reach agreement with the Golf Club about the future of the golf course[2254].

[2252] *Waikato Times*, 10 April 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2817.
[2253] *Waikato Times*, 10 April 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2817.
[2254] Minister of Lands to TE Rickard, Raglan, undated (letter drafted 10 April 1979). Lands and Survey Hamilton file 8/5/270. Supporting Papers #2818-2820.

In early May 1979 a meeting of Tainui Awhiro called on their negotiators to get the land back with full occupancy rights, and to apply to the Supreme Court to have the matter considered by the Maori Appellate Court rather than the Maori Land Court. It also supported a recently-established Whaingaroa Trust Board, run by 12 trustees appointed from the main Maori families in the Raglan area, to hold the land. Eva Rickard told the meeting that if the legal channels failed, then she would call for direct action to regain the land and restore the urupa[2255].

Despite the meeting proposing that the Maori Land Court be by-passed, Eva Rickard later that month lodged a Notice of Intention to Appear upon an Application. The grounds she stated were:

> The vesting order under Section 436 of the Maori Affairs Act 1953, with conditions set by the applicant, is unacceptable to the Tainuiawhiro people.
>
> 1. The nomination of the Tainui Trust Board, or any other body as the Minister sees fit, have no right as we see it, because they have made no claim for the return of the land in question.
> 2. The relocation of the Raglan Golf Club was promised by the Minister at our July meeting, but the vesting order directs the Tainui people to validate an illegal lease to the Raglan Golf club.
> 3. The Minister of Lands and the Crown Lands Department have stated publicly their sympathies to the thousand man-hours given by the Raglan Golf Club in improving the land, and also the Golf Club is the innocent third party, no regard has been shown to the Tainui Awhiro people for the loss of homes, cultivations, cemeteries and fishing rights resulting in serious cultural and economic repercussions from the loss of the lands. We claim the Minister's attitude and vesting order is discriminatory and racist.
> 4. We claim that our contentions and submissions to Government be answered, and we look to the Court for justice, if any.
>
> The Tainui tribe of Raglan was once a powerful member of the Waikato tribe, and we do not want a Mt Taupiri or Mt Taranaki kind of restitution.[2256]

Dan Te Kanawa also signed a similar Notice, on the following grounds:

> As I was one of the three negotiators appointed at a publicly called meeting of prospective owners held 5 June 1976, to negotiate with the Government for the return of the above land to the Tainui-a-whiro people, I object to the Minister's vesting order on the grounds that

[2255] *Waikato Times*, 7 May 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2821.
[2256] Notice of Intention to Appear upon an Application by Tuaiwa Eva Rickard, undated, attached to E Rickard, Raglan, to Commissioner of Crown Lands Hamilton, 25 May 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2822-2823.

1. Agreement was never reached to the terms and conditions of returning the land.
2. No account has been taken of historical events which is the basis of our contentions and negotiations.
3. A subsequent publicly called meeting of prospective owners held 5 May 1979 resolved that this objection be made.[2257]

A third Notice was sent to the Maori Land Court by Douglas Sinclair[2258]. Sinclair independently wrote to the Minister of Maori Affairs in a personal capacity. Arguing that "the situation surely calls for responsible intervention", he believed that the matter should be put before the Court at the earliest opportunity. He outlined how the Court could re-investigate how much compensation was due for the original taking, could award the land to "the Tainui Maori claimants", could set up a trust to complete negotiations for return of the land, including negotiations for continued use by the Golf Club for a limited term[2259]. However, he failed to identify any legal basis for giving the Court terms of reference along these lines. Sinclair's letter was passed on to the Minister of Lands, who felt that he was suggesting a renegotiation of a settlement that was close to fruition, because the Maori negotiators had agreed to pay $61,300 for the land to be revested, and the revesting application had been lodged[2260].

During the lead-up to the Court hearing, the Commissioner clarified some points about the application, which demonstrate how controlling of the process the Crown was being in its setting of conditions to the vesting.

> The application states three options as to revesting. They are options from which the applicant [the Crown] can make submissions to the Court following agreement with the other party. They are not options for selection by the Court irrespective of the applicant's recommendations. In terms of Section 436 the Court can then only make an order subject to the conditions set out in the application, or any variation desired by the applicant….
>
> The present intention is of course that the first option apply, i.e. the revesting in the beneficial owners entitled, and lists of the owners at the time of the taking of the land are attached to the application. Once the Court makes an

[2257] Notice of Intention to Appear upon an Application by Daniel Takutaimoana Te Kanawa, 30 May 1979, attached to DT Te Kanawa, Te Kuiti, to Commissioner of Crown Lands Hamilton, 30 May 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2824-2825.
[2258] Deputy Registrar Maori Land Court Hamilton to Commissioner of Crown Lands Hamilton 31 May 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2826.
[2259] D Sinclair to Minister of Maori Affairs, 16 May 1979, attached to Minister of Lands to Minister of Maori Affairs, 8 June 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #
[2260] Minister of Lands to Minister of Maori Affairs, 8 June 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #987A-987B.

> order, the Crown's actions would be complete. We would not be concerned in succession applications to update the titles, or any subsequent application should either of the other options be utilised. In other words, if the vesting is to be with the Tainui Trust or other entity, the title would first vest in putative owners, and subsequently pass to the final recipient. The chain of conveyance must include the putative owners. These points are made because of the conflicting statements which have been appearing in the press, so that a clear picture will be obtained.
>
> One difficulty, having set the conditions in the application, is to be assured they can be met before any fixture for a hearing is made. While the Act does not empower the Court to vary the conditions specified in the application, in the absence of agreement the Court could either dismiss the application or adjourn the hearing to give the parties further opportunity to reach an agreement. Either course would be embarrassing [to the Crown].[2261]

A further clarification was that "no order would be made at any fixture made other than by the applicant". This was immediately relevant because the Crown had not asked for a hearing date, and had told Eva Rickard that it would hold off from seeking a hearing to give her time to organise for the hearing. She, on the other hand, viewed the holding off as a lack of good faith on the Crown's part, that prevented the land being revested in Maori owners. She asked the Court to hear her Notice of Intention to Appear at its June 1979 sitting in Hamilton. The Commissioner recommended that, until there was more agreement between the parties about the conditions, the Crown should avoid appearing in the same courtroom, and should therefore not attend the June hearing[2262].

Thus it was that when the matter was heard before the Court in June 1979[2263], the Crown was not represented. This was of concern to the judge, who remarked that hearing an application in the absence of the applicant was most irregular. Noting that this was the third panui in which the application had been listed, he was also concerned about the delay, to the extent of setting out his opinion that the application should be dismissed if it was listed for a fourth time and was again not prosecuted by the Crown. Eva Rickard accepted that a vesting order could not be made that day, but asked that the Court hear the oral evidence of Herepo Hounuku Rongo, a kuia who

[2261] Commissioner of Crown Lands Hamilton to Director General of Lands, 31 May 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2827-2828.
[2262] Commissioner of Crown Lands Hamilton to Director General of Lands, 31 May 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2827-2828.
[2263] Maori Land Court minute book 59 W 182-210. Supporting Papers #3772-3786.

was the only Maori still alive who had attended at least one of the two meetings in 1941. The minutes record:

> Herepo Hounuku Rongo (in Maori)
> They had a meeting at a meeting house Miria Te Kaka. Mahuta was present. They promised to return Karioi and Te Kopua. The land was taken for camping grounds and I am still waiting. I am the only one left and my grandchildren.
>
> Judge
> Who said the land would be returned to them?
>
> Herepo Hounuku Rongo
> It was a representative of the Government. 1914 [sic] was the date they were discussing it. It has been 40 years waiting for the return of the land – since 1914 [sic].
>
> Mrs Rickard
> I asked her if it was true that when they came to ask for the land they promised to return it and she has said Yes. I know she is getting old, but she is confused, and I think this Court is confused as well, but we live with her and she most emphatically has said she wanted her meeting house back – her papakainga back and her land as promised. I know Mr Te Kanawa is here – a meeting in the Land Court supported the old lady's claim that the meeting house was going to be built on the hill. She still believes that that meeting house will be built….
>
> Judge
> How old is she?
>
> Mrs Rickard
> She would be 90 as far as I can assess – her husband would be 109 if he was alive.[2264]

The Court then heard submissions from the three persons who had served notices of appearance, Eva Rickard, Douglas Sinclair and Dan Te Kanawa, all of whom complained about the delays both in having the land returned and in having a hearing of the Crown's application. One of Sinclair's complaints about the whole process was the absence of a mediator or arbitrator to help the three parties (Crown, former Maori owners, and Golf Club) get over the impasse he felt they were at; this line of thinking in part explained the attraction for him of a Supreme Court hearing[2265]. At the end of the hearing, the Court adjourned the application, called on representatives of the Crown and the three persons with a notified interest in the application to attend in

[2264] Maori Land Court minute book 59 W 190-192. Supporting Papers #3776-3777.
[2265] Maori Land Court minute book 59 W 196. Supporting Papers #3779.

chambers within 14 days to fix a date for a hearing, and if that did not occur ordered that the application be set down for hearing at the next sitting in Hamilton in September 1979, where it would be dismissed if not prosecuted then[2266].

Following the Court hearing, the judge wrote to the Minister of Maori Affairs, thereby confusing the distinction between the judiciary and the executive. Setting out the legal requirements of Section 436, he noted that the Court had little room to manoeuvre because the Crown's application set out in whom the land should be vested, and under what terms and conditions. As he remarked, the legislation "clearly anticipates complete agreement" beforehand between the Crown and those in whom the land would be revested, yet there was no such complete agreement in the case of the golf course land application.

> From certain comments you made at Matakana that day, I gained the impression that there was room for negotiation between the parties, but unfortunately it seems to me that no positive effort is being made to reach agreement. I am not sure what it going on, but if this application is dismissed it would appear that is precisely what the protesters want in order to pursue their present publicity campaign and to promote their cause.
>
> They are talking of taking the matter to the Supreme Court, but quite frankly I cannot see upon what grounds they can do this. At present the Crown is the owner of the land, and that is that. They paid compensation for it, and I am sorely put to see how they are going to seek any remedy in the Supreme Court on the present facts as I know them.[2267]

Also following the Court hearing, the Minister of Lands agreed that the Commissioner should meet with Eva Rickard, who by now the Crown was regarding as the sole rightful representative of the former owners, because she, of the three Maori negotiators, was the only one who was a descendant of those former owners, and also because it was she who was the only one talking about establishing a trust to take over management responsibility for the returned land. The meeting should also involve the Golf Club; getting some agreement on the future of the golf course was integral to the Minister's application conditions[2268]. The Commissioner wrote to Eva Rickard offering to meet her.

[2266] Maori Land Court minute book 59 W 208. Supporting Papers #3785.
[2267] Judge Cull to Minister of Maori Affairs, 3 July 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #988-989.
[2268] Director General of Lands to Commissioner of Crown Lands Hamilton, 13 June 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2829-2831.

> Your [appearance] notice was sufficient evidence of the fact that full agreement had not been reached. You have, on several occasions, intimated that the price and deposit for the land can be found, but the continuance of the Golf Club occupation, and the definition of the persons in whom the land would be vested, were still matters for resolution in terms of your objection….
>
> It was not the intention of the Minister of Lands to arrange a fixture and cause the Court unnecessary embarrassment in the absence of agreement as to conditions….
>
> It is desirable therefore that we confer.[2269]

A letter from the Minister of Lands to Eva Rickard at this time also encouraged her to sort out agreements on matters to do with the conditions on the application to the Court[2270].

When the 14-day period fixed by the Court expired, and no meeting in chambers to fix a hearing date had been held, the Crown wrote to the Court that it had no objection to a fixture being made for the next Court sitting in Hamilton in September 1979[2271].

16.6.6 Gibson's Statements

It is appropriate at this stage to break into the narrative of the interaction between Maori and the Crown, and discuss an affidavit prepared by a former Crown official, which provided support to Eva Rickard in her campaign during 1979. Cathy Marr has also referred to this former official's intervention in her Rangahaua Whanui Public Works report[2272]. This section of the case study serves as a reminder that the return of the golf course was not just of concern to the main interested parties, as recorded in Crown records, but that it was also being held up to scrutiny on a wider stage, as a contest in the media for the hearts and minds of New Zealanders.

In June 1978 Esmond Alan (Gibby) Gibson wrote to the Minister of Maori Affairs. This letter does not appear to have had much influence on the debate, because its existence was not known to Tainui Awhiro and the Maori negotiators. It was only

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[2269] Commissioner of Crown Lands Hamilton to E Rickard, Raglan, 15 June 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2832-2833.
[2270] Minister of Lands to E Rickard, Raglan, 14 June 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2836.
[2271] Commissioner of Crown Lands Hamilton to Registrar Maori Land Court Hamilton, 25 June 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2837.
[2272] C Marr, *Public Works Takings of Maori Land 1840-1981*. Waitangi Tribunal Rangahaua Whanui Report Q, 1994, pages 204-205.

when Eva Rickard subsequently obtained a sworn statement from Gibson (see below) that what he had to say became part of the public debate.

Gibson explained in his letter to the Minister that he had been one of the Crown officials who had visited Raglan in 1936 in search of a suitable landing ground in the district.

> I understand that the present Maori protestors maintain that the Maori-owned land on this site was originally made available to the Crown for use as an aerodrome, and when that use was no longer required there was a strict undertaking that the land was to be handed back and not used for any other purpose whatsoever.
>
> If this is the contention of the Maori protestors, then I can confirm that their claim is correct, as I was the Air Force officer who was instrumental in getting the Maori owners to allow the land to be used temporarily for aerodrome purposes.
>
> In 1934 I was a reserve officer and civil engineer working for the Director of Air Services, Tom Wilkes, in his endeavours to expand Air Force and civil aviation facilities with the use mainly of unemployed labour. One of my instructions was to locate a suitable site for an emergency aerodrome on the coast and as nearly as possible to halfway between Hobsonville and New Plymouth.
>
> The reasons for the instruction were: - the use of light aircraft was growing rapidly and few of these had a range of much over three hours or a cruising speed in excess of eighty m.p.h. With strong westerly winds I have myself on several occasions spent over three hours in a light aircraft fitted with a reserve fuel tank, in flying from Hobsonville to New Plymouth. With an inexperienced pilot in an aircraft with such limited range and speed as those in general use in those days, there was a very real risk of forced landings on the coast in adverse weather. There were in fact several such incidents before Raglan became available as a refuelling point or a refuge for an aircraft caught in worsening weather. Another great attraction of the site as an emergency landing ground was that it was immediately adjoining the township, where accommodation and telephone facilities were available.
>
> After over twelve months searching the coast on every flight on which there was time to spare, the Raglan site was the only one I could find that was suitable. It is this site which appears to be the subject of the present controversy. When I reported my conclusion to Wilkes, he instructed that I set about getting the use of the land so that the PWD could commence levelling the site for aviation use.
>
> This I at once proceeded to do, and after flying to Hobsonville, I used a Fairey IIIF float plane to fly to Raglan to endeavour to comply with the instruction. I landed on the Harbour on the afternoon of February 13th 1936, this being

recorded in my personal log. Anchoring in the channel, I was taken ashore in a dinghy and called, by previous arrangement, on local county officials.

There I was told there was no possibility of getting the land for such a purpose as I described, as in addition to being an ancient burial ground for the first Maori settlers there, it was the historical site where the first settlement was founded. It will be recalled that this occurred after the large double canoe arrived in the Bay of Plenty, and half the migrants took their half on the famous portage from the Tamaki Estuary to the Manukau to establish this first settlement on the West Coast. I was assured that even the part of the land that had not been used as a burial ground would not be available, because of the almost sacred historical associations the site had for all West Coast Maori.

However, after taking leave of the county officials I happened by chance to be introduced to two Maoris, who I was told were leaders in the local community. One of these was an ex-soldier who had served in the Maori Battalion in World War I. I explained the reason for my visit and was given the same information I had already been given by the county officials.

I pointed out to these two the importance to aviation of this particular site, and there might well be a Maori pilot whose life could be saved by its availability.

These two walked with me across the footbridge to the tribal land on my way back to the aeroplane. We sat on the grass for some time discussing the matter. It was then that the returned soldier said that he thought the elders might be persuaded to allow the land to be used as an emergency aerodrome so long as no buildings were erected on it, and it was returned to the tribe as soon as its need for use as an aerodrome terminated. I told them if such a condition could be made by the tribe in making the land available to the Crown, I was certain it would be honoured.

I returned to Hobsonville and reported to Tom Wilkes by telephone the result of my visit.

Later when I got back to Wellington some days later, I was told a letter had been sent confirming what I had told these two Maoris, and that the stipulations covering the use of the land would be strictly honoured. I did not myself sight this letter, but I have no reason to doubt that it was sent.

Immediately after this incident the PWD was given permission to enter the land and start construction. The facts of the original Defence Department letter and the date on which the PWD occupied the site should be possible of confirmation from the archives of those two departments. What happened subsequent to my initial visit in negotiating some form of legal agreement between the Maori owners, the PWD, the Lands Department and the County Council, I have no idea, as my responsibility ceased once the PWD had been permitted to start aerodrome construction.

It could well be that in drawing up some form of legal document covering its use for an aerodrome, the negotiator on behalf of the Maoris did agree to

> something that was not agreed to in the initial meeting I have described. It could be also that the original undertaking was lost sight of in the subsequent handling of the matter by various civil service clerks in different departments. What there is not the slightest doubt about is that mine were the initial discussions on the use of the land as an aerodrome, it was agreed that the land could be made available for such purposes to the Crown only on the verbal conditions stated. I can say this as I was the only officer of the Government involved in the meeting here described. I suggest it is very unlikely that the matter was ever raised locally prior to my visit.
>
> What I now suggest is that although I would not know the two leading Maoris I met on my visit, if still alive they would certainly remember me. I suggest now that as a matter of common justice and good racial relations, this highly emotional issue should be defused by agreeing to an independent research of what went on at that time, and why.[2273]

Gibson's letter was acknowledged, and passed on to the Minister of Lands[2274]. It may not have excited much interest in Government circles at that time, because his central thesis that the land should be returned to its former owners was already Crown policy, so far as the golf course was concerned, and the remainder of the taken land was still in use as an airfield. It was not whether the golf course should be returned, but how it should be returned that officials were grappling with.

Sometime in the first half of 1979, a television programme on the Raglan golf course included an interview with Gibson. A transcript of what he said on the programme has not been located[2275], but Eva Rickard obtained a signed and sworn affidavit from him in June 1979, which she subsequently presented in evidence to the Maori Land Court. In that affidavit he largely repeated what he had told the Minister of Maori Affairs the previous year.

> That on the 13th day of February 1936 I was employed as an Air Force Flight Lieutenant and civil engineer with the duty of locating sites for emergency landing grounds for light aircraft on New Zealand routes then in use. One such site was located east of Karioi Mountain on the south side of Raglan Harbour adjacent to the township of Raglan.
>
> That prior to leaving Wellington some days previously, I had been instructed by my superior officer, T.M. Wilkes, Director of Air Services and the then

[2273] EA Gibson, Wellington, to Minister of Maori Affairs, 19 June 1978. Maori Affairs Head Office file 19/1/671. Supporting Papers #981-986.
[2274] Private Secretary to Minister of Maori Affairs to EA Gibson, Wellington, 27 June 1978. Maori Affairs Head Office file 19/1/671. Supporting Papers #987.
[2275] Gibson's comments were also made in the print media, e.g. *Waikato Times*, 29 August 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2857.

> head of the New Zealand Permanent Air Force, to give urgency to the location of an emergency landing ground roughly halfway between Hobsonville and New Plymouth.
>
> That complying with my orders, I flew from Hobsonville in a Fairey III float plane to examine the Kawhia Raglan area more closely. I found nothing suitable at either Kawhia or Aotea Harbours, but was impressed by the site inside Raglan Harbour. I landed in the harbour close to the township, called on the County official, and was told this land being Maori-owned was unavailable for such a purpose. Quite by chance I met, and was introduced by the County official to, two Maoris who were said to be leaders in the local Maori community. I explained what was required, and that the site was only needed for emergency aircraft landings, and would not be used for any other purpose. These two individuals gave me an address to write to, and told me that if an assurance was given on the lines I stipulated, and a guarantee given that the land would be returned to the owners directly it was no longer needed for aviation safety purposes, they thought the use of the land could be arranged. I told them that I was authorised to give such a guarantee, and the giving of the guarantee would be confirmed by mail by my superior officer. I reported that evening to my senior officer by telephone from Hobsonville, and was told he would see that the required assurance in writing was given.
>
> That this interview at Raglan lasting less than an hour is the only direct participation I had personally in arranging for the aviation use of the land in question. Later, while I was training at Wigram, my senior officer, during a visit, told me the whole question of the use of the site I had located at Raglan had been satisfactorily negotiated in terms of my promise, and the Public Works Department asked to proceed with levelling the land.[2276]

For this case study, an attempt has been made to compare Gibson's statements with the historical reports located during research, and referred to earlier in this case study. A visit by Gibson (and another Air Force officer named Wallingford) to Raglan on 13 February 1936 is confirmed, and forms the basis of the report later that month from the Acting Engineer in Chief of the Public Works Department to the Controller of Civil Aviation. However, this report states that "no site in the immediate vicinity of the town [Raglan] could be found", and the County Engineer was to supply further particulars of sites in the "surrounding country" that were inspected. When the County Engineer provided those particulars, they were for three different areas inspected by Gibson and Wallingford, plus a fourth subsequently identified by the County Engineer himself. None of these four sites was Te Kopua. The first reference

[2276] Affidavit of Esmond Allan Gibson, Wellington, 13 June 1979, attached as Exhibit A to Statement of Tuaiwa Hautai Kereopa (Eva Rickard) presented to Maori Land Court, 30 November 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2950-2974 at 2959.

to a site at Te Kopua was in 1938, when the inspecting officer was an aerodrome engineer in the Public Works Department named Haskell.

If the historical records are complete, then it would seem that the County Engineer's advice to Gibson that the Maori-owned land at Te Kopua would not be available was sufficient for Gibson to exclude Te Kopua from sites listed in his report of his visit. The existence of the Council's own land on the sand spit, Papahua 2 gifted to it for recreation purposes in 1923, may have influenced the County Engineer in what he said to Gibson, or led to a misunderstanding by Gibson about the site's unavailability.

Gibson gave verbal assurances about the return of any land when no longer required for aviation safety purposes. These assurances were given to two kaumatua met by chance, rather than at a meeting on a marae. Who these kaumatua were, and whether they could whakapapa to the Papahua block owners or to the Te Kopua block owners (each block being awarded to different owners by the Native Land Court in the nineteenth century), is not known. The two meetings organised by the Public Works Department to talk about the taking of Te Kopua land were held on the marae five years later. Whether Gibson's assurances were referred to at those later meetings, or whether another assurance about return of the land was given by the Public Works Department officials at those later meetings, is not known because the two meetings held in 1941 are so poorly recorded.

Eva Rickard supplied Gibson's sworn statement to the Secretary for Maori Affairs in August 1979, with a plea that there should be a thorough investigation of Crown records "with the view of uncovering evidence that would further substantiate the affidavit and reinforce the claims we have made"[2277]. The Secretary replied that some investigation had already been made, which had failed to turn up the historical records, and he agreed that a further search should be made.

> I did think, however, that the Ministers [of Lands and Maori Affairs], being honourable men, will accept what Mr Gibson says as being a true account of what happened.[2278]

[2277] TE Rickard, Raglan, to Secretary for Maori Affairs, 14 August 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #991-992.
[2278] Secretary for Maori Affairs to E Rickard, Raglan, 21 August 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #993.

Later in August 1979, Gibson wrote to Eva Rickard in a letter that was also subsequently presented as evidence to the Maori Land Court. He challenged an assertion by a Ministry of Works and Development official, made to him in Wellington, that the taking for defence purposes in 1941 implied that it must truly have been for a military reason.

> From the time I commenced to serve in the Air Force as a full time Air Force officer, my service was continuous right through the war until March 1947, when I was appointed Director of Civil Aviation. During my Air Force service, I served on the staff of every Chief of Air Staff, from Cochrane to Isitt. While I was away at times filling other appointments, I always returned to a staff appointment and knew everything that went on in the RNZAF that was of any significance. It would have been impossible for the Air Force to have requested the taking of the Raglan land under the Public Works Act without my being aware of the policy decision which caused such action. I was the RNZAF officer through whom any request to the Public Works Department would have to be made, and this situation continued up until at least mid 1942.
>
> As to the use that was required to be made of all emergency landing areas, of which the Raglan site was only one of many, in all cases the use was temporary for the emergency landing of light aircraft up until some time after the war, and very limited in that other usage by the owners, except the grazing of cattle, was normal. Apart from levelling, all the Air Force occupancy amounted to was usually establishing a fuel dump under some local control, usually the landowners, and erecting a windsock which had to be changed when a storm blew it to ribbons. In all cases of such emergency landing ground arrangements with landowners, I know of no case other than the Raglan one where the promise to return the land to the owner when no longer needed was not honoured. When I became Director of Civil Aviation, the Air Force control of all emergency landing areas passed to the Civil Aviation administration, and emergency sites were progressively returned to the owners.
>
> On the wider issue of the major air defence requirements; so far as I know, no land anywhere was ever taken under the Public Works Act unless we were contemplating establishing at least a fulltime Air Force establishment on the site for the duration of the war. I can name some half a dozen such places where we did take the land, but usually this was where we were establishing a store depot or underground fuel tank reserves. To take the land merely required for an emergency landing ground for light aircraft would never have been approved by the Air Board.
>
> If on the other hand someone had the idea that an Air Force base of any type was to be established there, he would have been deemed by the Air Force as fit for a mental institution. Raglan was possessed of none of the basic requirements for such use as rail and reasonable highway access. Any base has to be defensible to be of the slightest use, and it would be hard to imagine a more vulnerable site for an enemy attack from the sea than the Raglan land.

> In what I have said in this paragraph, I am certain the same situation would extend to the Army and Navy.
>
> From the remarks made by the County Clerk during my visit in 1936, and the subsequent taking of the land in 1941 under the Public Works Act, I have told the Minister I am left with a very uneasy feeling that someone in the wartime Government administration used the very temporary and limited use established by the Air Force as a means of getting hold of the land during the Japanese threat, and that they would not have been able to justify such action otherwise. Whoever initiated the "taking" action, and what his motives were, must in common justice remain highly suspicious to say the least. I am as certain as anyone could be that there was no requirement by the armed forces to take the Raglan land.[2279]

In analysing these remarks and comparing them with the historical records, Gibson has plainly forgotten, nearly 40 years later, what was happening during the heat of the wartime moment in 1941. It was Gibson himself, on behalf of the Air Secretary, who signed letters in October 1940, March 1941 and May 1941 to the Public Works Department asking for an emergency landing ground to be constructed at Te Kopua as a matter of urgency. That such a construction would also require the taking of the land seems to have emanated within the Public Works Department, as the Air Department only ever referred to work required for "bringing this ground into use", although costs of "land acquisition and compensation, etc" were later billed by Public Works Department to the Air Department. However, in July 1941 Gibson signed a further letter advising that "the work and the acquiring of the land mentioned therein are definitely required for defence purposes". As he himself says, Gibson emerges from these records as the Air Department's liaison person with the Public Works Department. Gibson also places himself squarely in the line of responsibility, as Director of Civil Aviation from 1947 onwards, for Raglan Aerodrome after the war. He was in a position to have arranged for the return of the aerodrome to its former owners, but neglected to do so.

Eva Rickard, Tainui Awhiro, the Maori Land Court (to whom the statements were presented as evidence), and the public (via his television appearance), were not to know that their confidence in Gibson was in part misplaced. Nor was the Crown to know of the veracity or otherwise of his statements, because they were never properly

[2279] EA Gibson, Wellington, to E Rickard, Raglan, 24 August 1979, attached as Exhibit B to Statement of Tuaiwa Hautai Kereopa (Eva Rickard) presented to Maori Land Court, 30 November 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2950-2974 at 2960-2967.

compared against the historical records during the 1976-1987 period. From the Maori perspective, Gibson's heart was in the right place, he was obviously concerned by what he saw as a travesty of natural justice in that it was taking so long for the land to be returned. He represented a vein of public opinion that, however difficult it might be to fashion a durable solution, it was necessary to persevere in doing so. His remarks also gave heart to Eva Rickard at that time, for she was quoted as believing that his signed statement "forced the Government's hand" into coming up with some new proposals (see next section)[2280]. From the Crown's point of view, his intervention may have been seen as unhelpful, although the Crown's records are too polite to say so.

16.6.7 The Maori Land Court Orders Revesting, 1979

In July 1979 the Director General and the Commissioner of Crown Lands met with the Raglan Golf Club, to see if there had been any movement in its position. If they were hoping for a change of heart (and there would have been little point in having the meeting if that was not their preferred outcome), it was not to be. As far as the Club was concerned, the existing golf course was an amenity of the town, the whole town supported its retention, and the alternative sites were not acceptable. The Club canvassed alternatives that allowed them to remain, such as offering Tainui Awhiro other land, including the Pilot Reserve or the former Child Welfare Home property, but were told that this was unlikely to be acceptable to the former Maori owners.

> Discussion then turned to the situation if the Minister finally decided to vest the land in the Maori people with the Club as a tenant. The club officials stated that they were relying on legal advice that all factors would be taken into account in the periodic re-assessment of rents, including the fact that the golf course was an amenity to Raglan. They were reminded that the counter to that argument would be that it is not the responsibility of the Maori people to provide an amenity, and that there was doubt as to whether the contention advanced by the Club would be tenable with the land privately-owned compared with the previous situation where it was owned by the State and administered by the local authority which is responsible for amenities.
>
> The Club representatives were reminded that the Minister cannot delay a decision much longer. Club members reiterated that … [financially they were] forced to stay where they were. They were prepared to fence off a practical

[2280] *Waikato Times*, 29 August 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2857.

> area to recognise the burial grounds, but they did not agree that the amount of land which the Maoris were claiming was justified.[2281]

Later that month the Director General of Lands and the Commissioner met "Mrs Rickard and Mr Te Kanawa and several Maori elders" at Raglan. The Secretary for Maori Affairs was also present, the first time that the Maori Affairs Department had become involved at the local level. Again the purpose of the meeting was to see if there had been any change in attitudes. In particular the Crown officials were looking to see how the land could be returned to Maori "with reasonable provision for the Golf Club". They were told quite directly that this was not possible, and that attitudes had moved beyond that possibility. The arguments with the Club about the urupa, which had still not been resolved, had hardened feelings against the retention of the golf course. In response to suggestions from the Crown officials that the land be returned and then the new owners could be in control of dealing with the Golf Club over the lease, the response was that it would be better if the Crown settled it before handing the land over. But the Crown officials persevered, offering favourable purchase terms if the next rent review (in 1980 and covering the following eleven years) was less than a market rate. This appeared to find some favour, and it was agreed that the Director General would report back to the Minister of Lands along these lines[2282]. Both sides told a newspaper reporter after the meeting that prospects of a settlement were good as a result of what had been discussed[2283]. The Secretary for Maori Affairs described the meeting as having made "some good progress"[2284].

A few days later Eva Rickard visited Wellington and saw the Minister of Lands. Notes of that meeting have not been located, only a subsequent newspaper report.

> After yesterday's meeting, both parties said a solution was in sight. Under the settlement taking shape, the land is likely to be vested in the Whaingaroa ki te Whenua (Long Pursuit for the Land) Charitable Trust, already set up to manage the land.

[2281] Note for File, 13 July 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2843-2844.
[2282] Note for File 25 July 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2845-2848.
[2283] *Waikato Times*, 25 July 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2849.
[2284] File note by Secretary for Maori Affairs, 24 July 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #990.

> Mr Young said, "I think we can develop a formula which will make it easier for the trust to take the land on, and at the same time ensure the Crown receives its entitlement."
>
> Faced with the golfers' determination to stay on the harbour land, the Government had wanted a $61,300 contribution from the Maoris and a guarantee that the golfers could remain until the year 2035.
>
> The Maoris objected to paying any money at all, saying it was they, if anyone, who should be compensated, but Mrs Rickard said yesterday her people may accept a reduced figure subject to the annual rental of $358 at present paid by the golf club being increased in a review next year. "The Government is to look around and see what other golf clubs are paying, and they are in for a big shock," Mrs Rickard said.[2285]

In a paper to the Minister of Lands after the meeting, the Director General described the agreement reached with Eva Rickard as return of the land "on the following conditions":

> 1. Revesting to be subject to the existing lease to the Golf Club.
> 2. Crown to join in negotiations to fix the review rental from 1 April 1980.
> 3. Sale price back to the former owners to be negotiated having regard to the rental fixed in (2) above….
>
> You will also recall that Mrs Rickard mentioned "injustices" at the time of the taking of the land, and suggested that further allowance be made accordingly in fixing the final sale back price.

The paper addressed what rental could be charged for the lease, and what the sale price might be. Taking $61,300 as the market value of the golf course land in 1976, a rental based on a commercial 6% of current market value basis would return $3678 a year. However, the current market rate for leasing of land in the Raglan district for grazing purposes had been assessed by the Valuation Department as $25 an acre, which would provide a rental income from the golf course of $1556 a year. The Valuation Department had also earlier assessed the value of the golf course to the lessor, if the lessor received $1500 a year rental, as $28,300. Noting that the terms of the lease required agreement on the reviewed rental between lessor and lessee (i.e. negotiation would be required), he suggested that a reviewed rental of $1500 to $2000 a year be negotiated with the Golf Club. He further suggested a minimum negotiating

[2285] *Waikato Times*, 27 July 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2850.

level of $1000 rental and $18,855 sale-back price. With respect to an allowance in the sale price on account of "injustices", he commented:

> While I am inclined to agree that Government should adopt a generous attitude having regard to the history of this land and the taking, I am also firmly convinced that this in fact is already reflected in the figures mentioned above.[2286]

The Secretary for Maori Affairs (writing also as Maori Trustee) was not persuaded by these mathematical calculations, and briefed his own Minister to look at the matter in wider terms, and as a result seek a lower purchase price. He also, for the first time, formally stated a departmental position on what should be done.

> A point that cannot be overlooked is that the Maori land owners are not in a financial position to repay any debt, regardless of what Mrs Rickard might proudly state. Raglan is in fact a poor economic area. The rent money that they would receive in the Lands and Survey proposal would not be able to meet their repayments, unless mortgage arrangements are very generous. I would also suspect there would need to be some provision for debt write-off.
>
> Frankly I am not satisfied that the present proposals give a fair and reasonable deal to the Raglan Maori owners. There is sufficient evidence to indicate that the Government's original negotiator, Mr Gibson, gave the Maori owners every reason to believe that the land when not needed by Government would return to them unencumbered. I cannot be persuaded otherwise. And on the basis that the land was no longer needed by Government, it was continued to be held instead of being given back, probably in 1946….
>
> I realise there are political considerations, but as Maori Trustee and Secretary of this Department I must state quite firmly that based on the evidence there is a case to hand the land back at the same cost paid for in compensation, that is, $1250. This is the official view of my Department. And as I said initially [in this paper], my advice to you as Minister is that you should come down strongly on the side of the Maori owners, to the extent that the land should be returned to them under vesting order by the Maori Land Court at an agreed price of $1250.
>
> Any argument concerning improvements to the land should be seen as fair compensation to the owners themselves for loan or use of their capital assets taken for Government purposes and not handed back. Government would be seen to be acting correctly in that the land, had it been handed back either in 1946 or 1953 after being used for defence purposes, could well have asked then for repayment for compensation paid originally to the Maori land owners. Yet on the other hand there is the argument that would say that Government

[2286] Director General of Lands to Minister of Lands, 3 August 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #994-995.

should have leased the land, and probably $1250 would not meet the rental to the present day.[2287]

The Crown hoped that these matters could be sorted out with one further round of meetings at Raglan, with Tainui Awhiro and with the Golf Club, at the end of August 1979, in preparation for taking an agreement to the already-scheduled Maori Land Court hearing in September. There must have been some intense discussions to reconcile the Lands and Survey and the Maori Affairs views, though no record of these (apart from one paper) has been located during research for this case study. The differences between the two departments apparently meant that whatever the Crown intended to offer had to be taken up to Cabinet level, and a Cabinet paper was prepared for presentation jointly by the Ministers of Lands and Maori Affairs. This paper seems to have been prepared by Lands and Survey officials, and then submitted to the Secretary for Maori Affairs for his consideration and approval. It proposed a formula for the sale-back price, although it did not specify an actual figure.

> Government policy, as stated in the 1978 Manifesto, is:
>
> - When Maori land is taken for a public work, wherever possible comparable land will be made available.
> - Maori land compulsorily acquired for a public work and no longer needed for that or any other public work for which compulsory acquisition power may be used, will where practicable be offered at current market value to those from whom the land was taken.
>
> [The proposal is] to offer the lessor's interest in the land to the former Maori owners, subject to the lease, at 1969 value, thereby recognising that the land should then have been returned. The value of the lessor's interest will take into account the fact that the rental for the Golf Club for 11 years from 1980 will be based on recreational use rather than commercial use.
>
> From the date of return the Crown will have no involvement, and all future dealings will be between the Maori owners as lessor, and the Golf Club as lessee. The Maori Trustee will advance the necessary purchase price to the owners to enable them to take freehold title.[2288]

The Secretary for Maori Affairs must have queried the 1969 date as the basis for land values, as he wrote in the margin of the draft paper "why not 1946, end of War" [2289].

[2287] Secretary for Maori Affairs to Minister of Maori Affairs, 22 August 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #996-997.
[2288] Draft Paper to Cabinet, undated. Maori Affairs Head Office file 19/1/671. Supporting Papers #998-999.
[2289] Note by Secretary for Maori Affairs, undated, on Draft Paper to Cabinet, undated. Maori Affairs Head Office file 19/1/671. Supporting Papers #998-999.

This probably led to further discussions between Lands and Survey and Maori Affairs.

It is not known if the Cabinet paper was completed and submitted by the two Ministers, because the matter was never actually discussed at a Cabinet meeting. This was because the Cabinet meeting was due to be held on the same day as the meetings scheduled to be held in Raglan. Instead, the position of the two departments was discussed with the Prime Minister at the end of the week before the Cabinet meeting, as an alternative to obtaining Cabinet approval[2290]. The key feature that came out of these discussions, and was approved by the Prime Minister, was that the Crown would offer the former Maori owners a purchase price of $9000. In a handwritten note, the Secretary for Maori Affairs explained the basis for this figure; he also claimed credit for coming up with it[2291]:

Current Market Value of the land at 4.8.69, being date at which the aerodrome land was declared surplus and made subject to Land Act 1948	$22,000
Lessor's interest, based upon annual rental value as a grazing proposal of $630 per annum	$15,300
But Crown did not return it to the owners, so they are held out of their enjoyment and income for 10 years (August 1969 to April 1980) and are therefore compensated by the equivalent of 10 years gross rental @ $630 per annum	
Therefore Lessor's interest at 4.8.69	$15,300
Reduced by lost rental	$ 6,300
Vesting consideration	$ 9,000

Thus the 1969 date had been retained, despite the Secretary for Maori Affairs' reservations, but the Lands and Survey proposal had been modified by discounting to account for lost revenue since that year.

The first meeting at the end of August 1979 was with the Raglan Golf Club, who were told that the Government's offer would probably be accepted by the former owners, that the offer allowed the continuation of the lease, and involved the Minister of Lands having a say about the new rental to be charged under the rent review. The main discussion was therefore about what that new rental was likely to be. The

[2290] Notes for File, 23 August 1979 and 24 August 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2851 and 2852.
[2291] Secretary for Maori Affairs to Mr Glengarry, 26 February 1980. Maori Affairs Head Office file 19/1/671. Supporting Papers #1002.

current market value of the land to be returned, excluding Club-owned improvements, was $89,000 and a rental based on 6% of that would be about $5400.

> It was agreed that the rent should be assessed on the unimproved value plus the lessor's improvements, which would exclude the development work effected by the Club….
>
> The Crown did want to see a rent fixed which would enable the Club to remain, at least for 11 years.[2292]

However, apart from the rental fixing, the Crown would have nothing further to do with the Golf Club's lease; the lease would in future be a matter solely between the new landowners and the Club. This included anything to do with the legality of the lease, and the occupation of the urupa.

The second meeting with Tainui Awhiro was again attended by the Director General of Lands, the Commissioner of Crown Lands and the Secretary for Maori Affairs (who also held the position of Maori Trustee). An offer was presented to return the golf course, and the severance strip on the other side of Ocean Beach Road, for a price of $9000, to be financed by a loan from the Maori Trustee, and to be subject to the continuation of the golf course lease, with the Crown fixing the rent in consultation with the new Maori owners in 1980 for the following eleven years. A rental figure of $1500 per annum was mooted during the meeting, which it was stated would cover all repayments to the Maori Trustee during the eleven-year period.

> It was explained that the price had been reached taking into account:
> - The land could have been returned in 1969 when it was declared surplus.
> - The land was encumbered with a lease that had 56 years to run.
> - The Crown wanted to fix the rent for the first review period.
> - The offer was made in settlement of all past grievances.

Eva Rickard was recorded in the notes of the meeting as describing the offer as "a generous decision and beyond her expectations". She stated her willingness to accept the offer, but acknowledged that it was a matter for the people involved, and it had to be put to a meeting to be held the following day[2293].

[2292] Note for File, 28 August 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2853-2854.
[2293] Note for File, 28 August 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2855-2856.

At the end of the meeting, the Director General of Lands provided Eva Rickard with a handwritten copy of the Crown's offer.

> As explained to you this afternoon, the Crown is prepared to return the Raglan Golf Club land to the original owners at a price of $9,000, subject to:
>
> 1. The land being vested subject to the existing Golf Club lease
> 2. The Crown to have the right to fix the rental for the Golf Club for the 11 year period beginning 1 April 1980, this to be done in consultation with the Maori owners.
>
> This offer is made in full recompense for all claims arising from the taking of the land.
>
> It is hoped we can fix the rental by agreement before the vesting order is considered by the Court.[2294]

It is almost certainly an inadvertent omission that the written offer fails to mention the return of the Ocean Beach Road severance strip.

After the meeting with Tainui Awhiro, the Director General of Lands spoke to the President of the Golf Club, and told him that the offer was likely to be accepted by Tainui Awhito, and he thought that a rental of $2500 could possibly be negotiated[2295].

Between the time that the offer had been made, and it was put to a meeting of Tainui Awhiro, Eva Rickard continued to express her satisfaction in the local newspaper.

> Reacting to the proposal, Mrs Rickard said the Tainui Awhiro people has, after 38 years, come a full bureaucratic circle and won a qualified victory.
>
> The only thing disturbing her was that the Government had "slipped out" of a highly awkward situation, using the office of the Maori Trustee to do so. "The Maori Trustee saved their bacon," she said.
>
> She said the Government knew it couldn't afford another Bastion Point type confrontation, which is what some of her more radical supporters were pushing her to turn Raglan into.[2296]

However, the meeting of Tainui Awhiro at the end of August 1979 failed to approve the offer that had been made, believing that it contained insufficient detail. It decided that further clarification should be sought about the compensation to be paid, and

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[2294] Offer made by Director General of Lands, 28 August 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #1003.
[2295] Note for File, 28 August 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2853-2854.
[2296] *Waikato Times*, 29 August 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2857.

what would be done to preserve the urupa[2297]. Eva Rickard set out the resolutions passed by the meeting in a letter to the Director General of Lands.

1. The Crown be requested to supply full details in writing of the basis which was adopted that determined the amount of compensation to be $9,000.00.
2. The Tainui people insist that the Crown formally and legally exercise its right under the conditions of the lease to establish a cemetery reserve over the urupa area, and exclude it from the golf club lease, before any vesting of the residual area proceeds.
3. In order to ensure that these final stages of negotiations are given an adequate period of time to be properly executed, the Tainui Awhiro people suggest that, if it is found to be necessary, the hearing of the vesting order by the Court be postponed to the December 1979 sitting at the Maori Land Court at Hamilton. This may require the Crown to reapply for this vesting order to be heard at this date.
4. That the present lease be amended as follows: (a) The clause relating to the payment of rates be amended to state that any payment of rental to the lessor as determined under the conditions of the lease will not incorporate any payment in part or full for rates to be paid by the golf club for the leased land.
5. The Tainui Awhiro people will endeavour to negotiate a new rental of $2,500 per annum.

> Our solicitor has advised us that he has serious doubts as to our ability to adequately reserve the urupa areas when the land is revested subject to the lease, as these urupas would not be excluded from the lease and still remain subject to the occupancy covenants of the lease.[2298]

For its part the Crown had deliberately not discussed the urupa areas in the offer it had made to the meeting with Tainui Awhiro, believing that it should be a matter between lessor and lessee after the ownership had transferred to Maori. Tainui Awhiro, however, saw the Crown's hands-off approach as a serious gap in the terms of the offer that had been made.

Legal advice provided to Eva Rickard at this time was that to accept the revesting terms outlined in the Crown's application would legitimise the Golf Club's lease. Having been declared to be invalid by the Magistrate's Court, the lease would acquire a new revitalised status if it became ordered by the Maori Land Court as a condition of vesting in the Maori owners.

[2297] *New Zealand Herald*, 31 August 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2858.
[2298] E Rickard, Raglan, to Director General of Lands, 31 August 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #1000-1001.

> Quite frankly, if the owners accept this settlement [as set out in the Director General's handwritten offer], we can see them deprived of the land for the next 56 years, or at the best involved in a long and costly legal wrangle over the lease. Accordingly, until these matters are straightened out, we cannot see it is in our clients' interests to accept any revesting.[2299]

Despite the letter from Eva Rickard setting out the results of the Tainui Awhiro tribal meeting, Lands and Survey proceeded with its preparations for the Court hearing in September. Because the terms of the new offer differed from the terms set out in the application to the Court that had been signed by the Minister in October 1978, an amendment to the application was required. This would need to be in the form of a new application signed by the Minister, which the Court would be asked to substitute for the original application. The changes between the two applications were:

1. Delete alternatives A and B thus empowering the Court to vest the land in such persons as may be found by the Court to be justly entitled, etc, etc.
2. Alter the purchase price to $9,000.00 payable in cash.
3. Sub-clauses (a), (b) and (c) in clause 1 of the original agreement will be deleted, and new sub-clauses added: (a) the vesting is to take effect from 1 April 1980; (b) the vesting is to be subject to the lease of the said land to the Raglan Golf Club Incorporated as appearing in Memorandum of Lease dated 23 November 1970, so far as it is subsisting and capable of taking effect. Note the reasons for this clause are that the rental to apply for the first eleven years is to be fixed with the Golf Club and the Crown as lessor prior to 1 April 1980, so that the effective vesting on that date is that the new owners will acquire the land subject to the new terms fixed between the previous parties.[2300]

The simplification of the request to the Court to define the owners was to overcome the arguments that had developed when the Crown had included reference to the Tainui Trust Board. The effective date of 1 April 1980 for the handover, which was also the date that the rent review applied from, was to enable the Crown to determine what that revised rental for the next eleven years would be, and to have the legal authority to impose that decision on the new Maori owners.

[2299] Low, Chapman, Carter & Hollinger, Barristers and Solicitors, Te Kuiti, to Officer Solicitor Maori Affairs Head Office, 7 September 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #1004-1005.

[2300] Note for File, 10 September 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2859.

The Minister signed the new application two days before the Court hearing[2301]. Reference to the Tainui Trust Board was deleted, the purchase price was changed to $9000, and the order would take effect from 1 April 1980. The deadline set by the Court meant that there was "no time to have a formal agreement executed and produced to the Court as evidence, but the parties could appear and support the substitutional application"[2302]. In view of the outcome of the Tainui Awhiro tribal meeting, there must be some doubt whether a formal agreement could have been drawn up and signed, even if the deadline had not loomed so closely.

The Minister's new signed application was brought to Hamilton on the morning of the hearing by a Maori Affairs Department Head Office solicitor, who inserted himself into the day's proceedings as a 'friend of the Court' (amicus curiae). His presence, and the manner in which the application was made known to all parties (including local Lands and Survey staff) at such a late hour[2303], can be viewed as a deliberate attempt by the Crown to tilt the proceedings in its favour.

The Court hearing was preceded by a meeting in chambers between the Judge and legal counsel for the Crown (including the Maori Affairs solicitor). This was in order to discuss the legal implications of an amended application being presented at the last minute by the Crown. The Judge was willing to accept the new application, but was concerned about an order of the Maori Land Court recognising the lease with the Golf Club, when the Magistrate's Court had declared that the lease was invalid. He advanced a scenario where the new Maori owners took over the land subject to the ongoing existence of the lease, but then on the basis of the invalidity of the lease sought to remove the Golf Club from the land. The Court might be seen as complicit in such a strategy. He then took advice from the Chief Judge, who pointed out to him that Section 226 of the Maori Affairs Act 1953 permits a Court to make an order subject to an instrument, without the Court having to determine the validity of that instrument.

[2301] Application for Order Revesting Land, 10 September 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2943-2945.
[2302] Note for File, 10 September 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2859.
[2303] Commissioner of Crown Lands Hamilton to Director General of Lands, 1 October 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2868.

Prior to the day of the hearing neither the solicitor for the three Maori negotiators (Rickard, Sinclair and Te Kanawa) who had served notice to appear, nor the solicitor for the Golf Club, had seen the new application signed by the Minister of Lands. When they did sight it shortly before the hearing commenced, the solicitor for the Maori negotiators indicated he had no objection to it, while the solicitor for the Golf Club felt it did not protect the Club or reflect the undertakings the Club had received from the Crown, and stated that he would ask for an adjournment.

When recording these pre-hearing manoeuvrings, the Lands and Survey District Solicitor, who was representing the applicant (the Minister), noted:

> It is my opinion that the whole matter reflected poorly on the Crown. The 'eleventh-hour' application (quite literally), and the manner and hour in which the new application was received in this office was unsatisfactory.[2304]

At the hearing[2305], the Crown's solicitor sought leave to withdraw the October 1978 application, and substitute the September 1979 application. There was no objection from any party to this substitution, and the Court accepted it. In oral submissions about the substituted application, the solicitor for the three Maori negotiators stated that those present at the meeting of Tainui Awhiro "were in general agreement that the settlement should be accepted, and I am therefore instructed by my clients that they accept the terms as set out in the application before the Court, and ask that an Order be made accordingly". The solicitor for the Golf Club, however, objected to the Order being made and asked for an adjournment, adding that if a vesting Order was made by the Court, then the Club would feel obliged to seek a judicial review in the Supreme Court about such an Order in the absence of debate about its effect on the Club.

The Judge felt it would be possible to make an Order that day, as any Order would not take effect for over six months, on 1 April 1980. The Order would apply to the lease as it existed on that date, and since there could be changes prior to the date, discussions and negotiations over the lease were not being prevented. He also felt, in

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[2304] District Solicitor Hamilton to Commissioner of Crown Lands Hamilton, 14 September 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2860-2861.
The Maori Affairs Office Solicitor's version of pre-hearing events is discussed in Office Solicitor to Secretary for Maori Affairs, 19 September 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #1006-1008.

[2305] Maori Land Court minute book 59 W 257-273. Supporting Papers #3787-3795.

the context of the October 1978 application not having been prosecuted by the applicant for nearly a year, that further delay in making an Order would act against the Crown and the former Maori owners, as beneficiaries of such an Order. The solicitor for the Maori negotiators agreed, and opposed an adjournment, arguing that whatever legal rights the Golf Club held were not being altered by the Order proposed in the application.

After a short adjournment, the Court granted the Order, noting that the Golf Club had a right to apply for a rehearing within 28 days, and that the Supreme Court could review any decision of the Maori Land Court. The Order vested the land in those persons who were listed as owners of the land at the time it was taken in 1941[2306].

Speaking to a newspaper reporter after the hearing, Eva Rickard expressed her satisfaction with the outcome.

> She could now see the way clear to eventually calling her people back on to the land. She said the Raglan outcome would give a boost to many other Maori land struggles.
>
> Although the golf course issue needed the initial 'push of the radicals' to bring it to public attention, she was glad the land was being won back through legal channels and not by recourse to further direct confrontation.[2307]

She and Tainui Awhiro agreed later that month to set up a Section 438 trust to hold and administer the returned land, with herself, Douglas Sinclair and Daniel Te Kanawa voted to be the trustees[2308].

As foreshadowed in the courtroom, the Golf Club was not as happy. It was worried that the scenario that the Judge had identified might become a reality, with the lease deemed to be invalid and the Club forced to leave the golf course[2309]. Its concern was shared in the wider Raglan community. The County Council saw a community amenity at risk, and offered its support to the Club[2310]. At this time, as a result of the

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[2306] Maori Land Court minute book 59 W 275-279. Supporting Papers #3796-3798.
[2307] *Waikato Times*, 13 September 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2862.
[2308] *Waikato Times*, 24 September 1979, and *New Zealand Herald*, 24 September 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2864 and 2865.
[2309] *New Zealand Herald*, 13 September 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2863.
[2310] *Waikato Times*, 25 September 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2866.

dispute, and as an indication of the divisiveness that was affecting the local community, Eva Rickard and her husband were voted off the Raglan Domain Board, thereby leaving no Maori representation on the Board that administered the camping ground that had been gifted by Maori to the community (both Maori and Pakeha) in 1923[2311].

16.6.8 Rehearing of the Revesting Order

In early October 1979, within the 28 days allowed by the law, the Raglan Golf Club applied for a rehearing of the Minister's application, on the grounds that the Club had been unfairly treated by the lack of notice about the new application, and the Order granted would prejudice the Club if the stated intention of two of the Maori trustees to regard the lease as cancelled on grounds of invalidity were carried through[2312].

Three days after applying for the rehearing, representatives of the Golf Club went to Wellington to meet the Minister of Lands. They presented written submissions to him, in which they exhibited a fundamental change in their strategy.

> The Club is placed in the position that as from April 1980 there may be no golf course on which to play.
>
> Our attitude is that the Club must now seek the long-term solution to the problem in the interests of all concerned.
>
> While we are confident that the Club would win legal action over the validity of the lease, this would certainly lead to another Bastion Point type confrontation.
>
> The Club accepts that relocation is the obvious answer.

Pointing out the repeated assurances of the Crown since 1976 that the Club's lease would be protected, the submission asked for financial assistance from the Government for the relocation

> We see this as a face-saving solution for all parties concerned, and a solution that would put to an end the bitterness that is developing.

[2311] *Waikato Times*, 25 September 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2867.

[2312] Application for Rehearing, 8 October 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2869-2878.

> The whole basis on which the Club places its case to you is that it has acted at all times in good faith, and on assurances given.[2313]

At the meeting itself, the Minister couldn't resist pointing out that the Club had earlier rejected relocation options. He expressed his disappointment at what he considered was the lack of cooperation he had received from the Club in trying to avoid confrontation and reach a solution. However, he was anxious to avoid the dispute being argued through the courts. Before committing the Crown to financial assistance, he wanted the Club and the three trustees for the new owners to meet and hold discussions about the future of the Club's occupation of the land after 1 April 1980. He offered that his officials would convene such a meeting[2314].

In advising the Commissioner of Crown Lands about the meeting between the Minister and the Golf Club, the Director General of Lands commented:

> You will gather from the notes attached that, while the Minister would still like to see agreement reached between the Club and the new (future) owners, he realises this may not be possible and accepts a moral responsibility to assist the Club.

He asked the Commissioner to reinvestigate the possible acquisition of the former Child Welfare Home property, including whether that property might be exchanged for the Te Uku property that the Crown had purchased[2315].

An initial attempt to arrange the meeting between the Club and the Maori people at the end of October 1979 was unsuccessful. While waiting for the rescheduled meeting to be held in mid November 1979, the Commissioner of Crown Lands wrote to his Head Office. His memorandum shows the potential difficulties of negotiation, and also the continuing pressure for a breakthrough that was coming from Wellington.

> As far as the negotiations with [the owner of the former Child Welfare Home property] are concerned, you will appreciate how delicate the situation is. If we should disclose our intentions to the Maori people by too active a pursuit of this enquiry, then there would be very little incentive for them to adopt a

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[2313] Secretary Raglan Golf Club to Minister of Lands, 9 October 1979, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 18 October 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2879-2892 at 2885-2892.
[2314] Notes of Meeting, 11 October 1979, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 18 October 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2879-2892 at 2881-2884.
[2315] Director General of Lands to Commissioner of Crown Lands Hamilton, 18 October 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2879-2892.

> reasonable attitude in arriving at conditions acceptable to the Club to enable them to remain on the present course. In the circumstances, I consider that we have gone as far as is prudent at this stage, namely to assure ourselves that [the owner] is receptive to the reopening of negotiations for the acquisition of his property, followed by the preparation of updated valuations for both the [Child Welfare Home] and the Te Uku properties. I have stressed to [the owner] the need to keep our approach confidential and am sure that he will cooperate. On the other hand it is placing a severe strain on him to safeguard our position since it would be in his interest if the negotiations for the present course broke down irrevocably, placing pressure on the Crown to acquire the farm and thus strengthening his own bargaining position….
>
> P.S. Since the above was dictated, I have received your telephoned advice that the Minister has instructed that the [former Child Welfare Home] property be acquired irrespective of the outcome of the golf course negotiations, by way of an exchange with the Te Uku property.[2316]

The delay in holding the meeting was of concern to the Club, as it had only until mid November if it wished to file an application in the Supreme Court for a declaratory judgement, to allow time for the Court to give a decision before 1 April 1980. This declaratory judgement would be seeking a definitive decision on the validity or otherwise of the Club's lease. The Club preferred to have the meeting held first, to see what agreement could be reached with the new Maori owners, before deciding whether or not to file the application[2317].

The meeting between the Tainui Awhiro people and the Golf Club, held in mid November 1979, was chaired by the Commissioner of Crown Lands, who was the only Crown representative present (and who explained to the meeting that he was present as an observer only on behalf of the Crown). The Club asked Tainui Awhiro if they really wanted the golf course to remain on the land, and were told that Tainui Awhiro did not welcome the prospect, even though they had agreed to the land being returned subject to the lease. Tainui Awhiro anticipated that, when the second rent review occurred in 1991, the Club would not be able to pay the rental, and they much preferred relocation now (i.e. 1979) than later. All other questions asked by the Club at the meeting (e.g. about the urupa, or the terms of a shorter lease) were secondary to

[2316] Commissioner of Crown Lands Hamilton to Director General of Lands, 1 November 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2893-2894.
[2317] Commissioner of Crown Lands Hamilton to Director General of Lands, 2 November 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2895.

this core matter, and were not given a direct answer by the Maori people in the belief that to do so might compromise the relocation option.

> Mr Te Kanawa summarised the situation... Relocation or a continued lease of the existing course. That the latter option had itself two options, whether on the basis of (a) a new lease, or (b) an application to the Supreme Court. The Supreme Court decision could rule either that the existing lease was valid, in which event the Maori people would require the highest rent, or alternatively that the lease had no standing. In the event of the Club remaining on the course, the Tainui people would ask for the Maori Affairs Department to assist in having the urupas freed.[2318]

At the conclusion of the meeting, the notes record:

> The parties reached the following consensus.
> 1. Relocation was the only practical solution.
> 2. Tainui people would be agreeable to the Club remaining for three to four years, and to the Club operating an 18 hole course, provided that protection and identification of a modified area of urupas was agreed.
> 3. That if more than three to four years was required for the physical transfer of the course, an extension would be negotiable.
> 4. It was agreed that an extension of the vesting date would be sought if the Minister of Lands was unable to reach a decision by the end of February 1980, but had indicated that relocation was being actively pursued.
> 5. Tainui people would give thought to the question of rent to be paid during a relocation period and would advise the Club.
> 6. That in the event of the Club vacating for any reason, the Maori people would be agreeable to the Club removing its improvements.
> 7. That the Club and the Tainui people request a meeting with the Minister, preferably when he is in the area in view of the expense involved in a visit to Wellington.[2319]

The purpose of the meeting with the Minister would be to push for Government support of the only option that was seen as feasible, the relocation of the golf course. After the meeting there was praise for its positive atmosphere. The Club's president described it as "very cordial", while Te Kanawa, one of the trustees present, felt that it was

> "one of the most amicable we have ever had", and left everybody in a "situation of hope"…. "There is no doubt in my mind we will succeed – we cannot lose," Mr Te Kanawa said.[2320]

[2318] Notes of Meeting, 17 November 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2896-2901.
[2319] Notes of Meeting, 17 November 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2896-2901.
[2320] *Waikato Times*, 19 November 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2902.

This meeting demonstrated that, once relocation of the golf course had become the preferred option of both the Golf Club and the new Maori owners, then there could be a general 'clearing of the air', and development of a more constructive relationship between the two local parties. The Golf Club's willingness to relocate was, however, conditional on it getting reasonable terms and strong financial support from the Crown[2321], and any uncertainty about whether or not relocation would occur could invite a negative reaction from Tainui Awhiro[2322], so there was still a distance between the parties.

The Minister of Lands was briefed on progress, and referred to the positive nature of the discussions in Parliament early the following month.

> Discussions are taking placed very amicably at present between the Tainui-Opiro [sic] representatives and the administrators of the Raglan golf course to try to finalise a date on which actual occupation might take place, and the golf club have a security of tenure either on that land or elsewhere.[2323]

Before a meeting with the Minister could be arranged, the Golf Club's application for a rehearing was heard by the Maori Land Court. The hearing would not be the rehearing itself, but a procedural inquiry about whether to grant or dismiss the application. The day before the scheduled hearing, the Judge met in chambers with the counsel for the Club and the Crown. Counsel for the three Maori negotiators/trustees was unable to be present at this pre-hearing meeting, but had advised that his instructions were to oppose any rehearing. The solicitor for the Golf Club explained that all the legal manoeuvrings initiated or contemplated by the Club were for the purpose of preventing the Club being dispossessed on 1 April 1980, and protecting its investment in the golf course. Because negotiations with the Crown over relocation had not been completed, what the Club most wanted was a relaxation of the deadlines, to give time for those negotiations to be worked through. The Club's solicitor thought that a decision to grant the rehearing would require that the Order already made would have to be treated as set aside and unable to be implemented until

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[2321] *Waikato Times*, 22 November 1979. Copy on Lands and Survey Hamilton file 8/5/270. Not included in Supporting Papers.
[2322] *Waikato Times*, 26 November 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2903.
[2323] *New Zealand Parliamentary Debates*, 7 December 1979, Volume 428, page 4581. Supporting Papers #4136.

the rehearing had been held. He was told by the Judge that he would need to argue that point in Court on the following day[2324].

At the hearing the following day[2325], the first question to be addressed was whether a rehearing could be granted by the consent of all parties. However, Eva Rickard, on behalf of Tainui Awhiro (her solicitor not being present), argued that the need for a delay was a matter between the Crown and the Golf Club, and the former Maori owners should not as a result be disadvantaged by having the date of return of the land to them put back. Because there was no consent of all parties, the basis for a rehearing had to be argued. The arguments in favour of a rehearing were put forward by the Golf Club, and the arguments against were advanced by Eva Rickard, while the Crown's solicitor made no submissions beyond commenting that the Crown would not object to a rehearing. The Court reserved its decision.

16.6.9 Review by the Supreme Court / High Court[2326]

Because it had not been able to get a decision on the day of the hearing, the Golf Club felt it could not wait any longer, and later that month sent in applications to the Supreme Court concerning two matters. The first sought a judicial review (under the Judicature Amendment Act 1972) of the Maori Land Court's decision of September 1979, while the second sought a declaration that the lease of the golf course was valid[2327].

The Director General of Lands provided an initial reaction to the referral to the Supreme Court.

[2324] Note for File, 3 December 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2904.

[2325] Maori Land Court minute book 59 W 362-379. Supporting Papers #3799-3816.
Note for File, 5 December 1979. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2905-2908.
Waikato Times, 5 December 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2909.

[2326] The Supreme Court was redesignated the High Court on 1 April 1980, part way through the history of proceedings set out in this section.

[2327] *Waikato Times*, 28 December 1979. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2910.
Crown Counsel to Director General of Lands, 18 January 1980, attached to Director General of Lands to Crown Counsel, 4 February 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2911-2912.

> The point which I feel will have the main bearing on future negotiations is whether or not the lease is considered to be valid. If it is then the Golf Club's position is strengthened, and the Crown's efforts to resolve the relocation becomes more important. On the other hand, should the lease be judged invalid the Golf Club immediately loses a considerable amount of its bargaining power – especially with the Maoris insofar as it relies on the validity of the lease to remain on the land. Its pressures on the Crown will not change, as it will still be looking for assistance towards early relocation.[2328]

Separately the Golf Club applied to the Waikato Land Valuation Tribunal to have the golf course land declared to be 'not farmland'. If granted, this would make it unnecessary for a declaration to be provided under the Land Settlement Promotion and Land Acquisition Act 1952. That would have the effect of overcoming the problem identified by the Stipendiary Magistrate in 1978 when he declared the lease to be invalid for trespass prosecution purposes.

The Maori Land Court issued its reserved decision at the beginning of March 1980, declining the Golf Club's application for a rehearing. This was primarily because the Minister's application had specifically requested a 1 April 1980 vesting date, and the Court could only make an Order for that date. The Golf Club, in applying for a rehearing, was effectively asking for a later date to be substituted, but that was not legally possible because it was inconsistent with the application[2329].

The Golf Club then applied for urgent interim action by the Supreme Court, and just six days before the vesting Order was to come into effect, the Court granted a stay on the vesting Order, as a holding action pending consideration of the Club's application for review at a later date[2330].

The Golf Club's legal actions largely turned both the Crown and the new Maori owners into by-standers, able to present submissions to the various judicial inquiries,

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[2328] Director General of Lands to Crown Counsel, 4 February 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2911-2912.
[2329] Maori Land Court minute book 60 W 42-47. Supporting Papers #3817-3820.
Waikato Times, 10 March 1980. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2913.
[2330] Judgment of Bisson J, 26 March 1980, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 14 April 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2919-2929 at 2923-2929
Waikato Times, 27 March 1980. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2918.

but unable to act on the 1979 vesting order or to influence the timing of events. There were only a couple of matters that could be addressed independently of the Supreme Court proceedings. The first was the acquisition of a relocation property, while the second was determining the rent to be set by the rent review due on 1 April.

In March 1980 the Crown took out an option on the purchase (by exchange for the Te Uku property) of the former Child Welfare Home property. The property was larger than required for a golf course, and there were negotiations with the Raglan County Council over the Council taking over part of the land, while other parts were retained by the Crown. This had the advantage for the Crown of spreading the costs of improved access in a number of different directions. The Crown's relocation measures with respect to the Child Welfare Home property, however, later became redundant when it became apparent that the Golf Club, on its own initiative, was more interested in another property altogether (see later section).

With respect to the rent review, the effect of the Supreme Court's stay was to confirm that the Crown was the landlord for the purposes of reviewing the rent. However, at the meeting at Raglan in August 1979 the Director General of Lands had promised that the views of the new Maori owners would be sought and taken into consideration before the Crown set a concessionary rental for the golf course. The Commissioner of Crown Lands wrote to Eva Rickard in March 1980 asking for a chance to meet with her to discuss the matter[2331], and a figure of $1500 was discussed with her[2332]. She agreed to bring the matter up at a tribal meeting. At this time a submission was prepared locally and sent to Wellington recommending approval of a rental of $1500, with payment of rates being the Golf Club's responsibility[2333], although nothing came of it because it had been prepared in the absence of consultation with Maori.

[2331] Commissioner of Crown Lands Hamilton to E Rickard, Raglan, 11 March 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2914.
[2332] Commissioner of Crown Lands Hamilton to Director General of Lands, 18 March 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2915-2916.
[2333] Submission to Land Settlement Board Head Office Committee, 19 March 1980, attached to Commissioner of Crown Lands Hamilton to Director General of Lands, 19 March 1980. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3126-3128.

At the tribal meeting, a resolution was passed that there should be no concessionary rental at all, and that it should instead be a market rental[2334]. On a current market valuation for the golf course of $75,000, and with a rent set at 6% of valuation, this would set an annual rental at $4500. The solicitor for the negotiators/trustees responded to the Crown quoting this figure, but not the basis for it, arguing that a rental of $4500 would be more appropriate having regard to the value of the land and the 11-year length of time before the next rent review[2335]. Nothing further had been done in this regard before 1 April 1980, and it was not until May 1980 that concrete steps were taken to consult again with Maori[2336]. The Director General of Lands and the Commissioner met Eva Rickard, Sinclair, and Rickard's husband at Raglan, where the Director General explained the original $1500 suggestion and a later $2500 suggestion, personally favouring $2500. The Maori representatives felt that $4500 was justified, based on values, but after discussion formally advised the Crown to seek a rental of $3000[2337].

On the same day the Crown representatives then met representatives of the Golf Club. The Club suggested the rental should be $1250, then on being told the figures that had been discussed during the meeting with the Maori representatives, increased their suggested rental to $2000. In further discussion they agreed to a rent of $2500 for the first three years, rising to $3000 for the subsequent eight years[2338]. A formal offer was presented to the Club the following month[2339], and was accepted in July 1980[2340]. A document formalising the change of rental was drawn up and signed in December 1980[2341].

[2334] E Rickard, Raglan, to Commissioner of Crown Lands Hamilton, 24 March 1980. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3129.
[2335] Low, Chapman, Carter and Hollinger, Barristers and Solicitors, Te Kuiti, to Commissioner of Crown Lands Hamilton, 25 March 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2917.
[2336] Note for File, 12 May 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2933.
[2337] Note for File, 14 May 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2934.
[2338] Note for File, 14 May 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2935-2936.
[2339] Commissioner of Crown Lands Hamilton to Honorary Secretary Raglan Golf Club, 5 June 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2939.
[2340] Honorary Secretary Raglan Golf Club to Commissioner of Crown Lands Hamilton, 17 July 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2978.
[2341] Agreement dated 4 December 1980. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3130-3131.

It should be pointed out that the Crown had been 'playing with fire' when it had failed to set the new rent prior to 1 April 1980. The agreement with Tainui Awhiro in August 1979 had been that the Crown would review the rent, but this had not been specified in the Court's September 1979 vesting order. If the Supreme Court had not stayed the Revesting Order, then the Crown would have lost its opportunity to review the rent, because it would not have been the lessor from 1 April 1980. Because the Order was stayed, the Crown remained the lessor on and after 1 April[2342]. This could in turn have meant that the Crown would treat the rent as its own revenue, but the solicitors for the Maori negotiators/trustees asked the Minister of Lands in April 1980 for the rents received from 1 April 1980 to be held in trust for the new Maori owners[2343]. This was agreed to by the Minister[2344].

The High Court heard the Golf Club's two applications over four days in June 1980. Tainui Awhiro were represented by counsel, and Eva Rickard gave evidence and was cross-examined. The Crown was represented by counsel, who summarised his involvement afterwards:

> While my participation in the argument on validity of the lease was minimal, I was able to negotiate several restraints in areas where evidence and argument could have been given contrary to the interests of the Crown. As it was, the Minister of Lands received very little criticism, and such as there was was clearly justifiable on the facts.[2345]

At the end of the hearing, the Court was able to give an immediate decision on its review of the Maori Land Court's Order, but reserved its decision on the validity of the lease. On the Vesting Order matter, it decided that the Maori Land Court had been incorrect in allowing the substitute application to be heard and decided upon without giving the Golf Club adequate time to make proper submissions. It therefore quashed the Order, and required that the application be heard again[2346].

[2342] Crown Counsel to Director General of Lands, 28 March 1980, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 14 April 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2919-2929 at 2920-2922.
[2343] Low, Chapman, Carter and Hollinger, Barristers and Solicitors, Te Kuiti, to Minister of Lands, 3 April 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2930-2931.
[2344] Minister of Lands to Low, Chapman, Carter and Hollinger, Barristers and Solicitors, Te Kuiti, 26 May 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2932.
[2345] Crown Counsel to Director General of Lands, 17 June 1980, attached to Director General of Lands to Crown Counsel, 20 June 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2975-2976.
[2346] Order of Bisson J, 12 June 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2946-2947.

In his commentary on the High Court hearing, counsel representing the Crown had advised the Director General of Lands that:

> As a result of the decision on the review proceedings, it is now possible for the Minister of Lands to withdraw the application now before the Maori Land Court, and to make a substitute application. As to the first of these actions, I suggest that it be undertaken as quickly as possible. The Maori Land Court should be given no opportunity to redetermine this application before we have had a chance to make the substitution. To this end, I propose that I should file with the Maori Land Court a memorandum setting out the background and making a formal request to have leave to withdraw. I doubt that the Maori Land Court can resist this.[2347]

This advice was accepted[2348], and in July 1980 the Crown sought leave to withdraw its substitute revesting application, while serving notice that it intended to await the High Court's decision on the validity of the lease before filing a new application[2349].

Later that month, the High Court issued its decision on the validity of the Golf Club lease. It ruled that the lease was valid; while technically in breach of the Land Settlement Promotion and Land Acquisition Act 1952, a court had the power under the Illegal Contracts Act 1970 to grant validation of a contract such as a lease, where invalidity would have a disproportionate effect in relation to a minor breach, and the Court used that power to declare the Raglan Golf Club lease to be a valid lease[2350].

The decision meant that relations between the local parties nosedived yet again. The Golf Club naturally felt that justice had been done, while Eva Rickard and Douglas Sinclair felt that the courts were loaded against Maori[2351]. Meanwhile the Crown was

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[2347] Crown Counsel to Director General of Lands, 17 June 1980, attached to Director General of Lands to Crown Counsel, 20 June 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2975-2977.
[2348] Director General of Lands to Crown Counsel, 20 June 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2975-2977.
[2349] Memorandum to the Judge, 8 July 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2948-2949.
[2350] Judgement of Bisson J, 16 July 1980. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3136-3176.
Waikato Times, 17 July 1980. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2979.
[2351] *New Zealand Herald*, 17 July 1980. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2980.

left exposed, as the withdrawal of its revesting application meant that the procedures for transfer into Maori ownership would have to start all over again[2352].

In Parliament the Minister of Lands was asked by Koro Wetere, Member for Western Maori:

> In the light of his statements to me in a letter of 23 May 1980 that "I believe the relocation of the (Raglan) Golf Course is the only satisfactory long term solution and my department is carrying out investigations in this respect", how far have the investigations proceeded, and has the High Court decision created any urgency in the matter?

The Minister answered:

> My Department has for some time been involved in detailed investigations into obtaining suitable land that would allow the relocation of the Raglan Golf Club. Regular meetings have been held with the parties concerned. The matter has been accorded priority throughout. Therefore, the recent High Court decision has not been a cause for greater urgency….
>
> We are talking about a long-term solution to a difficult problem. I still give top priority to obtaining suitable land so that, with its acquiescence, the Golf Club can be relocated.[2353]

16.6.10 Purchase of an Alternative Golf Course Site

Up until May 1980 the Crown had been negotiating in good faith for the acquisition of the former Child Welfare Home property in order that the golf course might be relocated there. At the end of that month the Crown became aware that the Golf Club was actively looking at another site. The irony about this alternative site was that it was Maori-owned land. The European lessees of the land had negotiated the acquisition of the freehold, and were willing to sell part of the block for a golf course. The political implications of land being lost to Maori ownership in order to make it possible for land to be returned to Maori were not lost on the Director General of Lands when he was made aware of the situation. He told the Minister of Lands:

> The area concerned has the advantage that it would obviate the causeway [access] problems associated with the [former Child Welfare Home] property, but it is Maori land. The land has been leased to [Europeans] who are Marginal Lands mortgagors, who at present owe the Marginal Lands Board less than $2000 on current account. The Maori owners are unable to find the finance to complete settlements with [the lessees], whose lease expired last

[2352] *Waikato Times*, 18 July 1980. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2981.
[2353] *New Zealand Parliamentary Debates*, 31 July 1980, Volume 432, page 2230. Supporting Papers #4137.

> year, and apparently the Golf Club deal is looked on as a solution to this problem.
>
> While I can understand the Golf Club being rather reluctant to face the problems which would be associated with the [former Child Welfare Home] property, I consider they would be most unwise to become involved with Maori land, even though the owners are apparently willing sellers. There could be subsequent problems despite the favourable development costs and the better location than the [former Child Welfare Home] property….
>
> I consider the Department should advise the Golf Club that it considers any deal in respect of the [new] property to be most unwise. If the Club wishes to proceed, the Department will not stand in its way, but at the same time will not assist in any way with the dealings that will be necessary [to obtain purchase approval] through the Maori Land Court…. We should make it quite clear that the only assistance the Club can expect in this deal is a cash contribution, and that if in the future problems about Maori or former Maori land are encountered, the Club will not be able to turn to Government for assistance.[2354]

At the end of July 1980, the Minister was again briefed by the Director General about the relocation negotiations, in connection with the Parliamentary question discussed above. He was told that the sale of the Crown's Te Uku property and of the part of the new property not required for golf course could finance the purchase of the whole of the new property, while a development grant to the Golf Club might be in the region of $80,000. The Crown was closely involved with the Golf Club and the County Council in discussions about the purchase, but the Golf Club was the party talking to the European lessees. There were suggestions that the Club might be better talking to the Maori owners direct.

> At this stage, your approval is sought, please, to the Department continuing with these investigations, right up to the stage of negotiating a firm price for the [new] property. As I see it the settlement of the Raglan issue has to be given top priority. It may be necessary to go to Cabinet for extra money, but if at all possible we will finance the deal from our normal development vote.
>
> I have discussed the transaction with the Commissioner of Crown Lands Hamilton, who advises the vendors of the [new] property are one Maori family who have sold other land in the district and who are not locals, but come from Hawkes Bay. The land concerned has a European title and this will greatly facilitate any dealings with it, and means that approaches to the Maori Land Court will not be necessary.

[2354] Director General of Lands to Minister of Lands, 26 May 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2937-2938.

The Director General added that the Golf Club's interest in the new property was still not public knowledge, and "it is important that word does not leak out prematurely"[2355]. Later information shows that the Commissioner of Crown Lands was not correct in the details of his advice about the Maori ownership (see below), but his advice was the only information available to the Crown at this time.

Between July 1980 and March 1981 investigations into the suitability of the site and the costs of development, and negotiations with the former lessee continued in private. It was only in March 1981 that details were revealed publicly, after the sale of the Maori-owned land had been authorised by the Maori Land Court. The new site, on Te Hutewai Road, was on the Rakaunui Block. The land[2356], with an area of 77 hectares, had 15 owners and was unoccupied (the lease having expired). Although there was a certificate of title for the land, it still came within the ambit of administration under the Maori Affairs Act 1953 and the Maori Land Court. The Court agreed in December 1980 to the establishment of a trust under Section 438 Maori Affairs Act 1953 to be responsible for managing the land, and included in the powers given to the trustees was the right to sell the land[2357]. The trustees then sold to the former lessees. The owners were Maori with traditional links to the Raglan area, but none lived locally[2358]. The former lease had specified that on expiry the owners would compensate the lessees for improvements made to the property. The Maori owners had been unable to find the money to pay off this debt, and in the circumstances had agreed to the sale. The fairness of otherwise of the sale process has not been researched, as it is not the focus of this report.

In May 1981, after the new European owners had obtained subdivision approval from Raglan County Council, the Minister of Lands announced that the Crown had purchased 42 hectares of the former Maori land for a new golf course[2359]. The Te Uku property was put up for sale, and the money received from that sale at the end of

[2355] Director General of Lands to Minister of Lands, 30 July 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2982-2984.
[2356] Rakaunui 1C2B3A, 1C2B3B and 1C2B3C.
[2357] Maori Land Court minute book 60 W 311. Not included in Supporting Papers.
[2358] *Waikato Times*, 24 March 1981 and 30 March 1981. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2991 and 2992.
[2359] *Waikato Times*, 15 May 1981. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2993.

the year meant that the Crown was able to advance money on a progressive basis for the development of the course. The first earthworks commenced in February 1982. Ultimately the Crown provided $207,000 towards the establishment costs of the new course[2360].

16.6.11 The Maori Land Court Orders Revesting, 1983

After the High Court had validated the Golf Club's lease in July 1980, the Crown did not view this new development as upsetting or making more complex its intention to revest the land and see the Golf Club relocated on another site, because it regarded the Club as being committed to relocation by then. Maori, on the other hand, believed that the Court decision made the chances of revesting more remote, because of the greater bargaining strength it gave to the Golf Club, and because of the implication that the Club could remain where it was until 2035. The Crown's withdrawal of its application to the Maori Land Court also seemed to make return of the land more remote[2361]. Tainui Awhiro's first thought, after discussions with lawyers and other advisors, was to appeal the High Court's decision to the Court of Appeal[2362].

Eva Rickard wrote to the Minister of Lands, expressing both her fears and her anger.

> The sorry state of affairs that we, the Tainui Awhiro people, find ourselves in at the present time is all due to your inability to provide a solution to this issue, which was clearly in the beginning a simple one. That is, relocate the Golf Club and return the papakainga of the Tainui Awhiro people back to the rightful owners.
>
> The Government has agreed in principle that the land should be returned to the Maori claimants as of right, but over the past few years you have made no secret of your desire to protect the lease to the Raglan Golf Club and ensure their tenure for the next 56 years. (Hansard has recorded your assurances to the Club).
>
> At various times I have disagreed with the conditions set by you in the vesting order and have placed my opposition on record in the Maori Land Court.

[2360] Director General of Lands to Minister of Lands, 12 October 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 20 October 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3062-3064.
[2361] Low, Chapman, Carter and Hollinger, Barristers and Solicitors, Te Kuiti, to Office Solicitor Hamilton, 4 August 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2986.
[2362] *Waikato Times*, 31 July 1980. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2985.

It has become increasingly clear that you have become quite incapable of handling the Lands portfolio, with now the Raglan issue becoming just as intriguing as the Fitzgerald affair [a reference to a Marginal Lands Board case receiving considerable publicity at this time].

When we first wrote to you, had you bothered to read the submissions of 1976, you would have seen how generous the Maori people were in their offer to let the lease run for the first term of 33 years. The Golf Club reacted with a racist newsletter, and relations deteriorated. The arrests of 17 people, whether descendants of owners or not, during a tapu service added fuel to the fire of an already deteriorating relationship between Maori and golfer. Had you followed the example of the previous Minister of Lands in handling the Taupiri issue, my people would not have been dragged through the courts of this land. Your overly protective attitude to the golfers disregarded all Maori feeling and their claims to the land.

After reading the judgement it has become clear that the judge has declared an unlawful contract a legal one in the public interest. I cannot see how the interest of 30 regular golfers over the interests of over 3000 descendants of the original owners (126 from my mother alone) can be regarded in all fairness as public interest! While I share his sympathies and criticism of the Crown, I cannot accept his judgement, as I deem it a moral rather than a judicial one. Although we were right in claiming that the lease was invalid, Judge Bisson has decided that the Golf Club's moral right should be taken into account in declaring the lease valid, whereas the legal point on the validity of the lease and the moral right of we the owners is considered of no consequence, despite the fact that it is we who have suffered hardship, not as he mentions the innocent third party.

The solution to this dispute is a political one, and in terms of the lease which is now a legal contract, the Crown's only recourse is to pay the Golf Club compensation and ask them to leave. It was stated by your representative at one of our meetings that the $61,000 required from the Maori owners for the Crown was in fact money not for the land but for the Golf Club's compensation. Inquiries from the Raglan County Council have shown that the land is worth in the vicinity of $29,000 (too modest I believe for an honest valuation), the difference of $32,000 being I presume the cost of the clubhouse, which I have many times contended that they should relocate on their new course.

The Raglan Golf Club is the innocent third party according to the judge, but I contend that while the Club Captain is a Raglan County Council member, and the executive are wealthy farmers and successful business people, moneyed people can hardly be regarded as innocent when they have been quite ruthless and have pursued their course relentlessly even to the point of perjuring themselves in order to save face in this rather small and bigoted place.

I am also critical of the Crown's counsel in not defending their part in this case, but perhaps this was to be expected considering the shabby manner in

> which the Maori people have been treated by the Crown from the very beginning.
>
> In view of what has transpired in the High Court and the decision favouring the moral right of the golfers, I believe it is unfair to expect the Maori people to be sympathetic to any future whims of the Golf Club. Having spent years negotiating and attempting to find a just solution for all, we have now found that we in fact had every right to occupy our land from the beginning (which of course we knew) and the Golf Club who have been trespassing for 11 years have now been given a lease of land which is rightfully ours, not just to look at but to use. In other words, as I have always stated, I don't want just the title, but the substance as well.
>
> In conclusion, I would strongly advise you to forget about setting any further terms of vesting, as I believe the owners now have that moral right to stipulate conditions beneficial to them.[2363]

Looked at from the distance of time, it is hard to understand what Rickard was hoping to achieve by personally attacking the Minister, and writing him a letter that set out her views but did not ask for something or suggest something. Sending the letter seems to demonstrate the depth and intensity of her anger at this time, and certainly the delays and roadblocks in the way of revesting the land entitled her to be angry. The Minister replied simply and rather stiffly, "I have noted your comments"[2364].

A similar expression of disgust at the Government's handling of the matter came from Koro Wetere, local Member of Parliament for Western Maori, and the Opposition's spokesman for the Lands portfolio.

> The Raglan golf course controversy could have been settled long ago without the Golf Club's now "inevitable" relocation, according to Opposition spokesman on Lands and Maori Affairs, Koro Wetere.
>
> The Government was fully to blame for the current situation in Raglan by ignoring the very fair submissions of the Maori people in 1976, he said. Those submissions had accepted the Golf Club's tenancy on their ancestral land, provided the urupa (sacred burial grounds) under one part of the golf course were gazetted as reserves. But Lands Minister Venn Young had not been prepared to exercise his authority to action these submissions, preferring instead to "push our people further back into the doldrums". The situation became aggravated and relocation inevitable….

[2363] TE Rickard, Raglan, to Minister of Lands, 17 July 1980, attached to Minister of Lands to E Rickard, Raglan, 29 July 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2987-2989.

[2364] Minister of Lands to E Rickard, Raglan, 29 July 1980. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2987.

> Mr Wetere said the Government should never have allowed the Golf Club to jump into the controversy, but it was now bound to assist in its relocation. "The situation was not of their making, as it was certainly not of Eva (Rickard) and her people's," he said.
>
> Mr Wetere said the Government seemed to be in the position of judge and jury of its own misdemeanours, "and it can't do that."[2365]

There is a definite slowdown in Government activity noticeable on the Crown files from about this time. The Golf Club was setting the pace in the matter of acquisition of an alternative site, because it had to obtain advice that a course could be developed, and it had to determine how much its development would cost, before returning to the Crown with its proposals. The Minister and his officials had also received and were following advice from Crown Law Office. With the promise that an appeal would be lodged against the High Court's lease validity decision, followed by the lodging of the appeal in October 1980, the legal advice was to wait for this to be heard and adjudicated upon before proceeding with a new revesting application, as the judicial decision might have a bearing on the revesting application.

As an example of this Crown stance, when announcing the purchase of the alternative golf course site in May 1981 the Minister of Lands added:

> "It is still my intention to proceed with the revesting of the present golf course site in the Tainui Awhiro people," he said.
>
> "This, however, cannot proceed while legal issues are still before the Court". He was referring to the Maoris' intention to appeal against a High Court decision which validated the Golf Club's lease after a ruling that it had been technically illegal.[2366]

In reaction to this statement, Eva Rickard declared that Tainui Awhiro had no intention of abandoning their appeal. She believed that the two matters (lease validity and revesting) were not connected, and there was no legal impediment to proceeding with the revesting.

> Mrs Rickard said that even though abandonment of their appeal might mean an earlier return of their ancestral land, the Tainui Awhiro wanted to test the

[2365] *Waikato Times*, 18 August 1980. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2990.
[2366] *Waikato Times*, 15 May 1981. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2993.

> High Court's ruling in fairness to Maoris who may be involved in similar land disputes in the future.[2367]

In his own reaction, the Minister then criticised Eva Rickard for seeking to "stir up feelings", and again called on Tainui Awhiro to withdraw their appeal.

> "Mrs Rickard's extreme and unhelpful attitude will do nothing towards resolving the original grievance".[2368]

Eva Rickard responded by accusing the Crown of "babysitting" the Golf Club[2369]. The clash of personalities between the two main protagonists seems to have intruded on the debate to such an extent that progress, which had already stalled, was unable to be revived immediately.

A general election at the end of 1981 returned the National Government, but with a new Minister of Lands (Jonathon Elworthy) appointed. This appeared to make no difference at Raglan, however, with no change to the Crown view that the appeal should be withdrawn, and no desire on Tainui Awhiro's part to withdraw the appeal, nor, apparently, to bring it on for hearing.

It was not until early 1983 that the Commissioner of Crown Lands in Hamilton wrote to Wellington about the apparent lack of progress, asking if there was anything he should be doing[2370]. The correspondence shows that different Lands and Survey personnel were by now involved, and it is possible that the turnover of officials had contributed in some degree to the absence of activity. The Director General replied:

> Notice of motion for appeal was lodged in the Court of Appeal on the 21 October 1980. As you are aware, all matters and correspondence concerning the Court case, and now the appeal, are being handled for the Crown by … Crown Law Office.
>
> On the recommendation of the Crown Counsel, Government decided back in 1980 that it would not be appropriate to lodge the fresh revesting application until the appeal question had been resolved. It was thought at the time that apart from any other consideration, it would be pointless to lodge a revesting application in which the Golf Club lease is recognised as being valid if the validity of the lease was the subject of an appeal to the Court of Appeal….

[2367] *Waikato Times*, 18 May 1981. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2994.
[2368] *Waikato Times*, 19 May 1981. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2995.
[2369] *Waikato Times*, date not recorded. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2996.
[2370] Commissioner of Crown Lands Hamilton to Director General of Lands, 10 January 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2997.

> As all conduct with the solicitors for the Maori owners in this matter has been through Crown Counsel, I do not think it would be appropriate for you at this stage to get in touch with [a barrister engaged by the appellants] or make inquiries of any kind regarding the appeal. In fact in my opinion it may be to the Crown's advantage if the appeal did not come to a hearing prior to the Golf Club shifting to its new course, and its present lease presumably being surrendered, in other words, "let sleeping dogs lie".[2371]

During 1983 progress continued on the development of the new golf course, and it was apparent that the existing course was likely to be vacated towards the end of that year[2372]. In April Eva Rickard proposed a meeting with the Minister. This was accepted, but the Minister asked first for a list in writing of the matters to be discussed at the meeting. This list was supplied the following month.

a) When will the title of the land be vested in the Tainui Awhiro people? Some former owners are impatient and expect action this year.
b) In whom will the title be vested, i.e. which legal entities are acceptable for this purpose? (A family trust, charitable trust, 438 or 439 trust, incorporation, or any other entity representing the descendants of the former owners.)
c) What compensation are the owners going to receive for damages to the land since the golf club took over? i.e. erosion has escalated in some areas due to lupin cover being removed, grave irons taken from important sites.
d) Who will pay the compensation?
e) What financial assistance will the former tribe receive from Government to help re-establish their marae on their ancestral land?
f) What assurance can the Crown give that what is on the land now will remain when the Golf Club leaves? (clubhouse, hoses).
g) Why is this issue taking so long to resolve?[2373]

The Commissioner of Crown Lands commented on these issues. Revesting was "held up" pending hearing of the appeal on lease validity. Erosion caused by action of the Golf Club was disputed, and erosion /accretion was argued to be a continuing process caused by the action of the sea rather than by the land's occupants. No one knew about any ironwork formerly around the graves. Maori Affairs were better placed to answer the question of future financial assistance. The Crown had already told the

[2371] Director General of Lands to Commissioner of Crown Lands Hamilton, 13 January 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2998.
[2372] *Waikato Times*, 8 April 1983 and 9 April 1983. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #2999 and 3000.
[2373] TE Rickard, Raglan, to Minister of Lands, 16 May 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 30 May 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3001-3003.

Golf Club that while it was lessor it did not want to pay the Club for any improvements left on the land, so the Club was at liberty to remove as much as it wished. Apparently it intended to remove all above-ground improvements, leaving only buried pipework. If Maori became the owners following revesting, and before the Club vacated, then the Club would have to negotiate that matter with the new lessors. The delays in resolving the revesting were blamed on the failure to have the appeal heard[2374].

The Director General of Lands prepared a briefing paper for the Minister, together with a draft reply to be sent to Eva Rickard prior to the meeting. In the briefing paper the Minister was told:

> The general thrust of Mrs Rickard's approach is to the effect that this whole issue (and more particularly the vesting in the Tainui people) is taking a long time to resolve. What she does not appear to appreciate is that this action is unable to proceed pending the outcome of the appeal to the High Court to overturn Judge Bisson's decision that the Golf Club's lease is valid. Further it is clear that the Crown and the Club are doing their best to vacate the old course as early as possible, and therefore the 'ball' would appear to be in the Maoris' 'court'. It may well be that the Maoris may choose to now withdraw the appeal, in which case there would be no impediment to you consenting to an application for a vesting order in terms of Section 436 of the Maori Affairs Act 1953. That being the case, the Golf Club's position would be adequately protected by the undertakings in Mrs Rickard's letter to you of 21 November 1979.[2375]

The Minister signed the reply to Eva Rickard, in which he stated:

- As far as the Crown was concerned, "the only matter holding up vesting action is the impending appeal, therefore this matter of revesting is entirely in the hands of the Tainui Awhiro people".
- In whom the title was vested was up to the Maori Land Court, with the application for revesting referring to vesting "in such persons as may be found by it to be justly entitled and in the relative shares as may be determined".

[2374] Commissioner of Crown Lands Hamilton to Director General of Lands, 3 June 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3004-3005.
[2375] Director General of Lands to Minister of Lands, 8 June 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 23 June 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3007-3036 at 3008-3009.

- Erosion appeared to be on land that had accreted, rather than on land forming part of the title to be revested, although no survey had been done to establish this.
- Removal of ironwork around the graves had not occurred during the Golf Club's tenancy, and must have been removed earlier.
- The Crown's position was that compensation for damage did not arise, and injurious affection was outweighed by the present condition of the golf course.
- The terms already agreed between the Crown and the Maori negotiators did not include any finance from Lands and Survey Department for the erection of buildings once the land was revested, although Maori Affairs Department may be able to assist.
- The Crown was not prepared to direct the Golf Club what improvements to leave, as this would involve it paying the Club for those improvements. A written assurance in November 1979 from the Maori negotiators had said that the Club could remove all removable assets.

The Minister concluded by repeating the remarks in the briefing paper to him that the ball was in Tainui Awhiro's court, to decide whether or not to withdraw the appeal, thereby allowing the Crown to submit the revesting application to the Maori Land Court[2376].

Eva Rickard responded in writing to the Minister's letter. Although dated three days before the meeting, she does not seem to have posted it to the Minister, instead presenting it to the Minister at the meeting, and providing a copy to officials immediately prior to the meeting.

- Vesting in a tribal trust, rather than in individuals on a shareholding basis, was preferred; she was wary of a Section 438 trust, having seen how it could be manipulated to allow the sale of the Maori land that became the new golf course site.
- Her legal advisers would be consulted about withdrawing the appeal, and she acknowledged that this would save a considerable amount of money, but the principles at stake had always been considered very important. She added that

[2376] Minister of Lands to E Rickard, Raglan, 9 June 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 23 June 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3007-3036 at 3010-3013.

"if the Court of Appeal application is the obstacle, that can easily be remedied".

- Erosion along the coastline remained an issue, and the Minister's remarks about no damage to the land were disputed.
- Loss of the iron railings around the graves was an act of theft, which she knew from personal experience had happened after the Golf Club took possession of the site.
- Telling her to look to Maori Affairs Department for financial assistance was "passing the buck". Considering the failure to re-establish the meeting house after the 1941 taking, and the loss of use of the land for over 40 years, plus its willingness to financially support the Golf Club in establishing the new course, the Crown should feel obligated to financially assist the new Maori owners re-establish themselves on the land being returned to them. The money would be used for a work-skills centre, horticultural glasshouses, and replanting and landscaping.
- The revesting should include the severance strip alongside Ocean Beach Road as well as the golf course.
- It was time for the landing strip to be returned to Maori ownership, as it was so underused.

She concluded:

> Although the ancestral land of our tupunas will be returned, there is little joy for those of us who witnessed the heartbreak of our old people, who were rendered homeless by the action of the Crown in taking their land for War purposes, for God for King and Country, and the enemy then grows rich and the blood of my people spilt for what. My people became homeless, cultureless, jobless, and became orphans in a changing world….
>
> The land will return with all its cultural wealth, and my Tainuiawhiro people will build their roots, and it is on our past that we will build our future.[2377]

Immediately prior to the meeting, the Head Office of Lands and Survey delivered to the Minister a 19-page "History of the Raglan Aerodrome Site", which traversed the

[2377] "Tuaiwa Hautai Kereopa, alias Eva Rickard", Raglan, to Minister of Lands, 13 June 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 23 June 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3007-3036 at 3014-3017.

Crown's dealings with the land since 1936[2378]. Sixteen of the 19 pages dealt with the attempts to revest the land since 1976. This history is not discussed here, except to note that it has been compared with the rest of this chapter to ensure that all the events set out in it have been covered.

At the meeting, in mid June 1983, the discussion centred around the written response from Eva Rickard. The notes of the meeting record her as saying "she would be seeking advice from their legal advisor … with a view to withdrawing the appeal", at which point "the Minister expressed his satisfaction at hearing it was likely the appeal would be withdrawn, and said this would clear the way to allow revesting action to proceed"[2379].

Following the meeting both Eva Rickard and the Minister were interviewed by the media. Eva Rickard said she would "ask her people to drop their appeal", as that was "the best solution for the Maori people", because "we have now been given an assurance that the land will be revested".

> Both Mrs Rickard and Mr Elworthy said lessons should be learned from the saga.
>
> Mrs Rickard said: "I regret that we had to go through all that, and do all those things. We had to go to jail for it, we had relationships broken, hardships and divisions caused by it. I do not know whether we will be able to amend it, and do not know whether Raglan will ever be the same because of the Raglan dispute."
>
> Mr Elworthy said: "I hope that a number of important lessons have been learned right throughout this long unhappy saga, because this sort of thing will go right on happening indefinitely, and if the Raglan story and the Act (the new Maori Affairs Amendment Bill) deal with these land issues more readily and quickly, then some of that turmoil has been justified.
>
> Mr Elworthy said the Government would investigate the type of vesting under the Maori Affairs Act, because of difficulties about the way the land should be vested. "Although it is rather technical, I do not see any reason why it should not be vested the way the people wish." He also pledged to provide Government assistance for marae development on the land. "No body is

[2378] History of the Raglan Aerodrome Site, 13 June 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 23 June 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3007-3036 at 3018-3036.
[2379] Notes of Discussion, 16 June 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 27 June 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3037-3041.

> seeking grants, but Mrs Rickard is seeking loans, and the Government agencies are in the business of handling finance for employment opportunities. "I think this is a jolly good case."[2380]

Preparations now began for the drawing up of the revesting application. Rather than the application referring to vesting in a trust, the Crown still favoured more general wording leaving it up to the Maori Land Court to decide in whom the land would be vested. There was, however, a preference by officials that the land should be vested in the owners from whom it had been taken, with the descendants of those owners and the Court deciding as a separate exercise what management structure should then be established[2381]. On the matter of purchase price, it emerged that the rentals collected from the Club since 1 April 1980 and held in trust for the new Maori owners totalled $9000[2382], the same amount that the Crown wanted the new Maori owners to pay for the return of the land. Whether the two could be allowed to cancel one another out was said to be "a political decision"[2383]. Advice was requested on revesting of the airstrip, which earlier in the negotiations had been said by Civil Aviation officials to not be available. Further advice on when the Golf Club might vacate the golf course was also sought, as that might avoid the need for any reference to the Club's lease in the revesting application[2384].

While the Crown sought to simplify the application to its bare essentials, the Raglan County Council raised a matter that threatened to complicate it. While the aerodrome reserve had been vested in the Council, it had given itself approval to run a sewer line between the new sewage treatment plant and the seaward end of Ocean Beach Road. There was also a water main running between Ocean Beach Road and the campground. The Council asked that both be protected by easements in the title that

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[2380] *Waikato Times*, 17 June 1983. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #3006.
[2381] Divisional Drafting Officer Maori Division Hamilton to Executive Officer Hamilton, 9 August 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3043.
[2382] Schedule of Rents held in Trust for Maori Owners on Vesting. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3135.
Commissioner of Crown Lands Hamilton to Director General of Lands, 19 July 1983. Lands and Survey Head Office file 8/5/270. Supporting Papers #3042.
[2383] Director General of Lands to Commissioner of Crown Lands Hamilton, 26 August 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3048.
[2384] Director General of Lands to Commissioner of Crown Lands Hamilton, 26 August 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3048.

was handed over to the new Maori owners[2385]. Local Crown officials supported this[2386], and were told to take legal advice on the feasibility of including reference to easements in the revesting application[2387].

In late August 1983 Eva Rickard wrote to the Minister that she had instructed her lawyer that the appeal to the Court of Appeal was to be withdrawn. Despite her own earlier misgivings about a Section 438 trust, a meeting of Tainui Awhiro had supported such a trust being set up. She had an option on the purchase of two buildings, to be moved on to the site before Christmas, and had spoken to Maori Affairs Department about funding.

> The Tainuiawhiro people are impatient to begin re-establishing a living community on the land, and the future holds exciting possibilities and challenges for us and the community. We have small land holdings in the area and these will utilised for a major horticulture programme, which will support the Golf Club land plus bring in cash returns for use of the tribe.
>
> The tribe is excited that their tupuna's land will be returned and we can start rebuilding a base for our homeless, jobless and landless people. If we could but build just a small portion of the living village as it was, with a sharing community alive and caring, then we can say that our survival into the future is assured.[2388]

It turned out that the appeal had not been immediately withdrawn. The lawyer for Tainui Awhiro was concerned that the County Council and the Golf Club, both respondents named in the appeal, might seek costs from Tainui Awhiro, so had written to both these organisations asking them to agree not to make any application for costs. The County Council readily agreed[2389]. The Golf Club wrote to Lands and Survey stating that costs of $250 had been incurred in connection with the appeal, and asking if the Department would pay them for the Club[2390]. The Crown was not going

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[2385] Chief Executive Officer Raglan County Council to Commissioner of Crown Lands Hamilton, 17 August 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3044-3046.
[2386] Commissioner of Crown Lands Hamilton to Director General of Lands, 26 August 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3047.
[2387] Director General of Lands to Commissioner of Crown Lands Hamilton, 2 September 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3052.
[2388] TH Kereopa (E Rickard), Raglan, to Minister of Lands, 24 August 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 29 August 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3049-3051.
[2389] Commissioner of Crown Lands Hamilton to Director General of Lands, 7 September 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3053-3054.
[2390] Secretary Raglan Golf Club to Commissioner of Crown Lands Hamilton, 7 September 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3055.

to let $250 stand in the way of completing the return of the land, and agreed[2391]; this allowed the Club to agree not to seek costs. It was then possible for the appeal to be withdrawn.

Following legal advice about the easement, the Commissioner of Crown Lands recommended that, while the land was currently Crown Land and an easement could be drawn up before the revesting, it was better to leave the terms of any agreement as something to be negotiated between the new owners and the County Council. The Council's ability to obtain an easement could be covered by some general wording as a condition in the revesting application[2392].

When word was received from Crown Law Office that it had been notified about the withdrawal of the appeal, the Minister signed the application for revesting at the end of October 1983. It was substantially the same as the 1979 application with respect to whom the land should be vested in and the $9000 purchase price. Because by this stage it was known that the Golf Club was surrendering its lease on 14 November 1983[2393], and the Court could not hear the application before its sitting in Hamilton at the end of that month, there was no reference to the Golf Club's lease. The payment to the new owners of all rents received after 1 April 1980 was acknowledged. The matter of easements was covered by a condition that the County Council was to continue to have the right in the nature of an easement for the operation and maintenance of its sewage and water pipelines[2394].

In the briefing paper to the Minister asking him to sign the application, it was stated that the Court might not accept the condition about the easement, and "it may well be also looked on unfavourably by the Maori owners". The Minister was asked to authorise the withdrawal of that condition if it attracted criticism at the hearing, or if it

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[2391] Commissioner of Crown Lands Hamilton to Secretary Raglan Golf Club, 9 September 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3057.
[2392] Commissioner of Crown Lands Hamilton to Director General of Lands, 29 September 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3058-3061.
[2393] Commissioner of Crown Lands Hamilton to Chairman Raglan Golf Club, 5 October 1983, and Deed of Surrender of Land in Lease, 13 October 1983. Lands and Survey Hamilton file 8/5/270/1. Supporting Papers #3132 and 3133-3134.
[2394] Application for Order Revesting Land, 25 October 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 25 October 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3065-3075 at 3066-3069.

might cause the revesting itself to be held up. The Minister agreed to this[2395]. He also wrote to Eva Rickard, answering the questions posed by her in the letter she delivered to the Minister at her meeting with him in June 1983, and bringing her up-to-date with developments, including the new request for easements from the County Council[2396]. Later he sent her a copy of the revesting application[2397].

Eva Rickard served notice of her intention to appear at the hearing of the application[2398]. The Judge directed that the hearing was to be on the Poihakena Marae at Raglan[2399]. The hearing would consider the Crown's revesting application first, and then an application to set up a Section 438 trust.

At the hearing at the end of November 1983, counsel for the Crown first applied to withdraw the 1979 revesting application. Notice seeking leave to withdraw it had been served on the Court in July 1980, immediately after the High Court quashed the revesting order and ordered that the application had been reheard, but the Court had not at that time considered whether to allow its withdrawal. The easement condition may have been the subject of some criticism prior to the hearing, as its inclusion in the application was withdrawn at the first opportunity in opening submissions[2400].

Eva Rickard, who presented written submissions supported by historical documents (including Gibson's June 1979 affidavit and August 1979 letter)[2401], objected to the $9000 purchase price, arguing that the land should not have to be purchased at all, because of the upset caused by its loss for 42 years. She disputed that there had been

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[2395] Director General of Lands to Minister of Lands, 21 October 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 25 October 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3065-3075 at 3070-3071.
[2396] Minister of Lands to E Rickard, Raglan, 21 October 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 25 October 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3065-3075 at 3072-3075.
[2397] Minister of Lands to E Rickard, Hamilton, 8 November 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 10 November 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3079-3081.
[2398] Notice of Intention to Appear, 10 November 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3082.
[2399] Directions of Judge Cull, undated. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3087.
[2400] Opening Submissions of Counsel for Minister of Lands. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3088-3089
[2401] Statement of Tuaiwa Hautai Kereopa (Eva Rickard) to Maori Land Court, 30 November 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #2950-2958.

any agreement to pay that price in August 1979, at a meeting held in Raglan prior to that year's revesting application, and which formed the basis for that application. The Crown, however, stated that its application would not be amended, and argued that the Court could only accept or reject the revesting application as a whole, including its conditions. The Court agreed with that legal argument. After a short adjournment, Eva Rickard would still not change her stance, supporting the revesting but objecting to the condition. The Court then made an order revesting the land subject to the two remaining conditions (the third having been withdrawn) as set out in the application[2402]. Immediately following the making of this order, the Court then went on to consider and order a Section 438 trust, and appoint three trustees, for the revested land[2403].

Speaking to a newspaper reporter after the meeting, Eva Rickard explained why she was refusing to pay the Crown for the land.

> She said she had fought for a principle for 10 years, and was not going to settle for anything less than full satisfaction of that principle.[2404]

This matter of principle had come up before the hearing. The Minister of Lands had sought assurances from the Minister of Maori Affairs that the Maori Trustee would still advance the purchase price, as had been promised in August 1979[2405]. The Minister of Maori Affairs had replied:

> It would seem more sensible to me for Mrs Rickard to let the $9,000 to be offset by the moneys in your department's trust account, leaving a small balance of about $200 payable to her…. I gather however that Mrs Rickard thinks otherwise.[2406]

The Director General, aware of another principle at stake, that the Crown should be paid for land it had itself paid compensation for, felt that the offset arrangement was a

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[2402] Maori Land Court minute book 63 W 182-197. Supporting Papers #3821-3836.
[2403] Maori Land Court minute book 63 W 197-199. Supporting Papers #3836-3838
[2404] *Waikato Times*, 1 December 1983. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #3090.
[2405] Minister of Lands to Minister of Maori Affairs, 28 October 1983, attached to Director General of Lands to Commissioner of Crown Lands, 1 November 1983. Lands and Survey Head Office file 8/5/270. Supporting Papers #3076-3078.
[2406] Minister of Maori Affairs to Minister of Lands, 7 November 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 16 November 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3083-3086.

matter between the Maori owners and the Maori Trustee, and that Lands and Survey Department should not become involved[2407].

16.6.12 Application for Rehearing

At the hearing on Poihakena Marae, Eva Rickard had been told by the Judge that she had 28 days to apply for a rehearing. She exercised that right the following month, relying on the following grounds:

1) The terms of the application made by the Crown required that the owners make payment of the sum of $9,000.
2) The Crown (or the Minister of Lands) did not consider whether it could on the grounds of the submissions made by me withdraw such conditions.
3) The condition for payment of purchase money is unfair to the owners in that:
    a. That part of the compensation schedules were altered without consultation with the owners when the land was compulsorily taken for defence purposes.
    b. The agreement made with the owners of the land at the time it was taken was that it should be returned to the owners as soon as it was no longer required for defence purposes, and this agreement was never honoured.
4) The order should not in the circumstances have been made, as the Crown had notice of my objection and did not reply to same.[2408]

The lodging of the application did not affect the situation on the ground. When the Golf Club had vacated the golf course in November 1984, Tainui Awhiro had moved on to the land and taken possession. Even though the titles paperwork had not been completed, this was not a problem for the Crown.

When her application was heard in March 1984, Eva Rickard asked for an adjournment "so that she could go and see the Minister". This was granted.

In May 1984 the Tainui Awhiro Management Committee asked that the rent moneys held by the Crown be paid over to Tainui Awhiro, as their absence was hindering

[2407] Director General of Lands to Minister of Lands, 14 November 1983, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 16 November 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3083-3086.
[2408] Application for Rehearing, 21 November [sic, should be December] 1983. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3091.

further development plans on the land[2409]. They were told by the Minister of Lands that this would occur, but in terms of the revesting conditions the handover of the rent moneys was dependent on the purchase price being paid, and that was held up by Eva Rickard's rehearing application.

> At one stage it had been suggested that the rent monies, to a total of $9,000, be offset against the $9,000 purchase price, with the balance held over and above $9,000 being returned to the Maori people. You will also know that at the 30 November 1983 hearing the Maori Affairs Department representative offered, on behalf of the Maori Trustee, to advance the $9,000 so that the rent monies could be available to the Maori people for use on their Kokiri project.
>
> I trust my comments here allay your fears that the rent monies will not be returned. It remains, of course, a matter for the Maori people as to how the $9,000 purchase price will be financed.[2410]

By September 1984, when the revesting application was considered again, a Labour Government had recently been elected, and there was a new Minister of Lands (Koro Wetere). However, he had not had time to come to grips with his portfolio, and while directing an investigation of the matter by officials, had not made any decisions about the conditions of revesting. At the Court hearing, a Crown representative opposed the holding of a rehearing, on the grounds that the Court was not legally allowed to amend or ignore the conditions set out in the revesting application, so unless the application was amended by the deletion of conditions it had no ability to give the decision that Eva Rickard wanted. The Court agreed that a decision on the conditions had to be made at the political level, and in order to give the new Minister more time, the hearing was adjourned again[2411].

[2409] Secretary Tainui Awhiro Administration Committee to Minister of Lands, 8 May 1984, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 30 July 1984. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3092-3097.

[2410] Minister of Lands to Secretary Tainui Awhiro Management Committee, 14 May 1984, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 30 July 1984. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3092-3097.

[2411] Maori Land Court minute book 64 W 133. Supporting Papers #3839.
Waikato Times, 14 September 1984. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #3098.

The report to the Minister was not prepared by officials until February 1985. In addition to providing the Minister with the 19-page History, the basis for the $9,000 purchase figure determined in 1979 was outlined:

CMV of land at 4 August 1969 (i.e. date declared surplus to defence)	$22,000
Lessor's interest at that date calculated at (based on then market value grazing rental of $630 per year)	$15,300
Allowance for loss of the land to the former owners since 1969 (and thus loss of rental of $630 per year for 10 years), lessor's interest rebated by $6,300 to	$9,000

The paper then traversed the historical background behind the original taking. Without resiling from the principle of requiring a purchase of land that had been compensated for when taken, the Director General of Lands felt that there was room for some adjustment, based around the taking being for defence purposes at a time of war, and the land not being returned after the Second World War.

> I consider it possible to fix an earlier date for assessing the purchase price for return of the land to the former owners – it would be reasonable to do so.
>
> The basis for fixing an appropriate date should have regard to the time the Wartime Emergency Regulations were revoked. The majority were revoked in 1947 (12 March 1947 and 22 November 1947), and I recommend that the earlier date of 12 March 1947 be adopted. The current market value of the land would then be assessed as at 12 March 1947. There would be no justification for adopting the complex formula to be paid to the Crown – the Crown would be returning the land based on values just after the war.

The Minister agreed to calculations being carried out on this basis[2412].

The Valuation Department found its roll valuation in 1947 for the whole of the aerodrome site, which showed the land was valued on average at about £10 an acre. However, after deducting the value of the levelling of the runway, which was included in the value of improvements, it came up with a value in 1947 for the revested land of £1360 or $2720 (being £680 unimproved value and £680 improvements)[2413]. There were, however, no decisions made as a result of this information.

[2412] Director General of Lands to Minister of Lands, 28 February 1985, approved by Minister (undated). Lands and Survey Hamilton file 8/5/270. Supporting Papers #3099-3100.
[2413] Supervising Valuer Hamilton to Commissioner of Crown Lands Hamilton, 12 August 1985. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3101-3102.

There was another hearing of the rehearing application in April 1986[2414]. Neither party had changed its position. Eva Rickard still opposed the conditions attached to the vesting, while the Crown representative said he had no instructions to vary the revesting application in which the conditions were set down. Rather than adjourn the hearing again, the Judge reserved his decision on the application for a rehearing.

16.6.13 Unconditional Revesting Order, 1987

The hiatus in Wellington at the political level was undoubtedly because of differing principles at stake for both parties. Eva Rickard as a matter of principle felt that Tainui Awhiro should not have to pay to get their land back. Crown officials as a matter of principle (and for fear of setting a precedent) believed that if monetary compensation had been paid at the time of a taking, then the Crown should itself be compensated at the time of a handing back. Aware of the incompatibility of both of these principles, and aware also that Tainui Awhiro already had the land back in practice because they were occupying and using the former golf course, the Minister appears to have chosen to avoid making any decision at all. Meanwhile the Department of Lands and Survey was continuing to pay the rates on the former golf course land, while receiving no income from the property[2415].

At the end of March 1987 the Department of Lands and Survey was due to be disestablished as part of the Government's administrative restructuring of environmental functions and departments. Possibly as a tidying-up measure prior to the disestablishment deadline[2416], there was some activity at the end of January and beginning of February 1987. The Assistant Commissioner of Crown Lands in Hamilton recorded the contents of a phone call he had with his Head Office.

> The Minister, possibly through Cabinet and the LSB [Land Settlement Board], is now contemplating what conditions if any might now be placed on a new MLC application to revest the ex Raglan Golf Club land.

[2414] Maori Land Court minute book 65 W 285-287. Supporting Papers #3840-3842.

[2415] Commissioner of Crown Lands Hamilton to Director General of Lands, 16 July 1986. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3103.

[2416] One of the issues associated with the disestablishment was the allocation of Crown-owned lands held by the departments to be disestablished to one or other of the new organisations. A decision would have been required about whether to allocate the golf course and the Ocean Beach Road severance strip to the new Land Corporation State-Owned Enterprise (as was the case with most Crown Land with productive potential and little conservation value), or to the Department of Survey and Land Information, or to the Department of Lands (the rump of the old Lands and Survey).

> Mr Campbell would like this office to discuss with the Judge of the MLC exactly what procedure / approach he would like the Crown to make, on the basis that any new application would be substantially different, as to conditions, compared with the previous order.[2417]

The results of the discussion with the Maori Land Court were that:

> The Judge holds the orders made by the Court were in terms of the application. The Court has the power to insist on the payment of the purchase price, but it is doubtful that it can impose on the Crown the second condition – the ex-gratia payment.
>
> However, the Court would be prepared to amend the order made on 30.11.83 because the conditions have not been complied with. This would be the opportunity for the Crown to withdraw one or both of the remaining conditions. Such action would, however, require the consent of Mrs Rickard whatever is done, otherwise her rehearing application would remain before the Court and absolutely no progress would have been made.
>
> No new application papers need to be presented to the Court. On advice from you that conditions 1 and/or 2 in the existing application are to be withdrawn, I will approach Mrs Rickard for her concurrence, and we can then move to have the rehearing application proceed. Note that condition 3 has already been withdrawn.[2418]

Here at last, after over three years of doing nothing, were the makings of a face-saving compromise. Because the payments of rent sightly exceeded the purchase price, the option was always there for the two amounts to be offset against one another. But while that might satisfy the Crown, because the principle of a purchase price was retained, it could not satisfy Eva Rickard. If, however, there was some doubt about the legality of even part of the twin conditions, which could be thought of as intertwined because of their offsetting capability, then maybe it was better to have no conditions at all.

In June 1987 the new proposal was put up to the Minister, approved and then advised to local officials in Hamilton.

> The Minister of Lands has now approved (4/6/87) the deletion of conditions 1 and 2 from the revesting order [application] dated 25 October 1983 relating to the Raglan Golf Course land. As you know, this approval will now have the

[2417] Assistant Commissioner of Crown Lands Hamilton to Divisional Drafting Officer Maori Division, 5 February 1987. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3104.
[2418] Commissioner of Crown Lands Hamilton to Director General of lands, 12 February 1987. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3105.

> effect of revesting the land free of any conditions. This will mean that the Maori people will no longer pay anything for the land, and nor will they receive the money previously held by the Department of Lands and Survey from the Golf Club rents.
>
> Would you please now take the necessary action along the lines as we have earlier discussed, that is advise the Maori Land Court and Mrs E Rickard of the Minister's approval, which should then open the way for the rehearing application by Mrs Rickard to be brought to a hearing before the Court. At this hearing the Crown will seek the leave of the Court to withdraw conditions 1 and 2 of the revesting order, which hopefully will then leave the way clear for the order to be finally sealed by the Court.[2419]

Eva Rickard was advised[2420], and a Court hearing was scheduled for the end of June 1987. The representative of the Minister of Lands withdrew the remaining conditions, so that the revesting order could be made without reference to any conditions at all[2421]. The Court's order of 1983 was amended, and Eva Rickard was able to withdraw her application for a rehearing[2422].

For Eva Rickard this final result was an anti-climax.

> Raglan Maori land activist Eva Rickard says she isn't at all elated over the unconditional return of the town's golf course to Maori ownership.
>
> Mrs Rickard was commenting on yesterday's decision by the Maori Land Court to unconditionally return the title to the land to the Tainui Awhiro people. "There have been too many tears, and the memories of these past years are not good ones," she said.
>
> Mrs Rickard said the decision, requiring 10 minutes of the Court's time after 11 years of struggle, had brought back a lot of the sadness of those years. Mrs Rickard said that because of that struggle and sadness, she didn't feel she owed any explanation about what the Maori people planned to do with the land.[2423]

[2419] Acting Director General of Lands to Manager Lands Hamilton, 17 June 1987. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3106.
[2420] Manager Lands Hamilton to E Rickard, Raglan, 23 June 1987. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3107.
[2421] Submission of Representative of Minister of Lands, 29 June 1987, and Manager Lands Hamilton to Acting Director General of Lands, 1 July 1987. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3108 and 3110.
[2422] There is no record of this hearing in Maori Land Court minute books, apart from a note at Maori Land Court minute book 66 W 261 that a transcript is in the relevant Application file. Not included in Supporting Papers.
[2423] *Waikato Times*, 30 June 1987. Copy on Lands and Survey Hamilton file 8/5/270. Supporting Papers #3109.

How necessary it was to find some legal cloak in which to wrap the new amendment to the application is a moot point. In 1979 the purchase price had been discounted by deducting 10 years worth of lease rental. If in 1983 the same process had been adopted, and 13½ years worth of rental income had been deducted, the purchase price would have been brought back to nil, and the conditions attached to the revesting could have been removed then. The only potential sticking point to resolving the matter then would have been Eva Rickard's reaction. In 1983 she was determinedly opposed to the principle of having to purchase the land in order to get it returned. By 1987, four years of inaction may have left her weary rather than feisty, with her energies redirected towards the community-building activities being carried out on the land.

While obtaining a revesting order that all parties could live with had been a lengthy exercise, the physical preparation of the actual order was no less so. In fact, it took another three years before the order was ready for the Judge's signature. There was one matter associated with the order that involved the Crown, and one matter that required some detailed thought by Court staff.

The matter involving the Crown was the preparation of a survey plan to support the order. As part of that process the Department of Survey and Land Information sought and obtained from the Court approval to describe the Ocean Beach Road severance strip as Te Kopua 3 block, and the former golf course as Te Kopua 4 block[2424]. The plan was then produced[2425]. Te Kopua 3 and 4 have areas of 1.7032 hectares and 25.8493 hectares respectively.

The matter for Court staff was the preparation of a list of owners and their respective shareholdings for each of Te Kopua 3 and Te Kopua 4. Their task was to commence with the lists of owners of the land at the time of taking in 1941. Conveniently the lists had been updated and relative interests defined at that time, as part of the exercise to determine to whom the compensation monies should be paid, and how much each owner should receive. However, the returned land had been taken from three separate

[2424] Chief Surveyor Hamilton to Registrar Maori Land Court Hamilton, 1 July 1987. Lands and Survey Hamilton file 8/5/270. Not included in Supporting Papers.
Maori Land Court minute book 67 W 99. Supporting Papers #3843.
[2425] South Auckland plan ML 21826. Supporting Papers #2335.

blocks, Te Kopua 1, Te Kopua 2A and Te Kopua 2B. The three lists of owners then had to be combined into a single list. Court staff chose to combine the shareholdings of the owners on the basis of the proportional contribution on an area and valuation basis that each of the former blocks made to the new blocks. The area of each former block within the returned land boundaries was calculated, and then a valuation of each of those areas was obtained in 1990. This showed that the former Te Kopua 1 contributed 21% of the value of the returned land, while Te Kopua 2A and 2B (whose ownership lists were the same) together contributed 79%. The completed orders were signed by the Judge in June 1990[2426].

16.6.14 Concluding Remarks

The Crown's efforts to return the golf course were as botched as its efforts to deal fairly and reasonably with the Maori owners at the time of the taking. Any exercise that takes 11 years (1976 to 1987) to complete must have something wrong with it. The Crown went into negotiations with some fixed points of view, in particular about the requirement that the land be purchased from it, and the need to protect the Golf Club, and took too long to become receptive to the matters of concern to Maori, that were expressed to it from the start. Applications were made to the Maori Land Court before opposition and contention had been cleared away, and agreement had been reached with other parties. There were periods where, from the Maori negotiators' point of view, the Crown was silent and failed to respond to its overtures. There were times, sometimes quite lengthy, when nothing was happening. There was no meeting with Tainui Awhiro generally, only their representatives / negotiators. There were no occasions when agreements were recorded in writing and confirmed by all parties.

The Crown had erred in taking the land for defence purposes, because there was both a military and a civilian aviation need behind the taking. In taking the land for defence purposes at a time of war, the logical result should have been a return of the land after the war ended. That did not happen, and there was a casual attitude displayed for the next 30 years, while the defence land was used solely for civilian purposes.

[2426] Chief Surveyor Hamilton to E Rickard, Raglan, 26 June 1990. Lands and Survey Hamilton file 8/5/270. Supporting Papers #3111.

The Crown had also created another problem for itself shortly before the start of the return process, as a result of decisions in the late 1960's that the golf course would not be declared surplus to aerodrome requirements, and would instead be leased out in a sleight-of-hand manner that justified a linkage of the lease with an aerodrome (although not a defence) purpose. It was naïve to imagine that Maori would look kindly on an initial offer that Maori should pay for land with which they had strong customary and traditional inks, yet would not have the opportunity to occupy for nearly 60 years (i.e. two to three generations). There had to be some dramatic action that would overcome the difficulties between the two parties. Maori were quicker than the Crown to identify that relocation of the golf course was essential to resolving the impasse.

The Maori negotiators did not make it easy for the Crown when, sometimes individually and sometimes collectively, they altered their offers and demands. The Crown never sought a more formal structure to the talks to overcome the difficulties this placed the negotiations in. Instead the plethora of statements allowed the Crown to cherry-pick the ones it would accept. In relying on only part of what the Maori negotiators were telling it, the Crown found itself going to the Maori Land Court and then being caught out by further disputes at Court hearings. The Crown, as applicant, seriously tried the patience of the Court when it found it could not do what it wanted to do, stalled for time, and changed its application on a number of occasions.

The campaign for the return of the golf course was a trailblazer, in much the same way as the campaign for the return of land at Bastion Point caused the country to look at itself and its past. The sometimes erratic nature of the negotiations was because neither the Crown nor Maori had a pre-defined framework of reference to work within. Unlike today there was no "settlement mentality", where a track record of settlements has conditioned the parties to work in certain ways towards one another. Instead, they had to find their way, and that meant making mistakes that they could learn from. For the Maori negotiators it must have been particularly hard, as they carried such a weight of nationwide Maori expectation on their shoulders. However, the Crown could have been more supportive of the negotiators, and more diligent in examining possibilities for new approaches that allowed a settlement of the dispute to be reached far sooner than it was.

There is one other issue that needs to be addressed in the context of future negotiations for a settlement between the Crown and Te Rohe Potae Maori. This is the handwritten offer by the Crown, handed to Eva Rickard during a meeting with the Maori negotiators in August 1979, that its offer, which formed the basis for the revesting application two months later, was "in full recompense for all claims arising from the taking of the land"[2427]. This is the only mention located during the research for this evidence in which that type of language is used. It is not recorded in the minutes of the meeting as having being picked up and commented upon by the Maori negotiators. There was therefore no consent to this being accepted by the Maori party to the negotiations. And when not all the land taken for defence purposes has been returned, how could all past grievances be said to have been settled. It seems better to regard the statement as a remark made in isolation and not binding on either party, rather than something that the Crown might feel it can bring up again and refer to in the future.

It is not just the partial nature of the return of the taken land that means there are still matters that need to be settled at Raglan, as a result of the Crown's decision to take 89 acres for defence purposes in 1941. The imperfections of the taking itself, and also the problems with the compensation process, have been addressed earlier in this case study. Since then the Crown has compounded its earlier errors by failing to return the land as soon as it was no longer required for defence purposes, by holding on to the whole area for another 30 years before agreeing to return part only, by putting Tainui Awhiro through a particularly harsh 11-year ordeal before coming up with a formula that it (the Crown) would accept for return of the golf course, by failing during that period to recognise the cultural and community harm it was causing to both Tainui Awhiro and the wider Raglan community, and by failing, even today, to consider return of the remainder of the taken land.

[2427] Offer made by Director General of Lands, 28 August 1979. Maori Affairs Head Office file 19/1/671. Supporting Papers #1003.

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