

# **TURANGI TOWNSHIP REPORT 1995**



**WAITANGI TRIBUNAL REPORT**

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# **Turangi Township Report 1995**



# **Turangi Township Report 1995**

(Wai 84)

Waitangi Tribunal Report: 10 WTR



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Original cover design by Cliff Whiting, invoking the signing of the Treaty of Waitangi and the consequent development of Maori-Pakeha history interwoven in Aotearoa, in a pattern not yet completely known, still unfolding

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We also record our appreciation of the cartographic work of Max Oulton, of Waikato University, in the preparation and production of the maps and figures in the report.



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The Honourable Minister of Maori Affairs  
Parliament Buildings  
WELLINGTON

Te Minita Maori

Tena koe, te Minita mo nga take Maori

We present to you the Tribunal's report on the Turangi township claim. It concerns the acquisition by the Crown under the Public Works Act 1928 and the Turangi Township Act 1964 of an extensive area of ancestral land of the Ngati Turangitukua hapu of Ngati Tuwharetoa. The land was taken by the Crown to build a township at Turangi, initially to house construction workers employed on the Tongariro power project, but with the intention that it should become a permanent town. The land taken was greatly in excess of the maximum area that the Crown promised it would take. Other land that the Crown undertook to take on lease for industrial purposes and return to the people after 10 to 12 years was not returned. As a result, the claimants lost most of their ancestral land and their social and economic base was seriously eroded. The hearing of this claim was granted urgency when it appeared that the Crown was on-selling surplus land taken from the claimants instead of returning it to them.

The Crown approached the Ngati Turangitukua people in the early 1960s to seek their approval for the Crown's establishment of a township on their land. On the basis of numerous assurances and undertakings given to them by Crown officials, the people approved in principle the construction of the proposed township of Turangi. Subsequently, this approval was undermined and negated by the failure of the Crown, in whole or in part, to honour many of the undertakings. The result was that the Crown acted inconsistently with the principles of the Treaty of Waitangi and the claimants have been prejudicially affected by various Crown policies, acts, and omissions.

We have also found that the provisions of the Public Works Act 1928 and the Turangi Township Act 1964, relied on by the Crown in entering and taking the claimants' land, are fundamentally inconsistent with the basic guarantee in article 2 of the Treaty that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown.

We give an overview of the claim in chapter 21. The claimants are clearly entitled to be compensated for the losses and injury they have suffered. The return of Crown land would no doubt be a central element in such compensation. Rather than embark on an inquiry into remedies at this stage, we have proposed that, in the interests of facilitating an early settlement, it would be appropriate for the claimants and the Crown, should they be willing to do so, to enter into direct negotiations for a settlement.

In chapter 22, we have set out 13 findings of Treaty breaches by the Crown. Our only recommendations at this stage relate to amendments that we propose should be made to the Public Works Act 1981, the better to secure the protection of Maori Treaty rights in relation to the proposed acquisition of their land by the Crown.

Heoi ano

## LIST OF ABBREVIATIONS

|      |  |
|------|--|
| AJHR | <i>Appendices to the Journal of the House of Representatives</i> |
| CT   | Certificate of Title   |
| DSIR | Department of Scientific and Industrial Research                 |
| MOW  | Ministry of Works  |
| NZPD | <i>New Zealand Parliamentary Debates</i>                         |
| SH1  | State Highway 1  |
| SH41 | State Highway 41   |
| TPD  | Tongariro Power Development                                      |

## REFERENCES

References in brackets refer to documents that are contained in the record of documents, and these are listed alphabetically in the order in which they were admitted. For example, (B12:3) in chapter 2 refers to the second hearing (B), the 12th document admitted (12), and the third page of that document (3).

## ENDNOTES

Numbered endnotes refer to sources and documents that were consulted in the preparation of the report and are not in the record of documents. They have been listed in the bibliography.

## CHAPTER 1

# INTRODUCTION

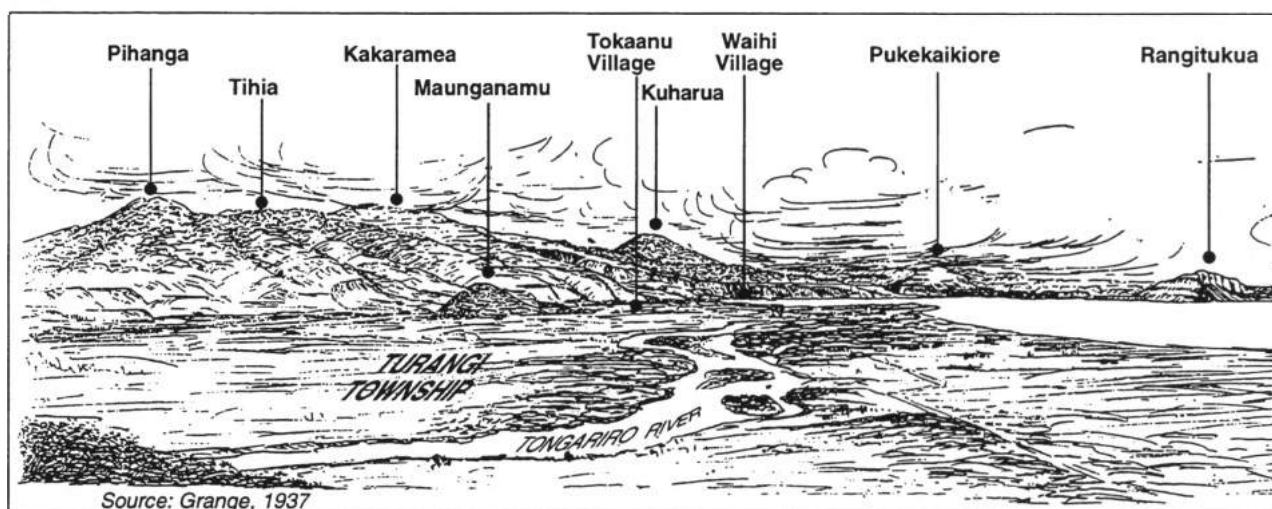
### 1.1 INTRODUCTION

#### 1.1.1 Particulars of the claim

This claim concerns the circumstances surrounding the construction of the Turangi township in the 1960s by the Crown (see figs 1, 2). The primary purpose of the town was to house the several thousand construction workers and related service people necessary to carry out the Tongariro power development scheme over several stages. The new township was constructed on ancestral land of the Ngati Turangitukua hapu of Ngati Tuwharetoa.

More particularly, the claim concerns:

- the process by which the hapu were alienated from much of their land in the period between 1964 and 1983;
- the assurances and undertakings made to Ngati Tuwharetoa by Crown officials which persuaded the owners to agree in principle with the Crown's proposal to build the town within their rohe;
- the alleged failure by the Crown to honour many of these promises, including those relating to the amount of freehold land which would be taken and the return of upwards of 200 acres of industrial land, which was to have been leased by the Crown and returned to the owners after 10 to 12 years;
- the use of the Turangi Township Act 1964 and the Public Works Act 1928 to effect the separation of the people from their land;
- the inadequacies of the compensation provisions in the Public Works Act 1928 and the absence in that Act of any requirement for surplus land to be returned to Maori owners;
- the absence of any statutory or other requirement that, before compulsorily taking any Maori land, the Crown ensure that no alternative non-Maori land was available for the township;
- the absence of any statutory or other requirement that, before acquiring the freehold of any Maori land, the Crown ensure that all alternative forms of tenure, such as leasehold, were exhausted;
- the actions of the Ministry of Works in relation to the tangata whenua, including its alleged failure to consult adequately with local people at all stages of the development and construction of the township on their land and to have regard for the mana and sensibilities of the tangata whenua, especially the older people; and



- the destruction and desecration of wahi tapu of Ngati Turangitukua during the construction of the town.

### **1.1.2 The claimants**

The claim in its final form is brought by Mahlon Kaira Nepia on behalf of the Ngati Turangitukua hapu of Ngati Tuwharetoa. The claimants' turangawaewae is located at the southern end of Lake Taupo, in and about the present township of Turangi. Their principal marae is Hirangi Marae, located in the township of Turangi.

## **1.2 DEVELOPMENT OF THE CLAIM**

### **1.2.1 First claim relating to Turangi township**

On 3 January 1990, a claim dated 25 December 1989 was received by the Waitangi Tribunal. It was made by Mahlon Kaira Nepia on behalf of himself and Arthur Lancaster Te Takinga Grace of the Ngati Turangitukua hapu of Ngati Tuwharetoa. The claimants sought the return of certain properties in Turangi which they said the Crown had agreed to return. These comprised vacant industrial land formerly occupied by a Ministry of Works depot; a Turangi office block; the Turangi refuse block; a recreational reserve; and a block of land, declared Crown land under the Land Act 1948, which was in the process of subdivision.

Further communications in support of the claim, dated 31 December 1989, 1 January 1990 (a copy of a letter to the Prime Minister), and 2 January 1990, were received by the Tribunal. These concerned the prospective sale by the Crown in February 1990 of the former Ministry of Works project office. The office was on land which, it was said, the Crown had undertaken to return. On 10 January 1990, in a further letter from the claimants,

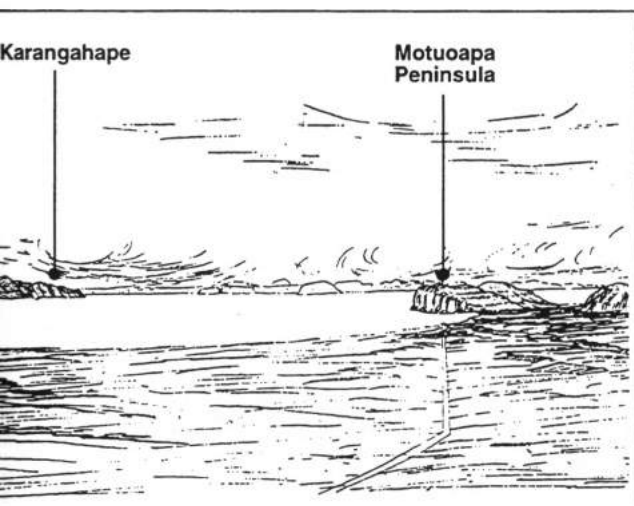


Figure 1: Field sketch of the Turangi township. View from the hills to the east of the township.

grievances were noted concerning the Crown's acquisition of tapu land and the inadequacies of the statutory provisions for compensation.

In a letter dated 6 February 1990, the claimants complained about the provisions of the Turangi Township Act 1964 which, it was said, permitted the Crown to take land under the Public Works Act 1928 without consultation with the Maori owners and to adjust township boundaries, also without notice to, or the consent of, the people.

### **1.2.2 Request for urgency**

On 9 December 1991, Mahlon Nepia, for the Ngati Turangitukua claimants, wrote to the Tribunal requesting an urgent hearing of the claim concerning the Turangi township. It was prompted by a recent offer the Crown had made to the previous owners of the land on which the Ministry of Works' project office building was built. This had been the subject of earlier correspondence when the property was proposed to be auctioned in February 1990. That sale was abandoned by the Crown, which was now offering the property back to the previous Ngati Turangitukua owners for \$450,000, plus GST. This was land that the claimants said the Crown had promised to return, being part of the industrial area which the Crown undertook it would lease for 10 to 12 years and then return to the owners.

As a consequence of this application on 3 March 1992, the Tribunal commissioned John Koning to provide an exploratory report on the background to any Crown undertakings concerning the leasing and return of land to the Ngati Turangitukua owners. The report (A1) was received in June 1992 and was released to the parties.



### **1.2.3 Amended statement of claim**

On 20 August 1992, Mahlon Nepia filed an amended statement of claim with the Tribunal on behalf of Ngati Turangitukua. The claimants, having considered the Koning report, brought together the various grievances referred to in earlier claims and in supporting correspondence with the Tribunal.

### **1.2.4 Urgency granted**

On 26 July 1993, the Tribunal, in response to a further application for urgency, convened a conference of the claimants and the Crown to consider whether an urgent hearing should take place. The claim, Wai 84, had previously been grouped under claim Wai 367, which included claims affecting Lake Taupo and the southern Taupo area. The Tribunal directed that a separate record be constituted for Wai 84, which would be confined to claims related to the Turangi township.

At a conference held on 18 August 1993, the Tribunal was advised that the urgent inquiry sought was in respect of the Turangi township lands only. After hearing the parties, the Tribunal decided that a case for an urgent hearing had been established, principally on the grounds that alienations of land were proceeding despite the objections of the claimants and sacred sites were affected.

At a conference with claimant counsel and the Crown on 2 December 1993, it was established that the claim for which urgency had been accorded related both to the way in which the Public Works Act 1928 had been used to acquire the land for the Turangi township and to the leasing arrangements for part of this land, to which, it was claimed, the Crown had not adhered.

### **1.2.5 Further amended statement of claim**

On 22 December 1993, in response to a direction from the Tribunal, claimant counsel filed a new comprehensive statement of claim. This contained numerous allegations of Treaty breaches by the Crown in relation to the construction of the township on the claimants' land. This became the substantive statement of claim, and is reproduced as appendix I. Unless otherwise indicated, references in this report refer to this statement of claim.

All the allegations are considered in the course of this report. In summary, it was claimed that:

- The legislation under which the Ngati Turangitukua lands were taken is inconsistent with the principles of the Treaty of Waitangi.
- The legislation should not have been employed to take the land by compulsory purchase without other sites and other landholding mechanisms being fully explored.
- The Crown acquired more land than it had undertaken it would take, and failed to honour its undertaking to return leased land.
- Where land was not compulsorily acquired, Crown actions often resulted in a reduction in the land's use and value.

- The Crown's dealings with the Ngati Turangitukua people were characterised by breaches of its Treaty duty to consult, to honour its undertakings, and to act in the spirit of partnership and with the utmost good faith. As a consequence, the Crown caused the claimants, both individually and jointly, to experience loss of land, distress, inconvenience, expense, and a loss of the mana that is rightly theirs as tangata whenua of these Turangi lands.

#### **1.2.6 Remedies sought**

The remedies sought by the claimants are:

- (a) an immediate recommendation that the Crown and its agencies refrain from the further sale of any land within the claim area;
- (b) the return to the claimants of the remaining Crown land without payment;
- (c) compensation for the owners of land whose value and use has been adversely affected by the Crown's actions and for those landowners who were inadequately compensated for the compulsory acquisition of their land;
- (d) the reimbursement of the claimants for their legal costs, valuation expenses, and disbursements;
- (e) recommendations as to the matters affecting the claimants, in respect of which they should be fully consulted by the Crown and other agencies in future;
- (f) compensation for land taken which cannot now be returned;
- (g) compensation for trauma, humiliation, loss of enjoyment of life, and associated suffering; and
- (h) compensation for the lost opportunity to develop their land and establish an economic base.

The last four remedies were sought in a further statement of claim, dated 1 March 1994 (see app I).

#### **1.2.7 Application for the return of State-owned enterprise land**

On 23 August 1994, the claimants applied to the Tribunal for an order that:

The Tribunal include in its recommendation under Section 6(3) of the Treaty of Waitangi Act 1975 Wai 367, a recommendation that any land or interest in land vested in or transferred to a state enterprise under the State-Owned Enterprises Act 1986 and covered by this claim ('the Land') be returned to Maori ownership, in particular to the Ngati Turangitukua hapu.



Figure 2

### **1.3 REPORTS COMMISSIONED BY THE TRIBUNAL**

In addition to the exploratory report which the Tribunal commissioned from John Koning, the Tribunal commissioned Tarah Nikora to collate a document bank of all documents referred to in the Koning report (A7–10). The Tribunal also commissioned Paul Hamer, a Tribunal research officer, to prepare a background report on the Tokaanu development scheme. This report (B12) provided a picture of the activities of Ngati Turangitukua in the Turangi area prior to the advent of the Tongariro power project in 1964.

These commissioned reports were subsequently produced in evidence before the Tribunal.

### **1.4 WHEN AND WHERE THE CLAIM WAS HEARD**

The first hearing of the claim took place at Hirangi Marae in Turangi between 5 and 8 April 1994. Prior to the hearing, public notice was given and, in addition, notice was sent to interested persons and bodies. Opening submissions were presented by claimant counsel. The claimants were represented by Carrie Wainwright and Sarah Giles. Camilla Owen, assisted by Andra Mobberley, appeared for the Crown. At this hearing, extensive evidence was given by a wide range of Ngati Turangitukua whanau. These were the Asher, Te Rangi, Ngaumu, Church, Duff, Hallett, Rihia, Kumeroa, Rota, Grace, Rawhiti Rangataua, and Smallman whanau. Rangi Biddle also gave evidence (see apps II, III). In addition, valuation evidence was given by William Cleghorn and sociological evidence by Mary-Jane Rivers. The report by John Koning was admitted in evidence, as was information from the Maori Land Court relating to Ohuanga North 5B2C2 and various areas of freehold land.

The second hearing took place at the Bridge Fishing Lodge in Turangi between 5 and 8 September 1994, when Ms Wainwright and Ms Giles appeared for the claimants. Ms Owen and Briar Gordon appeared for the Crown. Extensive evidence was called on behalf of the Crown from David Alexander, an environmental and planning consultant, and Stephanie McHugh, a historian. In addition, the report of Paul Hamer was received in evidence.

The third hearing was held at Hirangi Marae between 26 and 28 October 1994, when the Tribunal heard final submissions from claimant and Crown counsel.

### **1.5 FINDINGS AND RECOMMENDATIONS**

Chapter 21 contains an overview of the claim and the findings and conclusions of the Tribunal. Also in that chapter, after referring briefly to the question of remedies and the status of the many ancillary claims, we propose a negotiated settlement between the claimants and the Crown.

In chapter 22, we bring together our formal findings of Treaty breaches by the Crown, some 13 in number. In view of our proposal for a negotiated settlement, our recommendations are confined at this stage to proposals for amendments to the Public Works Act 1981.

## CHAPTER 2

# HISTORICAL OVERVIEW

### 2.1 THE TURANGI DISTRICT FROM THE 1920s TO THE 1960s

#### 2.1.1 Introduction

Before the Ministry of Works and its bulldozers arrived in October 1964 to begin work on the new Turangi township, the southern shores of Lake Taupo were a quiet rural area with a predominantly Maori population. Each hapu of Ngati Tuwharetoa had its own marae with a cluster of houses and a church nearby. The Waihi village was the home of Ngati Turumakina. At the Tokaanu village, Ngati Kurauia had their marae. Ngati Turangitukua were based at Hirangi Marae, Ngati Rongomai at Hautu, and Ngati Hine at Korohe (fig 3).

The Tokaanu village was also a European settlement, having been established as an Armed Constabulary post in the early 1870s. The Tokaanu Hotel was built soon after, and the village became known for its thermal attractions, particularly its warm bathing pools. Travellers from the north took a coach to Taupo township and then went by steamer to Tokaanu, which became a centre for excursions to the volcanoes, or a stopover en route south by coach via Waiouru. In the 1880s, a courthouse (which was to be used mainly by the Native Land Court) and at least two other hotels and three stores were built. In the 1890s, travellers could take an alternative route south by coach from Tokaanu via Raetihi to Pipiriki and then by steamer down the Whanganui River. Tokaanu was on the tourist route until the early twentieth century but was bypassed when all-weather roads were completed around the eastern shores of Lake Taupo.

The Turangi village, in an area formerly known locally as Taupahi, grew from a fishing camp in the late 1920s. A bridge had been constructed over the Tongariro River in 1891, but Hatch's Camp, later known as Taylor's Lodge, was the first Pakeha settlement. In 1931 a post office was opened there and local elders named the settlement Turangi, an abbreviated form of both the ancestral name Turangitukua and the name of the local hapu, Ngati Turangitukua.<sup>1</sup> Trout fishing was the principal attraction at Turangi. Bridge Lodge was constructed in 1932 and several Crown sections were auctioned in the 1930s and became the nucleus of a small fishing village. In the 1940s, the Tokaanu school was moved to Turangi, and a district high school was later added to it. Aside from the two local prison farms, Turangi in the 1950s remained a sleepy fishing hamlet.



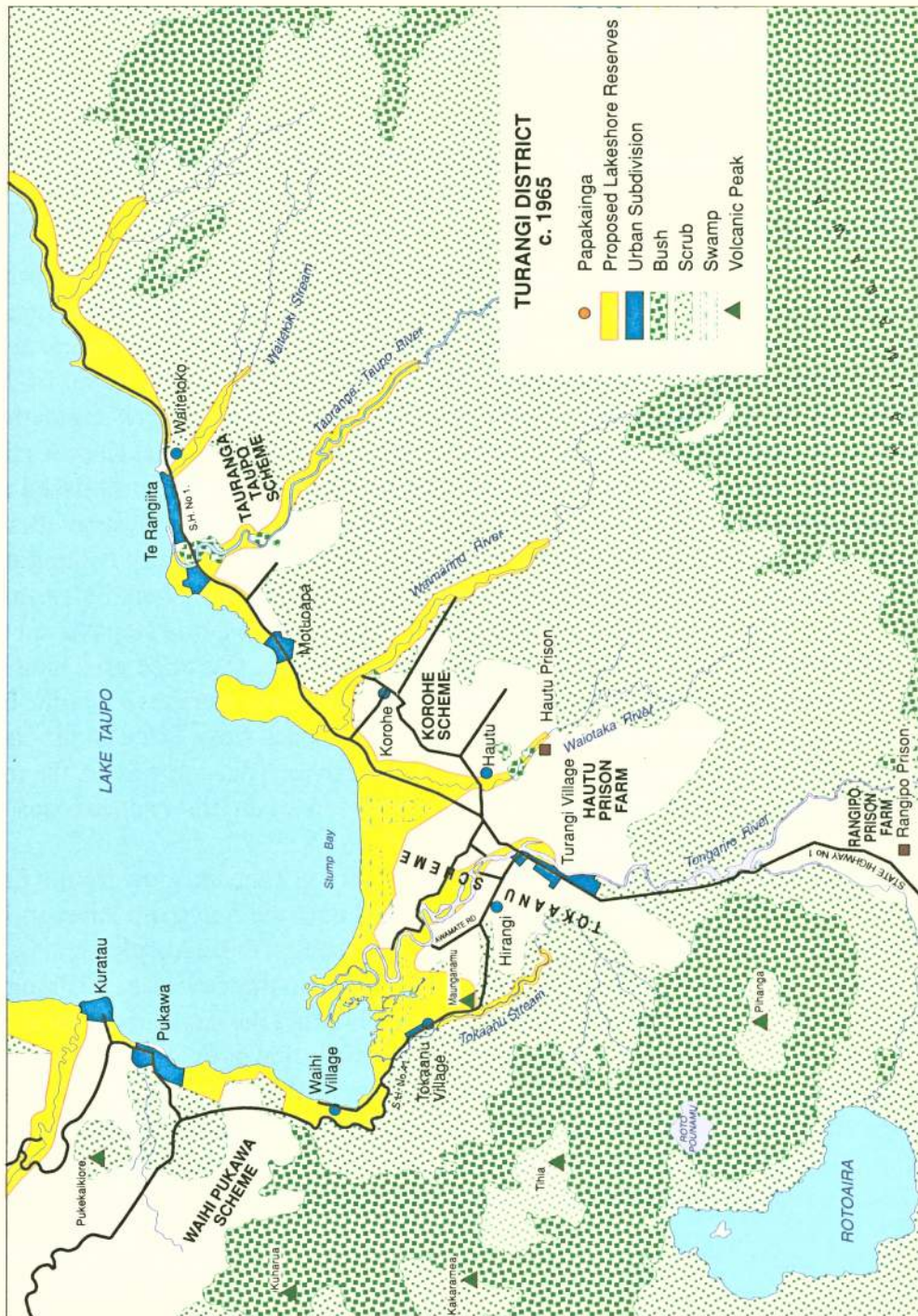


Figure 3



### **2.1.2 Land development schemes**

The 1930s saw the beginning of several land development schemes on Maori lands at Pukawa, Tokaanu, Korohe, and Tauranga-Taupo. Development work on the two prison farms at Hautu and Rangipo had already begun in the 1920s. The Tokaanu development scheme, on which the new Turangi township was constructed in the 1960s, is described in the next section. The 1920s and 1930s also saw the expansion of timber extraction in the west Taupo forests between Tokaanu and Taumarunui. Some 30 timber mills were opened in the vicinity, and Tokaanu became a 'bustling centre'.<sup>2</sup>

The expansion of Tokaanu as the commercial centre of the southern Taupo district was severely curtailed by flooding in the 1940s. The natural range of water levels in Lake Taupo, according to hydrographic records kept since 1905, was from 355.955 to 357.746 metres above sea level. Following the construction of the Taupo control gates in 1941, the lake level was maintained at high levels, but not above the natural flood level, for long periods. This resulted in numerous complaints about flooding along the lake margins, and the low-lying Tokaanu area was badly affected. The Lake Taupo Compensation Claims Act 1947 allowed for compensation claims where marginal lands had been damaged.

Under section 33 of the Finance (No 3) Act 1944, the Minister of Works was given power to remove the Tokaanu township to a new site if necessary. The town was not removed, but the agricultural potential of the surrounding lands was impaired, particularly the low-lying blocks in the Tokaanu development scheme.

### **2.1.3 Lakeshore protection**

By the early 1960s, the potential conflicts in the development of land for farming; the planting of exotic forests; the preservation of scenery, wildlife habitats, and Lake Taupo's water quality; the maintenance of the trout fishery; and the pressures for urban subdivision around the lake suggested to local authorities that measures to protect the lakeshore environment were needed. In 1963 the Taupo County Council appointed a committee comprising the county engineer, G B Burton, a registered surveyor, L H Cheal, and a town planning consultant, A L Gabites, to consider these matters. In the introduction to their report to the council in March 1964, the committee reviewed the scope of the problem and suggested that more land be retained in a natural state to slow down the run-off of water from developed land.<sup>3</sup>

With the report, the committee included a map of areas around Lake Taupo which it recommended should be set aside as reserves, a proposal which became known as the 'lakeshore reserves' (fig 3). While some of the proposed areas were already Crown land, most of the proposed reserves around the southern shores of the lake were in Maori ownership. Where possible, the committee recommended the acquisition of these areas by exchange for suitable Crown lands within the district.<sup>4</sup> In September 1964, the Taupo and Taumarunui County Councils, supported by the Waikato Valley Authority, made a joint approach to the Government. They had consulted with the Tuwharetoa Maori Trust Board and had given assurances that a fair price would be negotiated. The local bodies made it clear they did not wish to 'deprive the [Maori] owners of their rightful heritage' but stressed

the need for the 'co-operation and good will' of the owners if the scheme were to be successful.<sup>5</sup>

Cabinet set up the Officials Committee on the Lake Taupo Reserves, which recommended in June 1966 that the Department of Lands and Survey administer the lakeshore reserves. Meanwhile, both the Taupo and the Taumarunui County Councils had designated the proposed reserves in their respective district schemes. In 1968 the Taupo Basin Co-ordinating Committee was established to represent both central government and local authorities. The acquisition of lakeshore reserves was to be undertaken by Lands and Survey, a process quite separate from the Ministry of Works' acquisition of land over the same period.

#### **2.1.4 The Turangi village**

As discussed, before the township development, the Turangi village remained a small Pakeha fishing settlement with a number of Maori households along the old State Highway 1 (SH1). Maori homes were also scattered along the old State Highway 41 (SH41), now called Hirangi Road. The total population was about 500 people. Terewai Grace described the Turangi community in her submission to the Tribunal:

When I came to this area in 1953, Turangi was a fishing village. It was a prosperous little community which survived mainly on tourism from trout fishermen. There was a post office and a few shops but the main shopping centre was at Tokaanu. The Grace family farm, where I went to live with my husband and family in 1959, took up most of the area where Turangi township is today. There was a small settlement on the outskirts of where the town is now, with houses running along the riverbank.

At that time the school was the centre of community activities. Working at the school at that time [were] the headmaster, his wife (who was also the infant mistress), and myself. We also had a probationary assistant who had just graduated from teacher training.

It was a very united community. Pakeha and Maori homes ran along the same streets, although on the street that is now Hirangi Road but was then Highway 41, all the homes were Maori because it was Maori land. The Maori people were either Ngati Turangi or related hapu. Everybody knew everybody else. As far as I was concerned, it was an ideal place to live in. It was a beautiful, friendly, rural community. (A21(2):1-2)

Most of the surrounding land was owned by Maori, and some of it was within the Tokaanu development scheme. The social organisation was predominantly Maori and centered on local marae. The Pakeha population was principally concerned with tourism and trout fishing and fitted in with local lifestyles. Before the Ministry of Works arrived in Turangi, there was little to disturb the quiet tenor of rural life on the southern shores of Lake Taupo.

## **2.2 THE TOKAANU DEVELOPMENT SCHEME**

### **2.2.1 Introduction**

In the late 1920s, the Native Minister, Sir Apirana Ngata, introduced a policy of administration of Maori lands in multiple ownership which would maintain Maori ownership and allow the development of productive farm units. The statutory provision for this was set out in section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929, subsection (1) of which described the purpose of development schemes as the:

better settlement and more effective utilization of Native land or land owned and occupied by Natives, and the encouragement of Natives in the promotion of agricultural pursuits and of efforts of industry and self-help. (B12(a):15)

Under section 23, the Native Minister had the power to undertake a wide range of development activities on Maori land held under schemes, including draining, cleaning, fencing, roading, and so on, as well as erecting buildings and purchasing livestock.

The Minister could also delegate these powers to a Maori land board or to the Native Trustee. All funds expended on land development were to be paid out of the Native Land Settlement Account and charged, with interest, against the lands being developed. The intention to include any lands within a land development scheme was to be advertised in the *New Zealand Gazette*. Once gazetted, no owner could 'exercise any rights of ownership in connection with the land affected so as to interfere with or obstruct the carrying out of any works', except with the consent of the Native Minister.

### **2.2.2 The effect of a land development scheme**

In effect, the establishment of a land development scheme removed the control of almost all activities on the gazetted lands from the Maori owners and placed it either with a Maori land board or with the Native Trustee and, ultimately, with the Native Minister. In practice, the day-to-day farm management and financial control of a land development scheme was in the hands of officers of the Native Department (later the Department of Maori Affairs) and a farm manager appointed by the department.

### **2.2.3 The genesis of the scheme**

The Tokaanu development scheme had its genesis in a meeting called by the Native Trustee at Hirangi Marae in July 1930, following which a list of 'the blocks which are to be dealt with immediately' was forwarded to the Native Minister (B12:2). On 14 August 1930, a list of 34 Waipapa, Tokaanu, and Hautu blocks, totalling some 2923 acres, was gazetted as the Tokaanu development scheme (see fig 4) (B12:3). In October 1930, a report sent to the Minister indicated that work had already begun, and a house and other buildings were to be constructed near Hirangi Marae. Later that month, 31 acres of the 'Hirangi Reserve', the Waipapa 1A block, were added to the scheme (B12:3). In December 1930, the Minister

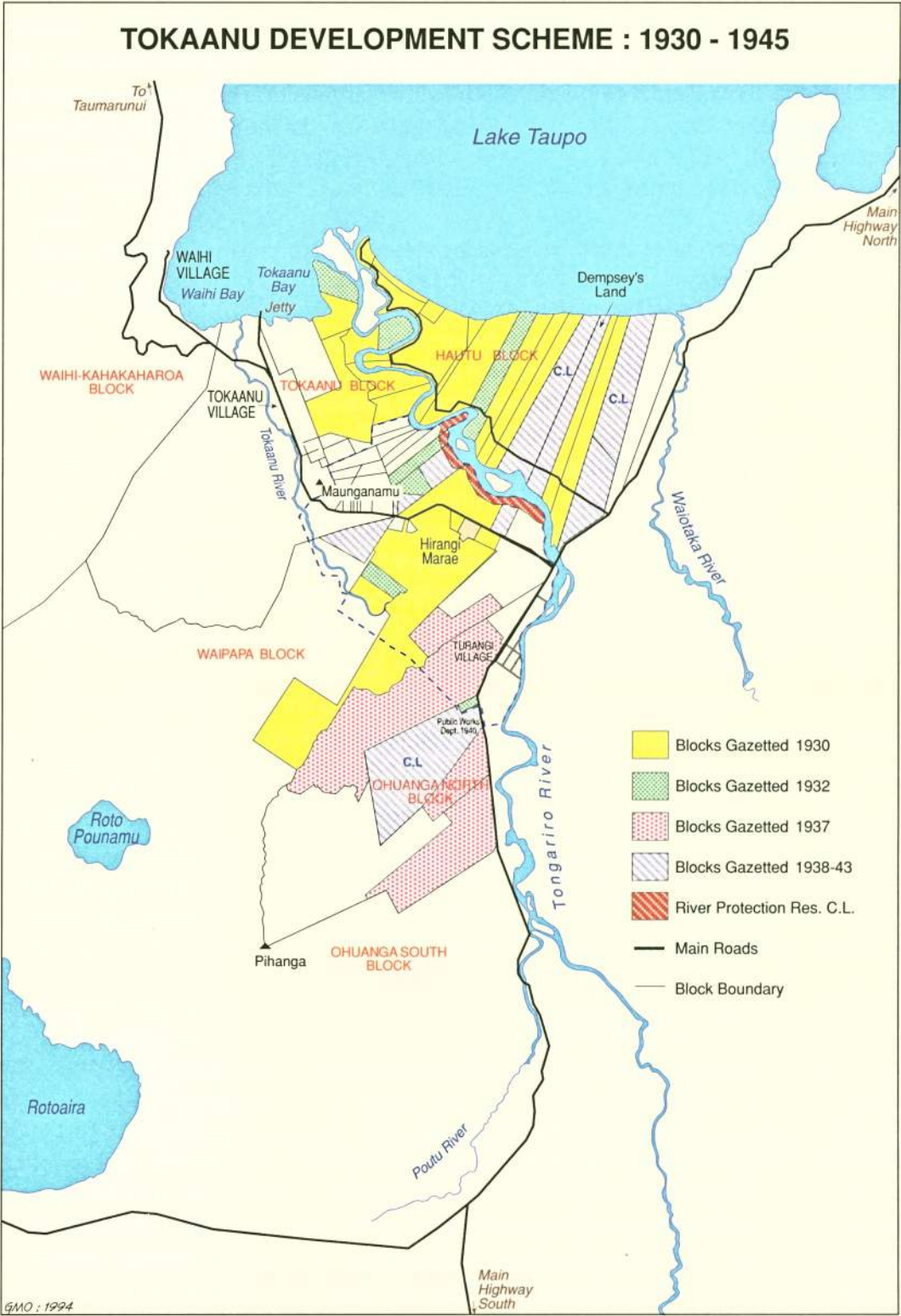


Figure 4

revoked the earlier notices and applied the provisions of section 25 of the recently passed Native Trustee Act 1930 to the Tokaanu development scheme (B12:3). The control and management of the lands were thus vested in the Native Trustee, who was given powers similar to those provided to the Native Minister under the Native Land Amendment and Native Land Claims Adjustment Act 1929 to undertake land development 'for the benefit of the beneficial owners'.

Ngati Turangitukua owners were unhappy with the Native Trustee's administration of their lands. In October 1931, Puataata Alfred Grace informed the Minister that the Maori owners felt that:

the management of the operations in connection with the present scheme so far has been disappointing, and there has been unnecessary waste of money, and [we] will welcome a change-over to the Native Department. (B12:4)

In February 1932, Grace wrote again to the Minister suggesting that he visit the scheme because the owners of other blocks wanted to have their land included. On 22 February, he also wrote to the Native Trustee asking for a meeting at Turangi to discuss local complaints, explaining that the:

present feeling is mistakes have been made involving a fair amount of money, and if this can be shown to be so, then we will respectfully expect any losses occasioned thereby to be written off. (B12:4)

The Director of Native Land Settlement, G P Shepherd, was sent to investigate and he reported to the Minister on 31 March 1932. The director described 'a very formidable array of complaints', which could be summed up as 'the capital expenditure is too high', and he was of the opinion that 'too much had been attempted and too little completed in the way of establishing pastures' (B12(a):73). The Minister subsequently applied to the Native Land Court for an order to release the scheme lands and vest them under section 522(3) of the Native Land Act 1931, which contained similar provisions to section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929. The order was issued and the Tokaanu development scheme thereafter became the direct responsibility of the Board of Maori Affairs and the Native Department.

#### **2.2.4 Additions to the scheme**

From 1932 more blocks were added to the scheme, including a substantial area in the Ohuanga North block (see fig 4) (B12:29–32).<sup>6</sup> In 1935 over 2600 acres were under development and the scheme employed 22 workers (B12(a):29). By 1937 the scheme carried over 300 beef cattle and some 3500 sheep and was divided into 10 units. The units had been allocated to settlers and houses had been erected for them. It was envisaged that the construction of the road to Taumarunui would make dairying a viable proposition (B12(a):25–26).

In 1937 some 1658 acres of several Hautu blocks were also gazetted as the Korohe development scheme (B12(a):36). There were also land development schemes established in the 1930s on Maori lands at Tauranga-Taupo and Pukawa, which provided work for unemployed Tuwharetoa people. Some of the development work on the Ohuanga North blocks was 'carried out by members of the Ngapuhi tribe brought down from North Auckland to relieve unemployment in that district' (B12(a):34). During the 1930s, Maori land development schemes were seen by the Government as not only contributing to the national expansion of productive farm land, but also providing employment to alleviate the poverty of the depression years. Land development in this period involved a great deal of hard labour. It was not until the 1950s that heavy machinery, such as bulldozers and giant discs, was used for land development in the Taupo district.

### **2.2.5 Attempt at dairying**

In the 1940s, the expansion of land development schemes everywhere was curtailed by the wartime requirements of manpower and material. In 1943, however, dairying was introduced on the Tokaanu development scheme. An earlier attempt at dairy farming in the 1920s had supplied a Maori-owned butter factory at Waihi set up by a Roman Catholic priest, Father Langerwerf. Water power from Waihi Falls was used to generate electricity. However, the remoteness of the area from markets and the inadequate area available for suitable pasture meant that butter production was uneconomic. The factory operated for eight years and was then converted to a sawmill.<sup>7</sup> The Tokaanu dairy farmers were a little better off in the 1940s but, even so, transport costs were considerable because the nearest dairy factory was at Kaitieke, 69 kilometres (43 miles) away (B12:11).

### **2.2.6 Development scheme problems**

Land development on the Tokaanu scheme was beset by problems. Many of the blocks were low-lying and waterlogged, and some became swamp in the 1940s when Lake Taupo was maintained at high levels. Some of the better drained lower terraces of the Tongariro River were made up of river gravels which would not support good pasture. Many of the southern blocks on the slopes of Pihanga lacked an adequate water supply and dried out badly in the summer. The depredations of rabbits became a perennial problem, and a constant battle was fought against noxious weeds, particularly blackberry and ragwort. Department of Maori Affairs files suggest that a lot of money was spent with little to show for it. Some of it was written off (B12:11), but we have not reviewed specific figures for development debt over this period.

The Board of Maori Affairs was the effective legal owner of the Tokaanu development scheme, and the objective was to establish separate farm units occupied on a leasehold by a 'settler' and her or his family. Any attempts by individual Maori owners or their families to seek the use of parts of the scheme lands were usually firmly declined. In the late 1940s, leases granted to eight local men comprised an area of some 4440 acres (a total of 6500 acres had been gazetted in the scheme by 1943). The unit farms affected by raised lake

levels had to be abandoned. A 1956 report indicated that, of the 7039 acres then in the scheme, only 2914 acres were farmed by settlers, with 4125 acres farmed as a station (B12:14–16). Two more leases were granted in 1957.

### **2.2.7 1956 scheme review**

Staff of the Department of Maori Affairs in Wanganui reviewed the scheme in 1956. Several Tokaanu and Hautu blocks in the Tongariro delta were released because they were now too swampy for farm development. A number of other blocks were also released, including an urupa, the Waipapa 1G block, and areas required by owners as house sites (fig 5). In recommending the release of the latter blocks, the district officer in Wanganui explained that they had initially been designated for housing and should never have been gazetted as part of the scheme (B12(a):77). At the same time, an adjustment of the boundaries of the Ohuanga North 3A2 and 3B2 blocks was made by way of exchange with adjacent Crown land so that the bush area on the upper slopes of Pihanga could be incorporated in the Tongariro National Park. Similar boundary adjustments were made in 1962 on Ohuanga North 1B2 and 3B1.

There was, however, still a considerable burden of debt on the scheme. In January 1957, the district officer in Wanganui reported:

The history of this scheme is well known to the Department. It was commenced primarily as a means of absorbing Maori labour during the depression years, and adequate results were not obtained from the large number of men engaged. It is admitted that a large proportion of the labour cost was subsidised, but there is every indication that the debt today includes monies charged to the scheme for work which has not created assets. Other factors were lack of fertiliser in the War years and the rabbit menace which necessitated almost total renewal of pastures. Unforeseen difficulties were encountered with water supplies on the Ohuanga Block, and areas on which part of the early expenditure was probably incurred, and which have been abandoned owing to raising of the Lake level. A certain amount of compensation was received on account of this latter factor, but did not cover the cost (as apart from the value) of the assets damaged or destroyed. (B12(a):85–86)

It was proposed that ‘subdivision and settlement’ of the scheme lands should occur and four settlers (Harry Nganangana Te Rangi, Puataata Alfred Grace, Tutemohuta (Sonny) Te Rangi, and Elwyn Grace) should be established on leasehold farm units. By 1960, however, it was considered that the two units settled in 1957 and farmed by Sonny Te Rangi and Elwyn Grace were uneconomic and should be amalgamated and further development work should be carried out. Te Rangi and Grace were persuaded to surrender their leases and were promised settlement at some future date (B12:16–17). This did not happen, although both continued to work for wages on the scheme. A report in March 1960 stated, ‘It will have to be recognised that settlement was premature and the men have not had a fair go’ (B12(a):117).



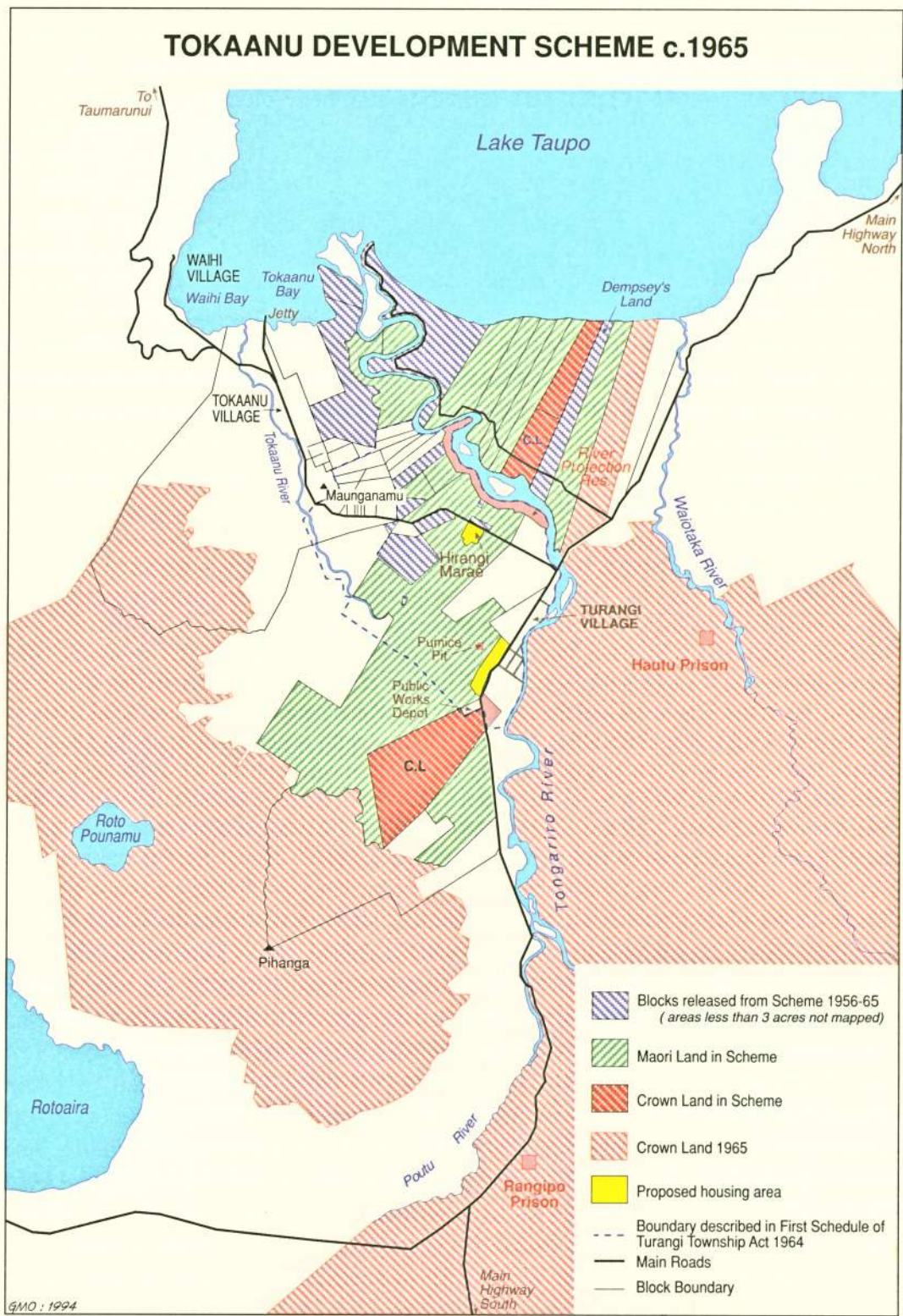


Figure 5

The surrender of these two leases was part of a total review of debt liabilities on the Tokaanu development scheme in early 1960. It was recorded that:

To all intents the old scheme has been wound up, the residual land should be released and the loss established. Many factors contributed to the large amount outstanding and these should be put on record and the amount frozen until such time as a formal write off is applied for. (B12(a):117)

Three leasehold farm units were operating on the scheme lands west of the Tongariro River; those of Puataata Grace (taken over in 1959 by his son Arthur), Harry Te Rangi, and William Reneti (Ned) Church. On the Hautu blocks across the river were the units farmed by Lang Grace, Walter Ngahana, and P Smallman. Of the total area gazetted (some 7040 acres), about 1876 acres had been released, 2914 acres were farmed by settlers on leaseholds, and the balance, some 2250 acres, mainly on the Ohuanga North block, were farmed as a station. Included in this latter area was a strip of about 38 acres, part of the Ohuanga North 5B2 and 5B3 blocks, fronting on the old SH1 (now Taupahi Road), which had been reserved for subdivision for housing purposes (B12(a):110). A total debt of £17,895 had been calculated in 1960 in a 'loss on disposal' statement prepared for audit (B12(a):116). No immediate action to write off the debt was taken.

#### **2.2.8 The need to upgrade the scheme**

On 15 October 1962, a meeting of owners in the Tokaanu development scheme was held at Tokaanu. The assistant district officer informed the meeting that the Board of Maori Affairs had approved the extra finance to bring the scheme up to the station stage, and had waived interest payments on £10,000 of scheme debt (B12(a):104). He also explained that there was a further loss of £3009 for the preceding year, but 'this position would right itself when the new programme was underway' (B12(a):104). Much of this loss derived from the purchase of stock. What was now described as the Tokaanu development scheme was the balance area of something over 2000 acres, of which only 874 acres were in grass. Some disappointment was expressed by owners that water had not been provided years earlier to support a larger number of cattle and prevent reversion to fern. Fearon Grace commented that 'The owners feel that they have been let down. It does not encourage us to work with the Department' (B12(a):106). The assistant district officer explained the financial situation:

The value of the land and improvements on this scheme is £15,900 which together with the value of stock and plant (£9,803) makes a total value of £24,703. The debt to the Crown of £34,123 represents £39 per acre. On a notional realisation the value would be £28.7 per acre. (B12(a):107)

The field supervisor explained further:

This scheme has had to be rejuvenated. In 1960 there were 600 odd ewes and 50 cattle. In 2 years we have over doubled the carrying capacity.

During the last winters 40 acres of crop were sown for sheep and 60 acres of new grass were sown. We have just finished sowing the second part of 100 tons of manure . . . and about 3,000 bales of hay cut.

This coming year we will be running water up the hill and cropping some of the lower fern faces. (B12(a):107)

The district field supervisor commented:

I can see that this scheme is going ahead. We hope to further increase stock with the accent on cattle. Wool production has increased from 9,000lbs to 13,000lbs. The management this year has been better. We now have Board of Maori Affairs authority and we can move a little faster with Development. (B12(a):107-108)

The impression given by the Department of Maori Affairs officers was optimistic. It was intended that Sonny Te Rangi and Elwyn Grace would eventually be settled on the scheme, but the area developed so far was not sufficient for two units. There was a large debt, but the impression given was that production would increase, funds for further development were available, and the debt would be farmed away in subsequent years.

The Tokaanu development scheme has been outlined in some detail because, within a couple of years, everything was to change. The settlers' farms of Arthur Grace, Harry Te Rangi, and Ned Church were massively affected by the Tongariro power development. The Grace farm lease was taken over by the Ministry of Works and became the Turangi township. The valuable lower flats of the station in the remaining Tokaanu development scheme were affected by the industrial area and later by the Turangi golf course. These impacts will be outlined in later chapters.

## **2.3 THE TONGARIRO POWER DEVELOPMENT**

### **2.3.1 Brief description**

The Tongariro power development (TPD) comprises a system of river and stream diversions through canals, aqueducts, tunnels, and lakes from the catchment areas of the Tongariro, Rangitikei, Moawhango, Whakapapa, and Whanganui Rivers. All this water is collected in some small hydro lakes and in Lake Rotoaira. En route, some of this water powers the turbines at Rangipo Power Station. From Lake Rotoaira, the water is sent through a tunnel to the penstocks and powerhouse of Tokaanu Power Station and out to Lake Taupo through another canal, known as the Tokaanu tailrace (fig 6). The Public Works Department first began survey work in 1924 in a search for power generation sites for proposed hostels in Tongariro National Park, but nothing came of this. Throughout the 1940s, more information was collected about the stream flows, geology, and topography

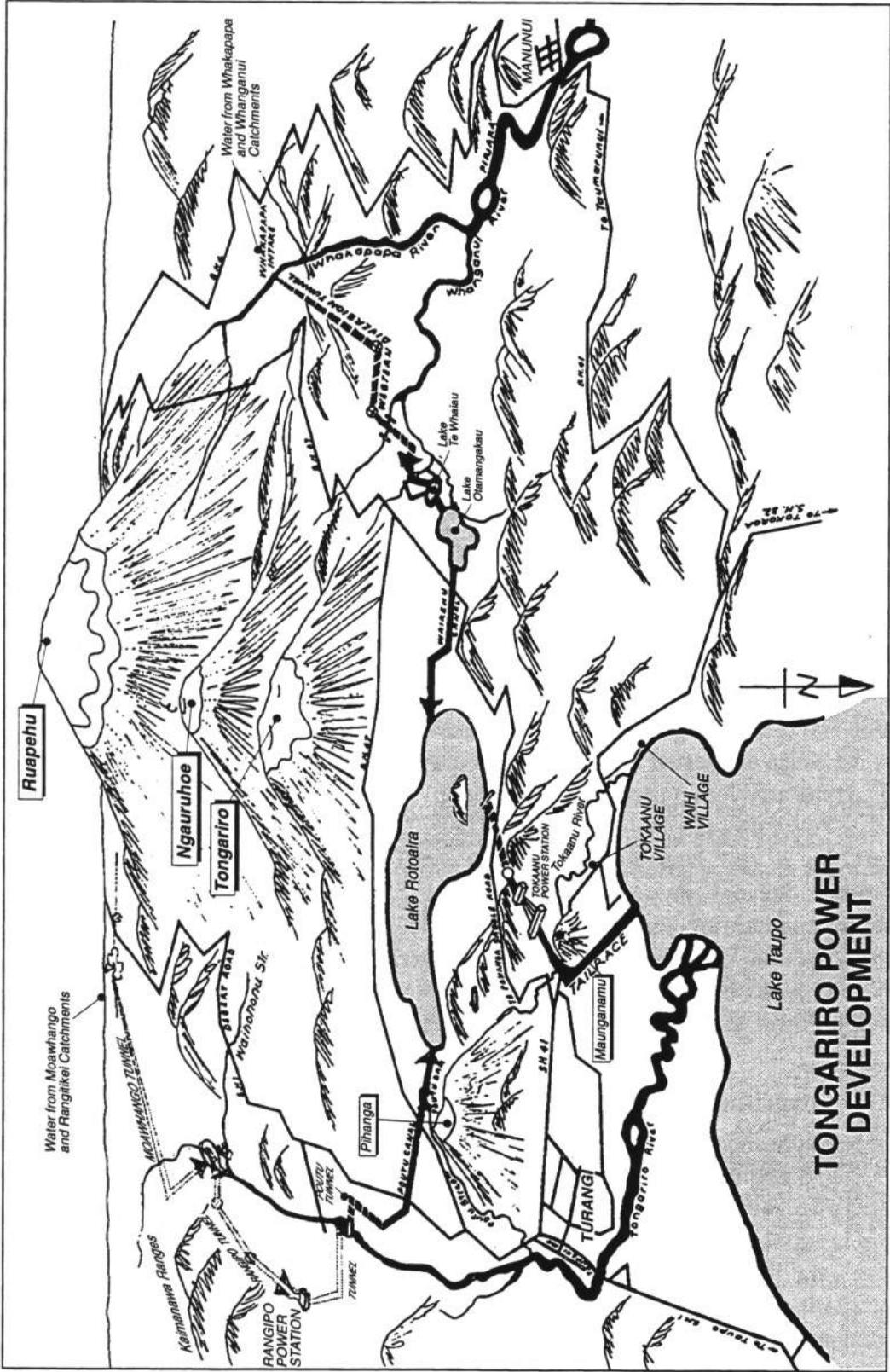


Figure 6



of this large catchment area, and this was compiled in a series of engineering reports. It was not until the early 1950s that the Ministry of Works decided to consider seriously the prospect of harnessing the water resources of this upland area for hydroelectric power generation.<sup>8</sup>

### **2.3.2 Gibb and Partners investigation**

In 1955 the British engineering firm Sir Alexander Gibb and Partners was commissioned by the Ministry of Works to carry out investigations. The preliminary indications were that the collection of water at Lake Rotoaira was economically viable. There were also some protests at this stage about the diverting of water from the upper Whanganui River catchment area. The consultants produced a preliminary report in 1957 setting out a number of options for power development which could proceed in stages. In 1962 Gibb and Partners produced a more detailed report on a proposed stage 1, called the 'western diversion', which carried upper Whanganui River waters through tunnels into the new lakes Otamangakau and Te Whaiau, and thence to Lake Rotoaira. This additional water would allow the generation of an additional 420 gigawatt-hours annually at the several power stations already constructed on the Waikato River. Stage 2 of the TPD envisaged the construction of a power station with three generating units at Tokaanu. To make maximum use of the head of water in Lake Rotoaira, which would be carried by tunnel to penstocks above the power station, the station would be almost at the level of Lake Taupo. The water would be discharged into Lake Taupo through the Tokaanu tailrace. Stage 3 would include the 'eastern diversion' canals and tunnels and the construction of the Rangipo Power Station and the fourth generating unit at Tokaanu.<sup>9</sup> Other possible dams and power station sites were also suggested but not all were constructed.

The timetable for construction suggested in the 'Report of the Planning Committee on Electric Power Development' in 1963 envisaged the completion of stage 1 by April 1970; stage 2 by a year later; and stage 3 by April 1972.<sup>10</sup> This timetable was extremely optimistic. Stage 1 was completed in mid-1971. Two of the Tokaanu Power Station generating units were commissioned in July 1973, the third in September 1973, and the fourth in March 1974. Work began on the eastern diversion in 1968 and the Moawhango Dam was filled in 1979, but the final phase of the project, the commissioning of the Rangipo Power Station, did not happen until 1983.<sup>11</sup>

### **2.3.3 Maori-owned land involved**

Lake Rotoaira and much of the surrounding land, as well as the proposed Tokaanu Power Station and tailrace site, were all Maori-owned. It was necessary, therefore, to meet with Ngati Tuwharetoa. The Secretary for Maori Affairs wrote to the Tuwharetoa Maori Trust Board in July 1955 to advise that the Ministry of Works was developing tentative proposals to use Lake Rotoaira as a reservoir in a hydroelectric power scheme. The secretary also directed his district office in Wanganui to organise a meeting. The trust board agreed to a meeting and suggested that it be held at Hirangi Marae. In September 1955, the Maori Land Court sent out a notice to the owners of Lake Rotoaira and the adjacent lands explaining

the Ministry's proposals and alerting owners to the possible submersion of some lands by the raised lake level (B2(a):3). The notice also suggested that there might be some impact on fishing in the lake. Presumably because there had already been some adverse publicity about the proposal to divert Whanganui River headwaters, the owners were told that 'Non-owners, members of the general public and the Press cannot participate in this meeting' (B2(a):3).

#### **2.3.4 Meeting of Maori owners**

The meeting was held on 11 October 1955 at Hirangi Marae, and was attended by Works and Maori Affairs officials and approximately 100 Maori owners (B2(a):4). The proposed diversions and possible raising of the lake level were explained and then the Ministry of Works officers left the meeting. The assistant district officer of Maori Affairs reported that the 'matter was then discussed very freely by the owners' but made no record of this discussion. However, the owners unanimously resolved that, because the proposals were tentative only, the matter should be deferred for consideration at a later date. The owners were also asked to treat the discussion as confidential, and they agreed to do so (B2(a):5).

#### **2.3.5 Order in Council issued**

Meanwhile, Gibb and Partners proceeded with its investigations. By September 1958, it was getting ready to install a number of 'automatic water-level recorders, cableways and footbridges' on the rivers and streams likely to be included in the scheme. The Commissioner of Works wrote to the general manager of the New Zealand Electricity Department:

Some of the gauging stations are sited on Maori-owned land. We fear there will be considerable delay in the finalising of the contract for the construction of the stations if we endeavour to get the owners' consent beforehand. The owners are usually numerous and with the best of good-will and intention on their part, it is difficult to get consent. Such consent, moreover, must be attested by a Maori Land Court to be valid and can be revoked at pleasure.

We therefore request you to seek an Order in Council under Section 311 of the Public Works Act which will permit us to enter upon any land, Maori-owned or otherwise, without prior consent while also giving us power to carry out any other investigations or to construct any works, including permanent works if necessary at a later stage. (B2(a):6)

On 29 October 1958, an Order in Council was indeed issued which:

authorises the Minister of Electricity to erect, construct, provide, and use such works, appliances, and conveniences as may be necessary in connection with the utilisation of water power from the Wanganui, Tokaanu, Tongariro, Rangitikei and Wangaehu River, and all their tributary lakes, rivers and streams, in the Land Districts of South Auckland, Taranaki and Wellington, for the generation and storage of electrical energy, and with the transmission, use, supply and sale of electrical energy when so generated; also to use electrical energy when so generated in the construction, working, or maintenance of any public work, or for the smelting, reduction, manufacture, or development of ores, metals, or other substances; also to raise or

lower the level of all or any of the said rivers and their tributary lakes, rivers, and streams, and impound or divert the waters thereof; also to construct tunnels under private land, or aqueducts or flumes over the same, erect pylons, towers or poles thereon, and carry wires over any such land, without being bound to acquire the same, and with right of way to and along all such works and erections; and also to supply and sell electrical energy and recover moneys due for the same. (B2(a):8)

This Order in Council was issued under the provisions of section 311 of the Public Works Act 1928. In effect, this empowered the Minister for the time being charged with the administration of the Electricity Act 1945 to enter lands to do all the things set out in the Order in Council.

Crown counsel informed the Tribunal that the Order in Council 'was subsequently relied upon as providing authorisation for entry onto lands for the development of Turangi township' (B1:4). Similarly, Crown consultant David Alexander stated that 'This Proclamation was subsequently relied upon from 1964 onwards to provide the legal mandate for entry on to Ngatiturangitukua's lands for the development of Turangi township' (B2:5).

The meeting at Hirangi Marae on 11 October 1955 had been primarily concerned with the proposed TPD and the impacts on Lake Rotoaira. No discussion of a construction town was recorded. In December 1963, Cabinet approved funding for a further investigation of the power scheme. By February 1964, it had been agreed that the Ministry of Works would carry out the design and construction work for the new township. On 2 March 1964, Cabinet approved the TPD in principle. Later that month, the Minister of Electricity made a public announcement that the project would proceed, 'subject to being satisfied that suitable arrangements can be made to preserve the interests of parties who would be adversely affected by the scheme' (B2(a):32). On 6 April 1964, Cabinet confirmed the approval in principle so that negotiations could proceed 'on a firm basis' and authorised the engagement of Gibb and Partners to undertake the detailed design work for the TPD. There remained, however, the issue of persuading the Maori owners to agree as well.

## **2.4 THE CHOICE OF THE TOWNSHIP SITE**

### **2.4.1 Gibson's assessment of the four alternatives**

In September 1963, the Power Planning Committee had recommended an immediate start on the construction of stage 1 of the TPD but there had been no discussion of the construction town for such a large project. The first indication of a consideration of sites for a township was a report prepared by Warren Gibson, the project engineer at Mangakino (who later became the project engineer for the TPD), which was sent to the Commissioner of Works on 29 November 1963 (B2(a):34-36). It was assumed that a single central township would be established to cater for an estimated population of 5250 by April 1968. The construction of the TPD was planned in stages over a period of at least 10 years. Gibson estimated the cost of the central township at £3 million, but felt that this would be

more economic and convenient for administration than separate accommodation sites. He also proposed that the new township be permanent.

Gibson set out the relative merits of the four possible sites (fig 7):

- (i) Rotoaira – Situated south-east of lake Rotoaira on Maori land. Altitude 1900ft. Annual rainfall 85 inches. The most expensive of sites considered for construction transport costs. No sound basis for permanent township, except some accommodation for fishing and winter sport, plus services to hill country farmers.
- (ii) Rangipo – Situated east of SH1 at National Park road junction on Crown Land (Rangipo Prison Farm). Altitude 1800ft. Annual rainfall 85 inches. The cheapest of the sites for construction transport costs provided that all five stages [of the TPD] are constructed. Land costs probably only re-establishment of Prison Farm elsewhere on Crown land. Basis for permanent township not good; similar to Rotoaira except for services to travellers on SH1.
- (iii) Turangi West – Situated west of SH1 at Turangi on Maori land. Altitude 1200ft. Annual rainfall 55 inches. Next most favourable to Rangipo for transport costs (difference is £50,000–£100,000 over all stages of development). Land is mainly in pasture with some residential and commercial development on the Northern and Eastern fringes. Situation excellent for permanent township, adjacent to present development; at junction of SH1 and Taumarunui SH41, and eventually at junction of SH1 and new West Taupo highway. Basic facilities (eg shops, District High School, Doctors' Surgery) exist making establishment period easier. The easiest of the four sites to develop. Well situated close to the greatest bulk of MOW expenditure in the first three stages.
- (iv) Turangi East – Generally similar to Turangi West but on Crown land (Hautu Prison Farm). Slightly more expensive for transport costs than Turangi West, and would involve a new crossing of the Tongariro River. Not as attractive as Turangi West as a permanent township site. Land costs probably only re-establishment of Hautu Prison Farm elsewhere on Crown land. (B2(a):34–35)

Gibson recommended that approval be given to the Turangi West site for the township and that the purchase of about 1100 acres of land be initiated (B2(a):36).

In briefing notes produced for the Minister of Electricity in early February 1964 giving arguments for obtaining an approval in principle from the Government, there was only brief comment on a township:

An essential preliminary is a Construction Township, and firm proposals can be formulated as soon as 'Approval in Principle' is obtained. Of 4 possible sites 2 are on Maori land and 2 on Prisons land. The most favoured site recommended by the Town and Country Planning Branch of the Ministry of Works, is at Turangi West, on Maori land, and this will require acquisition by Proclamation. (B2(a):19)

This comment, along with remarks on the need to make a start on design work and provide employment for Ministry of Works hydro workers at Mangakino, was listed under the heading 'Reasons for Urgency'. There followed a description of the five stages of the proposed TPD and comment on 'Controversial Aspects of the Scheme'. All these had to do with effects on river flows, flood control, and fishing, and included the need to negotiate



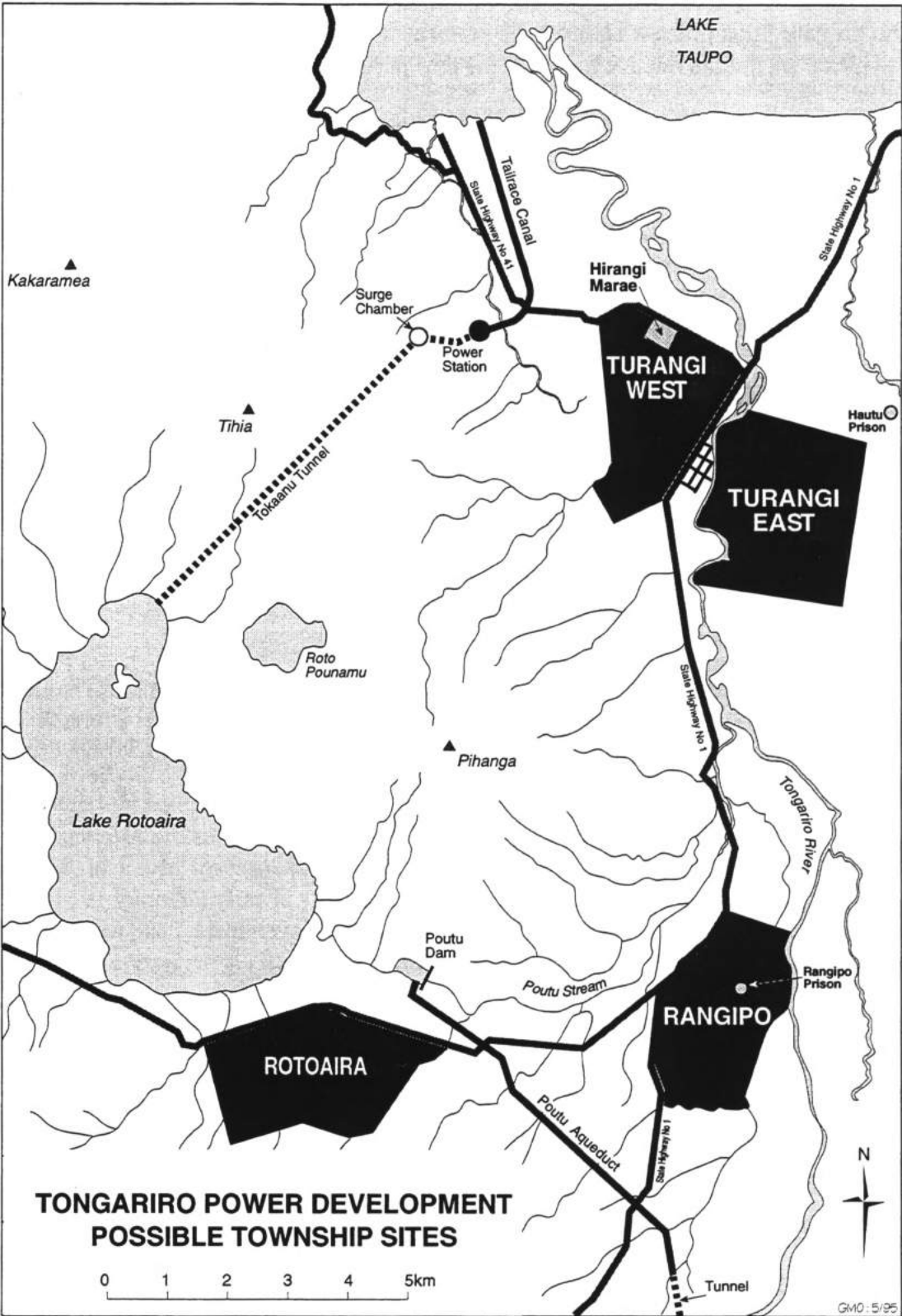


Figure 7

with the Maori owners of Lake Rotoaira. The proposal to establish the township on the preferred site of Turangi West and take it 'by Proclamation' was not included in the list of controversial aspects. The Ministry of Works' choice of the Turangi West site had already been made, but it had not yet been approved by the Government. The Minister of Electricity's public announcement of Cabinet's approval in principle of the TPD, as reported in the media in late March 1964, made no mention of the site for a construction township.

In early February 1964, the Commissioner of Works prepared a briefing paper on the TPD for the Minister of Works. Among the possibly 'controversial' issues reviewed were the effects of introducing a large construction force. The commissioner envisaged that a town constructed to county standards was likely to have a continuing existence, and he estimated that a population of 3400 in 10 years' time was probable. He outlined the need for a high level of services, which would also allow for the easy disposal of houses and sections at the end of the Ministry of Works' tenure in 10 or 12 years' time (B2(a):42).

#### **2.4.2 Permanent population estimated**

Ministry of Works officials in Mangakino suggested that the construction of the Turangi township should begin in April 1964 in order to ensure that sufficient accommodation was available by April 1965. It was estimated that, by 1968, the construction population in Turangi would peak at 5500, be maintained until 1972, and decline by 1976. Because of uncertainties about peak accommodation requirements, however, it was felt that the town should be planned for a possible expansion to 8000 to 10,000 people. The permanent population of the township, which was about 500 in 1964, was predicted to be about 3500 in 1976 (B2(a):45). Plans to press ahead were put back by a telex to Gibson on 1 April 1964 from the Commissioner of Works suggesting that it might be some time before the choice of site could be cleared with the Minister and other Government departments could be briefed. As the commissioner told Gibson, 'You can't do any official negotiation till site settled. Must still be off the record meantime' (B2(a):50).

#### **2.4.3 Possible sites considered**

There was, however, some consideration of possible sites on Crown land in the Rangipo and Hautu Prison Farms, and discussions took place between senior officials in the Ministry of Works and the Department of Justice. A handwritten note, in a Ministry of Works file dated 8 April 1964, reported:

Have discussed siting of works town on prison land with Mr Cutler Deputy Secretary of Prisons.

Either of the proposals shown on [Gibson's] plan would be disruptive Hautu perhaps less so than Rangipo, as Rangipo proposal covers prison buildings but there is considerable more prison land eg South Vee of two highways at Rangipo, land between Rangipo and Hautu which could be utilised without too much disruption. The Prisons people naturally are not keen for any use of this land but in view of the national interest would fit into some compromise site.

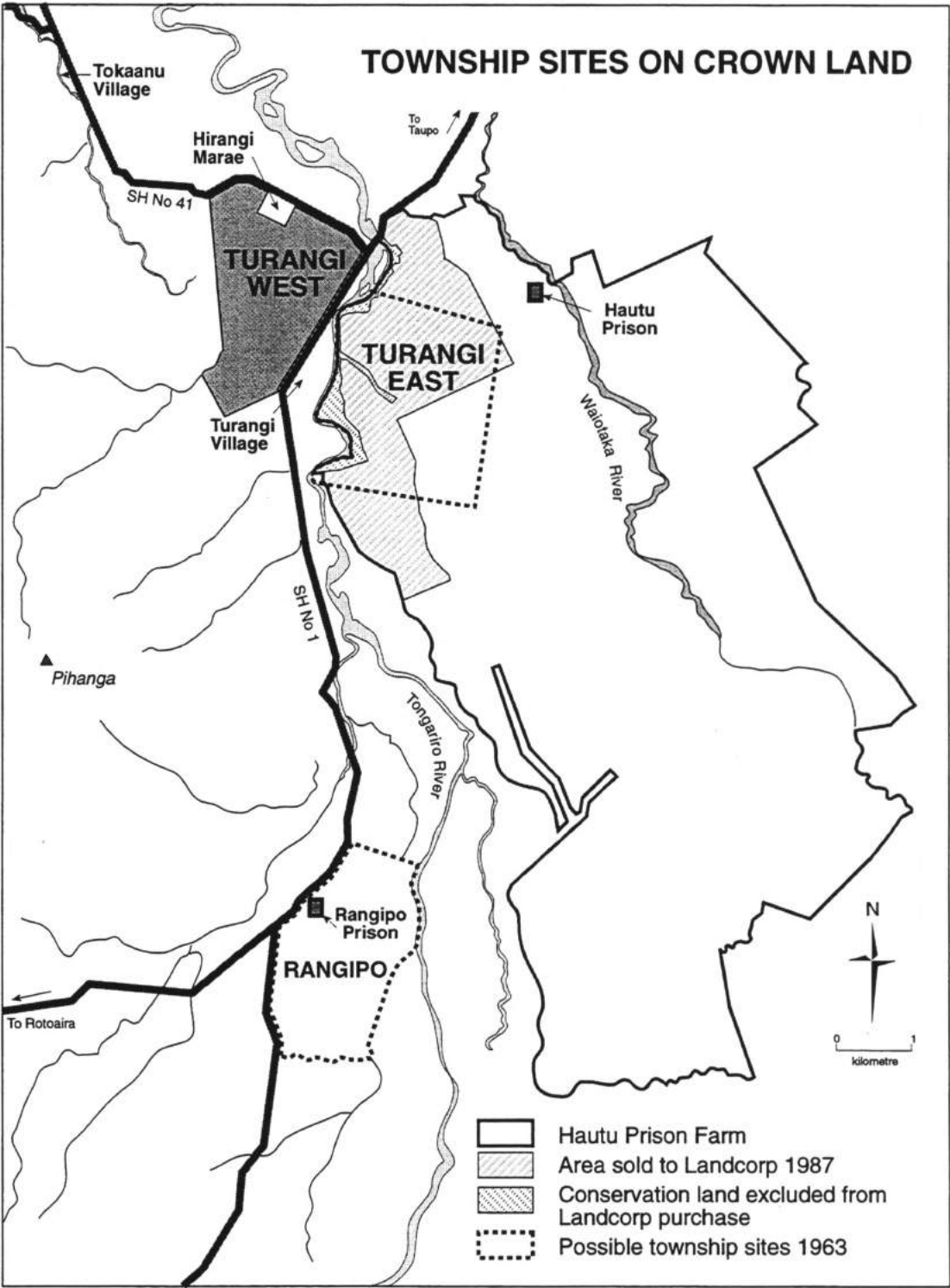


Figure 8

We advised Mr Cutler that our first choice would be Turangi Maori land but we needed to look at alternatives both to assist bargaining with the Maoris and to satisfy government right choice had been made and we felt sure Prisons would be asked to express an opinion. (B2(a):52)

It seems the Taupo County Council lobbied the Government hard at the time to make the township a permanent one, because of what it saw as the benefits that would accrue to the region in terms of population growth, employment opportunities, better roading, and so on.<sup>12</sup>

In April 1964, Gibson spoke to the Taupo Chamber of Commerce and was reported on the front page of the *Taupo Times* as saying that Works engineers would recommend to the Government that the township be built at Turangi if landowners proved cooperative. If their cooperation was not forthcoming, he envisaged a 'temporary establishment' being built at Rangipo (B2(a):57). Accompanying this story was a map showing the TPD proposals and the two town sites marked by a question mark at Rangipo and an exclamation mark at Turangi. Gibson was also recorded as saying that the township would be permanent, with a high degree of amenities, but that it depended upon the support of the local community and private industry. Rangipo's climatic conditions, he said, were such that a permanent township there was undesirable. He alluded to Mangakino when stressing the problems of building on a temporary rather than a permanent basis (B2(a):57).

#### **2.4.4 Turangi East site**

As we have earlier noted, the Ministry of Works, and Gibson in particular, had already decided Turangi West was the best site. The final choice lay between a permanent township at Turangi West or a temporary one at Rangipo. Curiously, the Turangi East site does not seem to have been given the consideration it merited. Physically and climatically, this site, on the east bank of the Tongariro River on Crown land opposite the existing Turangi village, was potentially as good as the chosen Turangi West site. It could even be said that it was a better site, in that there was more room for expansion there than at the Turangi West site, the latter being constrained by the Tongariro River and swamp lands to the north and steep hill slopes to the south. The one factor against Turangi East was the need for a new bridge across the Tongariro River, and this expense may have been significant in the Ministry of Works' assessment of town sites. However, Turangi East had a number of advantages: the site was on land which was already owned by the Crown; it was not occupied by an existing settlement, Maori or Pakeha; and it was part of the Hautu Prison Farm's lands, although the prison buildings were outside the site outlined (fig 8).

The Tribunal sought further information from the Department of Justice on the subsequent use of the lands included in the Turangi East site. We were informed that an area of 647.325 hectares (1598 acres) known as Mangamawhitiwhiti Farm had been sold by Treasury to Landcorp on 1 April 1987 and that 'Justice has never been advised of this property sale nor did it receive any revenue from its sale' (D3). Excluded from the sale was a strip of land along the east bank of the Tongariro River, reserved for conservation purposes. Up to 1987, this land was part of Hautu Prison Farm (also known as Tongariro

Prison Farm). A 1969 Department of Lands and Survey report on land development activity in the Te Kuiti district recorded that this land, then called Poutu, was an area of 530.5 hectares (1311 acres), which had just been laid in grass.<sup>13</sup> By 1969 the area supported over 4000 breeding ewes and 240 breeding cows. In 1980 the block, now known as Mangamawhitiwhiti, had been enlarged to 631 hectares. A Lands and Survey report that year described it as mainly flat land bordering the Tongariro River, with a 'light pumice soil of low natural fertility and very prone to summer drought'.<sup>14</sup>

It seems that the Department of Lands and Survey had taken over the management of this portion of the prison farm but, in 1980, the department had described Mangamawhitiwhiti as being 'taken over in 1967 from the Tongariro Prison Farm at Turangi'. It was not unusual for the department to act as an agent for other Government departments in land development activities. Presumably on the basis of this long-term management role, when the Department of Lands and Survey was restructured in the mid-1980s, Mangamawhitiwhiti was transferred to the new Landcorp. The title issued carries a memorial under section 27B of the State-Owned Enterprises Act 1986.<sup>15</sup> The balance of the Hautu (Tongariro) Prison Farm remains Crown land 'for Justice Purposes'.<sup>16</sup> If it was possible to transfer the management and ownership of this part of the prison farm to Lands and Survey in April 1967, it seems difficult to sustain an argument that the land was required for prison farm purposes and was therefore not available as a township site. Indeed, no such argument was advanced by the Crown before us.

#### **2.4.5 Turangi West site chosen**

By mid-April 1964, a preliminary meeting with representatives of the Tuwharetoa Maori Trust Board had been held, but there had not yet been any formal meeting of the Maori owners of the lands in the Turangi West site. Presumably, they heard about the proposals through the newspaper and through local rumours. Meanwhile, the Ministry of Works had advised its Minister in February 1964 that the most suitable site was Turangi West (B2(a):42), and the Ministry advised the Secretary for Justice on 20 April 1964 that:

Negotiations are not yet complete, but present indications are that the Maoris will sell land at Turangi which on the long-term viewpoint, will be the best site for a country town. If this eventuates there will not be a need to take any Prison lands. (B2(a):55)

John Asher gave a retrospective explanation of the choice of the Turangi West site in his submission to the Tribunal:

The first site considered had been halfway between Rangipo and National Park on State Highway 47A. The New Zealand Workers Union rejected that, because it was cold, bleak and isolated, and they had lived for too long in temporary conditions such as Mangakino and other camps. The next site was a triangle of land owned by the Justice Department at Rangipo . . . This too was isolated and exposed to wind, and not a congenial place to live. It was also rejected by the New Zealand Workers Union. The third site was across the Tongariro River from the old part of Turangi at Hautu. Hautu Prison is located in this area, and the land was

owned by the Justice Department. The Justice Department opposed the location of the town near the Prison, because they thought it would cause mayhem among their inmates . . .

Turangi was the last alternative available, so the Ministry of Works were determined to locate the town there. They sugared the pill by saying that there would be a permanent town with all its amenities, and the advantages to the local people would far outweigh the disadvantages. But those advantages were only material advantages. They didn't appreciate the extent of the emotional and spiritual cost to people. No one likes giving up their land, their birthright, for a pittance. (A12(1):3)

A memorandum for Cabinet signed by the Minister of Works, Percy Allen, which was the basis for the 21 September 1964 Cabinet decision to proceed, stressed that the Turangi West site was the most attractive in terms of both climate and maintaining prison security (B2(a):94).

In the next chapter, we will consider the meetings between Crown officials and Ngati Turangitukua. At this point, it can be concluded that the officials went to those meetings assuming that Maori agreement to the Ministry of Works' choice of Turangi West as the site for a permanent township (which had the support of the Taupo County Council) was the objective. As Gibson had stated in November 1963:

Construction of the township at the Turangi West site is favoured, largely because it will be possible to build the nucleus of a permanent township from the outset. The site is well situated in relation to main roads passing through the area, and is adjacent to recent commercial and residential development. . . .

All of the land is easily graded and at present in pasture or light scrub. Falls are adequate for drainage. A suitable location for a reservoir site on Mt Pihanga is available, probable water source being the Tongariro River, already passed by the Health Department as suitable with simple chlorination. Existing radiata pine shelter belts would be retained as far as possible. Existing commercial and residential development on the Northern and Eastern fringes of the area would, where of suitable standard, be either integrated or re-sited within the new development. (B2(a):35)

The area recommended for Crown acquisition in Turangi West was about 1100 acres. The Tokaanu village had also been considered, but, as Gibson explained later, the extent of existing private development there, the inadequate area available without major and expensive reclamation, and the fact that it was subject to flooding and that plans for the location of the tailrace were not yet final were all reasons for eliminating this site (B2(a):38).

Turangi West, Gibson's choice in 1963, became the Ministry's preferred site.

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## CHAPTER 3

# MEETINGS WITH NGATI TURANGITUKUA IN 1964

### 3.1 BACKGROUND

The Minister of Electricity made a public announcement on 24 March 1964 that Cabinet had approved in principle the construction of the TPD (B2(a):32). This was confirmed at the 6 April Cabinet meeting, where Ministers agreed in principle:

to the construction of the Tongariro Power Development so that preliminary discussions, negotiations and further studies may proceed on a firm basis, on the understanding that further approval will be sought before commencement of construction. (B2(a):33)

At this meeting, the Ministry of Works was authorised to commission Sir Alexander Gibb and Partners to do the detailed design work for the first three of the proposed power scheme's five stages. Some preliminary planning for the required construction town had been done, and Turangi West had already been chosen as the preferred site. No start had yet been made on the negotiations for the land required for either the township or the hydroelectric power scheme.

Up to this time, it seems there had been an informal relationship between Jack Asher, the secretary of the Tuwharetoa Maori Trust Board, and engineers with Gibb and Partners and the Ministry of Works. On 24 March 1964, Asher wrote to the Minister of Electricity in response to a newspaper report on the TPD approval, inviting the Minister, Gibson, and other officials 'to visit the Tuwharetoa people . . . so there cannot be any possible misunderstandings that our people most substantially support this project' (B2(a):51). In this letter, Asher outlined his dealings with the engineers:

At the inception meeting convened on Oct 11th 1955 at Tokaanu, between the Tuwharetoa people and the Ministry of Works, then appointing me as their chairman and liaison representative relating to this project, and in particular then dealing with Lake Rotoaira, the meeting did not hesitate to adopt an unanimous decision to cooperate fully with the Crown in an endeavour to implement this most important hydro proposal.

Following on the Tuwharetoa decision, the English engineers in Sir Alexander Gibb and Partners, whilst preparing the initial investigation carried out, in every incident, particularly, where the Maori land titles became involved, first sought through me our permission to enter upon our lands.



Now that you have made an open press statement, I want on behalf of that section of the Tuwharetoa people, whose lands could be affected, to inform you of our continued support. (B2(a):51)

The letter was written under the trust board's letterhead, but in it Asher described himself as:

past Chairman of the Taupo County Council, and the present Riding Member of the Tongariro riding, as Secretary also of both the Lake Rotoaira Trust and the Tuwharetoa Maori Trust Board. (B2(a):51)

In these various roles, Asher would have been well aware of the Ministry of Works' preference for Turangi West as the site for the construction town, the Taupo County Council's support for freehold tenure in planning for a permanent township, and the desire to see this sort of development in his riding. He was probably persuaded of the long-term benefits of both the township and the hydro development for Ngati Tuwharetoa generally. Jack Atirau Asher was to play a pivotal role in the 1964 meetings between Crown officials and the Tuwharetoa people.

### **3.2 15 APRIL 1964 MEETING**

On 15 April 1964, a meeting attended by J A Asher, J T Asher, T A Grace, L Grace, and H Te Heuheu of Ngati Tuwharetoa, as well as Maori Affairs, Works, and Electricity Department officials, was held in the trust board's offices in Tokaanu. Much of the meeting was taken up with explanations of the proposed power scheme and the land required and the need for further consultation with other Government departments, local authorities, and bodies such as the Waikato Valley Authority. The file note prepared by the Maori Affairs district officer summed up the issues relating to land acquisition and the timing of this process in relation to planning and construction work:

The procedures were talked about and I was convinced that the Ministry of Works personnel were under no misapprehensions as to the limits of what could be done through the Department of Maori Affairs. In fact, it was accepted by them that the Maori Land Court would give all the information necessary to enable the Ministry of Works to serve the appropriate notices on the appropriate people; that separate negotiations would have to be undertaken, in respect of any land leased, with the lessee; that the Maori Trustee would not have any interest whatsoever in the proceedings until after a proclamation had been issued; and finally, that the negotiations for compensation would have to be on a title for title basis. There could be no question of paying a lump sum to the Maori Trustee for the value of the land taken, and the Maori Trustee later distributing.

The original ideas of the Ministry of Works have been cut back quite considerably and the amount of land now sought is about 600 acres of freehold, lying between the Paper Road [Maori roadway] and the apex of a triangle formed by Turangi, limited on the road to Tokaanu

by the present Maori Pa [Hirangi Marae]. The Ministry of Works also contemplate leasing about 200 acres on the western side of the Paper Road for a heavy industrial area.

The point that worries the Ministry of Works engineers is that there may be some objection to the taking of the land. One single objection could throw the whole thing out of gear and they regard time as being of the essence. If there is any delay requiring particular negotiation with any individual, these delays could well out-weigh any other benefits that may accrue from the use of this particular area for the permanent town site.

What the Ministry of Works is seeking is an unequivocal undertaking by somebody that there will be no objections once the notice of intention to take is advertised. They were informed that this was a matter for the Maori owners. It is to this end that the special meeting is to be arranged by Mr J A Asher. (B2(a):53-54)

At this stage, the Ministry of Works wanted the Maori land in the Turangi West site immediately. Its construction timetable, however, would not allow time to hear objections. The Ministry intended to use the Public Works Act 1928 to take the land, estimated to be about 600 to 800 acres freehold for the town and 100 to 200 acres leasehold for the industrial area to the south of the proposed new SH41. Assurances were also given at this meeting about alternative housing for those who might be affected, the provision of schools, commercial development in a new 'town centre', the exclusion of Hirangi Marae from land to be requisitioned, and the intention that planning would proceed for a permanent township, which would 'revert to normal local body administration' in about five years (A7:205-207).

### **3.3 7 MAY 1964 MEETING WITH TUWHARETOA MAORI TRUST BOARD REPRESENTATIVES**

On 7 May 1964, another meeting was held in the trust board's Tokaanu offices. In attendance were J A Asher, H Te Heuheu, and P Hura representing the trust board, officials from the Ministry of Works and the Electricity, Maori Affairs, and Internal Affairs Departments, and members of the Taupo County Council. Warren Gibson, for the Ministry of Works, outlined the land requirements for the township and promised that a plan would be available in time for the proposed meeting of owners on 24 May. The Taupo County chairman, H Besley, spoke in favour of a permanent town, with houses meeting county standards, and Works officials suggested that private enterprise would need to be encouraged. The Internal Affairs officials expressed support. There was some discussion of roads and access, the water supply and sewerage, and the location of the commercial centre near SH1. The minutes record that Jack Asher said that most landowners were prepared to negotiate with the department but that some could prove difficult. He also pointed out that a question of values would be stressed at the meeting on 24 May (A7:189-191). No decisions were made at this meeting, which seems to have been intended as a forum for the various interest groups to meet and exchange ideas.

On 8 May 1964, a letter signed jointly by Jack Asher and Warren Gibson was sent out on Tuwharetoa Maori Trust Board letterhead to 'Maori Land Owners for the Waipapa, Ohuanga North, Tokaanu B and Tokaanu Township Blocks', inviting them to 'the inception meeting . . . to state fully the proposals relating to this major and important project'. The letter indicated that the first stage of the power project included the construction of a tunnel to carry water from Lake Rotoaira to the Tokaanu Power Station and the need for a freehold area in the Tokaanu village for up to 50 residences for staff. The proposals for the Turangi township were:

The preparation of the *permanent* town to accommodate some 8,000 workers and other residents at Turangi for an area of some 800 acres freeholding. The proposed town shall contain some 1,400 *permanent* residences, apart from a central shopping or commercial area. In addition three primary schools and a college are required. A hospital will also be provided. There will be a further area of some 2/300 acres of the Waipapa and Ohuanga North area located on the South West side of the Hangareko [sic] Stream, as a leasehold area for temporary erection of work-shops etc during the construction stages, after which the area shall revert to the owners. Possibly part of this area will be declared a *permanent* industrial area for future erection of factories under the Town and County planning of the local County. [Emphasis added.] (B2(a):61)

### **3.4 24 MAY 1964 MEETING OF MAORI LANDOWNERS WITH THE CROWN**

The meeting on 24 May 1964 between Maori landowners and the Crown was again held at the trust board's premises in Tokaanu and was attended by J A Asher, H Te Heuheu, P Hura, A Grace Snr, 'a large representation of Maori Land Owners', and two legal advisers, R E Tripe of Wellington and A G Horsley of Wanganui. Maori Affairs and Ministry of Works representatives were also present. The meeting was chaired by Asher, who, in his opening comments, 'pledged the Maori owners wish to cooperate', and noted that the meeting was restricted to Maori landowners only (A7:177-184). Most of the first part of the meeting was taken up with explanatory descriptions of the TPD by Warren Gibson and proposals for the Turangi township. Questions covered the effects on Lake Rotoaira, whether eels could get into Lake Taupo through the tunnel, flood protection on the Tongariro River, water levels in Lake Taupo, road access, impacts on fishing, and employment and housing issues. John Bennion, for the Ministry of Works, then addressed the meeting and talked about the proposed Turangi township:

He reiterated Mr Gibson's statement that the village was expected to cost about £4 million and made the fact that the Crown must ensure a permanent return for this expenditure, and to achieve this a village must be built on freehold land.

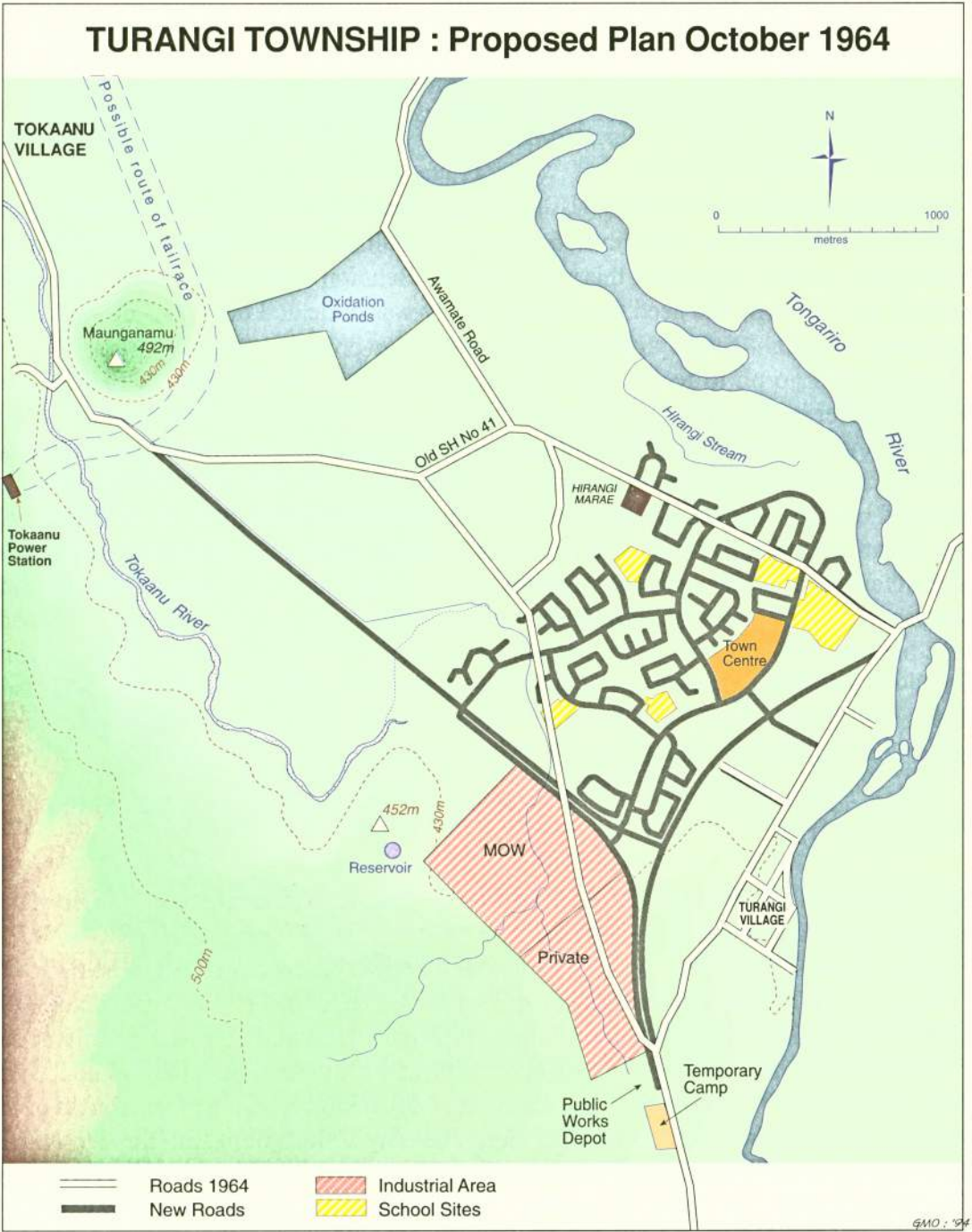


Figure 9

The Government would not consider building to the standard envisaged on leasehold land. It was hoped that the village would become a normal county town under Taupo County Council administration within 3 or 4 years. Therefore standards of construction and buildings must be to local by-law standards.

Mr Bennion then described with the use of an illustrated map, which he emphasised at this stage, was not to be taken as final, the proposed layout of the town area giving details of roading proposed standards of development etc. All essential services as for a normal town could be expected and this would be essential as it was hoped to attract private capital to the town. (A7:180)

The 'map' shown to the meeting was based on a draft plan completed by 1 April 1964, although this had already been revised. Crown consultant David Alexander advised the Tribunal that he had 'not located this plan' (B2:14). Bennion outlined the various facilities proposed for the town. The need for a water supply was indicated but no specific site was identified, although the area proposed for the oxidation ponds was pointed out.

The minutes go on to record that Dick Lynch, the Ministry of Works' district land purchase officer in Wanganui, indicated on the plan the probable areas required for both the township and the power development, stressing that no more land would be taken than necessary. He explained that compensation could not be paid until the full effects of the works had been assessed at a later stage. He also reiterated the desirability of the Turangi West site and the need for the land to be freehold before work could begin. Lynch stressed that the Government wished to cooperate and cited the presence of officials at the meeting as evidence of its good faith. Some residents, he added:

would be involved in disturbance but their interest would be considered and they would be fairly compensated. He could not say at present specifically how much compensation would be paid and advised on the process that the law required him to take in acquiring the land. Firstly the title to the land would be required by proclamation and then the amount of compensation would be settled by negotiation between valuers appointed by the Crown and Owners. (A7:182)

If agreement could not be reached, the Land Valuation Court would arbitrate. He also stated that the Crown would engage private valuers.

Lynch explained that houses interfering with the town plan would have to be removed or relocated, and indicated that exchanges of sections for nearby Crown lands were possible. The Ministry of Works' intention, he explained, 'was that the owner should be left as well off as he was previously. The Department will avoid as far as possible disturbing people unnecessarily.' The minutes record that an early decision on the preparedness of the owners to sell or not was required, and if there was 'any serious objection the Crown will have to select one of the alternative town sites which are being considered' (A7:182).

There was further discussion of housing issues, compensation provisions, the new SH41, and the land around Hirangi Marae. What the officials sought at this stage was some sort of agreement in principle as to whether the Turangi township should be built on Ngati Turangitukua land. At the end of the meeting, it was unanimously resolved that 'this meeting approves the proposal of the Crown for [the] establishment of a town at Turangi

along the lines outlined to the meeting, and accepts the assurance given that the owners will be reasonably and fairly compensated' (A7:184).

The question of the extent of land to be reserved at Hirangi Marae was held over. The owners also appointed a committee to 'confer without delay with the Ministry of Works on any matters of tribal importance'. The committee comprised Pat Hura, Wairemana Tamaira, Jack Asher, Fearon Grace, Walter Ngahana, Lang Grace, George Rawhiti, John Grace, Arthur Grace Snr, Pura Turanga, Mana Hallett, M Potaka, and Bessie Jorgensen. They met together after the main meeting on 24 May with Lynch and Taylor from the Ministry of Works and the two solicitors, Tripe and Horsley. The committee discussed the Hirangi Marae lands and decided to refer this issue to Ngati Turangitukua, arranging a meeting for the following Sunday, 31 May.

### **3.5 31 MAY 1964 MEETING OF NGATI TURANGITUKUA COMMITTEE WITH OWNERS**

The tribal committee met at Hirangi Marae on 31 May, and a large number of owners also attended. No Crown officials were present, but agreement was reached among Ngati Turangitukua on a number of issues, which were summarised in a letter written on 14 August 1964 to the Minister of Works by Arthur Grace Snr. It was agreed that 20 acres should be retained as the Hirangi Marae reserve and the other 30 acres of Waipapa 1A should be made available for the township. The committee was anxious to preserve housing sites for Ngati Turangitukua by excluding the land between Hirangi Road (the old SH41) and the Tongariro River and the land on the western side of the old SH1 (now Taupahi Road) from the area to be developed for the township. The committee also wanted to explore the exchange of shares in the Turangi site for land elsewhere, and proposed that owners be given an option to repurchase up to two acres at cost price in the town centre, 'to create an asset for their heirs who through this particular sale will have lost this valuable heritage which otherwise would ultimately become theirs' (A7:144–146).

Another meeting of owners was set for 14 June but it did not eventuate. The reason for Grace's letter of 14 August was to request a meeting so that these issues could be discussed and clarified before the Crown took any land. 'This does not mean however,' he explained, 'that we are opposed to any works on the overall scheme in its initial stages being started' (A7:145). Ngati Turangitukua owners simply wanted to clarify which areas would be taken for the new town and the procedures to be established. The Minister replied by telegram that 'Government officials [were] only too happy to disclose to owners the plans being prepared of new town at Turangi' and that a meeting would be arranged at an early date (A7:141). Although Lynch had talked with Jack Asher and other individuals, there had been no other open forum where locals could discuss matters with Ministry of Works staff. There does not appear to have been any consultation with the owners' committee that was set up on 24 May.

Meanwhile, Ministry of Works officials were preparing submissions for the Minister of Works to take to Cabinet to obtain final approval for the start of construction. The proposals put to the Minister of Works on 25 August 1964 were:

1. It is proposed to purchase about 900 acres and lease some 200 acres from Tuwharetoa tribal lands situated to the west of Highway 1 and South of Highway 41 at Turangi on which to build a construction town estimated to reach a population of 8000. Owing to multiple ownership it will be necessary to take the land and settle compensation either by negotiation or assessment by the Land Valuation Court.
2. As part of the scheme it is proposed to relocate Highway 1 to the west of its present position and relocate Highway 41 with its junction nearly one mile south of its present position near Bridge Lodge. The old section of highway will be cut off.
3. It is proposed that the new town be built with water supply, streets and sewage disposal to permanent standards, and with its buildings to County By-law requirements, so that after construction is completed houses and buildings may be sold in situ to form a permanent town under control of the Taupo County Council.
4. It is proposed the town be subject to special legislation introduced by the Internal Affairs Department to enable control to pass gradually from the Ministry of Works to the Taupo County Council over a period of years. This will be effected and arranged through a joint Liaison Committee comprising representatives of the Taupo County Council and Ministry of Works.
5. The Taupo County Council has prepared a district scheme plan covering this area. It is proposed that this be issued and immediate steps taken to amend it to include the Government's present proposal, all according to statutory procedures of the Town and Country Planning Act. (B2(a):93-94)

Officials noted that the area required was Maori land but that the 'Tuwharetoa tribe' had passed a resolution at a special meeting on 24 May 1964 which approved the Crown proposal for the Turangi township. They added that 'Some variations to meet detail requirements may be necessary but it is considered all requests of the Maori owners can be met' (B2(a):95).

On 26 August 1964, the Minister of Works approved the proposals and the following recommendations:

1. The proposed site at Turangi be accepted for a construction town in connection with the Tongariro Power Development.
2. The Maori land on which the town is to be sited be taken for that purpose.
3. The town be constructed to permanent standards with a view to continuing existence as a permanent town.
4. Proposals for relocations of Highways 1 and 41 be referred to National Roads Board for concurrence.
5. Special legislation be drawn up to cover the gradual change of control to the Taupo County Council.
6. The procedures of the Town and Country Planning Act be followed in adopting the new township into the Taupo County District Plan. (B2(a):97)



### **3.6 20 SEPTEMBER 1964 MEETING OF NGATI TURANGITUKUA OWNERS WITH CROWN**

On 20 September 1964, a meeting of Maori owners with the Crown was held to advise on the progress of the TPD as well as to explain the detailed town plan for the Turangi township and to outline land requirements. The meeting began in the morning at the trust board's offices in Tokaanu, and adjourned to Hirangi Marae in the afternoon. The meeting was again chaired by Jack Asher and was attended by Hepi Te Heuheu, Pat Hura, Arthur Grace Snr, 'and a large representation of Maori Land Owners', with their legal advisers, Tripe and Horsley. Officials of the Ministry of Works and Department of Maori Affairs were present, as well as one representative of the Taupo County Council (A7:73-92).

The first part of the meeting, as recorded in the minutes, was taken up with Warren Gibson's review of the progress in the planning for the TPD and with the answering of questions about Rotoaira lake levels; new roads and hydro lakes; quarries; and the impact on rivers, especially the Tongariro. He explained that it was the Ministry of Works' wish 'to arrange this programme as far as humanly possible so that there would be the minimum of upset to those affected'. He promised that he and Lynch would meet all owners individually to discuss details, and added that the issue of excluding 'sacred grounds' from town development would be looked into (A7:73).

During Gibson's review, Jack Asher reminded him of the 'standing committee' of owners elected at the 24 May meeting, 'which can be approached from time to time. They would like to be consulted' (A7:74). The Tribunal notes that, apart from the committee meeting held immediately after the 24 May 1964 meeting, Fearon Grace stated on 3 March 1968 that he had never been called on to attend any further meetings whatsoever (B3(a):18).

After answering a number of questions about the power scheme, Gibson turned to the plan for the Turangi township. He pointed out the relocation of SH1 and SH41, which he described as 'the main framework to the main development plan, and everything else hangs on it' (A7:74). He also pointed out the commercial area or town centre, school sites, the industrial area, the source of water, the need for a 'water supply reserve' (without specifically mentioning any area), and the location of the oxidation ponds. As noted earlier, David Alexander informed the Tribunal that he had not been able to locate the actual plans presented to this or the 24 May meeting. The earliest plan held on the Works files consulted was dated October 1964 (B4(a):15), which has been redrawn in figure 9.

In the afternoon, the meeting reconvened at Hirangi Marae with further discussion of the proposed works around Lake Rotoaira; the two new hydro lakes; and the impact on Otukou Pa of working a quarry nearby. Gibson confirmed that the Ministry proposed to lease land for an industrial area on a temporary, 10-year basis only (which would be developed to the standard required by the county), but added that there would need to be provision for further development by private industry (A7:80). Turangi would have a cheap water supply, the owners were told, and this would help keep rates low and encourage people to come to the area. It was also noted that the spring chosen for the water supply would have to be further down the Tokaanu River than first envisaged because of an Internal Affairs trout hatchery. A reserve would surround the springs to protect them from contamination, and



would be 'fenced to make it big and small boy-proof' (A7:81). There was no comment on how large this 'reserve' would be, or that it might also be taken.

Discussion then moved to the sewage disposal system, and the significance of locating the oxidation ponds (described as 'one of the biggest advances' in sewage treatment) on higher ground so that natural drainage would carry effluent out to pasture land without pumping. The area required would be 58 acres, and while there would be disruption to farming in that area, the treatment system proposed would be low cost, 'meaning that rates will be very very low' (A7:81). It would also be necessary to maintain an undefined buffer zone between the ponds and the residential area.

Questions were also asked about the location of the Tokaanu Power Station and tailrace. It was explained that the tailrace would be 'an open wide canal and will be considerably lower than the land'. It would be 100 yards wide, and an embankment would be provided in conjunction with a flood relief valve. Gibson told the owners that 'All this has to be finally settled. Everything will be dovetailed in to ensure that the fishing remains good and that property owners are not flooded' (A7:81-82).

These issues belonged to a later stage, and detailed design work had not yet been done. As it turned out, the drainage channel proposed by Sir Alexander Gibb and Partners was not constructed and the route of the tailrace was shifted westward. At this stage, the owners had to accept Gibson's assurances that everything would be worked out satisfactorily.

Much of the remaining discussion ranged over the location of specific facilities in the township. There was general concern about the fate of existing houses. Gibson explained that houses affected by the re-siting of SH41 could be moved to another site but that it all depended on owners' preferences: 'They will have the opportunity of doing what they wish,' he said (A7:82-83). He added that SH41 was being shifted to stop highway traffic passing through what was to become a residential area. He continued:

When the highway is wiped out the Crown will own the land. MOW proposes to buy all the land. If owners wanted they could then make application to buy it back. All this is subject to negotiation. (A7:83)

This could not have been very comforting to those whose houses were along SH41 and SH1 and within the Turangi township plan. This last comment from Gibson suggests that the Ministry of Works' strategy was to develop a model township plan in the office in Wellington, ignoring existing dwellings on the site. The plan had curving streets in the residential areas, separated main highway traffic from suburban motorists and pedestrians, concentrated the commercial activities in a planned town centre, and scattered schools and recreation reserves throughout the residential streets. No consideration at all appears to have been given to the location of existing houses, to family relationships, or to the viability of the existing Ngati Turangitukua community related to Hirangi Marae. In response to Gibson's estimate of 1000 to 1200 acres being taken for the township, Fearon Grace commented that it was a 'big space for a small area' and raised a concern about those owners who did not wish to leave their homes. Gibson replied that:

the proposition as discussed at the previous meeting was that some of these folk would have to go, but it may be that the Department will just have to move houses a bit forward or back on the present sections or adjust streets to suit, but some will just have to go.

Mr Gibson went on to say that the Department intended to provide alternative accommodation for all existing residents or alternatively to buy them out. The position of present house[s] affects final completion of the plan.

Fearon Grace stated that the Owners have not made up their minds whether they will give this area for a town site.

Mr Gibson replied that they did in fact agree at the last meeting. On that basis, in good faith, the Crown has gone ahead. Considerable discussions with other people about the preference for the Turangi town site had taken place as a result of the last meeting when the Tuwharetoa people agreed to township being located at Turangi. (A7:84)

The resolution of the 24 May 1964 meeting had been an agreement in principle to the Turangi township proposal. Careful reading of the minutes suggests that the local people were given a reasonable expectation that they would be consulted as planning progressed.

There was also a good deal of discussion at the 20 September 1964 meeting about the procedures for taking land and the payment of compensation. These undertakings were to some extent governed by existing legislation in the form of the Public Works Act 1928 and the Turangi Township Act, which came into effect in December 1964. These issues are considered in more detail in chapters 13 and 14. At the meeting it was made clear that compensation would be payable; that the Maori Trustee and the two solicitors present would be involved; that negotiations would be conducted with individual owners of separate titles; and that the Maori Trustee would negotiate on blocks in multiple ownership. The Department of Maori Affairs would also be involved in the repayment of debts and the payment of compensation to lessees in respect of lands in the Tokaanu development scheme.

With respect to scheme lands, Wally Ngahana stated that the lands had for so long been treated together that 'compensation should be on a blanket basis, not dealing with individual blocks' (A7:85). The district officer of the Department of Maori Affairs, J E Cater, responded that compensation 'cannot be treated as a blanket' (A7:86). He then explained the statutory role of the Maori Trustee in negotiating compensation for land held by more than one owner; the requirements for preserving unimproved values in land under Part XXIV of the Maori Affairs Act 1953; the need to get separate independent valuations for each block; the role of the two solicitors, Tripe and Horsley; and the fact that no compensation would be paid until after a proclamation taking the land for the Crown had been issued. When considered against the many other issues which the local people were confronted with at this meeting, it is doubtful that the complexity of the taking and compensation procedures were fully understood.

Another issue raised at this meeting was the protection of wahi tapu. The location of burials in the industrial area and 'reservoir ridge' were specifically mentioned. There were also the issues of how much of the Hirangi Marae land was to be retained, where the township cemetery and rubbish tip were to be located, and whether the owners could be

allocated commercial sites in the town centre for a 'trading post'. Gibson's response to the latter request was that, while public advertisement for tenders would be sought to allocate commercial sites, 'on the trading post, Ministry of Works have given the assurance that the Tuwharetoa people will be given preferential treatment' (A7:91).

The meeting concluded with a statement from Gibson:

In the development of this town Ministry of Works don't want to upset anyone. Very shortly they will get approval from the Government to build the town and will have to build it in a big hurry. The development of the five stages [of the TPD] costing £70 million is going to be dependent on the town being built. The Department will be in one very big hurry. When things have to be done in a hurry sometimes mistakes are made and sometimes people are upset. His Department does not want to upset anyone. If there is anything that the Owners think are [sic] not in their best interests they must tell his officers as soon as possible. If Owners can give the Department their assistance the misunderstandings will be very few. He would like to have very happy relations. (A7:92)

John Gardenier, a senior Ministry of Works engineer with the TPD, provided a retrospective view of the meetings with Ngati Tuwharetoa, which illustrates the 'official' version of the Ministry's dealings with local Maori:

The local Tuwharetoa people were playing a prominent part in the development of their tribal lands, in association with European settlers, whose respect they had earned from earliest acquaintance. Tuwharetoa elders, concerned about their young people migrating to the cities, were in favour of the TPD, which would provide local employment opportunities. Once again they proved their stature in the dignified manner in which meetings on the marae were conducted. Negotiators will not lightly forget how proposals to make land available for the TPD were democratically deliberated and constructively agreed upon.<sup>1</sup>

In 1964 the Ministry of Works seems to have been determined that the Turangi township and the TPD would go ahead regardless. No formal resolution was passed at the 20 September meeting, yet, on the following day, Monday 21 September 1964, Cabinet approved the construction of the first three stages of the TPD; the acquisition of the freehold of about 900 acres; and the lease of some 200 acres of Maori land to construct the Turangi township, 'with a view to its continuing existence as a permanent town'. It was also agreed by Cabinet that special legislation should be drawn up for the transfer of the township to the Taupo County Council.

## References

1. B Cooper, *Te Mata o Taupounui a Tia: The Head of the Lake*, Turangi District Historical Society, 1982, p 30

## CHAPTER 4

# UNDERTAKINGS AND ASSURANCES

### 4.1 DEFINITIONS OF UNDERTAKINGS AND ASSURANCES

The claimants stated that the Crown had failed to honour the undertakings made to them by the Ministry of Works, and that these undertakings amounted to terms and conditions upon which they as owners agreed to sell part of their land at Turangi. They pointed to a number of key representations or undertakings made by Crown officials on which they relied when, at the meeting of 24 May 1964, they approved the Crown proposal for the establishment of a town at Turangi 'along the lines outlined to the meeting'(A7:184).

Crown counsel in opening noted that, at the first meeting with owners on 24 May 1964, certain assurances or 'undertakings' were given by the Crown (B1:6). Later in their submission, Crown counsel stated that:

The Crown gave assurances to Maori owners and these were relied upon by Maori in reaching their decision to agree to their land being acquired. Similarly, the Crown relied on the consent to such acquisition expressed by Maori. (B1:19)

In her closing submissions, Crown counsel, after referring to her discussion of Crown 'undertakings' in her opening address, reiterated that the Crown did not give formal undertakings as such. She continued:

Rather they were statements made by persons representing the Crown at initial meetings with Maori when information was being provided to Maori on what was proposed. Some statements changed over time as the proposals for Turangi village changed. The statements were in the nature of information which Maori would presumably rely on, although we note the preliminary nature of some meetings and in turn the Crown relied on statements made by Maori. The context was one of a joint exchange of information and opinions. (C3:35)

Crown counsel then proceeded to discuss various undertakings she had identified in her opening address.

Claimant counsel was critical of the foregoing submission by the Crown. Ms Wainwright submitted that if no statements were made by Crown officials to the Ngati Turangitukua owners upon which they could rely then they could not have known fully what they could rely on. Either the statements were provisional and could not be relied on, or they were full and intended to be relied on. We agree that the Crown cannot have it both ways.

Crown counsel did not inform us of the distinction between an 'undertaking' and a formal undertaking. Nor did she distinguish between 'undertakings' and the assurances which she said in her opening address were relied upon by Ngati Turangitukua.

'Assurance' is defined in the *Concise Oxford Dictionary* as a 'formal guarantee; positive guarantee that [a] thing is true', while 'undertaking' is defined as a 'pledge, promise'. In the context of this claim, we consider that the terms 'undertaking' and 'assurance' are sufficiently close as to be interchangeable, and that their normal meanings are well understood, as defined above.

## **4.2 INTRODUCTION TO REVIEW OF THE UNDERTAKINGS**

We now proceed to consider the various undertakings upon which the claimants say the Maori owners relied in agreeing to the project proceeding and upon which they rely in making their claim to the Tribunal. They are 20 in number. We will refer to them all, but, as will be seen, some are of considerable significance, while a few have little or no weight. The Tribunal notes that only two meetings were held between the Crown and the assembled Maori owners, one on 24 May 1964 and one on 20 September 1964. At the preliminary meeting held with three or four owners on 15 April 1964, Crown representatives did indicate the likely number of acres to be taken, but owners generally may well not have been aware of this.

## **4.3 UNDERTAKINGS 1-3**

### **4.3.1 Undertaking 1: The amount of land to be taken was limited**

The 8 May 1964 notice to owners of the meeting to be held on 24 May 1964 issued by Warren Gibson and Jack Asher referred to an area of some 800 acres freehold and a further 200 to 300 acres as a leasehold area for temporary workshops and so on (the industrial area), which would revert to the owners (B2(a):61).

At the meeting between the Crown and Ngati Turangitukua owners on 24 May 1964 (see para 3.4), owners were told by Dick Lynch that the Crown would not be taking any more land than was necessary (A7:182). John Bennion, for the Crown, discussed the likely number of sections and the population envisaged for the new town, along with various other related matters. He also discussed the industrial area to be on leasehold land (shown on the plan), which would revert to the owners. The record of the meeting does not indicate whether Bennion referred expressly to the number of acres involved for the town and the proposed industrial area. But, later in the meeting, Lynch is noted as saying that 'approximately 800 acres in all' would be required for the village site (A7:183). This was the area stipulated on the notice to owners of 8 May 1964, which also stipulated a 'further area of some 2/300 acres' for the industrial leasehold area (B2(a):61).

In addition, Bennion stated that the area of the oxidation ponds would be about 50 acres and that a half-mile buffer zone would be required (A7:181). The area involved was not given, nor was it stated that such a zone would be acquired by the Crown. No indication was given of the amount of land likely to be required for a water supply reserve, although the need for one was mentioned (A7:181).

In approving the proposal for the new town, the owners did so in reliance on the Crown's statements that the township's area would be some 800 acres, with a further 200 to 300 acres leasehold for the industrial area and about 50 acres for the oxidation ponds. This constituted some 1050 to 1150 acres in all. It was not stated that the half-mile buffer zone adjacent to the oxidation ponds would be taken by the Crown.

No further information was given to the owners about the area for the new town until the second meeting between the Crown and Ngati Turangitukua owners on 20 September 1964 (A7:73–92) (see para 3.6). At that meeting, Gibson stated that:

- the land required for the industrial area would be leased;
- the water reserve proposed was coloured yellow on the plan;
- the Department of Internal Affairs was very interested in a fish hatchery on the Tokaanu River;
- altogether, the oxidation ponds would require 58 acres and some buffer zone should be provided; and
- the actual area to be taken for the town would be about 1000 to 1200 acres.

We infer from this last statement that the areas indicated included the matters previously discussed, viz the oxidation ponds, the buffer zones, and the water supply reserve proposed to be included in the town. The range of area stated of 1000 to 1200 acres is close to the previous assurance given on 24 May 1964 that the town area would be some 1050 to 1150 acres. This would have reassured the Ngati Turangitukua owners that, in the nearly four months since they had previously been consulted by the Crown, the area required for the town remained virtually the same.

The area of land taken for the Turangi township and associated works was 1665 acres of freehold land (see para 13.6). This was a substantially greater area than the areas in the various undertakings or assurances given by the Crown, of which the maximum, including up to 200 acres leasehold, was 1200 acres. It is clear the Crown undertaking was not honoured.

#### **4.3.2 Undertaking 2: The industrial area would be leased; Undertaking 3: The period for which the industrial area was to be leased was 10–12 years**

We will consider undertakings 2 and 3, which are related, together.

In chapter 6, we deal in some detail with the seven-year saga of the Crown's reversal of its plain and unequivocal undertaking in 1964 that it would acquire a leasehold interest only in the industrial area, some 200 acres in extent. We note here the salient facts, but stress that they need to be read in the light of our detailed consideration of this topic in chapter 6.

- The notice calling the meeting of owners on 24 May 1964 stated there would be 'a further area of some 2/300 acres . . . as a leasehold industrial area which shall revert

to the owners' (B2(a):61). That it would revert to the owners was confirmed by Bennion at the meeting (A7:181).

- At the next meeting of owners and the Crown, on 20 September 1964, Gibson stated that the land shown on the plan that the Ministry of Works was intending to lease would be a temporary industrial area for only 10 years (see para 6.5). The Ministry would take the land on a leasehold basis and develop it to a standard required by the county. Stated Gibson:

it was about 200 acres. . . . It will all be taken under lease. The private industrial development area however, can accept a limited temporary lease or go to the Maori owners and negotiate something more permanent. (A7:91)

- It is clear that at both the May and the September meetings, the owners were assured in quite categorical terms that the industrial area (by September estimated to be about 200 acres) would be taken under lease for 10 years and then revert to the owners.
- Cabinet, on 21 September 1964, approved the construction of the Turangi township including 'the lease of some 200 acres' (A7:95).
- The Crown's undertaking to the Ngati Turangitukua owners that it would lease the industrial area for a term and then return it was not honoured by the Crown. On the contrary, the land required for such purposes, amounting to some 189 acres, was taken compulsorily under the Public Works Act 1928.

As their counsel submitted, this is one of the claimants' major grievances. However, Crown counsel, after a reference to some of the evidence, submitted that the end result was that, 'although the land was acquired, it was acquired after a settlement had been agreed upon through negotiation'. In those circumstances, counsel submitted 'that the Crown did in fact meet its "undertaking" regarding the leasehold land in that the "undertaking" was varied and that variation was by mutual agreement' (C3:51).

We briefly note below the salient features of the protracted sequence of events over some seven years which finally led to the loss of the industrial land after strong and repeated rearguard action by and on behalf of the owners.

- At a meeting between the Crown and the Maori liaison committee held on 24 September 1964 to discuss Hirangi Marae land, Dick Lynch mentioned that a portion of the industrial land might need to be freehold. This came only four days after the 20 September meeting at which Gibson had given unqualified assurances that the industrial area would revert to the Maori owners after 10 years. The minutes of the meeting record no discussion of this surprising and sudden contradiction of the Crown's intentions (see para 6.5). Given the closeness in time, it may be that the change in policy was under consideration when Gibson gave his undertaking on 20 September. If so, he was less than frank in his statement to the assembled owners.
- In October 1964, Gibson, in response to a request from his head office, telephoned three owners and Jack Asher to ascertain whether they would agree to a Crown proposal 'to drop leaseholding of 200 acres for the industrial use' (A7:22). At the conclusion of the 24 September 1964 meeting, those present had appointed a

subcommittee of the Maori liaison committee to work to resolve any problems that might arise in the construction of the town site. On the subcommittee were Pat Hura, Lang Grace, and Wally Ngahana (A7:59). Gibson spoke separately to Arthur Grace Snr and Jack Asher and subcommittee members Lang Grace and Pat Hura. The third member of the subcommittee, Wally Ngahana, was not consulted. Lang Grace and Pat Hura each indicated that they were prepared to sell. Jack Asher, who was not an owner, wished to consult with Pat Hura. Arthur Grace Snr, on the day of Gibson's telephone call, sent a telegram to the Minister of Works advising he would cooperate in the transfer of the freehold of the 200-acre industrial area but preferred an exchange for Crown land in the same locality (see para 6.8).

- There was no meeting of all the multiple owners of the 200 acres nor of the subcommittee or the owners' committee to consider this sudden reversal of policy. Of the three owners consulted, two were reported as being willing to sell. One of them, Pat Hura, told a meeting of owners on 3 March 1968 that when Gibson rang him in 1964 and asked whether the owners would agree to sell the industrial area, he said he thought so, but that when it came to the final agreement it would be up to the owners (see para 6.10.3). They were not consulted. The third owner to be consulted, Arthur Grace Snr, gave a qualified approval seeking an exchange of land, which was not agreed to.
- By February 1965, the Ministry had established its intention to acquire 150 acres of freehold land in the industrial area on the basis of limited consultation with only a few owners. The proposal was not put to a meeting of owners.
- By early 1967, owners were expressing dissatisfaction with the increasing amounts of land being acquired by the Crown. The trust board's solicitor wrote to the Minister expressing concern about Crown proposals to acquire the freehold of the industrial area contrary to the Crown's undertakings at the two 1964 meetings of owners (see para 6.9).
- By early 1968, no resolution of the tenure of the industrial area had been reached. This, and other unresolved issues, had further raised the level of dissatisfaction among the Maori owners. A meeting of owners was held at Hirangi Marae on 3 March 1968, at which Gibson and other Ministry staff were present. Both Gibson and Lynch admitted they had not met with the local people since 20 September 1964 (see para 6.10.1).
- At this meeting, Gibson informed the owners that the Minister of Works had advised that there would be no alternative but that the industrial land 'be taken' (A8:31). Leasing was no longer an option. When asked whether the Minister might change his mind if there were a resolution of a different nature from the owners, Gibson responded that 'he could do' (A8:33) (see para 6.10.3).
- At the end of the meeting, after the officials had left, the owners resolved that they would prefer that any negotiations on the industrial area, including a leasehold, should be conducted under the provisions of Part XXIII of the Maori Affairs Act 1953 (see para 6.10.5).



- Subsequently, in May 1968, the Minister of Works, after a meeting with a delegation of owners, refused to enter into negotiations under the Maori Affairs Act 1953 (see para 6.11). He decided that, of the three blocks in the industrial area, block 7 (being developed privately), in view of commitments given to the developers, would be taken compulsorily. This was duly done. The commitments referred to were given by Ministry of Works officials without any notice to or consultation with the Ngati Turangitukua owners. A second block, area 8, would not be taken and would revert to the owners. As to the third block, being the Ministry of Works' industrial area, the Minister said no decision would be made for the duration of the project and thereafter only 'in full prior consultation with the owners' (B3(a):22). Clearly, the Minister did not consider that the owners had earlier agreed to the Crown acquiring the freehold of the industrial area.
- The owners' representatives continued in their endeavours to persuade the Minister not to take the remaining industrial land under the Public Works Act 1928. Unfortunately, on various occasions, as noted in chapter 6, the Minister received highly misleading advice from certain of his officials. Five days after receiving a seriously flawed memorandum from the Commissioner of Works, the Minister, on 20 September 1971, signed the proclamation taking the industrial land occupied by the Ministry of Works (see paras 6.12.4–5). This was exactly seven years after the owners were solemnly assured by the Ministry's project engineer that the land would be leased and returned to the owners.
- The main reasons given by the Minister were summarised by Crown consultant David Alexander as being:

All planning and development had been on the basis that the Crown would acquire the land and then later transfer it to other owners in a manner which assisted the retention of Turangi as a permanent township. (B3:36–37)

- The Minister's reasoning was incorrect. Were it true, it could only be on the basis that the Crown officials consistently and wrongly assured the owners at the two meetings in 1964 that the land would be leased and would revert to the owners after 10 years. In fact, a very important reason for taking the land was the maximisation of the Crown's return from its expenditure in connection with the new town (see para 6.12.5).
- It emerged soon after the Minister's proclamation taking the land was gazetted that the Order in Council taking the land might be invalid (see para 6.12.6). Legal proceedings were issued by trustees for the owners for a declaration that the proclamation was a nullity. A lengthy interview with the Prime Minister took place. As a result of further negotiations, the proceedings in respect of the proclamation, which affected some 101 acres, were withdrawn on payment of enhanced compensation. The owners were obliged to accept that the Crown ultimately had the statutory power to exert its will. This it had done by its compulsory acquisition of the industrial land.

#### **4.3.3 Tribunal's conclusion**

The Tribunal considers that the owners of the industrial land taken compulsorily under the Public Works Act 1928 never freely agreed to such taking. They were not consulted on the taking of the private industrial area. They were finally, after seven years' struggle to persuade the Crown to honour its undertaking, compelled, under considerable duress, to accept the Crown's proclamation taking the industrial land occupied by the Ministry of Works. We are unable to accept Crown counsel's submissions that the Crown did in fact meet its 'undertaking', in that the 'undertaking' was varied and that variation was by mutual agreement. Such a contention is inconsistent with the factual evidence of what actually happened, which, given the Crown's stance, we have been obliged to consider in considerable detail in chapter 6.

#### **4.4 UNDERTAKINGS 4-7**

##### **4.4.1 Undertaking 4: It might not be possible for the Crown to obtain European land**

We agree with the concession of claimant counsel that undertaking 4 (that it might not be possible for the Crown to obtain European land) was more in the nature of a statement than an undertaking (C2:49). Accordingly, we do not consider it further in this context.

##### **4.4.2 Undertaking 5: Alternative sites had been considered**

Claimant counsel submitted that the alternative sites were not given proper weight and were not considered in the light of the Crown's Treaty obligation (C2:50). We have upheld this contention in chapter 17 and need not discuss the matter further here.

##### **4.4.3 Undertaking 6: Standards of construction in the town would be to local body bylaw standards**

John Bennion told the assembled owners on 24 May 1964 that the proposed Turangi township was expected to cost about £4 million. Accordingly, the Crown had to ensure a permanent return for this expenditure and to achieve this the township had to be built on freehold land. He added that the Government would not consider building to the standard envisaged on leasehold land. It was hoped that the township would be a normal county town in three or four years. Therefore, he said, standards of construction and buildings must be to local body bylaw standards (see para 3.4). Later on, he said that on the completion of the construction work as many of the houses would be sold on site as possible and the balance sold for removal.

In fact, the Ministry did erect some substandard houses, but it appears these were removed at the end of the project and the vacant sections offered for sale to the public. Reneti Church gave evidence of being shifted along, with her parents, out of the family house, which was close to the oxidation ponds. They were relocated by the Ministry of

Works in a substandard house that the Ministry had placed on land taken from the Rawhiti family. It was not removed by the Crown until the Church family finally vacated it after some 16 years' occupancy, during which time Mr Church refused to pay any rent (para 12.3.6).

The evidence before the Tribunal suggests that the Taupo County Council was generally insistent that houses in the new township were to conform to county standards. We do not know whether any substandard houses erected by the Ministry remain. If so, we believe they would be relatively few in number and would have since been renovated to meet county requirements. While there was clearly some discomfort as a result of substandard houses being put in place, we are satisfied that the Crown's assurance that standards of construction in the town would be to local bylaw standards has been, if not wholly, then very substantially honoured.

#### **4.4.4 Undertaking 7: If owners had to move, notice of advance warning would be given and they would be fully compensated**

Claimant counsel referred us to Taima Bell's evidence of the experience of her grandfather Tewe Eru (C2:51–52). It appears that Eru's house was demolished on 29 October 1964 (see para 12.3.4). Two days earlier, a building supervisor, J W James, reported that he had discussed with Tewe Eru and his son, James Eru, the best way to dispose of the house and outbuildings. His report does not say when this discussion took place and whether the Erus were told when the house was to be demolished. Taima Bell gave the following account of what transpired:

I was told by Arthur Grace that my grandfather was still in the house when they came to bulldoze it down. I don't know why they had to bulldoze that house. It was only 21 years old. My grandfather was watching what was happening, standing there on the road with my little sister Josephine, another whangai who lived with my grandfather. He was crying, and his suitcase was there beside him. Arthur went and spoke to the men with the bulldozer, but they didn't listen and they drove a bulldozer into the back of the house right in front of my grandfather. They didn't even wait until he had left before knocking the house down. So Arthur picked up Josephine and my grandfather and took them away in his truck. All our turkeys and pigs and dogs and cats were let loose, running around. We had about 30 turkeys then. They were all just left to run away. My grandfather was taken to the marae to live, because there was nowhere else for him to go. He was moved from family to family, but he used to lock himself up in his room all the time. It was only a few months later that he died. (A14(2):2–3)

J W James, who was present when the demolition took place, referred to there being 'a bit of an upset during demolition with some members of the Eru family who thought that the old shack was going to be re-erected at the Pa' (B2(a):331). However, they were told a permit would not be granted for this and once this was explained 'they were quite happy' (B2(a):331).

Claimant counsel referred to a further example when it appears no advance warning was given. Reneti Church was the youngest of nine children living with their parents on the family farm, part of which was to be used for the oxidation ponds (see para 12.3.6). She described how one day the bulldozers came in and bulldozed the fence line while they were at home. She was aged seven at the time and was told by her parents that this came as a complete surprise to them. The family's stock, which were grazing on the paddocks where the oxidation ponds were to be sited, went straight out on the road. 'We had to rush to get them back,' she said. Later, the Ministry of Works started digging the oxidation ponds, and soon after the family was moved out of the house: 'All of a sudden one day we had to move' (A15:1).

The family was moved out to a 'substandard' house on land which had been owned by the Rawhiti family. It was described by the Ministry as an ex-Atiamuri 800 square feet house. According to Reneti Church, there were about 12 of the family living there, 'and it was full of cockroaches' (A15:2).

In chapter 12, other accounts will be found both of occupants being taken by surprise by the sudden arrival of the bulldozers and of the lack of adequate consultation. One more example here must suffice (see also para 12.3.3). Raymond Wade told us that his mother was living right next door to the high school:

Her house was nearly bowled over by the bulldozers. They had actually already flattened the orchard, which was made up of about 15 trees. They were approaching the house while she was still inside. I don't think they knew she was inside. I don't think my mother could have been given notice that they were coming to demolish her house, because she was an educated woman and she would have taken steps to try and stop them. She certainly wouldn't have just sat there in the house. Anyway, when the bulldozers came, she ran out of the house to stop them. She was in her forties, but very ill with asthma. She was very worried about her family home which she wanted to protect. The home had belonged to our great-grandmother, Paehoro Te Noni Hariata Kamekame Te Haeata Ipukai.

Although my mother stopped the bulldozers that day, a couple of years later the house was demolished anyway. (A20(2):1-2)

#### **4.4.5 Tribunal's comment**

While there were no doubt instances when the Ministry of Works did give adequate notice to owners who had to move, it is apparent from the evidence that they failed to do so on various occasions, notwithstanding their undertaking to the contrary. We consider the Ministry's undertaking that owners would be fully compensated later in chapter 19.

#### **4.5 UNDERTAKINGS 8, 9, 17**

##### **4.5.1 Undertaking 8: Tuwharetoa people would be given prior right of purchase when selling sections and houses at the close of hydro-construction; Undertaking 17: Sections would be available to absentee members of a tribe returning to the area**

Undertakings 8 and 17 are related and will be considered together. Claimant counsel submitted that, if these undertakings were honoured, they were not honoured consistently (C2:52, 72). A few instances only were cited by claimant counsel of failure to comply with the undertakings.

Jim Rawhiti gave evidence that, when the substandard houses that had been placed on his land were removed, he expected the family would get the land back (see para 12.4.4). But no offer to return the land was made. Instead, the sections were offered for sale to the public, some being sold by auction. They protested to the Ministry and the county in the mistaken belief that the land had been handed over to the county. The Rawhiti family were given the impression that 'it was nothing to do with us anymore. We had to stand by while they sold the land, and there was nothing we could do about it' (A22(1):2).

Raymond Wade, to whom we have just referred in relation to his mother's experience, was living in Wellington when the Ministry came to Turangi. He subsequently returned to live in Turangi and was living with his mother when she died in 1966 (para 12.3.3). The house was demolished two years later, after his mother died. He declined an offer to live in the Ministry's staff quarters. He wanted a section near his mother's land. He was allowed to pick a section, so he picked 'the fifth section back from the school on his mother's land'. He said the Ministry of Works agreed to this 'but nothing happened, no papers or explanation arrived'. He went through the whole process again but still nothing eventuated. He 'was virtually homeless and was forced to leave Turangi' (A20(2):2). His sister evidently got a house on the fourth section from the school on their whanau land. He understood the fifth section, the one he selected, was still vacant, being owned by the Department of Education.

##### **4.5.2 Undertaking 9: 50 acres would be taken for the oxidation ponds and there would be no pollution problems**

The construction and operation of the oxidation ponds is discussed in chapter 9. The relevant matters relating to undertaking 9 are drawn from the full discussion in that chapter.

- At the 24 May 1964 meeting of owners at Tokaanu, John Bennion stated:

Sewerage will be disposed of by way of oxidation ponds situated in an area as indicated on the plans. Effluent would be irrigated over land to avoid pollution and enrichment of lake water with subsequent encouragement of weed growth.

The area of the oxidation ponds would be about 50 acres and would be developed in stages. A half-mile buffer zone would be required between these ponds and the

first intensified residential area. No objectionable smells or insect problems would be forthcoming from these ponds (A7:181).

- At the 30 September 1964 meeting, Gibson, after discussing the sewage disposal system based on the oxidation ponds, stated that Lake Taupo would be protected from enrichment as had occurred in Lake Rotorua (see para 9.1.3). 'The lake,' he said, 'will be protected from enrichment for several thousand years' (A7:81).
- The lands occupied by the ponds, some 78 acres in area, were entered by the Ministry on 10 February 1968, when construction of the works began. They were not, however, formally acquired by the Crown by proclamation until April 1968. Final settlement of the claim for compensation was not effected until March 1972, some seven years after the date of the Crown's entry on the lands (see para 9.2.2).
- In 1980 the Waikato Valley Authority received a report from its technical experts which concluded that there was 'clear evidence' of indirect movement of effluent to Lake Taupo by means of the Hangarito Stream drain into the swamp and a meandering channel into Tokaanu Bay (see para 9.4.3). There might also be some leakage via groundwater, as implied by the Department of Scientific and Industrial Research in a report to the Taupo County Council.
- As a result, the Ministry of Works agreed to carry out substantial works to upgrade the disposal area (see para 9.4.5). The work was due to be completed by December 1983 but was not in fact finished until 1986.
- A Crown water right was finally issued to the Ministry of Works to take effect in 1985. It was transferred to the Taupo District Council in 1989 and expired in 1990.
- Various claimants expressed their concerns. Reneti Church, who farms the adjacent land, told the Tribunal that:

At the back of the oxidation ponds there is a drainage system which runs into a sort of lagoon that has formed. The lagoon drains into a canal which runs straight out into a swampy area and then the lake. This means that sewage is running into our lake. The fluid that runs through the canal is dark green and smells terrible. I don't know whether it is treated sewage or not, but it should not be running through an open canal, and it should not be running into our lake. (A15:5)

Arthur Grace stated:

There is no doubt in my mind that toxic material and enriched nutrients are going down the Hangarito Stream and down the tailrace into the lake. The outlet of Hangarito Stream into the swamp is very close to the Oxidation pond, and as a result there is considerable enrichment and pollution of the water in the swamp, which feeds down into the lake. The theory is that the swamp acts as a filter for the pollutant material, but in fact there is virtually an open channel at the point where the Hangarito Stream meets the swamp, and on out into the lake. This has led to a big increase in weed growth in Tokaanu Bay and Waihi Bay.

Our lake, and in particular those nearby bays, are precious taonga of our people. The weed and pollution has ruined Tokaanu Bay. It used to be a beautiful area popular for fishing, swimming, gathering of carp, koura and inanga. You can't take kakahi from

there now. There's a sort of black sludgy slime that's forming where the raupo touches the water. It squelches and smells. This has been terrible for our people. (A21(1):33-34)

Mahlon Nepia stated:

Ngati Turangitukua people are very concerned about the level of pollution in our waterways today. . . . We have real doubts about whether the swamp is acting as an effective filter for sewage pollution, and we think it is high time that a proper investigation of this situation is undertaken. . . . There is something terribly amiss with the water in our lake. This is clear from the vast weed growth and slime deposits in Tokaanu Bay and Waiariki Stream which is adjacent to the sewage ponds. The rohe of Ngati Turangitukua abuts Lake Taupo and like other hapu we hold custodial rights over our waters. It has always been part of our responsibility to ensure that our lake stays pure and free from pollution. But since the construction of the town and the Tokaanu tailrace, pollution levels have grown significantly. As tangata whenua, the rectification of this situation has been entirely beyond our resources. (A21(3):26)

- While the claimants have serious concerns about the discharge of effluent from the Turangi oxidation ponds, conclusive scientific evidence is lacking. It appears from a report of 5 December 1994 that the Tribunal received from the Waikato Regional Council that, although the present system has been in operation since the 1960s, no direct monitoring has been undertaken to identify what, if any, adverse impacts there are (D4).
- In December 1994, the regional council was considering granting a permit prior to the end of 1994 to authorise the discharge. This permit, however, would require the applicant to put in place a monitoring programme to more accurately identify the effects of this discharge on the environment. We have since learned from David Alexander that the Waikato Regional Council issued a new discharge permit with effluent upgrading requirements in March 1995 (D11:12). We do not know whether provision is made for adequate monitoring.

In the circumstances, the Tribunal, in the absence of the appropriate monitoring programme being in operation for an appropriate period, is unable to reach any conclusive opinion on whether the claimants' observations and consequent serious concerns are justified by the scientific evidence. Clearly, it is essential that an efficient monitoring programme should be put in place without delay.

## 4.6 UNDERTAKING 10

### 4.6.1 Part I: Although no information was available as to how much compensation would be payable by the Crown, the intention was that owners would be left as well off as before

At the meeting on 24 May 1964, owners were assured by Dick Lynch for the Crown that some houses could be bought straight out, replaced by way of exchange, or moved to new sections, the intention being that 'the owner should be left as well off as he was previously' (A7:182). At a previous meeting on 15 April 1964, the few owners present were told that occupiers of houses on land acquired by the Crown would be offered 'equivalent accommodation within the new township' (A7:206).

In support of this claim, claimant counsel referred to several examples of owners having been left worse off than they were previously. These were people who were forced to move out of their homes or had their homes moved and who felt that, 'because they were not provided with equivalent accommodation or compensation sufficient to purchase a house in the new town', they received a 'raw deal' (C2:58). Counsel also noted that these claimants 'lost a whole way of life made possible by having enough land to support seasonally-oriented subsistence farming which incorporated traditional hunting and fishing' (C2:58). They were not compensated for this loss. It was not until 1970 that legislation was introduced which allowed 'genuine personal hardship' to be compensated.

The experience of the Church family has been previously noted (see para 4.4.4). They were moved from their family home near the proposed oxidation ponds to the substandard house on land previously owned by the Rawhiti family. There they lived in crowded conditions away from their land. Joseph (Joe) Eru lived with his family, including four children, in a house built in 1950 on about 2½ acres (see para 12.3.4). The Ministry wanted the site and required the house to be moved to another position on the section. The result was that they were left with their house on a very small section. For the loss of the land, compensation was assessed at \$1200, but Joseph Eru received only \$237.99 after payment of mortgage, rates, and legal costs. The family did not consider that they had been left as well off as previously.

June Rota Whaanga lived with her parents and about 17 children on a self-sufficient farm which was taken by the Crown (see para 12.3.5). They had pigs, cows, chickens, horses, a big orchard, and vegetables, some of which were sold to the local greengrocer and others. As well as trout, they caught morehana (carp), kokopu (native smelt), and koura (freshwater crayfish) from the river nearby. They also took watercress. They were obliged to move into town to a house they built on land owned by the Rawhiti family. June Whaanga stated that their family life altogether changed as a result of the loss of their family home: 'It was never the same in town, and our parents were not happy there. We were left out of pocket and confused by all the sudden changes that came upon us' (A20(1):2-3). They received no compensation for the loss of their lifestyle and the benefits they had previously enjoyed from farming and associated activities.

We do not believe that these examples of owners not being left as well off as previously are the only instances. The Ministry of Works was, even had it been so minded, unable to



honour its undertaking because of the very narrow range of matters for which compensation could be paid under the Public Works Act 1928. But owners who relied on the Crown's undertaking in agreeing to the township proposal were not to know that.

**4.6.2 Part 2: The owners were not given specific information as to the deductions (for repayment of mortgages and rates) that would be made from compensation payments, even though the issue was raised**

The Tribunal is unaware of any evidence that the Crown gave any assurance or undertaking in respect of deductions for the repayment of mortgages and rates. Accordingly, we can make no finding on this matter. We note, however, that it does not appear that owners were advised by the Crown at either of their meetings as to what deductions would be made. Nor does it appear they were subsequently so advised by the Crown. This is one more instance of Crown officials' lack of consultation with the owners.

**4.6.3 Part 3: Owners would be contacted on values after a delay of 3–4 months, and the Crown would always take into consideration the highest values**

The matter of owners being contacted on values after a delay of 3 to 4 months, and the Crown always taking into consideration the highest values, will be discussed later when we consider compensation and valuation questions in chapter 19.

**4.7 UNDERTAKINGS 11–13**

**4.7.1 Undertaking 11: The Crown would engage private valuers**

Claimant counsel rightly conceded that the Crown honoured this undertaking (C2:64).

**4.7.2 Undertaking 12: The Ministry of Works would work in a cooperative and friendly manner**

In regard to undertaking 12 (that the Ministry of Works would work in a cooperative and friendly manner), claimant counsel invoked two statements by Ministry officers. The first was made at the meeting with the owners on 24 May 1964, when Dick Lynch emphasised 'the Government's wish to co-operate with the owners' (A7:182). The second was at the outset of the meeting on 20 September 1964, when Gibson stated that it was the 'Ministry of Works' wish to arrange this programme as far as humanly possible so that there would be a minimum of upset to those affected' (A7:73). Gibson reiterated the Ministry's anxiety not to upset anyone at the conclusion of his address to the owners. But he pointed out that they would be in 'one very big hurry. When things have to be done in a hurry sometimes mistakes are made and sometimes people are upset' (A7:92).

In chapter 12, we relate in some detail a variety of instances where, in their great haste to accomplish their mission, the Ministry failed to work in a cooperative and friendly

manner. Great distress was caused to innocent and largely defenceless people. Claimant counsel submitted that the bulk of the claimants' evidence goes to the 'upset' caused by the Ministry of Works (C2:64). Counsel referred to the difficulties encountered by Arthur Grace in relation to his house and farm, to Terewai Grace's memory of her mother-in-law's grief and despair at her husband's records being scattered all over the garden, and to other examples, which are discussed in chapter 12.

The legacy of bitterness towards the Ministry of Works, which remains to the present day, is living testimony to the failure on too many occasions of Ministry officials to act with understanding and in a helpful way towards people whose lives they were so seriously disturbing. There were commendable exceptions, as the claimants readily and gratefully recognised, but they were exceptions.

#### **4.7.3 Undertaking 13: Wahi tapu would be protected**

At the meeting of owners on 24 May 1964, Dick Lynch assured the Ngati Turangitukua people that 'any sacred land would not be interfered with' (A7:183). At the 20 September 1964 meeting, repeated assurances were given (see para 8.6.6). Gibson stated that sacred or special places which were important to the local people would be taken into account; that graves would be treated with the utmost respect and nothing would be done to offend the Maori people; that everything possible would be done to protect any sacred ground; and that if any remains were found, proper interment would be arranged.

Claimant counsel referred to the lengthy evidence on wahi tapu given by Arthur Grace, who complained about the lack of consultation with the old people about the sacred areas (C2:65). The Ministry of Works' operational attitude in respect of wahi tapu was that they did not know where the sacred sites were so it was up to the tangata whenua to approach them. But the problem was that the local people, because of a lack of notice, rarely knew where the Ministry would be operating next.

In chapter 8, the Tribunal discusses a number of instances where wahi tapu were desecrated or destroyed. We also record instances where John Bennion met the wishes of the people sympathetically. These examples, regrettably, appeared to be the exception rather than the rule. Given our full treatment of this issue elsewhere in this report, we confine our discussion here to two examples of the destruction of wahi tapu by the Crown.

The first concerns an old urupa called Te Puke a Ria, situated in what became part of the industrial area (see para 8.1). It was a small hill where the body of Ria lay buried on the summit. For years following the untimely death of her husband, Ria would climb to the top of the puke and call out and sing to her husband lying at Motiti, where he died. The hill was named for Ria. Arthur Grace told us that Te Puke a Ria was a sacred place, cared for and respected by Ngati Turangitukua.

Ranginui Biddle of Ngati Hine, a hapu of Ngati Tuwharetoa, told us what happened. He was employed by a contractor who specialised in earth moving with heavy machinery. He was working in the area close to the hill known as Te Puke a Ria. He approached the hill in his big D8 bulldozer. He and big earth movers ('carry-alls') flattened the land up to the base of the hill. He then realised this was the place where 'our old kuia was buried. . . . I

knew this place was very special' (A21(a):2). He stopped the bulldozer and told his boss they should not be digging there because the hill was an urupa. He was told by his boss the work had to go on. Everything had to be done quickly and on time. Ranginui refused to carry on with the destruction of the hill. He was, he says, instantly dismissed. Te Puke a Ria was flattened and the bones left lying somewhere in the industrial block. They have never been recovered. It appears the Ministry had not imposed any obligation on the contractor to respect wahi tapu.

In the early 1970s, some Maori owners, including Te Reiti Grace, realised that tip operations had damaged several wahi tapu known as tuahu (see para 8.3). Arthur Grace described them to us:

'Tuahu' is the name given to distinctive landmarks of our people. They are evenly-shaped conical hills built by the old people [ancestors]. Sometimes they are burial places, and at other times they are like altars. They were also used as places where the old people would bury something very special to them such as a lock of hair or a prized possession. They are very ancient, and very easy to recognise because of their shape.

... That place was very tapu. It had never been farmed for that reason. We all knew that the area was very special ... Originally there were five tuahu and they were situated on Blocks Waipapa 1M and 1F.

Anyway, the original site of the rubbish dump was a long way from the tuahu. No one suspected that the rubbish dump would grow to reach the place where the tuahu were located. There had been an agreement with the Ministry of Works that they would not do any digging in that area. But that agreement was apparently forgotten or ignored, because over time the machines got closer and closer to the tuahu until eventually they were working right where they were.

My mother [Mrs Te Reiti Grace] went to see one of the engineers about stopping the work near the tuahu. John Bennion was an absolute gentleman and treated the Maori owners with the greatest respect. We felt that he was the only one of the big men in the Ministry who tried to look after our interests. Mr Bennion must have intervened, because after that, they did stop that work.

At the time when Mr Bennion intervened ... there were three-and-a-half tuahu left. But work in the area must have started again at some stage, because there are only three left now. (A21(1):42-43)

Fearon Grace told the Maori Land Court in March 1977 that the conical tuahu were used by tohunga for incantation to the gods. This indicated only upoko ariki were buried there. The last burial, he said, could have been as many as 300 years ago.

As we relate in chapter 8, the Ministry appointed a project archaeologist for the TPD in February 1966 (see para 8.6.5). By this time, however, much of the new township area had been bulldozed flat and Trevor Hosking, the archaeologist, found himself working under pressure.

#### **4.7.4 Tribunal's conclusion**

We conclude that, in many instances, the Ministry of Works failed to honour its undertaking that wahi tapu would be protected. As is demonstrated in chapter 8, the desecration and destruction of wahi tapu was, in Maori terms, a significant part of the human cost of the construction of the Turangi township. The Ministry of Works was not proactive in efforts to protect wahi tapu. Local people had to make the effort to persuade Ministry officials to protect their sites. Their desecration and, in some instances, wholesale destruction symbolised the loss of rangatiratanga over their own lands experienced by Ngati Turangitukua.

### **4.8 UNDERTAKINGS 14–16**

#### **4.8.1 Undertaking 14: Any land not required for retention in the pa (marae) area would be leased by the Ministry of Works**

As claimant counsel observed, the promise that any land not required for retention in the pa (marae) area would be leased by the Ministry of Works was lost sight of almost as soon as it was made (C2:69). In the event, we do not consider it material. It was superseded by the agreement later reached that the owners would agree to the Crown acquiring 31 acres of the marae site.

#### **4.8.2 Undertaking 15: Important issues bearing on owners' individual circumstances were largely 'negotiable' and would be dealt with on an individual basis**

It is apparent from the evidence that there was a general reluctance on the part of the Ministry of Works to divert from its plans unless it was virtually forced to do so, as by Arthur Grace in the retention of his house, or it did not inconvenience the Ministry to do so. Sole owners were listened to on occasions, but most of the land was in multiple ownership. There was a marked lack of consultation with the owners and a virtual absence of negotiation. David Alexander very fairly conceded that the 'possibilities for true consultation . . . were not used as fully as they could have been' (B2:120). He pointed out that, while the Ministry did get some important feedback from the meetings with owners and a number of suggestions were taken up, 'the Ministry was largely impervious to suggestions other than those it came up with itself' (B2:120). He concluded that:

In the rush for development created by the compressed time deadlines, and the attitudes of the time, some local needs did not receive the attention they deserved. (B2:120)

#### **4.8.3 Undertaking 16: Conservation values were of high importance to the Ministry of Works**

In support of their contention that the Ministry failed in its conservation objectives, claimant counsel cited the desecration and destruction of wahi tapu (C2:71). In addition, various claimants gave evidence about the pollution of streams and rivers in the area.

Eileen Duff complained that the water in the Hirangi Stream is now muddy and polluted. 'We can't use anything that comes out of it, because it's likely to be contaminated,' she said (A22(2):6). She referred to the stormwater drainage into the Hirangi Stream.

Bill Asher told us that the Tokaanu River has changed to the detriment of the people as a result of the township development. The Ministry diverted it from its natural course, and it has been badly affected by run-off from the pumice excavation area. 'Effectively, the river has been destroyed as a place of harvest for us. Many species, most of them native, have disappeared together,' he said (A12(2):6). He cited as examples inanga, toitoi, kokopu, and morehana. Koura are still available but only in greatly reduced numbers.

Arthur Grace spoke of Te Awa Kahurau (the Kahurau Stream), which joined the Hangarito behind the industrial block. 'Like the Hangarito, it was a beautiful stream,' he told us, adding that the stream is now dead (A21(1):54). The Ministry buried it under pumice and dirt when levelling the surrounding area.

Given the damage to their wahi tapu and greatly valued waterways, it is apparent that the Crown failed to meet its undertaking that it attached high importance to conservation.

### **4.9 UNDERTAKINGS 18–20**

#### **4.9.1 Undertaking 18: Occupants of Turangi would be provided with a very cheap water supply**

The claimants contended that the undertaking that the occupants of Turangi would be provided with a very cheap water supply has not been fulfilled, in that the water supply in Turangi is not especially cheap. In the absence of evidence on appropriate comparative costs, the Tribunal cannot come to any conclusion on this question. However, claimant counsel submitted that the undertaking has been conspicuously breached, in that some parts of Turangi have no water at all (C2:73–74). In particular, complaint has been made about the failure of the Crown to provide reticulation of water in the Hirangi Road area, where an appreciable number of Ngati Turangitukua families were living in 1964 and where some still reside.

Reference is made in chapter 10 to the absence of water reticulation in this area, where the evidence of both a resident, Gae Chapman, and David Alexander is discussed. The following are the salient points:

- The Hirangi Road properties were within the Turangi township, as defined in the First Schedule to the Turangi Township Act 1964, but were not within the 1540 acres described in the Second Schedule, which section 11 of the Act empowered the Crown to take for the township.

- At the time, it would have been a reasonable expectation that the Ngati Turangitukua people living in Hirangi Road, within the wider township boundary as defined in the First Schedule, would be supplied with water (see para 10.2.3).
- For a variety of reasons, including the desire to avoid incurring the expense of reticulation (estimated at £6775 in February 1967), it was decided to recommend that the boundary of the township, as defined in the First Schedule to the 1964 Act, should be amended to exclude the area west of the township (including the Hirangi Road sections) (see para 10.2.1).
- The change to the First Schedule boundary was made by *Gazette* notice on 13 June 1968.
- There is no evidence to suggest that the Hirangi Road residents were consulted or agreed to their properties being excluded from the Turangi township.
- The effect of such exclusion was that the Hirangi Road sections west of Turangi Park were not rated as part of the town, but instead paid the general rural rate. As a consequence, these sections could not automatically expect to receive the same services those in the township received.
- Despite repeated requests, the water has not been reticulated to the excluded Hirangi Road residents.
- By contrast, the old township east of SH1 (principally in European ownership) remained within the First Schedule boundary of the township. David Alexander understands that the water supply was subsequently extended by the Taupo County Council to the old township along Taupahi Road (B8:36).

The Tribunal considers that the Hirangi Road claimants have a legitimate grievance at the Crown's failure to provide them with reticulated water and, further, at the Crown's action in subsequently excluding their properties from the Turangi township and thereby making it less likely that water would be reticulated to them by the Taupo County Council.

#### **4.9.2 Undertaking 19: Fishing would remain good**

Undertaking 19, that fishing would remain good, has been discussed in the context of undertaking 16, from which it is apparent that fishing in various rivers and streams has been detrimentally affected.

#### **4.9.3 Undertaking 20: Flood relief measures planned would ensure that property owners would not be flooded**

A number of claimants gave evidence as to continuing flooding on their property (C2:75). Reneti Church suffers significant stock losses when the Crown opens the flood gates at Rangipo South (see para 7.3.7). Flooding occurs at least four or five times a year and causes loss of fences, gates, and stock.

John Asher stated that Waipapa 1J2B, which lies just outside the township boundary, now acts as a conduit for flood waters from the commercial and residential areas of the town, making 'its use as a grazing area very limited' (A12(1):8).

Gae Chapman and Arthur Grace referred to the waterlogging of an area behind the houses on Hirangi Road (C2:76). Both believe the flooding there to be significantly more than it was prior to the town's development. Arthur Grace stated that a great many of the blocks still in Ngati Turangitukua people's hands are adversely affected by the poor water flows and drainage caused by the land now being contoured. It would help, they argued, if the drains and culverts were regularly cleared.

Tuatea Smallman told us that the Ministry's activities in removing the island in the Tongariro River have significantly increased flooding on Hautu 3E4A. This has involved him in considerable effort in trying to rectify flooding problems which prevent the development of the land (A23:8-9; C2:76).

For the Crown, David Alexander noted that some of these areas were prone to flooding after the major 1958 flood. Because the oxidation ponds and tailrace were situated in the area prone to flooding, the Waikato Valley Authority discussed a scheme involving stopbanks on both the right and left river banks down to the lake. These proposals were designed to cope with a flood equivalent to the 1958 flood recurring within a 50-year period. The Crown decided, however, having regard to the cost involved and because a major scheme was not warranted as far as power interests were concerned, not to proceed with the proposal (B5:19-23). In short, the Crown was not concerned to do more than was strictly necessary to protect the power station tailrace and the oxidation ponds. As a result, the stopbank on the Te Rangi family's block was the only one built in order to protect the oxidation ponds. Nothing was done by the Ministry of Works on the right bank.

#### **4.10 CONCLUSION**

There can be no doubt that, in a significant number of instances, the Crown made undertakings or assurances to the Ngati Turangitukua owners on which the latter relied in giving their approval to the Turangi township being developed on their ancestral lands. Nor can there be any doubt that the Crown failed in varying degrees to honour an appreciable number of these undertakings. Some of the undertakings which the Crown failed to honour were of greater importance than others, in that they affected the tangata whenua generally, whereas others appear to have affected relatively few owners.

#### **4.11 THE TRIBUNAL'S FINDING**

The Tribunal finds that:

- (a) The Crown failed by a wide margin to honour its undertaking as to the amount of land to be taken for the township and it resiled from its undertaking that the industrial area would be leased and returned to its owners after 10 years.
- (b) The Crown signally failed in numerous instances to honour its undertaking to protect the wahi tapu of Ngati Turangitukua.

### *Undertakings and Assurances*

- (c) The Crown failed in significant ways to act upon the high importance which it assured owners it placed on conservation values. As a consequence, the waterways and fishing are degraded and increased flooding has occurred.
- (d) The Crown failed to honour adequately its undertaking to work in a cooperative and friendly manner with owners affected by the Ministry's works and to negotiate and consult with individual owners on important issues.
- (e) The Crown failed in some cases to honour its undertaking that, if owners had to move, advance warning would be given and they would be fully compensated. In a few cases, the Crown failed to meet its undertaking to give owners a prior right of purchase when selling sections or to make sections available to returning members of Ngati Turangitukua. In a number of cases, the Crown failed to meet its undertaking that owners affected by the works would be left as well off as before.
- (f) The Crown failed to make provision for water to be reticulated to Ngati Turangitukua residents in Hirangi Road and later excluded such residents from within the Turangi township boundary without consultation or their consent, thereby making it more difficult for such residents to be supplied with water.
- (g) As a result of the foregoing, the Crown failed to act reasonably and in good faith towards its Treaty partner and, further, failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby.



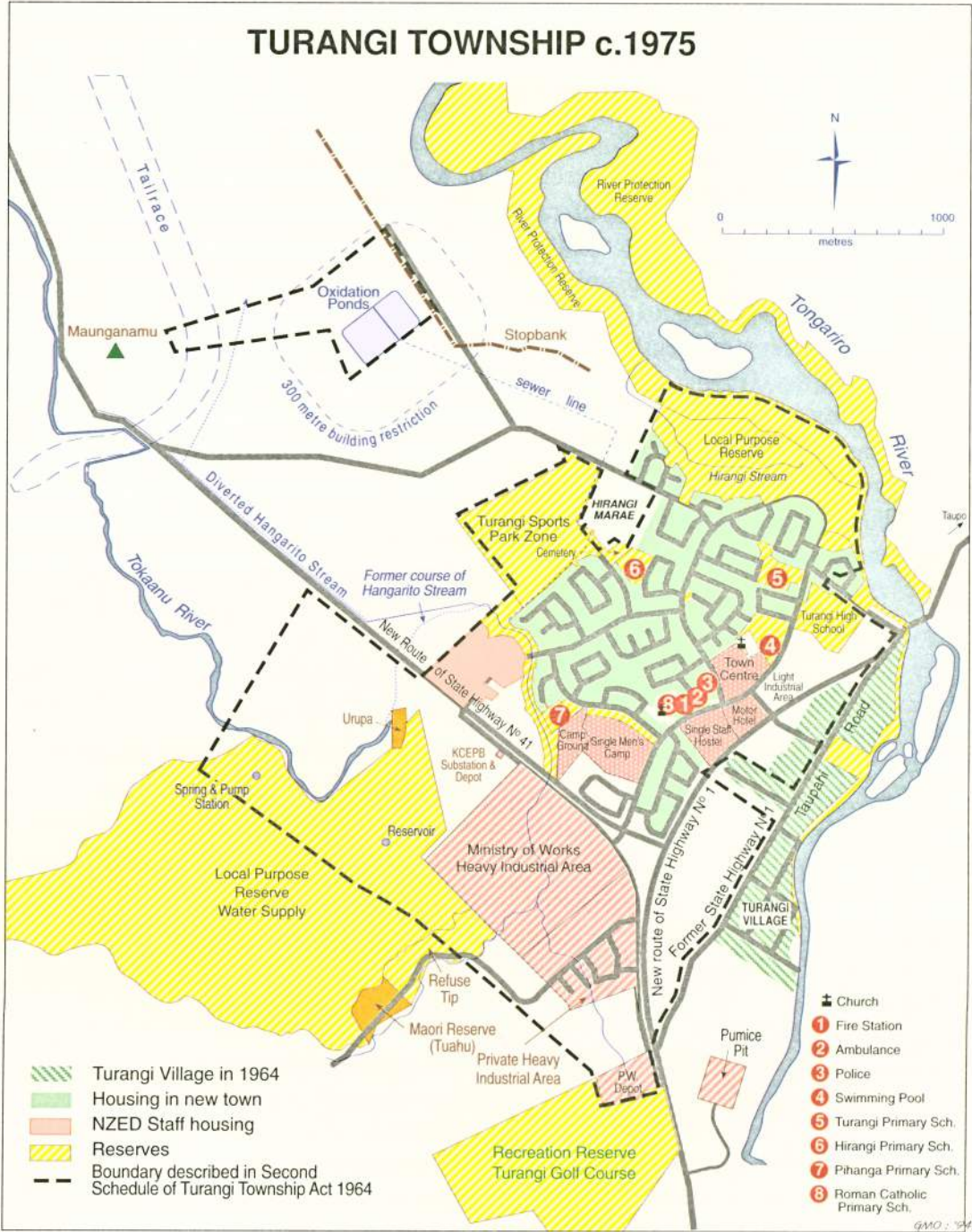


Figure 10

## CHAPTER 5

# THE BULLDOZERS ARRIVE: A REVIEW OF THE TURANGI TOWNSHIP DEVELOPMENT

### 5.1 THE TOWNSHIP TAKES SHAPE

#### 5.1.1 Traumatic change

Cabinet approval for the construction of the TPD and the Turangi township was granted on 21 September 1964. By 1 October, the bulldozers were on site in Turangi, beginning a traumatic two years for the Ngati Turangitukua community as a whole new town was almost literally dumped on them. The pace of change was staggering as a farming landscape was transformed almost overnight in an attempt by the Ministry of Works and contractors to meet tight deadlines. In chapter 12, we examine in more detail the impact of the township construction on Ngati Turangitukua families. The following sections in this chapter provide a narrative of the events concerning the lands affected by construction under the Turangi Township Act 1964.

Terewai Grace described the Turangi of early 1965 in her submission to the Tribunal. She had just taken up a senior position at Tokaanu District High School (which later became Tongariro High School):

By the time I began work at the school, life in the town was already moving at a tremendous pace, and that was reflected in the life of the school. When I set out for work each morning, I never knew what each day would bring. There was uncertainty in every area of my life. For instance, I never knew when I left for school in the morning if I was going to be able to get back home by the same route or not. The huge machinery could completely change the landscape in the course of a day, and there was always the fear that if you went home the same way that you had gone in the morning, you might collide with fast moving machinery or find that the road had been moved. At school, the roll was climbing rapidly. From about June of 1965, families had begun to move into the houses that had been deposited on the sites in the new town. The new primary school buildings were quickly put in place. . . .

Naturally, our new school was much bigger . . . But it didn't take long for those classrooms to fill up. . . . We were in a constant state of re-organisation, juggling children and classrooms and teachers to try and achieve proper ratios.

Nothing in our training or experience had prepared us for this situation. For the teachers it was horrendous. Not only were there large numbers of new children, but of course new teachers had to be appointed too in order to cope.

The children were disoriented too, both the local children and the newcomers. Once the newcomers were in the majority, a hostile attitude toward the local children began to emerge. The locals were now 'has beens', and the new children claimed the town as their own. We had

to manage this problem. . . . We used to have to organise the desks in the classrooms to cluster together the children who knew each other. All of the children had been uprooted from their previous lives, and needed whatever security they could get from people they knew. There would be one area for the Mangakino children, one for the Atiamuri children, and the local children would be scattered in between.

The children had nowhere to play outside because all the green grass had been bulldozed up to make the new town. While the grass was being put down, they were restricted to the courtyard and concrete paths, areas far too small for them to play properly. Sometimes the children couldn't go outside at all, because of the big dust storms which blew up whenever there was much wind. We had to bring the children inside during recess, and shut all the windows and doors until the dust had subsided. On those days you couldn't even see outside because of the dust.

As mothers, we teachers were concerned about our own children whose life in the town had changed completely. The countryside was no longer theirs to roam through. Many of their playing areas were now privately owned, and they were confined to much smaller spaces. The nature of the community had changed, with so many strangers in town.

Our town was being overrun with strangers. It got to the stage where, when you saw someone from the old community in the street, who previously you might have smiled at and passed, now you would almost run up and hug them. In the past, my friends had mostly been amongst the Maori community and the teaching community, but now both Maori and Pakeha from the old days were always delighted to see each other. A familiar face was a scrap of security in a rapidly changing world.

The migrants came in such numbers that it wasn't a question of them adapting to our way of life. We had to change to accommodate them.

We had to learn to live on our own little sections, where previously the whole area was ours to wander in and call our own. We changed from being country-dwellers to town-dwellers overnight, and against our will. Some of the changes were convenient. We had shops we could walk to easily, more to choose from, and increased facilities. . . . So I am not saying that all the things were bad. But on balance, I didn't like the new place we were living in by comparison with former times. (A21:7-13)

### **5.1.2 Proposed layout accepted**

The proposed layout of the Turangi township had been accepted by the Taupo County Council in September 1964 (B2(a):101-102). This did not give the final street layout, but the basic pattern of curving residential streets and the relationship of the town centre to the realigned SH1 was established. The industrial area, workers' camps, and other buildings and service areas associated with the construction work were to the south of the township, separated by the new SH41. The sites for the water supply pumping station and reservoir, and the oxidation ponds for sewage treatment, had also been decided. In this chapter, we review the overall development of Turangi and in later chapters we consider the components of the Turangi township and the Tokaanu power project so far as they affected the lands described in the First Schedule to the Turangi Township Act 1964.

## 5.2 MINISTRY OF WORKS PUBLICITY PAMPHLETS

A publicity pamphlet published by the Ministry of Works in 1969 described Turangi at that time as a pleasant and attractive town of 5000 people which offered a 'balanced community life'. The pamphlet enumerated the town's amenities, shops, and services, such as its mall, schools, sports facilities, library, maternity hospital, parks, and, not least, its wide, grassy verges and kerbing.<sup>1</sup>

John Gardenier (formerly a senior engineer with the Ministry of Works) described the immigrant population which settled in Turangi as an 'instant population . . . arriving from all quarters of the wind, including even a number of Italians'. The first of these were the 'hydro workers' who were already employed on other hydroelectric power projects on the Waikato River, such as Maraetai, Atiamuri, and Aratiatia. In addition to the construction workers, of course, came the professional people necessary for any town to function. For Gardenier:

The story of the TPD was also a story of giving and taking. Would the local marae extend its hospitality to hydro folk? Could a public cemetery be established around the marae cemetery? Who would build toilets on the sports grounds? Could removal of gravel from the river serve both project and fishing interests? Who controlled the riverbanks? Subjects like these were vigorously debated at Marae Committee meetings, Liaison Committee meetings, Welfare Society meetings, Taupo Council meetings, Project Engineers meetings, River Protection meetings and ad hoc meetings of any other group with a calling to be heard.<sup>2</sup>

Another edition of the Ministry of Works' pamphlet was issued in 1971 under the title *Turangi Scenic Attractions*, but with a similar text to the 1969 version. In a 1975 edition with the same title, the text had been revised. Turangi was described as 'a thriving community of 5,500 residents', which had now become 'an ordinary country town' after its hectic beginnings. The pamphlet stated that:

Several sites were investigated and finally the present site was chosen for its agreeable climate, and because it was convenient to construction sites and the established tourist area of the Tongariro River, Tokaanu and Waihi.

The Maori owners of the land, the Ngati Tuwharetoa, agreed to make the land available, for they realised that the establishment of a permanent town at Turangi could help their young people in their transition from country to town life. In the town plan 8 hectares were set aside for the Hirangi Marae, or meeting house.<sup>3</sup>

This was the Ministry of Works' version of the history of Turangi for general public consumption, which glossed over the contentious issues between Crown and Maori. The reality of the ongoing negotiations was much more complex. Also, because of its rapid growth and distinctive form of development, and the continuing presence of the Ministry of Works, it would be difficult to describe Turangi in 1975 as 'an ordinary country town' (fig 10).



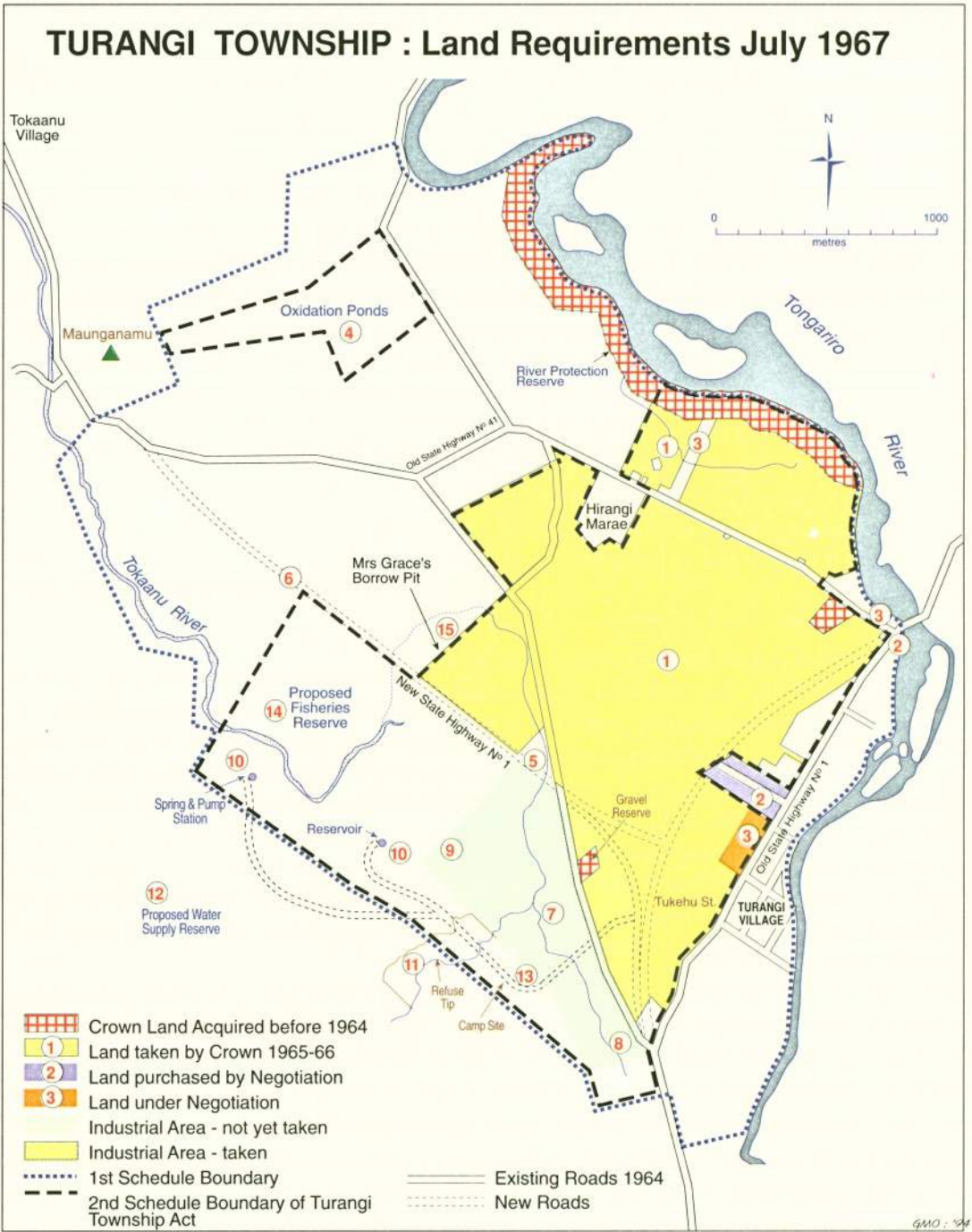


Figure 11

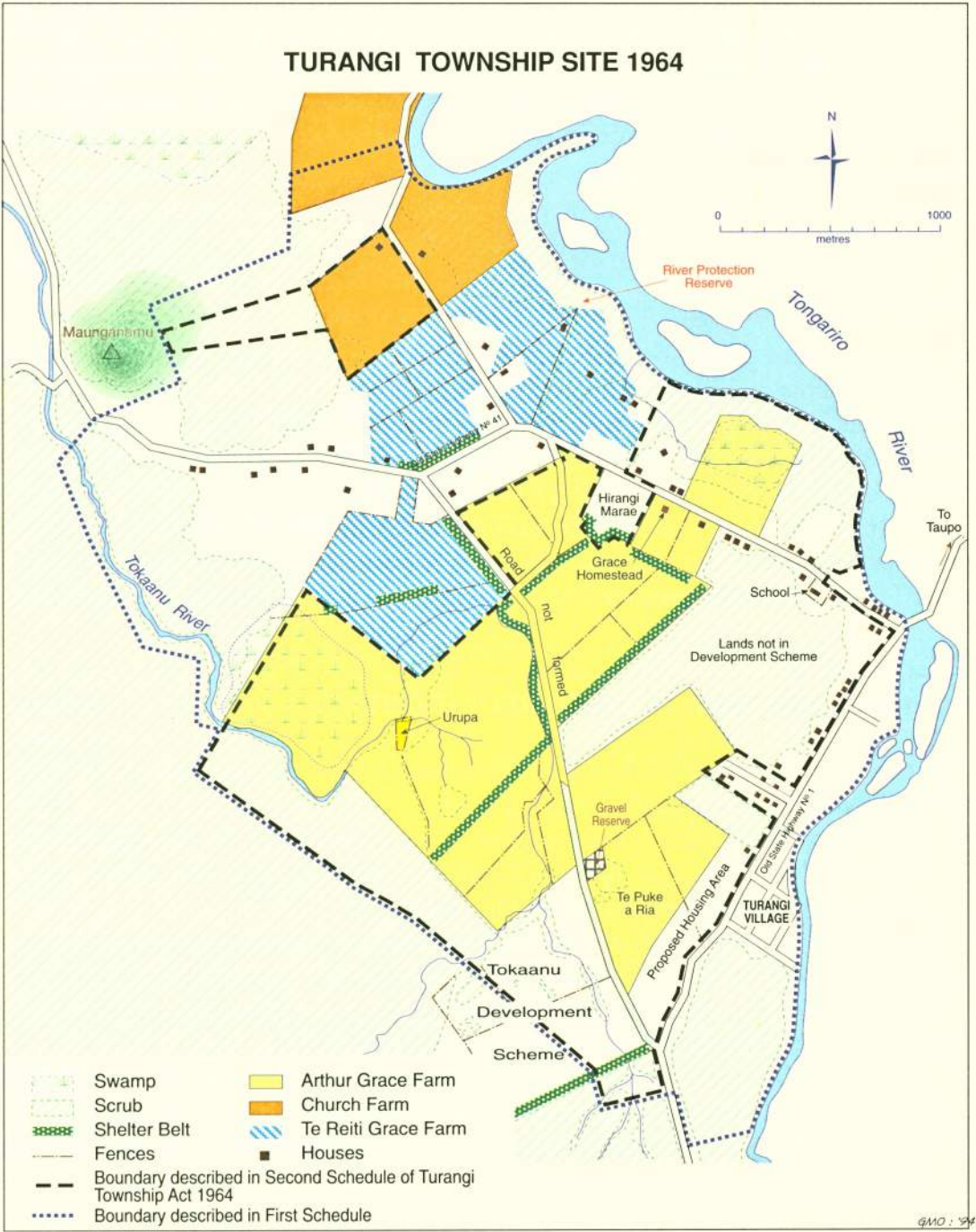


Figure 12

### **5.3 FRUSTRATION AT DEVELOPMENT WORK**

By early 1967, many Maori owners were feeling angry and frustrated over the disruption caused to their lives by the development work on the township site, the lack of information about how much land was required, the delays in the payment of compensation, and other irritations, including general stress. There was some media comment in April 1967 that local people were unhappy and planned to send a deputation to meet the Prime Minister to talk about the amount of land required by the Crown. The Minister of Works responded by explaining that the Turangi Township Act 1964 authorised the Crown to take 1450 acres but:

every endeavour was being made to acquire as little as possible consistent with the economic welfare of the township . . . [and] only land needed for the scheme would be taken when it could be defined by survey.

The Minister added that some land required 'could not be defined accurately until the relevant part of the project was completed' (B3(a):8).

The Minister of Works also referred to the Maori Trustee's role in negotiating the payment of compensation, noting that some advance payments were being made, as requested by the trustee. Under section 104 of the Public Works Act 1928 (as substituted by section 6 of the Public Works Amendment Act 1962), the Maori Trustee was responsible for negotiations concerning Maori land in multiple ownership taken for a public work. In chapter 14, we review the involvement of the trustee in the assessment of compensation.

### **5.4 BRIEF REVIEW OF LAND REQUIREMENTS**

At this point, we review briefly the various statements of land requirements for the Turangi township recorded in documents submitted to us.

- November 1963: Gibson's memorandum recommending the Turangi West site suggested 'about 1,100 acres' (B2(a):35), although the site shown on the accompanying map was larger than this (B2(a):37).
- April 1964: A Department of Maori Affairs report on a meeting with the Ministry of Works recorded 600 acres freehold in a triangle between Hirangi Marae, the old SH1, and the old SH41, the 'paper road' (Maori roadway), as well as 200 acres west of the paper road as leasehold for industrial purposes (B2(a):53).
- May 1964: The notice of the 24 May owners' meeting stated that 800 acres freehold and 200 to 300 acres leasehold was needed for the industrial area (B2(a):61).
- August 1964: A draft memorandum to Cabinet approved by the Minister of Works, Percy Allen, stated:

It is proposed to purchase about 900 acres and lease some 200 acres from Tuwharetoa tribal lands to the west of [State] Highway 1 and south of [State] Highway 41 at Turangi. (B2(a):93)

- September 1964: Plans produced at the 20 September owners' meeting included lands north of SH41. George Rawhiti and others objected to this. Gibson stated that 'everything is not detailed yet', but thought 'about 1,000 to 1,200 acres' would be required in total: 600 to 800 acres freehold and 150 to 200 acres leasehold (A7:84).
- Cabinet approval on 21 September was for 'the purchase of about 900 acres and the lease of some 200 acres of Tuwharetoa tribal lands situated to the west of [State] Highway 1 and to the south of [State] Highway 41' (A7:95). This approval did not include lands north of SH41, although owners had been told the previous day that lands to the north would be included.
- December 1964: The Second Schedule to the Turangi Township Act 1964 described an area of 1450 acres for the township and 90 acres for oxidation ponds, a total of 1540 acres, which could be taken under section 11 of the Act. No evidence was submitted to the Tribunal that these figures or the boundaries described were discussed with Maori owners prior to this legislation being enacted on 4 December 1964.

When the adverse publicity about the Crown relationship with Maori owners appeared in the press in April 1967, the Commissioner of Works asked Gibson to provide clarification of land requirements in Turangi. In response, Gibson produced the following table showing the relationship of the areas in acres suggested at the two meetings of owners in 1964 and the areas actually occupied in April 1967 (A8:143).

|   | 24 May Meeting |      | 20 September Meeting |      | Actual |
|---|----------------|------|----------------------|------|--------|
|   | Verbal         | Plan | Verbal               | Plan |        |
| Township<br>(including<br>oxidation<br>ponds) | 600-800        | 768  | 600-800              | 896  |        |
| Industrial area                               |                |      |                      |      | 102    |
| MOW   | 150-200        | ns   | 150-200              | 102  | 87     |
| Private                                       |                | ns   |                      | 87   |        |
| Water Supply<br>Reserve                       | ns             | ns   | ns                   | 128  | 341    |
| Fisheries<br>Reserve                          | ns             | ns   | ns                   | 165  | 340    |
| TOTAL   | 750-1000       | —    | 1000-1200            | 1242 | 1766   |

In this table, 'ns' means the area required was 'not specified' at the meeting or on a plan. The fisheries reserve area was estimated on the basis of the verbal statement that a five-chain strip on either side of the Tokaanu River would be suitable.



A small area of the 896 acres of the township in European title was purchased by negotiation. Gibson proposed in October 1964 (A7:26) that the industrial area of 189 acres should be taken, although, at the meetings of owners on 24 May and 20 September 1964, it had been stated that this would be a temporary leasehold of 10 to 12 years. All these areas were inside the boundaries specified in the Second Schedule to the Turangi Township Act 1964. Of the 341 acres in the proposed water supply reserve (including 34 acres 'now rezoned for rubbish dump'), only 59 acres were within the boundaries detailed in the First and Second Schedules and 282 acres were outside the Act boundaries. Of the 340-acre proposed fisheries reserve, 222 acres were within the Second Schedule boundaries, 53 acres were outside those boundaries but within the First Schedule boundaries, and 60 acres were outside the boundaries of the Act altogether. The proposed fisheries reserve was not taken, although part of it was included in the land taken for the water supply reserve in 1974. In the same report, Gibson provided a somewhat extraordinary explanation for the location of the southern boundary given in the Turangi Township Act:

The Water Supply Reserve was indicated to the owners at the meeting of September 1964 as a tentative requirement of unspecified size. In fact, the southern boundary of the reserve was dictated by the size of the sheet of paper on which the plan was drawn. Unfortunately this line was also used as the boundary of the Turangi Township Act and much of the Reserve, which was not defined at that time, is outside the township. (A8:145)

The even larger area of 539 acres, subsequently taken for the water supply reserve in 1974, and the occupation of the rubbish tip are outlined in chapter 7. The argument over the leasehold or freehold status of the industrial area is also discussed in chapter 6.

The Commissioner of Works had established a committee of senior officials to consider land requirements and report to the Minister of Works in response to the Tuwharetoa Maori Trust Board's representations to the Government on behalf of the Maori owners. In July 1967, the committee considered in detail each of the numbered areas on a plan, TPD 8501/2/41 (B3(a):9), which is redrawn in figure 11. Areas 1 and 2 on this plan had already been taken by proclamation or purchased by negotiation, and comprised a total of 837 acres. Another 22 acres in area 3 were under negotiation and were to be subsequently acquired. Area 4 comprised 78 acres, and was also to be taken for the oxidation ponds. An area of 15 acres in area 5 and seven acres in area 6 were required for the new SH41. Areas 7, 8, and 9 comprised the contentious industrial area. Area 9 (114 acres) was occupied by the Ministry of Works. Area 7 comprised 29 acres of the private industrial area that had already been developed that Gibson recommended should be taken. Area 8 (28 acres) was also in the proposed private industrial area but had not yet been developed, and was subsequently excluded. Area 10 (22 acres) was needed for the water reservoir, spring, pumping station, and access road. Area 11 (34 acres) was required for a rubbish tip, but it had not been decided whether to take it or lease it. Area 12 was the water supply reserve of 289 acres (later enlarged to 539 acres), which could be taken or leased, but this had not yet been decided. Area 13 was a severance occupied by Seton's camp, which was to be purchased if areas 11 and 12 were purchased. The question of taking all or part of the

fisheries reserve, area 14 (326 acres), was considered to be the responsibility of the Department of Internal Affairs. Area 15 (6 acres) was an area where gravel was being extracted, described in some reports as 'Mrs Grace's borrow pit', which Gibson recommended should be taken 'to ensure logical development of the area [of the township already allocated] for NZED operating staff housing' (A8:113-115).

The taking of the industrial area by proclamation, in the face of previous undertakings given at the owners' meetings in 1964, became a major source of contention. The developed portion of the private industrial area was taken in 1969 (B3(a):30). The Ministry of Works' industrial area was taken on 20 September 1971 (A9:28). Just prior to this latter taking, on 16 September, Pat Hura and Hepi Te Heuheu had been appointed by the Maori Land Court as trustees of the Waipapa 1E2C and Ohuanga North 5B1F blocks (B3(a):38). On the instructions of the trustees, R T Feist, who was the solicitor for the Tuwharetoa Maori Trust Board, lodged an application challenging this proclamation in the Supreme Court under the Declaratory Judgments Act 1908. At the same time, there were Crown moves to acquire control of Lake Rotoaira. There were also unresolved issues concerning the proposed water supply and fisheries reserves, the rubbish tip, and a number of places where the Ministry of Works had entered for construction purposes or extracted material such as pumice, rock, and river gravel. A letter to the Minister of Works dated 24 September 1971, written by Feist on behalf of the trustees of the blocks in the industrial area, summed up the Tuwharetoa attitude toward Crown dealings at this stage:

The trustees who have been appointed to deal with this land are empowered to contest the proposed compulsory taking of the land and steps are being taken to this end. My clients still hope that the matter can be resolved by negotiation. They believe that their request for payment at current market valuation is just and fair and that any attempt to pay less than current market valuation is an abuse of the spirit and intention of the Turangi Township Act and cannot do otherwise than upset the friendly relationships that have existed between the Tuwharetoa people and the Crown.

You will appreciate that developments in the Taupo area are leading to the loss by the Maori people of much of their hereditary land and that this is a matter of extreme concern to them. They are, therefore, endeavouring to retain as much of their land as they can. They realise that in some cases title must go, but it rankles with them when the Crown appears to be endeavouring to force an issue unnecessarily and on unreasonable terms. (B3(a):54)

## **5.5 A DELEGATION MEETS WITH THE PRIME MINISTER**

In January 1972, a Tuwharetoa delegation met with the Prime Minister, Keith Holyoake. Their principal concerns were to retain the ownership of Lake Rotoaira and to resolve certain ongoing issues in Turangi. Feist wrote to Holyoake that the owners had been assured in 'all early discussions' that no more land would be taken than was absolutely necessary, and that they would be able to retain certain areas, including Lake Rotoaira. As Feist put it:

The Tuwharetoa people are becoming increasingly concerned that statements and assurances given by Senior Departmental officers are not being honoured by Government. My clients appreciate the seriousness of this accusation. I refer specifically to two matters. The first concerns the industrial area at Turangi. (A10:93-97)

Feist then outlined the undertakings given at the May and September 1964 owners' meetings that an industrial area of up to 200 acres would be a temporary leasehold only. He explained that the land had now been taken by proclamation and that legal proceedings had begun to determine the validity of this taking. He stressed to the Prime Minister that:

the owners' co-operation in the establishment of Turangi Township was materially influenced by the assurances given at the early meetings and they are deeply concerned that those assurances have not been kept. (A10:94)

He also pointed out that the land for the water supply reserve was not to be taken compulsorily, but that the Ministry of Works had recently issued a notice of intention to this effect. Feist reiterated that:

The records of the early meetings make it clear how important the owners considered the statements and assurances given at these meetings. A large area of Maori land was going to be taken. It had been indicated that this would not be done without the full support of the Maori owners. It was appreciated by the owners that the limits of the land to be taken for different purposes could not be exactly defined and might be subject to some slight variations. However, matters of principle were clearly established. My clients feel that any changes on matters of principle which may be forced on them by utilising statutory powers of compulsory acquisition makes a mockery of the negotiations which have enabled so much progress to have been made both in the national interest and in their own interest. (A10:96)

## **5.6 DISCUSSIONS BETWEEN THE MINISTRY OF WORKS AND THE TUWHARETOA MAORI TRUST BOARD**

On 16 February 1972, Ministry of Works officials formally met with nine Tuwharetoa Maori Trust Board representatives to discuss the issues in contention: the water supply reserve, the rubbish tip, the industrial area, Lake Rotoaira, and other matters related to the TPD. The meeting was also attended by Feist and the district officer of the Department of Maori Affairs, J E Cater. The principal issue in relation to the Turangi township was whether the freehold needed to be taken or whether some form of leasehold would suffice for the water supply reserve (now about 539 acres), the rubbish tip (34 acres), and the industrial area.

In May 1972, the Ministry of Works produced a draft agreement covering the matters discussed in the February meeting. There were more letters and more meetings over the next few months.

On 30 November 1972, a document titled 'Heads of Agreement: Tongariro Power Development Land Compensation Claims Maori Owners' was signed by the Minister of

Works, Percy Allen, and Hepi Te Heuheu and Pat Hura as 'representatives of the Maori Owners' (B3(a):94-98). While this did not resolve all the outstanding issues, it provided agreement on the retention of Maori title to Lake Rotoaira (a separate agreement was also signed with the trustees of the lake on the same day, which set out certain Crown rights there); confirmed the taking of the industrial area and water supply reserve, but with better compensation arrangements; withdrew the legal proceedings; and resolved other matters in relation to TPD works.

Tuwharetoa leaders had supported in principle the development of a permanent town at Turangi as being in the long-term interests of their people. They had also, however, to protect the interests of these people and their lands from the depredations of the Ministry of Works. It was also in Tuwharetoa interests to support any measures to ensure the continuing viability of the town as construction work came to an end. A public statement of Tuwharetoa faith in the future of Turangi was made by the secretary of the trust board, John Asher, at a seminar sponsored by the Turangi Lions Club in September 1973.<sup>4</sup>

## **5.7 AN ORDINARY COUNTRY TOWN?**

Although the Turangi Township Act 1964 expired in 1975, the Ministry of Works had not yet left Turangi. At that time, the Ministry envisaged maintaining a substantial presence in Turangi until 1981 at least, when the underground Rangipo Power Station was expected to be completed. After that, according to the Ministry's 1975 publicity pamphlet, 'the growing interests of forestry, tourism and private ownership will have secured a permanent and stable community'.<sup>5</sup>

It was not in fact until 1983 that the Rangipo Power Station was commissioned. Given the continuing substantial presence of the Ministry of Works; the genesis of the township as a hydro town, with pretensions to a permanent existence; and 1960s concepts of a model township with curving tree-lined streets and underground services, it is difficult to accept that Turangi became 'an ordinary country town' as envisaged in the pamphlet.<sup>6</sup> It was conveniently glossed over in the publicity material that the location of two prisons and associated farms in the district, at Hautu and Rangipo, also meant that many Department of Justice employees were accommodated in Turangi. In addition to this, from 1983 to 1988, the Ohaaki geothermal power project was under construction by the Ministry of Works, and many of the project workers kept their homes in Turangi and commuted daily on 'workers' buses' to Ohaaki. The New Zealand Forest Service also set up a regional headquarters in Turangi in the former TPD office of the Ministry of Works. However, in the restructuring in the mid to late 1980s that translated several Government departments into State-owned enterprises, many Forest Service employees found themselves redundant. In the late 1980s, unemployment levels rose in Turangi, with few alternative job prospects for many families who had bought homes and were trapped by their mortgages.<sup>7</sup> Turangi was not yet a typical New Zealand country town. Although there has been some expansion of tourist services, local employment prospects are still limited.

In the following sections, we examine in more detail some specific issues already alluded to. We begin by considering the commercial and residential area of the township taken by proclamation in 1965 and 1966. In chapter 6, we consider the industrial area and the abandonment of the original Crown undertaking to lease this area. Chapter 7 reviews the issues relating to the water supply reserve, the rubbish tip adjacent to the industrial area, the Tongariro River, the Tokaanu River, and the Tokaanu Power Station and tailrace. Issues relating to wahi tapu are reviewed in chapter 8. Finally, we consider the oxidation ponds in chapter 9 and the residual Maori lands west of the Turangi township in chapter 10.

## **5.8 THE COMMERCIAL AND RESIDENTIAL AREAS**

### **5.8.1 Grace farm lease bought**

The transformation of a rural countryside into an urban landscape is shown graphically in figures 12 and 13. The town plan shown in figure 13 was the one accepted by the Taupo County Council in September 1964 as a basis for the zoning changes to be made in the district scheme (B2(d):101). The principal area affected was the Grace farm, shown in figure 12. However, it was not a 'green field site' because there were houses clustered along the old SH41 and in the Turangi village on the Tongariro River bank on both sides of SH1. The Ministry of Works purchased the lease of the 743 acres in the Grace farm held by Arthur Grace under Part XXIV of the Maori Affairs Act 1953. On 22 September 1964, Arthur Grace was told verbally that the Ministry of Works was about to enter the land (B10:27). Shortly afterwards, the stock was sold and farming operations ceased, although the Grace family were able to stay in their house for the time being while the bulldozers worked around them. Other householders also had to cope with town development on their doorsteps. Some houses were taken away and others moved within their sections to make way for the new alignment of SH1 and the new curving residential streets that took no account of the existing pattern of housing. In chapter 12, we review in more detail the impact on Ngati Turangitukua families.

### **5.8.2 Assurances given to owners**

At the meeting of owners at Tokaanu on 24 May 1964, Ministry of Works officials gave assurances about how the relocation of houses and families would be dealt with in the development of Turangi. Gibson said plenty of advance warning should be given to families who would need to be shifted, and he promised to look into the case of Jane Hurae, who requested she not be disturbed from her residence. Bennion said the Ministry would arrange for subdivided sections to be returned to displaced residents as part of their compensation. Lynch said that, while the town plan must take precedence over existing house sites, houses could be removed to new sites or replaced by way of exchange, and the Ministry's intention was that 'the owner should be left as well off as he was previously'.

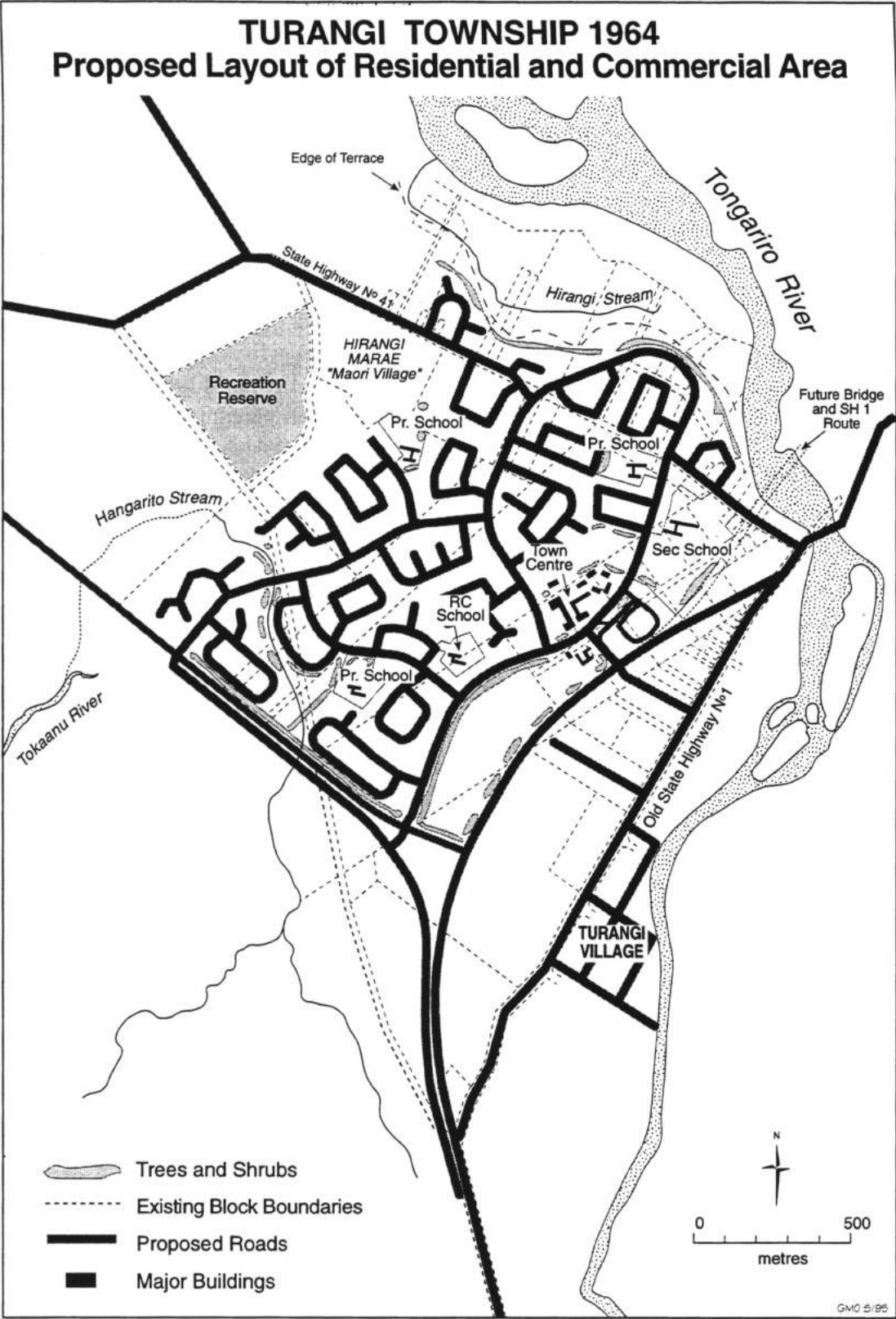


Figure 13

He also said that displaced residents would be placed 'as near as possible to where they wanted to go', and promised that 'sections would be made available to absentee members of the tribe, returning to the area' (A7:80, 82).

A second meeting of owners was held on 20 September 1964, and further assurances were given by Ministry of Works officials in response to a number of questions. At the morning session in Tokaanu, the fate of existing houses was briefly referred to. Gibson explained that the question of whether displaced residents would have the opportunity of exchanging their property would 'naturally . . . be a matter of separate negotiation with each of the individual owners themselves on a personal basis' (A7:73). In the afternoon, when the meeting reconvened at Hirangi Marae, Gibson was questioned by several individuals about housing on the old SH41. He assured them that, once the houses had been shifted and the sections redeveloped, the residents would enjoy 'first class frontage'. Alternatively, he said, they could move to a new site elsewhere in the town: 'They will have the opportunity of doing what they wish.' He explained that the Crown would acquire all the land around the highway while it was being resited, but that the owners could later buy it back. He acknowledged that some owners would simply have to move, but added that it might be that the Ministry would only have to move houses slightly forwards or backwards on their present sections (A7:83).

### **5.8.3 Negotiation techniques**

The discussion turned to other matters, including how compensation would be assessed, before returning to the issue of the existing houses along the old SH41. George Rawhiti expressed his disappointment at seeing his own family land (Waipapa 1F) included within the town plan. He asked that it be excluded so that his people's children living away from Tuangi would have land to build on when they returned to the district. If the Ministry of Works excluded 16 acres of that area, he said, he would be 'the first to help them build the town'. Lynch, however, was non-committal in his response, and repeated his invitation to individuals to come and talk to him, as each case would have to be looked at individually and could not be dealt with at a meeting such as this (A7:88).

This exchange suggests that the Ministry of Works was imposing a style of individual negotiation on owners, whereas Maori tikanga suggests it would have been quite appropriate to air individual family matters such as housing in a Maori way, in the meeting house, on the marae.

We did not receive any specific evidence of negotiations with residents and landowners of the old Turangi village, but it seems that they were influential in protecting their lands from any impacts from the construction of the new township. These 'resident fishermen' included those who had 'retired from influential places', and they won an 'undertaking . . . not to intrude on "old Turangi" in housing developments'.<sup>8</sup>

#### **5.8.4 Other possible reasons for choice of Turangi West site**

In the early stages of planning by the Ministry of Works, outlined in chapter 2, it had been implied that the choice of the Turangi West site had been influenced by the existing settlement, which provided a basis for expansion into a permanent town. It was also stated that the existing commercial premises in the Turangi village would be incorporated in the new 'town centre'. However, it seems that other influences were at work and the new township was developed on Maori lands, west of the realigned SH1. There was considerable disruption for householders at the northern end of the new SH1 route, while lands south of the Tongariro Road subdivision remained undeveloped. In effect, the lands between the old and the new highway became a buffer zone separating the old Turangi village from the new construction town.

John Asher, in his submission to the Tribunal, expressed the view of many local people that the realignment of SH1 was for the benefit of the residents of the old Turangi village:

It was apparent to people living here that there was one law for European land owners and one for Maori land owners. This came out in the fact that the old part of Turangi, the houses along the Tongariro River which were in freehold title and owned by Europeans, were untouched. The main road was diverted to keep the European-owned part of Turangi in an exclusive and untouched area so that those owners were largely unaffected by the works. (A12(1):7)

#### **5.8.5 The 'island'**

The 'island' between the old and new routes of SH1 still effectively separates the two parts of Turangi. At the northern end, some houses and motels were built. To the south, an area of about 34 hectares taken for the Turangi township remained undeveloped and is now held by Landcorp, subject to a memorial under section 27B of the State-Owned Enterprises Act 1986 (fig 14). In 1973 the local pony club leased part of the land. Over the period since it was taken it has been leased for grazing and not used for any purpose associated with the development of Turangi. The Landcorp block is currently the subject of offer back procedures under the Public Works Act 1981, which are reviewed in chapter 17.

The Ministry of Works' town and country planning division report of February 1967 on planning for Turangi's future referred to the large 'island' created by the realignment of SH1 (B8(a):126-145). The report stated that the land to the south would be held in reserve by the Crown until the number of residential sections finally required for the township was known, but that any accommodation erected there would be temporary and the land would revert to non-urban use in due course. Land to the north, it was noted, was mainly Maori-owned, with a scattered mix of permanent and holiday dwellings. No services existed in this 'island' area (B8(a):140-141).

It was assumed for planning purposes that the 'island' and vacant land east of the old SH1 would be built on eventually, but the process would be 'hastened if and when the County supplies services'. One difficulty was that to gain access to services in the new



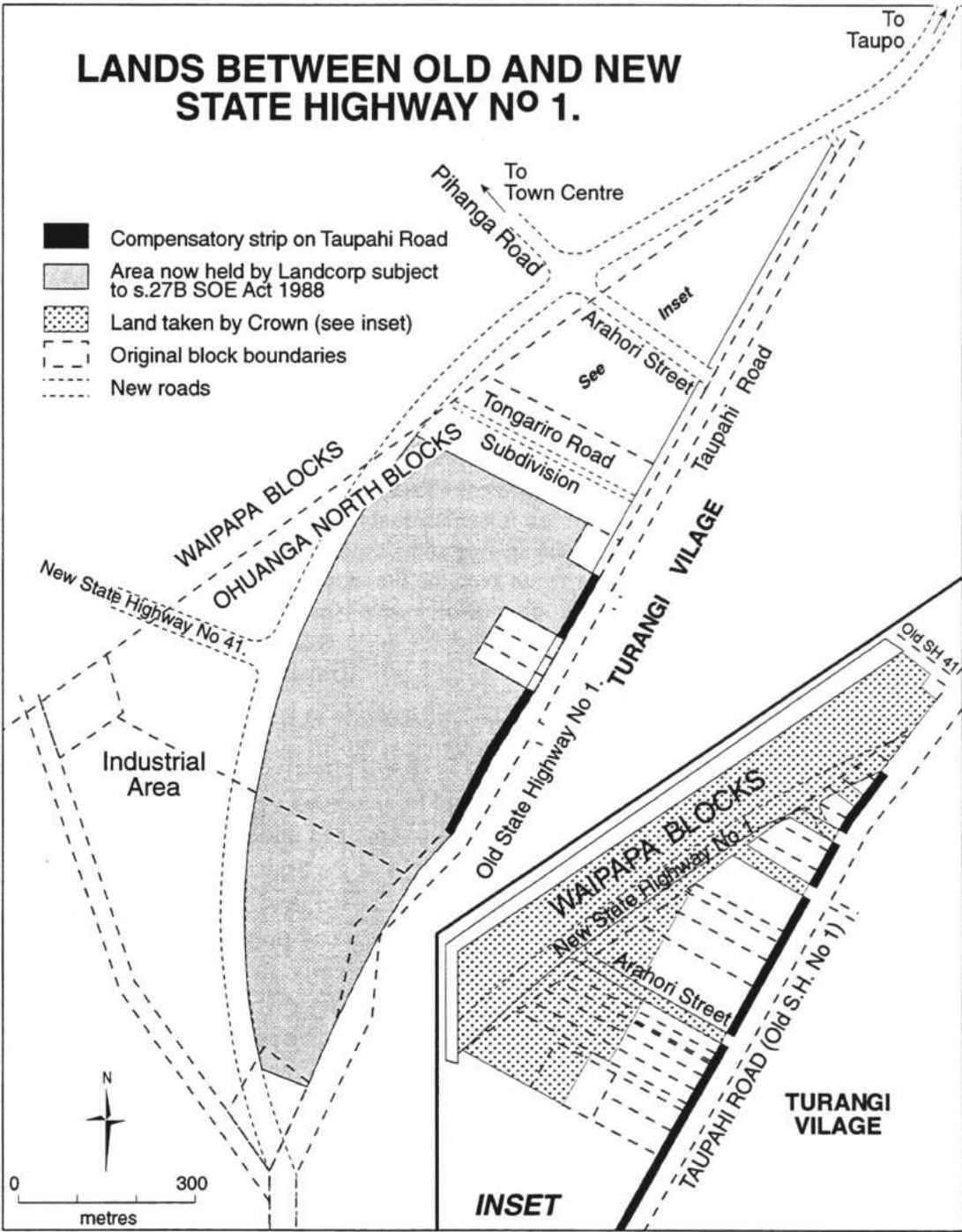


Figure 14

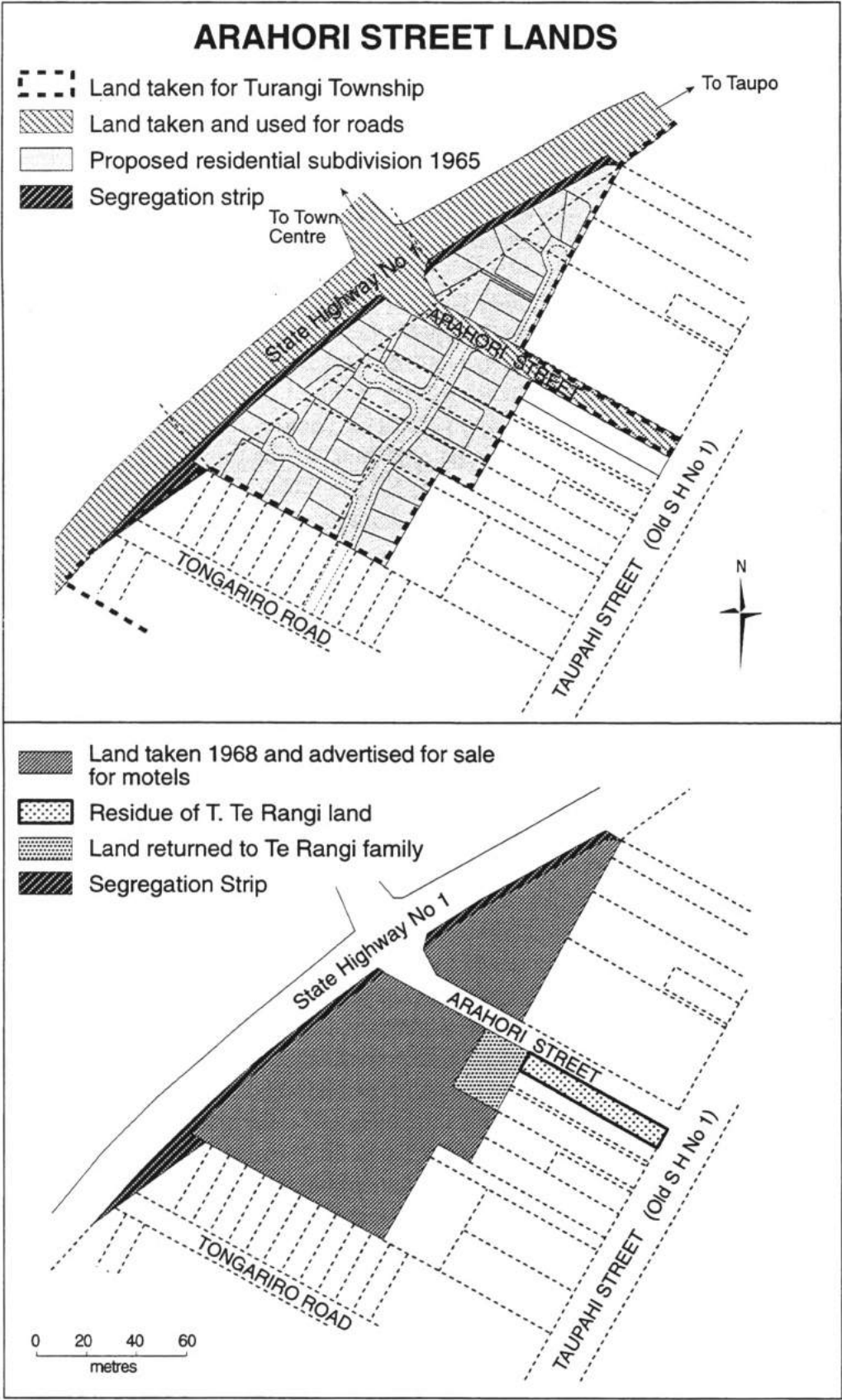


Figure 15

town required pedestrian and vehicular traffic across the new SH1. From this point of view, the report called the creation of this island of residential development by the new highway route 'unfortunate', and observed that 'Careful handling will now be required to ensure the dangers implicit in the present situation are reduced to a minimum' (B8(a):141).

#### **5.8.6 The new SH1 route**

The inset on figure 14 indicates how the new SH1 route was carved through existing residential sections. Not all were occupied by houses, but it was in this area that some houses were either taken away or relocated on their sections to make way for the highway. As part of the compensation provisions, a strip of land along Taupahi Road was added to these sections, and the old SH1 was reduced to the width of a suburban street. 'Segregation strips' were set out along the new SH1 to restrict access to it. Apart from access at the northern end of Taupahi Road, the principal vehicular access from the Turangi village to the new township was via Arahori Street across SH1 to Pihanga Road and the town centre. A pedestrian underpass between Arahori Street and Pihanga Road was also constructed at this point.

On either side of Arahori Street, east of the new SH1, were two blocks of land that had not been developed (fig 15). In 1965 a survey for a proposed residential subdivision had been carried out, on the assumption that this area would 'meet some of the anticipated demand from shopkeepers and others to whom it is proposed to make priority allocation' (B7(a):39). Presumably, the shopkeepers chose to live elsewhere, as these lands were not developed, although the Ministry of Works still expressed an intention to develop them in 1970. In response to an Ombudsman's inquiry, Lynch advised that the area provided 'essential access' to the land acquired by the Crown to the south, and that, while not required for immediate development, 'Its retention is in the best interests of the orderly development of the township for which purpose it was acquired' (B7(a):40). Gibson added that the Ombudsman should note that the land was 'taken . . . for the development of the township . . . with the unconditional agreement of the Maori owners' (B7(a):41).

It is hard to regard a taking by proclamation under the Public Works Act 1928 as an unconditional agreement, especially when one of the owners, Tutemohuta Te Rangi, had strenuously opposed the taking of part of his land at Arahori Street, had refused to accept the compensation money, and had complained to the Ombudsman in 1970. By April 1972, the Ministry of Works had decided it no longer needed this land for residential development and resolved to promote it as motel sites. In February 1973, the blocks were put up for sale by tender, transferred from the Ministry of Works to the Department of Lands and Survey and declared Crown land in August 1974, and offered on licence to two successful tenderers. However, neither built on their sites and the blocks were readvertised in June 1978 (B7:16). In August 1979, another complaint was lodged with the Ombudsman by Hono Lord, on behalf of Tutemohuta Te Rangi. The Ombudsman conducted an inquiry, finally reporting in 1982 and questioning whether a motel site was an appropriate use of land taken under the Turangi Township Act 1964, especially after the Act had expired in 1975. The Ombudsman also found that there was some justification for the return of land

to the Te Rangi family. After further negotiation, an adjacent block on Arahori Street was returned and the rest of the area disposed of for motel development.

While some of the existing houses on the Tongariro River bank at the SH1 end of the old SH41 were excluded from the township development, others had the township built around them. Opposite Hirangi Marae, the extended Rawhiti Rangataua family lived on the Waipapa 1F block, which had been partitioned into several house sites (fig 16). George Rawhiti's concerns about maintaining the land north of the old SH41 for future Maori housing had been voiced at the owners' meetings in 1964. At the first meeting on 24 May, a committee of owners had been set up, and this committee met on 31 May. In a letter to the Minister of Works on 14 August 1964, Arthur Grace Snr reported that the committee, among other things, had agreed that the two areas to be retained for Maori housing should be 'between the northern side of the Turangi-Tokaanu highway [old SH41] and the Tongariro River' as well as 'Certain sections along the [former] No 1 State Highway Turangi-Waiouru-National Park and bounded by the western side of this road' (A7:144-146).

The second area along the old SH1 was taken but not used, and is now part of the Landcorp block. Most of the area north of the old SH41 was also taken. As we have already noted, Ministry of Works officials did not consult with the owners' committee, and this attempt to preserve areas of Maori land for housing Ngati Turangitukua families was ignored. It may be relevant that in the 1960s the current Government policy on Maori housing was to 'pepperpot' Maori homes in urban areas under the guise of 'integration', as set out in the Hunn report on the Department of Maori Affairs.<sup>9</sup> The development of the Turangi township meant that only the zoned residential areas would be available, and returning Ngati Turangitukua would have to purchase urban sections at urban prices, rather than return to a 'family block'. The fate of the Rawhiti Rangataua block illustrates this.

#### **5.8.7 Residential development north of the old SH41**

The original plan showing the possible township sites did not include any land north of the old SH41 in Turangi West. It is not clear just when this land was included because the draft plan shown to Maori owners at the 24 May 1964 meeting has not been located. It seems that Jack Asher had indicated that some land north of SH41 'might be made available by the owners' (A7:203). The plan accepted by the Taupo County Council in September 1964 did show proposed residential development in this area, although on the Rawhiti Rangataua land it was not as extensive as that subsequently developed. Figure 16 shows this land before and after the taking. In 1964 a smaller portion of the Waipapa 1F block was to be used, with an extension west to Waipapa 1D2B3B. However, this latter block was outside the area described in the Second Schedule to the Turangi Township Act 1964. The Second Schedule boundary also extended upstream along the banks of the Tongariro River, giving the Crown powers to take any land between the river and the old SH41. In 1965 a subdivision plan was prepared which incorporated the existing houses and took the

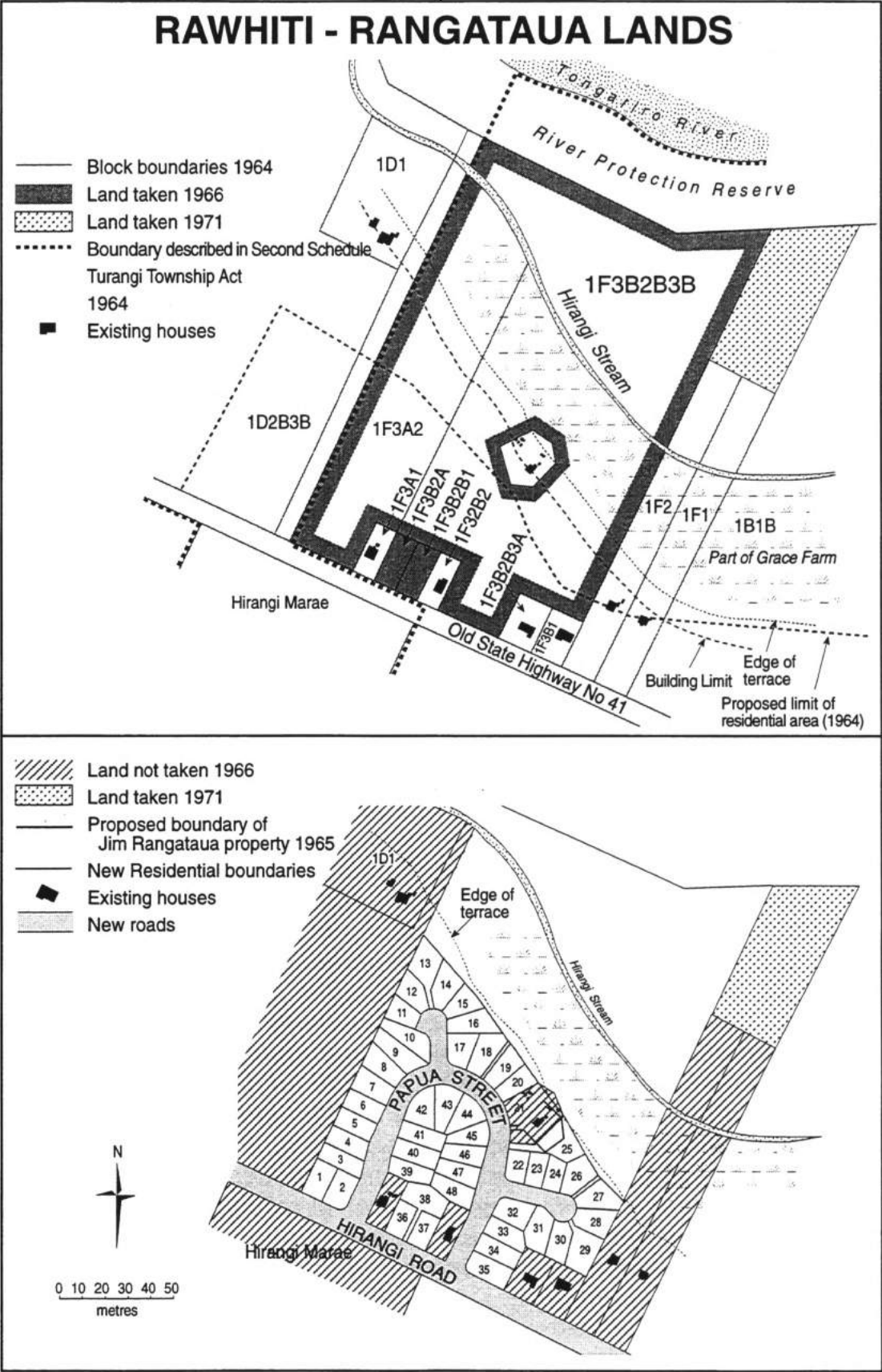


Figure 16

residential sites to the edge of the terrace above the Hirangi Stream. A 'retention area' was discussed with Jim Rawhiti Rangataua, the brother of George Rawhiti, 'who was not at all happy with it'. Apparently there were two reasons for this:

- (a) A large macrocarpa tree on the edge of the bank, which has sentimental value serves as a focal point for an outdoor living area (as evidenced by considerable development work). Important that this area be retained.
- (b) Adult family overfills small house. Extensions required urgently, also provision made if possible for sufficient land to subdivide and build another house. (B5(a):11)

This was the version reported by Lynch, but it was only part of the story. Jim Rawhiti Rangataua explained in his submission to the Tribunal that:

There was a Turangitukua marae next to my house. That old pa site was part of our history. We naturally thought that would be coming back to us. Opposite my house across the [Hirangi] stream was the original site where the afterbirths of my family were buried, and also on the same side of the stream as my house. With the new storm water system, that area flooded. So I established a new area for the afterbirths up the bank from my home. (A22(1):4)

Eileen Duff also spoke of Tomahukahuka, the former marae site, in her submission to the Tribunal:

Tomahukahuka was inhabited by Turangitukua people as their principal marae up until the beginning of the twentieth century. The old people wanted the marae to move to its present site at Hirangi, which was on higher ground. But the site of the former marae remained tapu after the people left. (A22(2):13)

Tomahukahuka was lost in the residential subdivision. 'Substandard' houses were put on the block, to be taken away when construction finished because they did not meet the Taupo County Council's requirements. The family expected the land would be returned to them but, in 1966, it was taken by proclamation.<sup>10</sup> When the substandard houses were removed, the sections were sold. The only area retained was around existing houses, and only included one of the wahi tapu – the macrocarpa tree of 'sentimental value'. This was a rakau pito, a tree marking the place where whenua (afterbirth or placentas) were buried. The word 'whenua' also means land, symbolising the connection between the people and their ancestral land. But many other people are now living on what once was the Rawhiti Rangataua family papakainga.

Because the Ministry of Works excluded only the sections already occupied by houses from the land taken, some members of the extended family lost all their interests in the family papakainga. Jim Rawhiti Rangataua explained:

as far as the wider family is concerned, the intentions of my grandmother Rea was that that block leading down to the Tongariro River [Waipapa 1F3B2B3B] would be a papakainga for her descendants. She had two daughters, Mihipeka and Te Hirau. My immediate family is descended from Mihipeka. Some of my brothers and sisters had freeholded sections from the

block prior to the project coming to Turangi, and accordingly their descendants have a papakainga there. As I have said, my half acre was the only part of the block still in Maori title which was not taken for the project. My older brothers and sisters who would have been entitled to land there, but who did not freehold their interest, missed out completely. There were three of those. The descendants of Te Hirau also missed out because they did not freehold their interest. This has meant that some of Rea's great-grandchildren have no place in Turangi to call their own, although her clear intention was that both her daughters' descendants would have a place to come back to. (A22(1):3-4)

When 'betterment' of \$2800 was deducted from the total of \$6200 compensation assessed for Waipapa 1F3B2B3B, the balance of \$3400 was paid to the 35 owners (A6:3). In 1970 a section adjacent to Jim Rawhiti Rangataua's house was sold for \$7000 (A22(1):3). Compensation matters are reviewed in more detail in a later chapter.

The lands north of the old SH41 taken for the Turangi township extended to the boundary of the river protection reserve. Less than half of the area up to the edge of the terrace taken between 1965 and 1971 was used for residential development (fig 17). The balance comprised low-lying swamp lands drained by the Hirangi Stream. This area had formerly been used for cultivations, but was prone to flooding. In 1958 the Tongariro River had flooded, breaking through to the Hirangi Stream and forming a new channel, which the Ministry of Works blocked in 1965. The Hirangi Stream and the spring which fed it were important to Ngati Turangitukua, as Eileen Duff explained:

The Hirangi Stream was a trout-spawning stream, and a source of watercress, koura [freshwater crayfish], drinking water – that stream was full of life. You could tickle the trout for dinner. The stream is woven into the history of our families, and figures in our waiata . . . the waiata connected with the puna [spring], which told the story of the taniwha coming up at that point and making its way back to the Tongariro River and out into the lake. The waiata was a very sad one, because the taniwha had originally lived further up the Tongariro River and the stream is the tears of that taniwha. (A22(2):2)

The whole area between the houses and the Tongariro River is now described as a recreational reserve, sometimes called Crescent Reserve. The area adjacent to Tautahanga Road is grassed, but the remainder is covered in scrub with tracks through it. The puna is now overgrown. Eileen Duff told the Tribunal that the Hirangi Stream is now muddy and contaminated by storm water draining into it (A22:6).

In chapter 12, we examine the impacts on Ngati Turangitukua of the taking of these lands and the construction of the Turangi township. We also examine in more detail the effects of housing policies and, in particular, how the Ministry of Works allocated house sites in Turangi to Maori families. In chapter 14, we review how compensation was assessed for the lands taken for the residential and commercial areas of the township in 1965 and 1966.



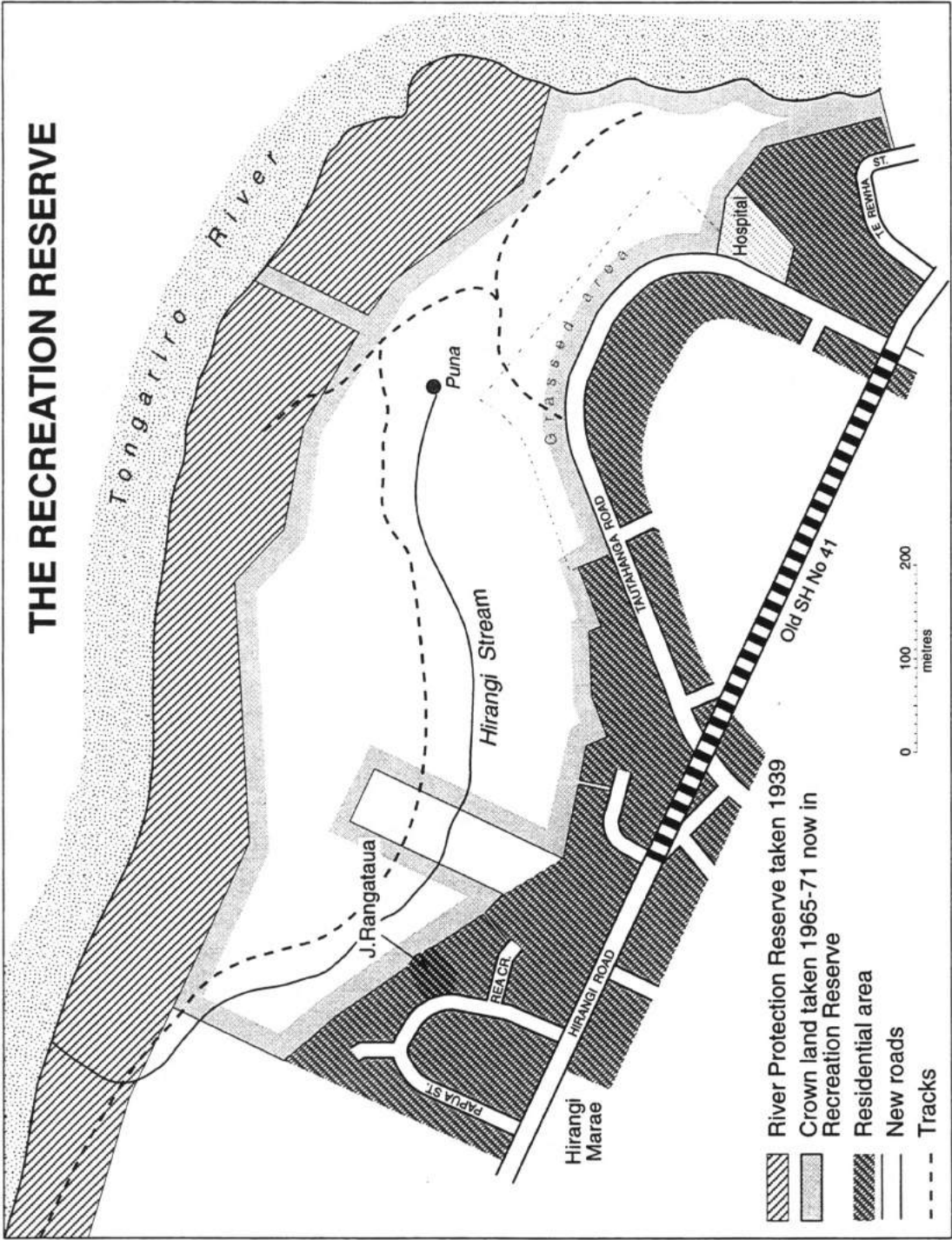


Figure 17



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## CHAPTER 6

# THE INDUSTRIAL AREA

### 6.1 INTRODUCTION

From an early stage of the planning for Turangi, it was envisaged that an 'industrial area', which would be occupied by both the Ministry of Works and private contractors during the construction period, would lie to the south of the permanent town. It would have access to the new route of SH41 to Tokaanu and be close to the junction with the realigned SH1. The intention was to separate heavy industrial activity and associated traffic from the new township and the existing Turangi village (fig 9).

### 6.2 15 APRIL 1964 MEETING OF NGATI TUWHARETOA WITH OFFICIALS

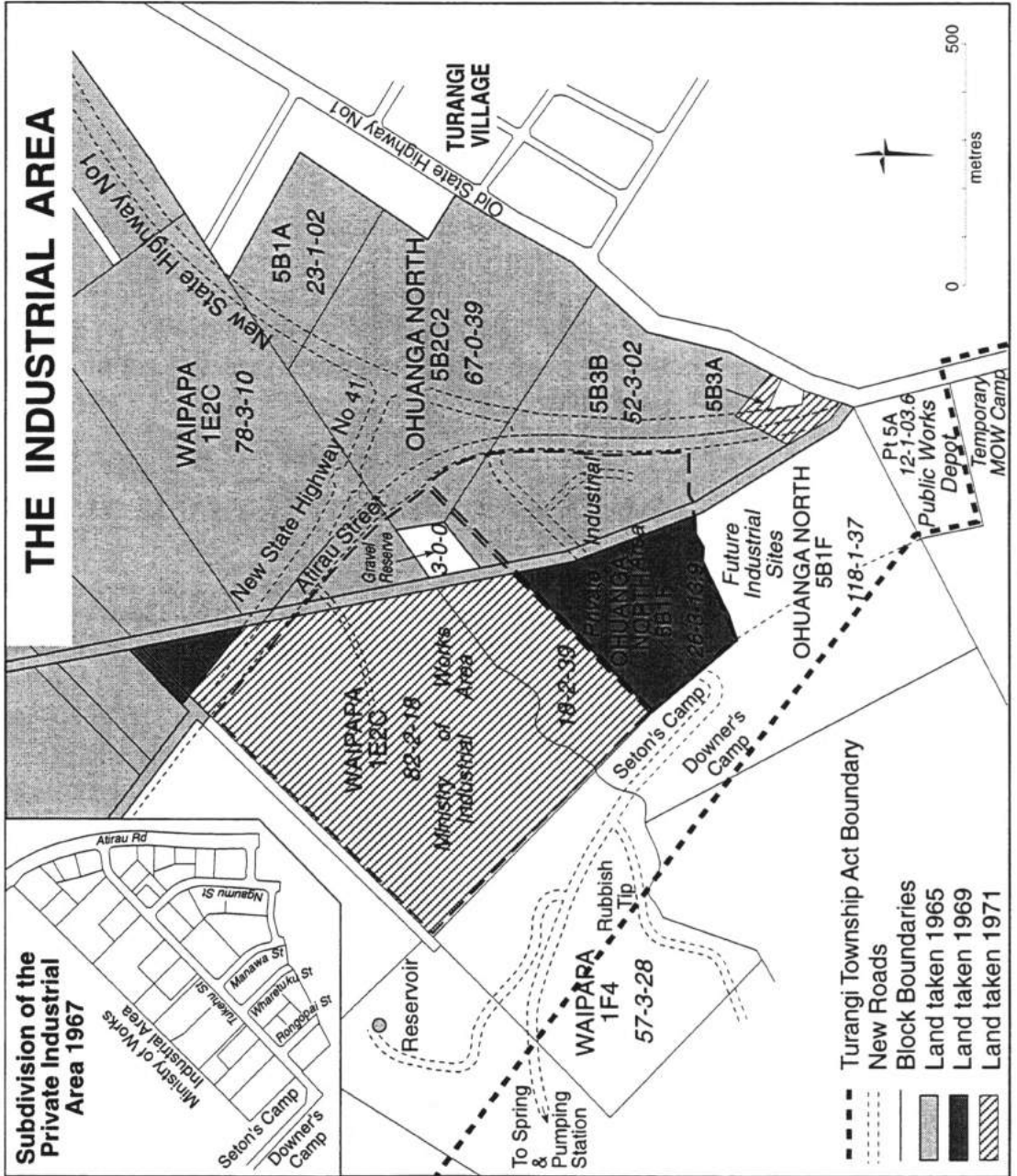
At the preliminary meeting of officials and five representatives of Ngati Tuwharetoa held on 15 April 1964, the separate requirements for the township and the industrial area were made clear in the summary of discussions:

- (a) In addition to the freehold land required (600–800 acres) some 150 to 200 acres of leasehold land would also be needed at the rear of the township site.
- (b) Land at the rear of the site (ie, south-west of the paper road) would be available, if required, to compensate for European land adjacent to SH1, which it might not prove possible to obtain (B1(a):4).

It was also indicated at this meeting that land in the Tokaanu development scheme south of the public works depot on SH1 would be occupied at an early stage for 'a temporary camp'.

### 6.3 7 MAY 1964 MEETING OF TRUST BOARD WITH MINISTRY OF WORKS

At the next meeting in the Tuwharetoa Maori Trust Board's offices with three trust board representatives on 7 May 1964, Gibson indicated that planning for the township was in the preliminary stages and he hoped to have a plan ready for the meeting of owners on 24 May 'to indicate land for township and housing areas'. The industrial area was discussed separately. The minutes record that Gibson 'also outlined the land requirements for



industrial development at the south of the construction village'. John Bennion then spoke, and among other things, stated that 'For industrial development leasehold for 12 years only was needed and that land would be required for private enterprises as well as Ministry of Works requirements' (A7:189-191). No other discussion on the industrial area or its tenure was recorded in the minutes of this meeting.

#### **6.4 24 MAY 1964 MEETING OF OWNERS WITH THE CROWN**

The notice of 8 May 1964 from Gibson and Jack Asher calling the meeting of 24 May stated that, in addition to freehold land:

There will be a further area of some 2/300 acres of the Waipapa and Ohuanga North area located on the South West side of the Hangareko [sic] Stream, as a leasehold area for temporary erection of work-shops etc during the construction stages, after which the area shall revert to the owners. Possibly part of this area will be declared a permanent industrial area for future erection of factories under the Town and Country planning of the local County. (B2(a):61)

The 24 May 1964 meeting of owners, held at the trust board's offices in Tokaanu, began with Gibson explaining the whole TPD, before moving to the question of the best site for the construction town. Officials preferred Turangi West and emphasised their proposal that it should become a properly serviced permanent township. Bennion stated that, 'The Government would not consider building to the standard envisaged on leasehold land.' This statement referred to the township itself, which was to be on freehold land. After answering some questions, Bennion explained that the proposed leasehold industrial area would cater for workshops, stores, and the like, and would revert to the owners when the Ministry's work was completed. He added that private industry would also 'be developed in this area, but would be a matter for negotiation between the individuals, the owners and Taupo County Council'. He stressed that 'this trend can not be forced but conditions could be made as attractive as possible' (A7:177-184).

The discussion then moved on to sewerage and other services and housing and compensation issues. The Department of Maori Affairs' report on this meeting noted that 'Industry would be sited on Maori Freehold land (leased by private firms?) outside Township' (B1(a):5).

## **6.5 20 SEPTEMBER 1964 MEETING OF OWNERS WITH THE CROWN**

At the next major meeting of owners on 20 September 1964, the realignment of SH1 and the new route for SH41 were confirmed (A7:73–92). These roads, Gibson stated, provided the ‘main framework’ for the planned development of Turangi. He also pointed out the industrial area, among other things, on the plan displayed at the morning session held at the trust board’s offices. The meeting reconvened after lunch at Hirangi Marae. The following statement was recorded in the minutes kept by the Ministry of Works as part of Gibson’s description of the proposed Turangi township:

Land shown on the plan that MOW are proposing to lease would be a temporary industrial area for only ten years, but there would be provision for further industrial development for private industrial installations. Ministry of Works would take the land on a leasehold basis and develop it to a standard required by the County. (A7:80)

There was no other discussion of the industrial area until near the end of the meeting, when Arthur Grace Snr queried the amount of land required. Gibson replied that it was 200 acres, some of which was in the Tokaanu development scheme, and that it would ‘all be taken under lease’. He added that private industry could accept a temporary lease or negotiate something more permanent with the owners themselves. R E Tripe, the trust board’s solicitor, noted that the land would be leased for 10 years and then revert to the owners (A7:91).

Up to this point, the Maori owners and the trust board had been given a clear assurance by the Ministry of Works of its intention to lease the whole of the industrial area for 10 to 12 years. If any private enterprise wished to negotiate a longer term, that would be done directly with the Maori owners. Otherwise, the land would revert to the Maori owners. As Crown consultant David Alexander said in evidence, ‘Leasing the industrial land had been firm Crown policy up till 21 September 1964’ (B3:2).

## **6.6 CABINET APPROVES THE LEASING OF INDUSTRIAL LAND**

It was soon revealed that the Ministry of Works’ policy in leasing the industrial area might change. On 20 September 1964, the owners were assured that all the industrial area would be leased. Cabinet approval for the construction of the TPD and the Turangi township was granted on 21 September, and included ‘the lease of some 200 acres’ (A7:95). However, on 24 September, at a meeting with the ‘Committee representing the owners of the area at Turangi’ at the trust board’s premises in Tokaanu, Lynch raised the possibility ‘that the Crown will want to freehold a portion of the Industrial site’ (A7:55–59). The committee would remember, he said:

that the Crown’s proposal in the inception, was to acquire a lease only of this area for the term of approximately 10 years, at the end of that period it was to revert to the Owners. The Crown however now realises that for private industry to be attracted to the town, and here they would

be permitted into the industrial area, it is imperative that they be given a sound tenure, and that tenure must be of a freehold nature. This is a proposal that must be given some thought by the Committee however not at present but at a later date. (A7:58)

There was no indication recorded in the minutes of this meeting of any committee response to this suggestion. Lynch went on to advise that the Ministry of Works and associated contractors would be 'moving in immediately' to begin work on roads in the industrial area (A7:58). A week later the bulldozers were at work.

## **6.7 THE MINISTRY OF WORKS ENTERS THE LAND**

The Ministry of Works entered the land, levelled it, and established on it the facilities to service the TPD's construction. The farm lease of Arthur Grace was purchased, but this covered only parts of the Ministry of Works' areas and private industrial areas on the Waipapa 1E2C and Ohuanga North 5B2C2 and 5B3B blocks. It did not cover the remaining parts of the industrial areas on the Ohuanga North 5B1F block; the road access to the rubbish tip, reservoir, and pumping station, known as the Tukehu Road extension; or Downer's and Seton's camps on either side of this road (fig 18).

On 14 October 1964, Gibson informed the Commissioner of Works that, with respect to the industrial area:

To date this has been vaguely spoken of as leasehold rather than outright purchase but a closer examination of the problems arising suggests that a leasehold would be a serious mistake especially in regard to land for private industrial development. . . . Further it has been recognised that in the case of commercial and residential land where investments will be heavy, the land should be freeholded. The same should apply in the case of industrial land. When this point was raised before Maori Elders no reaction resulted. (A7:24-25)

Gibson's opening statement that the question of industrial land had to that point been vaguely spoken of as leasehold rather than freehold was manifestly wrong and misleading. As noted, firm assurances that the 200 or so acres required for industrial purposes would be leased were given by both Gibson and his colleague Bennion at various times during discussions with owners earlier in 1964 and as recently as 20 September.

Gibson ended his letter with several recommendations, including 'Purchase land required for industrial use. The Ministry of Works area could revert to the Maoris if need be' (A7:25). It is not clear just who among the local 'Maori Elders' had been consulted. At the 24 September meeting of the owners' committee, which Gibson had not attended, Lynch had raised the matter but, as earlier noted, consideration was deferred to 'a later date' (A7:58). It is not, therefore, surprising that no reaction resulted.

On 21 October 1964, Lynch, on behalf of the District Commissioner of Works, wrote to the Commissioner of Works on the progress 'on agreements with various owners'. Among matters 'requiring urgent attention' was the industrial area:

An early decision is needed as to whether all or part of this area is to be freeholded. If any is to be leased, details of areas, and terms and conditions of leasehold interest to be acquired, are needed before any progress can be made. I should mention that in my view all land should be freeholded. Development of leasehold areas will be restricted by the limited tenure and will be less attractive to outside capital. Rental plus restoration will probably cost more than freeholding. Furthermore the advantages to the Crown of owning this land, from both economic and planning viewpoints, need hardly be stressed. I am aware that the original intention (which was validated by Cabinet) was to lease, but with the re-location of the highways the industrial area has moved northwards and is now largely on land that was originally proposed as freehold. A further point is that a strip of water supply reserve (freehold) will require to be taken along the south side of these lands and this would leave the leasehold area sandwiched between the areas that are to be freeholded. (A7:29–30)

## **6.8 THE CROWN SEEKS TO RESILE FROM THE UNDERTAKING**

It is disturbing to find that, within a month of the Cabinet confirming that the industrial land was to be leased from the Maori owners, the Crown land purchase officer was proposing that the economic advantage to the Crown of resiling from this undertaking should take precedence over the recognised advantages to Maori of retaining the ownership of the land and leasing it to the Crown and its successors. It is not surprising that the Ministry of Works' legal staff were concerned that the Maori owners had been advised of the intention to lease the industrial area and they felt that the owners' 'full consent' should be obtained prior to the Crown's acquisition of the freehold. Cabinet approval had been given on the basis of a lease. Gibson reported by telegram on 11 November 1964 on a head office 'request to test Turwharetoa reaction to proposal to drop leaseholding of 200 acres for industrial use'. He had contacted four people by phone, Arthur Grace Snr and Lang Grace – leaders of 'the Grace faction' – and Jack Asher and Pat Hura of 'the Asher faction'. The significance of Gibson's use of the term 'faction' in this context was not made clear. Lang Grace, Gibson recorded, 'prefers to sell this land outright to be quit of Maori Affairs Department'; Pat Hura 'is happy to sell in the belief that promotion of township will be improved'; Jack Asher 'is happy to support outright sale in view of wishes of the Crown and others', but he wanted to confer with Pat Hura; and Arthur Grace Snr 'is happy to see outright sale as he considers land would be taken for ten years anyway and therefore of no use for farming by his son'. The latter also expressed 'his preference for recompense in land rather than cash' (A7:22). It is not clear why these four were consulted individually when there was an owners' committee already set up. On 24 September 1964, this committee had met, and a subcommittee comprising Pat Hura, Lang Grace, and Walter Ngahana was 'elected for Liaison duties and in conjunction with Works Department Officers, [to] work to resolve any problems that may arise in the construction of the town site' (A7:58). Ngahana was not recorded as being consulted by Gibson, nor was there any record of a meeting of the subcommittee or owners' committee to consider this change of policy.

On 10 November 1964, presumably after Gibson's phone call, Arthur Grace Snr sent a telegram to the Minister of Works:

Will cooperate in transfer freehold of approximately 200 acres of Ohuanga North and Waipapa Blocks required by Government for heavy industry site Turangi Township preferably however by exchange for Crown Land in same locality and at present incorporated in the Tokaanu Maori Land Development Scheme farm being consistent with our general policy of conserving our lands for farming and ultimate settlement by our people. Your cooperation would be appreciated. (A7:7-8; B3:5)

However, there does not appear to have been any serious attempt to follow up Arthur Grace Snr's suggestion. Given the obligation on the Crown to protect Maori rangatiratanga over their land, strenuous efforts should have been made to accede to this entirely reasonable request. By February 1965, the Ministry of Works had established its intention to acquire 150 acres freehold in the industrial area (A1:8). There was no full meeting of owners called to consider the freeholding of the land as an alternative to the expressed Crown intention of a temporary leasehold. The Ministry of Works proceeded on the basis of limited consultation with a few people. Presumably because the Turangi Township Act 1964 was now in operation, thus giving the Crown the power to take the land, it was not considered necessary to meet with other owners. A proclamation plan was approved as to survey in November 1966 but could not be used because a small part of it was outside the boundary described in the Second Schedule to the Turangi Township Act (B3(a):3-4). An amended plan was approved in November 1967. Meanwhile, in October 1965, the three-acre pumice pit (also described as a gravel reserve), part of the hill Te Puke a Ria taken in 1923, was declared to be 'set apart for the establishment and development of Turangi Township'.<sup>1</sup> There was no further action to take the remaining part of the industrial area by proclamation, and the situation remained unresolved into the 1970s.

## **6.9 CROWN ABANDONS LEASEHOLD OF INDUSTRIAL AREA**

By early 1967, as already outlined, local people were expressing some dissatisfaction with the increasing amounts of land being required by the Crown. There was still no payment of compensation for lands already taken in 1965 and 1966. The Department of Lands and Survey was also trying to negotiate the purchase of the Tokaanu swamp lands and the Tongariro River delta as part of the lakeshore reserves scheme. It was still not certain how much land would be taken for the Tokaanu Power Station and tailrace. On 4 April 1967, R E Tripe, the solicitor for the Tuwharetoa Maori Trust Board, wrote to the Minister of Works expressing concern about the Crown's proposal to acquire the freehold of the industrial area. He reminded the Minister of the Crown's undertakings at the meetings on 24 May and 20 September 1964 that the industrial area would be leased:

At both these meetings the Maori owners expressed concern that no land should unnecessarily be taken from them, and, in particular, with regard to areas proposed to be occupied by the various Government Departments and others for industrial purposes connected with the Hydro Scheme, that these would be occupied on a temporary basis only and returned to the Maori owners at the completion of the works. The Maori owners were concerned that



they should not lose freehold title unnecessarily as they have all too little land in any event, and the proposal that these industrial areas should be leased from them was an important ingredient in their approval of the Scheme. Indeed many of the owners of the land in question have comparatively little other land remaining. (A8:80-81)

The Minister referred the letter to the Commissioner of Works for a response. On 9 May 1967, the commissioner advised the Minister that he had asked a committee of senior Works officials to consider the land requirements at Turangi and report back:

From a practical viewpoint it is thought desirable Government's powers to take land should be exercised to a minimal degree and that, with the exception of some 30 acres, other land should be negotiated with willing owners only. If owners do not wish to sell their land then it is felt that appropriate leasehold arrangements should be attempted. (A8:131)

One of the members of this committee was the Ministry of Works' chief land purchase officer, Lang Grace, who also belonged to Ngati Turangitukua. At a meeting on 1 May 1967, in response to a question about local Maori resistance to land sales:

Mr Grace replied that there had been a noticeable tendency towards resisting sales recently and he referred to efforts by the Lands and Survey Department to purchase land in the vicinity of the tailrace tunnel which had met with a flat refusal from the Maoris. The landowners felt they did not know where the Crown was going to stop in acquiring land. (A8:133)

On 30 May, the committee met again with Gibson and Bennion from the TPD. The minutes of this meeting record:

The Project Engineer contended very strongly that the Maori owners had agreed to the taking of a further 200 acres or so for industrial development both by private interests and the Department but that there had been a change of heart on the part of a small minority interest as a result of which the Maori owners were claiming through the solicitors, that this land be held on leasehold only. (There appeared to be some doubt as to what constituted 'Maori owners' within the terms of the alleged approval). (A8:138)

There were 'strong divergences of opinion' about the 'moral obligations of the Crown' in this matter, but it was agreed at this meeting that some action could be taken to acquire approximately 90 acres for the private industrial area under the Turangi Township Act 1964. The file note written by the Assistant Commissioner of Works, Mr Magill, which recorded this discussion, also included the comment that 'There certainly seemed to be lack of coordination between Head Office and Project in respect of these issues' (A8:140), and Gibson was duly asked to provide a schedule of land requirements to be considered. Magill, in turn, visited Turangi.

At the July meeting of the officials' committee, it was agreed that the freehold of the private industrial area should be acquired by the Crown, as recommended by Gibson, because the land had already been developed, partly allocated, and built on by private industry on the basis of an expectation of freehold titles. Magill noted, however, 'his

concern at the undertakings given to private industrial users, before the land had been taken, that it would be freeholded' (A8:111). Gibson, for his part, recommended that all the Ministry of Works' industrial area should be taken, as well as another 28 acres to the south of the 29 acres of private industrial area already developed. It was agreed in principle that both areas should be taken, although the opinion was expressed that leasing was a viable option. The arguments in favour of taking were that it would 'enhance the permanent development of the township to protect the Crown's investment and . . . allow [the] in situ sale of buildings on freehold land'. Magill noted that there was 'an obligation to recoup as much of the Crown's heavy investment as possible' (A8:114). However, no immediate action was taken and, in October, Gibson wrote to the Commissioner of Works stating that 'considerable pressure is being brought to bear by outside interests with regard to the issue of title', that he had had several applications for 'permanent title', and that the 'matter was becoming a source of much embarrassment' (A8:74). Since no formal approval had yet been given to take the land in the private industrial area, it seems that Gibson, having taken it upon himself to offer the promise of freehold title, was now putting the pressure on head office.

## **6.10 3 MARCH 1968 MEETING OF OWNERS WITH THE CROWN**

### **6.10.1 First meeting between local Maori and Gibson since 1964**

By early 1968, no resolution of the tenure of the industrial area had been reached. This and other unresolved issues had raised the level of dissatisfaction and frustration among Maori who owned land affected by both the Turangi township and the TPD generally. The district officer of the Department of Maori Affairs, J E Cater, called a meeting of owners, which was held at Hirangi Marae on 3 March 1968. This meeting was the first opportunity since 1964 for local Maori to address their concerns directly to Gibson and other Ministry of Works officials in their own environment. Both Gibson and Lynch admitted that they had not met with local people at a marae hui since the meeting of 20 September 1964, and it was now 3½ years since construction work had commenced. The meeting was also attended by representatives of the Taupo County Council, including the chairman, H Besley. The meeting was chaired by Cater who, after the mihi, explained that he had called the meeting 'to get the people together with the Project Manager' after the long interval since the previous meeting. He observed that while some lands in Turangi had been taken, other areas were occupied but had not been proclaimed taken, and for that reason the Maori Trustee could not yet make an approach for compensation. He invited the Ministry of Works officials to advance their proposal for the occupation of the lands, following which the owners would discuss the matter amongst themselves, much as would occur in a normal meeting held by the Maori Land Court under Part XXIII of the Maori Affairs Act 1953 (A8:27).

### **6.10.2 Gibson's explanation**

Gibson began by referring to various areas on a plan showing land requirements. He explained that his job was to explain 'the engineering requirements', that Lynch would discuss land acquisition and compensation, and, because the Taupo County Council would be taking over local government on 1 April 1968, that Besley would 'state what their requirements are'. Gibson then proceeded to the areas labelled 7 (the private industrial area already developed), 8 (the private industrial area not yet developed), and 9 (the Ministry of Works' industrial area) (see fig 11, ch 5). Gibson explained that area 7 had been developed for industrial B and C use and the majority of it had already been occupied by private firms, which had been assured they could acquire the freehold. He said that area 8 was also industrial B and C but had not yet been developed with services, although it had been occupied. He added:

We are very hopeful that you people today will agree that all this Industrial B and C land is necessary for a firm future for Turangi and that you will make Area 8 available to us to purchase just as we have to purchase Area 7. We would be very pleased to buy Area 8 if you would elect to sell it, thus ensuring the proper balance in the township between the various types of land. It is most important that adequate industrial land be provided to encourage industry into the area. (A8:28)

With respect to area 9, the Ministry of Works' industrial area in which Gibson said the Crown had already invested some \$3 million, he again expressed the hope that:

you will recognise the utmost importance of this land being acquired by the Crown so that when the power construction work phases out in 10–15 years these facilities will be immediately available to the Forestry Department and Lands and Survey who are already moving to forestry and farm development in this back area around Turangi and workshops will be necessary to support their activities over the huge area of lands surrounding Turangi. (A8:28–29)

After outlining the other areas already occupied or likely to be required, Gibson returned to the question of the Crown's acquisition of the industrial area:

When we were speaking of this area in here (pointing to map) we were undecided as to what we should do in regard to the acquisition of that land and at the meeting in September 1964 when asked just how the Crown would deal with this land requirement I explained that there were alternatives, that probably we would lease that block of land. Well, between that meeting in September 1964 and Christmas 1964 it was realised by our planning people that if we were going to encourage private firms to move into this area, invest their money and what is more take over the power development facilities when we pulled out that the only practical solution was for the Crown to acquire the title to that land and then be able to consolidate the titles and hand the land out expeditiously and at very low value to encourage industries to come here to support the population of the residential and commercial areas of the town. Now this was explained to your senior representatives who were set up at the end of the September 1964 meeting. As you will probably all remember you elected I think it was 12 members representative of your people to negotiate final details with departmental officers and this

requirement and this mode of attack with this land was discussed with your representatives and we had full understanding, or thought we did, with your representatives and that is why we have gone ahead and invested \$3 million on this block and private interests have gone ahead and invested \$500,000 in this block and that is why we are asking your confirmation that the arrangements we negotiated after the September meeting stand. (A8:30–31)

### **6.10.3 Clarification sought from Gihson**

Cater cut in at this point to seek clarification that what the owners were being asked was that 'the previous thought they had about leasehold is to be scrubbed and the land is to be taken completely. Is that the position?' Gibson responded:

Yes, Mr Chairman, I have been involved in long and protracted discussions with senior officers of the Department in Wellington and the Minister of Works in regard to this land and he is confident that you will affirm the understandings that we have that Areas 7 and 9 must be taken.

He conceded that area 8 could be retained by Maori and that 'We will just have to occupy it and pay you compensation at the end' (A8:31). Cater interrupted again:

Cater: Let us get this clear. Does that mean that irrespective of what the people think you are not prepared to lease Areas 7 and 9 and intend to take them anyway?

Gibson: Well, Sir, I think this truly represents the situation.

Cater: Let's be quite blunt about it so the people will know exactly what the position is. The original idea as I have heard it was that these areas here were to be leased and when you [the Ministry of Works] moved out the occupiers of the land would be paying the owners a rent probably in perpetuity or something and you would pay them a rent for the occupancy of the land. The idea now is that you will take that land whether or not the owners want to retain a leasehold. Am I right?

Gibson: Well, ladies and gentleman, Mr Cater puts the matter in a slightly different way to what I would put it to you.

Cater: But that is the question, isn't it?

Gibson: The question is rather this – 3 years ago we recognised that it was best that we take this land. (A8:31)

Gibson then reiterated his claim that, in late 1964, he had obtained an understanding from senior Tuwharetoa leaders that 'we had your full approval to take that land' and, on that basis, the Government had invested \$3 million and 'induced private interests' to spend \$500,000. 'We still do not want to bulldoze the people of Turangi,' he said, 'we just wish you to affirm that our understanding that we take that land stands' (A8:31). Gibson was questioned further by Cater on the form of resolution he would have to put to the owners

at the end of the meeting after the officials had gone. Cater ventured that it might be 'quite futile for me to get resolutions from this meeting which will be of no substance' (A8:33). Gibson finally admitted that he had correspondence from the Minister of Works indicating that 'there will in fact be no alternative but that the land be taken'. At this point, the minutes recorded 'Loud murmuring from the floor of the meeting'. Cater then asked whether the Minister 'might change his opinion if he gets a resolution of a different nature from the owners?' Gibson responded, 'He could do' (A8:33).

This exchange leaves open a number of questions. If it had been decided in December 1964 that the industrial land should be taken rather than leased, why then had no proclamation been issued? There had been no meeting of owners to discuss the matter. Gibson's 'understanding' appears to have been based on him talking individually by telephone to four Tuwharetoa leaders: Jack Asher and Arthur Grace Snr, who were both dead by 1968, and Pat Hura and Lang Grace, who were present at this meeting. Lang Grace made no comment but Pat Hura stated later in the meeting, while the Ministry of Works officials were still there:

I appreciate the fact there is one area considered to be the industrial area of the town, I appreciate that there is some disagreement there. When these matters were originally discussed and the committee [members] of which I was one were appointed – at that time the talk mainly was around the 700 acres around which the township was placed. The MOW then felt they wanted to lease the industrial area. Mr Gibson then rang me and asked whether the owners would agree to sell it. I said yes I thought so, but when it comes to the final agreement it is up to the owners. (A8:43)

#### **6.10.4 Full approval?**

Gibson seems to have been stretching the meaning of 'full approval'. On his own admission, he had talked to only four people in late 1964 (A7:22). His concept of 'full understanding' was perhaps what he and other officials wanted to believe. On the Maori side, it is more likely that they tacitly assumed that, if the Ministry of Works wanted to take the land, a proclamation would be issued in due course anyway, whether the owners agreed or not.

There was nothing in the 1964 'approval' or 'agreement' which complied with the requirements of Part XXIII of the Maori Affairs Act 1953 on how a resolution by a meeting of Maori owners to alienate a specific area of land should be dealt with and confirmed by the Maori Land Court. At this 1968 meeting, although Cater managed it as if it were a Part XXIII meeting of owners, he had before him no specific application to alienate which included a statement of conditions or price. Under section 259 of the Maori Affairs Act 1953, the Crown could acquire land 'in pursuance of a resolution of the assembled owners passed and confirmed in accordance with Part XXIII of this Act'. Later in the 1968 meeting, Lynch explained how he viewed these procedures:

The Ministry of Works has to operate under the Public Works Act and not necessarily under the Maori Affairs Act and we must look at this whole problem in the light of these meetings

which were originally held with the Maori owners and at these meetings the Maoris voted unanimously that they would make their land available to the Ministry of Works for the construction of a permanent township at Turangi. That being the case I think the intentions of a normal Pt 23 procedure have been fully met. There is no way under legislation under which we are now operating whereby the Pt 23 meetings can be held in respect of Turangi Township itself. As far as the areas outside Turangi township [are concerned] I have already expressed my willingness to attend these meetings and discuss this matter. (B10(c): doc 21)

In this statement, Lynch was conveniently avoiding the point that the only agreement reached in 1964 was an agreement in principle only. The relevant part of the resolution passed on 24 May 1964 was:

That this meeting approves the proposal of the Crown for establishment of a town at Turangi along the lines outlined to the meeting, and accepts the assurance given that the owners will be reasonably and fairly compensated. (A7:184)

At this meeting, it had been clearly stated that, in addition to the 600 to 800 acres required as freehold, some 150 to 200 acres required for the industrial area would be leased for 10 to 12 years. If the 24 May 1964 meeting had been held under the provisions of Part XXIII of the Maori Affairs Act 1953, there would have been specific resolutions to that effect put to the meeting. In any case, a single meeting of such a disparate group of owners called to consider the Crown acquisition of the range of lands involved – some 200 separate Maori Land Court titles – could not have voted on such a resolution. Each group of owners for each piece of land would have had to consider separately a resolution to alienate by sale or lease, including a specific figure indicating the current valuation and the price offered by the Crown. At each meeting for each separate title, a member of the staff of the Maori Land Court would have had to check attendance and proxy votes for each beneficial owner. There is no way that the meeting of 24 May 1964 could be construed as a meeting that even partly met ‘the intentions of a normal Pt 23 procedure’, as Lynch suggested. The 3 March 1968 meeting was conducted by Cater as if it were held under the provisions of Part XXIII only in terms of meeting procedure. However, as was pointed out several times during the meeting, it did not comply fully with Part XXIII because there was no application to the Maori Land Court to alienate a specific area of land on which the terms of a resolution would be based, nor a valuation or a price available, for owners to consider and vote on.

If the Ministry of Works officials had thought they might get the agreement of the owners to sell the industrial area, this possibility was quickly dispelled when Cater extracted from Gibson an admission that it had already been decided to take the land anyway by proclamation under the Public Works Act 1928. Both Gibson and the Taupo County Council representatives then put pressure on the owners by suggesting that the long-term future of Turangi lay in attracting industry, and that this would only be achieved by offering developed freehold sites at a low price as an incentive. Council chairman H Besley spoke after Gibson:

It will be your children and your children's children who will either profit or not from the decisions council and the department [the Ministry of Works] and you yourselves make and I think you have to take a very long view of whatever you do. We are very, very proud of Turangi as we see it. It is a wonderful experiment. . . . While the [TPD] scheme is in operation there is not much risk of things in any way depressing but as I said before you have to look further ahead than that. It is of when the scheme ends that you have got to think and so have we. What of the future? Industry is going to be needed, industry can be induced, forestry, soil research, fishing research, soil conservation, health spas . . . However, you must look at it from the viewpoint of those who are going to put money into it. I would feel that unless there is adequate ground available for industry of the nature I have mentioned and unless that ground is available on a freehold basis, you are going to limit future progress. Where heavy capital expenditure is needed the person investing that capital must have a freehold title. (A8:34)

#### **6.10.5 Leasehold or freehold?**

Cater also questioned Besley about the Taupo County Council's attitude to the leasehold or freehold of the industrial area: Besley said that the council would 'subscribe very strongly to freehold', having 'had enough trouble with this sort of thing in other parts of the county . . . we have had handicaps with leasehold' (A8:35).

The county clerk, C J Coates, reiterated Besley's position and indicated that the perceived problems in Mangakino, a construction town built on Maori leasehold land, had strongly influenced the Taupo County Council in advocating the freehold of the industrial area. The county engineer, G B Burton, was similarly sure that:

the future of this town depends very largely on industrial land becoming freely available at a very reasonable cost or no cost at all in order to induce people to come into this area which is remote from transport facilities in comparison to other areas. (A8:41)

Burton supported taking the freehold not only of the industrial area but of the water supply reserve and rubbish tip as well. At this point in the meeting, questions were asked by Mrs Lanham, who probably expressed the sentiments of many of the owners in her comments:

You are asking us to give you this land at a very low cost. Now the only ones who are giving are the owners. What about a bit of give from your side too. The Maori owners have no alternative but to give. You are taking it. You won't even tell us how much it is going to be. If you could give us a bottom and a top price then we can dream a little bit anyway. What are we here for? You have it all talked out amongst yourselves. You know all the answers and you are just wondering how many awkward questions these Maoris are going to ask. (A8:42)

With both the Ministry of Works and the Taupo County Council ranged against them, it probably seemed to most of the owners that it was no contest.

In the early afternoon, the Ministry and council people left the meeting, although the Maori Trust Office staff remained. Cater chaired the informal meeting of owners that followed and took the opportunity to explain the Maori Trustee's actions to date on seeking compensation for lands taken. He then opened up discussion on the further land requirements. Pat Hura spoke strongly in favour of a series of Part XXIII meetings. Cater

commented that the Ministry of Works had not used Part XXIII at Turangi, although Department of Lands and Survey officers had done so on many occasions. Cater also explained his role on behalf of the Maori Trustee. In negotiating compensation after land was taken under the Public Works Act 1928, he was carrying out a statutory obligation on behalf of the Maori Trustee, but if the owners wanted 'to try Part XXIII he did not think the Maori Trustee would object' (B3(a):19).

A number of other things were also discussed at this meeting. At the end, the owners resolved that they would prefer that any negotiations on the industrial area, including a leasehold, be conducted under the provisions of Part XXIII of the Maori Affairs Act 1953. It was also decided that a deputation, including the Tuwharetoa Maori Trust Board's solicitor, should go to Wellington to discuss these matters with the Minister of Works.

## **6.11 THE MAY 1968 MEETING WITH THE MINISTER OF WORKS**

A delegation in due course met with the Minister, but he and his advisers were not prepared to enter into negotiations under the Maori Affairs Act 1953. The Minister explained in a letter to the trust board's solicitor of 11 June 1968 (after the meeting in Wellington) that:

I do hope you will accept what we consider to be a necessarily firm view, that the Crown must have powers of resumption for public works, and legislation stipulates that the only procedure available to the Crown to acquire such land is that contained in the Public Works Act 1928 and its amendments.

The Maori Affairs Act is at variance with the Public Works Act in at least two important aspects. Firstly there is no provision for a specified date, consequently all negotiations and Maori Land Court confirmation must of necessity be conducted prior to entry, secondly there is no provision in the event of disagreement for the matter to be referred to the Land Valuation Court. From a practical point of view these difficulties could prove intolerable in regard to delaying the start of a public work, even for years, with the possibility of never reaching agreement. (B3(a):23)

The Minister decided that, 'In view of the Crown's commitment to vest the freehold', it would be necessary to take that part of the private industrial area that had already been developed (B3(a):22). We have noted earlier (see para 6.9) that the Assistant Commissioner of Works had expressed his concern in July 1967 at the undertakings given to private industrial users before the land had been taken that it would be freehold. Ironically, it would seem that this unauthorised undertaking was given priority over the earlier 1964 assurances that this land would be leased from Maori. Part of the industrial area had already been taken with other Turangi township lands in 1965 (fig 18). The procedures were set in train for the survey and eventual proclamation of an additional 31 acres on 7 August 1969.<sup>2</sup> Subsequently, this proclamation was found to have included part of Seton's camp, which was outside the Turangi Township Act 1964 boundaries. This area was excluded by another proclamation in 1972, leaving some 27 acres taken by the Crown.<sup>3</sup> Seton's and Downer's camp areas returned to Maori when construction ended. The Minister agreed in 1968 that



the area to the south of the developed private industrial area taken 'will be released from occupation by the Crown' (B3(a):22). This area also remained Maori land.

On the issue of the Ministry of Works' industrial area, the Minister stated in his letter that 'No final decisions to be made with regard to this block for the duration of the project, and then only in full prior consultation with the owners' (B3(a):22). The Ministry's occupation continued both under the 1958 Order in Council and as lessee of the lands in the former Grace farm.

## **6.12 A FURTHER CHANGE OF MIND**

### **6.12.1 Continued Crown support for the freehold**

Gibson and Ministry of Works officials continued to support the taking of the Ministry's industrial area and, after the Minister of Works visited Turangi in April 1970, he also concluded that the freehold of this area should be acquired (B3:25). In a memorandum to the Minister on 30 June 1970 (A9:169–171), the Commissioner of Works sought to justify the reversal of the Minister's 1968 written undertaking that no decision would be made about this land (area 9) for the duration of the project, and then only after prior consultation with the owners.

The commissioner pointed out that, under the Crown's existing lease, the rent would shortly rise to an estimated \$10,100 per annum for 14 years and be reassessed in 1984 for a further four years, when the term would expire. The commissioner affirmed that, from the Crown's point of view, the cost savings to be had by obtaining the freehold were sufficient justification for its acquisition (A9:170–171). The commissioner added that the New Zealand Forest Service was interested in using certain of the Crown's facilities and would require title to the land, as, it was said, would private interests. If the Crown were prepared to take the freehold, its 'prospects of obtaining a satisfactory return for its investment in the assets it has created for the power development will be enhanced' (A9:170).

The commissioner acknowledged that the present leasehold arrangement was very favourable to the owners and any change would be opposed. The Minister was warned that the owners would likely claim that the previous statements given at public meetings promised that this particular land would not be taken. He added:

Admittedly this was stated at the time as being the probable policy, but there were no categorical promises given to this effect and in the changed circumstances the Crown must exercise its right now in its best interests. (A9:170)

### **6.12.2 Bureaucratic sophistry**

It is difficult to reconcile this bureaucratic sophistry with good faith on the part of the Crown. It overlooks the fact that the undertakings given in May and September 1964 – that the industrial land would be leasehold, not freehold – were unqualified and positive. It further ignores the fact that the day after the assurance was repeated at the 20 September 1964 public meeting it was confirmed by Cabinet. Moreover, it implies that the Crown is justified in resiling from its unqualified undertakings if it is in its ‘best interests’. It is also implicit in this approach that the interests of Maori (its Treaty partner) are subservient to, and may be overridden by, the pecuniary interests of the Crown.

Accordingly, on 2 July 1970, the Minister wrote to the Maori owners’ solicitors. This letter was less than frank in that it made no reference to the substantial savings the Crown would make by extinguishing its liability to the Maori owners under the then current lease, although it did suggest that it was ‘essential to protect’ its quite substantial investment in the township and ensure its permanency. The Minister noted his intention to take the land compulsorily but expressed willingness to meet the owners’ representatives before doing so.

### **6.12.3 Further meetings and correspondence**

The meeting with the Minister of Works eventually took place on 9 March 1971. The Minister confirmed his intention to take the land under the Turangi Township Act 1964. The owners stated that strong objections would be raised to such a taking without negotiation. The Minister instructed his officials to discuss the acquisition and seek agreement with the owners’ solicitors prior to the taking, but would not agree that the value of the land should be the current market value at the time of the taking. The owners, for their part, were to submit a case for leasehold tenure (A10:137).

On 20 July 1971, the Commissioner of Works wrote to the owners’ solicitors stating that, at the May 1964 meeting and other (unspecified) meetings, it was ‘suggested’ that the industrial land occupied by the Ministry (area 9) ‘might be leased by the Crown’, but that no undertaking was given. This is palpably incorrect and the Tribunal can only speculate why the Crown was attempting to deny or resile from the plain and unambiguous undertaking it had given at both the 24 May and the 20 September 1964 owners’ meetings.

The commissioner also advised the solicitors that with the progress in planning for the permanent establishment of Turangi ‘it has been decided that the freehold to the industrial area must be taken to enable freehold title to be offered as an attraction to establish industry in the township’. The letter proposed valuations for the land to be taken as at the date of entry in October 1964 (A9:79–82).

The owners’ solicitors replied to this letter on 10 August 1971 on a ‘without prejudice’ basis. In this letter, they said that:

- it was now clear that the compulsory taking of the industrial land had not been necessary either for the purpose of establishing the town or for the hydro-works;
- in their experience, a leasehold title was often preferred because of the capital saving;

- the Maori owners were quite prepared to make title available to industry on a freehold or leasehold basis at current market values;
- the taking of the industrial land was not essential for either the establishment or the development of the Turangi township; and
- the owners might be prepared to settle, as long as the current market value of the land is offered, as the Minister had initially agreed at the March meeting (A9:72-73).

On 25 August 1971, the Commissioner of Works wrote to the Minister of Works concerning the industrial area occupied by the Ministry at Turangi. Again, the position in 1964 was misrepresented. The commissioner advised the Minister that:

Although in early 1964 it was suggested by the owners that the Industrial Area should be leased for the duration of construction it was subsequently decided that the freehold should be acquired to facilitate the future development of the town. (A9:53)

Once again, the fact that the Crown gave unqualified undertakings to the owners in 1964 that the industrial land would be leased and not taken was characterised as a mere 'suggestion' by the owners. This is plainly wrong. Cabinet had approved the leasehold of up to 200 acres on 21 September 1964 (A7:95). Moreover, the decision of the Minister to acquire the freehold of this land was not taken until 1970, nearly six years later, by which time the construction of the town was complete.

The commissioner's letter to the Minister went on to suggest that at the March 1971 meeting the owners accepted the Minister's decision to acquire the freehold 'without serious objection'. Again, it is difficult to reconcile this statement with the Ministry's own record that the owners stated that 'strong objections' would be raised to such a taking without negotiation (A10:137).

The commissioner's letter then proceeded to advise the Minister that the solicitors had now advised that the owners would negotiate only on the basis of current market value and that the disposal of the land should be left to the Maori owners. The commissioner, however, omitted to advise the Minister that in the same letter (a copy of which does not appear to have been supplied to the Minister) the solicitors advised him that the owners were quite prepared to make title available to industry on a freehold or leasehold basis at current market value to avoid any prejudice to the industrial development at Turangi. The commissioner reported that it was unlikely that the owners could finance a purchase of the Crown's improvements and contended that it was well known that Maori leases would not attract private investment. No evidence was supplied in support of these assertions. The commissioner then advised that, in any case, 'the bulk of the land would not be available to the owners until the expiry of the Crown's lease in 1998' (A9:58). Yet this was the very lease which the Crown had earlier advised was so burdensome that the Minister was justified in taking the freehold so as to extinguish it. No doubt the owners would have been happy to agree to a surrender of the lease by the Crown as part of a settlement, as would the Crown to have been relieved of its liability.

The commissioner concluded his letter by recommending that the Minister give approval to the issue of the necessary proclamation taking the Ministry of Works' industrial area

under the Turangi Township Act 1964 for the development of the township. The Minister endorsed his approval on the letter on 30 August 1971 and wrote accordingly to the owners' solicitors on 1 September 1971. In his letter, he made no reference to the Crown's breach of its 1964 undertakings that it would not take the freehold of the industrial land.

On 9 September 1971, Russell Feist, who was acting for the owners, and Pat Hura saw the Minister of Maori Affairs, Duncan McIntyre, and the next day wrote a follow-up letter to the Minister. In this letter, Feist:

- confirmed that an application had been filed with the Maori Land Court for the appointment of trustees for the purpose of instituting Supreme Court proceedings to determine the legality of the proposed taking of the industrial land;
- stated that the owners' preference was to retain the freehold and lease the land to the Crown or any other occupier on an agreed term, as long as the rent was at the current market value and was regularly reviewed;
- confirmed that the owners made no claim to the improvements effected on the land by the Crown, which could be sold to any purchaser of the leasehold interest;
- re-affirmed that the owners would sell the freehold interest to private enterprise at current market value, should such enterprise wish to acquire the freehold;
- undertook that, if title to the land remained with the beneficial owners, they would be prepared to see the Crown appointed agent for the purpose of lease or sale so that the control of negotiations rested fully with the Crown, and the Crown was thus able to obtain the best terms for both the land and the improvements; and
- observed that, if the Crown persisted in its wish to acquire the freehold, any purchase should be at the current market value (A9:36–37).

The Minister of Maori Affairs forwarded a copy of Feist's letter to the Minister of Works. In his letter, McIntyre expressed some sympathy for the owners' viewpoint and considered that the present proposals for the compulsory acquisition were quite inconsistent with the discussions and agreements which formed the basis for the Crown's entry on the land (A9:41).

#### **6.12.4 Commissioner of Works' 15 September 1971 memorandum**

This letter prompted a memorandum on 15 September 1971 from the Commissioner of Works to the Minister of Works. The memo repeated the earlier incorrect and misleading statement that the owners 'suggested' that the industrial area should be leased for the duration of the project, omitted the well-established fact that the Crown undertook to lease such land for a limited period and not acquire the freehold, and repeated the earlier erroneous statement that the owners accepted 'without serious objection' the Minister of Works' decision to take the land compulsorily.

The commissioner alleged that, while the proposal to take the industrial area had been the subject of extensive correspondence and discussion for seven years, the records indicated a consistent intention to acquire the freehold. He averred that the leasehold basis was suggested by the owners but this was not agreed to by departmental officers. Again, this is palpably wrong. Ministry officials undertook to lease, not take, the freehold of the

industrial land. Cabinet confirmed the arrangement on 21 September 1964. It is a matter of grave concern that the Ministry persisted in giving such misleading advice to their Minister. Finally, the commissioner rejected, with scant consideration, the owners' proposal (earlier made to the Ministry) that they would agree to offer the freehold title to any interested firm and make no claim for the Crown's improvements. The proposals were dismissed as an attempt by the owners to secure the increased land value resulting from the Crown's investment (A9:32–33).

#### **6.12.5 Minister of Works signs proclamation taking industrial land**

On 20 September 1971, five days after receiving this seriously flawed memorandum, the Minister signed the proclamation taking the industrial land occupied by the Ministry of Works (A9:28). The Minister duly wrote to the owners' solicitors on 3 October 1971 explaining his reasons for taking the area by proclamation. The main reasons given by the Minister were summarised by Crown consultant David Alexander as follows:

All planning and development had been on the basis that the Crown would acquire the land and then later transfer it to other owners in a manner which assisted the retention of Turangi as a permanent township. (B3:36–37)

This explanation by the Minister is totally incorrect. The proclamation of 7 August 1969 taking the industrial area for private development was made principally because an unauthorised undertaking to the effect that the title would become freehold had been given to some developers by Gibson. The decision to take the Ministry of Works' industrial area was not made until March 1970, almost six years after the undertaking to lease the land for 10 to 12 years was given to the owners in 1964. Another important reason for this taking was to maximise the Crown's return from its expenditure in connection with the new town. The Minister said, 'The Crown might need substantial parts of the block after completion of the power scheme to service the proposed afforestation development in South Taupo' (B3:37). This could also have been made available by the owners on either a long- or a short-term leasehold basis. Other reasons given by the Minister and summarised by Alexander were:

- The owners' proposals would introduce complications for prospective private purchasers in having to deal with the owners and with the Crown (in two capacities, as lessee under the old Grace lease, and as owner of the improvements).
- The owners and the Crown would have their own complications in their own dealings over the apportioning of values between each other.
- Readily available freehold tenure would be more attractive to private purchasers than the complex and frustrating negotiations required under the owners' proposals. (B3:37)

The owners, however, were prepared to appoint the Crown as agent for the purposes of lease or sale so that the Crown had complete control of the negotiations and could obtain

the best terms for both the land and the improvements. As earlier noted, these proposals were rejected by the Commissioner of Works with scant consideration and no consultation with the owners. Indeed, as discussed, they do not appear to have been taken seriously.

#### **6.12.6 Proclamation possibly illegal**

This was not the end of the matter. It soon emerged that, for a number of legal reasons, the Minister's proclamation of 20 September 1971 might well be illegal. This led to Pat Hura and Hepi Te Heuheu, as trustees for the beneficial owners, issuing legal proceedings to have the proclamation declared a nullity. The result was a somewhat more conciliatory attitude on the part of the Ministry of Works, which feared the Supreme Court might well declare the proclamation invalid. As indicated earlier, there were other unresolved issues, and negotiations proceeded into 1972, including a lengthy meeting on 28 January 1972 with the Prime Minister, Keith Holyoake, held with a view to reaching an amicable settlement. These negotiations covered a variety of matters and have been outlined in chapter 5.

The Ministry of Works continued to be concerned at the implications of the outstanding legal proceedings. In a memorandum to the Ministry's office solicitor, the assistant chief land purchase officer sought advice on the strength of the Maori owners' legal position, pointing out that:

Production of all Head Office, District and Project papers would disclose many reports and comments which could be very useful to the claimants and in some cases embarrassing to the Crown. Preparation of schedules would be a major task unless disclosure could be severely limited to papers relating to the actual Proclamation.

It has been decided that acquisition of the industrial area is essential to ensure a reasonable recovery on the Crown's investment. Consequently, we would seek to avoid any real risk of the owners succeeding in challenging the validity of the taking Proclamation. (B3(a):90)

It seems clear that the perceived need to ensure a reasonable recovery on its investment was the overriding reason for the Crown's persistence in resiling from its earlier undertakings and seeking, if at all possible, to save the proclamation from being declared invalid.

#### **6.12.7 Agreement signed**

Negotiations culminated in a heads of agreement signed on 30 November 1972 by the Minister of Works, for the Crown, and Hepi Te Heuheu and Pat Hura, as trustees for the owners (B3(a):94–98). In a subsequent report on the settlement to the Maori Trustee (B3(a):91–93), the owners' solicitor, Russell Feist, noted that, in relation to the industrial area of approximately 101 acres occupied by the Ministry of Works, the Crown was to make a net payment of \$10,000. This was approximately 2½ times the date of entry (1964) valuation plus an indemnity in respect of any claim that might lie with the Board of Maori Affairs for part of the development scheme debt properly apportionable to such land. For the area of 27 acres, being the balance of the private industrial land taken in 1969 and

amended in 1972, the sum of \$3500 was agreed to, which was described by Feist as a 'somewhat improved settlement'. This also included an indemnity in respect of any development charges.

And so, after years of contention with the Crown, the owners of the industrial land, which, they had been assured, would be returned to them after the proposed leasehold period of 10 to 12 years had expired, were obliged to accept the compulsory acquisition of the land. Their only solatium was an enhanced payment and an indemnity against any development scheme charges levied against such land.

## **References**

1. *New Zealand Gazette*, 1965, p 1729
2. *Ibid*, 1969, p 1465
3. *Ibid*, 1972, p 1280

## CHAPTER 7

# TURANGI TOWNSHIP: FURTHER DEVELOPMENTS

### 7.1 THE WATER SUPPLY RESERVE

#### 7.1.1 Possible sources

The possible sources of a supply of fresh water for the new town included the Tongariro River, bores in the alluvial material to the south of the town site, or the streams and springs on the slopes of Pihanga. The Tongariro River was discounted very early in these investigations because the riverbed was too unstable and it was prone to flooding and discolouration of the water. Bore supply had served the old Public Works depot, but the costs of maintaining pumping equipment to supply a whole town would be high and it was doubtful whether a sufficient quantity of water could be obtained. By September 1964, attention focused on the springs that fed the Tokaanu River. The meeting of Maori owners on 20 September 1964 was told that it was proposed to draw water from these springs for the town's water supply, and that a corresponding water supply reserve would be needed to protect both the water supply and a trout hatchery which the Department of Internal Affairs intended to establish on the Tokaanu River (A7:77).

The initial intention was to take water from the springs at the source of the Tokaanu River, Te Matapuna o te Awa. However, the Wildlife Service of the Department of Internal Affairs drew the Ministry of Works investigators' attention to 'the extremely valuable trout spawning beds immediately downstream from the springs'. The Wildlife Service asked, therefore, that this source be left alone. Furthermore, a second source, downstream from the spawning beds and further from the township, was thought to provide 'more than adequate water' (B4:4-5).

#### 7.1.2 Location of water reservoir and survey of catchment area

A decision had already been made on locating the water reservoir on the ridge to the south of the town site, Kohatu Kaioaraora. The area containing the water intake, reservoir, and access road was first occupied by the Ministry of Works on 1 October 1964 and construction work was completed during 1965 (fig 19).

During 1966 the catchment area of the springs was surveyed and, in January 1967, a draft proclamation and plan prepared to take an area of approximately 349 acres for a water supply reserve and rubbish tip under the Public Works Act 1928. This proclamation was not proceeded with because the matter was included in the representations being made to



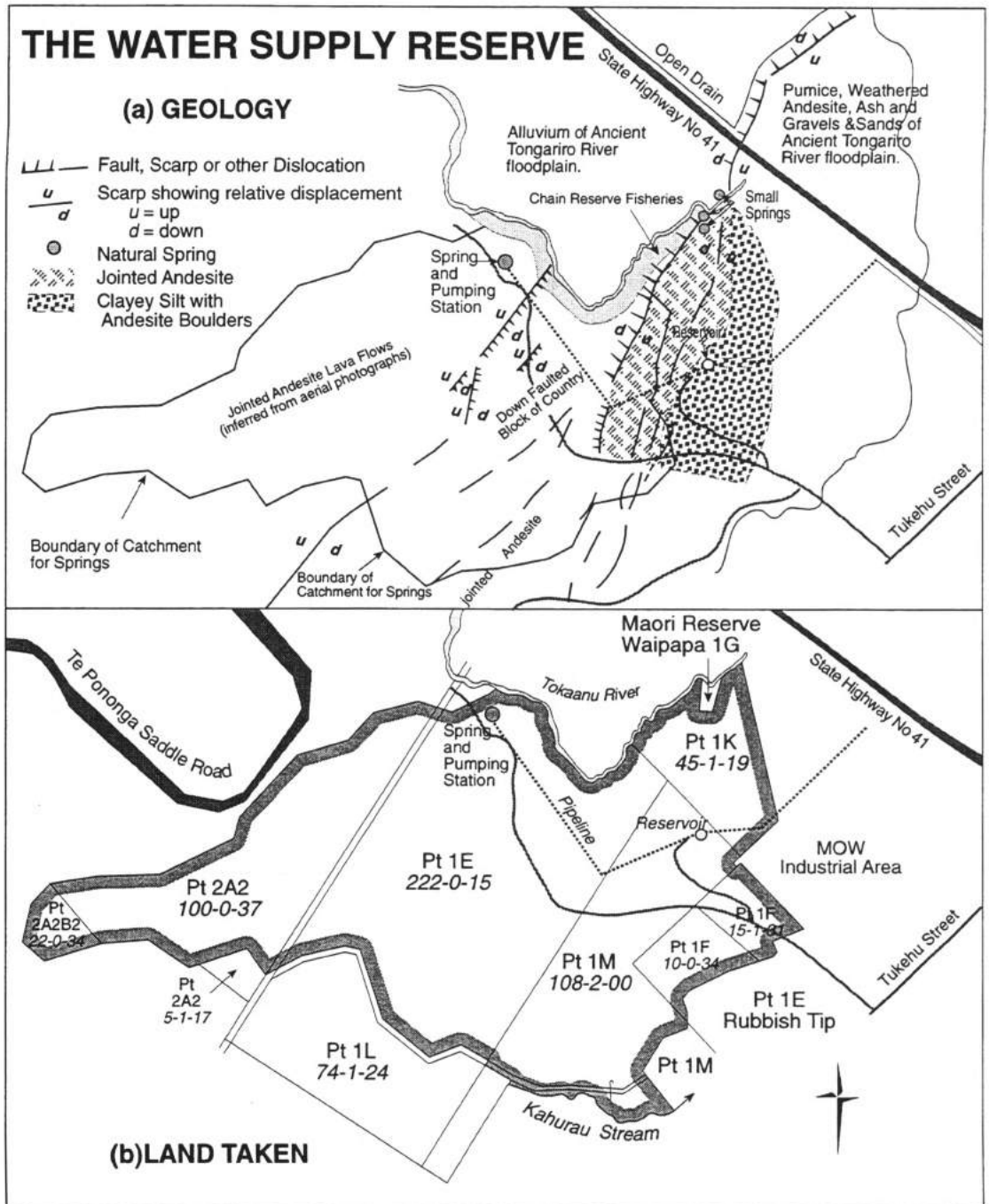


Figure 19

the Government by the Tuwharetoa Maori Trust Board about the greater extent of land apparently now required by the Ministry of Works. A large portion of the proposed water supply reserve lay outside the boundaries described in the First Schedule to the Turangi Township Act 1964. As already discussed in chapter 5, Gibson had explained to the Commissioner of Works in April 1967 that the size of the water supply reserve had not been specified to the owners at the September 1964 meeting and the southern boundary of the reserve on the plan 'was dictated by the size of the sheet of paper on which the plan was drawn', as was the township boundary. The reserve's eventual size was dictated by watershed divisions rather than the size of a sheet of paper (B4:9-10).

The Ministry's principal concern was to maintain the catchment area with its vegetation cover intact. The debate centred on whether adequate protection could be maintained on a leasehold tenure or whether the Crown should take the freehold. Representatives of the trust board suggested that a controlled afforestation programme in the catchment area should be implemented, with the land remaining in Maori ownership. However, it was argued that the public health requirements of the water supply would restrict timber extraction in the catchment area and there would be little economic benefit for the owners. The Taupo County Council, which had agreed to take over the control of the Turangi water supply, was opposed to any afforestation scheme or any form of leasehold tenure and wished to retain the land in its virgin state. The District Commissioner of Works told the Ministry's head office in October 1969 that:

Although it is technically possible to protect this area by the acquisition of a lease in perpetuity, or even a perpetually renewable lease, the Maori owners must realise that the land is lost to them and that for them to retain ownership of the freehold would be of no practical significance. From an administrative viewpoint acquisition of the freehold is the only common-sense thing to do. . . . In my opinion . . . formal acquisition of the freehold should proceed. (B4:14)

There is nothing in Ministry of Works files to suggest that Maori values, attitudes towards wahi tapu in this area, or concepts of mana and rangatiratanga were considered relevant to this debate. An exchange of this area for other lands was not considered feasible because this would involve lands formerly owned by different sets of Maori owners and might create a cause for complaint. One exchange block suggested was between the old and new routes of SH1, but Gibson stated that this land was not really surplus to requirements. The option of exchange of other Crown land for the water supply reserve was not pursued.

### **7.1.3 Part of water supply reserve outside Turangi Township Act 1964 boundaries**

Because part of the proposed water supply reserve was outside the boundaries in the Turangi Township Act 1964, the notification provisions of the Public Works Act 1928 had to be complied with. In May 1970, the Crown's intention to take 308 acres under the Public Works Act 'for a waterwork' was notified (B4:18). Two objections were lodged (only one of which was heard) when it was realised that some adjustments to the boundaries of the proposed reserve would be needed to make it contiguous with a proposed fisheries reserve.

Officers of the Department of Lands and Survey, on behalf of the Wildlife Service, were negotiating with the Maori owners over the protection of the banks of the upper Tokaanu River and the trout spawning grounds. It was decided to extend the water supply reserve to the left bank of the Tokaanu River and make other boundary adjustments to incorporate a total of some 539 acres in the proposed reserve. In October 1971, the District Commissioner of Works explained that the additional area was required because 'it was subsequently found that the area then proposed to be taken [ie, 308 acres in 1970] did not cover the water shed area, which fact could have given rise to further objections by the owners'. He added that 'to avoid this possibility a geological investigation was carried out and a fresh survey ordered accordingly' (B4:21-22). The geological report suggested that there was extensive faulting in the rocks in the springs' catchment area and a large surface area would need to be protected from any contamination of the groundwater supply (fig 19).

The Crown's intention to take this larger area 'for a water work' and a separate area for an access road was notified in December 1971 (B4:21). Several objections were lodged, including one from Hepi Te Heuheu and Pat Hura, who had just been appointed by the Maori Land Court as trustees of the Waipapa 1F4, 1K, 1L5, 1M, 2A, 2D, and 2A2B2 blocks covered by the notice of intention. The trustees had the power to negotiate an agreed settlement and/or 'prosecute an action to determine the validity of any proclamation or proposed proclamation' under the Public Works Act 1928 or the Turangi Township Act 1964 (B4(a):90).

#### **7.1.4 Objections to the acquisition of the water supply area**

In January 1972, the Tuwharetoa Maori Trust Board wrote to the Prime Minister expressing its concern over the additional land required for the Turangi township and suggesting that the taking of such a large area for a water supply, along with the industrial area, was contrary to the original undertaking given in 1964. As noted in chapter 5, a deputation from the board met with the Prime Minister in January 1972 and, at subsequent discussions in Turangi, Maori concerns about wahi tapu in the proposed reserve were expressed. In June 1972, the Commissioner of Works wrote to the board's solicitor setting out, among other things, a basis for agreement over the water supply reserve and access road. Under this proposal, the owners would agree to the taking of the land, subject to the payment of compensation and the exclusion of wahi tapu. The excluded areas were not to exceed 30 acres and would become reserves under section 439 of the Maori Affairs Act 1953 (B4:36).

In November 1972, the Crown's notices of intention to take the land for the water supply reserve and access road were confirmed by the Minister of Works on the same day that he signed a package agreement with the trustees, Te Heuheu and Hura. The deal was along the lines proposed by the Commissioner of Works, with a period of 12 months provided for the identification of 'areas of historic interest', and the Crown was to pay interest from the date of entry until settlement (B4:39).

The other objectors were subsequently heard and expressed their concerns about the excessive area required and the fact that the trustees had not consulted with the owners or had their appointment confirmed by any meeting of owners. Te Reiti Grace sought to have the whole area, excluding the road, water intake, and reservoir, set aside as a Maori reservation. The possibility of an exchange of land was raised again. The recommendation to the Minister of Works, after the hearing of these objections, was that the Crown should proceed with the taking of the land (B4(a):168–170). A proclamation taking 539 acres for the water supply reserve and road was issued on 2 October 1974 (B4(a):173).

#### **7.1.5 Agreement reached on compensation for land taken**

It was not until August 1977 that negotiations began with the solicitor representing the owners of all the blocks taken for the water supply reserve except Waipapa 1M. With the passing of the Maori Purposes Act 1974, the statutory obligation to negotiate compensation on behalf of multiple owners of Maori land taken under the Public Works Act 1928 was removed from the Maori Trustee. In 1976 new trustees (Fearon Grace, Ruaiterangi Mary Patena, and Hariata Hura) had been appointed for the Waipapa 1M block by the Maori Land Court (B4(a):221). Hepi Te Heuheu and Pat Hura were still the trustees of the remaining blocks. After some negotiation, an offer was made for all the blocks taken except Waipapa 1M. The offer was \$23,705, plus 5 percent interest since the date of agreement (30 November 1972), plus valuation and legal fees of \$1425. This was accepted and a total of \$30,615 was paid in September 1978 to the trustees' solicitor (A14:G). The Waipapa 1M trustees did not accept the November 1972 agreement, but the Ministry of Works took the line that they were bound by it because they were successors to the trustees who had made the agreement. The two parties did not agree and a claim for assessment of compensation was lodged with the Land Valuation Tribunal. The claim was heard in July 1982 but, soon after the proceedings commenced, agreement was reached to accept a total of \$28,500 for the land, which included a valuation of \$10,000 and severance and injurious affection of \$950, plus interest. An additional payment of \$2800 was made for valuation and legal fees, making a total of \$31,300, which was paid to the trustees' solicitor before the 7 August 1982 deadline (B4:51–52).

The area taken in 1974 on Waipapa 1M was 108 acres and was valued at \$10,000. The area of the other blocks combined was about 431 acres and was valued at \$23,705. On the face of it, the Maori owners of Waipapa 1M perhaps obtained a higher price by going to the Land Valuation Tribunal. However, without the details of the valuations of each block (which were not available to us), it is not possible to confirm this interpretation of the figures. It may be that the apparent discrepancy is accounted for by the considerable variation in the topography and farming potential of some of the blocks.

The interim agreement negotiated between the Ministry of Works and the Taupo County Council in 1968 provided for the transfer of various public utilities to the county. This agreement was finally signed in March 1980 and provided for the transfer of the water supply reserve and water supply facilities. On 15 January 1985, the lands taken for waterworks in 1974 were vested in the council.<sup>1</sup> No Maori reserves had been set aside

within this area, although, on adjacent blocks, the residual Waipapa 1M and Waipapa 1G Maori reserves had been set aside by the Maori Land Court under section 439 of the Maori Affairs Act 1953. Several wahi tapu of significance to Ngati Turangitukua, including urupa and pa sites, remain within the water supply reserve taken by the Crown.

## **7.2 THE RUBBISH TIP**

The provision of a rubbish tip was essential for the new town. Much of the negotiation for a tip site on the Waipapa 1F block was tied up with the adjacent water supply reserve. The rubbish tip area was first occupied by the Ministry of Works on 1 October 1964, and was used initially as a supply of pumice for the development of the industrial area. 'Pumice Pit No 2', as it was then known, was proposed in March 1966 as a likely alternative to the county tip which had served the old Turangi village, but which would not be large enough to service the new town. The new tip on the Waipapa 1F4 block was within the area intended to be protected for water supply purposes, but would not affect the water supply catchment area because the land sloped down toward the Kahurau Stream (fig 20). Not only was the proposed site out of sight to the south of the town but it had plenty of pumice material handy for covering. The new tip, an area of 34 acres, came into operation on 6 June 1966 (B4:6-7).

In September 1967, the tip was included in discussions between the Ministry of Works and the Tuwharetoa Maori Trust Board over the extent of additional land required for the industrial area and water supply reserve. The Ministry said that it desired to take the tip area by proclamation but the Crown 'would consider leasing in some way to secure its use as a rubbish tip for as long as required' (A8:88-89). In subsequent discussions, the Maori owners indicated that they would be prepared to lease the site but would not agree to a sale. The tip was mostly outside the boundary set out in the First Schedule to the Turangi Township Act 1964.

The Ministry of Works had negotiated an agreement in 1968 to hand over the operation of public utilities in Turangi to the Taupo County Council. The council was adamant that the freehold of the land should be obtained before there was any transfer to council control. The District Commissioner of Works, however, felt that, because the tip would have a limited life of around 50 years, there seemed 'no reason why proclamation action to take a suitable lease of this area should not proceed without further ado' (B4(a):48). The possibility of an exchange of land was briefly considered but was discarded on the ground that it might involve land formerly owned by a different group of Maori. The leasehold option was accepted by head office and became the Ministry of Works' proposed course of action.

However, no lease agreement was negotiated with the Maori owners because the Taupo County Council continued to insist that the freehold be obtained. The county clerk wrote to the Minister of Works on 14 May 1970 to say that a leasehold was unacceptable (B4(a):95).

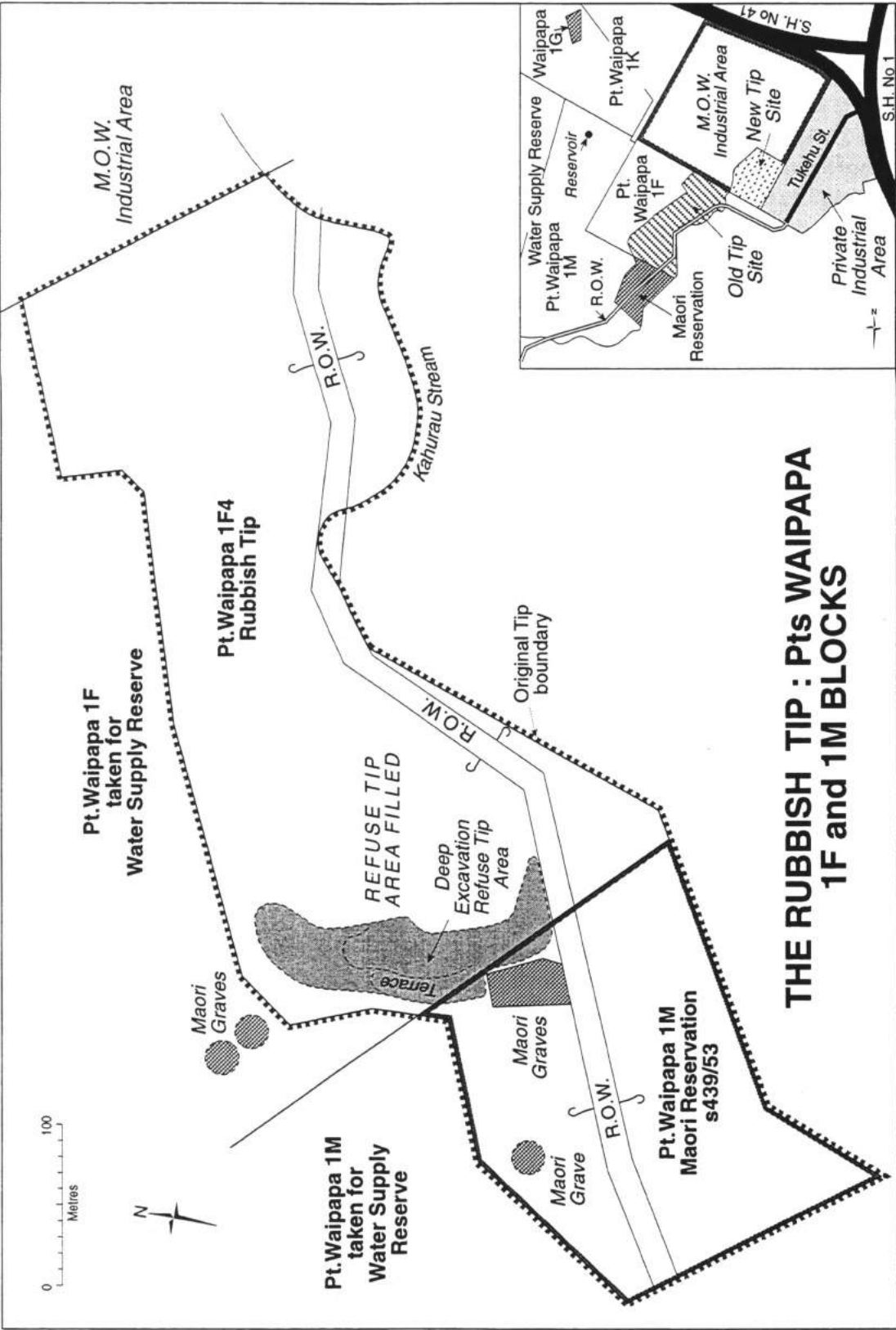


Figure 20

The Minister, advised by the Commissioner of Works, responded that 'the owners have given me an assurance that they would agree to a lease which ensures that the area is available as a tip on a long term basis'. He also indicated that further inquiries would be made to see if it 'may be possible to overcome the objections to the taking' (B4:26). There ensued some debate (recorded in Ministry of Works files) about the basis for valuation – the current market value or the value at the date of entry – and the question of betterment, both from the provision of road access and from the improvement of the site by filling and levelling. All this remained academic, however, because no lease was negotiated and the land was not taken by the Crown. It remained in Maori ownership but was used as a tip site throughout the 1970s.

In early 1972, the tip site was included in the discussions which led to the Maori Land Court appointing Hepi Te Heuheu and Pat Hura as trustees for the land with the authority to negotiate a settlement and their subsequent approach to the Prime Minister to settle all outstanding land matters at Turangi. By November 1972, an agreement had been reached between the two trustees and the Minister of Works to lease the 34 acres of the rubbish tip on the following terms: the land would be available at a peppercorn rent to the Crown or the Taupo County Council for as long as it was required for rubbish disposal; on termination of the lease, the Crown would return the land, with new topsoil and sown in grass; and the owners would not be liable for any maintenance or local authority rates during the lease period (B3(a):96).

In 1974 the adjacent water supply reserve was taken by the Crown (B4(a):173).<sup>2</sup> In 1973 an application by Te Reiti Grace to have all the area of Waipapa 1M, part of which was within the water supply reserve, declared a Maori reservation, was heard by the Maori Land Court. However, since the trustees, Te Heuheu and Hura, had already agreed in 1972 to its taking, this application was adjourned sine die because it was suggested there might be a judicial review. There remained a balance area of Waipapa 1M adjacent to the tip site that was not taken for the water supply reserve, and Mrs Grace's application for this to be set aside by the Maori Land Court as a Maori reservation was heard in March 1977. As we relate in chapter 8, the Court recommended that the area should be set aside as a Maori reservation, and this was duly done.

The effect of setting aside the Maori reservation on part of Waipapa 1M was to curtail the further use of the rubbish tip to 'a matter of weeks rather than years' (B4:46). The Taupo County Council sought an alternative site and, after some negotiation, settled on an area in the south-west corner of the Ministry of Works' industrial area. This site was formally transferred to the council in 1980. The remaining excavation on the old tip was filled with material from the northern end of the Waipapa 1F4 block, and some further restoration work was carried out in the mid-1980s. The area remained Maori land, but no rent or compensation was ever paid to the Maori owners for the Crown's use of the land as a pumice pit and rubbish tip. It is now covered in rough scrub and some pine trees.

### **7.3 THE TONGARIRO RIVER**

#### **7.3.1 A brief description**

In its lower reaches where it flows past the Turangi township, the Tongariro River is an inherently unstable, braided river made up of meandering channels and gravel banks. With a large catchment area, it was, in its natural state, also subject to periodic floods which filled the whole bed and overflowed into the swamp lands between Tokaanu and Motuoapa (fig 21).

The instability of the river and its propensity for flooding had to be taken into account in the design of both the township and the Tokaanu power project. In 1958 a major flood had inundated the northern end of the Turangi village, breaking through on the left bank into Hirangi Stream and scouring out a new channel which came to be known as the 'Hirangi Arm'. At the junction of Hirangi Stream and the Tongariro River, an area later known as 'Bennion's Bend', the flood waters broke through to the Tokaanu swamp lands and were reported as flowing three feet deep over Awamate Road (B5(a):81). The name 'Awamate' literally means 'dead river', and the road marks a former course of the Tongariro. In local Maori tradition, it is said that the taniwha Huruhurumahina was responsible for turning the river to its present course.

In the early stages of the planning for the Tokaanu power project, Sir Alexander Gibb and Partners had proposed that a 'drainage channel' be dredged through the Tokaanu swamp lands to carry any flood waters from the Tongariro River directly to Lake Taupo. The main concern was to protect the eastern margin of the tailrace. This proposal was later dropped, and 'riprap protection works' were put in place on the eastern berm of the tailrace to prevent scouring by Tongariro flood waters. The tailrace work is outlined in see paragraph 7.5. The Turangi township itself was located on a terrace above the flood level, but the oxidation ponds were vulnerable and would need some form of protection. Another factor that had to be taken into account in any scheme was the impact of flood control on the Tongariro River fishery. The trout fishing lobby was important in the planning of both the TPD and the Turangi township, influencing the decisions not to divert the Whangaehu River – which is polluted by sulphur from Mount Ruapehu's crater lake – into the Moawhango Dam and not to increase the Tongariro River's flow during fishing hours, which would have put those fishing at risk.<sup>3</sup>

#### **7.3.2 Trout fishing interests**

The potential for conflict with trout fishing interests was greatest when the Tongariro River fishery was threatened by the Ministry of Works' proposal to extract metal from the riverbed for the Turangi township and the Tokaanu power project. The Wildlife Service of the Department of Internal Affairs was responsible for the control of the trout fishery. The District Conservator of Wildlife, Pat Burstall, took an active role in a series of meetings on flood control and the proposed metal extraction which were held in late 1964 and 1965 between representatives of interested Government departments, the Waikato Valley



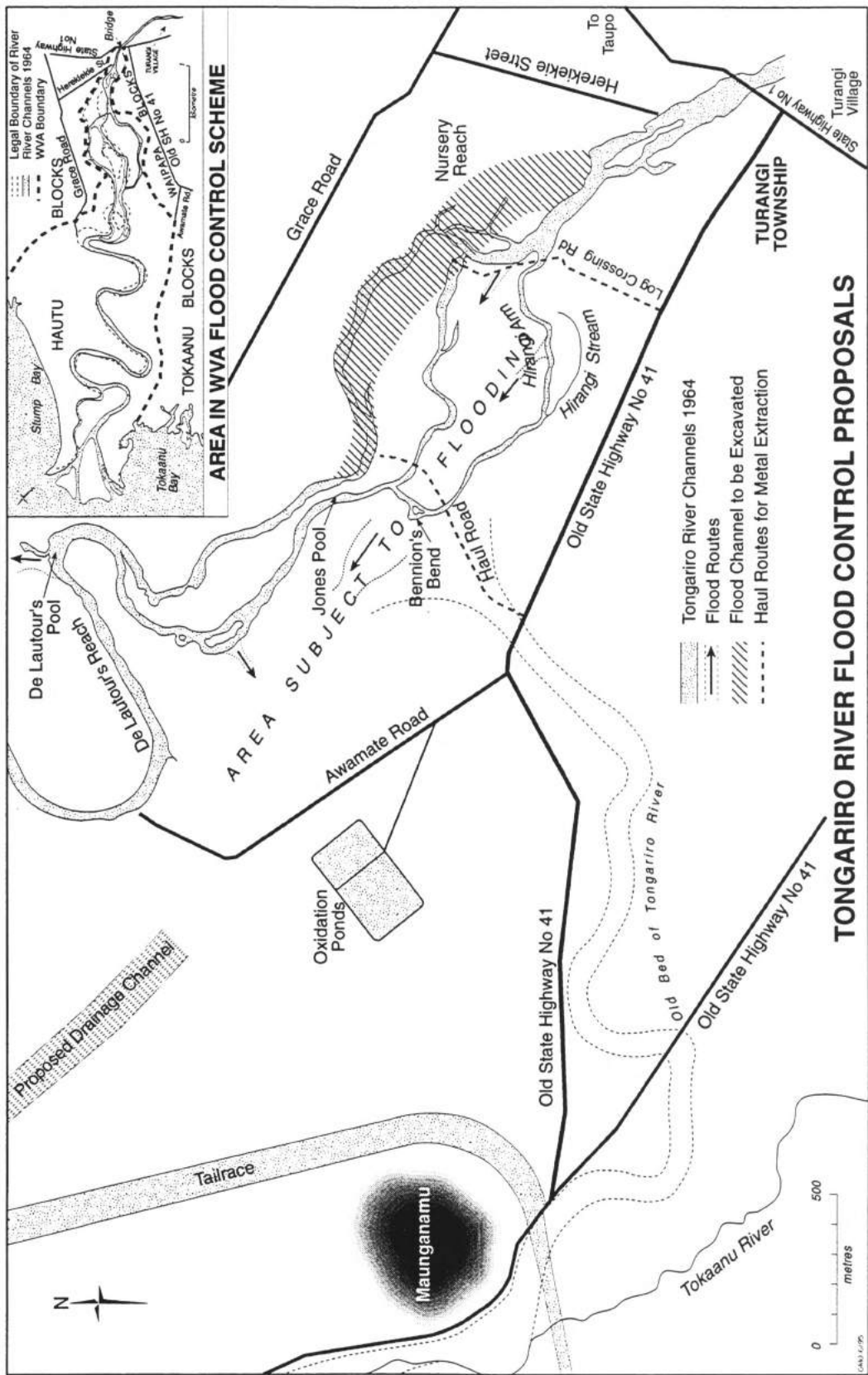


Figure 21

Authority, and the Taupo County Council. At a meeting on 10 December 1964, Burstall made it very clear that anglers did not want to see fishing rivers disturbed. Gibson, in turn, gave an assurance that 'there would be no destruction or despoliation of the fishing' (B5(a):51).

Trout fishing had been identified by Government officials at an early stage as one of the potentially controversial issues to be considered. However, the early reports of Gibb and Partners had identified the gravel bed of the Tongariro River as the most economic source of aggregate both for roading and for making concrete at the Tokaanu power project. The issue was not whether Tongariro River gravel should be used, but how to extract it with the least disturbance to the fishery. At the 10 December meeting, Burstall stressed that the river should be protected wherever possible and pointed out the economic benefits which fly fishing brought to the region (B5(a):52–53). Indeed, the number of trout fishing licences issued in the Taupo district increased from roughly 10,000 in 1948–49 to about 50,000 in 1959–60 and 77,000 in 1983–84.<sup>4</sup>

If, therefore, the Ministry of Works were to extract most of the gravel that was required for the township and the power project from the Tongariro River bed, agreement would have to be reached with the Waikato Valley Authority on flood control matters and the Wildlife Service on the protection of the trout fishery from unnecessary disturbance. The strategy that the Ministry evolved was to view the metal extraction, to be undertaken mainly by contractors, as a significant contribution to both flood control and the improvement of the Tongariro River bed by the stabilisation of the channels through which it flowed. At the 10 December meeting, Gibson suggested this, and Burstall conceded that the Tongariro River would be improved for anglers in several areas by the extraction of metal from the bed, which would include the diverting of the river back to its old course prior to the 1958 flood (B5(a):52–53).

Through 1965, meetings of Ministry of Works engineers with other Government officials and representatives of the Waikato Valley Authority and the Taupo County Council focused on the legal and technical issues relating to the extraction of metal from, and the flood control of, the Tongariro River between Turangi Bridge and De Lautour's Pool (fig 21). The main problem was that the river was increasingly following the Hirangi Arm, the new course formed in the 1958 flood, and frequently overlapping its banks at Bennion's Bend. It was feared that in a future flood the river would take the Hirangi Arm course and flood the oxidation ponds on Awamate Road. Gibson felt that diverting the river away from the Hirangi Arm back towards the right bank would be a considerable step towards flood protection. He informed the Commissioner of Works in September 1965 that the extraction of metal from this area could be 'carried out with little inconvenience to fishermen and will be of long term benefit to the trout fishing sport' (B5(a):77).

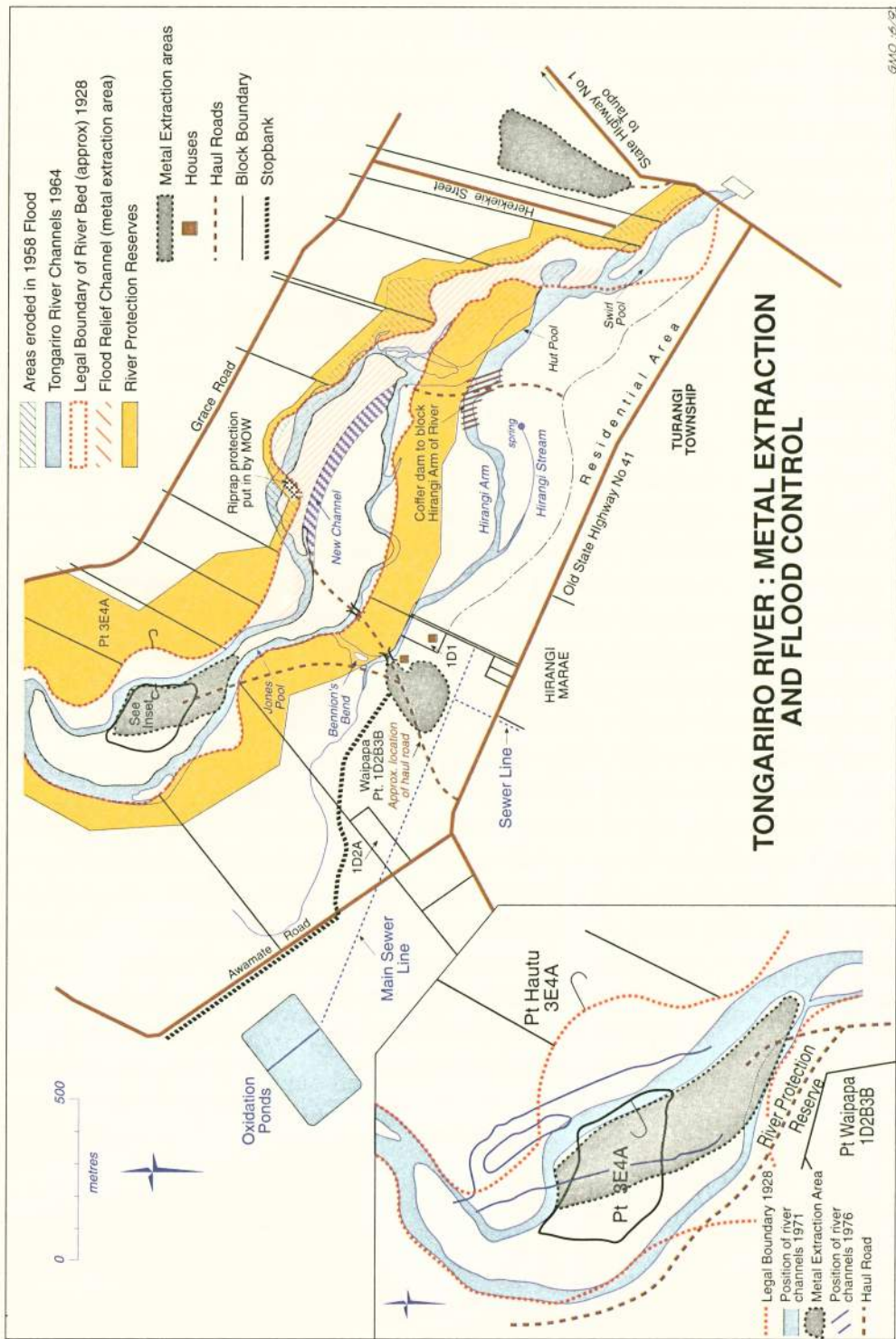


Figure 22

### **7.3.3 The metal extraction programme**

The Ministry of Works' metal extraction programme, in effect, became part of the Waikato Valley Authority's flood control scheme for the Tongariro River (fig 22). Metal extraction began in 1964 in the Swirl Pool area and in the metal pit between Herekietie Street and SH1. Throughout 1965, excavation was continued in the 'flood relief channel'. Strippings and other material unsuitable for construction purposes were used to block off the Hirangi Arm of the river, and this work was completed by mid-1966. With the development of the Turangi township, the Log Crossing Road access to the river was no longer used and a new haul road was put in across the Waipapa 1D2B3B block. Some three acres of this land, which was leased and farmed by Te Reiti Grace, had already been excavated for metal. The new road became the principal access route to the metal extraction area through the 1960s. By the early 1970s, the metal extraction had moved downstream to a Maori-owned island which was part of the Hautu 3E4A block (fig 22 inset).

Strippings were used to build up levels in the vicinity of Bennion's Bend and a stopbank downstream of the haul road carried a 'fishermen's access road'. Part of the Ministry of Works' agreement with the Wildlife Service was to allow anglers access to their favourite pools along the haul roads. Initially, Bailey bridges were used to span river channels, although the bridge over the Hirangi Stream was replaced in 1972 by a culvert. Subsequently, the culvert became blocked, causing flooding upstream. Complaints about this from the Rawhiti Rangataua family led to the removal of the culvert by the Ministry of Works in 1985, but not without some remonstrance from Pat Burstall on behalf of anglers (B5:44-45). Whatever informal agreement may have been reached between the Ministry of Works and the Wildlife Service, no agreement with the Maori owners of Waipapa 1D2B3B, whose land was crossed by the haul road, had been reached to allow for permanent access for anglers. The Ministry of Works had entered the land, relying on the 1958 Order in Council, but this did not give any powers to provide permanent public access. There were proposals to take the haul road but these were not implemented, and Waipapa 1D2B3B remained Maori land, although the amount of compensation payable for its use, the metal extracted, and the restoration of the land to pasture became issues for subsequent argument with the Te Rangi family and the lessee, Te Reiti Grace. The excavation of metal from the Maori-owned island, part of Hautu 3E4A, also became the subject of dispute and proceedings in the Supreme Court in 1976. These compensation issues are considered further in chapters 14 and 19.

### **7.3.4 The Tongariro River control scheme**

In June 1966, the Waikato Valley Authority produced a 'Tongariro River Control Scheme', the main objectives of which were the protection of the Tokaanu tailrace and Turangi township from flooding; the retention of river features for the benefit of fishing interests; and the acquisition of any land which was required for flood protection works or was adversely affected by them (B5(a):97). The scheme, designed for a flood of the magnitude of the 1958 flood, included building stopbanks on both banks of the lower reaches of the river downstream from the Turangi village. Although at this stage it was estimated that

some 700,000 cubic yards of metal and overburden would be excavated from the flood relief channel, it was also noted that infilling would continue as more gravel was carried by the river into the excavated areas. It was also assumed that the Ministry of Works would make a substantial contribution to the river protection works. However, the Ministry was interested solely in protection work on the left bank and considered that stopbanking was only necessary in the Awamate Road area for the protection of the oxidation ponds. In chapter 9, we consider the oxidation ponds in more detail. The 'riprap protection works' to be put into the eastern berm of the tailrace were considered adequate without further stopbanking.

On the right bank of the river, it was considered that stopbanks should be put in between Turangi Bridge and De Lautour's Pool but that a spillway could be built here to allow flood waters to enter directly into Stump Bay. Lands to be taken for river protection works on the right bank were identified and, after several modifications to the boundaries, were taken by proclamation in the mid-1970s.<sup>5</sup> In 1987 part of the land taken in 1975 was returned to Maori ownership when the 1975 proclamation was revoked.<sup>6</sup> Tuatea Smallman commented in his submission to the Tribunal:

This island was also apparently given back under that *Gazette* notice but of course the Ministry of Works had already excavated the whole island out of existence. The problem is that the land we were given back used to be pasture land but is now covered in light scrub . . .

The removal of the island has caused massive damage, because there is now continuous flooding . . .

Erosion of the river bank has occurred, along with silting of the riverbed and favourite fishing pools. The flooding has damaged the urupa where our great grandmother, Marotoa Takinga, a direct descendant of Tuwharetoa, [who] was struck by lightning and [was] laid to rest. We cannot protect the resting place from the water which is a cause of sorrow to us.

This flooding situation came about because to remove the island without losing any of the metal a diversionary canal was excavated into Hautu 3E4A to take the major flow of water. The diversion was never cut off or filled in. (A23:8)

When the first notice of intention to take lands on the right bank was issued in 1969, the Tuwharetoa Maori Trust Board's solicitor, Russell Feist, wrote to the Minister of Works on behalf of the Maori owners:

It appears from discussions with representatives of the [Waikato Valley] Authority that their proposals have been largely influenced by requests from fishing interests not to interfere with the trout fishing on the river. The Tuwharetoa people have no wish to interfere with any fisherman's paradise, but I would seriously question whether this is a factor that is relevant when it involves the compulsory taking of land for purposes of a public work. I had the distinct impression from the meeting at Hamilton that were it not for the fishing interests, the Authority's proposals would follow a completely different course. (B5(a):173)

### **7.3.5 Maori participation not sought**

There is no doubt that the trout fishing interests were an influential group, whose concerns were diligently pursued by the District Conservator of Wildlife, Pat Burstall. It is also noted that in the meetings on the flood control of, and metal extraction from, the Tongariro River there was no Maori participation – from either the Department of Maori Affairs or the owners' representatives – to consider matters that were of some concern to Maori landowners on both sides of the river.

The taking of lands for river protection purposes along the northern boundary of the Turangi township has remained a sore point with the local people. Eileen Duff explained in her submission to the Tribunal:

Whereas our family land [Waipapa 1F3B2B3B] formerly had a natural connection with the Hirangi Stream and with the Tongariro River, subsequent actions by government have cut us off from that connection. This causes us a lot of grief.

The thing that galls me is that nothing has ever been done to the land that was taken to effect protection of the land from the river. Big wide bits of Maori land were taken all along that stretch of the Tongariro River, but no works have ever been done to stop the river encroaching.

In a letter to my Uncle George of 6 June 1947 . . . the office of the Minister of Native Affairs said that the land needed to be taken for river protection purposes because otherwise 'many land owners both Maori and Pakeha' would lose land to erosion. But it is really obvious from looking at the Taupo County [planning] map that when the land abutting the river was European land, much less land was taken. Those skinny strips taken from European land owners have been justified by building flood control barriers, so less land was needed. When it was Maori land, they just took a big wide strip, and then did nothing to it. The conclusion is inevitable that taking larger quantities of Maori land was thought to be quite acceptable. (A22(2):2-4)

Further areas of Waipapa 1F3B2B3B were taken in 1966 and 1971.<sup>7</sup> Mrs Duff continued:

Although the Gazette Notice says that the land taken from us in both 1966 and 1971 was for the Establishment and Development of Turangi Township, a good deal of what was taken is now in the hands of Department of Conservation and was never used for the establishment of the township.

We still regard the areas [taken] as our family land, even though we know that legally speaking others have title of it. Morally and spiritually, it is ours, and we still regard ourselves as the kaitiaki of it. As a result, what has happened to the land since it passed out of our ownership has affected us deeply. (A22(2):5-6)



### **7.3.6 Legal status of riverbed unclear**

The legal status of the riverbed was not clear. As figure 22 illustrates, the Tongariro River had not remained in its legal bed as defined by survey in 1928. In March 1965, a Department of Lands and Survey representative at a meeting of officials with the Waikato Valley Authority and the Taupo County Council noted that the Crown Law Office's opinion was that the definition of a riverbed remained 'the same as it was at the date of proclamation notwithstanding subsequent changes in the river course'. If the Crown wished to own all of the present bed, he noted, a new proclamation would be required, which would lead to substantial compensation claims (B5(a):60). In effect, the Crown did acquire all the new riverbed areas in the vicinity of the Turangi township. In 1939 a 'river protection reserve' on the left bank had been taken under the Public Works Act 1928.<sup>8</sup> Lands between this reserve and the old SH41 were taken under the Turangi Township Act 1964, although only part of this area was used for township purposes, mainly as a residential area. All the lands below the terrace on which the houses were built, including the Hirangi Stream, are effectively, if not legally, part of the Tongariro River bed. The area is low-lying, subject to flooding, and cannot be built on. It is covered in scrub, interspersed by stream channels, backwaters, and gravel banks, and there are vehicle and foot tracks through it which provide access for anglers.

In the 1920s, negotiations between the Crown and Ngati Tuwharetoa led to an agreement, embodied in section 14 of the Native Land Amendment and Native Land Claims Adjustment Act 1926, in which the public were granted access to the Lake Taupo fishery and the bed of the lake was vested in the Crown. Sections 14 and 15 provided for compensation in the form of an annual payment and a share of the fishing licence revenue, and this was to be administered by the Tuwharetoa Maori Trust Board, which was set up for this purpose. The beds of rivers and streams flowing into Lake Taupo were subsequently declared Crown land by proclamation on 7 October 1926.<sup>9</sup>

The compensation awarded for the bed of Lake Taupo did not include the tributary rivers and streams, but this was determined in December 1948 by the Lake Taupo Water Claims Compensation Court. The claims were not settled earlier because of a doubt over interpretation, which was settled in section 8 of the Native Purposes Act 1946. The Court stated:

Without question the right that the Maori owners enjoyed prior to the Proclamation of reserving to themselves or their grantees the right of access to fishing waters was a right of very considerable value. The difficulty before us is to assess the value of this right as it existed prior to the passing of the Act of 1926.

The Tongariro River from the junction of the Whiti-kau Stream to its mouth in Lake Taupo was listed in the 1926 proclamation, but the Tokaanu River was not. In the 1920s, local Maori derived some income from fees charged to anglers for access to, and the letting of camp sites on, the Tongariro River.

In 1965 the Maori Land Court was asked to determine the beneficiaries of the Tuwharetoa Maori Trust Board. Although the court was not required to consider ownership

as the basis of a Maori freehold title to the lake, it noted that in other cases, such as those dealing with Lakes Rotoaira and Waikaremoana, ownership had been determined on the basis of ownership of riparian blocks around the lake. On this basis, the roll of beneficiaries of the Tuwharetoa Maori Trust Board is based on descent from owners listed in the blocks, as determined in the original investigation of title by the Native Land Court, which are adjacent to Lake Taupo, the Waikato River downstream to and including Huka Falls, and the tributary streams and rivers listed in the 1926 proclamation. All these are collectively known as 'Taupo waters'.

On 28 August 1992, a deed of agreement between the Minister of Conservation and the trust board was signed and, following ratification of the agreement by Tuwharetoa beneficiaries, it was confirmed by the board on 4 February 1993. The deed acknowledged the earlier negotiations and agreements set out in the 1926 Act and currently provided for in section 10 of the Maori Trust Boards Act 1955. The trust board sought the return of title to the beds of Taupo waters, asserting that it was not intended in the original negotiations, which were concerned with fishing rights, that title be vested in the Crown. Under the agreement, the beds were revested in Ngati Tuwharetoa; the public's freedom of entry to and access upon the waters (including their beds) was preserved; and their management was to be shared between the Crown and Ngati Tuwharetoa. Half of the members of the management board were to be appointed by the trust board and half by the Minister of Conservation, who would 'represent the public interest'.

On 22 September 1993, at a special sitting of the Maori Land Court at Tapeka Marae in the Waihi village, an application by the Minister of Lands to vest in the trust board 'the beds of Lake Taupo and the Waikato River up to and including the Huka Falls' was heard under section 134(e) of Te Ture Whenua Maori Act 1993. The application noted that the agreement also included tributary streams and rivers which are part of Taupo waters, but that these would be the subject of 'a separate application upon completion of technical investigations'. Specifically excluded from the Tongariro River bed were the section within the 'Tongariro Hatchery Camping Ground' and the islands in the river which were not taken by the Crown in 1926.

The technical investigations which have delayed the revesting of the beds of the streams and rivers include the requirement for new surveys to determine the actual location of the riverbeds. As we have seen with regard to the section of the Tongariro River reviewed here, the river has strayed well outside its legal bed, and even the efforts of the Ministry of Works in the 1960s and 1970s have not entirely succeeded in confining it to its surveyed route of 1928. We leave the specific task of defining the riverbed to the technical expertise of surveyors, but venture to suggest that, given the behaviour of the Tongariro River in recent decades, a broader definition than that used in 1928 needs to be applied.



### **7.3.7 Changes to the flow regime**

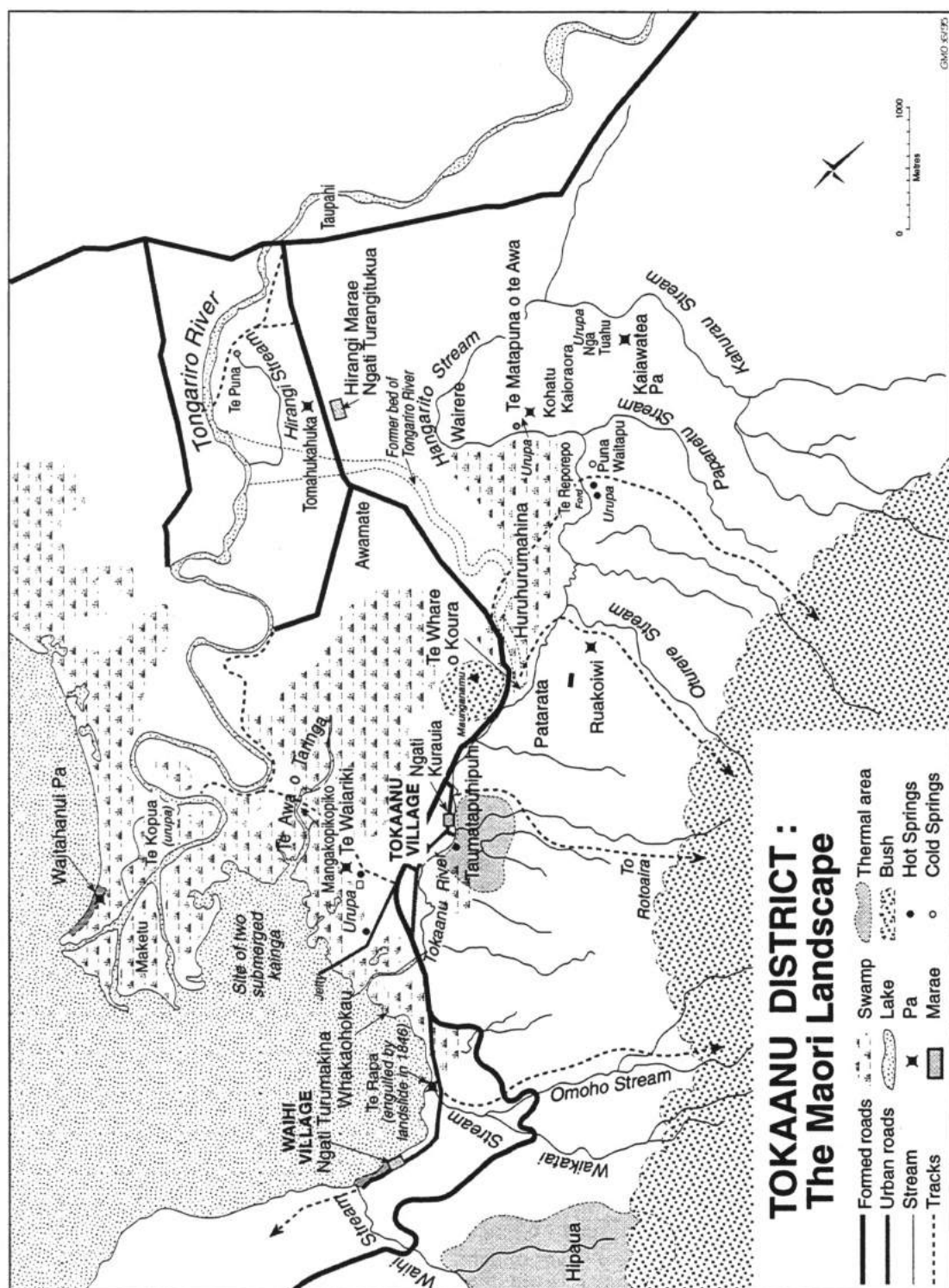
A related technical matter is the change in the flow regime of the Tongariro River which has occurred following the commissioning of the Rangipo Power Station in 1983. This station, and the dams and diversions upstream, have significantly altered the hydrological regime of the Tongariro River, which is controlled by the Electricity Corporation. A Waikato Valley Authority report concluded that there has been a reduction in the river's overall discharge because of the diversions. The flows are held as close to a constant level as possible, thus reducing the variability of flow, the magnitude of flood events, and the recession times when flooding does occur.<sup>10</sup> A significant issue for the Church family, whose farm is on the lower reaches of the Tongariro, is the occasional 'artificial floods'. These are caused by deliberate discharges, usually at night, from Rangipo, which come without warning and flood their lands downstream from the oxidation ponds (A15; A15(a)). The section of the Tongariro River adjacent to the Turangi township has been permanently changed by the Ministry of Works' metal extraction, by the flood control works, and by the subsequent build-up and erosion of sediments, which have, for example, significantly affected the Hautu 3E4A block (A23). While a review of the whole Tongariro River system and the impact of the TPD is beyond the scope of this inquiry, the section of the river adjacent to Turangi which formed part of the boundary of the areas described in the First and Second Schedules to the Turangi Township Act 1964 does need to be considered in the context of this inquiry.

## **7.4 THE TOKAANU RIVER**

### **7.4.1 'He taonga tapu, he awa tapu'**

The Tokaanu River was described as 'he taonga tapu, he awa tapu' by Bill Asher in his submission to the Tribunal (A12:5). The Tokaanu is a sacred river, a highly valued resource, and a taonga in the perception of local people. Te Matapuna is the source in the springs below the headland named Kohatu Kaioraora. There are also springs, or puna, which feed the Tokaanu on the left bank in the vicinity of Te Reporepo. The ultimate source of the river is said to be Rotopounamu, a lake high up on the mountain Pihanga. The lake waters flow underground and reappear in the several springs that flow out of the broken and faulted andesitic rocks of old lava flows.

Te Matapuna is the abode of two taniwha, Tikatakata and Tihorehore (Tioreore). These taniwha sometimes travelled to the springs downstream at Te Reporepo. The taniwha are protective beings and are closely associated with healing and with the tapu quality of the waters of these springs. Tikatakata and Tihorehore are also the names of the stars which Pakeha call the Magellan Clouds. In this form, they also have a protective role. Their relative positions in the sky were used to predict the wind and bad weather. As one of Best's informants put it, 'When wind rises, one of them goes to obstruct it; thus their



permanent task is to protect their people'.<sup>11</sup> The headwaters of the Tokaanu River, with its taniwha and the many urupa in caves and clefts in the cliffs, was a sacred area, entered only by a few on specific occasions. It was not an area to be entered by outsiders.

The Tokaanu River once flowed to the east of Maunganamu, past Te Waiariki into the lagoon in the swamp known as Te Awa o Taringa. The river was turned from its course by another taniwha, Kohuru Kareao, later known as Huri Kareao, who now dwells in the hot springs near the present Tokaanu village. This taniwha caused the earth movement that diverted the river. The Tongariro River was also diverted by a taniwha; it once flowed westward into the Tokaanu River (fig 23), but was turned to its present course by Huruhurumahina, a name which is still used by local people for the area south of Maunganamu where the two bodies of water once joined. Once settled in its present course, the Tokaanu River became the main highway for canoe traffic between the many kainga along its banks.

The volcanic origin of the mountains south of Lake Taupo meant that periodic earthquakes and associated earth movements occurred, which were recorded in traditional accounts and usually ascribed to a taniwha. Huruhurumahina was responsible for the uplift that created the waterfall, or wairere, on the Hangarito Stream. Earth movements also caused some former settlements to be submerged under the waters of Lake Taupo. There are two old kainga beneath the lake waters near where the water from the tailrace flows into the lake. Their submergence is also ascribed to a taniwha. A woman tohunga named Aratukutuku had been disturbed at her tuahu by a man, who had thereby broken the tapu tikanga. He had been on his way to the lake to go fishing but he did not return. Aratukutuku was beaten to death by his relatives for allegedly causing his death. Before she died, she was able to call on her taniwha to submerge the land and engulf the two kainga and their inhabitants in the lake. In the 1930s, local elders stated, the pallisades of the old kainga were still visible on the lake bed.

#### **7.4.2 Loss of resource areas**

The Hangarito Stream and its tributary the Kahurau often dried up in the late summer, but at other times carried a considerable flow of water into the Tokaanu River. A dam would be made in the dry watercourse, and when flushed during a flood was useful for transporting heavy objects such as logs or a partially-completed canoe. This was how local people obtained timber from the bush on the higher slopes of Pihanga. Te Reporepo was the name of a large canoe, or waka taua, which was constructed at the place of the same name on the bank of the Tokaanu River. As noted by J Te H Grace in his history of Tuwharetoa:

Te Reporepo was the pride and flagship of the Ngati Tuwharetoa fleet of war canoes. Its ownership was one of the visible signs of paramount chieftainship. It was built in the forest above the source of the Tokaanu River under the direction of Te Rangitautahanga [son of Turangitukua].<sup>12</sup>

Arthur Grace referred to the canoe in his submission:

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In those days there were massive totara trees, and it was from one of these that Te Reporepo was made. It was so long that some of the sharper bends in the Tokaanu river had to be excavated when they floated Te Reporepo down to the lake. (A21(1):46)

Downstream from Te Reporepo, there were numerous kainga and cultivations on the banks of the river. Some of the old kainga names included Te Ngutu o Te Manu, Korokoro, Te Hiwi o Te Kotukutuku, and Te Pukeapoapo. Te Hurumahinahina (or Huruhurumahina) was one of the cultivations, which were typically located near the edge of the swamp where the soil was more fertile. Bill Asher stated:

When I lived there as a boy there was a large cultivation area where we grew maize, potatoes, watermelon, kumara, kamokamo, and other vegetables, all of which fed the whanau which comprised the hapu of Ngati Kurauia. (A12(2):5)

The marae of Ngati Kurauia is in the Tokaanu village. Mr Asher also described the area now occupied by the Tokaanu Power Station and the start of the tailrace as 'he kohanga mahi kai tenei wa', or an important food production area. The foods that were cultivated were supplemented by the foods that were gathered, hunted, or snared in the forests and scrub on the slopes of Pihanga, Tihia, and Kakaramea or fished from Lake Taupo and the Tokaanu River.

Mr Asher talked about the impact of the Tokaanu power project construction on the food resources of the Tokaanu River:

There is no doubt in my mind that our river has changed to the detriment of our people. The Ministry of Works directed it from its natural course so that it now goes through an aqueduct, and overflows into the tailrace. The river has been badly affected by runoff from the pumice excavation area on Waipapa 2A2D. . . Sediment runs off in the rain, and lies in the bed of the river along to its confluence with Lake Taupo. This sediment is thickest in the deepest pools and interferes with the ecology of the river. Effectively, the river has been destroyed as a place of harvest for us. Many species, most of them native, have disappeared altogether. These include inanga, toitoi, kokopu and morehana. You never see them shoaling any more, where once they were present in large numbers. It is still possible to take koura in some places, but in vastly reduced numbers. Watercress, too, has become a rarity whereas once it used to grow in profusion all along both sides of the river. Watercress was a staple food for our people, but is now not usually available . . .

With the passing of the natural features of our rohe has passed a way of life for our people. The taking of koura in particular was full of significance and ceremony. There were certain families which had the job of gathering particular caterpillars (called 'mounu') from the fields. They would sew the caterpillar onto threads, and they would be used as bait. The families who gathered them would distribute them to the people who went out to do the harvesting at selected days in the year, and at selected places. All that has gone now, although the practices were still in place right up to the time the project came to Turangi.

It is a real loss to me that I cannot share with my mokopuna the way of life I once knew. (A12(2):5-6)

### **7.4.3 Trout fishing interests**

As already noted in the discussion on the water supply reserve, the Wildlife Service of the Department of Internal Affairs, and in particular the conservator for the Rotorua-Taupo district, Pat Burstall, was very active in protecting the interests of the trout fishery. From 1955 on, the Wildlife Service had collected ova from the trout spawning in the upper section of the Tokaanu River between the two groups of springs. It was to protect the spawning grounds that the Turangi water supply intake was established at the springs downstream of the spawning grounds. The ova collected from the Tokaanu River were raised at the Tongariro River hatchery and supplied to other parts of New Zealand as well as to sports fishing organisations overseas. Burstall explained that the Tokaanu River was:

with its 800 yards of spawning area . . . , without any question of doubt, the most valuable source of wild Rainbow trout ova in the world, and it is mandatory on us to ensure that every effort and means is undertaken to maintain and protect this asset. (B8(a):150)

With the prospect of a new township and a large immigrant population, the Wildlife Service was anxious both to protect this resource from poaching and to prevent the upper reaches of the Tokaanu River from being polluted or otherwise physically damaged. By December 1964, the threat of the Tokaanu River being polluted by stormwater drainage from the industrial area flowing into the Hangarito Stream was averted by the diversion of the stream into a drain alongside the new SH41 to an outfall in the swamp near the oxidation ponds. The impact of this diversion is reviewed in chapter 10. A related concern was the design of the 'cross-over', where the Tokaanu River was to be carried across the tailrace so that there would be minimum disturbance to trout during the spawning season from June to November.

The prospect of a fishery reserve five chains wide on each bank of the Tokaanu River from the source to the tailrace was raised at the 20 September 1964 meeting of owners. Some concern was expressed about the need for such a large reserve and the subsequent loss of grazing land, and the matter was deferred for discussion with the Department of Internal Affairs. In May 1965, the Ministry of Works had identified an area proposed for a fishery reserve as part of a review of land requirements for the TPD. The Ministry undertook to survey the area but had no authority to acquire it. The District Commissioner of Works advised the Secretary for Internal Affairs in September 1965 that, because the reserve was not essential to the TPD, it would be up to Internal Affairs to obtain the necessary authority and finance to acquire it under the compulsory provisions of the Public Works Act 1928 (B8(a):162).

There was no immediate action but, in July 1967, the Valuation Department in Rotorua was asked to supply an assessment of the 330 acres required for the fishery reserve. It may be that the total assessment of capital value at \$16,300 (B8(a):168) discouraged the taking of the whole area. In May 1968, Internal Affairs sought a valuation of 17 acres on the right bank of the Tokaanu River. A fence was constructed here in December 1965 to keep out poachers. By this time, it had been decided that part of the left bank of the Tokaanu River

suggested as a fishery reserve would be incorporated with the proposed water supply reserve. In July 1968, the Minister of Works, Percy Allen, wrote to the Minister of Internal Affairs, David Seath, advising that, since fish hatcheries in excess of 20 acres could not be compulsorily acquired under the provisions of the Public Works Act 1928, negotiations should be initiated with the owners by the Department of Lands and Survey under Part XXIII of the Maori Affairs Act 1953 (B8(a):170).

A report to the Minister of Internal Affairs from the secretary suggested that it was essential to acquire the 17-acre area, and very desirable to obtain control of the larger area in the longer term. In April 1969, approval was given to have Lands and Survey negotiate the purchase of the 330 acres for the sum of \$16,300 (to be paid for by Internal Affairs). In July 1972, the Secretary for Internal Affairs reported that the land purchase officer of the Department of Lands and Survey had been 'endeavouring to negotiate with the owners of the land for its purchase', but it was evident that the negotiations would 'take a considerable time to finalise . . . In fact he is finding a strong reluctance . . . to enter into any negotiations for the sale of the land' (B8(a):174). Up to this time, the Ministry of Works still held the Board of Maori Affairs lease that had been purchased from Arthur Grace, which included part of the area proposed for the fishery reserve. The Department of Internal Affairs investigated the possibility of taking over this lease, but there were some difficulties because only part of the leasehold was required. Internal Affairs had made a contribution towards the rent in recognition of its occupation of part of the leased area. This arrangement was maintained until the Ministry of Works terminated the lease in 1979. During the late 1980s, the Department of Conservation (to which the Wildlife Service was assigned following the restructuring of Government departments in the mid-1980s) reached an agreement with the owners of Waipapa 1L and 1M to lease an area of about five hectares on the right bank of the Tokaanu River with access by a right of way.

## **7.5 THE TOKAANU POWER STATION AND TAILRACE**

### **7.5.1 The areas of land taken by the Crown**

The construction of the Tokaanu Power Station and tailrace comprised the second stage of the TPD and impinged on the area described in the First Schedule to the Turangi Township Act 1964. In July 1965, Gibson set out the areas he considered were required to be taken for the Tokaanu project:

In the vicinity of the powerhouse most of the flatter land is swampy and it may be necessary to reclaim parts of this land in order to provide a suitable area for the site industrial facilities. The boundaries in the surge tank-powerhouse area have been chosen such that adequate areas for tunnel and powerhouse spoil are available . . .

Excavation from the tailrace by dredging will require all of the land shown on the west side of the tailrace for spoil disposal. This will cause the area between Tokaanu township and the tailrace to be raised perhaps 3–4 feet and provision will have to be made for stormwater drainage of this area along the western boundary. The boundary has been chosen to avoid

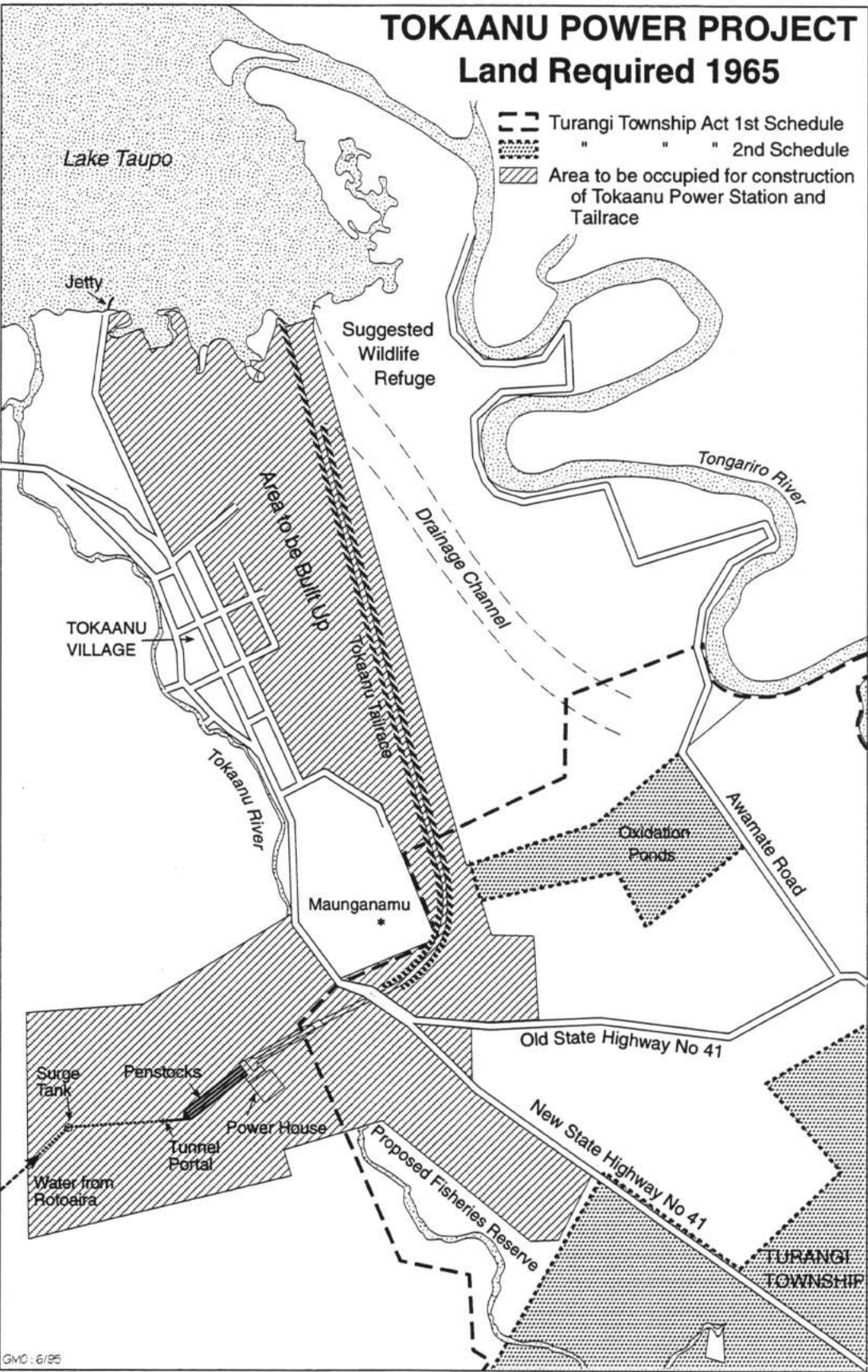


Figure 24



intensely subdivided areas where possible. It is not planned to dispose of spoil on the right side of the tailrace and no land, other than a nominal strip 3 chains wide, has been included in the area to be taken.

The excavation of the drainage channel will necessarily involve the temporary occupation of the area bounded by the oxidation ponds, the Tongariro River and the Tokaanu tailrace, and this area has been shown as being taken to form a wildlife refuge. (B9(a):1)

The areas referred to are shown in figure 24. At this stage, Sir Alexander Gibb and Partners had designed the tailrace to go further east of its eventual location, to join up with a proposed 'drainage channel' intended to take any overflow from the Tongariro River. The tailrace route was subsequently shifted westward, causing the destruction of the pa and urupa at Te Waiariki (see paras 8.4, 8.5). Part of the tailrace and construction area for the Tokaanu Power Station, but not the powerhouse itself, was within the area described in the First Schedule to the Turangi Township Act. In due course, the lands occupied by the power station, the penstocks, the surge chamber access road, and the tailrace between the powerhouse and Maunganamu were taken under the Public Works Act 1928 for electricity generation purposes.<sup>13</sup>

Over several months in 1965, there was consultation between the Ministry of Works and other Government departments, particularly Internal Affairs, and some debate over the potential use of the reclaimed area to the west of the tailrace between Maunganamu and Lake Taupo. Agreement was reached with Internal Affairs about a wildlife reserve to the east, but concerns expressed about the impact of the proposed drainage channel led to it being dropped from the plans. The means of Crown acquisition of the area had yet to be determined. The Commissioner of Works had responded to Gibson's report on land requirements (see para 5.4) by pointing out that section 311 of the Public Works Act 1928 and the 1958 Order in Council gave powers of entry for construction purposes but that taking 'land permanently however is another matter altogether'. He noted that the Electricity Department would want minimum areas only and that, if Internal Affairs or the local body wished to acquire the occupied area for recreational or other purposes, this would be 'a separate matter altogether which will have to be dealt with under different approvals' (B9(a):5).

Attention was focused initially on the Crown's acquisition of the area needed for the tailrace and the area between it and the Tokaanu village which would be used for dumping spoil. This reclaimed swamp area would then be developed for recreational purposes, and a marina, golf course, motel, and camping ground were to be sited there. In November 1965, a committee of officials representing the Ministry of Works, the Electricity Department, and the Departments of Internal Affairs, Tourist and Publicity, Lands and Survey, and Maori Affairs 'agreed that the Crown should acquire the land on which the spoil from . . . the tailrace was to be deposited and that the Department of Lands and Survey should be requested to undertake the necessary investigation and negotiations' (B9(a):9). The area involved was estimated to be about 200 acres. According to the officials' committee, the rationale for the Crown's acquisition of a much larger area than was needed for the tailrace was that:



It could serve as a recreation area for the new town at Turangi and also meet some wildlife and tourist needs, and the Crown would thereby benefit from the betterment of the land. While the acquisition of the land did not come within the field of the power project as such, the Crown was creating the new town and had a definite responsibility to provide recreation facilities. (B9(a):8)

By mid-1966, the Crown's land acquisition proposals had expanded to the purchase of some 1075 acres, comprising all the swamp lands between the Tokaanu village and the Tongariro River. A proposal was prepared for circulation among Maori landowners. Three areas were indicated. Area A was the strip required for the tailrace, which could be taken by proclamation under the Public Works Act 1928 if negotiations to purchase failed. Area B was the proposed recreation area of some 270 acres between the tailrace and the Tokaanu village, which would be administered by the Department of Lands and Survey. It was felt that the Crown's acquisition of this area was essential for its development 'as the finance required to undertake such a major project could only come from Government' (B9(a):10-11).

Area C, between the tailrace and the Tongariro River, comprised some 700 acres and was described as 'mostly undevelopable swamp'. It was to be retained in its natural state as part of the Tongariro River flood control scheme being worked on by the Waikato Valley Authority, but precise details of the 'river protection works' had not yet been decided. The Crown's proposal explained that, upon the completion of works in this locality, the Department of Internal Affairs' Wildlife Service was interested in taking over the swamp lands as a wildfowl habitat, safeguarding breeding and controlling shooting. The Crown's main intention in doing this, the proposal continued, was to put to use land which, 'if left in its present state, has no potential at all'. It was felt that the proposed use would ensure the natural ground cover did not deteriorate, thus lessening the threat of flooding to nearby areas (B9(a):11).

#### **7.5.2 16 July 1966 meeting**

A meeting was held at Tokaanu on 16 July 1966 to consider the Crown's proposals. In attendance were officials from the Ministry of Works, the Departments of Lands and Survey, Internal Affairs, and Maori Affairs, and the Taupo County Council. The meeting was chaired by Jack Asher 'and some 25 people were present, presumably affected land owners' (B9(a):16). Much of the discussion was in Maori and was not recorded in the Ministry of Works' summary of the meeting, but it was clear that the Maori owners present were not in favour of the proposals. The summary records that the owners accepted the sale of area A as inevitable, but felt that the sale of area B was unnecessary but they would allow the Ministry of Works to dump spoil there. The proposed sale of area C 'seemed to meet with the greatest resistance'. Since the area was already a shooting area, the owners could see no point in selling it so that it could become a controlled shooting area (B9(a):17-18).

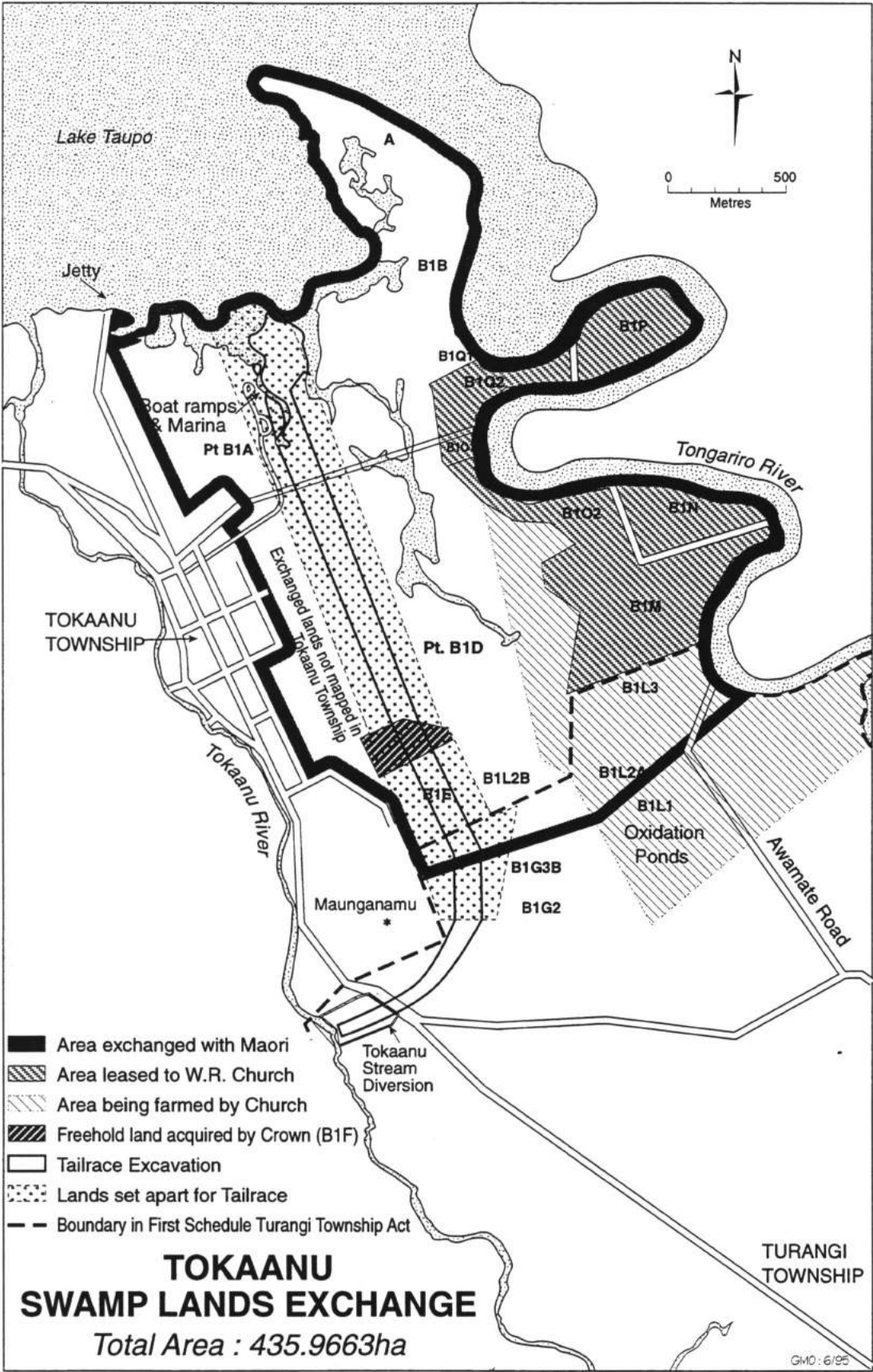


Figure 25

Crown officials pushed the potential for tourism and the attraction of a marina and accommodation and sporting facilities. 'However, the land owners were very little impressed by this argument' (B9(a):18). The suggestion was made that an exchange of land might be considered, and more information was needed both on the prospects for residential development and on the precise area required for the tailrace works. The report on this meeting that was sent to the Commissioner of Works concluded with the following comments:

The owners' reluctance to sell is caused by four factors:

- (a) Sentiment: attachment to ancestral ground;
- (b) Suspicion: we asked them to sell the land for Turangi Village. Now we ask for a second lot. When is it going to stop?
- (c) Irritation: they have not received any money yet for Turangi village.
- (d) Self Interest: Possibilities of residential development on reclaimed land. As servicing will be expensive and exclusion of enrichment of the lake impossible this must be resisted. (B9(a):18)

### **7.5.3 24 September 1966 meeting**

Another meeting was called for 24 September 1966. It was attended by Crown officials from the various Government departments and an unrecorded number of Maori owners. The Crown was interested in acquiring all the land between SH41 in the Tokaanu village and the Tongariro River, but the higher ground suitable for farming around the oxidation ponds could be leased back. This was currently farmed by William (Ned) Church. The same arguments about attracting tourists to the southern end of Lake Taupo by providing appropriate facilities in the Tokaanu area were traversed. However, the possibility of negotiating an exchange was put by the Lands and Survey representative, Graeme Crocker, and much of the discussion focused on this. It was also suggested by the local people that part of the swamp should be retained 'for Maoris only so that they can continue duck shooting in this same area' (B9(a):22). Concerns were also raised about wahi tapu; in particular, the burial places in the lagoon. Because the water was so deep, it was felt that the recovery of remains and reinterment elsewhere was impossible and the entire area should be excluded and set apart as a burial ground (B9(a):22).

Pat Burstall was not happy about this, 'as his department's activities concerning Wild Life would be restricted'. Crocker indicated that 'it could be done provided it can be definitely defined on the ground'. The Crown officials retired for a time while the Maori owners discussed the proposals. No decision was made but there was acceptance that work on the tailrace would proceed anyway. The owners felt, though, that more time was needed for them to discuss the future of their lands. An assurance was also sought that an exchange of Crown lands on the Hautu block could be negotiated, as well as an assurance by the Crown 'that the burial ground in the deep waters of the lagoon be left intact and others reinstated' (B9(a):23).

When they returned, the officials agreed that more time was needed and another meeting was set for 29 October 1966. It was also suggested by Lands and Survey that there should be either an outright sale to the Crown or an exchange, but not a combination. The Ministry of Works gave an assurance that any burial grounds disturbed by the tailrace construction would be reinstated elsewhere and that, if the area could be properly defined, the burial ground in the lagoon would be set apart. Burstall agreed, provided the area was about three to five acres, as stated by Fearon Grace (B9(a):24).

Gibson was not happy about Lands and Survey's 'all or nothing' attitude, maintaining that if people were prepared to sell, the Crown should purchase and an exchange should be negotiated with the rest. He suggested to the Minister of Works that 'If we could get Lands and Survey to agree to this more flexible attitude negotiations might go smoother'. He also stressed that any reclaimed land at Tokaanu should be zoned recreational rather than residential, because any residential development would incur prohibitive water supply and sewerage costs and 'become a liability on the rest of the community'. Similarly, he continued, any attempts to establish motels should be resisted (B9(a):26).

#### **7.5.4 29 October 1966 meeting**

Another meeting between Crown officials and Maori owners was held on 29 October 1966, but no decision was made on the sale or exchange of land. Much of the discussion was taken up with the westward shift of the tailrace route and the fate of the pa and urupa at Te Waiariki (see paras 8.4, 8.5).

A joint planning committee, comprising the Taupo County Council and several Government department representatives, was set up in December 1966 and reported in April 1967. Among other things, the committee recommended that the Tokaanu swamp lands should be acquired by the Crown for the proposed lakeshore reserves 'as a matter of urgency' (B2(a):247).

The pressure was thus increasing on the Maori owners to accept the Crown's acquisition of this area. In October 1966, work on excavating the tailrace had begun at the power station end, and this proceeded through 1967 in the section curving around Maunganamu. Little progress was made on negotiating the acquisition of the swamp lands, but Lands and Survey was actively investigating possible Crown lands which could be used in an exchange. On 24 March 1969, Cabinet authorised Lands and Survey to negotiate 'for the exchange of up to 750 acres of Maori land in the Tokaanu area, including that required for the Tokaanu tailrace' (B9(a):42). Further investigation of the marina and golf course proposals (see para 7.5.1) was to be carried out by an interdepartmental committee. On 20 April 1970, Cabinet authorised Lands and Survey 'on behalf of the Crown to negotiate the acquisition by way of exchange of all the Maori-owned land' between the Tokaanu village and the Tongariro River (B9(a):42).

#### **7.5.5 Tailrace excavation by draglines**

In December 1970, the Minister of Works advised Cabinet that the tailrace excavation should be completed by the use of draglines, which had been used on the work to date, rather than by dredging the Lake Taupo end of the tailrace, as previously suggested. This was the best method for dealing with trees buried in the swamp or with geothermal water and steam, which had already been encountered near the power station (B9(a):43). However, a dragline operation meant that spoil would be dumped in a bund on either side of the tailrace, and additional costs would be incurred in shifting the spoil for the swamp reclamation. Because it had now been decided to build a bund on the eastern side, there would be less spoil available for reclamation on the western side, where the golf course was to be located. The Minister of Tourism was concerned about the abandonment of the golf course proposal, but, on both technical and cost grounds, the Ministry of Works settled for the dragline operation for the whole tailrace excavation.

#### **7.5.6 Trustees appointed**

By mid-1970, agreement was reached on the 'Tokaanu swamplands exchange' (fig 25). The negotiator for the Crown was Graeme Crocker of the Department of Lands and Survey. On 11 December 1969, the Maori Land Court appointed nine trustees (John Grace, Pat Hura, Katerina Wikaira, John Asher, Takutai Turoa, Lang Grace, Fearon Grace, Robert Biddle, and Mihimamao Te Rangiita) under section 438 of the Maori Affairs Act 1953 to negotiate an agreement to exchange the Tokaanu lands with other Crown lands, a proposal described by the court as a 'commendable one'.<sup>14</sup> Some of the sections in the Tokaanu village were Maori reserved lands, which were administered by the Maori Trustee, and these had to be revested in the trustees, who took over the existing leases in some cases. Some of the Tokaanu blocks were still administered by the Board of Maori Affairs under Part XXIV of the Maori Affairs Act and were leased to Ned Church, who was farming there. The exchange agreement reached was a complex one, and the trustees were advised by Russell Feist, the Tuwharetoa Maori Trust Board's solicitor. The details need not be reviewed here, but they involved the exchange of the Tokaanu swamp lands for Crown lands in the Hautu block on the other side of the Tongariro River (which had been part of the Tokaanu development scheme and were now leased by Lang Grace) and a substantial area of land in the Opawa-Rangitoto and Tauranga-Taupo blocks (which are now part of the Maori-owned Lake Taupo Forest). Exchange orders completing the transaction, subject to survey by the Crown, were issued by the Maori Land Court at a sitting at Tokaanu on 8 July 1970.<sup>15</sup>

## References

1. *New Zealand Gazette*, 1985, p 251
2. *Ibid*, 1974, p 2132
3. B Cooper, *Te Mata o Tauponui a Tia: The Head of the Lake*, Turangi District Historical Society, 1982, p 123
4. D J Shaw, M Fletcher, and E J Gibbs, *Taupo – A Treasury of Trout*, Taupo, Department of Internal Affairs: Wildlife Service, 1985, p 11
5. *New Zealand Gazette*, 1974, p 1649; 1975, p 364
6. *Ibid*, 1987, p 636
7. *Ibid*, 1966, p 1487; 1971, p 286
8. *Ibid*, 1939, p 1142
9. *Ibid*, 1926, pp 2895–2896
10. M Davenport (et al), *Tongariro River – Overview*, Hamilton, Waikato Catchment Board, 1988
11. E Best, *The Astronomical Knowledge of the Maori*, Dominion Museum Monograph No 3, Wellington, Government Printer, 1922, p 40
12. J Te H Grace, *Tuwharetoa: The History of the Maori People of the Taupo District*, 2nd ed, Wellington, Reed, 1970, p 160
13. *New Zealand Gazette*, 1974, p 414
14. Tokaanu Maori Land Court minute book 49, pp 292–293
15. Tokaanu Maori Land Court minute book 50, pp 26–30

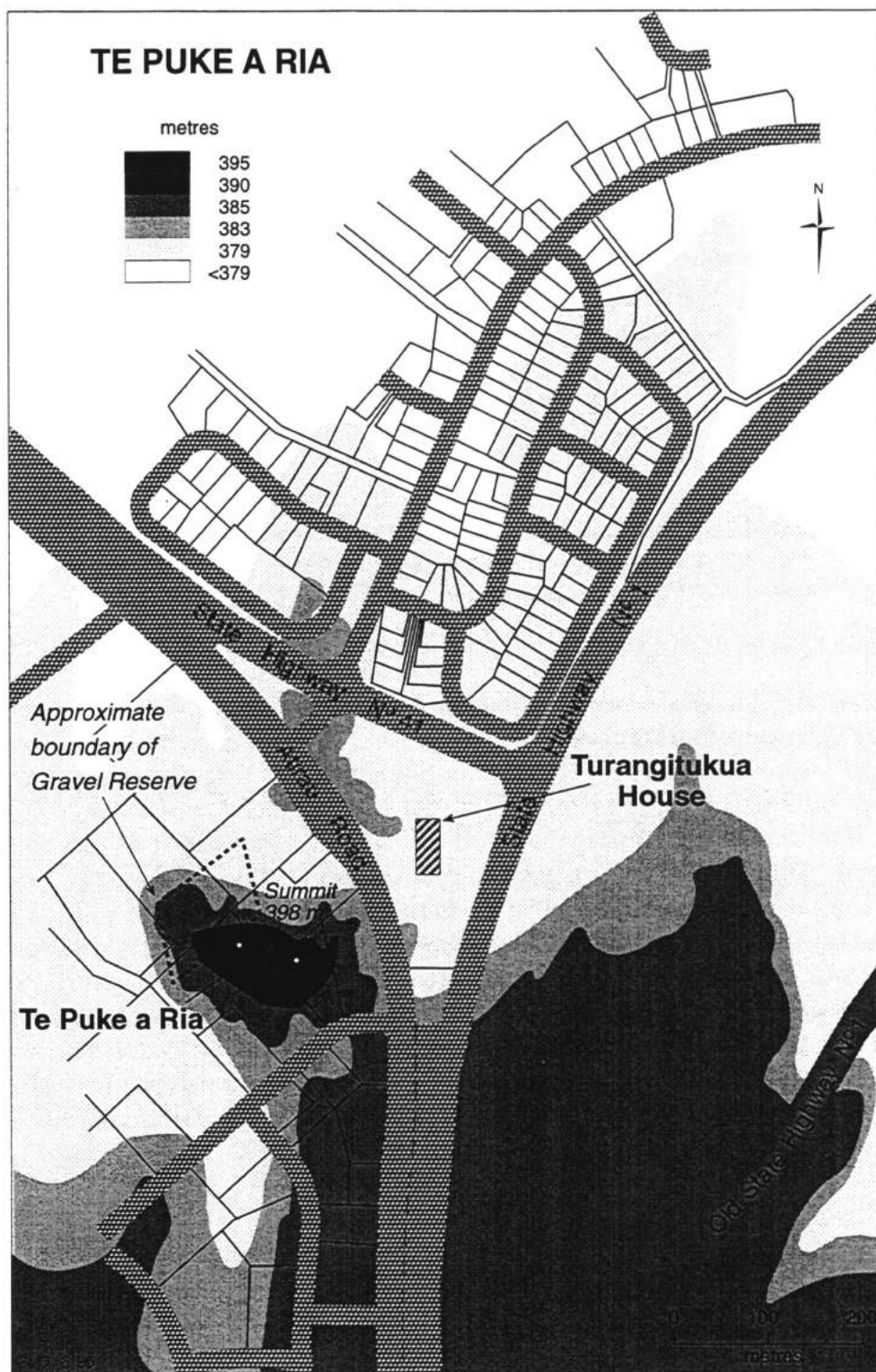


Figure 26

## CHAPTER 8

# WAHI TAPU

### 8.1 TE PUKE A RIA

In 1923 the Crown took a three-acre 'gravel reserve' or pumice pit under the Public Works Act.<sup>1</sup> At the 20 September 1964 meeting of owners, Lang Grace had pointed out that there were two Maori graves in the gravel reserve, and asked that, when it came to removing the hill, the remains be shifted to the cemetery. Dick Lynch assured the owners that 'everything will be treated with the utmost respect and nothing will be done to offend Maori people' (A7:89).

The hill in the gravel reserve was known locally as Te Puke a Ria and was a wahi tapu. Arthur Grace explained its significance in his submission to the Tribunal:

It was a prominent hill, because although not very high, the surrounding land was fairly flat. Te Puke-a-Ria was an old urupa from a long time ago. It was named after one of our old kuia whose name was Ria. Ria, like many women of those days, was frequently parted from her husband, because of the seasonal activities that men and women would engage in separately. One year, Ria's husband died while staying at Motiti, which is a landmark in the foothills of the Kaimanawa Ranges. It was not possible for his body to be returned to Turangi, so he was buried at Motiti. In the years following, Ria would climb to the top of the puke at Turangi, and call out and sing to her husband lying at Motiti . . .

Ria was buried on the summit of the hill where she had called and sang and it was named for her. Like all our sacred places Te Puke-a-Ria was a place which we cared for and respected. Although we were farming the land, our kaumatua would remind us to be careful to respect this place, making sure that nothing disturbed our Ria.

When the Ministry came in, the old people said 'That's a tapu hill. We have dead there.' During the negotiations, the Ministry had said that they would protect our tapu places and the places associated with our dead. But then later on they realised that the Ministry of Works needed the land where the hill was, and that in their plans the land was flat. The Ministry had decided that this area would form part of the Industrial Block in the new town, so that hill had to go. (A21(1):39)

The local people were very unhappy about the proposal to bulldoze Te Puke a Ria and asked to remove any bones found there. According to Arthur Grace, 'The Ministry sent their bulldozers in, but didn't recover any bones. They said they didn't see anything' (A21(1):40). The local people believed that, because of tight work schedules, they had not looked properly and just proceeded with bulldozing the hill and levelling the site. Mr Grace commented:



My mother was very upset about this incident. A famous chapter in our history had been wiped out with no trace. She told us that one of the engineers, Jim McLaren, had said to her, 'Oh there were all sorts of bones, how were we to know which ones were human?' They could have asked us . . .

The old people had wanted to re-inter the bones after they were found. But now the bones were lost forever. They had been crushed and scattered over the whole area by the heavy machinery. This was a desecration of a very sacred place. The Ministry of Works had simply destroyed our wahi tapu. (A21(1):40-41)

Ranginui Biddle of Ngati Hine, a Tuwharetoa hapu whose marae is at Korohe, described the work of preparing the industrial area in his submission to the Tribunal. He was employed by a contractor who specialised in earth moving with heavy machinery:

The Ministry [of Works] wanted everything flattened out to make way for the town. . . . All this work had to be done in a hurry and the contractors had to keep up with their work.

First of all we started over towards where the Hangarito Stream goes behind the building that used to be the Ministry of Works headquarters. That building is the Waiariki Polytechnic today. We worked in that area and put in a big culvert at the Hangarito Stream so that a road could go over it. Then we spread out further and eventually we got close to where the hill known as Te Puke a Ria was. . . .

When we go near this hill I was driving a big D8 bulldozer. I would bring the bulldozer blade up behind the big earth movers which we called carry-alls. My job was to push from behind so that the carry-all could dig into the ground and pick up a full load. The whole job was very noisy and very dusty because most of the ground was dirt and pumice.

We flattened the land up to the base of the hill so that we could start cutting into it. I remember that I made 2-3 cuts at the base of this hill when I realised that this hill was the one where our old kuia was buried. This old kuia was living in our early days and I knew this place was very special.

This old kuia was part of Ngati Turangitukua. In those days Ngati Turangitukua would travel from this area into the hills of the Kaimanawa Ranges. . . . they went through Korohe and would camp there with their Ngati Hine relations . . .

So when I came up to the hill in my D8 bulldozer something told me that this was not right. I remembered that this hill was an urupa for our old kuia Ria. So I stopped the bulldozer and got down from it because I didn't want to dig into that urupa. . . . I said, 'we shouldn't be digging here, that hill is an urupa'. My boss said that the work had to go on. There was no need to stop or slow down. Everything had to be done on time and quickly. I still said that I did not want to flatten the urupa because these things should go to the old people first. But the attitude of my boss would not change. He said the work had to go on. . . . I was told to carry on and dig up our old kuia or get the sack . . . As it turned out, I lost my job and Te Puke a Ria was flattened anyway. They didn't cart away any human remains. The land was just spread out so that everything was flat. So the bones of our old kuia and others lie somewhere in the Industrial Block. (A21(a):1-3)

Te Puke a Ria was a distinctive small hill rising some 17 metres above the surrounding land south-west of the present junction of SH1 and SH41 (fig 26). Part of it was in the gravel reserve taken in 1923. To the north were some smaller hillocks three to five metres

high (B3(c)). All these hills were flattened to make way for the industrial area and the new route of SH41. The contract to Taylor and Culley for earthmoving on this site could not be located. Another similar contract with this firm was perused by David Alexander, but it did not include any 'reference to or confer any obligations on the contractor in the event of burial remains being discovered during earth moving' (B3:61).

Te Puke a Ria was a wahi tapu of indeterminate boundaries. Tuatea Smallman explained in an oral submission that such places could be described as being within earshot of a bellbird calling in a kahikatea tree. The distance away that its call can be heard sets the boundary of a wahi tapu (B16).

## **8.2 NGATI APAKURA URUPA**

Within the industrial area, there was another urupa dating from the late 1820s where many people of Ngati Apakura, a hapu of Ngati Raukawa, were buried. They had been travelling south from Maungatautari to the Otaki district, and had camped on the slopes of Pihanga when they were overcome by an epidemic of some kind. Their burial place was near the rubbish tip but it was bulldozed to clear the site for the industrial area and the land was taken and subsequently sold. Arthur Grace commented:

Ngati Turangitukua were the guardians of that Ngati Apakura urupa. Those people perished on our turangawaewae, so it was our job to take care of their graves. When the land was taken out of our hands by the Crown, we lost the ability to look after that urupa, because the Ministry was not prepared to take the time and effort required to help us set apart and safeguard our sacred places. This loss affects our mana as tangata whenua. (A21(1):53–54)

## **8.3 NGA TUAHU**

It was at some time in the early 1970s that some Maori owners, including Te Reiti Grace, realised that operations at the tip had damaged some wahi tapu in the area. By 1977 the tip excavations had encroached on the Waipapa 1M block in the area being considered for a Maori reservation (fig 20). Within the rubbish tip area on both Waipapa 1F4 and Waipapa 1M, there were several wahi tapu called tuahu. Arthur Grace explained in his submission to the Tribunal:

'Tuahu' is the name given to distinctive landmarks of our people. They are evenly-shaped conical hills built by the old people [ancestors]. Sometimes they are burial places, and at other times they are like altars. They were also used as places where the old people would bury something very special to them such as a lock of hair or a prized possession. They are very ancient, and very easy to recognise because of their shape . . .

That place was very tapu. It had never been farmed for that reason. We all knew that the area was very special. . . . Originally there were five tuahu and they were situated on Blocks Waipapa 1M and 1F.

Anyway, the original site of the rubbish dump was a long way from the tuahu. No one suspected that the rubbish dump would grow to reach the place where the tuahu were located. There had been an agreement with the Ministry of Works that they would not do any digging in that area. But that agreement was apparently forgotten or ignored, because over time the machines got closer and closer to the tuahu until eventually they were working right where they were . . .

My mother [Mrs Te Reiti Grace] went to see one of the engineers about stopping the work near the tuahu. John Bennion was an absolute gentleman and treated the Maori owners with the greatest of respect. We felt that he was the only one of the big men in the Ministry who tried to look after our interests. Mr Bennion must have intervened, because after that, they did stop that work.

At the time when Mr Bennion intervened . . . there were three-and-a-half tuahu left. But work in the area must have started again at some stage, because there are only three left now. (A21(1):42-43)

At the March 1977 hearing in the Maori Land Court of Mrs Grace's application to have the area containing the tuahu set aside as a Maori reservation, a plan of the area which had been prepared by the Taupo County Council was produced (B4(a):191). A redrawn version of this plan is shown in figure 20. Fearon Grace stated:

This [plan] plots presence of some only of the graves. There are others, not shown. There are mounds or Tuahu in cone shapes, used by high priests for incantations to the Gods. This indicates that only upoko anki are buried there. . . . Last burial could be 300 years ago. It is not a current burial place. Very ancient.

Place has shown significance for Ngati Turangitukua. The land carries on to a high ridge that all formed part of Kohatu Kaioraora Pa. This subject land is part of the General Pa area. The rest of the ridge has been taken under [Public] Works Act. There are other graves not on this part. . . .

One of those buried is Rangataua – a descendant of Turangitukua.

The land was left in its natural state, undeveloped and not grassed by the development scheme, because of its significance – even though Waipapa 1M was included in the Part XXIV scheme.

Land should be for common use and benefit of Ngati Turangitukua. (B4(a):188)

Others also spoke in support of the application and the court recommended that the area should be set aside as a Maori reservation under section 439 of the Maori Affairs Act 1953, 'for the purposes of an ancient burial ground and place of historical interest, for the common use and benefit of the people of Ngati Turangitukua' (B4(a):189). In September 1977, this land was declared a Maori reservation.<sup>2</sup>

The Maori Land Court also made some general comments about the relationship of the tuahu to the rubbish tip, following an inspection of the site:

1. This Court does not pretend to any archaeological expertise but the tuahu are clearly visible monuments, upon the land . . . and they would appear to be both dramatic and unique. Their preservation would appear to be a matter of utmost concern, not only to Ngati Turangitukua for whom they must have the greatest significance, but for the sake of preserving that which might well have special scientific, archaeological and historical interest. . . .
2. It is apparent that certain other prominent Tuahu are now located on land that has been taken by proclamation and which I presume to be now Crown land. . . . It may well be appropriate that those parts as well should be protected as Maori Reservations, and also the Pa site. . . .
3. The location of the rubbish tip adjoining the proposed reservation, and its overlapping onto the reservation itself, detracts from the reservation, and from the general sacredness of the area as a whole, as a matter of general town planning. The local authority might well consider that the rubbish tip be sited elsewhere.
4. Excavations in the vicinity of the tuahu, the planting of a pine forest and the cutting of a roadway to the rubbish tip, on this proposed reservation which has at all times been privately owned Maori land, are matters of real concern to this Court. (B4(a):189–190)

#### **8.4 TE WAIARIKI URUPA**

Among a number of questions to be considered when the Ministry of Works raised the issue of land acquisition for the construction of the tailrace was the fate of the old pa and urupa at Te Waiariki (fig 27). At an owners' meeting at Tokaanu on 25 July 1966, the Ministry offered to reinter the bodies elsewhere. At a meeting on 24 September 1966, the issue of the protection of burial grounds was raised again. The Ministry gave its assurance that 'burial grounds so affected by the Tailrace will be reinstated elsewhere' (B9(a):24). There was also some discussion about another burial place in a lagoon east of Te Waiariki, a place called Mangakopikopiko, in the area proposed as a wildlife reserve, but it would be difficult to fence it and keep out duck shooters. In due course, the 'Tokaanu swamplands exchange' was negotiated, but no burial reserves were marked out in the swamp area that became Crown land.

Meanwhile, contract documents for digging out the tailrace were being prepared. In April 1966, the local representative of Sir Alexander Gibb and Partners wrote to the District Commissioner of Works saying that he understood there to be a Maori cemetery near the Tokaanu tailrace and that he would be 'grateful if you will advise its exact position' (B9(a):73). In July, in another letter to the commissioner, the same writer commented that the 'downstream end of the tailrace has been moved to the west to be just clear of the Maori burial ground' and added that it 'could be moved further to the west if it is accepted that the burial ground be excavated' (B9(a):74).

Trevor Hosking of the Historic Places Trust, who was appointed as the 'project archaeologist' for the TPD in February 1966, was asked to investigate.<sup>3</sup> He undertook a preliminary investigation of the Te Waiariki cemetery in May 1966 with the aid of some

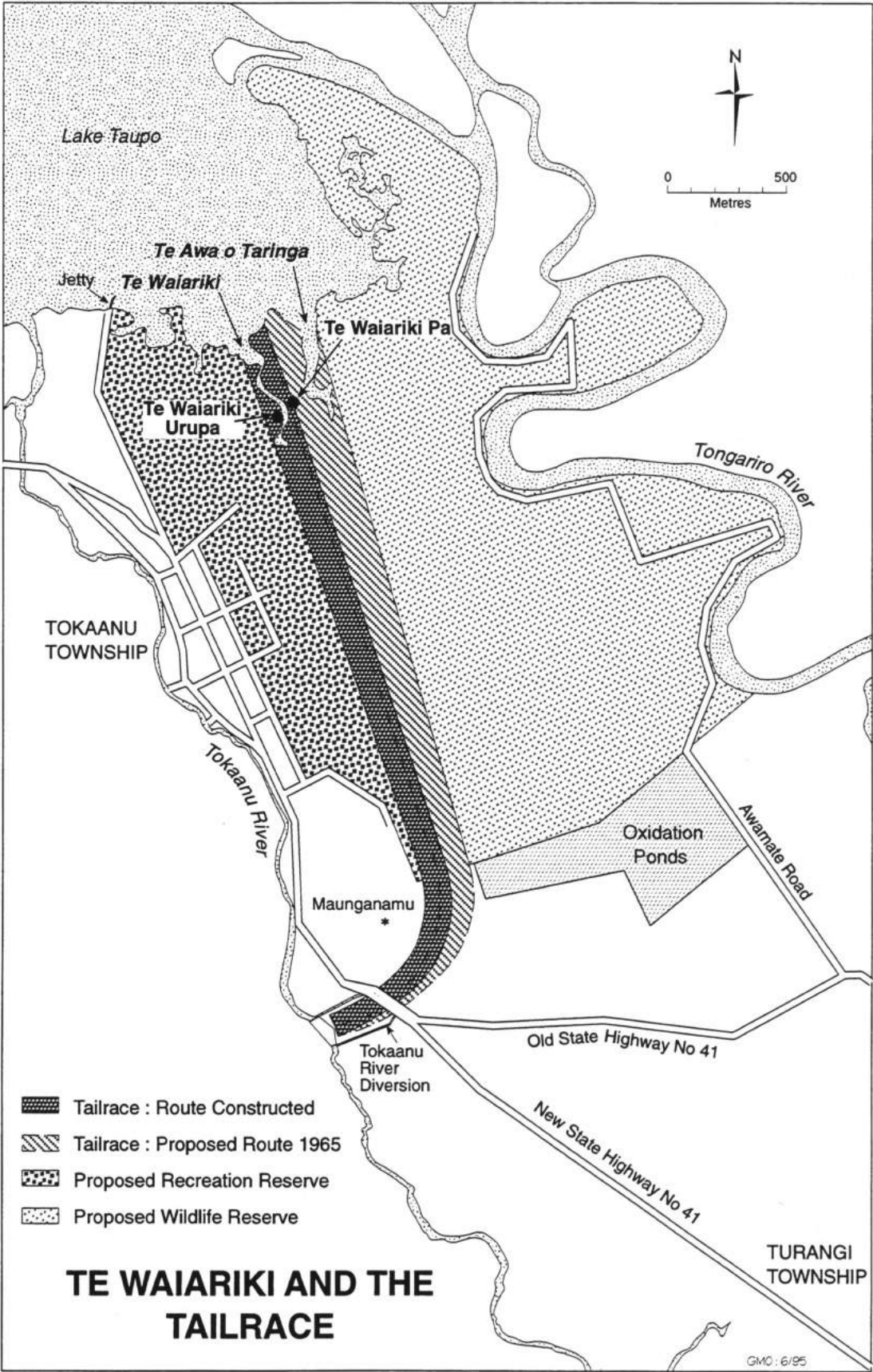


Figure 27

local kuia, and 'deduced a possible location of the site on three parallel ridges of sand running in an east-west direction, on the western berm of the tailrace', where he 'could see the outlines of two houses and a number of shallow depressions'.<sup>4</sup>

By December 1966, it seems that a decision had been made that the burial ground would have to be removed. Gibson advised the Commissioner of Works and the site representative of Gibb and Partners that the terms of the contract for dredging out the tailrace were that the Ministry accepted the responsibility for the reinterment of bodies from the urupa before the contract starting date in June 1967, but that any bodies subsequently uncovered in the course of the work should be left undisturbed and reported to the Ministry immediately (B9(a):77).

On 24 April 1967, Gibson sent letters to Lang Grace, Haukino Duff, and Wairemana Tamaira requesting their attendance at a meeting on locating and identifying graves. By this stage, roads were being constructed on either side of the tailrace, and 'the left one of these roads is to pass through the area of land where the Waiariki Urupa Burial Ground is' (B9(a):82). On 6 June 1967, Gibson wrote another letter to each of these people, thanking them for their attendance and confirming the approximate location of the graves of 'Rangiamohia the 1st' ('to the East of the Eastern bund road') and 'the two missionaries, Manihera and Kereopa' ('to the west of the Western bund road'). Gibson noted that the graves would not be disturbed in the construction of the tailrace, except that three or four feet of dredged material would be placed on top of the missionaries' graves. He also noted that Duff had been unable to 'pinpoint' Rangiamohia the First's grave but that agreement had been reached to mark the approximate location 'with a stone monument bearing a suitable inscribed plaque'. If the graves of the two missionaries could also not be pinpointed, he understood that they would be treated in the same way (B9(a):83).

On 27 June 1967, Gibson informed the medical officer of health in Rotorua of the Waiariki burial ground and advised that Hosking would be applying to the Director-General of Health for a disinterment licence. He also confirmed with Hosking that 'you are prepared to administer the removal of any bodies from this area with the assistance of the Ministry of Works and in conjunction with the local Maori Elders' (B9(a):86-87). Hosking had to abandon for the time being the archaeological excavation of a kainga at Opotaka, on the shores of Lake Rotoaira, which had already been damaged by Ministry of Works activity.

In May 1967, Hosking had begun initial testing of the site at Te Waiariki, and spent 55 days on the site during the next four months, being forced to work at a pace which kept up with the Ministry's construction operations. Conditions were also very difficult, the raised level of Lake Taupo since 1942 having left the burials in warm groundwater for a number of years, which led to an advanced state of decomposition. The bodies could not be lifted out intact but rather were scooped out, and sometimes the outlines of graves were all that remained. Furthermore, the site had to be pumped continually, and excavation with a trowel was impossible. Hosking 'commented on the frustrations caused by the conditions which marred this rare opportunity to work on a burial ground'.<sup>5</sup>

In all, 54 human burials were disinterred. Eleven of these (seven adults and four babies) were buried in an extended position and associated with some type of European item, thus dating their burial to a post-European contact period. The remaining burials were in an

older style 'trussed' position, but the site was too waterlogged to determine properly the chronological order of the burials by their stratigraphic position. An account of Hosking's work notes that:

The basic priority of the excavation was to excavate the burials and ensure that none remained when the tailrace construction proceeded. It is creditable that Hosking was able to achieve this even though information on structures, stratigraphy and physical anthropology of the burials was not recovered. This was a result of the race against time and the difficult working conditions.

All the burials were removed for reburial at the Tokaanu cemetery (Piripekapeka), except for Manihera and Kereopa who were reinterred at St Paul's Church, Tokaanu where a plaque was erected in their memory.<sup>6</sup>

Te Waiariki was an old and well-known urupa, situated close to an old pa and kainga, and its name was derived from a hot spring. The kainga was occupied in the early nineteenth century and was associated with the Tuwharetoa rangatira Te Herekiele. It was during his absence that two visiting 'missionaries', Manihera and Kereopa, who were Maori teachers from Ngati Ruanui in Taranaki, came to the Tokaanu region in 1847 to preach Christianity. Unfortunately, they became the victims of a revenge attack for the killing of Tauteka by Ngati Ruanui at Waitotara some six years earlier. Te Herekiele was angry at the missionaries' murder, which brought shame to his people, and arranged for the bodies to be taken to Te Waiariki for tangihanga and burial.<sup>7</sup> The Anglican missionary Richard Taylor wrote to the murdered men's Taranaki relations imploring them not to retaliate. Letters were sent by Ngati Ruanui to Ngati Tuwharetoa to say that, in spite of the sorrow at their deaths, 'as they had died in the Lord's cause, they should leave it with him, and not in the old way demand blood for blood'.<sup>8</sup> Another missionary teacher belonging to Tuwharetoa, Wiremu Tauri, addressed the hui called to discuss the Ngati Ruanui letters:

A minister, he said, was like a lofty Kahikatea tree full of fruit, which it sheds on every side around, causing a thick grove of young trees to spring up; so that although the parent tree may be cut down, its place is more than supplied by those which proceed from it.<sup>9</sup>

Soon afterwards, Taylor himself visited Tokaanu to ensure that peaceful relations had been restored. After a long and at times tense discussion, Taylor commented:

I was thankful that the affair had so far terminated satisfactorily. . . .

Thence we went to Waiariki, the place where our dear departed friends last slept, and near to which they are buried. A neat double fence surrounds the sacred spot.<sup>10</sup>

The deaths and burials of Manihera and Kereopa were associated closely with the arrival of Christian teachings in the Taupo region, which gave added significance to the urupa at Te Waiariki. Their graves were located during Hosking's excavation work and 'were distinguished by the placing of each body in a half canoe in place of a coffin'.<sup>11</sup> The injuries to their skulls were consistent with the traditional accounts of their deaths.

## 8.5 TE WAIARIKI PA

Close by the urupa was Te Waiariki Pa, which was also threatened by the tailrace construction. Hosking had its location – on a low-lying neck of land between the Te Awa-a-Taringa and Te Waiariki Streams – pointed out to him by local elders. The tailrace was planned to cut through this site.<sup>12</sup> Again, the archaeological excavation, during October and November 1967, was hampered by waterlogged soil conditions and the pressure to complete the work before the bulldozers moved in. Hosking could do little more than sample the site to establish that it had been occupied, and only by proper excavation could he have confirmed that it was the site of Te Waiariki Pa. Nevertheless, he did uncover a number of signs of habitation.<sup>13</sup>

It is not clear from Ministry of Works files just why the tailrace had to be moved westward and thus destroy an important archaeological site that had great significance in Tuwharetoa history. Even when this decision was made, the time pressure put on all involved meant that the investigation was a matter of ‘salvage archaeology’. This theme and the role of the project archaeologist are explored more fully in a later section. The scientific information that might have been gained at Te Waiariki was destroyed and Ngati Tuwharetoa lost their wahi tapu.

## 8.6 TE URUPA A HINENAMU

There were several urupa on the higher slopes and cliffs about the left bank of the Tokaanu River in the area taken for the water supply reserve. One was Te Urupa a Hinenamu, or the resting place of Hinenamu, a puhi (high-born young woman) who lived in the early nineteenth century. Arthur Grace told her story to the Tribunal:

Hinenamu intended to marry a man known as Paraone, who left Turangi to go and discuss the marriage with his people. It was while he was away that Hinenamu began to pine until eventually she became ill. Her longing became so extreme that finally she died. Her body was placed at the entrance to a cave, clothed in finery. This was how Paraone found her when he returned. He was full of remorse. Every day he would sit with Hinenamu at the cave entrance, talking and singing songs to her. This went on for a very long time, and the people understood how deeply he mourned his beloved. Eventually, the old people thought Paraone’s mourning had gone on long enough, and they took him away from the cave. (A21(1):44–45)

Paraone died in 1866 and Hinenamu’s remains were left undisturbed in the cave, which was known only to local people. However, with the arrival of many new people in the town, it was inevitable that the remains would be tampered with. Mr Grace commented:



Because there were now so many people in Turangi who were beyond the control of our tribal tapu, we could no longer protect the cave from interference by ignorant strangers. We spoke to Mr Bennion, who arranged for the Ministry of Works to concrete in the front of Hinenamu's cave. A skilled stone mason was used to create a beautiful front to the cave. We have Mr Bennion to thank for that. (A21(1):45)

## **8.7 KOHATU KAIORAORA**

The ridge of Kohatu Kaiaoraora was a tapu area, a place of many burials, and the site of a number of springs which were the source of the Tokaanu River, te awa tapu. Arthur Grace spoke of the local feelings about the use of one of the springs as a source of water for Turangi:

The tapu of the area was completely disrupted when the Ministry of Works moved into the area to undertake the works for the pumping station. They enclosed the springs and put in the big pumping station to pump the water up to the reservoir.

I don't think the old people really knew what was going on. Again, this work was taking place out the back where the old people wouldn't have been likely to see it. By the time they got involved in arguments with the Ministry about it, it was too late to do anything. The Ministry had already played havoc with the area. As far as our people were concerned, nothing should have been put there. The place had to be left to itself, intact. The Ministry people had no sense of that. (A21(1):47)

Other urupa near the Tokaanu River were also threatened by the bulldozers. At Omawete, local people were able to stop an access road being bulldozed through the cemetery. But, later, this burial place was also tampered with (A21(1):47-49).

## **8.8 RUAKOIWI**

The old pa site Ruakoiwi was also a burial place, but it was extensively excavated as a pumice pit before the work was stopped by local people. This pit was the principal source of pumice for the power station and tailrace work, and was reached by an access track off Te Pononga Saddle Road. In May 1968, Hosking was called in to examine the site when a bulldozer lifted some bones out of the pumice. By the time Hosking arrived:

most of the burials had been disturbed by the bulldozer. Only one burial remained, partially intact, being a little deeper than the rest and on the higher side of the platform on which the bulldozer was working. However, the bones which had been displaced were retrieved from the spoil heap.<sup>14</sup>

After the archaeological investigation was completed, the bones were re-interred at Piripekapeka Cemetery at Tokaanu. The site appears to be in the pumice pit described to the Tribunal as Ruakoiwi, a pa and urupa on the Waipapa 2A2D block. In Newman's

account, the site was described as 'not recorded in local Maori tradition'. This would appear to be at variance with the claimants' view that they knew there were burials there. The name 'Ruakoiwi' means a cave or pit (rua) with bones (koiwi) in it. Arthur Grace described it:

This place is a very large burial ground where many of our old people were buried. It is one of the older urupa around, and is located next to a very old pa. This wahi tapu overlooks the flatlands between Turangi and Tokaanu near the tailrace canal. The whole area was made of pumice. . . . one day one of our people saw bones spread on the tailrace road. . . . it was at that stage that our people said hang on, and the elders demanded to have a look. They went up to the site, and they nearly died of shock. (A21(1):51)

Bones of moa and a rat were also found at the bottom of the tomo, but were not associated with the human burials. However, because the site was already disturbed by the bulldozers, little scientific information of any value was obtained by Hosking's archaeological excavation.

## **8.9 WAHI TAPU AND 'SALVAGE ARCHAEOLOGY'**

### **8.9.1 Introduction**

The site development work for the Turangi township was carried out under considerable pressure. The project was approved by Cabinet on 21 September 1964 and the bulldozers had moved in by 1 October 1964. Earth moving contractors were expected to maintain tight deadlines. As we have seen, the urupa on the hill called Te Puke a Ria and the burial place of Ngati Apakura were obliterated. 'Pumice Pit No 2' was entered early on, and was used initially for foundation work in the industrial area. Later it was used as a rubbish tip, and further excavation for covering material led to the destruction of tuahu there. There was no systematic survey of archaeological sites, wahi tapu, or other sites of traditional significance to local Maori before the earth moving commenced. A project archaeologist was not appointed until February 1966, by which time much of the damage in Turangi had been done. Local people were able to protect some wahi tapu only by seeking the cooperation of individuals within the Ministry of Works, John Bennion in particular.

### **8.9.2 Appointment of project archaeologist**

The appointment of a project archaeologist in February 1966 was a belated attempt by the Ministry of Works to address the issue of wahi tapu. The excavation of the tailrace destroyed Waiariki Pa and the urupa alongside. In this case, the project archaeologist, Trevor Hosking, was employed to survey the site and remove the bones for reburial. However, the remains of a famous ancestress, Rangiamohia, ariki tapairu, could not be found. A memorial plaque was erected on the embankment on the right bank of the tailrace to commemorate her and the site of the former Waiariki Pa.

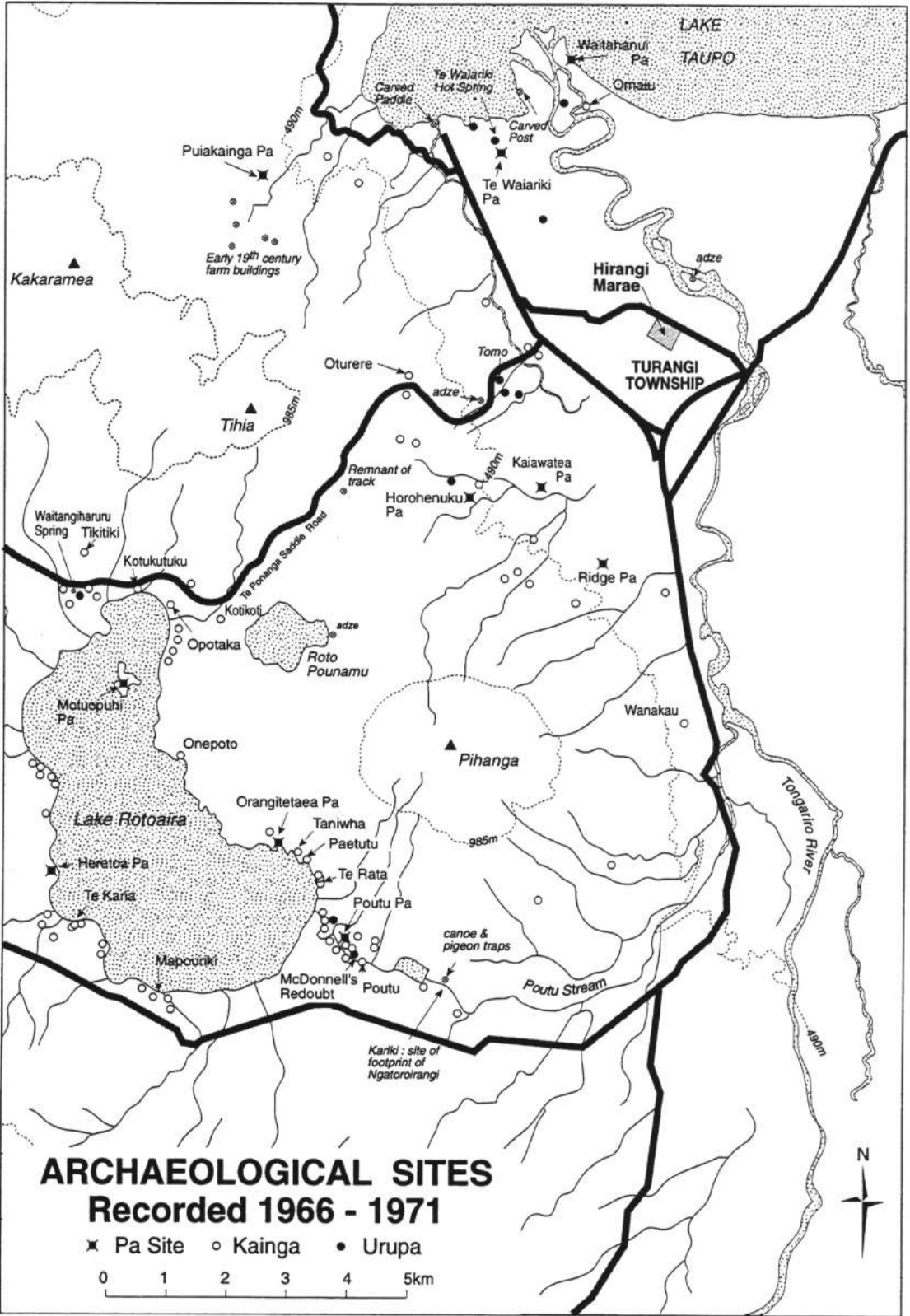


Figure 28

The appointment of an archaeologist does not resolve the problem of protecting Maori cultural sites or the need to consult with kaumatua about wahi tapu. However, an archaeologist does have the expertise to recognise sites of former Maori occupation on the ground and record some information about them before the bulldozers move in. Hosking became involved because of public concern over the impact of the TPD on historical sites in the Lake Taupo region. This was apparently one of the very first occasions that an archaeologist was employed as part of such a large construction programme. The project engineer, Gibson, and Tony Bailey of the Historic Places Trust were involved in setting up the position, which ran from 1966 to 1971. Hosking's task was twofold: to locate and investigate archaeological sites prior to construction work and to deal with any remains unexpectedly uncovered in the course of the work.<sup>15</sup>

Hosking undertook a site survey of areas likely to be affected by construction and he excavated several sites, including Te Waiariki Pa and burial ground and a burial plot uncovered in a pumice pit near the Tokaanu Power Station. All the archaeological work was done under the pressure of construction timetables and it was not always possible to carry out a detailed investigation. Newman notes that, ideally, site survey work should be undertaken before actual construction work begins, but Hosking began his task when work was already well underway. Soon his investigatory work:

had to give way to the demands of emergency excavation. Site survey thus had to be fitted in around excavation work; in fact some excavations were interrupted by the necessity to do a more urgent excavation on another site.<sup>16</sup>

Normally, a site survey provides a picture of the spatial distribution of sites, which will assist in deciding which sites are sufficiently significant for preservation, which ones should be excavated scientifically before they are destroyed by construction work (salvage archaeology), and which ones can be obliterated without further investigation. The locating of sites on the ground is facilitated by the use of local informants, aerial photographs, old survey plans, and other historical documents, such as accounts by nineteenth-century visitors. The range of sites identified by Hosking in the area between Tokaanu, Lake Rotoaira, and the Tongariro River is shown in figure 28. These include pa, or fortified sites defended by earth works and/or palisades; kainga, or undefended sites, comprising a cluster of houses, storage pits, hangi stones, and other evidence of occupation; urupa, or burial sites; traditional sites associated with some event or particular ancestor; and miscellaneous evidence of occupation such as a totara tree from which bark has been taken for roofing houses, bird troughs and snares in the bush, the remains of a canoe or other artefact, drainage ditches and banks in a swamp, or a track in the bush.

### **8.9.3 Assurances that wahi tapu would be protected**

Hosking's archaeological investigations did not include any sites in the Turangi township. Most of the bulldozing work to prepare the township site had already been done in late 1964 and 1965 and any archaeological sites had been destroyed. Among the assurances given to Ngati Tuwharetoa at the 1964 meetings had been an undertaking that wahi tapu would be protected. During those meetings, local people raised the issue of protection in general, and mentioned the existence of burial places in specific areas. The minutes of the meeting held on 24 May 1964 at Tokaanu record that Dick Lynch gave an assurance that 'any sacred land would not be interfered with' (A7:183; B1(a):5). At the meeting of the owners' committee held that evening, the question of the precise location of the tailrace was raised, whereupon Lynch conceded that 'it was possible that some tapu land may have to be interfered with' (A7:185; B1(a):5). Later in the same meeting, Lang Grace 'pointed out the existence of Maori graveyards in the proposed industrial area and it was decided that this would be looked into with Mr Lynch' (A7:186; B1(a):5).

At the meeting held in the trust board's offices on the morning of 20 September 1964, Gibson, in his introductory remarks on what needed to be done, stated that 'Sacred grounds would have to be looked into with a view to deciding which ones should be excluded from any town development' (A7:73). Later, when the meeting reconvened at Hirangi Marae, Gibson noted that the issue of how much marae land would be required had to be resolved. About six acres would be allocated for a Maori cemetery and 'Any other sacred or special places which are important to the local people will be taken into special account and the Elders have undertaken this task on their behalf' (A7:84).

There was a further discussion of burial places at the meeting. As noted, Lang Grace drew attention to the graves at Te Puke a Ria and Lynch assured him that the Ministry would observe the utmost respect and cause no offence to the owners. In response to Lang Grace's concerns about the two graves at the source of the Tokaanu River, Lynch said the area would be undisturbed. He also said that 'any reasonable request' would 'receive every consideration' when Fearon Grace asked him about sealing up Hinenamu's cave. He advised the owners to consult with Bennion, who would 'see that everything possible is done to protect any sacred ground' (A7:89).

Later in the meeting, Fearon Grace:

again made the point that workmen may come across remains of some of the owners old timers and he hoped that the Department [Ministry of Works] will take good care of them and let them know and they will do the rest.

Gibson 'replied that if they turn up any remains, all arrangements will be made for proper internment [sic]' (A7:90).

When the owners' committee met with Bennion and Lynch at the trust board's offices on 24 September 1964, the question of burials was again raised. Lynch noted there had been 'some reference to burial grounds' at the 20 September meeting and that, because construction work was about to commence immediately, 'some policy should be formulated now with regard to these burial grounds'. Arthur Grace Snr and Lang Grace stated that

Peter Rota and Makiwhara (Topia) Te Rangi had been 'authorised to deal with these matters' and Bennion could contact them through Lang Grace. Lang Grace added that an addition of three or four acres to the cemetery at Hirangi would be necessary, which Lynch readily agreed to (A7:55–58).

#### **8.9.4 Committees elected to deal with wahi tapu**

It was unanimously resolved to set up a committee of Arthur Grace Snr, Lang Grace, George Rawhiti, and Wally Ngahana 'to discuss with Mr Bennion' the addition to Hirangi Cemetery. Another committee was also elected, comprising Pat Hura, Lang Grace, and Wally Ngahana, to work with Ministry of Works officers 'to resolve any problems that may arise in the construction of the town site' (A7:58–59). Although a committee to deal with wahi tapu had therefore been put in place by the local people, the Ministry clearly did not establish effective communication with it. Nor does there seem to have been any requirement on contractors to protect cultural sites or report them.

In his submission to the Tribunal, Bill Asher spoke of what has been taken from Ngati Turangitukua through the loss of their wahi tapu:

We certainly have gained much in the way of facilities. But we have lost much too. When I was young, I didn't think about the implications of the coming of the township to our wahi tapu. We younger people regarded those as the responsibility of our kaumatua. We left all that to them. But once the project got underway, the role of those kaumatua diminished, and they weren't consulted about the effect of the works on the wahi tapu. As a result, many of those places have passed from us, and we are emotionally, spiritually, and culturally poorer as a result. (A12(2):4)

Arthur Grace spoke to the Tribunal in similar terms:

The desecration of our precious wahi tapu caused our people, and particularly our old people, great distress. In all the confusion and enormous changes that were happening in Turangi, we often didn't find out until too late that more was being done in sacred areas. And the Ministry of Works didn't want us to find out.

There should have been a system in place whereby the Ministry had to check with our old people before they went charging into a new area. They should have wanted to help us protect our wahi tapu . . .

Those places are like important signposts to our history and mana. Many of the signposts have disappeared without trace. Other signposts are so changed as to be unreadable. We will never have the same access to our past as a result. . . .

When the Ministry of Works came to our area, we had kaumatua here who had great authority and many responsibilities. After the Ministry of Works took over, these people were reduced in status almost overnight because they no longer had any authority over what happened in our rohe. There was nothing they could say or do which would make the government people listen. This was very hard for those old people to accept and it affected them very badly. (A21(1):55–56)

The desecration and destruction of wahi tapu was, in Maori terms, a significant part of the human cost of the construction of the Turangi township and the TPD. When the Ministry of Works did respond, as in the case of the removal of bones from the urupa at Waiariki, it was only because there was no alternative. The Ministry was not proactive in efforts to protect wahi tapu. Local people had to make the effort to persuade the Ministry people to protect such sites. Their desecration and, in some cases, wholesale destruction symbolised the loss of rangatiratanga over their own lands experienced by Ngati Turangitukua.

## **References**

1. *New Zealand Gazette*, 1923, p 875
2. *Ibid*, 1977, p 402
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5. *Ibid*
6. *Ibid*, pp 54–55
7. J Te H Grace, *Tuwharetoa: The History of the Maori People of the Taupo District*, 2nd ed, Wellington, Reed, 1970, pp 377–378; R Taylor, *Te Ika a Maui, or New Zealand and its Inhabitants*, London, Wertheim and Macintosh, 1855, pp 359–360
8. Taylor, p 362
9. *Ibid*
10. *Ibid*, p 366
11. Newman, p 47
12. *Ibid*, p 56
13. *Ibid*, p 61
14. *Ibid*, p 127
15. *Ibid*, p vii
16. *Ibid*, p 1

## CHAPTER 9

# THE OXIDATION PONDS

### 9.1 INTRODUCTION

#### 9.1.1 Initial information

The need for oxidation ponds was included in the provision of services outlined for the new Turangi township by the Ministry of Works engineer, John Bennion, at the meeting of owners at Tokaanu on 24 May 1964. He explained that the effluent would be irrigated over land to avoid polluting the lake, and that the area required for the ponds would be about 50 acres (A7:81). There was no other discussion recorded at this meeting about sewer lines, sewage treatment, or the specific land area required.

#### 9.1.2 Awamate Road site chosen

In May 1964, no firm decisions had been made about sewage treatment facilities (A7:189–191). No specific site was identified, but it was intended that the oxidation ponds should be west of the new township. By 21 May, a layout proposal produced by the Ministry of Works' head office appears to have settled on the present site near Awamate Road. Possible sites further west were considered too swampy and likely to conflict with the as yet undecided route of the tailrace from the Tokaanu Power Station. A main sewer line would cross the intervening land from the township at a point just west of Hirangi Marae (fig 29). The ponds themselves would take up 28 acres, while the surrounding irrigation land would comprise 55 acres. It was envisaged that this latter area should be grazed, although it was not thought absolutely necessary that it should be owned by the Crown (B6(a):2). However, Gibson favoured the Crown acquiring the full 83 acres because 'the installation is to be a permanent one' (B6(a):5).

#### 9.1.3 Public concern

At the 20 September owners' meeting at Tokaanu, Gibson responded to a question from Fearon Grace, who was concerned about 'chemicals . . . seeping through the swamp' and the impact of four to six floods a year from the Tongariro River, by assuming that it would be 'very many years' before the concentration of chemicals became 'injurious'. He explained that the chemicals would be 'converted into vegetable growth' and that, should an occasional flood pass over the swamp, 'it will be a surface flow and the chemicals will be dropped back down' (A7:77). In response to a question as to why the ponds were to be located so near to Awamate Road, Gibson explained that the site had been chosen because



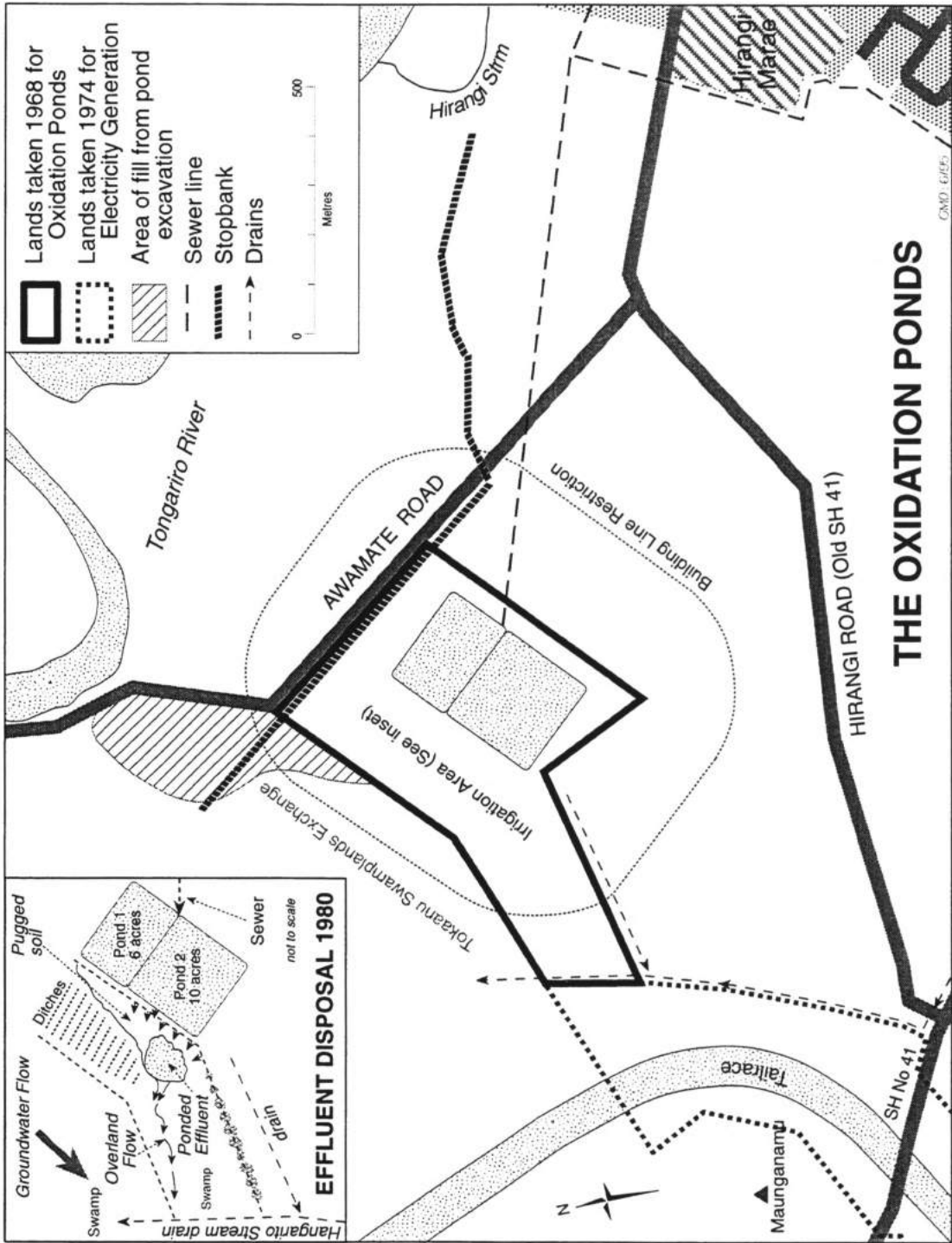


Figure 29

of the 'fall of the land'; the effluent could flow with gravity rather than needing to be pumped, which would have had 'a material effect on the rates that people would have to pay' (A7:78). The costs of pumping day and night at 'several hundred pounds a year' would also preclude the 'too low-lying' Tokaanu village from being linked to the scheme (A7:78).

When the meeting was reconvened at Hirangi Marae that afternoon, there was further discussion of sewage disposal, and the use of oxidation ponds as a method of treatment was described as 'one of the biggest advances made' in recent years. Gibson explained how the oxidation pond and irrigation system would work, and gave an assurance that Lake Taupo would 'be protected from enrichment for several thousands of years' (A7:78).

The ponds would occupy an area of 58 acres but no specific figures were provided for the area required for the effluent outfall or for a buffer zone around the ponds. Gibson said that the Ministry of Works would consider any propositions to buy the buffer zone to guarantee its permanent existence. He also conceded that 'people who now farm along the oxidation pond area will experience some upset' (A7:78).

The area to be taken for the oxidation ponds was specifically defined in Part II of the Second Schedule to the Turangi Township Act 1964. Any additional area which might be purchased in the buffer zone would be subject to separate negotiations. However, this was not yet spelled out in legislation, although an area corresponding to the Second Schedule boundaries was clearly shown on the October 1964 plan for the Turangi township. Presumably it was also clear on the plan shown to local people at Hirangi Marae on 20 September.

In early December 1964, the mayor of Taupo was reported in the press as being concerned about the pollution of Lake Taupo by the proposed Turangi sewage treatment facilities. His remarks had been sparked by a comment by the Ministry of Works' chief public health engineer that no assurance could be given 'that "there will be no pollution whatsoever" of the lake' (B6(a):9). The mayor had accused the Ministry of Works engineers of being 'arrogantly bureaucratic'. The chief designing engineer responded that 'a great deal of engineering planning is being applied to all aspects of development' in Turangi, and quipped 'I wonder where the Taupo sewage goes now? People who live in glass houses shouldn't throw stones' (B6(a):11). In answer to an urgent question in Parliament, the Minister of Works, Percy Allen, stated that:

the proposed scheme for sewage disposal will ensure the minimum interference with national assets by avoiding the unnecessary artificial enrichment of Lake Taupo and the development of weed nuisance as at Lake Rotorua. (B6(a):12)

## **9.2 INITIAL CONSTRUCTION**

### **9.2.1 Concern at the site of the oxidation ponds**

The construction of the oxidation ponds and main sewer line began in February 1965, and in May of that year the first pond was commissioned. Bill Duff explained to the Tribunal how his father, Haukino Duff, tried to prevent Tokaanu B1J being entered for the excavation of the oxidation ponds:

When the decision was made for the oxidation ponds to go on that paddock, I remember my father objected strenuously. His opposition was strengthened by the fact that there was a tapu tree in that paddock which we called a kuiki tree. That particular tree was the place where our tipuna Marotoa was struck [by lightning and died]. My father continually went down there and put padlocks on the gate to prevent the Ministry of Works people from getting into the paddock. (A16:3)

At a meeting of owners held at Hirangi Marae on 3 March 1968, an unidentified owner complained he had not yet received any compensation for a section of the land where he used to live which was used for the oxidation ponds. He said the Works employees had once tried to prevent him from entering his land, but that he had driven through the gates regardless (B10(c): doc 21).

Two Maori households, the Church and Rota families, were forced to leave their homes, gardens, and orchards and go to live in the Turangi township. The impact of the eviction on these families is related in chapter 12.

For compensation purposes, the date of entry on the oxidation ponds was set at 10 February 1965. Excavated material was spread over Tokaanu B1L2A and B1L2B to the north of the area defined in the Second Schedule to the Turangi Township Act 1964. For reasons that are not explained in Ministry of Works files, the lands occupied (some 78 acres) were not taken by proclamation until April 1968 (B6(a):44). No compensation negotiations could be undertaken by the Maori Trustee until a proclamation taking the land was issued.

### **9.2.2 Compensation negotiations**

In August 1968, the Maori Trustee initiated negotiations on compensation. It was not until early 1970 that all the valuations were completed, and, in August 1970, a formal compensation claim for lands taken as oxidation ponds was lodged by the trustee. The additional complicating factors in the negotiations were the lessee interests for the Church farm; that the sole owner of one of the blocks which had been taken had died, and this was later added to the Maori Trustee's responsibility by the executors of the estate; that there were severance issues and injurious affection on adjacent residual lands; that there were arguments over valuation fees, and whether an unformed Maori roadway should be compensated; and, finally, that there was the issue of compensation for the two dispossessed families. It transpired that the Church family did not actually own the dwelling in which they had been living. Legally, the Maori Trustee was required to

distribute compensation payments for the house to all the owners of the block. In June 1971, some advance payments were made by the Ministry of Works, but final settlement was not made until March 1972 (B10(c): docs 28–29). It was over seven years after the date of entry.

The main sewer line, which affected several blocks, was completed in early 1965, and in September of that year the district officer of the Department of Maori Affairs was advised that, although no lands had been taken for the sewer, compensation would be payable under the Public Works Act 1928. In July 1966, the district officer, J E Cater, sought information on the status of the lands affected on behalf of the Maori Trustee, and was advised by the district chief land purchase officer that, since the Ministry of Works' land requirements in this area remained uncertain, any claims for injurious affection should be deferred in the meantime and the statutory time limit for making claims would be correspondingly extended to run from the date final land requirements were known (B10(c): doc 24).

In August 1966, Cater commissioned valuations on the blocks affected, based on their condition prior to the laying of the sewer mains (B10(c): doc 24). In subsequent correspondence, the Ministry of Works added that it would not be possible to build over any sewer line. In August 1968, the Maori Trustee lodged a claim for \$438.10 for injurious affection on the blocks in multiple ownership: Waipapa 1D2B3B and 1F3B2B3B and Tokaanu B1H. Early in 1969, the Taupo County Council indicated that it may require an easement over land occupied by the sewer line, but this was not proceeded with (B10(c): doc 24; B10(d)). A sum of \$450, including interest, was finally agreed on in June 1969 and was paid to the Maori Trustee in March 1970.

### **9.2.3 Construction inspected**

In September 1965, a party of Ministry of Works head office engineers inspected the water supply and sewage disposal facilities and wrote a letter afterwards to the project engineer, for the attention of John Bennion, congratulating Gibson and his staff 'on the standard of execution of these works'. They were confident that 'the Department's record in this matter should be such as to withstand any criticism both in respect of conception of the scheme and its very creditable execution' (B6(a):26).

While the engineering construction may have been well executed, the site's physical characteristics created difficulties in the disposing of effluent from the ponds. In April 1966, Bennion reported to the chief public health engineer at the Ministry's head office that the irrigation trenches in the first half of the area developed tended to hold water for a considerable period in wet weather, and thus did not serve their functions of disposing of the effluent by soakage and avoiding discharge to the lake (B6(a):28–29).

The chief public health engineer replied that, if complete disposal by soakage in trenches proved impossible, 'irrigation over pasture is very beneficial and had been considered in lieu of trench irrigation'. He felt there would be 'no real harm in allowing the overflow to

flow over pasture into the swamp' (B6(a):30). He also suggested that a decision could be delayed until after the winter but, if necessary, surplus effluent could be diverted to the additional disposal area now available and allowed to flow over the surface and eventually soak in.

In 1968, probably in preparation for the handing over of the sewage treatment facilities to the Taupo County Council, a report was prepared by the treatment plant operator which indicated that the ponds were working as designed. However, problems in the disposal field were identified, and these were the result of inadequacies in both design and management. The entire length of the ditches (29 km) had to be cleared of weeds, but their layout meant that the spraying had to be done by hand rather than from a vehicle. Furthermore, the narrowness of some of the ditches had led to the deaths of 'many' sheep, which had entered them to graze the overhanging growth. A horse and a cow had also died when ditch sides had given way under their weight. Some ditches at the marshy lower end of the irrigation area showed poor permeability but, overall, 'the field has stood up well to the effluent disposed on it and assiduous search has revealed no point where any has escaped to the lake' (B6(a):34).

In September 1968, in response to a request from the Minister of Works, the Commissioner of Works reported that the Turangi sewage treatment facilities had been 'singularly free of trouble' and that Gibson had assured him that there had been no evidence of any pollution or overflow from the irrigation area into the adjacent swamp or into the lake. He said that the only danger of sewage reaching the lake would come from the inundation of the ponds in a severe flood, but that the construction of a protective stopbank would prevent this (B6(a):38). There was no hint in this report of any problems with the irrigation ditches in the disposal field. It seems to have been assumed by the Ministry of Works that if no effluent was seen to be flowing directly into Lake Taupo then all was well. Efforts now only needed to be concentrated on preventing a flood from the Tongariro River engulfing the oxidation ponds.

#### **9.2.4 Flood control stopbank constructed**

By the middle of 1967, the Waikato Valley Authority had developed a flood control scheme for the lower Tongariro River which included a stopbank from a point on Waipapa 1D2B3B, near the confluence of the Hirangi Stream, all the way to Lake Taupo. The Ministry of Works was principally concerned with protecting the oxidation ponds from flood waters and was not prepared to construct the whole of this proposed stopbank. In July 1967, the resident engineer reported on two possible methods of flood protection: the construction of a perimeter dyke around the ponds or as much of the stopbank proposal as was necessary to protect the ponds. On 20 July, Gibson recommended to both the Commissioner of Works and the Waikato Valley Authority the 'construction of about one mile of the WVA stopbank' (B6(a):91). Initially, the authority was not prepared to authorise the construction

but, by December 1967, consent had been granted (B6(a):102). On 11 April 1968, the Taupo County Council wrote to Gibson advising 'that the flood protection of the oxidation ponds is a necessary requirement in the Turangi take-over' and asking for 'a suitable clause to this effect in the agreement' (B6(a):104).

On 30 August 1968, a letter was sent to the Maori Trustee, with copies to the Tuwharetoa Maori Trust Board and selected owners, giving notice of proposed entry to several blocks along Awamate Road. The letter explained that the stopbank, when complete, would be 'grassed and suitable for stock to graze off, although no tilling of the land on the bank will be permitted'. The stopbank would not encroach on farmland 'any more than will be necessary' and 'Every care will be taken to disturb as little as possible the area affected' (B6(a):109). In September 1969, the stopbank was completed.

### **9.3 COMPENSATION SOUGHT FOR LAND AFFECTED BY STOPBANK**

#### **9.3.1 Claim lodged**

On 21 October 1970, the Maori Trustee lodged a claim for \$240 with the Ministry of Works for injurious affection on the four blocks affected by the stopbank: Waipapa 1D2B3B and Tokaanu B1H, B1L2A, and B1L2B (B6(a):113). The district land purchase officer of the Ministry of Works responded on 16 December, seeking details of the grounds for this claim. He argued that he could not see what 'permanent damage' to the land had resulted from the stopbank construction, and added that it had in fact protected the lands from flooding (B6(a):114).

On 12 January 1971, the Maori Trustee cited as grounds for the claim the loss of grazing during stopbank construction; the poorer soil on the banks; the dumping of pine trees on Tokaanu B1L2B; and the lessening of the value of Tokaanu B1H through the collection of water in the area adjacent to the stopbank (B6(a):115).

#### **9.3.2 Purchase of stopbank land initiated**

The Ministry of Works decided that, because of the 'importance' of the work, the Crown should have some interest in the land occupied by the stopbank, and advised the district officer of the Department of Maori Affairs accordingly. There were further discussions with the Waikato Valley Authority, which advised the Ministry in June 1971 that the stopbank site should be purchased. By October, the Ministry was considering the alternative of obtaining an easement, which would avoid the objections of Maori owners to the taking of the freehold and overcome the problems of severance of parts of the blocks concerned if a strip for the stopbank were taken.

The matter was left unresolved until 1973, when the Waikato Valley Authority held a meeting with some of the Maori owners. However, there was no further communication with the authority, as Eileen Duff explained in a letter to the Town and Country Planning Appeal Board on 13 October 1980:

In 1973 my family met representatives from the Waikato Valley Authority. At that meeting we all stated that the above land was to remain ours; we did not want to sell or receive compensation. However we all agreed that the Authority could build a stopbank and have access to the waterways. My family nominated me to liaise with the Authority but to date I have not heard from the Waikato Valley Authority. The schedule notice . . . in our local paper is the only communication we have had. (B6(a):130-131)

On 19 September 1980, the Waikato Valley Authority had issued a notice of intention 'under the provisions of the Public Works Act 1928, to take an easement for soil conservation and river control purposes' over Waipapa 1D2B3B and Tokaanu B1H (B10(c): doc 31). By this time, the other two blocks affected by the stopbank, Tokaanu B1L2A and B1L2B, had become Crown land as part of the Tokaanu swamp lands exchange in 1970.

Meanwhile, the Maori Land Court had, in November 1976, appointed four owners as agents under section 73 of the Maori Affairs Amendment Act 1974 to negotiate on the stopbank and other matters on Waipapa 1D2B3B and Tokaanu B1H. The Maori Trustee had written to the Maori owners in 1975 and instigated the applications to the court. By this time, the trustee had lost the statutory authority to act, with the passing of the Maori Purposes Act 1974, which repealed this provision of the Public Works Amendment Act 1962. However, the Maori Trust Office in Wanganui must have kept the pressure on the Ministry of Works. The District Commissioner of Works informed the chief engineer of the Waikato Valley Authority in 1977 that he had 'received repeated enquiries from the Maori Trustee' about the blocks affected by the stopbank and asked the authority to advise what decision, if any, had been made. The matter drifted on to 1980, when a notice of intention to take an easement was published in September, but this was not followed up. There was more correspondence through the 1980s but no agreement was reached. No compensation has been paid for the stopbank works and this remains one of the unresolved issues in the construction of the oxidation ponds.

### **9.3.3 Disruption caused by construction of the stopbank**

Kahukuranui Te Rangi described the disruption caused by the construction of the stopbank in his submission to the Tribunal:

At the time when the Ministry of Works sought to put a sewer line, a road and then a stopbank through the Te Rangi block . . . five households were living on this land, and Nanny Te Reiti Grace was leasing the land from us and farming it. The resident families sometimes with the help of the extended whanau, had established gardens and orchards on the land and kept pigs, poultry and ducks. They were able to live off what the land produced.

The stopbank ran through the northern, riverward part of the blocks. It divided the farm, cut through areas used for gardening, and destroyed two orchards. Topia Te Rangi's garden and orchard was completely destroyed, as was Meri Te Rangi's orchard. In the process some of the most fertile whanau lands were converted to stony, sandy mounds. About 50 or 60 acres of land was [sic] removed from productive use as farmland.

Also, the natural seepage and underground water table in the area has changed as a result of the stopbank construction. The deep drains which our family had formed and maintained in the past to control the water table in the area and allow us to farm it profitably were destroyed when the stopbank was constructed. (A13(1):2-3)

The family had investigated the planting of *Pinus radiata*, but some areas behind the stopbank were too swampy, the topsoil around the stopbank had been destroyed during the construction work, and the material in the stopbank itself was infertile. The land was also affected by the construction of the sewer line, as explained by Eileen Duff, a niece of Topia Te Rangi:

The sewer line and ponds have always been a very deep concern for us even to this day. The Ministry of Works people did talk to Topia Te Rangi but only to tell him that they would be laying the sewer line right through the middle of Waipapa 1D2B and Tokaanu B1H blocks. As Kahu [Te Rangi] has said, Topia tried to get them to agree to lay the sewer alongside Hirangi Road, but they would not listen. So they went ahead and just dug up the land and laid the pipes right through our land, both the main sewer and a network of branch pipes right down to the holding ponds adjacent to our lands. . . . After the drains were laid there was a lot of sand and stones left on the surface of the land and this ruined the pasture that was once there.

This block had been discussed by the whanau as possible area for papakainga or residential settlement by some of our family and partitions had already been approved by the Maori Land Court. We were very annoyed to find that the sewer line would prevent us from building on or within a certain distance of the sewer line. (A13(2):3)

The problems facing families living on the residual lands west of the Turangi township are taken up again in chapter 10. We turn now to the actual operation of the oxidation ponds and, in particular, to the problems encountered in the disposal of the sewage effluent.

## **9.4 THE DISPOSAL OF THE EFFLUENT**

### **9.4.1 Sewage facilities praised**

The Ministry of Works had consistently maintained that the Turangi sewage treatment facilities were working well. At a meeting of owners at Hirangi Marae on 3 March 1968, Gibson commented that Turangi's sewage treatment system was 'the most modern and economical type' and 'envied by many New Zealand and overseas people'. He added that 'To operate the town we must take that land' (B10(c): doc 21). These comments may well have been addressed as much to the Taupo County Council chairman, H Besley, and the other county representatives who were present as to the Maori owners of the lands that had been occupied since February 1965 with no compensation paid and no proclamation to take yet issued.



#### **9.4.2 The Taupo County Council takes control**

On 1 May 1968, the Taupo County Council took over the operation of the sewage treatment facilities. By the late 1970s, discussions were being held between the county council and the Ministry of Works over the transfer of title. The Waikato Valley Authority was also involved and, in 1978, it inquired whether a Pollution Advisory Council permit had been issued for the oxidation pond discharges: no permit had been applied for or issued. Nor did it seem that section 31 of the Water and Soil Conservation Amendment Act 1973, which validated 'rights in respect of water for Tongariro power scheme', covered the taking of water for domestic supply for, or the discharge of storm water or sewage effluent in, the Turangi township. In short, the Ministry of Works held no valid water rights.

On 22 January 1980, the Commissioner of Works directed the project engineer to prepare applications for water rights under the Water and Soil Conservation Act 1967 for the taking of water for domestic supply and for the discharge of effluent and storm water (B6(a):174). An agreement was reached that the Ministry of Works would apply for these rights and then transfer them to the Taupo County Council. On 24 March 1980, applications were lodged by the Minister of Works with the National Water and Soil Conservation Authority. The procedure was that Crown applications for water rights would first be heard by the regional water board, in this case the Waikato Valley Authority, which would then make recommendations to the National Water and Soil Conservation Authority, which would actually issue the water rights.

The Taupo County Council lodged an objection to the Ministry of Works' application for a right to discharge sewage effluent on the grounds that 'the existing irrigation paddocks permit rapid infiltration and therefore little nutrient removal is obtained' (B6(a):186). The council's objection was supported by a report prepared by the Ecology Division of the Department of Scientific and Industrial Research (DSIR) in Taupo, which was based on field work carried out between November 1976 and February 1977. Dye tracer studies and collection of water samples at various points over this period indicated that there was 'a slow but definite movement' of groundwater from the Tongariro River westward towards the tailrace canal. This was not an unusual situation because the Tongariro River in the vicinity of the oxidation ponds was about three metres above the level of the tailrace, and this allowed water to leak through the delta sands and gravels to the canal. The DSIR's study indicated that:

groundwater is entering the tailrace canal from beneath the land disposal fields of the Turangi oxidation ponds and therefore there is a real possibility that nutrients percolating down to the groundwater could reach the tailrace canal and hence Lake Taupo. (B6(a):180-181)

#### **9.4.3 Investigations conducted**

The Waikato Valley Authority also conducted its own technical investigations. The DSIR report, while not conclusive, did indicate that some westward movement of groundwater was occurring. There was a further complicating factor in the Hangarito Stream drain. This had not been addressed in the DSIR report, which described it as a 'blind drain'. The Waikato Valley Authority report noted that, since being deepened in 1979, the drain now intercepted the surface and probably the subsurface flow from the disposal field to the tailrace and was not now 'blind' but flowed 'out into the swamp drain channel and then indirectly to Waihi Bay' (B6(a):189). The report also noted that the disposal area had not been properly maintained, with the border dyke drain either unreliable or totally weed-infested and unusable. Furthermore, livestock had pugged the ground near this drain with the result that the effluent simply puddled before flowing overland to the 'blind' drain, which was only 100 metres from the tailrace. Leakage from the drain to the tailrace was a distinct possibility and, indeed, the report concluded that there was 'clear evidence' of the indirect movement of effluent to Lake Taupo by means of the Hangarito Stream drain into the swamp and by groundwater into the tailrace. If the management of the oxidation ponds was 'substantially upgraded', the flow of undesirable nutrients and chemicals from effluent could be reduced. What was required, the report said, was the recontouring and levelling of the disposal field, the building of a bank around the western portion to retain the waste, and the better control of livestock in the field (B6(a):190, 192).

In his summing-up of the technical reports, the Waikato Valley Authority resources manager agreed with the conclusion that there was 'considerable movement of nutrients from the disposal site to water which has a direct link with Lake Taupo', as well as 'some groundwater flow carrying nutrients'. Reference was also made to a DSIR publication, *Interim Guide for Land Application of Treated Sewage Effluent*, which had been compiled by an interdepartmental working party.<sup>1</sup> The resources manager felt it to be 'clear that the existing system is not being managed in accordance with these guidelines'. He stated that the system was disposing of the waste rather than treating it, and that steps needed to be taken to encourage the 'evapotranspiration and uptake of nutrients by a crop or pasture' to ensure that both processes occurred (B6(a):187). He recommended that the guidelines set out in the *Interim Guide* should be adhered to and listed a number of ways in which the existing operation of the Turangi sewage treatment facilities was deficient, including the unevenness of the disposal field, the poor maintenance of the irrigation ditches, the lack of control over the grazing of livestock, and the swampiness of the western portion (B6(a):187).

#### **9.4.4 Problems acknowledged**

The Taupo County Council's response to the Waikato Valley Authority's report was to agree that the disposal of effluent was not as effective as it should be, in that nutrients were reaching Lake Taupo. The county engineer argued, however, that this was a question of construction rather than poor management (B6(a):198). However, it was agreed that

'concepts of effluent disposal' which influenced the design of the disposal area in 1964 did not meet the standards of nutrient removal later recommended in the *Interim Guide's* guidelines.

Another technical report produced by the 'Hamilton Science Centre' (being the Water and Soil Division of the Ministry of Works) suggested that the input of phosphorus and nitrogen from the oxidation ponds to Tokaanu and Waihi Bays was 'minimal when compared with the natural input' (B6(a):196). This was not the central issue. What was important was the prevention of additional nutrients entering the lake, as the Taupo County Council pointed out (B6(a):197).

In its report to the National Water and Soil Conservation Authority in September 1980, the hearing committee of the Waikato Valley Authority observed that the reliance on the 1958 Order in Council to discharge waste water where it might come into contact with natural water was 'at risk and accordingly actionable'. The current problem was assessed to be the result of 'improper management' since 1968 and the 'limitations of construction in the first instance'. At any rate, the ponds and irrigation drains were considered 'overdue for some form of reconstruction' (B6(a):204).

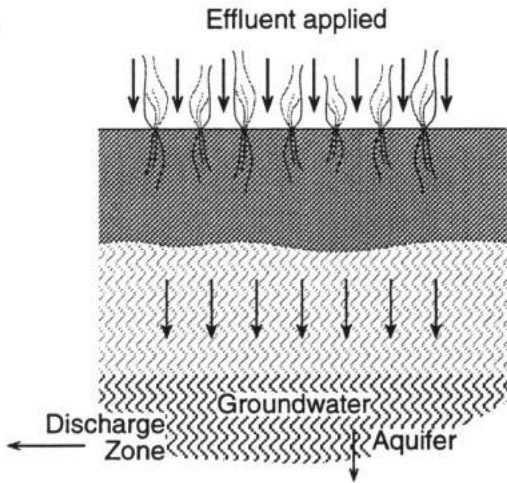
#### **9.4.5 Upgrading**

A water right for five years was subsequently granted by the National Water and Soil Conservation Authority, which included a condition that the disposal area, of no less than 12 hectares to serve 6500 people, was to 'be formed and managed to provide irrigation treatment' which complied with the *Interim Guide's* guidelines. The Taupo County Council objected to the shortness of the term, arguing that if substantial capital works had to be undertaken to upgrade the disposal area then a longer period was justified. It was subsequently agreed that the five-year period would begin when the upgrading, to be carried out by the Ministry of Works, was complete. The completion date was to be December 1983 but it was not actually finished until 1985.

The required upgrading was considered in 1981 to be the recontouring of the disposal field and the formation of bunds around it (B6(a):215). By early 1983, the plan for upgrading had been reviewed and a new design developed. In March 1983, the Ministry of Works sought from the Waikato Valley Authority another variation of the Crown water right that had been issued in August 1981, which had specified 'controlled flood irrigation' as the means of disposal of effluent from the oxidation ponds. Because of the high water table, the Ministry now sought approval for 'an Overland Flow system' (B6(a):221). The application was treated as a minor variation under section 24B(2) of the Water and Soil Conservation Act 1967 and was approved.

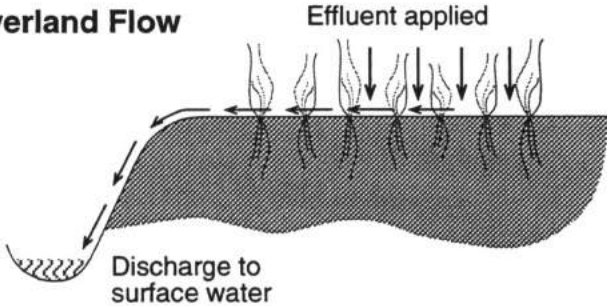
This change in design can best be understood in relation to the diagrams in figure 30, which are redrawn from the *Interim Guide*. The main objectives in discharging effluent on land are the treatment of the effluent to improve its quality and the disposal of the effluent. Other objectives can also include irrigation to supply moisture and nutrients to crops or tree plantations, and the recharging of groundwater. However, in the swampy conditions at Turangi, the latter objectives were not so relevant. The principal approaches to land

(a) Irrigation



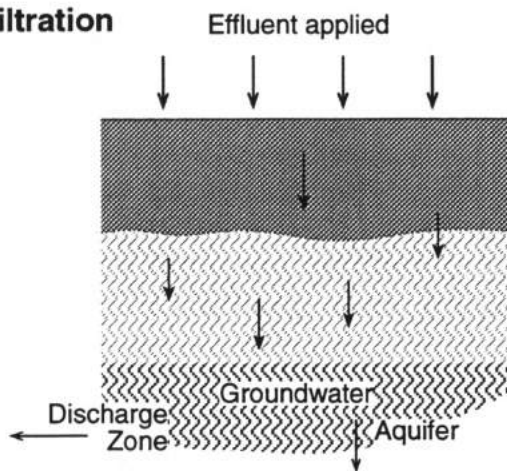
Purification  
predominantly  
in root zone

(b) Overland Flow



Purification in  
microbiological  
slimes on grass  
stems and soil  
surface: little infil-  
tration

(c) Rapid Infiltration



Little purification  
in highly perme-  
able medium

METHODS OF EFFLUENT APPLICATION

GMO: 6/95

Figure 30

disposal, as described in the *Interim Guide*, are irrigation treatment, overland flow or grass filtration, and rapid filtration or controlled flooding.<sup>2</sup> Although disposal could be by a sprinkler system, the method chosen at Turangi was controlled flooding from a header canal to plots in the disposal area. There was no guarantee of the effectiveness of the system. The *Interim Guide* commented that the success of land application largely depended on a range of factors, including soil type, vegetation cover, climate, effluent type, and site management.<sup>3</sup>

## **9.5 TRIBUNAL'S COMMENTS**

In the 1960s, there was little experience in New Zealand of land disposal of sewage effluent. The 1976 *Interim Guide for Land Application of Treated Sewage Effluent* was the report of a working party convened by the DSIR in 1974 at the request of the Officials Committee on Eutrophication. The foreword to this report made it clear that this was only an interim set of guidelines supported by some relevant background information, and noted that 'the optimum operating conditions will differ with each site, and must be the subject of specific investigations before any system is put into operation'.<sup>4</sup>

The Tribunal accepts that, in 1965, when the Turangi oxidation ponds and effluent disposal system were put in, this was an innovative way of dealing with sewage. However, while problems with the system of irrigation ditches were identified in 1966, little seems to have been done at that stage. The whole of the discharge area was not trenched and the lower, swampier part to the west became, by default, an area of overland disposal. When the Hangarito Stream drain was deepened in 1979, the overland flow of effluent was accelerated. There was also an ongoing flow of effluent into groundwater moving westward to the tailrace. Over the period 1965 to 1985, there was a flow of nutrients from the disposal area into the Tokaanu swamp lands, the tailrace, and the waters of Lake Taupo, which aggravated an existing problem of eutrophication in Waihi and Tokaanu Bays.

During this time, there appears to have been little or no monitoring of the situation. The discharge of effluent proceeded without any permit from the former Pollution Advisory Council, the Waikato Valley Authority, or the National Water and Soil Conservation Authority under the provisions of the Water and Soil Conservation Act 1967. The provisions of section 311 of the Public Works Act 1928, which were the authority for the 1958 Order in Council claimed by the Ministry of Works at the water rights hearing before the Waikato Valley Authority in September 1980, do not, even when interpreted most liberally, grant any right to dispose of sewage effluent from a town the size of Turangi into natural waters. The authority's hearing committee suggested then that relying on the Order in Council was risky and 'accordingly actionable', although no action appears to have followed.

The Crown water right finally issued to the Ministry of Works took effect in 1985, was transferred to the Taupo District Council in 1989, and expired in 1990. In June 1990, an application to replace it was lodged. We append a statement supplied to the Tribunal by

Environment Waikato of the Waikato Regional Council in December 1994 (D4), which sets out the status of this water right application (lodged before the passing of the Resource Management Act 1991) and the operation of the Turangi sewage treatment facilities since 1985 (see app V). Mr Alexander advises in his report on matters ancillary to the Turangi claim that the Waikato Regional Council issued a new discharge permit with effluent upgrading requirements in March 1995 (D11:12).

## **9.6 CLAIMANTS EXPRESS CONCERN**

The Ngati Turangitukua claimants expressed their concern to the Tribunal about the pollution of Taupo lake waters by effluent discharged from the Turangi oxidation ponds. Reneti Church, who farms the adjacent land, stated in her submission:

At the back of the oxidation ponds there is a drainage system which runs into a sort of lagoon that has formed. The lagoon drains into a canal which runs straight out into a swampy area and then the lake. This means that sewage is running into our lake. The fluid that runs through the canal is dark green and smells terrible. I don't know whether it is treated sewage or not, but it should not be running through an open canal, and it should not be running into our lake. (A15:5)

Arthur Grace stated:

There is no doubt in my mind that toxic material and enriched nutrients are going down the Hangarito Stream and down the tailrace into the lake. The outlet of the Hangarito Stream into the swamp is very close to the oxidation pond, and as a result there is considerable enrichment and pollution of the water in the swamp, which feeds down into the lake. The theory is that the swamp acts as a filter for the pollutant material, but in fact there is virtually an open channel at the point where the Hangarito Stream meets the swamp, and on out into the lake. This has lead to a big increase in weed growth in Tokaanu Bay and Waihi Bay.

Our lake, and in particular those nearby bays, are precious taonga of our people. The weed and pollution has ruined Tokaanu Bay. It used to be a beautiful area popular for fishing, swimming, gathering of carp, koura and inanga. You can't take kakahi from there now. There's a sort of black sludgy slime that's forming where the raupo touches the water. It squelches and smells. This has been terrible for our people. (A21(1):33-34)

Mahlon Nepia stated:

Ngati Turangitukua people are very concerned about the level of pollution in our waterways today. . . . we have real doubts about whether the swamp is acting as an effective filter for sewage pollution, and we think it is high time that a proper investigation of this situation is undertaken. . . . There is something terribly amiss with the water in our lake. This is clear from the vast weed growth and slime deposits in Tokaanu Bay and Waiariki Stream which is adjacent to the sewage ponds. The rohe of Ngati Turangitukua abuts Lake Taupo and like other

hapu we hold custodial rights over our waters. It has always been part of our responsibility to ensure that our lake stays pure and free from pollution. But since the construction of the town and the Tokaanu tailrace, pollution levels have grown significantly. As tangata whenua, the rectification of this situation has been entirely beyond our resources. (A21(3):26)

Other claimants also expressed their concerns about sewage effluent flowing into swamps where there are old urupa; in particular, the place called Mangakopikopiko, which was referred to during the negotiations with the Crown over the Tokaanu swamp lands exchange in the late 1960s.

## **9.7 CONCLUSIONS**

The claimants have serious concerns about the discharge of effluent from the Turangi oxidation ponds. There is insufficient scientific information to assess these concerns. Eutrophication of lakes is a natural long-term process, as normal erosion and stream flow carry nutrients from the land to lake margins. However, when nutrient flows are increased by fertiliser applications and accelerated rates of run-off from land developed into pasture, or by storm water and sewage effluent from a town, there is a greater potential for the growth of algae and aquatic weeds in the shallow waters of the lake margins. The impact of the disposal of the sewage effluent also needs to be considered in relation to the Hangarito Stream drain, which is discussed in the next chapter.

No firm conclusions can be reached about the relationship of the Turangi sewage treatment facilities with the quality of Lake Taupo waters in Waihi and Tokaanu Bays. The Waikato Regional Council has a statutory obligation to investigate these issues and impose constraints on any activity that contributes to the pollution of natural waters. The Tribunal can only endorse Environment Waikato's intention to require the Taupo District Council to 'put in place a monitoring programme to more accurately identify the effects of this discharge on the environment' (see app V). If it can be demonstrated that there is no longer any direct flow of nutrients, and that effluent from the oxidation ponds is effectively purified by the land disposal system that is in place, the claimants' concerns about the contamination and desecration of wahi tapu may be diminished. We consider that this is a matter which should be treated with some urgency by Environment Waikato. Whether the new discharge permit issued by the Waikato Regional Council in March 1995, which contains effluent upgrading requirements, will ensure the effective purification of effluent from the oxidation ponds remains to be seen. An effective monitoring system is essential.

## **References**

1. C D Stevenson (comp), *Interim Guide for Land Application of Treated Sewage Effluent*, DSIR Information Series No 114, Wellington, Government Printer, 1976

2. Ibid, pp 7–8

3. Ibid, p 8

4. Ibid, p 4





## CHAPTER 10

# THE RESIDUAL LANDS WEST OF THE TURANGI TOWNSHIP

### 10.1 INTRODUCTION

The residual lands between Turangi's residential area and the Tokaanu tailrace south of the oxidation ponds remained in Maori ownership but did not escape the impact of construction work (fig 31). The disruption to families and the damage to the land as a result of the construction of the oxidation ponds, sewer line, and stopbank have already been referred to. In spite of this, households along Hirangi Road (the old SH41) were not connected to services such as the water supply and sewerage. Nor was it possible to build any more houses on ancestral lands, because the Taupo County Council's planning policy was to concentrate urban uses, including residential areas, in Turangi and discourage any rural residential development.

The first group of issues concern zoning and the provision of services. The second group is related to the Hangarito Stream drain, which, with the construction of the stopbank, resulted in major modification of the drainage patterns in the residual lands. The third group is related to lands used for construction purposes but not taken or restored to their former condition. In the case of areas used for metal extraction, there were additional legal arguments about compensation for the metal taken. In this chapter, we consider these three groups of issues, which, in various ways, affected the residual lands and the remaining Maori households on them.

### 10.2 ZONING AND PROVISION OF SERVICES

#### 10.2.1 Planned future of Turangi

A joint planning committee was set up in December 1966 following a meeting called by the Department of Internal Affairs to consider the arrangements to be made for the takeover of the local government of Turangi by the Taupo County Council in 1968. The committee produced a report in April 1967 which, in general, considered that all land whose use was not specifically rural, such as farming and forestry land, or which was not a reserve of some kind should be concentrated in the Turangi township in order to encourage a variety of occupations and ensure the township's economic viability. To this end, it was thought that land within the township should be made freehold to attract industrial and other commercial enterprises, as well as motel and hotel accommodation and related services. The report

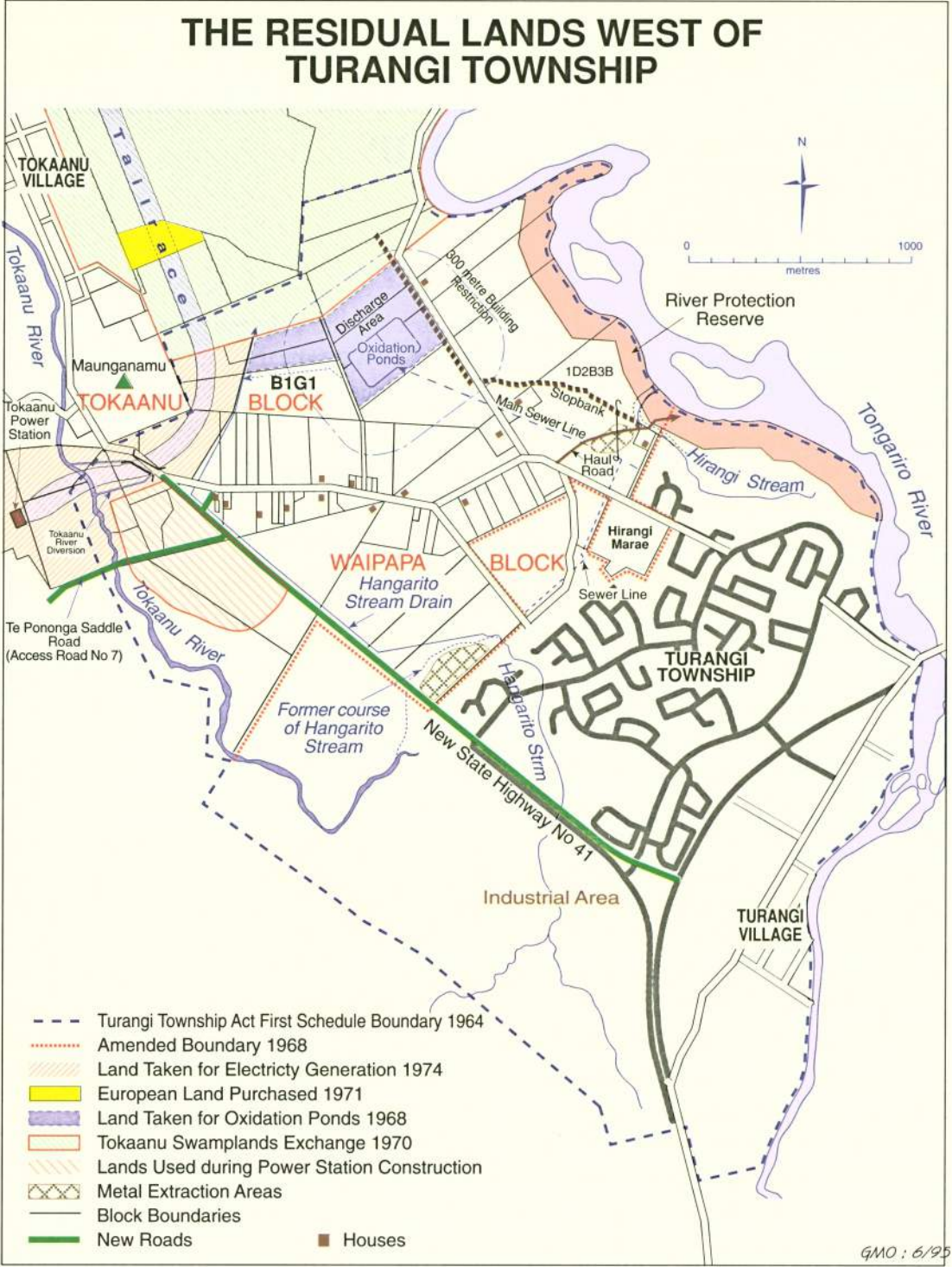


Figure 31

proposed that any development in the Tokaanu village should be restricted to existing uses, on the grounds of inadequate water supply and sewerage services, and suggested that 'the Maori Affairs Department be requested to discourage further Maori housing in this settlement' (B2(a):247). In order to prevent any development west of the Turangi township, the report recommended that the boundaries described in the First Schedule to the Turangi Township Act 1964 should be redefined so that this area might retain a rural zoning and be rated accordingly. This was effected officially over a year later, under section 3 of the Act, by 'the Minister of Internal Affairs, with the consent of the Taupo County Council'.<sup>1</sup> For local government purposes, the new boundary coincided with the Second Schedule boundary on the western side of the township.

### **10.2.2 Residential development**

The background to this boundary change was a concern expressed in the Ministry of Works' discussions with the Taupo County Council about the cost of providing water and sewerage services to homes west of the planned Turangi township but within the area covered by the Turangi Township Act 1964. As already noted, the water supply and sewage treatment systems were sufficient to serve the needs of the surrounding rural population. The issue was the cost of reticulation rather than any technical problem. In December 1966, Gibson suggested that possible ways of restricting development included the Crown purchasing this land, to be retained 'as part of a green belt surrounding the town'; altering the Turangi township boundary to exclude the area so that rates levied in the town could not be spent on services outside it; or reaching some agreement with the Taupo County Council and the Department of Maori Affairs to restrict development (B8(a):125). There would be some difficulty with the latter option, as Gibson pointed out:

Taupo County Council cannot refuse permits for the construction of one house per title on present zoning (this could involve 30–40 houses in the area) and are not confident of their ability to resist applications for conditional use, eg service stations, camping grounds, motels etc. Maori Affairs are willing to cooperate as far as possible, but will obviously not refuse partitions where these are not in opposition to the District Scheme. They are willing to try to direct Maoris seeking finance for housing to sections which we make available in the new town, but they point out (i) the extra finance required for section purchase, and (ii) the sentimental attachment of Maori Owners to their own land, are major stumbling blocks.

The [Ministry of Works] District Land Purchase Officer will be kept informed meanwhile of all applications for Maori housing finance in this area and will offer applicants sections in the new town on a sale or exchange basis.

All present at these meetings have expressed their concern at the possibility of an extension of the town in the Tokaanu direction which is both expensive and contrary to good planning principles. (B8(a):125)

A report produced by the Town and Country Planning Branch of the Ministry of Works in February 1967 similarly noted that the build-up of dwellings around Turangi would lessen its role as a centre for the district and 'lead to a demand for the uneconomic extension of services from the township, the cost of which would have to be borne by the

Government or the local authority' (B8(a):135). The report also noted the Taupo County Council's policy of restricting lakeshore development by encouraging urban development in two major towns, Taupo and Turangi, and by implementing the lakeshore reserves scheme. It warned that there were as many as 72 partitions between Tokaanu and Turangi and that 'haphazard residential development . . . could now occur in this area [which] would be undesirable from a town and country planning point of view' (B8(a):137).

The only way the Maori Land Court could be restrained from allowing further partitions was by a change in legislation, but this was a longer term aim and not an immediate solution to the perceived problem. It was also possible that the Taupo County Council could tighten up on the allowance of conditional uses in the rural zone. Another option for the council was to refuse to issue building permits on health grounds. Although there was a restriction zone around the oxidation ponds, the report observed that 'there is no suggestion that the ponds are a direct threat to public health' (B8(a):138). This zone did not cover the whole area of concern and a building ban probably could not be enforced anyway. The purchase of the lands was a remote possibility but was unlikely because of the complexity of negotiations over lands in multiple ownership. It was considered that one way to achieve Crown ownership could be by extending the lakeshore reserves scheme to include all the land between Tokaanu and Turangi, but it was felt that it would be difficult to justify reserve status for all of it and no source of finance was immediately available. The encouragement of Maori to build their houses in the Turangi township would have to be based on 'some attractive financial inducement'. Nevertheless, a 'cheap (or even free) section' in town would have to be weighed 'against the traditional desire to build on ancestral land' (B8(a):138).

The report concluded with some comments on land tenure and relationships with local Maori in the Turangi district:

It is also clear that to win the co-operation and understanding of the Maori owners will be an important element in the successful planning of the district. An uninformed and resentful local population could effectively hinder much that needs to be done. At present, consultation with the Maori people in the area is maintained through the Liaison Committee set up under the Turangi Township Act 1964, through the Department of Maori Affairs, and by direct contact with individual owners on specific questions, and this policy of consultation should be continued to the utmost as planning for the district progresses. (B8(a):142)

### **10.2.3 A resident's view**

In her submission to the Tribunal, Gae Chapman provided a Hirangi Road resident's view of the failure to provide a water supply and sewerage system for houses between the tailrace and the Turangi township:

When the Ministry of Works came to Turangi to create the township, our people approached them to seek a connection of these houses along Hirangi Road to the water supply. The nearest connection was at Turangi Park next to the Hirangi Marae. There, water was freely available to keep the fields well-watered in the summer. But the residents of Hirangi Road who lived

further along towards Maunganamu were told that a connection could be made only at their own expense . . . it would have meant laying a pipeline across the park and through the swampland . . . this was an expense which they could ill afford.

At the State Highway 41 end of Hirangi Road, the water supply ran along the opposite side of the State highway to reticulate the Ministry of Works buildings which serviced the construction crew for the Tokaanu Power House and the tailrace. Residents at this end of the road sought permission to connect to the water supply at that end of Hirangi Road but were told this would not be possible. . . .

In 1975 we sought permission again to make a connection to the water supply only to be told by Mr John Thorby of the Turangi District Community Council that this was not possible because the pipeline carrying the water to the sewage pond was not large enough to reticulate the homes in this area and anyway the water supply was not in sufficient quantity to allow any more connections in the Turangi area. Our area was known as a 'buffer zone' between the townships of Turangi and Tokaanu, and Mr Thorby said there were definitely no plans to reticulate this area as the people living there should purchase homes in the town. This made no sense to us at all. We chose to live in Hirangi Road because ours was a family home on Maori land. To us it was important that we be there to care for our family home and land.

It was interesting to note that the 'buffer zone' area was changed in later years to become '10 acre farmlets'. One can only speculate what this was supposed to mean. Unfortunately, it hasn't meant that we've been connected to the services. (A12(5):1-3)

Ms Chapman also noted that a further effort was made in the mid-1980s 'to see if homes could be reticulated using health grounds as a reason', but this came to nothing. A continuing concern was the pollution of groundwater and local wells caused by run-off from the industrial area flowing into the rerouted Hangarito Stream drain and by the cutting off of natural flows by the construction of SH41. Hirangi Road families 'provided land for the township and the power project' but had not benefited from any services in this development. As Ms Chapman stressed:

The least they should have got out of all the disruption we experienced was to have their homes connected to the water supply. . . .

We are also well aware that the connection to the water system was made available to the people of the River Road (Taupahi Road) area where many European people lived or had holiday homes. In later years, while denying us access to the water, Herekieke Street and Hautu Prison were connected. To us, this looked as though connection to the water supply was necessary for Europeans but not for the Maori, the tangata whenua. (A12(5):3-4)

### **10.3 THE HANGARITO STREAM DRAIN**

#### **10.3.1 Effects of industrial area construction**

By the late 1960s, the new SH41 had been built, work was continuing on the tailrace excavation and powerhouse construction, and the Hanganito Stream, which formerly flowed into the Tokaanu River, had been diverted into a drain running alongside SH41. When the Ministry of Works moved into the industrial area, it was inevitable that the earthworks associated with the levelling and consolidating of the land would result in pumice silt being carried into the Hanganito Stream, which flowed across the site. The Wildlife Service was anxious to protect the upper reaches of the Tokaanu River, with its valuable trout spawning grounds, and had already proposed a fishery reserve in this area. The potential pollution problems were exacerbated by stormwater drainage from the industrial area. By December 1964, the District Conservator of Wildlife in Rotorua, Pat Burstall, was thanking Gibson for the Ministry's prompt remedial response to a silting problem in the Tokaanu headwaters which threatened the fishery (B8(a):158).

The Ministry of Works' solution to pollution threats from the industrial area was to divert the Hanganito Stream into a drain which ran across the Waipapa 1J2A and 1J2B blocks and then alongside the new route of SH41. Just before the tailrace, the drain turned sharply to the right, ending in the swamp lands west of the oxidation ponds. Te Reiti Grace, who leased Waipapa 1J2A and 1J2B, sought compensation for damage caused by pumice silt and industrial pollution overflowing her pasture. Part of Waipapa 1J2B was also being used for the extraction of metal by the Ministry of Works. The damage and disturbance to the block was acknowledged by the Ministry of Works in 1970 and compensation was assessed:

First entered March 1965 to extract metal most of which was used in the construction of the new deviation of SH41 carried out by Project. The property consisted of approximately 12 acres dry terrace sloping to 27 acres drained swamp. Pasture on the terrace was good and in the swamp fair. Fencing was adequate over the whole block. The metal extraction has virtually destroyed all the good grazing on the higher ground and, in addition, approximately 1.4 acres has been taken for State highway. . . .

Run-off from the area being worked caused considerable silting on the lower land and this was aggravated to a considerable degree when storm water from the Town was diverted to a small stream which meandered over this land. Damage to pasture accounted for a further five acres and some 17¼ chain of fencing became buried in silt. Remedial work has been carried out by the Department but pasture restoration on the metal area has been unsuccessful. The meandering stream has been replaced by a deep 15-20 feet wide channel into which approximately 75% of the Town's run-off is discharged. (B8(a):74)



### **10.3.2 Access to land prevented**

The drain alongside SH41 also had the effect of preventing access to adjacent blocks from the highway. While the impact of the diversion of the Hangarito Stream and the silting was acknowledged, the issue of whose responsibility it was to maintain the drain along SH41 and into the swamp was not resolved. The adjacent block, Waipapa IJ2A, was also affected by the same drainage and silting problems. By 1969 the Ministry of Works had cleaned out the drain in response to complaints by Mrs Grace and others, but there were some longer term problems to do with the gradient of the drain. The loss of the natural flow towards the Tokaanu River and the diversion to the SH41 drain had slowed the water flow and exacerbated the flooding and silting problems. In 1979 and 1986, the Ministry of Works again cleaned out the drain in response to complaints made to Ministers by local people, but the issue of whose responsibility it was remained unresolved.

In 1967 a Department of Lands and Survey plan (B8(a):112) showed the drain as part of the road reserve. In other plans prepared in the 1970s, the drain was shown separately from the roadway of SH41 (B8(a):113–115, 118–121). In March 1969, the Ministry of Works had begun discussions with the Taupo County Council on the legalisation of the drain that carried the Hangarito Stream and Turangi township storm water. In May 1969, the county engineer responded, saying that the council considered that the drain was for the improvement of adjacent farm land and it refused to accept liability. The District Commissioner of Works' response in June 1969 was that the channel had been cut 'to improve the storm water drainage and as such is part of the drainage system' (B8(a):89).

### **10.3.3 Responsibility for drain contested**

The county engineer, however, maintained the position that the drain across Waipapa IJ2B was the responsibility of the landowners and had never been 'a "public drain" in either its function or its purpose, but is purely a private drain to facilitate the drainage of a privately operated farm'. With regard to the open watercourse cut along the new SH41, the council saw this as:

purely a drain to provide shoulder drainage and intersection run-off from adjoining land for the protection of the highway, and therefore this becomes a liability of National Roads Board.  
(B8(a):90)

The Ministry of Works, however, continued to argue that it was the council's responsibility. Because it served as a stormwater drain for the Turangi township, it was a public drain and the Ministry's opinion was that 'the County is trying to evade its responsibility' (B8(a):91). As a stormwater drain from a town, it could not be regarded as the responsibility of the National Roads Board. The Taupo County Council, however, still asserted that it had no obligation to maintain the drain.

Following more complaints and a ministerial visit to Turangi in 1986, an engineer's report was commissioned. The silting problem caused by the gradient and the amount of sediment carried into the stream along its length was acknowledged. The flow was irregular



and aggravated by periodic floods, which also eroded the banks of the drain. Several possible solutions to the problem were suggested. One was to redirect the Hangarito Stream through a culvert under SH41 back into the Tokaanu River, but it was acknowledged that 'the fisheries people would probably object, a water right would be required, and some degree of maintenance would be required as well'. Alternatively, the drain could be directed into the tailrace, increasing the gradient. Unfortunately, this would create a problem with sediment in the tailrace and would need continuing maintenance and a water right. Other possibilities included purchasing the approximately 100 hectares of affected land, constructing a stopbank to protect the farm land, putting sediment traps in the drain, or maintaining the existing drainage system. All these options would also require some continuing maintenance (B8(a):60-61). Flooding and sedimentation are part of the natural flow pattern of the Hangarito Stream, but the addition of storm water, the diversion alongside SH41, and the lower gradient aggravated the problem. The cheapest solution was for the local authority to take over the maintenance of the existing drain and clear it periodically.

The Taupo County Council's urban resources engineer responded to this report in December 1987, noting that the natural drainage pattern had been altered by the construction of SH41. 'The basic legal liability,' he said, 'is therefore between the landowner, who is affected, and the constructors/owners of the road, being the National Roads Board.' His conclusions were unequivocal:

1. Any work done to alleviate flooding/sedimentation of the land provides a benefit to that land.
2. The maintenance of drains through private property is a responsibility of the landowner.
3. The maintenance of a drain alongside State Highway 41 is the responsibility of the National Roads Board.
4. The ratepayers of the Taupo County as a whole should not be required to contribute to the cost of the maintenance as there is no benefit to them. (B8(a):111)

Following the ministerial visit in 1986, an investigating committee was set up to gather relevant information. The committee was chaired by Murray Black (chairman of the Waikato Catchment Board and Taupo County Council) and comprised representatives from various Government departments. In May 1988, Black reported to the Minister of Lands, Peter Tapsell, that the original water rights for the diversion were obtained by an Order in Council issued to the Electricity Department and were now, presumably 'the property of Electricorp who assume all responsibilities and liabilities with regard to this water right' (A21(1):E).

#### **10.3.4 Problems continue**

It seems that the responsibility was thrown back on the Order in Council issued in 1958 under section 311 of the Public Works Act 1928, which authorised entry on lands for the TPD. No 'water right' had been issued, nor any permit sought or given from the Pollution Advisory Council. The diversion works preceded the Water and Soil Conservation Act 1967. In the circumstances, it is difficult to understand Black's further comment that he had 'advised Mr Grace of the possible future cancellation of a water right' (A21(1):E).

The diversion of the Hangarito Stream was not required for hydroelectric power generation at Tokaanu Power Station and the Electricity Corporation of New Zealand had no interest in it. The whole Hangarito Stream diversion is within the area described in the First Schedule to the Turangi Township Act 1964. The Taupo County Council (now the Taupo District Council) has remained firm in refusing to accept any responsibility for the drain. The drain needs regular cleaning out – that much is agreed by all parties – and it was last cleared in 1986. Arthur Grace stated to the Tribunal:

Currently it requires cleaning, but I have been told that its nobody's responsibility. Transit New Zealand has come to visit. They did some measurements, but told us that the stream is too far from the centre line of the road for Transit New Zealand to take responsibility for its maintenance. Likewise, the Taupo District Council say it's not their road so they have no responsibility. We need to know who will take responsibility for ongoing maintenance, because as far as we are concerned the original agreement with the Ministry of Works was that they would take that responsibility. This means that the responsibility lies with the Crown. (A21(1):21)

#### **10.4 COMPENSATION FOR METAL EXTRACTION**

In the 1960s and early 1970s, the Ministry of Works took the line that compensation would not be paid for metal extracted for the Turangi township or the TPD. This was an interpretation of section 29(1)(c) of the Finance Act (No 3) 1944, which stated:

The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority.

This was translated in the 1965 edition of the Ministry of Works' instructions concerning entry on land as follows:

Royalty for metal may be paid only where there is a demand for the material in the locality disregarding demands for Government or local works. The approval of Head Office is a prerequisite to the payment of any royalty. If there is not already an established market for the material outside all requirements for Government or local works royalty should not be paid. If the metal has no value to anyone except the local body or the Department, then the Department's liability is limited to damage done to the land in obtaining the metal. (B10:6)

The Maori Trustee challenged this view and claimed that pumice and metal taken from Maori blocks should be assessed for compensation purposes. There was some discussion in the Department of Maori Affairs over the right of the Maori Trustee, or the Board of Maori Affairs in the case of lands under Part XXIV of the Maori Affairs Act 1953 in the Tokaanu development scheme, to sue the Ministry of Works. The matter came to a head in litigation over metal extracted by the Ministry from the Rangipo North 6C block, about 38 kilometres south of Turangi. A meeting to discuss Turangi township and TPD compensation matters was held within the Department of Maori Affairs in Wellington in September 1971 and was attended by district officer J E Cater. The meeting resolved to ask the Tuwharetoa Maori Trust Board:

to support us in a general claim in respect of metal particularly that taken from Te Reiti Grace's lease. If the Board agreed we would invite Mr Feist to undertake the work. (D12:1549)

In the meantime, trustees were appointed for Rangipo North 6C by the Maori Land Court under section 438 of the Maori Affairs Act 1953, and the Maori Trustee was relieved of any further obligation. It was also decided that negotiations on other metal extraction areas would await the outcome of litigation on Rangipo North 6C, although claims were made by the Maori Trustee for damage, injurious affection, rent, and the restoration of several areas where pumice and metal had been extracted. However, Cater had argued in an earlier report that the Ministry of Works could not sustain its position:

It could not be argued that there is no actual or potential market apart from the Works. It must be remembered that demographic survey taken before the commencement of the work showed that it was expected that Turangi, by natural growth, would have grown into a sizeable town. This was the real reason for the siting of the construction town at Turangi. On these grounds it could be argued that there would be a substantial market for metal. (D12:1549)

The litigation over metal extracted from Rangipo North 6C (*Minister of Works and Development v Hura* [1979] 2 NZLR 279) eventually reached the Court of Appeal in October 1979 (C6). The Supreme Court had held that the appellants, Pat Hura and the other trustees and beneficial Maori owners of the block, did have a claim against the Crown under section 17 of the Public Works Act 1928, which provided:

Where any public work has been authorized to be carried out by or on behalf of Her Majesty and gravel or stone is required in the construction of such work, any land may be taken under this Act for the purposes of a gravel-pit or quarry to be used in connection with such work, or the Minister may by his servants or agents after twenty-four hours' notice to the occupier enter on any such land, other than land occupied as a garden or ornamental shrubbery, and dig and take any stone, gravel, or other material therefrom. Reasonable compensation shall be paid for any injury done to or material taken from the land entered upon. . . .

The question then arose as to the basis on which any compensation should be assessed:

- (i) with reference to the commercial value of metal determined with reference to prices paid by private purchasers from owners or licensees of metal pits?
- (ii) by taking as a maximum the capital value of the land affected by the extraction of the metal?
- (iii) by having regard to the fact that the only demand for such metal from this particular pit is created by the requirements of a Government department?

The Crown had argued that, if compensation were to be paid under section 17, the maximum amount should be the value of the land at the time of entry for the extraction of metal, after taking into account the potential value of the resource. The Court of Appeal upheld the decision of Justice Mahon in the Supreme Court that the question should be answered in terms of clause (i) above, that reasonable compensation should be paid for the material extracted, not for the remaining metal or for the land containing the metal. It was the Crown's choice whether to take the land by proclamation or to extract the metal and pay for it. Rangipo North 6C, like other blocks around the Turangi township, such as Waipapa 1J2B and 1D2B3B on Te Reiti Grace's leasehold, Waipapa 1F4 and 1M (the rubbish tip, formerly known as Pumice Pit No 2), and part of Hautu 3E4A (a Maori-owned island in the Tongariro River), had not been taken by the Crown under the Public Works Act 1928. However, pumice and metal were extracted over several years in the late 1960s and early 1970s.

The only basis for compensation for metal extraction in the 1960s was damage to the land and/or loss of the use of it. In the case of Waipapa 1J2B, some restoration work was carried out, but insufficient topsoil was replaced and the grass sown did not take. The damage was assessed on the basis that there had been good pasture before. After a good deal of correspondence, in 1972 the Maori Trustee finally accepted the negotiated figure of \$360 for the damage, leaving open the question of payment for the metal extracted (B10(c): doc 25). No compensation had been paid on Hautu 3E4A and, in 1976, the owners took the matter to the Supreme Court. The matter did not proceed to a full hearing but was settled in chambers in March 1978, where compensation was set at \$7500. This settlement was described by Crown counsel in a letter to the Commissioner of Works as 'a judgment of the Court rather than a negotiated settlement, notwithstanding it has some of the characteristics of a settlement' (B10(c): doc 15). This 'settlement' predated the Rangipo North 6C case.

On Waipapa 1D2B3B, the Ministry of Works had assessed the disturbance and loss of income to the lessee, Te Reiti Grace, at \$800 in 1968, but considered the 'only equitable solution' on this block was 'to pay the proportionate rent for the unexpired term of the lease' (B10(c): doc 19). In 1977 trustees appointed by the Maori Land Court in 1975 lodged a formal claim with the Ministry of Works for \$40,998, including \$37,000 for the value of the metal, \$2648 for the replacement of topsoil, and the balance for survey and valuation costs (B10(c): doc 17). In August 1978, a revised claim was lodged in the Supreme Court for a total of \$40,700, reducing the value of the metal extracted to \$35,802. The Ministry's response was to suggest an offer based on 'loss in value to the whole block' in the order of \$950 (B10(c): doc 17)). However, by this stage Justice Mahon had delivered his judgment

on Rangipo North 6C and the Crown was in the process of taking this matter to the Court of Appeal. It was decided to wait until this had been heard.

Negotiations did not resume until 1984. In December of that year, the Ministry of Works offered to make an ex gratia payment of \$17,000. This was accepted and paid in 1985, with a further payment of \$1275 interest for six months in 1986 (B10(a): doc 7). No compensation was assessed or paid for Waipapa 1F4 and 1M. It is clear that there remain unresolved issues in relation to metal extraction and compensation not yet paid. Moreover, the manner in which the compensation was assessed was inconsistent and inequitable.

## **10.5 UNRESOLVED MATTERS**

There are still many unresolved matters derived from the construction of the Tokaanu Power Station and tailrace and the development of the Turangi township that remain a burden on the residual lands between the township and the tailrace. The Maori homes along Awamate Road and Hirangi Road (the old SH41) are still not connected to a town water supply. The oxidation ponds are close by, but there is no connection to a sewer line. There are severe constraints on any residential development in this area because of the rural zoning. Access to blocks fronting on SH41 is restricted to some specific points by segregation strips on either side of the highway and, on the northern side, by the location of the Hangarito Stream drain. Much of the land is low-lying and swampy and has limited potential for farm development. The natural drainage patterns have been altered by the construction of SH41, the Hangarito Stream diversion, and the stopbank along Awamate Road between the oxidation ponds and the Tongariro River. Some areas are no longer usable because of silting or flooding or because they were not fully restored following metal extraction. These remain as unresolved impacts of construction work on both the Turangi township and the Tokaanu Power Station and tailrace. The Tribunal considers the Crown has a responsibility to take all reasonable steps to resolve these outstanding matters. To this end, the work of David Alexander as a facilitator has been a useful start. The outstanding matters need further effort on the part of all concerned.

## **References**

1. *New Zealand Gazette*, 1968, p 1029

## CHAPTER 11

# FROM HYDRO TOWN TO COUNTY TOWN

### 11.1 INTRODUCTION

Several 'new towns' were established in New Zealand during the 1950s and 1960s, all bearing the distinctive marks of the Ministry of Works' town planning in their curving streets and culs-de-sac, uniformity of houses, pedestrian shopping centres, parking lots, and separation from the traffic on the main highway. Two types can be distinguished: timber towns such as Tokoroa, Kawerau, and Murupara, and hydro towns associated with the construction of hydroelectric power projects in both islands. The early hydro towns were not intended to be permanent, as timber towns were, but some, such as Mangakino, survived anyway. Turangi was the first hydro town built with the intention of creating a permanent town, after lobbying on the part of the Taupo County Council.<sup>1</sup>

The new towns were characterised by rapid early growth and the dominance of a single employer. In hydro towns, the Ministry of Works played a similar role to a forestry company in a timber town. The project engineer was the town boss, a sort of mayor, director, arbitrator, and decision-maker. The Ministry was the landlord and employer. In Turangi, the Ministry of Works was dubbed 'Uncle MOW', and played a dominant role in the Turangi Liaison Committee, which was the form of local government between 1965 and 1974. All the hydro towns had some sort of welfare association to coordinate community activities. The Mangakino welfare association controlled the civic centre and sports grounds and consisted of representatives of various town organisations. When Mangakino hydro workers moved to Turangi, the welfare association moved there too.

### 11.2 BOOM TOWNS

In their early years of rapid growth, towns such as Turangi, Tokoroa, and Kinleith exhibited the characteristics of 'boom towns'. This differentiates them from towns of comparable size which have evolved over several decades as urban centres serving a rural hinterland. The new towns exhibit distinctive spatial characteristics in their layout and social organisations. They have a single employer, a young population dominated by single men, and a 'paternalistic attitude of "management" towards town development'.<sup>2</sup> This paternalism stems from the fact that, to attract employment and compensate for the remote surroundings, the single employer must provide a range of amenities and features, such as

housing, schools, electricity and water supply, medical facilities, and parks and other recreation areas. The head of the company or construction force, therefore, 'tends to be the sole arbiter of the way in which the settlement is run'.<sup>3</sup>

One of the biggest problems facing a new town is the development of a community identity. There is a high potential for social disruption in a rapidly growing town with a transient, multicultural, immigrant population and a typical new town age-sex structure. Sociologist Don Chapple, in his study of Tokoroa, commented:

In the mushroom growth of an industrial boom town, the slow wisdom of traditional community life is not possible. The boom town is a synthetic community. Its inhabitants have not all been nurtured in its rhythms and its rules. Most have had to adjust to these, and adjust much more rapidly than people have been accustomed to over most of human history. There are many merits in the new and expanding cultural environment. There can be stimulating variety, and a pattern of status and prestige which is more fluid than in most traditional communities. A premium may thus be placed upon openmindedness, initiative and talent. But there are also many hazards. The social casualty rate measured in terms of loneliness and apathy, *whakamaa* (a compound of shyness, shame and lack of confidence), and frustration, is probably very high, much higher than in older communities.<sup>4</sup>

All these new towns passed through stressful early years of mushroom growth before evolving into more settled communities. But they all retain a distinctive character imposed on them by the physical, economic, and psychological domination of a single enterprise, whether it is a large pulp and paper mill or a massive power project. In Turangi, even though the Ministry of Works has left, the provision of alternative employment, especially for women and young people, has been a continuing challenge.

### **11.3 HOUSING LAYOUT**

Chapple was particularly critical of the new towns' housing layout and house design, which reflected industrial needs rather than social benefits. He quoted a comment heard in Tokoroa in 1970 that those 'who create a town think in terms of numbers and labour force . . . [and] tend to forget that the numbers they are dealing with are people'.<sup>5</sup> As a sociologist, he considered that the Ministry of Works' town plans of the 1950s and 1960s were not appropriate for the social demands and uncertainties of new industrial communities:

The New Zealand answer to housing people is supplied by engineering and animal husbandry; that is, the provision of cheap, sanitary boxes, arbitrarily partitioned, and hooked up to essential power, water, and drainage networks. All this is set in a few square yards of the flattest grazing land, and is bordered by a road or 'race' along which the breadwinner may be driven to or from the forest or factory where he labours. Spatial relationships between such house units, and between these and other facilities – especially those which cater for the needs of young mothers, children and old people – are matters which have seldom exercised the minds of our town planners.<sup>6</sup>

The Ministry of Works' houses were based on the assumption of a nuclear family – a married couple, with a father (the breadwinner), who worked on the project, and a mother, who stayed home to look after the children. Single workers lived in the 'single men's camps'. There was little flexibility for extended Maori families or for the grandparents' generation. The houses were small and box-like and were not designed for large extended families.

#### **11.4 DYNAMICS OF NEW TOWNS**

In the 1960s, there was almost no information collected about the dynamics of the growth of new towns, and no assessment of their impact on host communities. Chapman has commented that 'There are serious doubts whether we know much about the development of the New Zealand town once the provision of physical facilities is accomplished'. He wondered whether, in the construction of another new town, 'New Zealand planners would have little more than broad impressions of how its new towns have progressed since the initial establishment of physical facilities'.<sup>7</sup> While a review of the research on new towns overseas would provide some general guidelines on the social processes involved, 'it is no guarantee that detailed and non-physical community planning in New Zealand can be based upon any other than well documented local experience'.<sup>8</sup> It can be expected that new towns move from the early boom town years through a transition period to a social and demographic structure more typical of older small towns. It is during this transition stage that the potential for social disorganisation is greatest. Many of the workforce move on. Some will stay if alternative forms of employment are available. The new town has to attract other enterprises in order to keep its population and sustain its economic and social viability.

In the early 1970s, Turangi people began to consider the implications of a reduction in the workforce. By 1973 the first two stages of the TPD were complete, including the 'western diversions' of water from the Whanganui, Whakapapa, and Tongariro Rivers to Lake Rotoaira, as well as the construction of the Tokaanu Power Station, tailrace, and tunnel. The 'Moawhango diversion' would not be complete until 1977, although a large reduction in the workforce was expected if the Rangipo scheme did not proceed. In early 1973, the total workforce on the TPD was about 1700.

In 1972 a survey of 300 households (including single men's quarters and motor camps) in Turangi was carried out by B Mitcalfe and students of Wellington Teachers' College. At that stage, no decision had been made about the construction of Rangipo or any other power project which the hydro construction workers could move to when the TPD was complete. In the early 1970s, Turangi was 'entering the transitional phase' as construction work wound down and diversification into other activities was considered in order to maintain employment opportunities. Mitcalfe observed that the decision to create a permanent town at Turangi was a 'calculated risk' and that Turangi remained 'almost entirely dependent on the construction works for its economic wellbeing'.<sup>9</sup> Turangi was still a construction town



and many families did not know how long they would stay. It all depended on employment opportunities; if there were other jobs, they might stay.

## **11.5 EMPLOYMENT AND RELATED PROBLEMS**

### **11.5.1 Commission for the Environment audit**

In 1973 the Ministry of Works produced an 'environmental impact statement' for the Rangipo power project, the first under the newly promulgated 'environmental protection and enhancement procedures'.<sup>10</sup> In this, the Ministry noted that the immediate survival of Turangi as a permanent town depended upon whether the Rangipo project went ahead, but that Rangipo would only delay an inevitable population decline from 6000 to 3000 people. However, the Ministry recognised the need for a 'labour intensive industry with a high added value' in Turangi. The interest of private industry in the town had thus far only been 'mild', although there was likely to be more involvement from various Government departments, in particular the Forest Service. The Ministry also hoped tourism based on the Tongariro fishery would expand.<sup>11</sup>

In its 'audit' of this 'environmental impact statement', the Commission for the Environment commented on the industrial prospects for Turangi and noted that there had been 'only limited interest' from private industrial developers. The large Ministry of Works workshops and hostel facilities were not being made available until a decision was made on Rangipo, and the commission observed that industry could not therefore make any firm commitments. Pointedly, the commission stated that Turangi residents 'tend to neglect opportunities to diversify the economic base of the town as long as they have the Ministry of Works to fall back on'. However, it noted that new efforts had been made since a symposium in May 1973 to find solutions to the problem of Turangi's future.<sup>12</sup>

The commission also noted developments in the forestry area, including negotiations between the Tuwharetoa Maori Trust Board and the Forest Service, begun in 1967, to lease land for afforestation; the planting of Lake Taupo Forest, begun in 1969; the commencement of planting in Rotoaira Forest by 1973; and prospects for other forestry development which could provide employment for some 150 people who would live in Turangi. The potential for tourism, including trout fishing, was also noted, especially an expectation that visitor numbers to Tongariro National Park would increase and that Turangi might 'share in a growing accommodation and service role'.<sup>13</sup> A decision to proceed with the Rangipo construction, the commission observed, would not solve Turangi's problems but would 'provide more time to find the right answers which will finally remove those doubts'.<sup>14</sup>

This audit also commented on the employment issue. One of the few submissions to the commission dealing with social issues was made by the president of the Turangi branch of the New Zealand Workers' Union in support of the Rangipo proposal, and outlined the benefits brought to local Maori by the construction of the Turangi township and the TPD. He explained that the town had brought with it a full range of social amenities and

opportunities, whereas formally there had been little to change Maori existing as 'hewers of wood and drawers of water'. He said the local Maori, a large number of whom were members of his own union, sat on many local committees and took 'a considerable part' in the running of various activities in the town. Maori elders, he said, were very pleased with the situation, whereby the young people stayed and worked in their tribal area and families were kept together. In conclusion:

The local Maori people are today enjoying a quality of living which would have been impossible in this area if the Tongariro Power Development had not gone ahead. Also, it should never be forgotten, that it was the foresight, co-operation and goodwill of the Tuwharetoa Tribe which facilitated the efficient construction of the Tongariro Power Development.<sup>15</sup>

In the audit, based on the submissions made to it and on staff investigations, the commission noted that the Ministry of Works, the New Zealand Workers' Union, and John Asher, the secretary of the Tuwharetoa Maori Trust Board, had confirmed the benefits of the TPD and the construction of the Turangi township to local Maori. Asher was confident, wrote the commission, that 'given sufficient employment at centres near home, Maori youths will be happy to remain there rather than move to Auckland, Wellington or some other city'.<sup>16</sup>

#### **11.5.2 Development prospects**

In May 1973, the Associate Minister of Works, Fraser Colman, spoke to a symposium on the future of Turangi which was organised by the Turangi Lions Club. Among other things, the Minister referred to the benefits that the town had brought to Ngati Tuwharetoa. He said that the Government would 'keep faith' with the Maori people who had parted with their lands for the township. He suggested that the urban drift of Maori youth could be 'arrested' through the use of 'training facilities in the vacated camps'. Colman noted, however, that 'it may be difficult to attract industry to Turangi' because of its isolation, lack of a rail link, and lack of nearby raw materials. He said that the Government would do its best, but that much depended on the local people preventing Turangi reverting to a 'weekend fishing village'. He went on to deny that the Government 'owes Turangi a living' and explained that the Government was always going to withdraw from the town once the TPD had been constructed. However, he said, the Government wanted 'to see industry in Turangi and we will do everything possible to make it as attractive as possible to potential investors who will contribute to the town's development'.<sup>17</sup>

The papers delivered in the symposium addressed the prospects in the Turangi district for the development of land, forestry, and tourism. The common theme was how to create alternative job opportunities. The most problematic was how to attract industrial enterprises to Turangi. In summary discussions at the symposium, however, the prospects for industrial development were viewed pessimistically. Turangi's disadvantageous location was 'all too obvious', and the town's provision of buildings, while attractive, 'did not offset other disadvantages'.<sup>18</sup> It was agreed that the kind of industry required 'must be light, non-

polluting, and labour intensive (high added value)'. It was also noted that land had to be available and that buildings remaining for the TPD construction should be offered at attractive prices to encourage private enterprise.

In 1975 the Taupo County Council's planner, Peter Crawford, produced a report reviewing the social and economic issues and the future development of Turangi. Among the 'dilemmas' to be faced by Turangi in the late 1970s as the TPD work wound down, Crawford cited the maintenance of community investment despite the reduced economic base; the support of facilities built to cater for a much larger population; and future progress in both employment and community economic activity.<sup>19</sup> One of the aims of this report was to identify the factual matters which would provide the base for planning development strategies for Turangi in the future. Crawford noted that much planning in Turangi, while it had occurred in a period of constant change, had not been well thought out.<sup>20</sup>

By this stage, a decision had been made to proceed with Rangipo, but it was not clear by just how much the population would decline by the time the Rangipo project was completed. Population estimates varied, and Crawford suggested that this 'illustrates not only the vulnerability of the settlement but also the hydro town character of the town'.<sup>21</sup> The population of Turangi in the 1971 census was 5994, compared with 1661 in 1966. Over the period 1966 to 1971, however, the population of the surrounding rural area had declined, but it was not clear to Crawford 'whether or not the rural depopulation was to the work created at Turangi or a general urban shift elsewhere in population'.<sup>22</sup>

As outlined in the previous chapter, the planning policy for the southern Lake Taupo region was to concentrate all urban development in Turangi, restrict rural residential development, and constrain other settlements, such as the Tokaanu village and more recent urban subdivisions at Motuoapa, Pukawa, and Kuratau, within existing limits. The intention of this policy was to encourage residential concentration in Turangi, which would also support the development of tourist accommodation and employment. It was also envisaged that Turangi would be the residential base for employees in forestry development, although the establishment of a timber, pulp, and paper processing plant in the Lake Taupo catchment area was ruled out on environmental grounds. Crawford considered that the prospects for industrial development in Turangi had been unrealistic given the distance to both raw materials and a sizeable market. He concluded that Turangi 'currently has little to offer an industrialist, apart from an exciting natural environment, which is of no industrial assistance or economic advantage'.<sup>23</sup> He considered that Turangi in 1975 'has been and is a Ministry of Works and Development construction town. That is a town established by statute'.<sup>24</sup> There was considerable social and economic dependence on the Ministry of Works. Over 70 percent of the population was either directly or indirectly employed by the Ministry, many of them having spent much of their working lives moving from project to project. 'Uncle MOW' provided social, economic, and cultural services. 'The basic philosophy of the Ministry,' he explained, '[was] to provide supporting and ancillary services to the construction work force.' The shift in management of the township to local government and the eventual departure of the Ministry meant that social and economic relationships would be 'drastically altered'.<sup>25</sup>

If the Ministry of Works had not come to Turangi, Crawford argued, there would have been some growth of the old Turangi village as a service centre with similar characteristics to Taupo. It would have also developed as a holiday accommodation centre, which would have expanded other service facilities in turn. Turangi's strategic significance – at the convergence of two State highways and the Tongariro River – also provided 'an important stopping place for travellers', and such places have traditionally been the point of growth for towns.<sup>26</sup>

In other words, the old Turangi village would have gradually expanded to meet the needs of increasing numbers of visitors. But the new construction town of Turangi had not been successfully grafted on the old village; it was separate, on the other side of SH1. In its 1973 audit, the Commission for the Environment remarked that the Turangi village, while well integrated socially with the new town, was 'almost entirely independent of the power scheme for employment' and could be expected to expand regardless of whether the Rangipo project went ahead.<sup>27</sup>

## **11.6 CONTROL IS TRANSFERRED TO THE TAUPO COUNTY COUNCIL**

On 12 January 1975, an agreement between the Minister of Works and the Taupo County Council was signed, transferring Turangi to local government control on 31 March 1975, following the expiry of the Turangi Township Act 1964 (B2(a):270–273). In this agreement, interim provision was made for the operation of a number of public utilities and the transfer of property. However, there was a good deal of further negotiation and it was not until March 1980 that a final agreement was signed (B2(a):274–304). The Rangipo power project was not commissioned until 1983 but, by the late 1970s, the Ministry of Works had begun disposing of some surplus properties. The substandard houses had to be removed because they did not comply with Taupo County Council building requirements, and most were sold for removal. The sections they had stood on were subsequently sold as residential sites. This process continued in the 1980s, accelerating in 1983 and 1984 as the Ministry finally departed. There were some pieces of land which had been taken under the Public Works Act 1928 but had never been used for the township and remained Crown land, and there was also undeveloped land in the industrial area. Given the statements made in the early 1970s about the prospects for attracting industrial enterprises, it seems hard to justify the Crown's acquisition of the industrial area. Ironically, at the time, Ministry of Works officials and the Taupo County Council had seen the acquisition as essential to the future economic development of Turangi.

## **11.7 FAILURE TO RETURN SURPLUS LAND**

Following the restructuring of Government departments and the establishment of State-owned enterprises in the late 1980s, there was a further round of disposals of Crown lands and other property. Central to the claimants' grievances has been the disposal of Crown assets on Maori land which was taken by proclamation under the Public Works Act 1928. In chapter 17, we consider the Crown's policy on the disposal of properties taken under the Public Works Act. For Ngati Turangitukua people, it seemed that the difficulties put in their way, not the least being that 'offer back' conditions included paying current market prices for their lands, only reinforced their sense of grievance. After all the stress suffered by dislocated families, the loss of ancestral lands, the destruction of wahi tapu, and the social and economic disruption suffered during the construction work, Ngati Turangitukua felt that they were being denied the opportunity to participate fully in the next stage of Turangi's development. In the following chapter, we explore in more detail the impact of the construction of the township and the Tokaanu power project on Ngati Turangitukua.

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## CHAPTER 12

# IMPACTS ON NGATI TURANGITUKUA

### 12.1 INTRODUCTION

In the 1960s, when the Crown, principally through the agency of the Ministry of Works, embarked on the construction of the TPD and the Turangi township, there was no requirement to carry out any investigation of social, economic, and environmental impacts, and none was done. In 1972 Cabinet guidelines on environmental protection and enhancement procedures were promulgated and the Commission for the Environment was established. The first environmental impact statement and the first 'audit' by the Commission for the Environment were completed in 1973 for the Rangipo power scheme.<sup>1</sup> By this stage, Turangi was an established township of over 6000 people, and the principal concerns relating to the 'human environment' in these reports had to do with ensuring a sustainable level of local employment by proceeding to the Rangipo stage of the TPD.

During the 1980s, environmental impact assessment procedures were developed more fully, and greater attention was paid to the social effects of large development projects. The Tribunal has heard a submission from Mary-Jane Rivers, a consultant in social impact assessment and social policy analysis. She commented on the types of social effects which are likely to occur in a project such as the TPD, including visible alteration of the physical landscape, increases in population and employment opportunities, a new infrastructure, and various secondary spin-off effects.

Ms Rivers identified the key issues in any social impact assessment as:

- the rate and type of change to a community, arising from a combination of the characteristics of the project and the host community; and
- the knowledge, understanding, involvement, and agreement of the host community to the changes being introduced (A25:4).

Ngati Turangitukua were the 'host community' and, for many local people, the Ministry of Works and its bulldozers were uninvited and unwelcome guests. Now, in the 1990s, any assessment of the potential impacts of a development project is carried out in the initial planning phase, and is governed by legislative provisions, particularly those found in the Resource Management Act 1991. In the 1960s, the Crown, as developer, was not bound by the provisions of the Town and Country Planning Act 1953 and its amendments. It was not until the Town and Country Planning Act 1977 that there was any legislative recognition of Maori concerns. One of several 'matters of national importance' to be taken into account was 'The relationship of the Maori people and their culture and traditions with their ancestral land' under section 3(1)(g). There was no mention of the Treaty of Waitangi and the Crown's obligations to Maori until 1991, when the Resource Management Act, which



binds the Crown, introduced at section 8 the duty 'to take into account the principles of the Treaty of Waitangi' in all aspects of the administration of the Act.

In May 1964, when Ngati Turangitukua were first confronted with the proposed TPD and the prospect of a permanent township at Turangi, a great deal of planning had already been done in the offices of the Ministry of Works, in consultation with other Government departments. On 20 September 1964, a second meeting was held, largely to review the plans with local people. The next day, Cabinet gave approval to begin construction.

The Ministry of Works had also consulted with the Taupo County Council, which, on 29 September 1964, resolved that changes to the operative district scheme (which made provision for the Turangi township and the TPD) should be publicly notified. By 1 October 1964, the Ministry, its contractors, and their bulldozers were on site in Turangi. There was minimal participation by Ngati Turangitukua in the planning phase of the development project. The second phase, the actual construction, was traumatic. In the next section, we review, in the words of the people who made submissions to us, how Ngati Turangitukua perceived the impacts on them. The third phase of a development project is the ongoing operation: the time when the impacts are fully realised, the costs and benefits are weighed up by the host community, and a considered appraisal is made. In 1994, three decades later, the Tribunal has been asked to review the impacts on Ngati Turangitukua of Crown actions in Turangi. In the absence of any detailed baseline information, which would have been available if any assessment of potential impacts on the host community had been carried out, we begin our review with the statements of Ngati Turangitukua themselves, which range from events within the construction phase to their assessment of the longer term impacts.

## **12.2 NGATI TURANGITUKUA PERCEPTIONS OF IMPACT**

### **12.2.1 Introduction**

In foregoing chapters, we have set out a narrative of what happened on the land during the construction of the Turangi township. In this chapter, we focus on the impacts on the people, Ngati Turangitukua, who were living on their ancestral land. In early 1964, a small, predominantly Maori, rural community was confronted with the prospect of a major hydroelectric power project and a township of possibly 10,000 people being built on its land. By the end of that year, township construction was well underway. The transformation from a rural to an urban environment was rapid, traumatic, and unprecedented. Coping with these changes was stressful and beyond the experience of local people, and this created tensions which few could have foreseen. Many local people felt that they had lost control of their lives, that the Ministry of Works had taken over completely, and that they were powerless against the bulldozers which were tearing up their land. In the following pages, we quote extensively from claimants' submissions to the Tribunal, so that their feelings may be expressed in their own words about how the Ministry's operations at Turangi changed their lives.

### **12.2.2 The meetings of 1964**

It can be assumed that when the proposals for the TPD and the Turangi township were put to the local people at the first meeting on 24 May 1964 few would have appreciated the magnitude of the impending changes. By the second meeting on 20 September 1964, the Ministry of Works was ready to start up its bulldozers. Bill Asher, a member of the Tuwharetoa Maori Trust Board for the last 10 years, described how the prospect of a permanent township was conveyed to the local people in 1964:

Essentially the purpose of the two meetings was to inform us as to what would happen if the project was given the green light. The information took a long time to sink in. It was immediately apparent that we would have to give up a lot of land. . . .

The owners of the land certainly thought that they would be coming in for a lot of compensation if the scheme went ahead. . . .

Previous to those meetings I hadn't been aware that much of the land in the area was subject to mortgages to the Maori Affairs Department. I think that our people were very keen to see those mortgages paid off, and were under the impression that the compensation would enable them to pay off their mortgage debt, and still have plenty left over. There is no doubt that the money was a big drawcard for some of our people.

But the money was not a sufficient carrot for everyone. Many were weighing up the pros and cons for a long time. But looking back, I don't really think that those owners would in most cases have had any way of knowing what they were weighing up. A lot of our old people had no experience in commercial matters at all, although some of them would have had some involvement with the Tuwharetoa Trust Board. They had all lived their lives in a rural environment, and a predominantly Maori environment. The kind of place that Turangi has become today was entirely foreign to their way of thinking. I don't think they would have been able to imagine the extent of changes in store for our rohe [district]. For that reason, I don't think they would have had any idea of the real consequences of the decision they were being asked to make.

And it should be remembered too, that they were being subject to a pretty high-pressure sell-job by the Ministry of Works. The people who came to speak to us were skilled communicators, and their fast-talking persuaded our people that the benefits of what would come would outweigh the disadvantages. When we were told that the town would go to Rangipo if we said 'No' some people then became concerned that we were in danger of losing out on an opportunity. That is what we were supposed to think of course. There is no doubt that people were attracted to the prospect of better housing, to having facilities at their doorstep, work opportunities, and to the novelty of it all. (A12(2):2-3)

Arthur Grace made similar comments, making it clear that he and his mother, Te Reiti Grace, had been opposed to the township proposal if it meant the loss of their farm land and livelihood:

But the other owners – and especially some of the more influential older people – had been swayed by the eloquence of Mr Gibson, who was spokesperson for the Ministry. Mr Gibson was a powerful and persuasive speaker, and our old people were very impressed by him. He told our people that only the land absolutely required for the project would be retained once the project was built. Everybody envisaged the people getting most of the land back after the

construction period, and they saw themselves having the benefit of a new town as well. This was why they were not keen to see the town being built at Rangipo – which was the other alternative – because they saw many advantages coming to them. (A21(1):5–6)

John Asher, Jack Asher's son and his successor as secretary of the Tuwharetoa Maori Trust Board, gave his view of the attitude of Ministry of Works officials:

I was in a good position to know what was going on because initially I was on the Tuwharetoa Trust Board, and then later I was a member of the Taupo County Council. But because of the breakdown of communication as between the Maori Liaison Committee and the Ministry of Works, there was no consistent flow of information to the local Maori people as to the Ministry's intentions. The Ministry of Works were a power unto themselves. It was useless trying to talk to them and negotiate with them. They just fired ahead and did what they thought was right. They were philistines with bulldozers, and Maori people and their land didn't mean a thing to them. They had the all-powerful Public Works Act to fall back on, and basically they didn't need to negotiate. And they just didn't.

To begin with, there had been vehement objections in the meeting house. The Ministry of Works must have been afraid early on that the plan would be compromised to meet the requirements of the Maori owners. They did everything they could to allay people's fears by verbal assurances. But those assurances weren't worth the breath with which they were uttered, because once they were established there was no going back for the owners, and as far as the Ministry was concerned the gloves were off. (A12(1):4–5)

John Asher was particularly concerned at the Ministry of Works' failure to honour an assurance given about the leasehold of the industrial area and the way the Crown's land acquisitions exceeded earlier estimates:

I remember attending meetings on this issue with the Ministry of Works in the late 1960s. I was there in a listening capacity as an owner of land in the area. As a member of the Tuwharetoa Trust Board, I had been instructed [by the board] not to play an official role in the negotiations because the Trust Board wanted to retain their independent status in relation to the Turangi activities. But I remember the completely uncompromising attitude of the Ministry of Works representatives and the government, which I thought at the time was very unreasonable. Warren Gibson, a Project Engineer, was a law unto himself. He wasn't a man to negotiate and compromise if he could possibly avoid it. (A12(1):6)

Terewai Grace, Arthur Grace's wife, recalled how the proposed development created uncertainty, ambivalent attitudes, and anxiety for local people:

I remember that we were told by the Ministry of Works men that this town would be built for us on a permanent basis. This was contrasted with the situation at Mangakino, which I gathered had not proved satisfactory because it was built only on a temporary basis. This new town was certainly an exciting concept, especially when we were told that when the Ministry left, the town and all its amenities would be left for us.

It emerged in the discussion that some were hesitant or unsure about the benefits to us of such a town being built. We were told that if there was not complete agreement about the town

being built at Turangi, a temporary town would be erected at Rangipo which would be removed at the conclusion of the project.

I remember feeling really torn because I loved the farm life, but Arthur's family was only one among many owners of the land we leased. The other owners would have to make decisions based on what they thought would most benefit their families. I personally felt that a permanent town would be the best option, but by this time I was really worried about where we stood in the overall plan. (A21(2):4-5)

### **12.2.3 Social impact**

Terewai Grace summed up her views on the social impact of the construction of the Turangi township:

The emphasis in my evidence is on the human dimension of what took place in Turangi in the 1960s, and on the consequences of the enormous changes that took place. The change was so sudden that all of us who lived here were taken by surprise. In a way I think we lived in a state of shock for quite some time. No one sitting in the meetings at Hirangi Marae in 1964 when the whole thing was in contemplation could have said what it was going to be like. I wonder now whether those who were in favour of the project coming to our rohe would have said 'yes' if somehow they could have been given a glimpse of what they were letting us all in for.

I don't blame those who were in favour of the town in the slightest. They weren't to know how it would turn out. Like me, they were probably naive and trusted the Crown to make things happen like they said they would in the beginning. A lot of us felt pretty stupid afterwards, because we'd been so trusting. Our old people were especially trusting, and accepted at face value the assurance offered them by these authoritative Pakeha men who came to speak to us. They had no experience of the cut and thrust of the business world. When those dignified, persuasive men told them how it would be, and that it would be a good thing for us, they simply believed it. . . .

The Crown certainly didn't present the whole picture to our people. And we had no outside help at all to cope with the dramatic changes to our lives. Not only did we not get help, but in fact the Ministry of Works made it all much harder to take because they treated us so poorly. There were one or two exceptions, and I would mention in particular Mr Gardiner [Gardenier] and Mr Bennion. But for the most part we were consistently denied the respect and consideration due to people who had given up their land and their way of life in the interests of developing an electricity resource that would benefit the whole country. (A21(2):19-21)

### **12.2.4 Lack of information and misinformation**

Arthur Grace summed up the feelings of many Ngati Turangitukua, who told the Tribunal that they did not know what was going on. As to compensation, they did not know whether or to whom compensation was paid, whether it was adequate, or even which lands compensation moneys were being paid for:

The lack of information about what really happened has always been a source of real frustration to me. We didn't know how to find out who got paid for what and when. In preparation for this claim, our lawyer has got information from the [Maori] Land Information

Office about what really happened in terms of payment of compensation. All sorts of things have come out of the woodwork. You will see from the evidence that our people will give that a lot of this information came as news to them, because for years none of us has really known who got paid for what and when. People would come to me for help and information, and I wasn't able to tell them much because I didn't know myself.

The situation was considerably complicated by the fact that the Ministry did not gazette the land they were taking in one lot. Instead, there were dribs and drabs of land that would appear in the newspaper as 'proclaimed' as having been taken. When our people complained about the delays in payment, they were told that they couldn't be paid their compensation until the taking of the land had been legally proclaimed. And then we were told that the delay was down to the Maori Trustee's office. Admittedly, the Maori Trustee's office had a hard job on their hands. But still, the effect was that the whole town was built on land that for the most part was not paid for until *afterwards*. That didn't seem right to us, and it was certainly not what was expected when the people agreed to have the town at Turangi. I believe that some people had big deductions made from their compensation for back payment of rates, as well.

So what happened was quite different from the expectations of our old people who were making the decisions at the time. The situation with the Maori Affairs mortgages, and the fact that deductions would be made for rates arrears, was never properly explained. Then there is the issue of whether the landowners' interests were properly valued. There was a very strong feeling around at the time that the valuations went against the interests of Maori owners all the way. [Emphasis in original.] (A21(1):13-14)

While many complained about not being informed of what was going on, sometimes misinformation was fed back to the community. Bill Duff explained how his father, Haukino Duff, had strenuously opposed the taking of the Tokaanu B1J block for the oxidation ponds because there was a wahi tapu on the site:

Dad wasn't getting anywhere with the Crown, so a neighbour, Mr Usher who lived in Tokaanu, was called in by my father to help him. Mr Usher went to the Council in Taupo and voiced his views there. Mr Usher told my father that the Council in Taupo said that the land had been taken because my father had not been paying his rates. Mr Usher asked if compensation was paid. The Council said no compensation was paid because the money would be used to pay the arrears of rates. As far as my father was concerned, the lessee [Ned Church] was responsible for the rates, so he couldn't understand how this happened. (A16:3)

Mr Duff explained that he now knew that compensation had been paid and that 'the Ministry of Works took the land' by proclamation, not the Taupo County Council (A16:3; C). 'But we do not know what amount was outstanding in rates, or whether the arrears were deducted from compensation we were paid for the land.'

Sometimes stress was caused by proposed works, or rumours of them, that did not eventuate. Te Hononga (Hono) Lord commented:

I remember, for instance, that the Ministry of Works came and surveyed a portion of our land along Hirangi Road. They told my father that there would be a housing subdivision along there, and the houses would be situated on our land alongside Hirangi Road. I remember my father [Nganangana Te Rangi] being 'hopping mad' about what the surveyors were doing,

wandering around his land as free as you please, and planning to take it from him. As it turned out, the plan didn't eventuate, but Dad still had to go through the trauma of thinking it would happen. (A13(3):6)

#### **12.2.5 Traditional authority tested**

Bill Asher described the tensions created by the arrival of large numbers of new residents:

Our community changed overnight. I was very much aware of that, even though I wasn't living at Turangi at the time. I didn't move back here to live until 1972, when I returned [from Kuratau] to take up a job with the Ministry of Works as a carpenter. By then there had been significant migration into the area of people who followed Ministry of Works projects around the country. Quite frankly, many of those people left a bad taste. A lot of them were Maori, but quite insensitive to our tikanga. Somehow, they had been brought up in a different way, and had a pushy and demanding attitude. That didn't go down too well with the local people. A lot of the older Maori migrants understood where we were coming from, but there was this particular category who were bombastic, and quite offensive in a Maori way. For instance, they cleaned out our hunting areas, trespassing on Tuwharetoa land without our permission. It was the sheer weight of numbers that enabled them to get away with behaving badly. Ngati Tuwharetoa have always opened their doors to Maori people coming to our district, but there is no doubt that privilege was abused in Turangi. It got to the stage where some of us wanted to reject those types altogether.

Some of that element has moved on since the Ministry of Works left town. Most of those who have stayed behind have had to learn to fit in, and they are welcome at any of our marae. (A12(2):4)

Others also commented on how the traditional authority of kaumatua was undermined or ignored. Kahukuranui Te Rangi, Nganangana Te Rangi's eldest son, described the impact of the project on his grandfather, Topia (Makiwhara) Te Rangi:

My grandfather was 81 when he died in 1969. He was a very trusting and humble man who was not easily angered by anything, but he was very annoyed with the way the Ministry of Works went about things and what they did to our whanau lands. He was particularly opposed to the sewer line and stopbank going through our land [Waipapa 1D2A and 1D2B3B and Tokaanu B1H]. He tried personally to persuade Mr Gibson, the Chief Engineer, not to proceed with these works, but he was totally ignored. Initially, he had trusted the Ministry of Works would not do the things they did, but by the time he died, he felt personally betrayed by what had happened. He was also deeply affected by the desecration of ancestral urupa and the bulldozing of bones, which seemed to be going on all the time. (A13:1, p 1)

Hono Lord, Kahukuranui Te Rangi's sister, also described the stress on kaumatua:

The old people were also very concerned about the desecration to our wahi tapu that was going on all around us once the project got underway. I remember my Grandfather and Uncle Peter Rota going out in the mornings to see where the bulldozers were heading that day so that they could move the tupapaku before the bulldozers got to them. This situation caused great

anxiety amongst our people, and especially amongst our old ones who were already under great pressure from the works affecting their lands. (A13(3):6)

#### **12.2.6 Grace whanau experience**

In 1959 Arthur Grace took over his father's farm, a well-established leasehold unit of some 743 acres. The farm had been part of the Tokaanu development scheme and was still subject to mortgages administered by the Department of Maori Affairs on behalf of the Board of Maori Affairs under Part XXIV of the Maori Affairs Act 1953. The Grace farm lease, which had about 30 years to run, was taken over by the Ministry of Works, and farm operations ceased in October 1964. As Mr Grace explained:

As far as I was concerned, losing that farm was a disaster. In the time since I had taken over the running of the farm, I had been fortunate enough to make a lot of progress. The result was that I had been paying off the mortgage to Maori Affairs at a good rate. My stocking levels were such that Wrightsons had indicated to me that I would be able to borrow money from them against the security of my stock, and I foresaw being able to pay off the Maori Affairs mortgage altogether within a year or two. This made me very happy, because I felt that I was really getting somewhere on that land.

It soon became clear that I had no chance of keeping the farm. Our family had two levels of involvement in that farm, firstly as joint owners of the land with many of the other families, and secondly as leaseholders. We had to be compensated by the Ministry of Works in both capacities. I am very critical of the arrangements for compensation that were reached both with the owners of the land and with me and my family in respect of that farm lease and our house. (A21(1):6)

The Grace family were in for a period of difficult negotiations. Not only had their farm and livelihood been taken away, but the Ministry of Works wanted them out of their house, because it was on the route of a proposed new road in the township. There was also a problem with the title, because the one-acre site on the 'papakainga block' adjacent to Hirangi Marae had not been partitioned out by the Maori Land Court. Mr Grace told the Tribunal that, 'as far as the old people were concerned, that house and the single acre on which it sat belonged to my Dad and now belonged to me' (A21(1):7). Legally, however, that one acre was part of Waipapa 1A, which the Ministry of Works intended to take, and Mr Grace had to buy back his house site:

The Ministry asked nearly \$4,000 for the site. The way it turned out was that I received compensation for the loss of use of the farm land of about the same amount. They more or less cancelled each other out. The stock on the farm was sold, and the returns from that used to reduce the debt on the Maori Affairs mortgage.

One of the things that upset me and my wife was that there was a rumour that went round among our people that we had been greatly enriched by the Ministry of Works coming to town. That's how it appeared to a lot of people, because the town was being located on our farm. In fact, of course, the opposite was true. Whereas previously we had a life to look forward to, with plans to develop the land, and a livelihood, now we were left with virtually nothing. I remember that my wife bought a car at that time out of money she had earned by

teaching at the local school. But a lot of people pointed to that car as something we had got out of the Ministry. I hated to be in that situation, where everything was going so badly for us, and yet we were being resented by some of our own people. (A21(1):7-8)

It was perhaps inevitable that there would be a personal toll to be paid in coping with such traumatic changes in one's life. Mr Grace, under the heading 'Emotional and financial stress', summed up the impact on his family and the personal pressures he faced:

The battles that my family and I have had to fight with the Ministry over the years have cost us a great deal of time and money. It was often necessary for us to enlist the help of our lawyer, which didn't come cheap. We were always having to pay out to our lawyer to support us on one issue or another. I didn't mind paying him, because I honestly feel that we wouldn't have managed to win the few victories we did without a solicitor in our corner. But we shouldn't have had such an uphill battle on our hands with the Ministry of Works when all we were wanting was a bit of common justice. I think you really needed a lawyer to keep your head above water, actually. The Ministry would fight you on every point, and wouldn't accept your word for it. And then it seemed there were new rules and regulations springing up every day that they would quote at you, and the ordinary person just couldn't keep up with it. Also, I saw those relations of ours who didn't know how to put up a fight being walked all over. The Ministry could really do what they liked with those people. They were innocent and law-abiding people, but they felt completely powerless to do anything against what was happening to them. I tried to do what I could to support them, but we were all trying to live our lives and keep our families going, so there was a limit to what you could do. The whole situation really got us all down.

It was under the stress of all this that I developed an alcohol problem in the 1960s. . . . This had a very bad effect on my family, and things got to a bad state before I got the hard word from my doctor and I pulled myself together. . . . But I think that problem was a reflection of the sort of stress that we were living under. When I look back I think that my wife and me, and my mother and all our family really, went through a terrible time during those years. Our sense of personal dignity suffered, because we were treated as though our lives and our homes were of no importance. We felt out of control of our own futures: we didn't know what would happen tomorrow, but the Ministry of Works did. They were pulling the strings. That was a very bad feeling.

Having a town at Turangi was always going to change our way of life. But I still think that the Ministry of Works could have made the process of change much less painful than it was. If they had treated us like the tangata whenua of this place, instead of like inconveniences who were getting in the way of their plans, we would have come through it all more easily. (A21(1):25-26)

Terewai Grace also described the stresses she and her family suffered:

I can't actually recall whether the model that the Ministry of Works had at the meeting [24 May 1964] showed our house and the other houses just up the road from us. I don't think I realised at that early stage that the Ministry's plans involved moving our house. It was when representatives of Maori Affairs and the Ministry of Works came to our home to discuss repayment of the Maori Affairs mortgage and compensation for loss of the lease that the whole



thing became clear to me. The Ministry of Works plan showed a street running through our kitchen, and the rise that our house was on was to be flattened.

At this time we were still living in our house, but our farming days were effectively over. Our farm animals had all gone, and the fences and trees had been pulled up. Getting rid of the farm animals was very traumatic for the children. They were farm kids, and they found the changes very hard to accept. Earthworks were taking place all round with a great deal of noise and dust as the streets were laid out. It was all happening at tremendous speed, and yet no agreement had been reached with us on what compensation we were to be paid. Obviously they did not need our agreement or consent before going ahead. Dealing with us was a mere formality from their point of view. It didn't feel as though we were in a very strong position.

This was a terrible time for me. My husband did not want the town in place of his farm, and he was hurting. He argued so bitterly with the Ministry of Works and with Maori Affairs that I was reduced to tears. A feeling of hopelessness had begun to creep in, and I was afraid that if Arthur fought the people in charge, we would be left with nothing. I remember sitting in the bay window of our house crying because I felt so distressed and worried. I felt like a displaced person, not allowed to remain in my home and with no home to go to.

Because the Ministry of Works wanted us to agree to leave our house, they actually offered us a new house anywhere in the town. But by this time the new houses had started arriving, and we were not impressed. They were on such very small sections, and the houses themselves were on the mean side. The Ministry then offered to move our house to a section close to the marae, but my husband had become adamant that we should be allowed to stay where we were. This was our family home on Ngati Turangitukua papakainga, and it was our right to remain there.

Eventually we were allowed to remain, and a new plan was drawn up which had the street encircling us instead of going straight through our property. The area where we were was labelled 'The Grace Retention Area'. The workmen tried to make us feel guilty because that Retention Area hadn't been in their original plans, and caused them extra work. I remember them telling us that we would just have to put up with work going on all around us, making for difficult access to our house and houses dotted all around the perimeter of our section. Their attitude was that whatever disruption or inconvenience they inflicted on us, we had asked for it by not going along with their wishes. I don't think it really sunk in quite what that meant. The main thing as far as Arthur was concerned was that he had saved the family home. (A21(2):5-7)

Mr Grace commented bitterly on his battle to retain the family home:

A lot of what went on made me angry. I felt that our people had been sold down the river. Their [the Ministry of Works'] whole attitude towards us was insulting. I felt it didn't matter what I said, their plans came first. Their plans had a road running through our kitchen, and that's what mattered to them. If it was a choice between our kitchen and their road it was no contest as far as they were concerned. But I wouldn't give in. I stuck to my guns and finally they put a ring around our house on the map and called it 'the Grace Retention Block'. It was a very hard-won concession, and the Ministry people always seemed to resent it after that. They were so used to being top dogs and having everything their own way, that they really couldn't stand it when anything or anybody stood in their way. (A21(1):8-9)

Mr Grace also had to cope with other problems, including finding alternative employment, having further arguments with the Ministry of Works over his licence to undertake cartage contracts (his mother was also having arguments with the Ministry over metal extraction on her leasehold land), and so on. The negotiating environment had become adversarial, and clearly defined between 'us' and 'them', as Mr Grace indicated in the following comment:

The Ministry's attitude to dealing with us really got under my skin. I felt so powerless to do anything about what was happening, even though I knew the way they were treating us was wrong. In my heart I knew that standing up to them wouldn't make much difference, but I felt that I couldn't just sit there and let them trample all over me and my family, so I did fight back as much as I could. I don't know whether it did much good in the long term, but at the time I felt that was all I could do if I was to live with my conscience. (A21(1):12)

### **12.2.7 Other whanau experiences**

There were others who also fought back in their own way. Hono Lord described the response of her uncle, Tutemohuta (Sonny) Te Rangi, when some of his land was taken. He and Elwyn Grace had been settled on farm units in the Tokaanu development scheme in 1957, but each had voluntarily relinquished his lease in 1960 when a Department of Maori Affairs review suggested that their units were uneconomic (B12:16–17). Sonny Te Rangi had continued to work for wages on the scheme in the hope of eventually being able to lease a farm unit when further land development work was completed, a hope which was based on a Maori Affairs promise. In 1964 he was living on a one-acre rectangular section, Ohuanga North 5B1D3C1, which fronted on the old SH1. In 1966 part of the section was taken.<sup>2</sup> Hono Lord described it:

The land to the north of Sonny's section was owned by his brothers and sisters. This land had been partitioned by my paternal Grandmother and gifted to her children. In 1965 Sonny and his family were the only members of the family living on the family land. During the period of the Tongariro Power Project works my husband and I built our house on a nearby block (5B1C2B3) gifted to me by my family. We are still living there.

Sonny gardened all of his and parts of the family sections extensively. He grew large quantities of potatoes, kamokamo, and corn and had several fruit trees. He also grazed some sheep and kept pigs on these sections. He grazed some horses on the property too, as he and his sons hunted extensively over the Tuwharetoa lands bounded by Tongariro and Kaimanawa Range. He had a large extended family who benefitted from his generosity, and also there were informal barter systems that operated. In total, Sonny would have had about two acres in cultivation.

Our family blocks used to be on the main road, although Sonny's house would have been a hundred yards or so back from the road. His house was screened from the road by trees. But when the Ministry of Works came, the main highway changed and an access road [Arahori Street] had to be put through. . . . This was part of the area where Sonny had his gardens. Sonny was totally opposed to the road being situated so close to where he was living. He loved the outdoors and was a very private person who valued the open space and tranquillity of the area where he lived. He and his family were very upset with the thought that their peace and

privacy would be shattered by vehicles and pedestrians in such close proximity to their home. He would never accept that the road should go through his property but eventually resigned himself to the inevitability of the situation. He didn't like the way they went about it, particularly the fact that the Ministry of Works bulldozed straight through a good fence he had along the boundary of the garden, demolishing it and the bulk of their orchard.

After the road was put in Sonny found out that the Ministry of Works were also taking the rear half of his section. He didn't understand why they needed to take half of his section, and none of us could understand it either. It seemed very odd, because Uncle Sonny was living on the side of the new highway [SH1] opposite from where the town was being developed. No one gave him the courtesy of an explanation.

Sonny was very distraught and angry about the fact that the back of his land had been taken. He felt that his privacy was being further eroded, and he felt powerless to do anything about it. This move seriously reduced the land he had available for his gardening and grazing activities. He was a traditionalist and a fighter and felt he had been dealt a gross injustice. He refused absolutely to have anything to do with the compensation that was offered. He refused to sign any of the papers that the Ministry of Works wanted him to sign. Eventually he just received a cheque in the mail, with a note attached which he was supposed to sign and send back. When it arrived he took one look at that cheque for \$225.00 and went over to the coal range to throw it into the fire. I grabbed it from him. He was so angry but I knew it was important to keep documentation. . . . so I took the cheque home with me, and then later on when Sonny had cooled down I went back to see him about it again. (A13(3):1-3)

The land taken from the rear of the section was not used for the township but was offered for sale later for motel purposes. This provoked Hono Lord into lodging a complaint with the Ombudsman. As outlined in chapter 5, an area of land was returned to Sonny Te Rangi's family some years after his death. He never did get a farm unit of his own in the Tokaanu development scheme either. Some of those lands south of Arthur Grace's farm were used for the industrial area, for temporary camp sites for construction workers, and, later, for the Turangi Golf Course.

Hono Lord also commented on the impact on other Maori families:

I remember this old kuia who lived next door to Sonny. She was a really old lady, in her mid seventies. Te Arai Paurini was her name. She came to my house one day to see me. She was very upset. She had just found out that her back piece [of land] had been taken too. I remember her waving a piece of paper, saying 'Kua haringa aku whenua e te kawana' [The Government has taken away my lands] as she came up our drive. I took her inside to give her a cup of tea. I explained to her what the paper was about, and got in touch with her eldest son so that he knew what was going on too. The whole thing had a very bad effect on the old people in particular. That old kuia had no idea what was going on.

That land that was taken from the backs of people's sections just sat there for many years growing broom.

The way the Ministry of Works went about doing what they did caused great agony to people and affected their lives very deeply. The damage to our old people's happiness and health can never be compensated for. What makes me particularly resentful is that I don't

believe that there was any necessity for the Ministry of Works to take that land from the backs of people's houses, and the road taking and survey could have been located elsewhere to the many acres where no one lived. Another anomaly is that the rest of that area . . . was never used for the development of the township; it was just sold off. (A13(3):3–5)

Tuatea Smallman summed up the effects of the hydro development on his family:

By severing the lands from the Maori title, the Ministry of Works has alienated the owners, our grandmother and her children, from the land. Younger members of the whanau have been denied their land. Loss of land to us means a loss of dignity, pride, and a distancing of whanau members through alienation to a feeling of mokaitanga [dependency, like being slaves]. We have lost our values, and our esteem, and a rift between families has developed. We fear our children will leave their turangawaewae. (A23:10–11)

Hono Lord stated:

It is difficult to know exactly what should be done to rectify the many injustices that have occurred. The Ministry of Works at the time were totally insensitive to anything our people said and treated us with disdain and contempt. Over the years their experience has led many of us not to expect any favours and we have tended not to ask for any. Nowadays we just want to get on with life and forget the pain of the past. (A13(3):6)

It is clear from the statements made to us that the 'pain of the past' has not been forgotten. The resentment and feeling of grievance felt by those who lived through the stresses of the construction period are being transmitted to succeeding generations. For those who made submissions to us, it was painful to relive the traumatic experiences of the construction period and even more painful to realise that any long-term benefits have been far outweighed by the human costs, the loss of land and resources, and the denial of any real participation by Ngati Turangitukua in the economic benefits of development on their lands.

In her opening submission, Crown counsel conceded that:

The Tribunal has already heard several families give evidence of their personal histories and the Crown does not dispute that the change from a rural lifestyle in a small village to a busy tourist township over a matter of a few years was for most unsettling and for some traumatic. (B1:1)

For those whose homes were physically moved, or in some cases demolished, the trauma was exceptionally painful. We consider their case histories in the next section.

## **12.3 THE REHOUSING OF NGATI TURANGITUKUA FAMILIES**

### **12.3.1 Introduction**

At the 24 May 1964 meeting, the fate of existing houses occupied by Ngati Turangitukua families was at the forefront of questions put to Ministry of Works officials. As already discussed in chapters 3 and 4, Dick Lynch told the owners that houses would have to give way to the town plan where the two conflicted, but the Ministry's intention was that 'the owner should be left as well off as he was previously' and it would 'avoid as far as possible disturbing people unnecessarily' (A7:182). At the 20 September 1964 meeting, a clear message was given that separate negotiations would be undertaken with the owner or owners of each piece of land. Warren Gibson said that arrangements would be made with the individual owners, who would 'have the opportunity of doing what they wish' (A7:182).

By mid-January 1965, 'assurances' had been given to a number of residents which involved either the modification of the boundaries of an existing house site, and/or the shifting of the house, or the allocation of another section. The general policy of the Ministry of Works, where practicable, was to allocate sections on family holdings to members of the owners' families who required building sites. The Ministry felt that the 'numbers of Maoris who will be asking for such allocations is not expected to be significant' (B2(a):316). This policy was probably workable when a single owner of a house and section was involved but, even so, there were complaints.

### **12.3.2 Rehousing of families living on the old SH1**

The people living on the old SH1 had been assured at the 24 May 1964 meeting that 'present holders would not be interfered with'. In the previous section, we have referred to the lands taken, including the gardens and orchard of Tutemohuta (Sonny) Te Rangi and the land belonging to Te Arai Paurini, as well as the upset this caused, especially because they had assumed from the plan presented to them that their homes, which were east of the realigned SH1, would not be disturbed. The Hallett family also lived on the old SH1, on the western side, near the Turangi Bridge. Joyce Hoko told the Tribunal about the freehold property (about half an acre fronting on the old SH1) which her father, Te Hikoinga Hallett, had purchased in 1962. He was approached several times by Ministry of Works officers in 1965 because part of the land was on the route proposed for the new SH1:

My father didn't want to move his house, but the Ministry of Works threatened compulsory acquisition. Because he was worried about them taking his land, my father agreed for the house to be moved forward to the front of the section. (A17:1)

The property was on two levels, with a large garage on the lower level which was used to service the tour buses that her father operated. The garage was demolished (compensation of £150 was subsequently paid) and the house was moved at the Ministry of Works' expense. The land was taken for SH1 in 1966 (A17:2; B) but it was not until

1973 that compensation was finally assessed. The compensation included 16.4 perches, formerly part of the old SH1, being added to the residual title. According to Ms Hoko:

It is useless – people use it as a foot path. My father always said that extra land was useless because he couldn't do anything with it. Our next door neighbour was given a section down the road in compensation for the part of his land that was taken. This discrepancy seems to me to be an injustice. . . . We think it would make more sense for the 16.4 perches to be given back and made into a proper footpath, and for us to be given the land next door which is used as a reserve.

My father never wanted compensation. What he wanted was land on the neighbouring site to keep the same sized property. The Ministry would not agree to this. Now this neighbouring site is a reserve. (A17:2)

### **12.3.3 Wade whanau experience**

The older houses along the old SH41 were targeted for demolition because it was not possible to move them. Raymond Wade described what happened to the home of his mother, Nehi Miria Wade, where she and his three sisters were living in 1964:

At the time when the project came, my mother was one of the landowners involved. She knew that they were taking her land, which was where the high school is now. . . . However, she did not know how much was being taken or what she would be paid. We were never given a breakdown of the situation. She asked the Maori Affairs of the day if she could have a proper explanation, but it was never forthcoming. She didn't know how much land she had left, nor what she had been paid for what. She was very unhappy with the whole transaction. . . .

My mother was living right next door to the high school . . . Her house was nearly bowled over by the bulldozers. They had actually already flattened the orchard, which was made up of about 15 trees. They were approaching the house while she was still inside. I don't think they knew she was inside. I don't think my mother could have been given notice that they were coming to demolish her house, because she was an educated woman and she would have taken steps to try and stop them. She certainly wouldn't have just sat there in the house. Anyway, when the bulldozers came, she ran out of the house to stop them. She was in her forties, but very ill with asthma. She was very worried about her family home which she wanted to protect. The home had belonged to our great-grandmother, Paehoro Te Noni Hariata Kamekame Te Haeata Ipukai.

Although my mother stopped the bulldozers that day, a couple of years later the house was demolished anyway. Efforts were made to get the house preserved, but the Ministry of Works would not agree to that after my mother died. By then there were only younger members of the whanau left, who did not have enough influence to stop the Ministry's plans.

After my mother died in June 1966, we remained living in our house until it was demolished a couple of years later. (A20(2):1–2)

Both Mr Wade, who had returned to Turangi from Wellington and was employed as a labourer by the Ministry of Works, and one of his sisters tried to obtain sections on part of their mother's land. They chose sites, but for some reason the arrangements fell through

without explanation. Mr Wade refused an offer to go and live at the Ministry of Works' staff quarters:

I was virtually homeless and was forced to leave Turangi. My sister eventually got [purchased] a house on the fourth section from the school on the whanau land.

I am sure the trauma of all the events surrounding the coming of the Ministry to the town badly affected my mother's health. She was so worried about what would happen to her and to our family home. The Ministry really confused the owners, and our mother didn't speak to us much about what had happened.

Eventually my three sisters and I received compensation . . . although I am not sure what interests I have been paid for because the notices from the Maori Trust Office did not specify. My uncle always said he was not paid. I don't really know exactly what land of my mother's was taken, and I don't think my mother did either. (A20(2):2-3)

In January 1965, a Ministry of Works report on Mrs Wade's house on Waipapa 1E1A noted that one section west of the house was to be reserved and that the house itself was 'to be left undisturbed for reasonable time to enable replacement house to be built' (B2(a):316). On 27 June 1966, Mrs Wade signed an agreement acknowledging that compensation money due to her for her interests in various blocks and payable by the Maori Trustee 'will be reduced by the sum of £725' in payment for the section to be vested in her by the Ministry of Works. 'I also acknowledge that the price of £725 is reasonable for this section,' her agreement stated (B2(a):334). On 27 July 1966, however, Mrs Wade died, and in September Dick Lynch reported this to Gibson:

This section allocation is now cancelled. The present occupants of the cottage have no legal rights of occupation. I understand that they are neither willing nor able to secure other accommodation. Perhaps you could check with the Maori Welfare Officer in this regard.

Eviction of these tenants will probably be a problem unless you have alternative accommodation to offer. There is nothing more I can do the matter is now in your hands. (B2(a):335)

A Ministry of Works officer in Turangi, J Davis, visited the Wade home and spoke with Raymond Wade, advising the district officer of Maori Affairs, J E Cater, in November that:

He was adamant that he had a right to be in the house and was under the impression that his mother had subdivided her share of the land so that he was entitled to live in the existing homestead. I requested permission to enter the house to enable a Housing Inspector to measure the square footage so that a suitable house in the Township could be rented by him in exchange. This permission was refused. On my second approach, he requested that I contact Mr Lang Grace who would act on his behalf. (B2(a):336)

The Ministry of Works requested Maori Affairs to investigate whether a housing loan to finance a new house would be made available to Miria Edwards (Raymond Wade's sister), who was living with her de facto husband and a young child, because rental accommodation did not appear to be a solution. Maori Affairs' response in April 1968,

delayed by the need 'for a considerable amount of research', illustrates the financial situation faced by displaced families in Turangi:

The maximum housing loan to which she would be entitled is \$5,300. She has only one child which will be one year of age in July and the maximum capitalisation of family benefit for this child is \$940. This would represent the bulk of the finance available, apart from any funds built up by the operation of the de facto husband's wage assignment of \$6 per week and the assignment of Mrs Edwards' rents and royalties.

To build a normal three bedroom house at Turangi would cost not less than \$7,200. Under existing policy it would be necessary for Mrs Edwards to find the difference between the loan limit and the cost of the house, plus 10% of the cost of the section (say \$140), together with legal and supervision fees of approximately \$100. The present financial position could be summarised as under:

|  |                |                |                |
|--|----------------|----------------|----------------|
| Maori Housing<br>Loan                  | 5,300          | Cost of House  | 7,200          |
| Capitalisation<br>of Family<br>Benefit | 940            | 10% of section | 140            |
| Cash savings,<br>say                   | 100            | Legal fees     | 100            |
| Deficiency                             | <u>1,100</u>   |                |                |
|  | <u>\$7,440</u> |                | <u>\$7,440</u> |

Mrs Edwards is one of the three children of the late Mrs Wade and will be entitled to certain compensation for lands taken. . . . Of this amount Mrs Edwards' share would be \$900. (B2(a):338-339)

Even when the calculation included some funds 'in Mrs Wade's housing deposit account' (although 'an application to the Court will be necessary to determine who is entitled to this money'), there was still a shortfall in meeting the requirements for a Maori Affairs housing loan.

In May 1968, Davis advised the District Commissioner of Works that it was his 'intention to have the residence . . . demolished as soon as eviction is effected' and suggested that he 'notify the Department of Maori Affairs and the parties affected' (B2(a):340). On 5 June 1968, a 'notice to quit' giving one calendar month's notice from the date of receipt was issued to Raymond Wade and Miria Edwards on 'the grounds that you have not right, title or license to occupy the said premises and land' (B2(a):341). The Commissioner of Works was asked to 'obtain the necessary Warrant for this office to proceed under section 334 of the Public Works Act 1928 and section 31(d) of the Magistrate's Court Act 1947' (B2(a):342). The commissioner immediately requested further information about why the house had to be demolished, the alternative accommodation for the occupants that had been offered, and whether children were



involved (B2(a):343). The project office in Turangi reported in July 1968 that it was desirable that the house be demolished and the sections cleared as soon as possible, because the house and outbuildings 'appear as sub-standard structures in an area of good residences' and the house 'is built over the boundary of two sections tying up both'. No alternative accommodation was available for Ms Edwards. It was noted that Mr Wade could be housed in the single men's quarters, but that he intended to leave his employment with the Ministry of Works soon (B2(a):344–345).

The Commissioner of Works responded at the end of July 1968, saying that the proposal, in essence 'to evict a woman and child for the purpose of demolishing a substandard house not required for any other purpose', was such that the Ministry 'could not face the criticism to which it would be subjected if the eviction took place in these circumstances'. The commissioner noted that the Department of Maori Affairs had asked the Ministry to stay its hand for the time being, and he considered that this 'would make our position even weaker if debated in the House'. He concluded that 'No action can at present be taken' (B2(a):346).

In the meantime, Dick Lynch, on behalf of the Ministry of Works, had notified the solicitor acting for the Maori Trustee that he would withhold the payment of compensation money for Waipapa 1E1A 'until full possession is secured' (B2(a):347). The Department of Maori Affairs investigated the case further and, by November 1968, was 'making urgent arrangements for the erection of a new house' on one of the sections. In December, Ms Edwards signed an agreement 'to vacate the old cottage . . . as soon as the new house is ready for occupation' (B2(a):349–350). The 'old cottage' was subsequently demolished.

#### **12.3.4 Eru whanau experience**

The house belonging to James Eru, and one next door occupied by his father, Tewe Eru, were also in the way of the Ministry of Works' plans for Turangi. James Eru's son Joe explained to the Tribunal how 12 acres fronting on the old SH41 had been partitioned by Rangiita Waaka in 1942 into four sections (Waipapa 1L1, 1L2, 1L3, and 1L4) for house sites for his own and his brothers' and sisters' children:

On the twelve acres were two houses. One belonged to the Eru family, my family, with four children still remaining at home. The house was built on about 2¼ acres, Block 1L2, given to my Dad by his mother and his 2 aunts . . . It was a Maori Affairs house, built in 1950. We grew up there. It was our family home. This land and our home were very important for my Dad, and me.

Next door on Block 1L4 lived our koroua and kuia [grandparents], with Taima, Thomas and Josephine, their whangai [adopted children], who were like brothers and sisters to us. Their house actually belonged to Maata Wikitoria Te Rangiita, but was occupied by my grandparents, Kiekie Manawa and her husband Tewe Eru, who had adopted Maata's daughter Taima Rangimarama [Bell] from birth. (A14(1):1–2)

As Joe Eru put it, 'Things started happening when I turned 15. My Dad told me the town was coming.' The family land was included in the lands taken for the township:

Our house was moved forward on our section so that most of the site could be taken. We were left with only a very small section. When they moved the house, it twisted so that none of the windows and doors fitted any more. The foundation work was not done properly, and the house still looks crooked. . . .

Our Dad was given no choice as to whether the house was shifted. They had us over a barrel. I remember my Dad saying 'You can never beat the Pakeha'. We were left with only a small part of our 2¼ acre section, 5.7 perches (about 140m<sup>2</sup>). (A14(1):2)

Because the house was still subject to a mortgage to the Department of Maori Affairs, the work was to be done by the Ministry of Works under the supervision of the Maori Affairs building supervisor, J W James. He had discussed the matter with a Ministry of Works engineer, J Gardenier, and reported to J E Cater, the district officer in Wanganui, on 27 October 1964 that the Ministry appeared 'only too pleased to comply with our requirements in this matter'. However, he noted that the requirement to shift the house 20 feet forward on the section was urgent, and that the 'general condition of the dwelling can be classed only as fair' (B2(a):326–327). The house was shifted over 29 and 30 October 1964. It had been shifted forward by the middle of the first afternoon but this was not its final position. James reported on 4 November that a decision had been made in conjunction with the Ministry of Works engineer to 'slightly twist the building so that it would thus lie better on its new site and at the same time obviate the need to re-plan the Turangi Township Subdivision'. He noted that:

Friday the 30th of October saw the house settled once more on its foundations, new chimney erected, new septic tank, new effluent disposal soakage, new drains installed . . . By 5 pm the house was again ready for Eru's occupation. (B2(a):328)

There was still some finishing work to be done the following week, and fencing could not be done until a survey of the section was complete. James wrote in his report that he had 'discussed the completed job with Mrs Eru before I left on Friday evening and she stated that she was more than satisfied with the work' as well as 'the Ministry of Works treatment' in agreeing to pay the family '£10 compensation for the night away from their home' (B2(a): 328). There was no report on how the family felt about the move afterwards.

The older house and land next door to James Eru had been occupied for many years by Tewe Eru and his wife and adopted children. Waipapa 1L4 was included in the land to be taken and no effort was made to retain a house site or the buildings. James reported on 27 October 1964 that the buildings consisted of an 'Old shack', which was 'generally extremely sub-standard' and had 'demolition value only' of £80; a detached wash-house with demolition value only of £15; a motor shed with demolition value only of around £15; and 'Outbuildings and [an] earth closet' with demolition value only of £10 (B2(a):330).

James stated that he discussed the disposal of the material from the demolition of the buildings with Tewe and James Eru, and the suggestion was made that it 'could be disposed of at Korohe Pa where they will make use of it for fuel'. The report concluded with the comment that a house site for Thomas Eru, Tewe Eru's adopted son, was also discussed and

it was to be located in the vicinity. Tewe Eru was to be housed with Thomas Eru when the new house had been built. As yet, however, no section had been allocated (B2(a):330).

On 29 October 1964, Tewe Eru's home was demolished, but James's report, written on 4 November, made no reference to where Eru and his family were going to live in the meantime. Instead, James reported that debris suitable for firewood was transported to Korohe Pa, with the balance burnt on site or dumped at the Ministry of Works' depot for burying. James recorded that the buildings were in fact in a much worse state than first realised, the 'old shack' having been 'jerry built and . . . in extremely poor condition'. James also reported that:

There was a bit of an upset during demolition with some members of the Eru family who thought that the old shack was going to be re-erected at the Pa. However, they were informed that the County would not grant a permit to re-erect such old and defective material and once this was explained to them they were quite happy. (B2(a):331)

James's report focused solely on the physical structure of the house, which was probably typical of many built in the 1940s, when building materials were in short supply. Whatever its physical shortcomings, it was a family home. Taima Bell explained to the Tribunal how she perceived the demolition of the house she had been brought up in:

At the time when the Ministry of Works came to Turangi, I was living in the house owned by my mother with the people I called my grandparents. . . . The people I lived with, Kiekie Manawa and Tewe Eru, were actually first cousins of my mother, and I was their whangai [adopted child]. The house where we lived had been built in 1942 by my father, who was a builder with the Maori Affairs Department.

. . . my mother came down from Auckland to see us because she had received notice that the Ministry of Works were going to take her house, where we were living, for the hydro project. My mother told my grandparents that they would have to find somewhere else to live, and she wanted me to go and live with her in Auckland. My grandparents had nowhere else to go. My mother went back to Auckland, and we remained living in the house. We didn't know exactly when the Ministry of Works were going to come and take the house away. So we just stayed there, because as far as we could see there was no alternative. (A14(2):1)

Ms Bell went to Wellington to find work, returning some months later for the tangihanga for her grandmother:

After my grandmother's funeral I went back to Wellington. I only stayed another two months in Wellington because I was so unhappy. I then went up to live with my Mum in Auckland. I called into Turangi on my way up to Auckland, to find that my grandfather was still in the house. He was refusing to leave. He didn't want to live with any of the rest of the family because their houses were all full, and anyway he didn't approve of alcohol or cigarettes so he didn't want to be around any of that. I tried to get him to leave the house and move in next door with the Erus, but he would not listen to me. I was very depressed and lonely, and so I left to go up to my mother in Auckland, hoping that I would be able to mingle in with her family up there. I stayed with my mother for about another 9 months, then we got a call in 1965 telling us that my grandfather had died. I came back to Turangi for his funeral.

When I came back for the funeral, I found out what had happened. I was told by Arthur Grace that my grandfather was still in the house when they came to bulldoze it down. I don't know why they had to bulldoze that house. It was only 21 years old. My grandfather was watching what was happening, standing there on the road with my little sister Josephine, another whangai who lived with my grandfather. He was crying and his suitcase was there beside him. Arthur went and spoke to the men with the bulldozer but they didn't listen and they drove a bulldozer into the back of the house right in front of my grandfather. They didn't even wait until he had left before knocking the house down. So Arthur picked up Josephine and my grandfather and took them away in the truck. All our turkeys and pigs and dogs and cats were let loose running around. We had about 30 turkeys then. They were all just left to run away. My grandfather was taken to the [Ngati Hine] marae to live, because there was nowhere else for him to go. He was moved from family to family, but he used to lock himself up in his room all the time. It was only a few months later that he died. (A14(2):2-3)

Dulcie Gardiner told the Tribunal about how worried her mother, a widow in her 60s, became when she was threatened with the prospect of having to leave her house near the proposed Tokaanu tailrace:

At about the same time, one of our whanaunga [relatives] Mr Tewe Eru, who was also an old man, refused to leave the house that Ministry of Works wanted to take from him. The house was bulldozed before his eyes, and all his belongings were left on the road. All of the local people knew this and it terrified my mother. She thought that she would be the next one, that her house would be bulldozed and she would be left with nowhere to go.

It was at this stage that my mother took to her bed. . . .

My mother was not an old woman. She was only 62, and a woman of vitality. She had asthma, but she was not an invalid. It was the Ministry of Works that killed her. I hated the Ministry of Works for what they did to my mother. They seemed to have no feeling at all for how their actions were affecting the lives of our people. (A19:3)

Ms Gardiner moved into her mother's house and still lives there, as it was later decided that it would not have to be taken. Her mother had also been upset by the taking of family lands for the tailrace. Both Ms Gardiner and Ms Bell were adamant that the worry and stress over land takings and housing contributed to the early deaths of old people. Ms Bell felt that the events leading up to the death of her grandfather and the events surrounding it contributed to her own personal difficulties:

After the tangi, I went back to Auckland. My mother had 14 other children. I had been brought up by old people in the country. My grandfather was a Ratana minister, and I had been brought up in an old-fashioned Maori way. We hardly ever spoke English in the house. Suddenly I had to adapt to a big city family in Remuera. I had not known all these brothers and sisters, and it took me years to get used to them. I just could not handle it at first. I moved back to Turangi in 1967. I kept moving all the time. I couldn't settle anywhere. My mother died in 1968, but I couldn't get to the tangi because my family couldn't get in touch with me. I was always on the move. Finally I went back up to Auckland in 1970 and I made a go of it that time. I stayed there for over twenty years. I have only just come back to Turangi, and I have been here now for nearly a year.

The Ministry of Works caused my family a great deal of stress, without a care it seemed for my elderly grandparents who had nowhere else to go. The Ministry of Works' actions meant the breaking up of my adoptive family in Turangi, and I believe led directly to the deaths of my two grandparents. Old people should not have been treated like that, their lives suddenly blown apart, leading to endless unhappiness, stress, illness and then death.

I suppose my grandparents were not thought to be important because they did not own the house where we were living. But my mother had given over that house to those old people because it was my home and my sister Josephine's home. The Ministry of Works was not interested in how Maori customs operated, and looked only to the official papers which showed my mother as owner. My mother used to come back and bring the babies' [afterbirth] (pito) to bury on the land. Our family had a special connection with that place, but that was of no concern to the Ministry . . . Although my mother wasn't living in Turangi at the time, she was still very depressed about what went on . . .

Our whole family want to be back in Turangi, to be with members of the family who are buried here. When I tried to come back here to buy some land and build a house, the Housing Corporation told me I did not have enough money for a deposit, and I should go back to the city. I am now living with my sister and I don't want to go back to Auckland. I feel very aggrieved that I have to pay for land when my mother had land here for the children. I would dearly love to live in Turangi on family land. (A14(2):3-5)

#### **12.3.5 Rota whanau experience**

While some families had the town built around them, others were forced to give up their rural subsistence lifestyle and move into town. June Whaanga described her life at the Rota family home on Tokaanu B1L1, which was taken for the oxidation ponds:

When I was young I lived with my parents and about 17 children on the family [land] . . . We had a self-sufficient farm there, which took in a number of blocks between B1L1 and Maunganamu. Our extended family had interests in other blocks between our house and Maunganamu. That land also went when the hydro development came. We had pigs, about five cows, chickens, horses and a big orchard and vegetable garden. My father was an excellent gardener, and he used to supply the local greengrocer with vegetables. The family was more or less fed off the property and from the Tongariro River. We took trout from the river, morehana (carp), kokopu (native smelt), freshwater koura and watercress.

At this time, I was about 19 years old. Our Mum was very sick. She had had a stroke and was paralysed down one side. We had to move into town. My parents had to pay for a house to be built on land owned by my mother's family, the Rawhitis. We were not allowed to use the land near where our old house was, because the oxidation pond had been built on that land, and sewage was running over the land where the orchard and gardens used to be. But up until the time when all construction work on the oxidation pond was completed, we used to go back there, and we used the old house at Christmas time and so on. It was still our family home. We would all be there now if it had not been taken.

Even when we moved into the house in town we were still disrupted by the Ministry of Works. I remember one time the Euclids [bulldozers] coming right up the house about 3½ metres away, digging around us. I complained to the Ministry of Works but they took no notice. It was very distressing for us. My father's vege garden was dug up for Papua Street.

The digging near our house only stopped because I knew one of the drivers who sympathised with our predicament. (A20(1):1-2)

Ms Whaanga noted that compensation was paid:

but we had no idea what the money related to. All it said on the voucher was 'compensation'. This compensation seems pretty low to me, and certainly was no compensation for the dramatic changes to our whole lifestyle. The areas where we used to get food were taken and polluted. There was no way we could re-establish that big orchard and garden in town.

Our family life changed altogether as a result of our land being taken for the power scheme. It was never the same in town, and our parents were not happy there. We were left out-of-pocket and confused by all the sudden changes that came upon us. I think we were treated badly by the Ministry of Works. They didn't have our welfare at heart. All they cared about was getting their power project done, and what happened to people just wasn't their problem. (A20(1):2-3)

In July 1966, Pehioi Rota, Ms Whaanga's father, was advised that sections valued at between £600 and £750 had been allocated to him and his family, but that his own would not be released until the Ministry of Works was assured of his financial ability and intention to build a house within 12 months. He would have to arrange finance with the Department of Maori Affairs or the Department of Lands and Survey and could not simply deduct the section cost from any compensation payment received for having his own land taken, 'as these allocations cannot be treated as part of a compensation settlement' (B2(a):399).

Rota responded, indicating that he was 'deeply concerned' that, as one of the owners of land taken, he would be charged for the new sections (B2(a):400). Dick Lynch replied that Rota had 'misunderstood the position as we cannot make sections available without payment' (B2(a):401), and referred him to R E Tripe, the Tuwharetoa Maori Trust Board's solicitor, who had been asked to act on behalf of any owners who were not represented by any other solicitor or by the Maori Trustee. Lynch also wrote to Tripe at the same time, explaining that Rota could not be provided with sections at no cost, although the allocation of sections to him and to those of his family who needed them would be a priority. Lynch said that Rota could use part of his compensation entitlement for the taking of Waipapa 1E2C, 1E2B7, and 1E2B1 to purchase the sections if he wished, and that he (Lynch) would support an advance payment of up to £4000 (B2(a):402).

It is not clear why Lynch could not have told Rota directly that his compensation money could have been used to pay for sections in the Turangi township. A request was made in 1971 for assistance to preserve the old homestead, which the Ministry of Works declined on the ground that the building was 'past reasonable repair' (B2(a):403-404). The Rota family had to purchase a section and build a new house in town.

### **12.3.6 Church whanau experience**

The Church family were also forced to give up their rural subsistence lifestyle and live in the new township. Reneti Church, the youngest of nine children, described how her family had to leave their house on Tokaanu B1K when this and the adjacent Tokaanu B1J and B1L1 blocks, part of her father's farm, were taken for the oxidation ponds (A15:B). William (Ned) Church held a leasehold of several blocks in a farm unit which was formerly part of the Tokaanu development scheme. Ms Church told the Tribunal:

I am not aware of negotiations having taken place between the Ministry of Works and my parents about those paddocks being needed for the oxidation ponds. I remember being told that one day the bulldozers came in and bulldozed the fence line while we were at home. This came as a complete surprise to my parents. Our stock, which was grazing on the paddocks where the oxidation ponds are now, just went straight out on to the road. We had to rush out and get them back.

Dad went out to talk to the Ministry of Works men, but I don't know what was said. No one stopped work.

Not very long after, we were moved out of our house because it was too close to the oxidation pond. This was quite upsetting for us because the family had never talked about having to move to town. All of a sudden one day we had to move.

They moved us into one of the 'substandard' houses on the land which had been owned by the Rawhiti family. I know that they tried to charge Mum and Dad rent for that little house which was stuck on 1/5th of an acre. They refused to pay. There were about twelve of us living there, and it was full of cockroaches. Cockroaches were a feature of those substandard houses [which had been transported to Turangi from other projects].

My mum was really depressed to be there. My Dad was even worse. They hated being in such a small confined area. My parents were so angry about the whole situation. I understand that they were paid compensation for their land and house . . . but I am sure the money they received did little to make up for the life they had lost forever. They had been told they would be moved to a new house with no expense to themselves. Instead, they were in a crowded, small house which they couldn't stand. My father used to go down to the farm for the whole day, and came back late. My mother only lasted two years there until she died [in September 1968].

After that, I lived in the house in town with my father. The Ministry of Works were always coming around trying to get the rent. When they realised that Dad would never pay, they said that they would leave him there until he died, and then they would remove the house. Meanwhile, Puke [a sister] and I had moved to another house, where my father came to live after he got too sick to be on his own. When he moved out of his house, the authorities, I think the Ministry of Works, wasted no time in getting rid of that house. (A15:1-3)

In March 1965, Ramarihi Church applied for a Maori Affairs housing loan, but the assistant district officer, M McKellar, reported that there was some doubt whether the family could meet 'the difference between the loan limit and the cost of the proposed house' (B2(a):351). Ned Church was an undischarged bankrupt, but one of his sons had assigned part of his wages as a regular payment toward the deposit on a house. In June

1966, the house in Papua Street to which the family was to be moved was described as 'an ex Atiamuri 800 sq ft house that has been modified to include a space heater instead of an open fire'. At this stage, the house was connected to 'temporary services' because it would 'be some months before street, water and power services are complete'. It was also suggested that 'payment of rent could be allowed to accrue pending settlement of land compensation' (B2(a):352).

On 6 September 1966, Ramarihi Church signed a 'form of consent' to say that the £3 (\$6) per week rent would be 'a first charge against my share of the compensation due to me' for her interests in Tokaanu B1K (B2(a):353). Mrs Church died on 20 September 1968, and the Public Trust Office agreed that the rent due to that date should be paid out of her estate. In July 1971, the Ministry of Works sought the payment of something over \$800 in rent arrears. Ned Church was approached in September, because he was now employed as a truck driver and was thought able to afford the rent, although he had not signed any agreements about the tenancy. He argued, however, that the family's house had been exchanged by the Ministry of Works and their present house should be rent-free. The Ministry noted that:

he did not seem to be unintelligent and the overriding impression gained was that this was simply a try on. What was definite, was his refusal to make any payment, current or of arrears. (B2(a):358)

By February 1972, Church was served with a notice to quit and agreed to pay \$10 per week (\$6 current and \$4 towards arrears) on the understanding that eviction proceedings would be withheld (B2(a):360-361). By August 1972, only \$30 had been paid and, when approached, he stated 'he would rather the whole affair was taken to court' (B2(a):362). At this stage, there were 12 people living in the house: Ned Church, one adult son, three adult daughters, one of whom was pregnant, and that daughter's husband and their five children, who ranged in age from one to nine years old. The Ministry of Works was again considering eviction proceedings, but delayed action for the time being.

By August 1974, the rent arrears had reached some \$1700 and the Ministry had served another notice to quit and had decided to proceed with the eviction. The secretary of the Tuwharetoa Maori Trust Board, John Asher, wrote to the project engineer, B Dekker (who had succeeded Gibson), saying that the Church family had only moved from their original home in Awamate Road because the location of the oxidation ponds, in the view of the Ministry of Works and the local authority, had meant that 'their continued occupancy of their home could well be hazardous to the health of their family' (B2(a):366). He suggested that Ned Church would like to purchase the new house but he was unlikely to be eligible for a home loan. The house itself was substandard and was due for removal to meet the Taupo County Council's requirement that all houses left in the Turangi township comply with their building bylaws. The trust board accepted no financial liability for the Church family but asked the board's solicitor, Russell Feist, to take the matter up because, although the Ministry of Works was legally correct in claiming rent and issuing an eviction order:



morally, in the Board's view, this family all of whom are beneficiaries of the Board, have a case to be put to Ministry of Works, Wellington, in that they were forced to leave their land and original family home to make way for a public utility (B2(a):369)

The Department of Maori Affairs had been asked to investigate the status of any unpaid compensation money for the Church family's former house. It transpired that the house, described by the Ministry of Works as a 'converted barn', was located on a block of land (Tokaanu B1K) in multiple ownership and the house site had never been partitioned out. The house, therefore, went with the land, and any compensation paid for the house would be included in the payments made to all the beneficial owners of Tokaanu B1K.

The Ministry of Works officials in Turangi were reluctant to proceed with the eviction and Dekker summed up the arguments against this course:

We don't want the house which is substandard anyway.

With Mr Church are living various children and grandchildren, possibly some 12 altogether, some of them babies.

These children all belong to the Tuwharetoa tribe with whom we've successfully maintained good relationships over the years.

The original deal with the Church family does not do us credit although undoubtedly legally correct. The money we paid for their old house (\$1000) could not possibly buy them other accommodation. We should have just exchanged houses, even though in money values we could have lost on the deal. This same thing was in fact done when we replaced badly substandard facilities along Lake Rotoaira by houses and jetty of far better construction. (B2(a):374)

It is important to reiterate that the \$1000 was not paid to the Church family, but to all the beneficial owners of the Tokaanu B1K block. The issue reached ministerial level. In November 1974, the Minister of Works, Hugh Watt, approved eviction proceedings, but after a visit to Turangi decided not to take further action until he had consulted with the member for Western Maori, Koro Wetere. The trust board continued to support the principle that, because the Church family had been forced to move out of their house, the Ministry of Works was obliged to find them a replacement home, free of rent. Ministry of Works officials pushed for eviction proceedings. In April 1975, another Minister of Works, Michael Connelly, after consulting with Wetere and the member for Eastern Maori, Brown Reweti, explained to the Commissioner of Works that the members' views were that Ngati Tuwharetoa had given much to the nation, including 'helping to facilitate the launching of their hydro electric scheme', and it was appropriate that the Ministry showed a similar level of goodwill to the Church family (B2(a):386). He went on to comment that it would not create a precedent because this was 'a special sort of case' and the family were now worse off because of the taking of their house. He asked whether there was any reason why, of all the project's houses, 'when they are being removed, that one of them, just a good average house' could not be given to the Church family (B2(a):387).

In 1978 Ministry of Works officials tried again to evict the Church family. The Minister of Maori Affairs, Duncan MacIntyre, told the Minister of Works that the 'fact that this

situation has run on for so long aggravates the problem and frankly my Department would not like to be involved in any way with the eviction of Mr Church and his family as this is certain to be resisted by the Tuwhaiteo people' (B2(a):391). However, Ministry officials continued to pursue the eviction and began legal steps in 1979, only to be cautioned by Maori Affairs, which was trying to negotiate a housing loan in the name of Ned Church's daughter Puke. Ned Church remained in the house in Papua Street until October 1984, when he finally moved out to stay with Puke. The house was removed from the site and the Ministry wrote off the outstanding debt (B2(a):398).

### **12.3.7 Tribunal's comment**

The foregoing account of the impact of the Ministry of Works and its bulldozers on the tangata whenua is disturbing and deeply depressing. It reveals, in many instances, an apparent absence of sympathy and respect for people who were attached to their ancestral land. There is little evidence of adequate consultation or, all too often, any effective consultation, especially with those who were obliged to vacate their homes. The promises made at the 20 September 1964 meeting that they would be kept informed of what was to happen were not honoured. One account after another of the uprooting of the claimants from their homes, sometimes with no or insufficient prior notice, suggests that progress had to be made at all costs and delays could not be tolerated. Arthur Grace's success in remaining in his home was a rare exception. The fact that bitterness and disillusionment persist to this day among the survivors and their descendants is not surprising.

## **12.4 THE TRANSITION FROM RURAL TO URBAN**

### **12.4.1 Introduction**

Many of the claimants, in their submissions to the Tribunal, lamented the loss of a traditional subsistence lifestyle and their forced adjustment to living in a new town. Some families lost not only their homes but also their livelihoods, their gardens and orchards, and their livestock, which had supported their large extended families. From an economic point of view, many of these households may not have been commercially productive, but when viewed against a social structure where kinship, whanaungatanga, and reciprocal obligations were often expressed in barter arrangements rather than cash, the economic arguments seem less relevant. Many of the houses were 'substandard', as measured by the county building codes, but for many local families building regulations imposed from outside were irrelevant. Their primary concern was to preserve a lifestyle whereby local people remained in control of their lives, which were lived out on their ancestral lands.

The arrival of the Ministry of Works changed all that. Many families were relocated. Others had the town built around them. Local people lost control of their lands and lifestyles. The Ministry had promised that people would not be worse off. But many families felt that they were worse off, not just in financial terms, but also in terms of

anxiety, stress, and a feeling of powerlessness. In this section, we examine in more detail the Maori housing policy of the Ministry of Works in the Turangi township against the background of Government policy generally, as it affected local people.

#### **12.4.2 The Hunn report**

The *Report on the Department of Maori Affairs* ('the Hunn report') established the basis for Crown policy toward Maori in the 1960s. The author, J K Hunn, became the Secretary for Maori Affairs. He commented that 'Evolution is clearly integrating Maori and pakeha'.<sup>3</sup> 'Integration' was a process in which Maori 'have taken quite remarkable strides forward in the last two generations' and this process was expected to accelerate in the next two generations.<sup>4</sup> At a time when the Maori population was increasing rapidly and many Maori were moving to the cities in search of employment, it was the role of the Department of Maori Affairs to ensure that this 'evolution' was appropriately directed. Hunn believed that urbanisation was inevitable and essential for employment, and observed that, 'Far from being deplored, the "urban drift" can be welcomed as the quickest and surest way of integrating the two species of New Zealander.'<sup>5</sup>

'Integration' was defined as a process and an objective: 'To combine (not fuse) the Maori and pakeha elements to form one nation wherein Maori culture remains distinct.'<sup>6</sup> The underlying assumption was that Maori, whose condition in 1800 was compared with that of ancient Britons at the time of the Roman invasion in 55BC, had to catch up and make the transition to 'the 1960 pattern of living', to a 'modern' way of life.

With the benefit of hindsight some three decades later, it is difficult to distinguish this policy of integration from the assimilationist assumptions derived from nineteenth-century colonial administrations. These combined Darwinian ideas of survival of the fittest with concepts of the superiority of modern industrial culture and the desirability of indigenous people 'catching up', so that they might then enjoy the benefits of civilised life in the 1960s.

Officers of the Department of Maori Affairs, the Ministry of Works, and others operated within a framework of assumptions that Maori 'development' had to be directed; that urbanisation was the route to integration; that some Maori lived in a primitive, backward mode which was not desirable; and that such people needed to be persuaded 'to fall into line'. Maori culture was relegated to those elements such as language, arts and crafts, and marae institutions which might be worthy of preservation. This simplistic view of cultural relations had its critics even in the 1960s. Professor Bruce Biggs damned the report in 1961 as over-simplified and 'impatient of cultural differences'. He wrote:

Is integration as simple and polarised as the report suggests? Are the Maoris who are most advanced in terms of living standards the ones who have completely abandoned their Maori institutions and vice versa? Do the backward Maoris who live in isolated rural communities really provoke more of the frictions of co-existence than their city cousins who have absorbed more of the Pakeha way of life? And is urbanisation the quick frictionless road to integration? Why in the list of Maori cultural relics are only the most obvious, even hackneyed items

mentioned, while no mention is made of for example: aroha; extended kinship obligations; attitudes to land, children, sex, rank; and other customs, values and attitudes of which long-time observers of the Maori are aware.<sup>7</sup>

In its consideration of social impacts, the environmental impact statement prepared in July 1973 for the Rangipo power scheme was restricted to issues related to ongoing employment and the survival of Turangi as a permanent township. The statement suggested that life in Turangi for many Maori was an important step in helping them prepare for city life.<sup>8</sup> In the context of a Government policy of continuing to encourage Maori to migrate to cities to find jobs, this statement seems to imply that the Ministry of Works was assisting local Maori. It is beyond the scope of our inquiry to review Government policy generally on Maori housing and urbanisation. However, it is now well established that the massive urban migration of Maori in the 1950s and 1960s was the cause of considerable social disruption, with negative cultural impacts in loss of identity with ancestral lands, language, and tribal tradition. On a number of occasions, the Tuwharetoa Maori Trust Board supported a policy of keeping young people in their home district and curbing the process of urbanisation. To some extent, the employment opportunities offered by the TPD did just that. But the restrictive housing policies of the Ministry of Works in the Turangi township worked to the detriment of many Ngati Turangitukua families.

#### **12.4.3 Restrictive housing policies**

The Ministry of Works' policy on housing Maori families in Turangi, including those who had been forced to move, was worked out in association with the Department of Maori Affairs at district office level. On 30 April 1965, the District Commissioner of Works informed the Commissioner of Works that there had been informal discussions with Maori Affairs officers in Wanganui, who had already received 14 applications for housing loans for the Turangi area. He noted that the Ministry had originally given assurances 'that dispossessed owners and their families would receive priority allocations of sections where required to establish their home in the township', and suggested that Maori Affairs be given an assurance 'that a section will be allocated to that Department for each applicant approved by them for housing finance' (B2(a):317).

On 18 May 1966, the Acting District Commissioner of Works wrote to Warren Gibson setting out, in the form of draft letters, the policy to be followed in the preferential allocation of sections to Maori in the Turangi township and noting that 'Unless there are special reasons I do not think we should attempt to reserve sections for unspecified applicants' (B2(a):318). In the draft letter headed 'Advice to Maori Affairs Department', the Ministry made it clear that it would only make sections available where the applicant had the intention and the money to build on it and that the allocations were in keeping with the assurances given at the 24 May 1964 meeting and 'quite independent of any

compensation negotiations' (B2(a):319). A successful applicant who had been approved for mortgage finance through the Department of Maori Affairs, the State Advances Corporation, or another source had to purchase a section ranging in value from £600 to £750 (B2(a):320).

The assurances on housing made by Ministry of Works officers at the 24 May meeting were couched in very general terms: some houses would have to be moved, those who were displaced would be offered alternative accommodation, and compensation would be paid. At one point during the 20 September 1964 meeting, Gibson stated that the 'Ministry of Works proposes to buy all the land' and owners could 'make application to buy it back'. No price was mentioned and, in the context of so much else that was being said about the proposed TPD, the position was not made clear. In any case, Gibson went on to state that 'All this is subject to negotiation' (A7:83). When a policy of preferential allocation of sections was implemented, it was quite separate from any compensation agreements, and, in practice, applying for a housing loan in Turangi was no different from applying for financial assistance to build a house anywhere else.

For those who could afford it, it went against the grain to have family land taken by the Crown and then have to buy back a small section at a much higher price, which included the cost of development of roads and services which they did not necessarily need or want. There were some families who were displaced who could not meet the financial requirements for a Maori Affairs housing loan. At the 24 May 1964 meeting, Dick Lynch said, as we have quoted elsewhere (see para 12.3.1), that 'the intention was that the owner should be left as well off as he was previously' (A7:80). As we have seen, however, some families who could not afford to buy a new section and build a house were left much worse off than before.

Ministry of Works officials seem to have had an underlying concern to keep the number of sections allocated to local Maori to a minimum. On 18 March 1968, Gibson wrote to Lynch seeking clarification of eligibility for the preferential allocation of sections. The point at issue was the availability of sections for absentee Maori owners returning to Turangi, in line with assurances given and recorded in the minutes of the 24 May 1964 meeting. Gibson felt that any number of family members could claim a right to a section, and asked whether any minimum landowning interest had been set before someone qualified for the right to claim a section under the preferential scheme. Otherwise, he felt, the Ministry of Works 'would be put in a very embarrassing position, as the number of sections which can be allocated this way is limited without expanding the town's original area' (B2(a):323).

On 25 March, Lynch responded that the 'original intention was that a dispossessed owner would be granted priority where he or a member of his family could reasonably claim to have been deprived of land upon which they would have built'. It had been estimated that about 50 sections would be involved. However, he explained, the Department of Maori Affairs had begun arranging the supply of sections for any of their clients ready to build, and some Maori entitled to make a claim to the Ministry for a section could have been satisfied with an arrangement made with Maori Affairs (B2(a):325).

It is not clear why Gibson was so concerned about restricting the allocation of sections to local Maori. Given that Ngati Turangitukua applicants had to meet the same criteria as any other Maori applicant for a Maori Affairs housing loan, it is hard to see that any preferential treatment was being given to the people who had been dispossessed, the tangata whenua. We do not know how many of the Maori Affairs housing loans granted in the Turangi township in the 1960s were granted to Ngati Turangitukua families. Restricting the allocation of sections to those who could meet the requirements for a housing loan and build within a specific time period (six months was suggested) also precluded some families from purchasing a section and saving up for a deposit for a house over a longer period. The Ministry of Works' attempts to prevent 'trafficking in sections' by only allocating sections where Maori Affairs housing finance had been arranged placed greater restrictions on local people in Turangi than if they had tried to buy a section on the open market in any other town.

One example which illustrates how this 'preferential allocation' of sections to Maori did not always work out was the case of Duke Tamaira, who was represented by a Taumarunui law firm, McKenzie Ferguson and Donovan. Tamaira was the sole owner of Waipapa 1L1A, a house site of 1 rood 8 perches (1214m<sup>2</sup>) fronting on the old SH41, which was one of the blocks taken by proclamation on 1 April 1965.<sup>9</sup> He wanted a section in the new Turangi township in exchange. On 6 July 1965, Lynch wrote to McKenzie Ferguson and Donovan stating that a section would be provided to Tamaira in lieu of cash compensation, providing he could 'establish his intention of building a residence thereon for his own use'. If Tamaira preferred cash compensation, however, he would not qualify for any preferential treatment in the allocation of a replacement section. 'Meantime,' wrote Lynch:

I am asking Project Engineer to earmark a section as close as possible to the original holding. It must be realised that the section cannot be held vacant indefinitely and for this reason your clients urgent decision – cash or replacement section – is required. (B10(a): doc 8)

A section was allocated to Tamaira, but his lawyer wisely advised him to wait until a valuation of his taken land was available before making a final decision. On 26 November, the lawyer wrote to Lynch stating that Tamaira had been advised to approach Ministry of Works officials in Turangi about choosing a section, which he had done. 'However,' he wrote, 'he says that the Ministry of Works people at Turangi have referred him back to us.' The lawyer sought clarification of the situation and, on 6 January 1966, Lynch replied that he was prepared to recommend that Tamaira receive a preferentially allocated section if he (Tamaira) obtained Maori Affairs assistance and intended to build, and that this would be in compensation for the taking of Waipapa 1L1A, despite, on the basis of valuations, this being to Tamaira's advantage. Lynch noted, however, 'that this proposal is without prejudice should Tamaira be unable to show that the section is essential for his own establishment' (B10(a): doc 8).

There was more correspondence indicating that Tamaira wanted to choose a section in the Turangi township. On 23 February 1966, the lawyer advised Lynch that the Maori welfare officer favoured Tamaira's application and 'will recommend that a loan to enable

him to build be granted' (B10(a): doc 8). On 8 March, Lynch wrote to J E Cater seeking confirmation of Tamaira's eligibility. The Maori Trust Office replied on 3 May that 'in view of past performance it is unlikely that Duke Tamaira would be recommended as eligible for a Maori housing loan', although any application he made would 'have to be treated on its merits' (B10(a): doc 8).

On 11 May 1966, McKenzie Ferguson and Donovan wrote to Lynch urgently seeking the legal description of the allocated section in order to complete a housing loan application. The response sent on 13 May was that this would 'not be available for some time' but, in the meantime, the section was 'identified as lot 105 plan HDH43113 – area 22p – Tautahanga Road Turangi', which should be sufficient description for a housing loan application. Lynch also advised that he had checked Tamaira's eligibility for a Maori Affairs housing loan. 'From advice received,' he wrote, 'there is considerable doubt as to his reliability and I am not very optimistic about the outcome of your application' (B10(a): doc 8). The lawyer responded on 10 May that his discussion with the assistant district officer of the Department of Maori Affairs indicated 'that a proper application would be considered and we have reasonable expectations of being able to satisfy the Department that Tamaira should receive a loan' (B10(a): doc 8). Lynch checked again with Maori Affairs and, on 12 July 1966, was advised that 'no application for housing assistance has been received from Mr Duke Tamaira' (B10(a): doc 8).

Lynch wrote to McKenzie Ferguson and Donovan on 27 July 1966 stating that 'We seem to be going around in circles and I think a straight out cash settlement for the taking of Waipapa 1L1A – with no tags – is the only way we can reach finality.' He proposed a settlement figure of £650, made up of a valuation of £600, plus interest since 1 April 1965 and legal fees (B10(a): doc 8).

The lawyer immediately wrote back indicating that an attempt had been made to sort out the situation through Maori Land Court proceedings, but this had not eventuated because one of Tamaira's brothers, who had promised assistance, had not been able to appear at the hearing. The lawyer agreed to recommend acceptance of the cash offer. On 9 August, John Bennion, on Gibson's behalf, informed the District Commissioner of Works that Tamaira wished to retain his section and build, rather than accept the compensation, but was having trouble with finance. He asked whether the district commissioner would:

please discuss the matter with Maori Affairs to see if there is any possibility of Mr Tamaira building a house with their assistance. While we do not want to see sections lying idle after development, I feel that in the case of Maori compensation and preferential sections a reasonable time must be allowed to organise finance and start building. I would suggest a period of 12 months from the date of availability for building is appropriate. In this case this would mean that we would be expecting construction on Mr Tamaira's house to start by June 1967. (B10(a): doc 8)

However, Bennion's intervention came too late. On 10 August 1966, Tamaira signed a memorandum of agreement in his solicitor's office accepting the sum of £650 'in full and final satisfaction of all claims for compensation', with a settlement date of 30 October 1966.

There was a further sting in this tale, however, when it was found that there was an outstanding survey lien of 10 shillings on Waipapa 1L1, the 'parent block' of 1L1A, which had to be met. Therefore, on 25 October 1966, a cheque for £649 10s was sent to McKenzie Ferguson and Donovan in payment of compensation for Tamaira's section, and the district commissioner undertook to pay the balance of 10 shillings to the chief surveyor in payment of the survey lien, a payment which should have been shared among all the owners of the parent block.

#### **12.4.4 No provision for Ngati Turangitukua's future housing needs**

One of the principal concerns of Ngati Turangitukua people whose lands were taken was the preservation of enough land on which local people could build their homes. As we have already outlined in chapter 10, the Maori owners of the residual lands west of the Turangi township were severely constrained by the Taupo County Council's planning policy, which zoned their lands rural, thus meaning there would be no reticulation of the water supply or sewerage. In a review of Turangi in 1975, the Taupo County Council's planner, Peter Crawford, explained that:

all future residential and urban land use in the Southern Taupo area will be concentrated in Turangi. This is a legal policy which means that no new urban areas will be created. Such a policy is necessary in order to preserve Lake Taupo and environs and Turangi is a strategic piece in the policy.<sup>10</sup>

Ngati Turangitukua families had foreseen the need for future housing sites and some, like Duke Tamaira, had already partitioned out residential sections. Arthur Grace stated to the Tribunal that, in his farm lease, there had been 'a provision which meant that any owners with shares in the farm block had a right to take up a building site in a designated block' (A21(1):15). This area was part of the Ohuanga North 5B2C2 and 5B3B blocks fronting on the old SH1. It was taken and valued as rural land but not used, and remains empty of houses as part of the Landcorp block between the old and the new SH1. These owners were deprived of house sites for the future. Indeed, many younger generation Ngati Turangitukua will not be able to live on family blocks. When Ngati Turangitukua want to return to Turangi, they have to purchase houses in the town. Those who might have been entitled to house sites but were unable to meet the conditions for a Maori Affairs housing loan in the 1960s and build within six months lost any entitlement for themselves and their descendants. It is seldom expected in other instances that building a house follows immediately after the purchase of land. This sort of pressure put on Ngati Turangitukua by the Ministry of Works was unreasonable. The argument based on a perceived shortage of house sites is not well grounded, because there were areas taken in Turangi, in addition to the Landcorp block, which were not used for township purposes and were later offered for sale. There are vacant sections in Turangi even today.

Another aspect of the housing issue was an expectation that, once the construction phase was over, land would come back to owners. Arthur Grace stated that Gibson:



told our people that only the land absolutely required for the project would be retained once the project was built. Everybody envisaged the people getting most of the land back after the construction and they saw themselves having the benefit of the town as well. (A21(1):5)

On the Rawhiti Rangataua lands, where many of the substandard houses brought in by truck from other projects were located, owners assumed that, when these houses were removed, the land would return to them. Jim Rawhiti Rangataua stated:

I recall that, at a meeting on Hirangi Marae which was held on 20 September 1964, attended by the whole hapu, [Project] Engineer Mr Gibson was talking to my older brother George Rawhiti who was the spokesman for our family. George said that he wanted to keep a block out of the development for his family . . . part of Waipapa 1F3B2B3B . . . Mr Gibson said *'Well, Mr Rawhiti, we'll put in a road for you. We'll put substandard homes on your land, and we'll withdraw the substandard homes when the job is finished'*. What was intended was that the area identified by my brother would be used to house people in substandard housing during the period when the development was being built, and the houses would be taken away afterwards. We knew the houses would have to be taken away because they were below the standards set by the Taupo County. Once the project was finished and the houses were removed, that land was to come back to us. That was clearly understood by everyone concerned.

At the time the project was taking place, I was in business. My business phone was bulldozed down. My road was bulldozed all around my house. One time they had to pull me out with a truck so that I could get to work. There used to be manuka trees all around where I lived, but that was all bulldozed down.

Once the sections were cleared, they started bringing in the substandard houses. . . . At that time, we expected to get the land back. That Rawhiti block was the only one where they put substandard houses, and we thought that was because they knew they had to get rid of them when the time came for us to get the land back.

Sure enough, at the end of the project, they started taking the substandard houses away. But then they began selling the sections. Some of the sections sold at auction. We protested to the Ministry of Works and to the County. We found out that the Ministry of Works had handed the land over to the County, and we were given the impression that it was nothing to do with us anymore. We had to stand by while they sold the land, and there was nothing we could do about it. [Emphasis in original.] (A22: 1, pp 1-2)

There was clearly a major misunderstanding, because this block had been taken by proclamation in 1966.<sup>11</sup> This statement illustrates comments made by other claimants that they did not know what was going on, or which land was being taken. A further misconception that the land was handed over to the county council was also typical, and indicates a confusion between the taking over of local government by the Taupo County Council and the transferral of lands for disposal from the Ministry of Works to the Department of Lands and Survey. This family had wrongly assumed that their land would come back to them. The compensation subsequently negotiated by the Maori Trustee for the 16 acres taken in Waipapa 1F3B2B3B was \$6200, but this was reduced by \$2800 for the 'betterment' provided by the construction of an urban road, Papua Street, to Jim Rangataua's house. Eileen Duff commented in her submission to the Tribunal that

compensation 'should not have been reduced by nearly half for putting in a road that Uncle Jim never asked for' (A22(2):5).

Although we have focused on housing in this section, it is difficult to separate out this one issue from the many that impacted on Ngati Turangitukua families. This example illustrates the powerlessness that many felt then and still do. It also illustrates the failure of communication between local people and the Ministry of Works, and the general feeling of loss of control and disorientation. The immediate and often most painful impact on Ngati Turangitukua was the dislocation of households, the loss of lifestyle and livelihood, and the loss of the guarantee of a place on ancestral lands for their children. The pain of this loss is long term, and is being passed on to the next generation.

## 12.5 THE ASSESSMENT OF IMPACTS

In 1964, when the decision was made to proceed with the construction of the TPD and a permanent town at Turangi, a great deal of preliminary work had been done by engineers. There had not been, as is now required of any developer, any assessment of the impacts of the development project on the local environment, physical and human, at Turangi. In 1972 Cabinet issued guidelines on environmental protection and enhancement procedures, which required that an environmental assessment be carried out for any development proposal and, if appropriate, an environmental impact report be compiled. The Commission for the Environment was established to oversee the 'audit' of such reports.

An environmental impact report was required to provide a general description of the existing environment prior to the implementation of a proposed project, including any 'relevant aspects of the existing human environment', such as 'community patterns, man-made facilities, activities etc'.<sup>12</sup> The impact assessment report was also required to outline the expected effects and estimate their magnitude, intensity, and significance; establish whether they would be adverse and/or beneficial, unavoidable and/or irreversible; and identify and evaluate the safeguards proposed to alleviate or remedy the expected impact. The report also had to include some comment on individuals and agencies consulted 'for their expert views, advice or opinion', as well as references to any other written papers used.<sup>13</sup>

The process of environmental impact assessment and the audit of environmental impact reports became well established by the late 1970s. By the early 1980s, with the realisation of the magnitude of the social implications of the large energy development projects in Northland and Taranaki, there was an increasing emphasis on social impact assessment. In 1985 the Town and Country Planning Directorate of the Ministry of Works published a guide for developers and local authorities entitled *Social Impact Assessment in New Zealand*.

By the late 1980s, the process of social impact assessment was well established as part of the planning for any significant development project. Taylor, Bryan, and Goodrich set out six steps in the social assessment process which should be carried out by developers in consultation with local and regional government and the local people likely to be affected.

Their process also assumed that qualified social scientists and community workers would be employed along with engineers and other technical experts as planning proceeded.<sup>14</sup>

The first step in the process of social assessment was described as 'scoping', and the second stage involved a 'social overview'. The third stage in the social assessment process was the 'formulation of alternatives'.<sup>15</sup> If there are several options, the preferred one must be chosen on the basis of the social, environmental, technical, and engineering information available, in consultation with all parties involved. The options could include a decision not to proceed. If the project were to proceed, the fourth stage would be a decision on a specific option, or options, and a more detailed analysis of the likely effects, including 'mitigation and management of impacts', before a final decision was made. This stage would involve a weighing up of all the pros and cons of a particular proposal, bearing in mind the different views held by different social groups, public agencies, and private sector interests.<sup>16</sup> The fifth stage in the social assessment process was 'monitoring, mitigation and management' – that is, the collection of relevant information during project construction, the checking of any discrepancies between expected and actual effects, and the suggesting of any adjustments 'to help reduce unanticipated and unwanted effects or to enhance benefits'.<sup>17</sup> The final stage was 'evaluation', which could be a periodic assessment during the monitoring of the construction but, when the project ended, could include a 'systematic retrospective review of the social effects of the change being assessed including the social assessment process that was employed'.<sup>18</sup>

The construction of the TPD proceeded without any social or environmental impact assessment. The engineering design work, based on investigations over a period of nearly 10 years in the late 1950s and early 1960s, was prepared before approval of the first three stages was given by Cabinet on 21 September 1964. The preparation of plans for the Turangi township was carried out in a much shorter time-frame, beginning late in 1963, and the bulldozers were on site on 1 October 1964. The tight deadlines set by the Ministry of Works and the pace of construction work meant that many decisions were made quickly and without adequate consultation with the local people. The Ministry of Works officials had some preliminary talks with the Tuwharetoa Maori Trust Board in early 1964, and there was a meeting of Ngati Tuwharetoa called on 24 May 1964. Maori owners who attended this meeting were expected to comprehend a large and complex hydroelectric power scheme, as well as the prospect of a new and permanent town on their lands, *and* to reach agreement on this proposed development at one meeting in one day. It was unrealistic to assume that the full implications would be immediately appreciated. People needed time to think it all through and consider how it might affect them and their families. They needed time to decide on what position to take and on any other responses which might seem appropriate. They were not given that sort of time. The 'agreement' to proceed that came at the end of their meeting was little more than an agreement in principle – an acknowledgement of the potential benefits to the region and its people which a large development project might bring in terms of employment and amenities. No opportunity was given to consider the possible costs to the local community.

If such a large development project were to be considered now, three decades later, there would have to be a much longer period given to all parties to consider the implications of

the proposal. There would be a process of social assessment, along with technical and other assessments which would have to meet the stringent requirements of the Resource Management Act 1991 and other legislation. The project would be subject to a process of public notification, objection, and appeal. The Resource Management Act, at section 8, includes a requirement to take into account the principles of the Treaty of Waitangi. In the 1960s, the Crown, as developer, was not bound by any legislative restrictions. Once the approval of a project was granted by Cabinet, the Ministry of Works could, and did, proceed with construction, with little or no accountability. During the 1970s, public attitudes to large Crown development projects changed. By the mid-1980s, the Ministry of Works was employing social scientists and, in 1985, it issued guidelines for assessing the social impact of major development projects.

The assumption in the 1985 guidelines was that all involved or affected in some way by the proposed development project would be given the opportunity to express their views. As we have already outlined in earlier chapters, there was little consultation with local Maori between May and September 1964, in spite of the appointment of a liaison committee of Maori owners. The 20 September 1964 meeting of Maori owners was merely an opportunity for Ministry of Works officials to tell the local people that the project was proceeding. All the plans and Cabinet submissions were already prepared, and the Ministry only awaited Cabinet approval, which was granted the next day. After that, construction moved apace. Local people felt powerless as bulldozers moved in on 1 October 1964 and the Turangi township was constructed around them.

There was some consultation between the Ministry of Works and the Taupo County Council, which was anxious to see a permanent town developed at Turangi. On 29 September 1964, the council resolved to notify publicly proposed changes to the district scheme. The Ministry of Works did not wait for any objections to be heard before proceeding, because the scheme changes arose out of a ministerial requirement lodged with the county council. Construction was well underway when special legislation, the Turangi Township Act, became law on 4 December 1964. A senior Ministry of Works engineer, John Gardenier, provided a retrospective view of the extent of the Ministry's consultation in 1964:

Turangi has been the first hydro town in New Zealand which was designed and built as a permanent extension of an existing small settlement. This required the involvement not only of the Crown (Ministry of Works) but also of local government (Taupo County Council in this case) and to achieve this the Project Engineer of the Tongariro Power Development proposed some months before the scheme was officially approved, the formation of a liaison committee. This was in June 1964 . . .

It took some time to implement the proposal, which required special legislation. Yet it all went with surprising speed. On 7 August 1964 a meeting of interested parties was convened in Taupo . . . and the Turangi Township Act was passed on 4 December 1964.

Meanwhile much of the technical planning of the town had been completed by a provisionally appointed liaison committee . . . Six lengthy meetings were held between 31 July

and 1 December 1964. One meeting lasted from 9 am till 6.30 pm. This was the meeting of 4 August where the detailed standards of the District Scheme of the new town were discussed.

The first meeting of the Liaison Committee with a representation as required by the Act did not take place until 5 April 1965.<sup>19</sup>

The 'provisionally appointed liaison committee' comprised both elected members and officers of the Taupo County Council (five men), as well as three men from the Ministry of Works, including the project engineer. There was no Maori representation on this provisional committee, nor did the Turangi Township Act 1964 provide specifically for local Maori representation. There were Maori members on the Taupo County Council by virtue of their election to represent the Tongariro riding. Jack Asher chaired the liaison committee from April to October 1965. This position was then taken by Lang Grace as chairman to March 1972, and as a riding member until November 1973. John Asher served as a riding member from October 1971 to October 1972. Both Jack Asher and his son John served as secretary to the Tuwharetoa Maori Trust Board. However, their position on the liaison committee was ex officio, as elected riding member of the Taupo County Council. Bessie Jorgenson was appointed as a 'local member' by the Taupo County Council and served from April 1965 to March 1968 as one of only two women appointed to the liaison committee over the period 1965 to 1974. An elected district community council replaced the liaison committee in 1974.<sup>20</sup>

Ngati Turangitukua were the 'host community' for the construction of the Turangi township. They were and are the tangata whenua. The claimants told us in their submissions that the Ministry of Works did not respect their mana and rangatiratanga. Their way of life was changed almost overnight. Some families were evicted from their homes. The whole community was rapidly urbanised. They had to adjust to the arrival of a large number of newcomers – people with different lifestyles – who came to live among them, and traditional social structures, leadership styles, and patterns of social control were stretched to breaking point. There were tensions between the newcomers and the host community, and there was social disruption within the host community itself. The elders of Ngati Tuwharetoa, both individually and collectively through the Tuwharetoa Maori Trust Board, strove to protect Maori interests. But everyone knew that the real power in the community had shifted to the Ministry of Works, which was backed by the Public Works Act 1928. Throughout the submissions, there was a strong sense of 'us' and 'them', and local people felt powerless. The situation became adversarial. People felt they had to 'fight' or they would be 'trampled on'. At times, especially on the issue of land takings, it seemed that both the Ministry of Works and the Taupo County Council were ranged against Maori landowners. Other Government departments, such as the Wildlife Service of the Department of Internal Affairs and the Department of Lands and Survey, were also trying to obtain land.

In his 1975 study of Turangi, P Crawford noted that 'prior to the Hydro-electric scheme and for at least 100 years or more Tokaanu and the adjoining district had a well structured and organised Maori community', but, in the 1960s, 'the fabric of that community was weakened'. He observed that the Ministry of Works had been a 'transitory interloper' and

had left the local Maori community with the need 'to restructure itself to restore its traditional patterns'.<sup>21</sup>

In the late 1970s<sup>2</sup>, local people were faced with the wind-down phase of the construction of the TPD. After the Rangipo Power Station was commissioned in 1983, the Ministry of Works began selling houses and industrial plant. Lands no longer needed were transferred to the Department of Lands and Survey, and many sections in the town were disposed of. Once again, there was no participation by Ngati Turangitukua in this process. Some expected that these lands, which had not been used or were no longer required by the Ministry of Works, would be returned to them. When some offers to sell land back were made under the provisions of the Public Works Act 1981, local people were dismayed that the current market values of lands taken from them in the late 1960s were beyond what they could afford. This issue of disposal of lands has compounded the sense of grievance.

Many Ngati Turangitukua people acknowledged that, while they had derived some benefit from employment on construction work and from the facilities provided by the new town, when they balanced up the costs and benefits, they felt that they had given up more than they had received. They had lost land, lifestyle, and livelihood. Now that employment prospects in Turangi are more limited, many feel that the promised benefits of the Turangi township and the TPD were more illusory than real. Many accept that the TPD was in the national interest. Some question whether the Turangi township, as designed by the Ministry of Works in the 1960s, was in the national interest. If the Turangi village had been allowed to develop at its own pace, social change would have been slower and at a pace people could have coped with.

No social assessment, monitoring, or evaluation of the impact of the construction of the Turangi township and the TPD on Ngati Turangitukua was carried out. If a large development project like the TPD were to proceed today, not only would there be a great deal of social and environmental impact assessment prior to the decision to proceed, but there would also be people appointed to community liaison positions who would provide assistance to people affected. In Turangi in the 1960s, the only source of assistance was through solicitors appointed by the Tuwharetoa Maori Trust Board or individual owners or through the Department of Maori Affairs and the Maori Trust Office. The Wanganui office and, in particular, the district officer, J E Cater, were loaded with an enormous additional administrative burden in the negotiations over the Turangi township and the TPD. None of these people lived in Turangi.

Some indication of the work of the Maori Trust Office in Wanganui in negotiating compensation claims was provided in a letter sent in 1975 by the deputy registrar of the Maori Land Court, Brian Herlihy, following an interview with two owners:

The point I attempted to make when referring to the Ministry of Works and Development was that the Ministry is using public funds and has a responsibility to the taxpayers to ensure that these funds are spent wisely.

The Maori Trustee, however, has no such responsibility to the taxpayers and as agent of the Maori owners his sole responsibility was to ensure that he got the best deal possible for the Maori owners.

When I stated that the Department, and more particularly the Maori Trustee, had done its utmost to ensure the Maori owners got a fair deal, I was not speaking from hearsay but from personal experience. Before returning to work in the Maori Land Court I was directly involved with the work of the Maori Trustee in negotiating compensation with the Ministry of Works and have therefore a personal knowledge of the efforts made to obtain the highest compensation possible.

To help him in his work the Maori Trustee used his own legal staff and also engaged outside expert Legal Counsel and expert Valuers. The work carried out by the Maori Trustee's staff, which on a number of occasions involved night and weekend work, was at no cost to the Maori owners, and the advice of outside experts was at little or no cost to the owners as the Maori Trustee claimed those expenses against the Ministry of Works. (B10(c): doc 29)

Cater worked closely with the trust board and several solicitors. However, with the magnitude of the task that confronted Maori Affairs staff, in addition to their normal duties, it is not surprising that not all Maori owners were kept fully informed or fully understood the process of negotiation for compensation for lands taken by proclamation by the Crown, or otherwise affected by the Turangi township or the TPD.

Some Ministry of Works engineers, John Bennion in particular, did provide a community liaison role, in addition to their numerous other responsibilities. Bennion commented in his address to the Lions Club symposium on the township's future in 1973 that:

The town itself was inevitably a compromise between the desire to produce a planning and architectural showpiece, and the need to provide, quickly and economically, accommodation and industrial facilities to serve the Power Development.<sup>22</sup>

Rural farm land around the old Turangi village was transformed dramatically into the urban landscape of the Turangi township. This engineering accomplishment had a high social cost in the disruption, stress, and continuing sense of grievance among the host community, Ngati Turangitukua.

The construction of the township and the TPD also severely strained the relationship between the Crown and Ngati Tuwharetoa generally. The following comments were part of a statement made by the Tuwharetoa Maori Trust Board to the Prime Minister in January 1972, and are still relevant today:

The Tuwharetoa people are currently co-operating with the Lake Taupo Basin Co-ordinating Committee for the establishment of Lakeshore Reserves. We have written assurances from Government that such reserves would only be acquired by Government as a result of negotiation and agreement and that they will not be taken by Government compulsorily. These negotiations are continuing in good faith on the part of the Tuwharetoa people and resting on the assurances given. The fact that other assurances given with regard to the Tongariro Power Development Scheme have not been kept puts in jeopardy these negotiations and any other negotiations which there might be between the Tuwharetoa people and the Government. The Tuwharetoa people wish to continue negotiations in good faith and in the knowledge that assurances given will be kept. (A10:93-97)

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## CHAPTER 13

# STATUTORY FRAMEWORK: THE POWERS OF THE CROWN

### 13.1 INTRODUCTION

In this chapter, we set out the statutory framework within which the Crown was required to operate in carrying out public works. In particular, we discuss the provisions relevant to the taking of land for the Turangi township. The principal legislation was the Public Works Act 1928 ('the 1928 Act'). After 4 December 1964, the Turangi Township Act, a special Act within the meaning of section 18 of the 1928 Act, came into effect and provided, in section 11, powers to take or otherwise acquire land 'for the purpose of a permanent town'. We note that the 1928 Act was repealed and replaced by the Public Works Act 1981.

The Ministry of Works entered the land which became the Turangi township long before any formal proclamations taking the land were issued. The earliest date of entry accepted for the purpose of assessing compensation was 1 October 1964. The first of a series of *New Zealand Gazette* notices proclaiming lands taken did not appear until 1 April 1965 and notices continued to appear periodically up to 1980. Most of these (at least 17) proclaimed land taken under either section 11 of the Turangi Township Act 1964 or the 1928 Act.

We now consider the relevant provisions of the 1928 Act and the Turangi Township Act, and the extent to which these statutes authorised the entry on, and the subsequent taking of, the claimants' land for public works by a series of proclamations.

### 13.2 CROWN POWERS OF LAND ACQUISITION

#### 13.2.1 Possible options

There were a number of options available to the Minister of Works for the acquisition of land. The powers of the Crown to acquire land for any public work were set out in the 1928 Act. Section 11 empowered the Minister of Works to take land required 'for a Government work'. Section 32 authorised the Minister to enter into an agreement to take the land of any person required for a public work without complying with the notification provisions of section 22 or to purchase, take, or lease any such land upon such terms and conditions as he or she thought fit. The Minister then had several choices. He or she could:

- take the land by proclamation under section 11;
- take the land by proclamation pursuant to an agreement under section 32 without complying with the provisions of section 22; or

- purchase or lease the land on terms agreed with the owner pursuant to section 32.

Although, as we have seen, discussions were held with the owners, this did not result in individual agreements with the owners to sell the land. The Minister's representatives made it clear from the outset that the Crown wished to acquire some 800 acres freehold by taking it by proclamation and some 200 acres of industrial land by leasing it from the owners for 10 to 12 years and then returning it.

### **13.2.2 Public notification**

The usual procedures for taking land by proclamation were set out in sections 22 and 23 of the 1928 Act. Section 22(1) provided for public notification of an intention to take land for a public work. The plans of the land affected, including a survey of the land to be acquired, 'together with the names of the owners and occupiers of such lands, so far as they can be ascertained', had to be made available for public inspection. A notice of intention to take had to be published in the *New Zealand Gazette*:

and to be twice publicly notified stating the place where such plan is open for inspection, with a general description of the works proposed to be executed and of the lands required to be taken.

The notice was also required to state that there was a period of 40 days from first publication within which any 'well-grounded objections' could be lodged in writing. A copy of the notice and description was to be served on 'the said owners and occupiers, and any other person having an interest in the land so far as they can be ascertained'. If any objections were received, the objector could be heard before 'the Minister [of Works] or some person appointed by him', if it were a Government work, or before a local authority, if it were a local work.

In section 22(3), there was a discriminatory provision which excluded many Maori landowners from this process:

The provisions of this section requiring the names of the owners and occupiers of the land to be shown on the plan thereof, and requiring copies of the notice and description referred to in this section to be served upon the said owners and occupiers and upon all other persons having an interest in the land, shall have no application to any Native [Maori] 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, 1915. Entry on the Provisional Register shall not be deemed to be registration within the meaning of this subsection.

Section 22(4) made provision for the publication of a notice of intention in the *Kahiti*, the Maori-language *Gazette*, 'but no proceedings for the taking of land shall be invalidated by any failure to conform to the requirements of this subsection'. Under section 47 of the Finance Act 1931, publication of such a notice in the *Gazette* was deemed to be equivalent to publication in the *Kahiti*.

If no objection to the taking of the land was lodged, or if objections had been heard and considered, and it was still thought 'expedient that the proposed works should be executed,

and that no private injury will be done thereby for which due compensation is not provided in this Act' (s 23), a proclamation taking the land was prepared. The proclamation, accompanied by a survey plan certified on behalf of the Surveyor-General and approved by the Governor-General, was to be published in the *Gazette* and thereafter the land vested absolutely in the Crown.

The procedures set out in sections 22 and 23 providing for the public notification of intention and objections were, however, not applicable in situations excluded specifically by section 10(1) of the 1928 Act. Among those situations excluded were takings of land for water power works or purposes, or takings of native land for any public work.

'Native land' in this context refers to what is now called Maori customary land, that is, Maori land which does not have a title by a process of investigation by the Maori Land Court. There was no Maori customary land in the proposed Turangi township in 1964.

The power to take land for 'water-power . . . works or purposes' was provided in section 276 of the 1928 Act, which also prescribed the same procedures for takings as section 254 provided for takings for defence purposes. As a result, land could be taken by proclamation for the construction of a hydroelectric power scheme without public notification or any provision for lodging objections. When the proclamation was gazetted, the land vested in the Crown.

### **13.2.3 Section 11 of the Turangi Township Act 1964**

Section 11 of the Turangi Township Act 1964 made special provision enabling the Crown to take or acquire land as for a public work under the 1928 Act for the purposes of a township. Section 11 provided:

(1) The Governor-General is hereby empowered to take or otherwise acquire as for a public work under the Public Works Act 1928 such land within those areas of the Turangi Township described in the Second Schedule to this Act as may in the opinion of the Minister of Works be required for the establishment or development of the township.

(2) Any land that is taken or acquired pursuant to this section shall be taken or acquired in the manner prescribed by the Public Works Act 1928 for the taking or acquisition of land for water power purposes.

(3) This Act shall be deemed to be a special Act within the meaning of section 18 of the Public Works Act 1928.

(4) Any land taken or acquired pursuant to this section may be developed by the Minister of Works for the purpose of a permanent town to the extent considered desirable by him and any such land may be declared Crown land subject to the Land Act 1948 or may be dealt with in accordance with the provisions of the Public Works Act 1928.

It will be noted that subsection (4) was not specific about the conditions for taking land for the Turangi township. The terms were vague in that land taken would be 'developed by the Minister of Works for the purpose of a permanent town to the extent considered desirable by him'. Any land acquired could be dealt with under the Public Works Act 1928 or declared Crown land under the Land Act 1948. The area affected by the First and Second Schedules to the Turangi Township Act is shown in figure 32.

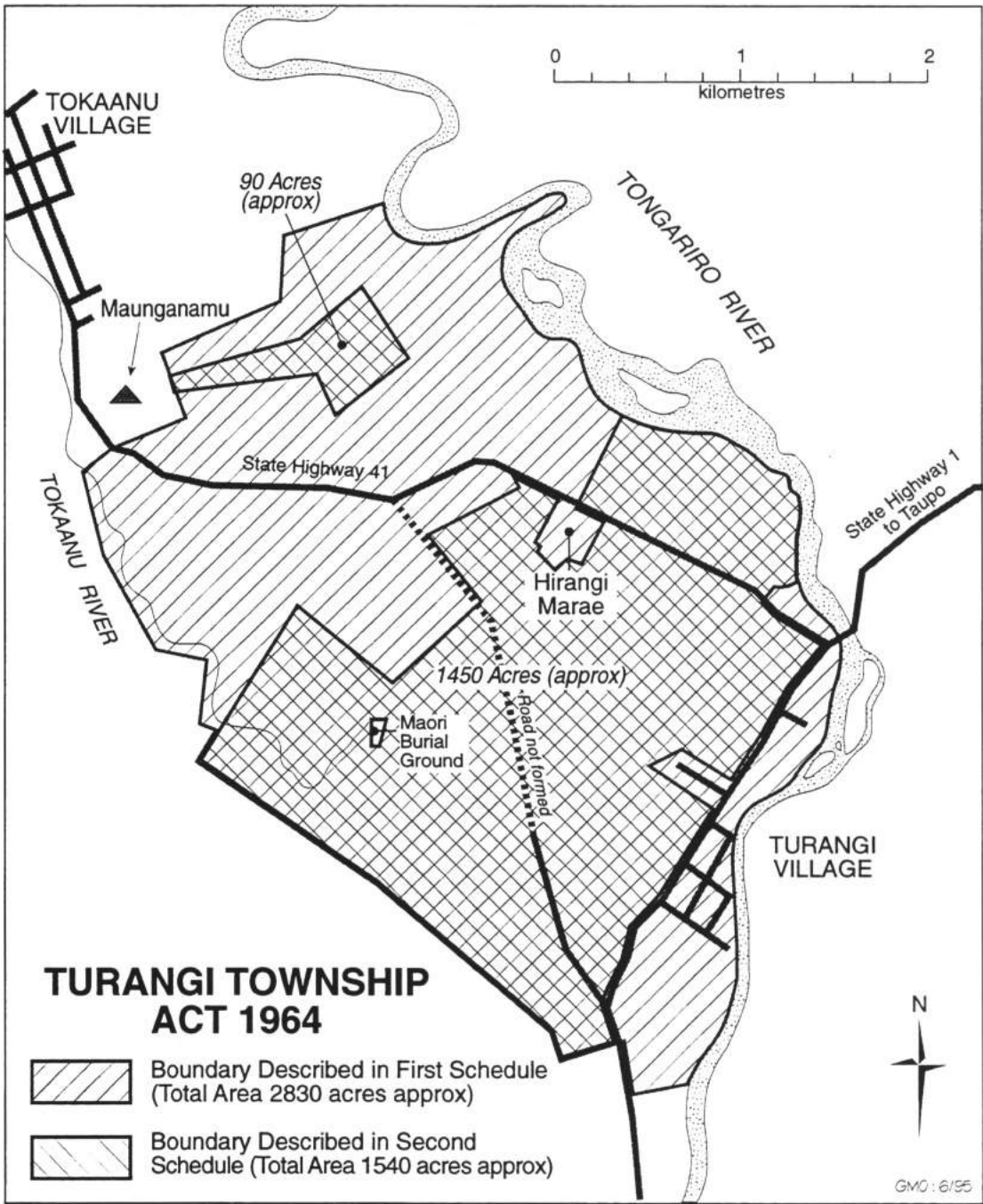


Figure 32

Briefly summarised, the Crown's power to take the claimants' land for establishing and developing the Turangi township derived from section 11 of the Turangi Township Act 1964. The land so taken was to be taken in the way prescribed by the Public Works Act 1928 for taking land for hydro power purposes. As a consequence, the Crown was under no legal obligation to notify the owners of its intention to take the land, nor did the owners have the normal rights of objection conferred by section 22 of the 1928 Act.

Other Government departments could also acquire land, but only by negotiation. If land was required to be taken, this was arranged by the Ministry of Works on behalf of the department involved.

An alternative to the taking of land by proclamation was to negotiate its purchase. As already noted, there was provision in section 32 of the 1928 Act for the Crown to enter into an agreement or contract to take or to purchase or lease land for public works. However, the Ministry of Works, in practice, normally took Maori lands by proclamation, especially blocks in multiple ownership, when such lands were required for public works. It was usually considered that negotiations with Maori owners under the Maori Affairs Act 1953, and the subsequent confirmation of sale by the Maori Land Court, introduced unnecessary delays into the procedure, which justified the use of the 1928 Act for a faster solution. On the other hand, the Department of Lands and Survey, which also purchased Maori land, had to work within the Maori Affairs Act and Maori Land Court procedures.

### **13.3 CROWN ENTRY ON LAND**

#### **13.3.1 Section 311 of the Public Works Act 1928**

Section 311 of the Public Works Act 1928 defines the powers of the Crown as to the utilisation of water power. Section 311(1) states:

- (1) The Governor-General may by Order in Council from time to time authorize the Minister for the time being charged with the administration of the Electricity Act 1945 to—
  - (a) Erect, construct, provide, and use such works, appliances and conveniences as may be necessary in connection with the utilization of water-power for the generation and storage of electrical energy, and with the transmission, use, supply, and sale of electrical energy when so generated;
  - (b) Use electrical energy when so generated in the construction, working, or maintenance of any public work, or for the smelting, reduction, manufacture, or development of ores, metals, or other substances;
  - (c) Raise or lower the level of any lake, river, or stream, and impound or divert the waters thereof;
  - (d) Construct tunnels under private land, or aqueducts and flumes over the same, erect poles thereon, and carry wires over or along any such land, without being bound to acquire the same, and with right of way to and along all such works and erections;
  - (e) Supply and sell electrical energy, and recover moneys due for the same.

There is no provision in this or in any other section of the 1928 Act expressly authorising entry on private land for water power works or purposes, although, as indicated later, such power may reasonably be implied.

The day after Cabinet approved the construction of the TPD on 21 September 1964, the Ministry of Works advised the Department of Maori Affairs in Wanganui that a temporary camp was to be set up within two days on a site on Tokaanu development scheme lands to the south of the Public Works depot on SH1. For the purpose of assessing compensation under the 1928 Act, the first official date of entry for many blocks in the Turangi township was established as 1 October 1964. By November 1966, the Crown had acquired title to most of the land required for the township. The process of taking the land by proclamation has been outlined in the preceding section. As noted below, the land was entered in the Turangi township long before any proclamation under the 1928 Act was issued. The Ministry of Works' authority to enter was ostensibly based on the Order in Council quoted earlier, which was issued in 1958 under section 311 of the 1928 Act.<sup>1</sup>

### **13.3.2 Ministry of Works instructions**

The Ministry of Works had produced a set of instructions in 1954 covering entry on any land not owned by the Crown for any purpose related to a public work, whether or not that land would subsequently be acquired (B2(a):106–112). These instructions covered the Crown's entry on the claimants' land on 1 October 1964. They were reviewed in 1965 (B2(a):113–122) and 1969 (B2(a):123–132). Briefly, no Ministry of Works officer could enter any land without proper authority confirmed by the District Commissioner of Works, and appropriate notice was to be given to the landowner(s):

Whatever the Department's legal rights may be, whether given by statute, order in council or otherwise, they must not be exercised negligently or officiously or in such a manner as to cause unnecessary annoyance or inconvenience to landowners and occupiers or unnecessary damage to property.

It should always be borne in mind that the Department may be prejudiced in all its dealings with a landowner if he is treated discourteously or without proper consideration when entry is first made on his land for survey purposes. Claimants make the most of such points in compensation claims.

... the acquisition of the site before work commences is the general policy of the Public Works Act. Moreover, acquisition of land before construction is commenced affords the Crown's assets greater protection and avoids possible causes of complaint by the landowners.

However, it is sometimes necessary or desirable to operate under provisions in the Public Works Act and other Acts that authorise entry on land for the construction of certain public works before title is acquired or without title ever being taken. (B2(a):107–108)

The 1954 instructions covered provisions in the 1928 Act for various types of works. The relevant provision for the Turangi township and the TPD was:

(j) Water-power Development (Hydro-electric Works)

An order in council under section 311 of the Public Works Act is a prerequisite to the exercise by the Minister in charge of the State Hydro-electric Department of the powers conferred by that section, some of which may be exercised without ever acquiring the land.

There is implied authority to enter upon the land required for the exercise of those powers and there is no legal requirement of notice. Courtesy notice must, however, be given by officers of this Department when carrying out any work as agent for the State Hydro-electric Department. (B2(a):110)

A similarly worded section appeared in both the 1965 and the 1969 instructions, except that in 1969 the reference to section 311 of the Public Works Act 1928 was replaced by section 11 of the Electricity Act 1968 (B2(a):119, 129).

### **13.3.3 Tribunal's comment**

It will be noted that the Ministry of Works assumed, in the absence of any express authority, that there was an implied authority for the Crown to enter land for the exercise of powers conferred under section 311 of the Public Works Act 1928. We agree that such power may reasonably be inferred but a critical question in this claim is whether a power of entry on the claimants' land can be inferred for the purpose of constructing a permanent town. Again, it may be the case that the 'works' which the Minister can construct pursuant to section 311 may extend to the construction of a temporary town to facilitate the work involved in the hydroelectric project. The Tribunal is not, however, convinced that the scope of section 311 is sufficiently wide as to encompass the construction of a permanent town and the sale of commercial, industrial, and residential sections as part of such a project. Accordingly, there must be very real doubt that the Ministry of Works had any power to enter the claimants' land for this purpose prior to the gazetting of the necessary proclamations in conformity with the provisions of section 11 of the Turangi Township Act 1964. However, claimant counsel accepted that the Order in Council made under section 311 provided the authority for the taking of, and entry on, Turangi land, as did Crown counsel. Accordingly, the extent of the implied authority to enter land under section 311 was not argued. For this reason, we reach no definite conclusion on the matter.

It is clear that the Crown had decided before its first entry on the claimants' land in October 1964 that Turangi would be built as a permanent town. The draft memorandum seeking Cabinet approval for the construction of the Turangi township was approved by the Minister of Works, P B Allen, on 26 August 1964 (B2(a):93-97). This approval included a recommendation that 'The town be constructed to permanent standards with a view to continuing existence as a permanent town' (B2(a):97). This recommendation was duly approved by Cabinet on 21 September 1964 (A7:95).

On 2 October 1964, the Minister of Works wrote to John Grace and advised that:

As regards the planning and layout of the township at Turangi, I can assure you that it is my intention to have a model town constructed on a permanent basis rather than the customary temporary village. This matter is at present in the hands of the Commissioner of Works, whose



town planning officers are now working on a town plan which will provide all features usually associated with a normal town of that size, including full services and amenities, recreation areas, etc. The emphasis throughout will be placed upon aesthetic values and provision will be made for future development of the town to follow the initial pattern. (B2(a):313)

It was apparently only after Turangi lands had been entered and site development work had commenced in October 1964 that it was appreciated that it might be unlawful to use the provisions of sections 276 and 311 of the 1928 Act for entering and taking land for water power purposes when the real intention was to develop and sell land for a permanent town. On 27 October 1964, the Commissioner of Works wrote to the Minister of Works indicating that, since no notice of intention was required, proclamations taking Turangi lands could be prepared immediately for lands which did not require survey:

You will be aware that as part of the proposal to establish the new hydro town of Turangi on a permanent basis, it is proposed to take from the Maori owners under the powers conferred by sections 311 and 274 of the Public Works Act such land as is required for the town. These sections do not require the issue of a notice of intention calling for objections so that a Proclamation taking those areas which do not need a survey can issue almost immediately.

However, I have been concerned with the taking of all this land for the development of water power without any right of objection being given (even though the representatives of the Maoris generally have agreed with [the] taking proceeding) because the Department intends to sell land with the least possible delay to private individuals to be used for the construction of private homes, shops, offices etc.

These proposals could be attacked by any of the dissentient Maori owners (and there are sure to be some) on the grounds that it is an abuse of the provisions of the Public Works Act to take land for development of water power and then sell it privately.

There is power under section 30 of the Finance Act (No 2) 1945 to take land for development and after improving and developing it for industrial, commercial or residential purposes, to lease it for long term or to declare it Crown land so that it can be sold. This power could be operated in this case but it would be necessary to issue a Notice of Intention and to call for and formally hear objections. This would take at least three or four months and work must proceed immediately. Moreover it is almost impossible to define the boundary between the land required for the workers on the hydro job and the sites to be sold for shops, offices, etc.

In the circumstances the best course seems to be to add a clause to the Turangi Township Bill empowering the taking of all the land required for the permanent township without the issuing of any Notice of Intention and the disposal of that part of such land required for commercial or residential purposes after it has been developed to a sufficient extent. (B2(a):197)

We observe that neither section 311 nor section 274 of the 1928 Act referred to in the first paragraph of this letter conferred authority on the Crown to take land by proclamation. Section 274 is apparently a misprint for section 276.

The Minister agreed with the commissioner's proposal, and section 11 was included in the Turangi Township Act 1964, which was originally intended only to provide for local government in the new town. As noted above (see para 13.1), the Crown's powers to take

the claimants' land for the Turangi township derived from section 11 of the Turangi Township Act, not from the 1928 Act. But section 11 provided that the land was to be taken in the way prescribed by the 1928 Act for water power purposes. Neither section 311 nor section 276 of the 1928 Act authorised the taking or, indeed, the entry on the claimants' land for the construction of a permanent town. Moreover, while section 11 of the Turangi Township Act 1964 clearly authorised the taking of the claimants' land for this purpose, it did not authorise any entry on such land prior to the land being taken by proclamation, when of course, such land vested in the Crown. The first of a series of proclamations taking lands under section 11 of the Turangi Township Act 1964 was published on 1 April 1965<sup>2</sup> and notices continued to appear periodically up to 1980.

It appears, therefore, that the entry of the Ministry of Works on claimants' land from October 1964 and prior to the gazetting of the necessary proclamations between 1965 and 1971 was without statutory authority.

### **13.4 WAS NOTICE OF ENTRY BY THE CROWN REQUIRED?**

#### **13.4.1 Implications of section 10(3) of the Public Works Act 1928**

As noted earlier, the Ministry of Works, in both its 1954 and its later instructions to staff concerning entry on any land not owned by the Crown for water power development, stated that there was no legal requirement of notice but that courtesy notice must be given. The Ministry no doubt had in mind that section 10(1) of the Public Works Act 1928 expressly stated that sections 22 and 23 (which provided for prior notice to landowners of, and objections by landowners to, a proposed taking of their land) did not apply to takings for water power works or purposes. In 1955 section 10 was amended by adding subsection (3), which provided that where authority is given (as is implied under section 311) to enter land and construct a public work before the land has been taken, and no other provision is made as to the giving of notice of entry, the Minister shall, where practicable, give to the owner or occupier reasonable notice of the intention to enter such land and, if so required by the owner or occupier, show her or his authority to do so. This provision was in force in 1964 and would appear to require the Minister 'where practicable' to give notice of intended entry to the owner or occupier. It may be that the Ministry considered that section 10(3) did not apply because of the exemption from the notice and objection provisions in section 22 conferred by section 10(1). The provision was not referred to by counsel and we have not reached a concluded opinion, but a 'fair, large and liberal' construction in terms of section 5(j) of the Acts Interpretation Act 1924 would indicate that section 10(3) applied to entry on claimants' land, assuming that the Crown had a right of entry prior to taking the land under section 11 of the Turangi Township Act 1964, which is highly questionable.

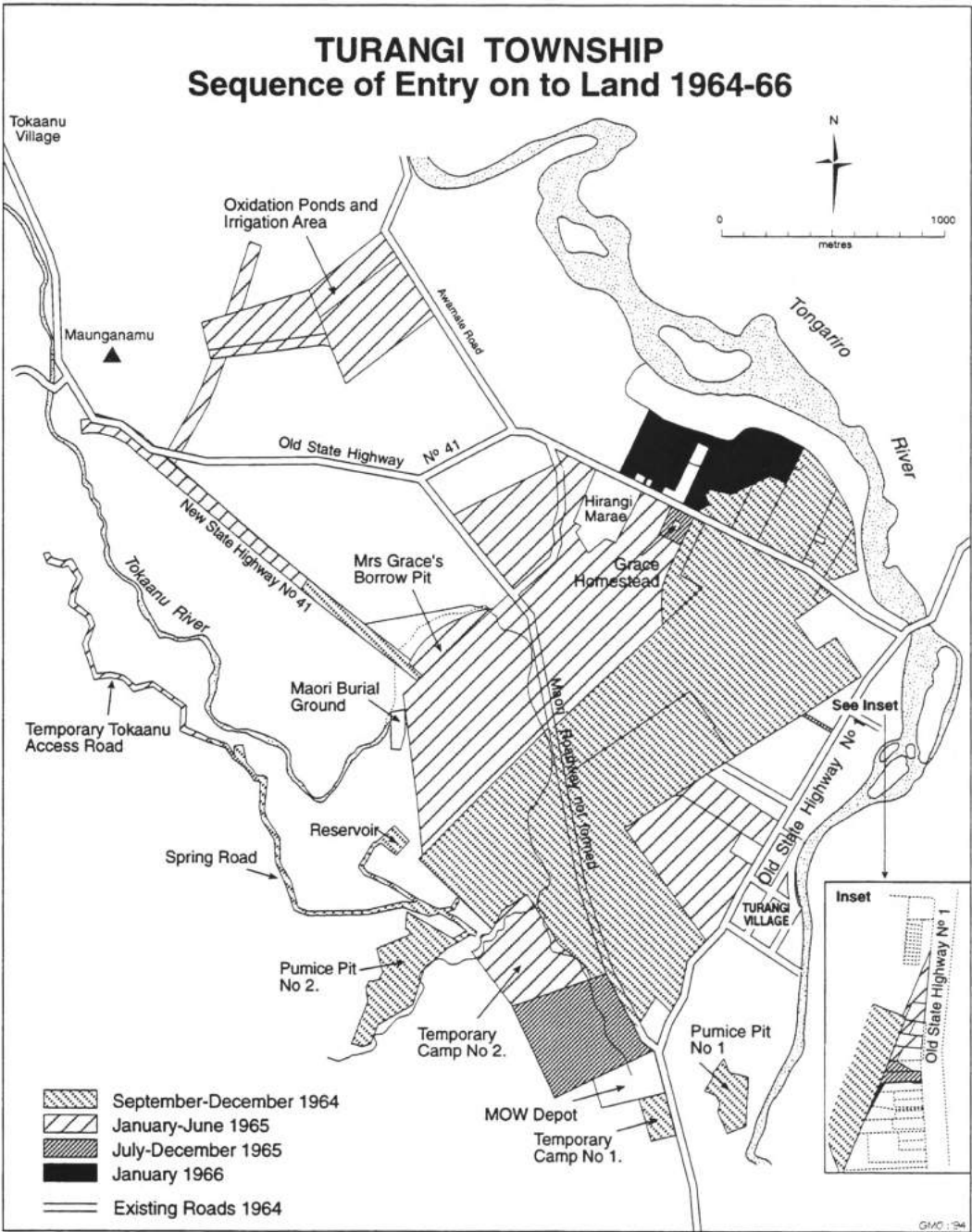


Figure 33

### **13.4.2 Notification of claimants**

During the first year or so of site development in Turangi, the Ministry of Works relied on verbal notification of entry. However, in several claimant submissions to the Tribunal, it was alleged that the first local people knew of the entry was when a bulldozer arrived. Such specific allegations are reviewed in chapter 12. John Asher, who was a member of the Tuwharetoa Maori Trust Board in 1964 and was later its secretary for many years, provided a retrospective view of the relations between the Ministry of Works and the local people. He described how Ministry officials, including the project engineer, Warren Gibson, held meetings at the trust board's offices in Tokaanu in early 1964:

The Ministry of Works explained the ramifications of the scheme, and asked if the Trust Board would help them see it through. The Trust Board was very wary about that. The Ministry of Works wanted the Trust Board to act as liaison between the Ministry of Works and the Ngati Turangitukua people and others in the district, but the Trust Board was unwilling to adopt that role. They very firmly said 'no'. They were aware that there were too many pitfalls for them in such a role, because the Public Works Act provided the Ministry of Works with power to ride roughshod over people, and the Trust Board did not want to be implicated in that sort of thing.

The Ministry of Works then went to the Maori Trustee in Wanganui to serve their notices on the owners. (A12(1):2)

### **13.4.3 The Ministry of Works' notification procedure**

In November 1965, Gibson issued his own circular to senior officers about entry on land for the Tongariro power development. By this stage, most of the Turangi township lands had been entered and taken and these instructions applied more specifically to entry on land for power project construction. In the weeks following Cabinet's approval of the TPD on 21 September 1964, most of the notifications of entry were given verbally by the Wanganui district land purchase officer, Dick Lynch (B2:59). By the end of 1965, the notification procedures were set out more specifically in Gibson's circular, with model 'courtesy letters' included to advise when land was to be entered for survey and investigation purposes, for construction work, or to be taken by the Crown. It was not considered necessary to advise all Maori owners, because many lived away from the Turangi district and the Department of Maori Affairs was unable to supply complete lists of names and addresses. In April 1966, Lynch, after discussion with various parties concerned, set out the following notification procedures:

- (1) Courtesy notices to be sent to
  - (a) Secretary Tuwharetoa Trust Board (Mr Asher)
  - (b) Members of Tribal Liaison Committee (Mr L R Grace; Mr P Hura; Mr W Ngahana)
  - (c) Department of Maori Affairs Wanganui
  - (d) Occupier of the land (if any) with the request that the PE [Project Engineer] be advised of any principal owner to whom a copy of the notice should be sent.

(2) Plans, illustrating the probable extent of the Department's operations relative to land title boundaries, to be posted up at the [Tuwharetoa] Trust Board Office Tokaanu and at Hirangi Pa. (B2(a):144)

While the notification procedures were an improvement on previous practices, the Crown was under no legal obligation to comply. Moreover, by the time they were eventually established, most of the claimants' land had already been entered and subsequently taken. In the rush of the first year or two of construction of the Turangi township, many local people did not have a clear picture of which lands were going to be affected until the bulldozers arrived on site. Figure 33 shows the sequence of entry on Turangi township lands over the period from the last week of September 1964 to January 1966. In this short period of 16 months, the Turangi landscape was transformed by the bulldozers of the Ministry of Works and its contractors. The engineering work on the ground proceeded far ahead of the legal and clerical work required to complete the procedures for Crown proclamations taking the land or to begin negotiations on the assessment of compensation for Ngati Turangitukua owners.

### **13.5 THE TURANGI TOWNSHIP ACT 1964**

#### **13.5.1 Introduction to Parliament**

The Turangi Township Bill was introduced to Parliament on 5 November 1964 by the Minister of Internal Affairs, D C Seath, who explained:

Sir, this Bill provides for special arrangements for the administration of the new township at Turangi during the construction period of the Tongariro power project. These special arrangements are necessary because of the speed of construction of the new town and because of the fact that all the work of subdivision and construction will be carried out by the Ministry of Works on behalf of the Crown. In normal circumstances the Ministry of Works remains responsible for the administration of local services within its construction towns. In most cases they are of a temporary nature and are removed after construction is completed. In this case two special circumstances apply. Firstly, the new town is being built in the midst of an existing community, and that is an important point. Secondly, although the town will serve as the construction town for the power project, it is being built to very high standards with the idea of its being retained as a permanent town on completion of the construction work. In such circumstances special arrangements are necessary to enable the Crown and local authority – in this case the Taupo County Council – to work in very close liaison during the construction period so that there will be a smooth transition to full local control at the completion of construction work.<sup>3</sup>

The Bill was principally concerned with issues of local government, and provided for the establishment of a Turangi liaison committee to administer, in association with the Taupo County Council, an area described in the First Schedule. Clause 11 of the Bill empowered the Crown to take land within areas specified in the Second Schedule (fig 32). In his introduction, Seath stated:

The Bill also confers power on the Crown to take under the Public Works Act 1938 [sic] any of the land required for the establishment of that part of the township which it will develop. The land may be taken in the same manner as for water power purposes – that is, without giving notice of intention to take the land. The need for the provision arises because the town is to be developed to permanent instead of the usual temporary standards.<sup>4</sup>

### **13.5.2 Debate on the Turangi Township Bill**

The Bill went through the committee stage on 25 November 1964. Much of the debate focused on the form of the town administration, the representation of residents on the liaison committee, and the standards of housing and amenities. In his introduction, Seath noted that the Bill ‘has been discussed with the Taupo County Council [which] is generally acceptable to it’.<sup>5</sup>

Having summarised the first 10 clauses of the Bill, which were concerned with local government matters, Seath explained the Crown powers relating to the compulsory acquisition of land:

Clause 11 empowers the Governor-General to take or otherwise acquire land under the Public Works Act 1928 in that part of the township which is to be developed by the Ministry of Works. Land for water-power purposes may be taken without notice of intention under the Public Works Act, but it cannot be taken for that purpose and then disposed of almost immediately. Some of the land taken in this case will need to be sold for residential, commercial, and industrial purposes as soon as it can be developed for those purposes, and so, as the land is essentially being acquired for the purposes of the Tongariro power project, the clause authorises the taking of the land without notice of intention in the same way as land may be taken for water-power purposes. A substantial part of the area required is Maori land. I understand that the Ministry of Works has kept the representatives of the Tuwharetoa people fully informed and has had a number of discussions with them. The land is being taken with the general agreement of the Maori people.<sup>6</sup>

The debate ended with Seath responding to the various questions asked about the earlier clauses of the Bill:

Reference has been made to clause 11, which gives special power to take or acquire land under the Public Works Act 1928 for the purposes of the township. The town is to be established on a permanent basis and the build-up to the maximum population will be a gradual process. However, it is essential that the business and residential sites should be made available to private interests as soon as possible after the construction of the town commences. The Crown cannot, under the terms of the Public Works Act 1928, acquire land and then dispose of it immediately it has been developed, and that is why this special provision is being made in clause 11.<sup>7</sup>

On 26 November 1964, urgency was granted for the Turangi Township Bill. The following day, the Bill was given a third reading with no amendment or opposition.<sup>8</sup> On 4 December 1964, the Turangi Township Act passed into law.

### **13.5.3 Turangi liaison committee**

The Turangi Township Act 1964 gave the proposed new town a special status which was outside existing local government for the time being. Local administration was to be carried out by a 'Turangi Liaison Committee' of 12 members, as described in section 5(2) of the Act:

- (a) The Chairman of the [Taupo County] Council;
- (b) Two members of the Council to be appointed by the Council, being members representing the riding of the county in which the township is included . . .
- (c) Three persons, being electors of the county having a residential qualification in respect of an address in the township, to be appointed by the Council;
- (d) Two persons to be appointed by the Minister of Works on the nomination of a welfare association recognised by him as being representative of the persons engaged on the [Tongariro Power] Development;
- (e) Two persons being officers of the Ministry of Works residing in the township to be appointed by the Minister of Works;
- (f) The engineer in charge of the Development;
- (g) The officer of the Public Service holding the office of District Electrical Engineer at Hamilton of the New Zealand Electricity Department.

Committee members were appointed for a term of three years, could be re-appointed, and could elect their own chairman.

During the debate in the House, the question of Maori representation on the liaison committee was raised. The Minister of Works, P B Allen, commented:

I hope there will be one Maori, or even two or three Maoris, appointed from those people who are nominated according to the provisions in the clause, because Maoris have had a long and happy association with the area.<sup>9</sup>

In spite of these comments from the Minister, and comments from several other members, no amendment was proposed to make specific provision for Maori representation or otherwise ensure participation by local Maori in the work of the Turangi liaison committee. However, as noted in chapter 12 (see para 12.5), some Ngati Turangitukua served on the committee by virtue of their membership of the Taupo County Council.

The functions of the liaison committee were set out in section 8 of the Act. Some of those functions were:

- to combine the interests of various sections of the township community so as to facilitate the eventual administration of the town by the Taupo County Council;
- to advise and make recommendations to the council and the Minister of Works on the administration of the town; and
- to advise and make recommendations to the council on the planning of the countryside in the vicinity of the town.

By section 12, the Turangi Township Act 1964 had an expiry date of 31 March 1975.

#### **13.5.4 Consultation with Maori over the Turangi Township Act 1964**

There does not appear to have been any consultation with Maori owners of Turangi lands about the contents of the Turangi Township Act 1964. An early version of the Bill had been sent to Jack Asher but this did not include section 11. Asher wrote to the Minister of Internal Affairs on 12 October 1964 expressing a desire to have capable Maori representatives appointed to the proposed Turangi liaison committee and suggesting possible candidates (B2(a):195). Although this letter included some references to the discussion of land requirements with Gibson, it predates the Commissioner of Works' memorandum to his Minister on 27 October 1964 suggesting that a separate clause be added to the Turangi Township Bill empowering the Crown to take land without notice of intention and dispose of it for commercial or residential purposes. The Minister of Internal Affairs regarded Asher's letter to him as 'confirmation that you have no serious objection to the provisions of the Bill' (B2(a):196). Asher had also indicated in his letter that he had just been discharged from an Auckland hospital and he gave an Auckland address, so it is likely that he was not in a position to consult widely.

In short, the Turangi Township Act 1964 provided for a form of local government for a township on Maori land, without any specific representation of Maori owners, and, in section 11, empowered the Crown to take by proclamation, without notice or any right of objection, an area of 1540 acres described in the Second Schedule (considerably greater than any figures mentioned in meetings with Ngati Tuwharetoa) and then dispose of it for the purpose of a permanent town – which the Ministry of Works had already begun to build anyway.

In Turangi, land was entered by the Ministry of Works long before it was proclaimed as taken. This was presumably done under the dubious provisions of the 1958 Order in Council under section 311 of the Public Works Act 1928 in order to construct a permanent town. The land in Turangi contained within the area described in the Second Schedule to the Turangi Township Act was taken over the period 1965 to 1971 under section 11 of the Act. Other Maori lands were taken within the area described in the First Schedule to the Act. Some, in the area of the Tokaanu Power Station and the tailrace down to Maunganamu, were 'taken for the generation of electricity'.<sup>10</sup> The water supply reserve was taken 'for a water work'.<sup>11</sup> Between 1964 and 1974, a substantial area of Ngati Turangitukua lands had been acquired by the Crown (fig 34). Within this area, only in the Tokaanu swamp lands exchange was land exchanged for land.



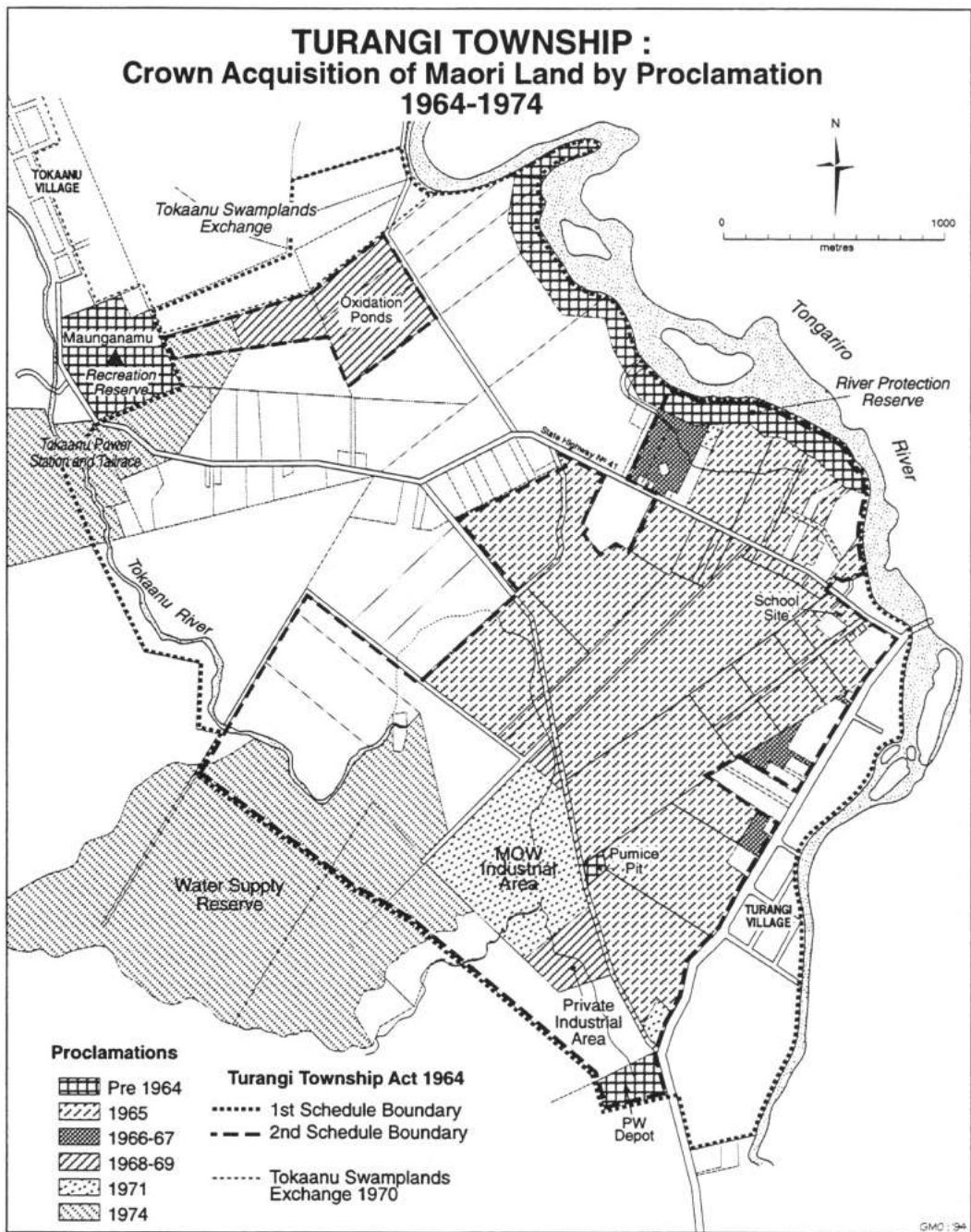


Figure 34

### 13.6 AREAS TAKEN BY PROCLAMATION

We set out here the areas of the claimants' land taken by proclamation for the purpose of construction of the Turangi township.

| No            | Acres             | Locality                                       | Year                  |
|---------------|-------------------|--|-----------------------|
| 1             | 803               | Township                                       | 1965–71 <sup>12</sup> |
| 2             | 79                | Oxidation ponds                                | 1968 <sup>13</sup>    |
| 3             | 27                | Private industrial area                        | 1969 <sup>14</sup>    |
| 4             | 101               | MOW industrial area                            | 1971 <sup>15</sup>    |
| 5             | 539               | Water supply reserve                           | 1974 <sup>16</sup>    |
| 6             | 93                | Tailrace                                       | 1974 <sup>17</sup>    |
| 7             | 23                | State Highway 41 between township and tailrace | 1980 <sup>18</sup>    |
| <b>TOTAL:</b> | <b>1665 acres</b> |  |                       |

We note that, of the 539 acres taken for the water supply reserve, 480 acres were outside the boundaries given in the First Schedule to the Turangi Township Act 1964. They are included here because the water supply reserve was needed to service the township. The 93 acres for the tailrace were inside the First Schedule boundaries. The remainder has not been included because the tailrace was part of the Tongariro power project rather than the township.

The total industrial area was larger than the figures for numbers 3 and 4 above indicate, because part of this area was taken in 1965 for the township (see fig 18). The total area occupied for the industrial area has been calculated by the Tribunal as being approximately 189 acres.

### 13.7 SUMMARY

We now summarise the statutory powers of the Crown under the Public Works Act 1928 and the Turangi Township Act 1964 which related to the compulsory acquisition of the claimants' land at Turangi.

*(1) Powers of land acquisition*

The claimants' land could be taken for the establishment or development of the Turangi township:

- without any notice to the owners;
- without any right of objection by the owners;
- without any consultation with the owners; and
- without the consent of the owners.

*(2) Crown entry on land*

We summarise here the main points relating to the Crown's entry on land:

- Under section 311 of the Public Works Act 1928, an Order in Council may authorise the Minister of Electricity to erect, construct, and provide works in connection with the utilisation of water power for the generation of electricity.
- There is no statutory provision expressly authorising entry on private land for these and related purposes.
- An implied power of entry for such purposes may be inferred for such purposes, which may well extend to the construction of a temporary town to facilitate such work, but it is very questionable whether such implied power extends to the construction of a permanent town.
- To the extent that such entry on private land is authorised by section 311 of the Public Works Act 1928, it may be effected before any proclamation taking the land is promulgated by the Crown.
- Because of doubts held by the Crown as to its legal rights to enter the claimants' land for the purposes of constructing a permanent town before it was compulsorily acquired by proclamation, section 11 of the Turangi Township Act 1964 was enacted.
- Section 11 of the Turangi Township Act 1964 authorised the compulsory acquisition of the claimants' land for the construction of a permanent town but did not authorise entry on such land prior to such acquisition by proclamation, at which time the land vested in the Crown.
- The first of a series of proclamations taking lands under section 11 of the Turangi Township Act 1964 was published on 1 April 1965 and notices appeared periodically thereafter up to 1980.
- It appears likely that the entry of the Ministry of Works on claimants' land from October 1964 and prior to the gazetting of the necessary proclamations taking the land between 1965 and 1971 was without statutory authority.

**References**

1. *New Zealand Gazette*, 1958, p 1436
2. *Ibid*, 1965, p 436

3. NZPD, 1964, vol 341, pp 3207–3208
4. Ibid, p 3208
5. Ibid, p 3804
6. Ibid, p 3806
7. Ibid, pp 3819–3820
8. Ibid, pp 3836, 3858
9. Ibid, p 3817
10. *New Zealand Gazette*, 1974, p 414
11. Ibid, pp 2132–2133
12. Ibid, 1965, pp 436, 1125; 1966, pp 1333, 1487, 1779; 1967, pp 1417, 2114; 1968, p 1744; 1969, pp 1198, 1605; 1971, pp 286, 391
13. Ibid, 1968, p 605
14. Ibid, 1969, p 1465
15. Ibid, 1971, p 1959
16. Ibid, 1974, pp 2132–2133
17. Ibid, p 414
18. Ibid, 1980, p 3751



## CHAPTER 14

# THE ASSESSMENT OF COMPENSATION

### 14.1 STATUTORY PROVISIONS

#### 14.1.1 Section 42(1) of the Public Works Act 1928

The procedures for making and determining claims for compensation were set out in Part III of the Public Works Act 1928, which provided at section 42(1):

Every person having any estate or interest in any lands taken under this Act for any public works, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the Minister or local authority, as the case may be, by whose authority such works may be executed or power exercised.

#### 14.1.2 Crown's position on compensation

An interdepartmental committee which, in 1969, had produced a report on cases of hardship arising from Public Works Act land acquisitions set out the Crown's position on compensation: 'The general principle is that the owner should be paid a sum of money which, together with the land he retains, should leave him no better or no worse off than he was previously' (B10:5). This same report set out an interpretation of section 42(1) of the Public Works Act 1928:

##### (i) The Value of the property

As compensation must be assessed on the current market value, the amount is agreed on the basis of valuations made by registered valuers for either side, ie the claimant and the Crown.

##### (ii) Injury

This must be injury to land. If the taking of the property is deemed to have a permanent injurious effect on the balance of the land, injury is assessed by registered valuers who value the property before the work commences and again after it was completed. Betterment is also assessed on 'before and after' valuations.

If the injury is temporary or physical it is generally classified as 'damage'. The compensation payable is either the amount needed to restore the property to its previous condition or the value of the property whichever is less.

(iii) Disturbance

This section presents difficulty in defining 'full compensation'. It should allow for all actual monetary losses of a non-recurring nature occasioned by dispossession due to the public work. Items include legal costs of negotiating, legal costs and stamp duty in buying a similar property, valuation costs, removal costs, forced sale of stock at a loss, the use of land for stock-piling, and interest upon compensation. These costs must be unavoidably and reasonably incurred. (B10:5)

A Ministry of Works directive to district land purchase officers in 1968 had reminded them that items under the heading 'Disturbance' had to be set out in detail: 'These are generally described as the unavoidable out of pocket expenses or loss actually or reasonably incurred by the landowners as a direct consequent [sic] of the taking of the land' (B10(a): doc 2).

#### **14.1.3 Assessment of compensation under the Public Works Act 1928**

The manner in which compensation was to be assessed was originally set out in sections 79 and 80 of the Public Works Act 1928. By 1964 these provisions had been replaced by section 29 of the Finance Act (No 3) 1944, which was to be read together with and deemed part of the Public Works Act as the principal Act.

#### **14.1.4 Section 29(1) of the Finance Act (No 3) 1944**

Section 29(1) of the Finance Act (No 3) 1944 laid down the rules for determining compensation under the Public Works Act 1928 (the principal Act):

- (a) No allowance shall be made on account of the taking of any land being compulsory:
- (b) The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller on the specified date might be expected to realize:  
Provided that the provisions of this paragraph shall not affect the assessment of compensation for any matter which is not directly based on the value of the land and in respect of which a right to compensation is conferred under the principal Act or any other Act:
- (c) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority:
- (d) Where the value of the land taken for any public work has on or before the specified date been increased or reduced by the work or the prospect of the work or by the existence or prospect of any more comprehensive public work or scheme of development or reconstruction of which the work forms part and concerning which a notice is in force under the next succeeding subsection at the time of the taking of the land, the amount of that increase or reduction shall not be taken into account:

- (e) The Court shall take into account by way of deduction from the total amount of compensation that would otherwise be awarded on any claim in respect of a public work (whether for land taken or injuriously affected or otherwise) any increase in the value of any land of the claimant that is injuriously affected, or in the value of any other land in which the claimant has an interest, caused before the specified date or likely to be caused thereafter by the work or the prospect of the work or by the existence or prospect of any more comprehensive public work or scheme of development or reconstruction of which the work forms part and concerning which a notice is in force under the next succeeding subsection at the time of the taking of the land or, as the case may be, at the time of the commencement of the execution of the work or the portion thereof that causes the damage.

The 'specified date' was either the date of publication of a proclamation notice in the *New Zealand Gazette* or the date of entry on the land, whichever was the earlier.

#### **14.1.5 Taupo County Council zoning**

For compensation purposes, the earliest date of entry by the Ministry of Works on the Turangi township lands was 1 October 1964. The value of lands to be taken had to be the market value as of that specified date. However, an immediate problem arose in relation to the status of the Taupo County Council's zoning of the Turangi township lands and how this would affect land values. Much of it had been zoned rural, adjacent to some residential areas, in the district scheme, which had become operative on 4 September 1964. On 29 September 1964, the council resolved, under section 29 of the Town and Country Planning Act 1953:

to modify the Taupo County District Scheme, Tongariro Riding Section, by substituting, in place of the operative zoning and ordinances for the Turangi locality, the zoning and ordinances necessary to make provision for public works as required by the Minister of Works in a notice given under Sections 21A and 38(13) of the Act, dated 28 September 1964 and further resolves that public notification of this intention be forthwith given pursuant to Section 30A(1A) of the Act. (B10(c): doc 33)

The proposed scheme changes were publicly notified in October 1964 and some objections were received, but not all had been heard by the end of 1965. On 9 November 1965, the Ministry of Works' district land purchase officer, Dick Lynch, wrote to the district officer of the Department of Maori Affairs, J E Cater, about the basis for valuation assessments:

I have been informed that claims are being formulated on the basis of the proposed zoning changes for Turangi as recommended for public notification by Taupo County Council on 29 September 1964. The Crown will contest any claim not based on values in conformity with the plan which became operative on 4 September 1964. If the owners are in fact proposing to claim on the basis of the new Plan I suggest that the validity of this approach be legally decided *before* claims are formulated. This could save much time and wasted effort. [Emphasis added.] (B10(a): doc 4)



A legal opinion was sought by the Maori Trustee and produced in July 1966. The issue was the status of the Taupo County Council's 29 September 1964 resolution, which predated the 1 October 1964 and subsequent dates of entry, and whether it was a finite step with some statutory force or merely the first stage of a process. The legal advice, given after consultation with a valuer, Mr Nathan, was that it was not in the interests of the Maori owners 'to advance the rather tenuous argument' of claiming a legal status for the zoning changes proposed in the 29 September resolution.

## **14.2 THE INVOLVEMENT OF THE MAORI TRUSTEE**

### **14.2.1 Statutory provision for the Maori Trustee's involvement**

The Maori Trustee was involved in the process of assessing compensation on the Turangi township and TPD lands as a consequence of section 6 of the Public Works Amendment Act 1962. This provision repealed sections 104, 105, and 106 of the Public Works Act 1928 and substituted a new section 104. The new section bestowed on the Maori Trustee the obligation to negotiate compensation where any Maori land in multiple ownership is taken under the Public Works Act 'for any public work, or is injuriously affected thereby, or suffers any damage from the exercise of the powers given by this Act'. Any Maori land vested in a single owner was excluded unless that owner specifically requested the Maori Trustee to negotiate on her or his behalf. Maori lands in multiple ownership which were already vested in trustees or in a Maori incorporation were also excluded, but trustees or bodies corporate could ask the Maori Trustee to act as an agent for them.

None of the Turangi township lands were vested in trustees. Most of the area was under the control of the Board of Maori Affairs under Part XXIV of the Maori Affairs Act 1953, and was either leasehold or still being developed in the Tokaanu development scheme. There were, however, several small blocks owned by individuals, and some of these were dealt with by the Maori Trustee. The Tuwharetoa Maori Trust Board instructed its solicitor to look after the interests of individuals who might otherwise be unrepresented, but some individual owners negotiated through their own solicitors. In practice, the Maori Trust Office ended up with by far the greatest load in negotiating compensation for lands taken and/or occupied by the Ministry of Works under the Turangi Township Act 1964. In addition, the Maori Trustee also negotiated compensation for many of the blocks taken or affected by the TPD. The work was mainly carried out by the Maori Trust Office of the Department of Maori Affairs in Wanganui, under the direction of J E Cater. The details of the negotiation process and the relationship of the Maori Trustee, Department of Maori Affairs, and Board of Maori Affairs are outlined in para 14.3.

#### **14.2.2 Form of compensation**

Compensation was usually paid in money. However, in section 99 of the Public Works Act 1928, there was provision for the Governor-General to grant any Crown land in satisfaction of compensation payable under the Act, provided such land did not exceed the value of the land taken or the sum payable in compensation.

#### **14.2.3 Procedure for claiming compensation**

Once land had been proclaimed as taken by the Crown and a notice to this effect had been published in the *New Zealand Gazette*, the landowner(s) had five years within which to lodge a claim in writing with the Ministry of Works for compensation. If the land was not actually taken but suffered some damage because of the public work, claims had to be lodged within 12 months of the completion of the work, or the relevant portion of it (s 45). However, section 63 of the Statutes Amendment Act 1939 authorised the Supreme Court to extend this period to up to five years in respect of land injuriously affected. Once a claim was made, the Ministry of Works made an offer, which could be subject to further negotiation before agreement was reached. If no agreement were reached, the matter could be taken to the Land Valuation Court (s 54).

#### **14.2.4 Interest rate on compensation**

The interest rate on compensation moneys was assessed by the Ministry of Works at 5 percent from the date of entry and appears to have been added to all compensation payments. On 29 January 1969, counsel for the Maori Trustee claimed interest at a rate of 5 percent up to 6 February 1967 and thereafter at 6 percent, in accordance with a recent decision of the Land Valuation Court (B10(a): doc 5).

Any rates or mortgages outstanding on land taken could be deducted from compensation moneys. The Crown became liable for rates from the agreed date of entry, but outstanding rates before that date were deducted and paid by the Maori Trustee, or a solicitor acting for a sole owner, on the basis of information supplied by the Taupo County Council (B10(a): doc 5). Section 94 of the Public Works Act 1928 provided that compensation money, on the application of the mortgagee, could be assigned in payment of a mortgage. The authority to pay interest and deduct charges such as outstanding rates, mortgages, insurance premiums, and so on was contained in a Cabinet approval dated 19 January 1949 (B10(a): doc 1).

#### **14.2.5 Ministry of Works policy on compensation**

There was no statutory prohibition on negotiating compensation prior to entry or proclamation. In Turangi, entry predated the formal notice of proclamation in every case. In some cases, the land was occupied but not taken, although it was subject to claims for compensation for damage and requirements for restoration, rental for use, and so on. It was Ministry of Works policy to delay the negotiation of compensation until after proclamation

(in the case of lands taken) or the completion of the construction work (for the assessment of damage or injurious affection, or betterment, and disturbance).

The question of delay in the making of compensation payments provoked a resolution urging that all land taken under the Public Works Act 1928 be paid for before work commenced being put to the headquarters of the National Party. In January 1967, the Minister of Works, P B Allen, responded. After noting that Ministry of Works policy was 'to deal promptly with payments' and that in approximately 2000 transactions per year there were very few complaints, the Minister commented:

The suggestion contained in the resolution is one which cannot be adopted in those instances which often occur where a portion of a property is required for a public work and the effect of the completion of the work cannot be foreseen before work commences. In these instances the assessment of compensation is deferred at the request of the land owner until the work is completed and the full extent of the loss or damage can be properly estimated.

In the situation where it is necessary to commence work before compensation can be assessed, I arranged with the Commissioner of Works that land owners in appropriate cases should receive advance payments of compensation when their loss occurs, with full rights preserved for the final amount to be arranged by agreement or assessed in accordance with the provisions of the Public Works Act. (B10(a): doc 2)

#### **14.2.6 Compensation payment procedure**

In July 1966, Dick Lynch advised the Maori Trustee that he would recommend advance payments on the Turangi township lands of up to 90 percent of the Government valuation: 'It is left to you to make specific application in respect of each title' (B10(a): doc 4). By the end of August 1966, the Maori Trustee had lodged the relevant claims for blocks gazetted in 1965, and advance payment for some blocks was made by the Ministry of Works to the trustee on 18 October 1966. On other blocks, more information was requested and supplied, and another advance payment was made on 27 January 1967. On 23 February 1967, an advance payment was made on the Grace farm lease. Final settlement of the first group of claims was made in August 1968, when payment was made to the Maori Trustee for distribution to the beneficial owners of lands in multiple ownership. Some sole owners of small sections had had their claims settled earlier.

Some claims dragged on into the early 1970s before final settlement. Once payment was received by the Maori Trustee, the money was distributed to the owners by way of credit on individual beneficiary cards and it was paid out in the same way that other moneys were disbursed from the Maori Trust Office.

#### **14.2.7 Additional compensation**

Section 6 of the Public Works Amendment Act 1970 introduced the concept of 'additional compensation' to provide a solatium of \$500 for the owner of any residential land taken containing a dwelling. In addition, a grant of up to \$1000 or a loan over \$1000 could be made if, solely through want of means and age or infirmity, a person entitled to compensation were unable to establish themselves suitably in another residence of comparable standard (B10(a): doc 2). By 1970, however, most of the Turangi compensation claims had been settled and this provision came too late to benefit any local people who had been dispossessed from their homes.

#### **14.2.8 Review of outstanding Ministry of Works commitments in 1967**

In a review of outstanding commitments in his district for the Commissioner of Works in September 1967, Lynch put those Turangi township land takings with the date of entry of 1 October 1964 at the top of his list:

Approx 80 titles affected.

Early delays in survey work and general job pressure.

Dept ready to negotiate since December 1966. Owners valuations believed now finalised but MT [Maori Trustee] seeking further instructions from owners. (B10(a): doc 2)

There were also other areas occupied from 1965 on, both in the Turangi township area and in the TPD (another 120 titles), which needed to be dealt with but for which compensation could not be assessed until the land was vacated by the Crown and restoration work was completed. This made a total of some 200 Maori titles involved with the Turangi township and the TPD. In addition, there were only five claims under negotiation which involved 'European owners and [miscellaneous] claims' (B10(a): doc 2). In the report accompanying this list, Lynch commented:

Perhaps the most troublesome problems involve Maori land, where multiple ownership, plus the restrictive conditions under which the Maori Trustee operates, contribute to the sometimes lengthy delays between commitment and settlement. (B10(a): doc 2)

In the next section, we consider how the Maori Trustee and the solicitors acting for the owners proceeded with their onerous and protracted task of negotiating compensation with the Ministry of Works.

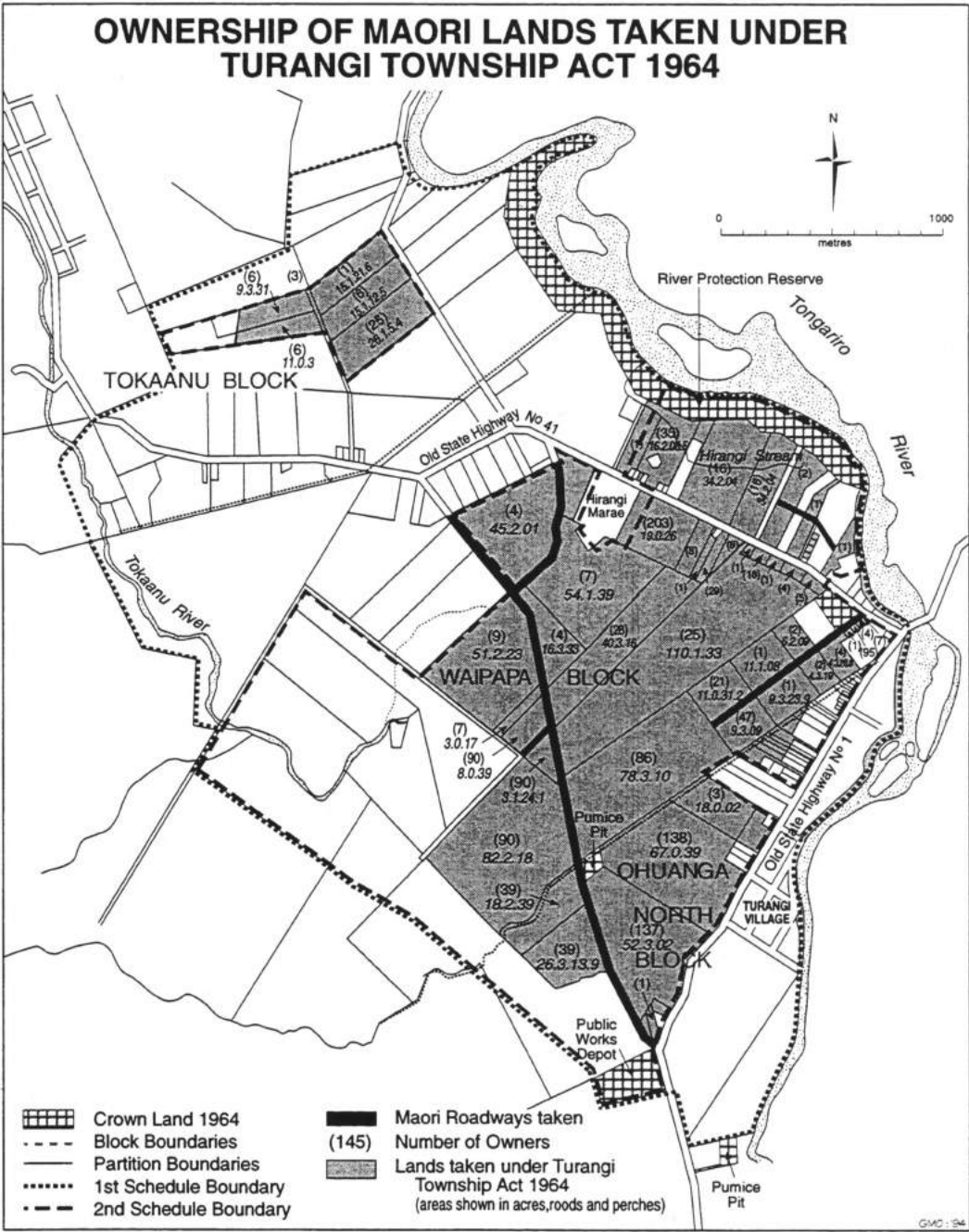


Figure 35

## **14.3 COMPENSATION FOR LANDS TAKEN IN 1965 AND 1966**

### **14.3.1 Standard procedure**

The standard procedure before negotiating compensation for lands taken by proclamation under the Public Works Act 1928 was for the Ministry of Works to compile information on the value of the land taken and make the first offer. Each block had to be assessed individually (see fig 35). A survey would possibly have been made for the preparation of the proclamation plan, but other title details would also need to be checked. The Ministry of Works appointed a valuer, either the Valuation Department or a private valuer, or both. When the valuers' reports were in, along with engineering reports indicating the nature of the work done on the land or on any adjacent lands which were not taken but which were occupied, modified, or otherwise affected in any way, the district land purchase officer was in a position to make an offer of compensation. Meanwhile the owner (or owners), or a representative acting as agent, had to lodge a claim for compensation with the Ministry of Works. Normally, a separate valuation would be commissioned on the owner's behalf, as well as title details and any other relevant information. Once this was put together and lodged with the Ministry of Works, negotiations began. The Maori Trustee had statutory responsibility under the Public Works Amendment Act 1962 to act on behalf of the owners of Maori land in multiple ownership. Sole owners of Maori blocks were, in many cases, represented by other solicitors, but they all worked closely together to represent the interests of the Maori owners of the Turangi township lands within the limitations of the Public Works Act 1928 and related legislation.

### **14.3.2 Valuers appointed**

On 13 October 1964, Dick Lynch asked J Morgan of Bernie Coombes and Wilson of Palmerston North to act for the Ministry of Works 'in valuing the various properties comprising the new Turangi Township Area' (B10(a): doc 10). On 14 January 1965, Lynch also asked the Valuation Department in Hamilton to provide special valuations for compensation purposes, noting that the Ministry had 'engaged the services also of a private valuer Mr J Morgan . . . with whom any information and data may be exchanged' (B10(b): doc 10). The Hamilton manager of the Valuation Department sought clarification of the extent of the area likely to be required by the new town and the TPD. At this stage, the schedule provided included only those blocks included in the 1965 *New Zealand Gazette* notices of proclamation taking lands for the Turangi township.

The manager was concerned that his valuer:

will be faced with piecemeal valuation over a long period of time as your Turangi project develops, and during that time land characteristics will alter and valuations based on original state, and conditions ruling as at date of proclamation, will become more difficult to assess. (B10(b): doc 10)

The District Commissioner of Works in Wanganui responded prophetically on 22 April 1965:

If only I was in a position to define the areas in question at this stage many problems would be solved. Unfortunately the construction authorities cannot supply this data. . . .

I can well appreciate the difficulties . . . fortunately the aerial photographs will help to establish conditions prior to entry. Like you, I am not at all happy with the way construction is outpacing land definition, and I foresee endless complications.

Please be assured of our cooperation in what promises to be a rather sticky problem for all concerned. (B10(b): doc 10)

J E Cater, who was also responsible for Maori Trust Office administration in his district, was concerned about dealing piecemeal with lands to be taken. He wrote to the District Commissioner of Works on 10 December 1965 about the Turangi township lands:

As you know, the areas occupied by the Crown have not yet all been the subject of proclamations. In addition, some areas other than those originally contemplated have been occupied. Beyond that again, we understand that certain areas will be needed for future purposes.

It is going to be very difficult if we are going to wait for proclamations before valuations are made.

So that we will not be prejudiced in our claims, it would be appreciated if you would agree that our cost of valuing all land included in the Turangi Township Act and also all land included in the plan you showed us as outlining the areas likely to be taken in the future, can be accepted as a normal charge against the project. (B10(b): doc 10)

Dick Lynch replied that, as the Ministry of Works' district land purchase officer, he had 'no authority to accede to your request' and suggested that it would be 'pointless' to obtain valuations for blocks which might not be taken (B10(b): doc 10). At this stage, only some of the lands in the Turangi township area had been proclaimed as taken. More proclamations were issued in 1966. The oxidation ponds area had been entered in February 1965 but the blocks affected were not proclaimed until 1968.

#### **14.3.3 Payment of professional fees**

The payment of legal and valuation fees was an issue that remained throughout the negotiations. The Ministry of Works' position was expressed in a memorandum to district land purchase officers in September 1967:

There are many occasions when the Crown is prepared to meet out-of-pocket costs unavoidably incurred by a land-owner as a consequence of the acquisition of his property for a public work. It is not an obligation of the Crown to meet excessive demands, or to pay in full the actual fees charged by professional consultants for services to their clients. This is supported by Land Valuation Court decisions and judgments. (B10(a): doc 2)

When pressed for clarification of the Ministry's policy on the payment of professional fees, Lynch wrote to the Tuwharetoa Maori Trust Board's solicitor on 17 May 1968 setting this out:

## *The Assessment of Compensation*

Legal: A reasonable contribution towards legal fees, appropriate to the circumstances of each case, will be made.

Valuation: As for legal fees providing such fees were reasonably incurred and that the valuation report was properly prepared and the details were freely made available to the Crown in negotiations.

Note: Costs and fees based on the higher scales appropriate to Court proceedings are not admissible in negotiated settlements. (B10(a): doc 5)

When pressed further, Lynch replied on 29 May:

With regard to valuation fees, my instructions are that before payment of valuation fees can be approved, it is necessary that the Land Purchase Officer should know not only that a valuation was made, but that it was properly prepared, presented and used in negotiations, and that details were freely made available to the Crown in reaching a settlement. Any valuation made solely and confidentially for the benefit of the Claimant is considered to be his property and liability. (B10(a): doc 5)

### **14.3.4 Role of the Maori Trustee**

The Maori Trustee had a statutory responsibility to negotiate compensation for Maori land in multiple ownership but the trustee could not act until after a proclamation taking the land was published in the *New Zealand Gazette*. The trustee appointed C I Patterson, of the Wellington legal firm Watts Patterson, to represent him in the Turangi township land compensation negotiations. The Tuwharetoa Maori Trust Board was concerned that all Maori owners should have adequate legal representation and asked the board's solicitor, R E Tripe, of the Wellington firm Hadfield Peacock and Tripe, to undertake this task. (After Tripe's death, Russell Feist, who had become a partner in the same firm, took over the role of solicitor for the board in 1967 and inherited the Turangi township land compensation negotiations.) On 22 September 1965, Tripe wrote to Dick Lynch explaining who was representing whom in these negotiations:

The Tuwharetoa Trust Board, acting for the owners, has instructed the writer to represent all owners who do not specifically instruct other Counsel. This general instruction was given to us for the protection of Maori owners in general, who look to the Board to secure their representation.

In addition to the above we have received specific instructions from many owners, but a number of others have relied on the Board to instruct us.

Apart from those of our clients who own interest in severalty, there are a good many who own land in multiple ownership, and these also wish us to safeguard their interests, notwithstanding that they have to be represented in terms of the legislation, by the Maori Trustee. We approached the Maori Trustee some little time ago with regard to this aspect of the matter, and he has arranged with Mr Patterson that, in those cases in which the writer's clients have an interest in multiple ownership, Mr Patterson shall act in conjunction with the writer as Counsel in any negotiations for settlement or in the prosecution of any claims.



In consequence of the above arrangement settlement proposals should be referred to the writer as well as to Mr Patterson except in cases where the writer can indicate to you that he has no interested clients.

Mr A G Horsley of Wanganui acts for a number of owners . . . He has promised to write to us giving a list of the owners concerned . . .

We rang Mr Corry of Le Pyne & Co, Taupo, this morning and he confirms he acts for Mr Arthur Grace Senior and Mr Fearon Grace. He appears to have no other specific instructions at the moment.

Both Mr Horsley and Mr Corry are adopting the valuers whom we have instructed . . . Since the same valuers are acting not only for owners in severalty, but also for the multiple owners represented by the Maori Trustee, it may be some little time before the valuations are to hand.

The Tuwharetoa Trust Board has instructed us to employ Messrs Corby, Ashworth and Nathan to value on behalf of all Maori owners in severalty, and has undertaken responsibility for valuation fees in the first instance, subject to recouping itself out of compensation moneys. We have accordingly instructed these valuers to value all interest in severalty at the same time that they are valuing multiple interests for the Maori Trustee, who has also instructed them. It is these arrangements which have been adopted by Messrs Horsley and Corry but we should like you to note that their instructions do not include the valuation of the leasehold interest of Mr Arthur Grace Junior, which Mr Horsley arranged separately. (B10(a): doc 4)

Tripe also offered to contact the solicitor for two other individual Maori owners to suggest that they join with these arrangements. Tripe considered that this would 'enable us to fulfil our responsibilities to the owners in general as a result of our instructions from the Tuwharetoa Trust Board' (B10(a): doc 4).

Lynch's response to Tripe's letter was to write to J E Cater on 8 November 1965 for clarification in procedures:

My instructions require that negotiations in all cases of Maori land in multiple ownership must be conducted with the Maori Trustee, for whom I understand Mr Patterson will be acting in this matter. Would you kindly advise whether any variation in our normal procedure of negotiating through you is proposed. (B10(a): doc 4)

The response from the Maori Trust Office in Wanganui on 30 November 1965 was:

I confirm that negotiations in all cases of Maori land in multiple ownership must be conducted with the Maori Trustee. The Maori Trustee will take the necessary steps to ensure that Mr Tripe is informed of progress in the appropriate cases. (B10(a): doc 4)

A perusal of the Maori Trustee's files suggests that Cater worked closely with Tripe, his successor Feist, and the Tuwharetoa Maori Trust Board. Patterson, acting for the Maori Trustee, also maintained regular contact with the Wellington-based solicitor for the trust board.

#### 14.3.5 Block description problems

A great deal of preliminary work had to be done by the Maori Trust Office. When a proclamation to take land was published in the *New Zealand Gazette*, it included a schedule of the blocks to be taken and gave a reference to a plan on which the area of land affected was shown. Many of these proclamations listed only the parent block, or part of it, and did not give the full title descriptions held in the Maori Land Court's records. For example, the following description was included in the schedule of a proclamation published in the *Gazette* in 1966:

All that piece of land containing 16 acres 2 roods 8.5 perches situated in Block X, Puketi Survey District, Wellington RD, being part Waipapa 1F; as the same is more particularly delineated on the plan marked MOW 20675 (SO, 26596) deposited in the office of the Minister of Works at Wellington, and thereon coloured orange.<sup>1</sup>

The records in the Maori Land Court for Waipapa 1F (see fig 16) would have shown, when the plan was compared to the court titles, that the parent block had been partitioned and only part of it was being taken, but that the part coloured orange comprised (A6:3):

|              |          |          |         |             |           |
|--------------|----------|----------|---------|-------------|-----------|
| Waipapa      | 1F3A2    | 6 acres  | 2 roods | 24 perches  | 1 owner   |
| Waipapa      | 1F3B2A   | 0 acres  | 1 rood  | 0 perches   | 1 owner   |
| Waipapa      | 1F3B2B1  | 0 acres  | 1 rood  | 0 perches   | 2 owners  |
| Part Waipapa | 1F3B2B3B | 16 acres | 2 roods | 8.5 perches | 35 owners |

In such a case, the statutory requirement was that the Maori Trustee, having searched the court records, would find that her or his authority only included the part owned by the multiple owners. The sole owners of the house sites could request the trustee to act for them or each could choose to be represented separately by a solicitor.

Tripe, who was acting for a number of sole owners, had already complained politely about the difficulty he was having in interpreting the 1965 *Gazette* notices. He wrote to Lynch in September 1965:

This arises from the fact that many of the descriptions do not coincide in area with the Maori Land Court search notes, and are stated with reference to a number of Survey Office and Ministry of Works plans. You were kind enough to say that you would endeavour to arrange for the supply to us of copies of the plans in question and we should be most grateful if you would do this at your earliest convenience.

We should also be grateful if you could refer us to any future Proclamations as soon as they issue, and, if they also contain similar oblique references to the descriptions of the land, we should be most grateful if you could obtain us copies of the plans in question. (B10(a): doc 4)

Without a copy of the relevant plan, neither solicitor nor owners could know for certain what land was being taken just by reading the 'oblique references to the descriptions of the land' in a *Gazette* notice of proclamation.

The work of the Maori Trustee was unnecessarily prolonged by the Ministry of Works' continuing habit of describing lands taken by proclamation without reference to Maori Land Court titles, including the relevant block references:

In dealing with these matters the Maori Trustee has found that the Ministry of Works does not issue proclamations on the basis of Maori Land Court titles, their gazettings being based on the Land Transfer Titles. Consequently considerable research has been found necessary to ascertain the actual Maori lands affected by the proclamation. In some cases the partitions have resulted in sole ownerships in which cases the Maori Trustee has been obliged not to act for the sole owner unless requested to do so. Consequential adjustments were necessary to obtain valuations of the partitioned areas. Some expedition has been required in these matters because claims have to be lodged within five years of the land being taken or one year from the execution of the works for damages. (D12)

By the time this comment was written in late 1971 as part of a general review of Maori Trustee negotiations over the Turangi township lands and the TPD, there had been 12 separate proclamations taking land within the area described in the Second Schedule to the Turangi Township Act, and numerous others related to TPD works, roads, river protection works, and miscellaneous purposes, such as a 'Post Office Repeater Station'. In addition, there were numerous notices of entry for pumice or metal extraction, workers' camps, a rubbish tip, construction work areas, a water supply intake, a reservoir and pipelines, stopbanks, and so on. Each title in a block, including every partition, had to be inspected and reported on individually, valuations had to be obtained, and title details and ownership lists had to be checked. As noted earlier, there were over 200 Maori titles affected by the construction of the Turangi township and the TPD, and the Maori Trustee was involved with the compensation for a large number of them.

#### **14.3.6 Valuations received for land taken between 1965 and 1966**

By June 1967, Patterson had received the valuation reports for all the Maori blocks in multiple ownership taken by proclamation during 1965 and 1966. Subsequently, Cater sent out a form letter to owners on 28 July 1967 informing them of the amount the Maori Trustee had been advised to claim and explaining the procedures to be followed (B10(c): doc 21).

#### **14.3.7 Concern over additional areas required**

By late 1967, there was concern among owners about the additional areas required by the Ministry of Works. Cater decided to organise a meeting on 3 March 1968 with Ministry of Works officials present to answer questions. Much of this meeting was taken up with a discussion of the controversial proposed taking of the industrial area and water supply reserve (see para 6.10). However, Lynch also took the opportunity to outline the negotiation process so far and also to lay some blame for the delays on the Maori Trustee:

In the first place the surveys necessary to complete the legal actions took us quite a lot longer than we had anticipated and that was one reason why as yet no finality has been reached. In the second place I can say it wasn't until Thursday of this week that I received the formal statements of claim from the Maori Trustee and statements of claims from the solicitor who represents most of the sole owners. So far I have had no opportunity of checking those with my own valuation advice which I might say has been in my hands for over twelve months. So I think you will concede that all the delay has not been due to the Crown's attitude. In all cases where land has been taken and where requests have been made by the proper authorities for advance payments these have been readily made. I think I can qualify that by saying that in one case we had to decline it because the owner concerned had not vacated the land. But other than that there has been no case where an advance payment has been refused. If you haven't had those advances then I can only say it is not the fault of the government. (B10(a): doc 21)

#### **14.3.8 Compensation negotiations**

On 23 February 1968, Patterson lodged a schedule of compensation claims with the Ministry of Works for 40 separate titles, all Maori lands in multiple ownership in the Turangi township, which were included in the *Gazette* notices published on 1 April and 15 July 1965 and 25 August and 26 September 1966. The accompanying letter stated, among other things:

As all these claims are necessarily inter-related, the Maori Trustee is not prepared to settle some of them only leaving others to go to Court. If we are unable to reach a settlement of the lot, we would be willing to give consideration to the selection of test cases by agreement between us and to defer consideration of the other cases until we have the results of those hearings. Naturally if we are unable to reach agreement before litigation of any of the claims, the Maori Trustee will desire to review all the claims in the light of the litigation. Accordingly this letter and the schedule are put forward as a proposal for settlement for a global sum of \$189,948.00, being the total of the amounts shown in the schedule, made without prejudice. (B10(a): doc 5)

On 28 February 1968, Feist lodged a schedule of compensation claims with the Ministry of Works for 14 separate titles, many of them residential sections of less than one acre and all owned by individual Maori; a total of 13 names were listed. The accompanying letter stated that the claims totalled \$49,260 and the offer to settle for this sum was made subject to the same conditions as were made by Patterson (B10(a): doc 5).

The Ministry of Works did not accept all the Maori Trustee's claims and further negotiations occurred over several months before a revised schedule was submitted on 11 December 1968 for 14 titles (B10(a): doc 5). Substantial agreement on all the Maori Trustee's claims for compensation for land taken was reached by the end of January 1969.

Some indication of the nature of the negotiations over compensation can be derived from the following extracts from an account of a meeting compiled by Cater:

On 11 July 1968 I attended a meeting in the office of Mr Patterson, solicitor of Wellington, at which were present Messrs Lynch and Morgan (representing Ministry of Works), Mr

Nathan (Valuer), Mr Patterson and myself. The objective was to try and obtain finality on those blocks for which compensation had not been finally determined.

The argument relating to Waipapa 1F3B2B3B revolved around a deduction from 2 acres which Mr Lynch said had been excluded from the proclamation and enabled the owners to have 2 sections fronting a tarsealed highway available for connection to all township services available for sale. After some haggling as to the value to be placed upon the sections it was finally decided that a sum of \$5,150 be accepted in settlement.

It was soon obvious that there were fundamental differences between the valuers and there was such an element of rigidity on the part of Mr Lynch that further progress became almost impossible . . .

The claims in respect of Waipapa 1E2B5A and 1E2B5B were linked by the Crown and related to an adjoining piece of similar area which had already been settled. Much of the argument turned upon the zoning and the valuation set by Mr Nathan on the basis of deferment for a period of 6 years. Because it was impossible to get Mr Lynch to move on this point Mr Patterson considered that there was not much point in having any further negotiations. This upset Mr Lynch quite considerably, who took the view that Mr Patterson was merely trying to break up the meeting. However, this was not the case. It was finally agreed that these two blocks should be left for further consideration.

Mr Lynch was not prepared to make any move in respect of Waipapa 1E1B or 1E1D. He insisted that because of settlement of adjoining blocks he could not agree to payment on an acreage basis of any more than was paid for these other blocks. Mr Nathan tried to explain that the configuration, shape and areas of blocks affected the number of sections that could be obtained, their cost of development, and consequently their ultimate value. This was brushed aside by Mr Lynch and Mr Morgan, who insisted that their settlements already made must be taken into account as 'comparable sales'.

The final break came on Waipapa 1E2B4 where Mr Nathan was invited to provide his evidence of comparable sale to decide a price of \$2,100 as against a Crown valuation of \$1,700. At this stage Mr Nathan produced his comparable sales but Mr Lynch argued that circumstances of the sales were set and he would not accept them. There were some heated remarks at this stage concerning Mr Lynch's inflexibility and it was suggested that he was not prepared to negotiate at all but his idea of negotiation was our acceptance of his valuation.

It was fairly obvious that Mr Lynch's method of valuation was on a 'comparable value per acre', whereas in each case Mr Nathan had inspected the land, drawn up what he considered to be a reasonable form of subdivision and valued accordingly.

Although Mr Patterson suggested to Mr Lynch that the only thing was litigation it was decided that we would not press for the moment but would leave Mr Lynch to chew his attitude over in the hope that he would make further approaches to us. However, my personal view is that we should avoid litigation right up to the last ditch, and Mr Patterson in private conversation with me afterwards inclined to agree.

In the event of any approaches or suggestions from Mr Lynch the matter is to be referred to me personally to deal with. Our outward attitude must be that we are quite prepared to litigate but we should not push this to the stage where Mr Lynch makes no further effort to settle. (D12)

## **14.4 AGREEMENT REACHED**

### **14.4.1 Length of time for final settlement**

Agreement was eventually reached, after protracted negotiations, on the compensation to be paid to owners. It is likely, however, that many of the owners did not fully comprehend the process that was being carried through by the Maori Trustee on their behalf. As well, the time lapse between the Ministry of Works entering the land and the eventual final payment by the Maori Trust Office was at least three years for most blocks, and some owners had to wait four years for final settlement. In the case of the blocks taken for the oxidation ponds, it was seven years.

### **14.4.2 Maori Trustee's continuing work**

The Maori Trustee's task was by no means complete with the settlements made by 1969 (fig 36). In September 1971, R C J Mainwaring, of the Maori Trust Office in Wanganui, summed up the large amount of work that still remained to be done in carrying out the obligations of the Maori Trustee in relation to the Turangi township and the TPD:

- (a) Claims for compensation for lands already proclaimed and valued but not satisfied.
- (b) Payment of valuation fees for cases already settled.
- (c) The assessment of the value of metal and pumice taken and the establishment of a claim therefor.
- (d) The limiting of proclamations affecting lands required for the establishment of Turangi Township, the principle being that the Ministry of Works are not to take lands outside those originally proclaimed for the said Township.
- (e) Claims for loss of revenue of [Tokaanu] Development [scheme] lands. The principle involved here is that land in production has been occupied by Ministry of Works without payment, whether or not the lands are eventually returned. An assessment has been made but no payment received.
- (f) The breaches of the covenants of the lease taken over by the Crown from A L Grace, the Crown merely replacing Grace as lessee and being therefore responsible for compliance with the covenants of the lease. The Board of Maori Affairs has a responsibility to the owners in the same manner as for any other Part XXIV/53 lease.
- (g) Claims for compensation for lands proclaimed but not yet valued.
- (h) Claims for lands not taken by proclamation, but entered, used, restored, and regressed.
- (i) Inspection of lands entered so as to establish state of the land prior to entry and eventual proclamation. Who is to pay for these inspections? Ministry of Works has affirmed that no regard will be had for these costs unless and until the proclamations issue, and then only if the Maori Trustee's valuations are seen by them.
- (j) Claims for injurious affection and/or loss of revenue of Part XXIV/53 leaseholds, such as L R Grace, A L Grace, Mrs Grace and Mrs Church.
- (k) Claims for Maori lands affected by the tailrace. Also to be considered in this category are the leases of L R Grace and Mrs Church. (D12)

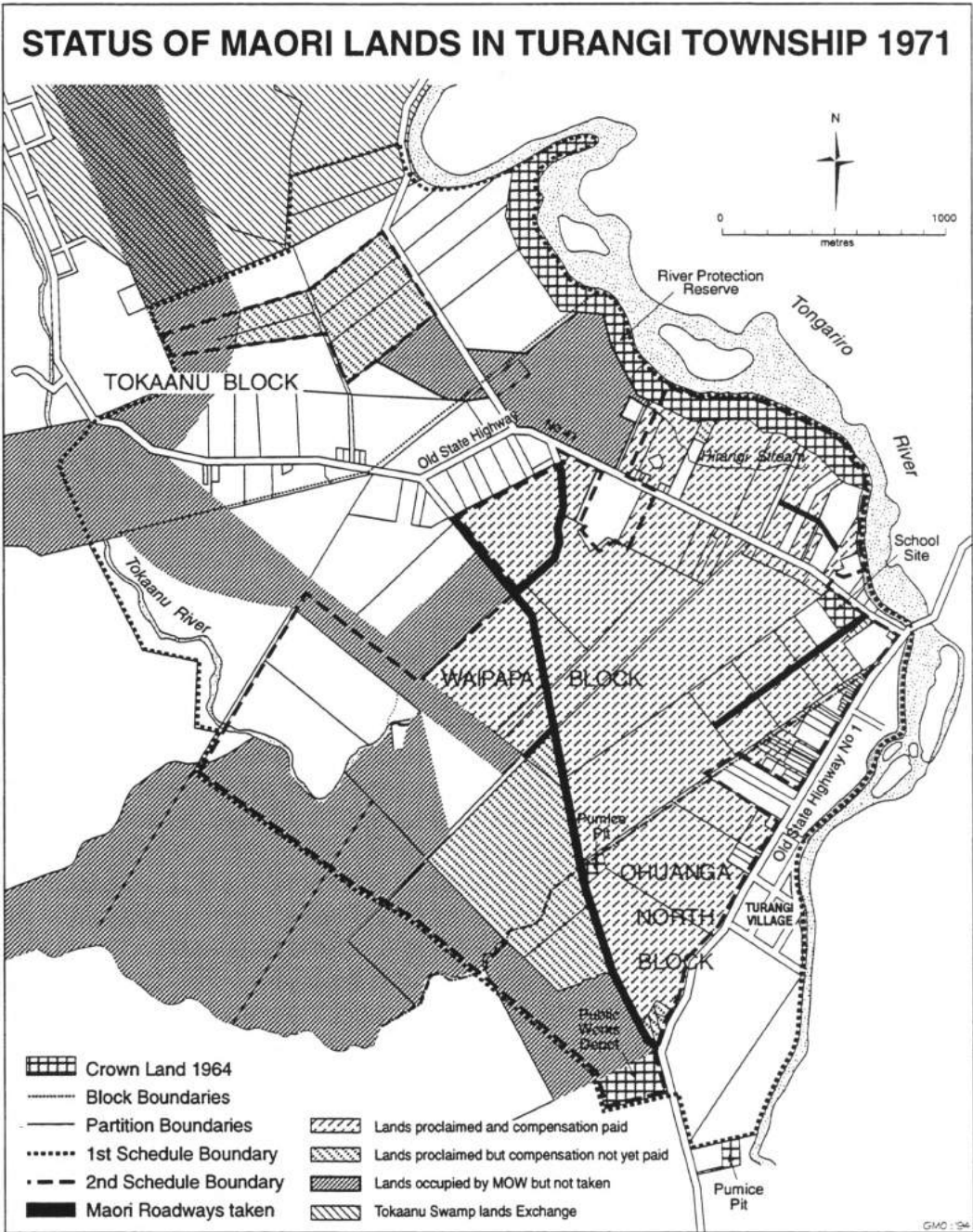


Figure 36

In September 1971, a file note concerning a discussion in the head office of the Department of Maori Affairs reviewed the Maori Trustee's work to date, and the difficulties he faced in carrying out his task at Turangi:

It was agreed that the present position relating to the Turangi Power Project [sic] and the land taking had become considerably confused and most complex. While the matters of the first taking had, to some extent, been resolved there was still a considerable number of matters at large which needed clearing up and, of course, there is the very great difficulty of the balance of the land to be taken. In addition of course, is the known owners' objection to the proclamation of land and the fact that the Ministry of Works is sitting on areas but not proclaiming them, neither is any rental being paid.

It was decided that the present position is inadequate and that the Maori Trustee is the object of unfavourable comment because of his inability to do anything pending the taking of the land. Therefore it was agreed that the District Officer should immediately make common cause with the Tuwharetoa Trust Board and any other local committee to the end that we would all work in concert using the Trust Board's solicitor, Mr Feist, and have actions taken either in the name of the Maori Trustee by Mr Feist or by trustees appointed for the purpose in terms of Section 438 of the Maori Affairs Act 1953. The object of the exercise is to ensure that the Maori owners do not lose out because of the problem of multiple ownership and also that no actions are taken by the Department [of Maori Affairs] or the Maori Trustee which will in any way prejudice the intentions or wishes of the owners vis-a-vis the Ministry of Works.

It was agreed that we will be involved in considerable clerical work both in the Court and on the Maori Trustee section because it will be necessary for us to provide secretarial services to call meetings and service meetings until such time as the whole matter is cleaned up. This of course also applies to the complications arising from the exchanges and the River Protection problems. However, it was agreed that while considerable extra strain will be thrown on this office in getting this scheme going, in the long run we will benefit because the pressure on the office will diminish by avoiding references to Head Office and by having some of our functions taken over either by the Trust Board or trustees. For this reason we must accept temporarily an increase in the volume of work requiring to be done. (D12)

#### **14.5 REPEAL OF MAORI TRUSTEE'S STATUTORY POWERS**

The statutory powers given to the Maori Trustee by section 6 of the Public Works Amendment Act 1962 were repealed by section 12(8) of the Maori Purposes Act 1974. Maori owners of land held in multiple ownership could now decide how they would represent their interests. The usual alternatives were the appointment by the Maori Land Court of either trustees under section 438 of the Maori Affairs Act 1953 or agents under section 73 of the Maori Affairs Amendment Act 1974. However, by 1974 the Maori Trustee had completed most of the negotiations on compensation in the Turangi township. In any case, Cater had already moved towards this position by working in with the Tuwharetoa Maori Trust Board and its solicitor Russell Feist and by encouraging the appointment of trustees by the Maori Land Court under section 438 of the Maori Affairs Act to negotiate



on later takings, such as the water supply reserve. It is difficult to understand why the Crown persisted until 1974 in requiring the owners to be represented by the Maori Trustee.

#### **14.6 TRIBUNAL'S CONCLUSIONS**

The Tribunal concludes that both the statutory compensation provisions in force at the time and the current administrative procedures left much to be desired.

- The legislative provisions were strictly defined and rigid in nature. Although section 42 of the Public Works Act 1928 recognised the entitlement of owners to 'full compensation' for the involuntary loss of their land, the code introduced by section 29(1) of the Finance Act (No 3) 1944 (a war-time provision) was restrictive in nature. It was not until the Public Works Act was amended in 1970 that the Crown recognised that some allowance for hardship should be made to dispossessed owners obliged to find alternative accommodation – too late for the Ngati Turangitukua people. Nor was there any recognition of the effect of compulsory acquisition on Maori rangatiratanga over their ancestral land.
- The administrative procedures adopted by the Ministry of Works were often cumbersome and inflexible. Entry on land and the exclusion of owners could and did precede by years the actual taking of land by proclamation in the *New Zealand Gazette*.
- Only the Maori Trustee could act for multiple owners, but he had no jurisdiction until such time as the proclamation was gazetted.
- The payment of compensation in advance did something to mitigate the hardship to owners of the long delays in receiving the balance of their compensation payments.
- The Ministry of Works rarely supplied title references to the properties taken which reflected the Maori title in Maori Land Court records, thereby adding greatly to the work of the Maori Trustee and his legal advisers and the time involved in processing compensation claims.

#### **14.7 TREATY IMPLICATIONS**

In chapter 19, we consider various claims by Ngati Turangitukua owners of Treaty breaches on the part of the Crown in respect of the compensation provisions and practices (see paras 19.5–6).

#### **References**

1. *New Zealand Gazette*, 1966, p 1487

## CHAPTER 15

# TREATY PRINCIPLES

### 15.1 INTRODUCTION

#### 15.1.1 Claims before the Tribunal

The claims before the Tribunal essentially relate to the taking by the Crown of a substantial area of ancestral land under the Public Works Act 1928 and the Turangi Township Act 1964. The claims call for a review of these statutes in terms of the Treaty and Treaty principles, and for a consideration of the ways in which the Crown exercised its statutory powers in the light of its Treaty obligations to Ngati Turangitukua.

#### 15.1.2 The Treaty of Waitangi in New Zealand law

At the risk of stating the obvious, it should be noted that the Treaty of Waitangi has yet to become legally binding as part of the New Zealand constitution, of which it was undoubtedly a founding instrument. It is part of New Zealand law for very limited purposes. As a consequence, the Crown and the New Zealand Government are not legally bound, save in exceptional circumstances, to act in accordance with Treaty provisions. It follows that, as a strict matter of law, the Crown is not constrained by the Treaty (including article 2) in exercising its legal sovereignty.

#### 15.1.3 The Treaty of Waitangi Act 1975

The Treaty of Waitangi Act 1975 is, however, one of the few instances in which the New Zealand Legislature has incorporated the Treaty into New Zealand domestic law. The Act enables the Waitangi Tribunal to inquire into, and report on, claims by Maori under the Treaty, with the expectation that the Crown will grant a remedy in the case of all well-founded breaches of the Treaty. In reaching a decision on claims before it, the Tribunal must have regard, among other matters, to the concession of the power to govern made by Maori to the Crown under article 1 and the guarantees made to Maori by the Crown under article 2, which qualified in very important respects the extent of the concession of the power to govern given to the Crown. The sovereignty of the Crown under article 1 is less than absolute; it is qualified by, and subject to, the guarantees to Maori under article 2.

#### **15.1.4 Previous Tribunal reports**

In chapter 4 of the *Ngai Tahu Report 1991*, the Tribunal discussed in some detail the status of the Treaty, the rules of Treaty interpretation, the constitutional status of the Treaty, and Treaty provisions.<sup>1</sup> These were again briefly addressed in the *Ngai Tahu Sea Fisheries Report 1992*.<sup>2</sup> While the subject-matter of those reports differed from the present claims, certain of the Treaty principles enunciated in those reports are equally applicable here. We accordingly adopt them as a touchstone for evaluating the grievances of Ngati Turangitukua.

We believe the claims before us should be evaluated in the light not only of the Treaty itself, but of two major principles which are applicable to many Treaty claims. We discuss each in turn.

### **15.2 THE CESSION OF SOVEREIGNTY WAS IN EXCHANGE FOR THE PROTECTION OF RANGATIRATANGA**

#### **15.2.1 An overarching principle**

##### *(1) Importance of this Treaty principle*

As the Tribunal has stressed in the *Ngai Tahu Sea Fisheries Report 1992*, the principle that the cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga is fundamental to the compact or accord embodied in the Treaty and is of paramount importance.<sup>3</sup> It should be seen as overarching and far-reaching because it is derived directly from articles 1 and 2 of the Treaty itself. Inherent in or integral to this basic principle is:

- the Crown obligation actively to protect Maori Treaty rights;
- the duty to consult; and
- redress for past breaches.

Implicit in this principle is the notion of reciprocity. Under article 1, Maori conceded to the Crown kawanatanga, the right to govern, in exchange for the Crown guaranteeing to Maori under article 2 tino rangatiratanga, full authority and control over their lands, forests, fisheries, and other valuable possessions (taonga), for so long as they wished to retain them.

##### *(2) Conditional cession of sovereignty*

It is clear, therefore, that the cession of sovereignty to the Crown by Maori was conditional; the Crown guaranteed to Maori their full authority over their land and all other taonga, notwithstanding their concession to the Crown of the right to govern. The confirmation and guarantee of rangatiratanga by the Queen in article 2 necessarily qualifies or limits the authority of the Crown to govern.

If the Crown is to avoid acting in breach of the Treaty or Treaty principles it must recognise that its power to govern is constrained in important ways by its Treaty obligation to respect and give effect to the critically important guarantee of Maori rangatiratanga in terms of article 2.

There can be no doubt that, had the rights of Maori to retain tino rangatiratanga in terms of article 2 not been recognised and guaranteed in the Treaty, Maori would not have ceded kawanatanga to the Crown in article 1, and there would have been no Treaty.

The limited grant of sovereignty acquired by the Crown under the Treaty does not create a constitutional problem. Few, if any, western governments enjoy unqualified sovereign power. Apart from the legal constraints imposed by entrenched constitutions, where these exist, the powers of modern States are being increasingly constrained by international agreements. The Government of the United Kingdom, for instance, is now constrained in important ways by the rules and organs of the European Community of which it is a member, as is the New Zealand Government by, for instance, its membership of the World Trade Organisation (the successor to the GATT).

### *(3) Crown powers limited*

The Treaty principle under discussion is seen to be of fundamental importance because it has its genesis in the very terms of the Treaty. It was recognised by Justice Somers in *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at page 693 that a breach of the Treaty must be a breach of the principles of the Treaty. This raises the question of whether the Crown can ever be justified, when exercising its right to govern in terms of article 1, in doing so in a way which is inconsistent with the rights guaranteed to Maori under article 2.

Central to the present case is a claim that certain legislation, namely, the Public Works Act 1928 and the Turangi Township Act 1964, was and is fundamentally inconsistent with the basic guarantee in article 2 of the Treaty that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown. The statutes in question authorise, inter alia, the taking of Maori land for certain purposes without notice to, or the consent of, the Maori owners.

Maori insistence on their right to retain tino rangatiratanga over their land resulted in the inclusion of article 2 in the Treaty, and was a measure of the depth and intensity of their relationship to their land and other natural resources. It follows that 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.

We have adopted this formula from the recent *Ngai Tahu Ancillary Claims Report 1995*.<sup>4</sup> There, the Tribunal, after considering whether the Crown's compulsory acquisition of land over and above the objections of the Ngai Tahu owners was in breach of Treaty principles, expressed the provisional view that the power of compulsory acquisition for a public work should be exercised only in exceptional circumstances and as a last resort in the national interest. It proposed further limitations which we will consider later in chapter 20. This was felt to be the only time when the Crown was justified in exercising this power.

We consider that a lesser test than that used by the Ngai Tahu Tribunal, such as that a Government proposal is in the public interest or is justified for reasons of convenience or economy is insufficient. It implies that the solemn guarantee in article 2 guaranteeing Maori

property rights may be overridden if the Crown considers this to be justified. The Tribunal is unable to reconcile this with the express terms of the Treaty or with the principles which underly them.

Crown counsel invoked the following passage (C3:2) from the judgment of the president of the Court of Appeal, Sir Robin Cooke, in the *New Zealand Maori Council* case at pages 665 and 666:

The principles of the Treaty do not authorise unreasonable restrictions on the right of a duly elected Government to follow its chosen policy. Indeed to try to shackle the Government unreasonably would itself be inconsistent with those principles.

We do not infer from this statement that the Crown would be acting reasonably if it enacted legislation which was clearly contrary to the principles of the Treaty of Waitangi and inconsistent with the guarantee to Maori under article 2.

In our view, the Crown would be acting reasonably only if any such legislation were confined in its application to meet exceptional circumstances and as a last resort in the national interest. We consider this question further in the context of our discussion of the Public Works Act 1928 and the Turangi Township Act 1964 in chapters 16 and 20.

We turn now to consider certain of the Crown obligations which are inherent in the Treaty principle under discussion.

### **15.2.2 Crown obligation actively to protect Maori Treaty rights**

#### *(1) Previous endorsement of this obligation*

The Tribunal has on various occasions stressed the obligation of the Crown actively to protect Maori Treaty rights. See, for instance, the *Ngai Tahu Sea Fisheries Report 1992*.<sup>5</sup> This obligation was endorsed by the president of the Court of Appeal in the *New Zealand Maori Council* case at page 664:

Counsel were also right, in my opinion, in saying that the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable. There are passages in the Waitangi Tribunal's Te Atiawa, Manukau and Te Reo Maori reports which support that proposition and are undoubtedly well-founded. I take it as implicit in the proposition that, as usual, practicable means reasonably practicable. It should be added, and again this appears to be consistent with the Tribunal's thinking, that the duty to act reasonably and in the utmost good faith is not one-sided. For their part the Maori people have undertaken a duty of loyalty to the Queen, full acceptance of her Government through her responsible Ministers, and reasonable co-operation.

*(2) Context of the present claims*

In the context of the present claims, which involved the exercise of statutory powers for the compulsory acquisition of the claimants' lands, the first question must be whether such takings could be justified on the grounds of exceptional circumstances and as a last resort in the national interest. If the answer is yes, the next question is whether, in exercising its statutory powers, the Crown has done so in a way which actively protects the Maori owners' Treaty rights to the fullest extent reasonably practicable. In short, whether no practicable alternative to the compulsory acquisition of the freehold was available, such as, for instance, mutually acceptable leasehold arrangements.

*(3) Distinction between the conservation and expropriation of Maori resources*

There is an important distinction between laws for the conservation and protection of land and other valuable resources and laws empowering the Crown to expropriate such resources belonging to Maori. In the *Ngai Tahu Sea Fisheries Report 1992*, the Tribunal said:

The Crown in the exercise of its powers of governance in the national interest clearly has a right, if not a duty, to make laws for the conservation and protection of valuable resources such as the sea fisheries. But such power should be exercised with due regard to the interests of the owners of such resources. In the case of their sea fisheries guaranteed to Maori by the Treaty, the Crown should first consult with Maori on proposed conservation measures and ensure that Maori interests are not adversely affected, except to the extent necessary to conserve or protect the resource. Failure by the Crown to so act is inconsistent with Maori tino rangatiratanga over their sea fisheries.<sup>6</sup>

Conservation legislation, provided it conforms with these guidelines, is clearly intended for the protection of Maori resources and is compatible with article 2. By contrast, legislation which empowers the Crown to compulsorily acquire Maori land will require exceptional circumstances to justify it as a last resort in the national interest. There is a critical difference between the control or management of a resource on the one hand and its expropriation on the other.

**15.2.3 Duty to consult**

The second of the Crown obligations inherent in the Treaty principle that the cession by Maori of sovereignty to the Crown was in exchange for the protection of Maori rangatiratanga (see para 15.2.1) is the duty of the Crown to consult with Maori. This duty does not exist in all circumstances. In the *New Zealand Maori Council* case, Justice Richardson, after discussing the problems in postulating an absolute duty of consultation with Maori in all circumstances, said at page 683:

In truth the notion of an absolute open-ended and formless duty to consult is incapable of the practical fulfilment and cannot be regarded as implicit in the Treaty. I think the better view is that the responsibility of one treaty partner to act in good faith fairly and reasonable towards the other puts the onus on a partner, here the Crown, when acting within its sphere to make

an informed decision, that is a decision where it is sufficiently informed as to the relevant facts and law to be able to say it has had proper regard to the impact of the principles of the Treaty. In that situation it will have discharged the obligation to act reasonably and in good faith. In many cases where it seems there may be Treaty implications that responsibility to make informed decisions will require some consultation. In some extensive consultation and co-operation will be necessary. In others where there are Treaty implications the partner may have sufficient information in its possession for it to act consistently with the principles of the Treaty without any specific consultation.

It follows from Justice Richardson's discussion that in some areas more than others consultation will be highly desirable or, indeed, essential. If the Crown wishes to acquire Maori land, full discussion with the owners or, to use Justice Richardson's expression, 'extensive consultation and co-operation' on the part of the Crown will be necessary.

#### **15.2.4 The right of redress**

The right of redress for past Treaty breaches is the third of the Crown obligations inherent in the Treaty principle that the cession by Maori of sovereignty to the Crown was in exchange for the protection of Maori rangatiratanga (see para 15.2.1) which is relevant to the present claim. If a failure by the Crown to protect a tribe's rangatiratanga guaranteed by article 2 results in detriment to Maori, there is an obligation on the Crown to make redress. Justice Somers in the *New Zealand Maori Council* case so held at page 693:

The obligation of the parties to the Treaty to comply with its terms is implicit, just as is the obligation of parties to a contract to keep their promises. So is the right of redress for breach which may fairly be described as a principle . . . That right is not justiciable in the Courts but the claim to it can be submitted to the Waitangi Tribunal.

Sir Robin Cooke also accepted in that case that if the Waitangi Tribunal found merit in a claim and recommended redress the Crown should grant at least some form of redress, unless grounds existed justifying a reasonable partner in withholding it – which he thought 'would be only in very special circumstances, if ever'.

We turn next to consider the second main principle applicable to this claim.

### **15.3 THE PRINCIPLE OF PARTNERSHIP**

We repeat here what the Tribunal said in the *Ngai Tahu Sea Fisheries Report 1992* at page 642 concerning the principle of partnership:

This principle is now well established. It was authoritatively laid down in the *New Zealand Maori Council* case where the Court of Appeal found that the Treaty signified a partnership between Pakeha and Maori requiring each to act towards the other reasonably and with the utmost good faith.

We reiterate the following statement by the Muriwhenua Tribunal as to the basis for the concept of a partnership:

It was a basic object of the Treaty that two people would live in one country. That in our view is also a principle, fundamental to our perception of the Treaty's terms. The Treaty extinguished Maori sovereignty and established that of the Crown. In so doing it substituted a charter, or a covenant in Maori eyes, for a continuing relationship between the Crown and Maori people, based upon their pledges to one another. It is this that lays the foundation for the concept of a partnership.<sup>7</sup>

We propose in subsequent chapters to apply these principles in deciding whether, and to what extent, the Crown has acted consistently or inconsistently with them in relation to the taking of the claimants' land for the Turangi township and related matters.

#### **15.4 FIDUCIARY OBLIGATIONS OF THE CROWN**

In her final submissions on behalf of the claimants, claimant counsel Ms Wainwright sought to show that fiduciary obligations can be argued as arising from, as being enacted in, or as arising independently from the Treaty of Waitangi (C2:108). Counsel submitted that if a fiduciary obligation on the part of the Crown can be established as arising at general law in relation to the claimants and their situation then the fiduciary obligation on the Crown extends to an obligation to comply with the recommendations of the Tribunal in this regard.

Ms Wainwright made an extensive and erudite review of leading American, Canadian, Australian, and New Zealand decisions. She noted that, to date, the New Zealand courts have not considered the existence of an aboriginal fiduciary obligation independently of statutory reference to the principles of the Treaty of Waitangi. In deference to the courts, whose function it is to declare the common law, this Tribunal must await an authoritative decision from them on the question.

In the *New Zealand Maori Council* case, Sir Robin Cooke stated that 'the Treaty signified a partnership between races'. At page 664, he went on to hold that:

the issue becomes what steps should be taken by the Crown, as a partner acting toward the Maori partner with the utmost good faith which is the characteristic obligation of partnership to ensure that the powers in the State-Owned Enterprise Act are not used inconsistently with the principles of the Treaty.

After further discussion, he stated on the same page that what had already been said 'amounts to acceptance of the submission for the applicants that the relationship between the Treaty partners creates responsibilities analogous to fiduciary duties'. We note that here the president speaks of responsibilities 'analogous' to fiduciary duties.



Ms Wainwright cited a passage from a later decision of the New Zealand Court of Appeal in *Te Runanga o Wharekauri Rekohu Incorporated v Attorney-General* [1993] 2 NZLR 301, at page 304, where Sir Robin Cooke summarised the decision in the *New Zealand Maori Council* case as holding:

that the Treaty created an enduring relationship of a fiduciary nature akin to a partnership, each party accepting a positive duty to act in good faith, fairly, reasonably and honourably towards each other.

Here the president speaks of a relationship 'of a fiduciary nature akin to a partnership'. In each case, the court finds the responsibilities of the parties, which are said to be 'analogous to fiduciary duties' or 'of a fiduciary nature', to have their genesis in the Treaty. There is no suggestion that they arise independently of the Treaty or have their source in the common law. We do not, of course, foreclose the possibility that at some future time the New Zealand Court of Appeal may so hold.

The jurisdiction of the Tribunal arises from the Treaty of Waitangi Act 1975 and its amendments. It does not extend to anticipating the courts by purporting to declare the scope of the common law and the duties arising from it. It should suffice that, as stated in paragraph 15.3), the Tribunal considers the second main Treaty principle applicable to this claim to be the principle of partnership. This principle requires each party to the Treaty to act towards the other reasonably and with the utmost good faith.

## References

1. Waitangi Tribunal, *Ngai Tahu Report 1991*, Wellington, Brooker and Friend Ltd, 1991, vol 1, pp 215–233
2. Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report 1992*, Wellington, Brooker and Friend Ltd, 1992, pp 267–268
3. Ibid, p 269
4. Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, Wellington, Brooker's Ltd, 1995, p 11
5. *Ngai Tahu Sea Fisheries Report 1992*, p 269
6. Ibid, p 272
7. Ibid, p 273

## CHAPTER 16

# CROWN LEGISLATION AND THE TREATY

### 16.1 PRELIMINARY

Before turning to a consideration of the Public Works Act 1928 and the Turangi Township Act 1964 in relation to the Treaty and Treaty principles, it is necessary to consider a number of preliminary matters raised by counsel.

In the introduction to their closing submissions, Crown counsel referred, among other matters, to what was called the ‘factual matrix’, which, it was said, called for a ‘contextual understanding’. Linked to this submission was a discussion of expert evidence and the onus of proof. We consider each of these submissions.

#### 16.1.1 The factual matrix: a contextual understanding

After noting that the relevant legislation and the statutory role of the Maori Trustee had been discussed in earlier submissions, Crown counsel said:

The Crown witnesses, Mr David Alexander and Ms Stephanie McHugh, told the story of what actually happened, as distilled from the contemporaneous documentation. Our concern in bringing that evidence was that the actions of the Crown and Tuwharetoa and their reactions to one another should not be judged in the light of modern values and practices, nor in the light of today’s statutory regime, but in the light of the values and practices of that time as far as possible. There must, then, be a critical assessment of all the evidence, and in that respect, evidence created during or close to the events concerned is most important if an event is to be understood in the context of its time. (C3:5)

The Tribunal has some difficulty in accepting this submission as it stands.

- The submission suggests that the two Crown witnesses alone told the story of what actually happened, as detailed from the contemporaneous documentation. This overlooks the substantial report by John Koning (A1) and the extensive supporting documentation commissioned by the Tribunal and accepted without question by counsel for both the claimants and the Crown.
- The contemporary documentation relied on included the files of the project engineer and his staff. Only selected extracts from these files, which must have been extensive and very relevant, were produced, rather than the complete files.
- The submission wrongly assumes that what was reduced to writing at the time constitutes a complete record of all the relevant events. The official documents relied on are almost completely silent about the misery, pain, and anguish which the

Ministry of Works caused to many people. There is little official documentation, for instance, about the destruction or defilement by the Crown of wahi tapu, including urupa, or the sudden arrival, without notice, of a bulldozer ready to demolish a house still occupied by its owner (see para 12.3.4).

- The submission appears to be based on the premise that incomplete written documentation is superior to the evidence of those claimant witnesses who were actually present at critical meetings, or who personally experienced or witnessed the havoc and confusion caused by Ministry of Works operations, and their effect on elderly kuia and koroua and their families.
- The Tribunal was greatly assisted by the extensive evidence of both Mr Alexander and Ms McHugh. However, reference to the very lengthy documentation adduced by Mr Alexander revealed important matters relating to the industrial area on which Mr Alexander had not commented. These are noted in our subsequent discussion of the industrial leasehold question.
- The Crown argues that the actions and reactions of the Crown and Ngati Turangitukua should not be judged in the light of modern values and practices, nor in the light of today's statutory regime, but in the light of the values and practices of the time as far as possible. We are uncertain to what values and practices the Crown is here referring. We do know that for the decade 1964 to 1974, with which this claim is chiefly concerned, the Crown paid little regard to its Treaty obligations in relation to the compulsory acquisition of Maori land. We cannot believe that we are being asked to accept the values and practices evidenced by such neglect as the appropriate standard by which to judge the actions of the Crown and its officials. Moreover, if today's statutory regime or current Crown practices in any particular instance reflect some concern for Treaty principles, is it not relevant to ask why they could not or should not have done so earlier – in this case a mere 30 years ago?
- In paragraph 13 of their submission, Crown counsel contended that the Tribunal should accept the Crown's evidence as the best evidence of how events were understood at the time they occurred. In paragraph 14, they stated that this approach was most relevant in terms of the 'valuations' placed on land taken under the Public Works Act 1928. It was also said to be relevant in terms of the 'value' that was placed on land and taonga by those who were involved in discussions with the Crown in Turangi (C3:5).
- In reply to the Crown's closing submissions, Ms Wainwright accepted that some allowance must be made for the effluxion of time in relation to valuation evidence (C9:2). Given subsequent inflation, this is obvious. But Ms Wainwright strongly objected to any suggested analogy between value and valuation in the context of Maori taonga. The taonga at issue in this claim, namely, land and wahi tapu, she said, have an intrinsic value which does not change in the way that money does. On behalf of the claimants, she completely rejected the implication that there has been some sort of revisionism going on whereby their land and wahi tapu were less valuable to the tangata whenua in the 1960s than they are today (C9:2).

We accept Ms Wainwright's rejection of this hypothesis, because the hypothesis lacks any evidential base. Indeed, it runs counter to the strong and convincing evidence of various claimants, who spoke of their concern, and of the concern of those now deceased, at the time of the destruction and desecration of their wahi tapu. It is also inconsistent with the depth of concern that existed when it became apparent that the Crown was expropriating considerably more land than it had earlier assured the Ngati Turangitukua people it would be taking.

We turn to the second, and related, introductory Crown submission.

### **16.1.2 Expert evidence and the onus of proof**

The Crown's first submission as to onus of proof is that when a claim is made to the Waitangi Tribunal alleging breaches of Treaty principles it is for the claimants to establish the breach (C3:6). This, in effect, calls for the application of the onus of proof on a plaintiff in civil proceedings in courts of law. However, the Tribunal is not a court of law. It has the powers of a commission of inquiry and has the unique power to regulate its procedure by adopting such aspects of *te kawa o te marae* and *tikanga* as it thinks appropriate in any particular case. Moreover, the Tribunal may commission research or authorise a claimant to commission research at the Tribunal's expense on any matters relating to a claim before it. It may receive any report resulting from such commissions in evidence. This practice is frequently followed, as it was in this inquiry. As well, the Tribunal may conduct its own investigations.

The Crown, as a party to the proceedings before the Tribunal, is obliged to furnish the Tribunal with evidence of all relevant matters within its control, or to which it has access, which it is reasonably able to provide. As a Treaty partner obliged to act reasonably and with the utmost good faith towards Maori claimants, it can do no less. It is not uncommon for the Crown, in the honourable discharge of its duty as a Treaty partner, to provide highly relevant information which is of material assistance to the Tribunal and which, on occasion, assists in substantiating the claim before the Tribunal.

We consider it unhelpful to suggest that either the claimants or the Tribunal should be bound by court rules of civil procedure as to the burden of proof. The Tribunal's mandate is to ascertain the truth of what happened in any particular matter before it. In so doing, it must ensure, as far as possible, that both parties, the claimants and the Crown, do all they reasonably can to assist the Tribunal to achieve this outcome. When all the evidence is in, the Tribunal must then decide on the totality of the relevant evidence before it the extent to which, if at all, the claims before it are made out. It is then appropriate to do so on the balance of probability.

### **16.1.3 Contemporaneous documentation and traditional evidence**

Crown counsel further submitted, by way of amplification of its 'factual matrix' argument, that the most reliable evidence in this case is to be found in the contemporaneous documentation (C3:6). It appears that the Crown may here be contrasting what is sometimes described as traditional evidence with contemporaneous documentation. Traditional evidence is evidence relating to past events, often of a century or more ago, the account of which has been transmitted orally from generation to generation. It is well known that such accounts are likely to undergo interpretation and re-interpretation.<sup>1</sup> In the present case, however, we are concerned chiefly with the evidence of claimants, many of whom personally participated in various of the events.

In reply, Ms Wainwright emphasised that:

- in terms of the historiographical argument, which is what the Crown is tendering, the general view is that all recasting of history, whether the source of information is recollection or documents, involves an element of interpretation and re-interpretation;
- the documents which the Crown's historians viewed in this case did not provide a complete record of everything that happened;
- the documents do not speak for themselves;
- the documents have been interpreted by the historians, and it is this interpretation that they related to the Tribunal in evidence;
- similarly, the claimants lived through a period some years ago which they have now interpreted for the Tribunal in the light of their subsequent experience; and
- the two exercises are completely analogous and there is no distinction to be made between them in terms of their reliability and the extent to which the Tribunal should now proceed on them as reflecting a true position (C9:2).

The Tribunal agrees with all the foregoing submissions of Ms Wainwright, save for the last, which denies any distinction in any instance between the two types of evidence. There will be some instances of conflict or apparent conflict between the two types of evidence. In an appreciable number of cases, these differences arise from the different perceptions and values of local Maori and the officials dealing with them. The result may be that in some instances each group is talking past the other. In such cases, the Tribunal must decide what weight it should give to the apparently conflicting views, while accepting that the perceptions and perspectives may differ, and it must decide which version it should accept and whether it should accept it in whole or in part. Broadly, however, the Tribunal believes, after hearing over 20 Ngati Turangitukua witnesses, that the circumstances attending the conversion of their ancestral lands into an embryonic township over a frenzied year or so of intensive bulldozing and associated activities are indelibly imprinted on the memories of those who were subjected to and lived through it. We would not denigrate such evidence simply because it was not recorded in writing at the time by either the Crown or those immediately affected.

We now proceed to consider the Ngati Turangitukua claim that certain statutes are in breach of the Treaty of Waitangi.

## **16.2 THE PUBLIC WORKS ACT 1928, THE TURANGI TOWNSHIP ACT 1964, AND THE TREATY**

We consider here the Crown's powers relating to the entry on and the taking of the claimants' land under the Public Works Act 1928 and the Turangi Township Act 1964 in terms of the Treaty and Treaty principles. In chapter 17, we will consider the offer back provisions relating to the return of land taken by the Crown. These were not enacted until the passage of the Public Works Act 1981. In chapter 19, we consider the compensation provisions.

## **16.3 SUBMISSIONS OF CLAIMANT COUNSEL**

Ms Wainwright drew our attention to certain features of the Public Works Act 1928 and the Turangi Township Act 1964 which operated in relation to the entry on and the taking of land at Turangi and to which exception was taken. These are briefly noted later (see para 16.6).

Claimant counsel referred to a recent comment by the Privy Council in *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 on the principles of the Treaty of Waitangi, with references to the Treaty of Waitangi Act 1975 and the State-Owned Enterprises Act 1986 (C2:8–9). We quote the passage cited, together with the two following sentences:

Foremost among . . . [the] 'principles' [of the Treaty] are the obligations which the Crown undertook of protecting and preserving Maori property, including the Maori language as part of taonga, in return for being recognised as the legitimate government of the whole nation by Maori. The Treaty refers to this obligation in the English text as amounting to a guarantee by the Crown. This emphasises the solemn nature of the Crown's obligation. It does not however mean that the obligation is absolute and unqualified. This would be inconsistent with the Crown's other responsibilities as the government of New Zealand and the relationship between Maori and the Crown. This relationship the Treaty envisages should be founded on reasonableness, mutual co-operation and trust. It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting taonga to go beyond taking such action as is reasonable in the prevailing circumstances. While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time.

Ms Wainwright takes issue with some observations of the Tribunal in the *Te Maunga Railways Land Report*, in which, after referring to the foregoing passage by the Privy Council, the Tribunal said:

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 . . . <sup>2</sup>

Claimant counsel asked what is left of the Treaty guarantees if they can be unilaterally set to one side by the government of the day if to do so seems expedient (C2:9). Ms Wainwright submitted that if there is in any instance 'a more significant public interest for both Maori and Pakeha than the guarantee to Maori of rangatiratanga', that interest should be one which Maori landowners should be able to recognise. In such circumstances, she submitted, the appropriate course was for the Crown to seek Maori agreement to the use of the land in the furtherance of that public interest.

Ms Wainwright went on to submit that if it were reluctantly conceded that there might be instances where the Crown's kawanatanga and interest in taking land compulsorily might sometimes legitimately outweigh rangatiratanga interests in retaining the land, it would be incumbent upon the Crown to show in any particular case that the very highest public interest was being served (C2:10). We note that this test is similar to the test proposed by this Tribunal in our discussion of Treaty principles (see para 15.2.1(3)), where it is said that 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.

## **16.4 CROWN COUNSEL'S SUBMISSIONS**

### **16.4.1 Authority of the Crown to govern and legislate**

Crown counsel also cited from the foregoing passage of the Privy Council judgment. They submitted that from this affirmation of the authority of the Crown to govern, as recognised within the context of the Treaty, flows the corollary that the Crown 'had all the authority needed to legislate in terms of the Public Works Act 1928 and the Turangi Township Act 1964' (C3:3). Together, it was said, those Acts mandated the taking of Ngati Turangitukua land for public works, namely, developments for electricity generation, and for the establishment of the township associated with those works.

This submission lacks nothing in boldness but we believe that it contains a major fallacy. It does not follow that, because under the Treaty the Crown has authority to govern, such authority is unqualified. Plainly it is not. It is limited by, and subject to, the provisions of article 2. To determine whether the Crown 'had all the authority needed to legislate in terms of the Public Works Act 1928 and the Turangi Township Act 1964', it is necessary to determine whether these provisions can be reconciled with the guarantee in article 2. This involves a consideration of the various features of the legislation referred to earlier (see para 14.6) to which exception has been taken by claimant counsel. We will consider these features shortly in the light of the relevant principles which we have articulated in the previous chapter on Treaty principles.

#### **16.4.2 Hierarchy of interests in natural resources**

Crown counsel cited from the *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* that there is a hierarchy of interests in natural resources based on the twin concepts of *kawanatanga* and *tino rangatiratanga*, and quoted a passage from the report that 'First in the hierarchy comes the Crown's obligation or duty to control and manage those resources . . . in the wider public interest'.<sup>3</sup>

The relevance of this citation in the present context is not readily apparent, because this claim is concerned with the very different circumstance of legislation empowering the compulsory expropriation of ancestral land by the Crown. This is of markedly graver consequence than the exercise of control or management in the public interest of resources which remain in the ownership of the *tangata whenua*. We have earlier made this point when discussing Treaty principles in chapter 15.

#### **16.4.3 Orakei Report 1987**

Crown counsel submitted that the Tribunal has, on occasion, acknowledged the general public benefit of taking land and referred to the Tribunal's *Orakei Report 1987* at page 166 (C3:29). Counsel stated that the Tribunal there noted that the Crown's exercise of its sovereignty in taking land for defence purposes was seen as intended to secure peace and good order for the nation, as being for the benefit of all citizens, and therefore as being 'not inconsistent with the principles of the Treaty' (C3:29–30).

We pause here to observe that the Orakei Tribunal did not, as Crown counsel contended, accept the foregoing proposition, but qualified it as being 'arguable'. Moreover, the Tribunal went on to say immediately after the passage cited by Crown counsel:

For reasons which follow we do not find it necessary to decide this issue. It may be that, should a similar need arise today, having regard to Maori sensibilities to the involuntary loss of their land, the Crown might seek to lease rather than acquire ownership of the land. Any such lease could be for the estimated time of the works with a right of renewal for the full term of the works relating to defence.<sup>4</sup>

Crown counsel was, however, correct in stating that in the same report the Orakei Tribunal held that the Crown acted inconsistently with Treaty principles in compulsorily acquiring the Ngati Whatua papakainga against their wish and without their consent.<sup>5</sup>

Crown counsel next submitted that in both the *Mohaka River Report 1992* at page 70 and the *Ngati Rangiteaorere Claim Report 1990* at page 48 the respective Tribunals found that, where compulsory acquisition for public works of general public benefit was undertaken by the Crown without adequate consultation and negotiation with the Maori owners, the Crown infringed rights of *tino rangatiratanga* and thereby breached its Treaty duties (C3:30).

So far as we are aware, the question of whether the compulsory acquisition of land for roading purposes under the public works legislation constituted a Treaty breach was not argued in the Mohaka River claim and no recommendations were made in respect of such a taking. Nor was such compulsory acquisition the subject of argument in the Ngati



Rangiteaorere claim and, for that reason, the Tribunal refrained from making a finding in its report. Nevertheless, it thought it appropriate to make some observations. In the course of its discussion, it noted that kawanatanga did not involve taking control or rangatiratanga from Maori. It said:

Had Maori been told in 1840 that kawanatanga would mean the limiting and eventual loss of rangatiratanga over their lands, they would not have signed the Treaty. Indeed some who feared that this might happen did refuse to sign.<sup>6</sup>

After noting various statements by the Tribunals in the *Report of the Waitangi Tribunal on the Motunui–Waitara Claim* of 1983 at page 16; the *Report of the Waitangi Tribunal on the Manukau Claim* of 1985 at page 90; the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* of 1988 at page 195; and the *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, also of 1988, the Tribunal went on to say in the *Ngati Rangiteaorere Claim Report*:

If we apply these principles to the claim before us, we must express doubt whether the Crown could properly assert its kawanatanga over Ngati Rangiteaorere's rangatiratanga – by compulsorily acquiring their land for roads. In any case, the Crown failed to carry out the necessary pre-requisites. It failed to consult Ngati Rangiteaorere in the first instance about the need for a public road; and it failed to negotiate genuinely with them to purchase the land. The Crown therefore had no right to proceed to compulsory acquisition. It was clearly in breach of article 2 of the Treaty, which provided no sanction for compulsory purchase of land, either in the English or the Maori text. And it infringed Ngati Rangiteaorere's rangatiratanga which included the right to control entry to as well as ownership of their land.<sup>7</sup>

This Tribunal is unable to reconcile what was said by earlier Tribunals in the Mohaka River and Ngati Rangiteaorere reports with Crown counsel's submission that it follows from the findings in those two reports:

that where compulsory acquisition under the Public Works Act for the general benefit was pursued by way of the correct procedures and appropriate compensation measures, infringement of tino rangatiratanga does not arise. (C3:30)

As we have indicated, the question was not argued in either the Mohaka River or the Ngati Rangiteaorere claim. In the latter case, the Tribunal did, however, express doubt whether the Crown could properly assert its kawanatanga over the claimants' rangatiratanga by compulsorily acquiring their land for roads. Neither report supports the Crown's proposition.

#### **16.4.4 The Crown's article 1 right, Ngati Turangitukua's article 3 obligation**

Crown counsel further submitted that:

on the basis of the Crown's right to govern, the acquisition of Ngati Turangitukua land by the Crown from Ngati Turangitukua as provided for by the Public Works Act was an exercise of the Crown's right of governance under Article 1 and of Ngati Turangitukua's obligations of citizenship under Article III, provided the Crown acted reasonably and in good faith. (C3:30)

This submission makes no reference to the Crown guarantee of Maori rangatiratanga contained in article 2, nor does it explain how the compulsory acquisition of Ngati Turangitukua land by the Crown can be characterised as Ngati Turangitukua exercising their obligation of citizenship under article 3. The statement appears to postulate that, in some unexplained way, the claimants were obliged by article 3 to consent to, or acquiesce in, the compulsory acquisition of their land. The Tribunal is unable to sustain such a proposition, nor can this be reconciled with the right guaranteed to Maori under article 2.

#### **16.4.5 *Te Maunga Railways Land Report***

Crown counsel next referred to the statement on page 50 of the *Te Maunga Railways Land Report* that 'on the face of it a Crown right of compulsory acquisition of land cuts right across the guarantee of Maori rangatiratanga'.

They further contended that the Te Maunga Tribunal acknowledged that both article 1 and article 3 authorise the Crown's acquisition of Maori lands for public works when it stated at page 67 that 'there has been no suggestion that Maori land should not be used, if needed, for public purposes, or for public benefit'. The next sentence, not quoted by Crown counsel, reads 'the sticking point has been the compulsory acquisition of the freehold title when something less than freehold would have served equally well'.<sup>8</sup> This places the statement quoted by the Crown in a different perspective.

The Crown sought to rely on the foregoing statement from the Te Maunga report for the proposition that the Tribunal in that case was accepting that the guarantee of tino rangatiratanga under article 2 is subservient to the cession of sovereignty. Reading the report as a whole, we do not believe the Te Maunga Tribunal intended to convey that impression. Rather, it placed strong emphasis on the need for a mutually agreeable solution to be reached and for the Crown to refrain from seeking to acquire the freehold title to Maori land.

For our part, this Tribunal reiterates that, for the reasons given in paragraph 15.2.1, 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.

## **16.5 ARE THE PUBLIC WORKS ACT 1928 AND THE TURANGI TOWNSHIP ACT 1964 INCONSISTENT WITH TREATY PRINCIPLES?**

### **16.5.1 Claimants' contentions**

The claimants, in paragraph 5(1) of their statement of claim (see app I), contend firstly that the Public Works Act 1928 and the Turangi Township Act 1964 were and are fundamentally inconsistent with the basic guarantee given in article 2 of the Treaty of Waitangi that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown. Secondly, they contend that the Turangi Township Act permitted the Crown to acquire land compulsorily, without direct consultation with the Maori landowners, thus contravening the Crown's duty to act in good faith and consult with the Treaty partner in respect of matters affecting Maori. Thirdly, they contend that the Turangi Township Act further breached the principles of the Treaty by excusing the Ministry of Works from the notice requirements of sections 22 and 23 of the Public Works Act 1928.

### **16.5.2 Crown counsel's contentions**

Crown counsel, however, contend that where compulsory acquisition under the Public Works Act 1928 for the general public benefit was pursued by the Crown by way of the correct procedures and appropriate compensation measures, infringement of tino rangatiratanga does not arise (C3:30). They further contend, on the basis of the Crown's right to govern, that the acquisition by the Crown of Ngati Turangitukua land was an exercise of the Crown's right of governance under article 1 and of Ngati Turangitukua's obligation of citizenship under article 3, provided that the Crown acted reasonably and in good faith (C3:30).

Crown counsel purported to find authority for the first of these propositions in the Mohaka River and Ngati Rangiteaorere reports and for the second in the Te Maunga report. For reasons which we have discussed above (see paras 16.4.3, 16.4.5), we do not accept either of these propositions as being soundly based.

### **16.5.3 Tribunal's comment**

In chapter 15, we articulated the relevant Treaty principles and, in particular, what we see as the overriding principle applicable in this case. That is, that the cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga. The confirmation and guarantee of rangatiratanga in article 2 necessarily qualifies or limits the authority of the Crown to govern. In addition, under article 2, the chiefs gave to the Crown a pre-emptive right to purchase such lands as they might be disposed to sell at such prices as may be agreed upon.

Statutory powers giving the Crown a right to ride rough-shod over the solemn rights guaranteed to Maori by article 2 could be justified only, as we have earlier indicated, in exceptional circumstances and as a last resort in the national interest.

## **16.6 RELEVANT STATUTORY PROVISIONS**

### **16.6.1 Draconian provisions**

The draconian provisions of the Public Works Act 1928 and the Turangi Township Act 1964, which we discussed in chapters 13 and 14, included the right of the Crown to take the claimants' land compulsorily for the establishment or development of the Turangi township:

- without any notice to the owners;
- without any right of objection by the owners;
- without any obligation to consult with the owners;
- without the consent of the owners;
- without any obligation to return any land not required or no longer required for the purpose for which it was taken;
- at a price negotiated with a statutory official acting on behalf of the multiple owners rather than with the owners themselves;
- on pre-ordained mandatory conditions upon which payment of compensation for the land taken would be made; and
- with insistence on the freehold of the land being taken, irrespective of the preference of the owners.

In this particular claim, if counsel for the claimants and the Crown respectively are correct, the Crown also had the right to enter the claimants' land, without notice to or the consent of the owners, and operate bulldozers to demolish buildings, change the contour of the land, and construct roads and buildings thereon, before any Order in Council taking the land has been proclaimed and gazetted. Whether or not the Crown had such rights, which is arguable, it did so enter and carry out such operations on claimants' land well before the necessary Orders in Council were made and gazetted.

### **16.6.2 Modification effected by the Public Works Act 1981**

We are mindful of the fact that the Public Works Act 1981 has effected some modification of the powers of the Crown to acquire land compulsorily. But as the Tribunal in the *Te Maunga Railways Land Report* has noted in its discussion of past and present public works legislation, the most significant omission of the 1981 Act is the failure to acknowledge in any way the Crown's obligations and responsibilities towards Maori as a partner under the Treaty of Waitangi.<sup>9</sup> The same omission is present in the Public Works Act 1928 and the Turangi Township Act 1964.

### **16.6.3 Tribunal's conclusion**

This Tribunal has had the advantage of considerable argument from both counsel for the claimants and counsel for the Crown on whether the provisions of the Public Works Act 1928 and the Turangi Township Act 1964, pursuant to which the Crown compulsorily acquired the claimants' land for the township, were compatible with the Treaty and Treaty principles. The various statutory powers exercised by the Crown were in respect of ancestral lands of the Ngati Turangitukua hapu of the Tuwharetoa people. The Tribunal considers that they are not merely inconsistent with the terms of the Treaty and relevant Treaty principles; they are 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 the Public Works Act 1928 and the Turangi Township Act 1964.

### **16.7 TRIBUNAL'S FINDING**

The Tribunal finds that:

- (a) the claimants have been prejudicially affected by the provisions of the Public Works Act 1928 and the Turangi Township Act 1964, in that both Acts were and are fundamentally inconsistent with the basic guarantee given in article 2 of the Treaty of Waitangi that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown;
- (b) the Turangi Township Act 1964 permitted the Crown to acquire land compulsorily without direct consultation with the Maori landowners, thus contravening the Crown's duty to act in good faith and consult with its Treaty partner in respect of matters affecting Maori; and
- (c) the Turangi Township Act 1964 further breached the principles of the Treaty by excusing the Crown from the notice requirements of sections 22 and 23 of the Public Works Act 1928.

### **References**

1. Judith Binney, 'Pakeha Written Texts, Maori Oral Narratives: Two Forms of Telling History', *New Zealand Journal of History*, vol 21, no 1, 1987, p 17
2. Waitangi Tribunal, *Te Maunga Railways Land Report*, Wellington, Brooker's Ltd, 1994, p 71
3. Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies*, Wellington, Brooker and Friend Ltd, 1990, p 42

4. Waitangi Tribunal, *Orakei Report 1987*, 1st ed, Wellington, Department of Justice: Waitangi Tribunal Division, 1987, p 166
5. Ibid, p 162
6. Waitangi Tribunal, *Ngati Rangiteaorere Claim Report 1990*, Wellington, Brooker and Friend Ltd, 1990, p 46
7. Ibid, pp 47–48
8. *Te Maunga Railways Land Report*, p 67
9. Ibid, p 56



## CHAPTER 17

# CROWN TREATY BREACHES

### 17.1 INTRODUCTION

In this chapter, we consider whether the Crown was under a Treaty obligation:

- before deciding to take the claimant owners' land to ensure first that no other land, in particular, the Crown-owned Turangi East site, was available as an alternative;
- to give adequate consideration to the desirability of acquiring the leasehold instead of the freehold of the land compulsorily taken for the township and the water supply reserve; and
- to ensure that provision existed for land, when it was no longer required for the public work for which it was taken, to be returned at the earliest possible opportunity and with the least cost and inconvenience to the Maori owners.

### 17.2 CLAIMANTS' ALLEGATIONS

#### 17.2.1 Statement of claim

In paragraph 5(2)(a) and (b) of their statement of claim (see app I), the claimants allege that they have been prejudicially affected by the following policies and practices adopted by the Crown:

- (a) the policy of taking Maori land for the establishment of public works, and in particular the policy of taking such land without first ensuring
  - (i) that no non-Maori land was available as an alternative;
  - (ii) that all practicable alternatives to purchasing the land, including the alternative of taking a leasehold interest in the land required, had been exhausted; and
  - (iii) that provision existed for the land, when no longer required for the public work for which it was taken, to be returned to its Maori ownership at the earliest possible opportunity and with least cost and inconvenience to those Maori owners; and
- (b) the policy decision to site the Tongariro Power Project ('the Project') and the Turangi Township ('the Town') in their current location when other locations were available which did not involve the wholesale taking of Maori land.

We consider each of the allegations in paragraph (5)(2)(a)(i), (ii), and (iii) in turn. As to sub-subparagraph (b), we do not discuss the policy decision to site the Tongariro power project in its current location, because urgency was granted in respect of claims relating



only to the Turangi township, not to the project. The remainder of sub-subparagraph (b) relates to matters encompassed in our consideration of sub-subparagraph (a)(i).

### **17.2.2 The choice of the township site**

The Crown's choice of the township site has already been discussed in some detail (see para 2.4). We here note the salient points to emerge from that discussion.

- (a) The first recommendation of a suitable site was made by A W Gibson, then the project engineer at Mangakino and later the project engineer for the Tongariro project. On 29 November 1963, he recommended to the Commissioner of Works that a single central township, to become permanent, should be built at Turangi West. He saw it as the easiest site to develop. Possible sites at Lake Rotoaira and Rangipo were rejected as unsuitable for permanent towns. A fourth location, and the nearest to Turangi West, was at Turangi East, just over the Tongariro River, which it was said was generally similar to Turangi West. The river would need to be bridged and it was slightly more expensive for transport costs than Turangi West. It was considered not to be as attractive as Turangi West, which was favoured largely because it would be possible to build the nucleus of a permanent township at the outset by enlarging the existing Turangi village.
- (b) In April 1964, discussions were held between senior officials of the Ministry of Works and the Department of Justice. The department, while not keen on any use of its land, agreed, in view of the national interest, that it would fit into a compromise site. It was advised that the Ministry's first choice would be Turangi Maori land, but the Ministry 'needed to look at alternatives both to assist bargaining with the Maori and to satisfy government [the] right choice had been made' (B2(a):52).
- (c) The Turangi East site does not appear to have been seriously considered (see para 2.4.4). Physically and climatically, this site, on the east bank of the Tongariro River and on Crown land opposite the existing Turangi village, was potentially as good as the chosen Turangi West site. Indeed, it had some advantages in that there was more room for expansion than at the Turangi West site, which was constrained by the Tongariro River and swamp lands to the north and steep hill slopes to the south. The Turangi East site did, however, need a new bridge over the river.
- (d) The Crown did not produce any evidence to the Tribunal to indicate that any serious consideration was given to the Turangi East site, although it was on Crown-owned land, which, as subsequent events disclosed, was not required for prison purposes.
- (e) The Department of Justice supplied information to the Tribunal about the subsequent use of the lands included in the Turangi East site. An area of 647.3 hectares (1599.5 acres) known as Mangamawhitiwhiti Farm was sold by the Treasury to Landcorp on 1 April 1987. It appears that the Department of Justice was not advised of the sale, nor did it receive any revenue from it. Apparently, the

land, the major part of which was flat, was being managed and farmed by the Department of Lands and Survey from April 1967, not by the prison (see para 2.4).

- (f) When the Department of Lands and Survey was restructured in the mid-1980s, the Turangi East site, as part of Mangamawhitiwhiti, was transferred to Landcorp. The Land Transfer Office title to the land carries a memorial under section 27B of the State-Owned Enterprises Act 1986.
- (g) If it was possible to transfer the management in 1967 and, in 1987, the ownership of this part of the prison farm to the Department of Lands and Survey, it seems difficult to believe that the land was essential for prison farm purposes and was therefore not available as a township site. Indeed, no such contention was advanced by the Crown before us. Under cross-examination, Crown consultant David Alexander stated that the Crown's second choice was across the river at the Hautu Prison property (5.1:3).
- (h) The choice of a permanent township site was between Turangi East, being Crown land which could have been made available, and Turangi West, being Maori land, which, from the outset, it was intended to take under the compulsory acquisition provisions of the Public Works Act 1928.
- (i) There is no evidence before us that, at any stage in the consideration of the site to be developed for the township, the Treaty rights of the Maori owners of the Turangi West site were adverted to or taken into consideration by the Crown.
- (j) The Crown accepted that the tangata whenua had 'minor input' into the decision of where to site the town (5.1:3).

Claimant counsel submitted that there was a strong feeling among claimants that, even after the Turangi West site was identified, there was a preference in the Ministry of Works not to take or even affect European-owned land in the area (C2:33). She referred to the evidence of John Asher that:

the old part of Turangi, the houses along the Tongariro River which were in freehold title and owned by Europeans, were untouched. The main road was diverted to keep the European-owned part of Turangi in an exclusive and untouched area so that those owners were largely unaffected by the works. (A12(1):7)

The Turangi East 'green-field' site had obvious advantages:

- it was already Crown land;
- there was nobody living on it;
- it would have avoided the enormous disruption caused to the existing Turangi community;
- the Department of Justice did not oppose the use of the site;
- the land was not essential to prison farm operations – the Department of Lands and Survey assumed the management of the Mangamawhitiwhiti block in 1967 and the land was subsequently transferred by Treasury to Landcorp without reference to the Department of Justice; and

- Ngati Turangitukua claimants would have been left in possession of the lands taken for the township.

### **17.2.3 Tribunal's conclusion**

The Tribunal concludes that there was an inadequate investigation and no social or environmental impact assessments of the respective sites. Maori participation in the choice of the site was minimal, amounting to being informed at meetings in 1964 that Turangi West was the preferred site for the permanent town; the only alternative suggested was a temporary town at Rangipo, although the Crown's actual second preference was the Turangi East site.

The Crown failed to take into account its Treaty obligation actively to protect the claimants' rangatiratanga over their lands, nor did it consider the social impact on Maori landowners or on the Ngati Turangitukua community.

### **17.2.4 Tribunal's finding**

The Tribunal finds that the Crown's policy decision to take the Maori-owned land at Turangi West for public works without first ensuring that no other land, in particular the Crown-owned Turangi East site, was available as an alternative was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga and that the claimants were thereby prejudicially affected.

## **17.3 PRACTICABLE ALTERNATIVES TO PURCHASING THE SITE**

### **17.3.1 Review of the evidence**

We now consider the claim in paragraph 5(2)(a)(ii) of the statement of claim that the Crown failed first to ensure that 'all practicable alternatives to purchasing the land, including the alternative of taking a leasehold interest in the land required, had been exhausted'.

The Crown made clear to the owners its conviction that the freehold of all the land required for the township would have to be acquired, apart from a leasehold area of some 200 acres.

As was noted in chapter 3:

- (a) At a meeting with a few owners and others on 15 April 1964, it was indicated that the Crown sought 600 to 800 acres of freehold land and about 100 to 200 acres of leasehold land for a heavy industrial area (see para 3.2).
- (b) After a later meeting on 7 May 1964, in a letter dated 8 May 1964 from Gibson and Jack Asher to Maori owners of the land affected by the Turangi township, the Crown proposals for a permanent town were said to require 800 acres of freehold land and some 200 to 300 acres for a temporary industrial area (see para 3.6).
- (c) At a meeting with Maori landowners on 24 May 1964, John Bennion, a Crown representative, reiterated a statement by Gibson that, in view of the Crown's

expenditure of an estimated £4 million and the need for the Crown to ensure a permanent return for this expenditure, the township had to be built on freehold land. Bennion advised that the Crown would not consider building to the standard envisaged on leasehold land. He added that it was hoped that private capital would be attracted to the town.

Bennion further advised that an industrial area on leasehold land would be required for workshops, stores, and the like, and the area shown on the plan would revert to owners when the Ministry's work finished. Private industrial development on this area would be a matter for regulation between the individuals, the owners, and the Taupo County Council (see para 3.4).

- (d) At a lengthy meeting with Maori owners on 20 September 1964 (the day before Cabinet approved the proposals for the Turangi township), Gibson advised that there would be no change of location and he was about to reveal to the people present 'for the first time' the final plan for the Turangi township. The lengthy minutes of the meeting make no express reference to the fact that the Crown would be acquiring the freehold of much of the land required, but this may reasonably be inferred. Express reference was, however, made to the area of 200 acres which would be taken on temporary lease for the industrial area. The private industrial developers, Gibson said, could either accept a limited temporary lease or negotiate something more permanent with the Maori owners. R E Tripe, the Tuwharetoa Maori Trust Board's solicitor, said the industrial area would be leased for 10 years and would then revert to the owners. Subsequently, the Crown resiled from its undertaking to lease the industrial area and took the freehold by proclamation.

### **17.3.2 Maori owners given no choice**

It is clear that, from the inception, the Crown was committed to the compulsory acquisition of the freehold of all the land required for the Turangi township other than the industrial area. The proposals were presented on that basis and it is a reasonable inference that they were non-negotiable. The available evidence indicates that the Maori owners were given no choice in the matter, nor, indeed, asked whether they would prefer the leasehold only to be acquired by the Crown for the township land. An important, perhaps the dominant, consideration appears to have been that the acquisition of the freehold was seen as necessary to ensure a permanent return for the Crown's expenditure.

There is no evidence that the Crown considered what form of tenure would be in the best interests of the Maori owners and would best protect their rangatiratanga over their ancestral lands.

### **17.3.3 W A Cleghorn's evidence**

Claimant counsel contended before the Tribunal that leasing ought to have been regarded as viable for the whole of the township (C2:34). In support, evidence was adduced from W A Cleghorn, a registered valuer and the vice-president of the New Zealand Institute of Valuers. Claimant counsel put to Mr Cleghorn various statements made by Crown representatives at the meeting on 24 May 1964 referred to earlier (see para 17.3.1(c)). Cleghorn was asked to comment on the proposition that the Ministry of Works was initially proceeding on the premise that a leasehold was suitable for the industrial block but was wholly unsuitable for residential or commercial purposes in the village, and he was asked whether he would agree with that premise. Cleghorn replied:

There is an instinctive reluctance I suppose for people to take on leasehold land for a type of occupation. But provided the terms of the lease are fair to both sides and are quite clear leasehold tenure can be a very satisfactory form of occupation. There are a number of examples where substantial residential, commercial, industrial and rural areas of land are occupied under leasehold tenure and have been for a long time. Perhaps by way of example, approximately  $\frac{1}{3}$  of the central business district of Rotorua city is occupied under 21 year leases. That area contains multi-story office blocks, shops, large hotels and motels. A further quite substantial area slightly to the south of the central business district is similarly occupied under leasehold tenure. The land used here is warehousing, retail warehousing and recreational. We've got, of course, the two well known examples of residential tenure on a large scale in the church leasehold lands in the eastern suburbs of Auckland city, Melanesian Trust and St John's College. We have also got examples of leasehold tenure in Motueka and in Greymouth, where a large area of Greymouth township itself is leasehold tenure. We have the Porirua city centre which is all leasehold land, and, perhaps a little closer to home, we have the Mangakino township and area surrounding it, which was land vested by the Crown in the ownership of the Wairarapa Maori people in compensation for the bed of Lake Wairarapa. Mangakino being a hydroelectric town, the whole town is leasehold and a large area of farm land around it is similarly leasehold. Those, perhaps, are clear examples of how it does work under a leasehold tenure. (5.2:3)

Mr Cleghorn was asked by Crown counsel whether it would be reasonable to assume that if the Crown had not had freehold tenure for the commercial and residential sections of Turangi it would have had to take the same steps it took for Mangakino and not put in what it considered to be a permanent hydro village (5.2:7). Mr Cleghorn did not accept Crown counsel's suggestion. He pointed out that Turangi:

has an infrastructure of its own in tourism of quite a variety.

It was being regarded as having the tourism activity as long as I can remember with its thermal, its access to the National Park, to the mountains and to rivers and the trout fishing and the like. So it is an established tourist area . . . Quite different from Mangakino which is on, certainly, a State Highway, but serves the local forestry industry and the local farming community. (5.2:7-8)

The Crown did not call any evidence in rebuttal of Mr Cleghorn's view that, provided the terms of the lease are fair to both sides and are quite clear, leasehold terms can be a very satisfactory form of occupation. Mr Cleghorn clearly regarded leasehold as a viable option for the whole town. Had the respective options of leasehold or freehold tenure been thoroughly investigated at the time, the Crown would no doubt have produced evidence of this. The conclusion appears inescapable that, given the Crown's failure to advert to its Treaty responsibilities in relation to the Ngati Turangitukua land, it simply did not have regard to the claimants' rights under article 2. The early decision that the freehold should be taken for all but the industrial area of 200 acres or so was, it appears, made on the basis of what, in the view of Crown officials, best suited Crown interests, including obtaining a return on its investment. It seems that the Crown thought a return would be better secured if the freehold were taken. Of course, the problem would not have arisen had the Crown elected to develop the new township just across the river, on the Crown-owned Turangi East land.

Claimant counsel also submitted that 'leasehold was an obvious option for the land designated for the rubbish tip and for the water supply reserve' (C2:35). The two matters are interrelated; the land proposed for the rubbish tip was adjacent to that to be taken for the water supply reserve. A detailed account is given in chapter 7 and need not be repeated here. We note only the salient facts:

- Because parts of the water supply reserve and rubbish tip were outside the boundaries of the land authorised to be taken under the Turangi Township Act 1964, the Crown had to comply with the notification and objection provisions in the Public Works Act 1928 (see para 7.1.3).
- It was originally proposed to take 349 acres for the water supply reserve and the rubbish tip.
- Debate between representatives of the Maori owners and the Crown centred on whether adequate protection could be maintained on leasehold tenure (which the Maori owners sought) or whether the Crown should take the freehold. It was suggested by the Tuwharetoa Maori Trust Board representatives that a controlled afforestation programme in the catchment area should be implemented and the land retained in Maori ownership.
- The Taupo County Council, which was to take over the control of the water supply scheme, was opposed to any afforestation schemes (for public health reasons) and also to any form of leasehold tenure. It advised the Ministry of Works in October 1969 that:

Although it is technically possible to protect this area by the acquisition of a lease in perpetuity, or even a perpetually renewable lease, the Maori owners must realise that the land is lost to them for all time and that for them to retain ownership of the freehold would be of no practical significance. From an administrative viewpoint acquisition of the freehold is the only common-sense thing to do . . . In my opinion . . . formal acquisition of the freehold should proceed. (B4(a):48)

- The Crown later decided it needed a larger area for the water supply reserve and an access road, and notice to take some 539 acres for this purpose was given in December 1971 (see para 7.1.3).
- Several objections were lodged, including one from Hepi Te Heuheu and Pat Hura, who had been appointed by the Maori Land Court as trustees of the Waipapa blocks covered by the notice. The trustees and the Tuwharetoa Maori Trust Board met the Prime Minister in January 1972, having earlier expressed to him their concern over the additional land required for Turangi, and suggested that the taking of such a large area for the water supply along with the industrial area was contrary to the original undertaking given in 1964. It was recorded that at this meeting the 'owners reluctantly accept decision to take [the water supply] catchment area' (A10:37).
- A proclamation taking 539 acres for the water supply reserve and road was issued on 2 October 1974 (see para 7.1.4).
- The owners made it clear that they were prepared to lease the tip site but would not agree to its sale. In November 1972, an agreement was reached with the Crown to lease the 34 acres of the tip for as long as the land was required for rubbish disposal, at a rent of 10 cents per annum if demanded. On termination of the lease, the land was to be restored to a reasonable contour and sown in grass, without cost to the owners. For the reasons given in chapter 8 relating to the sacred wahi tapu Nga Tuahu on adjoining land, the Taupo County Council ceased use of the tip in 1977. The land remains in Maori ownership (see para 7.2).

#### **17.3.4 Maori values, attitudes, and concepts not considered**

There is no indication in the voluminous Ministry of Works files made available to us that Maori values, attitudes towards wahi tapu in this area, or concepts of mana and rangatiratanga were considered important in the lengthy negotiations over the water supply scheme. Probably, Maori willingness to allow the county to utilise the 34 acres for the rubbish tip for a nominal rental of 10 cents saved that land from being compulsorily acquired and permanently lost, but no compensation for the use of or damage to the land or for the pumice extracted has ever been paid (see para 7.2).

#### **17.3.5 Tribunal's finding**

The Tribunal finds that the Crown failed to give adequate consideration to the desirability, in the interest of protecting the rangatiratanga of Ngati Turangitukua owners over their land, of acquiring the leasehold instead of the freehold of the land taken for the township and the water supply reserve, that such failure was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga, and that the claimants were thereby prejudicially affected.

## **17.4 OFFER BACK PROVISIONS**

### **17.4.1 The claimants' allegations**

We turn now to consider two further claims by the Ngati Turangitukua claimants. They allege that they have been prejudicially affected by:

- the Crown policy of taking Maori land for public works purposes without first ensuring that provision existed for the land, when it was no longer required for the public work for which it was taken, to be returned to Maori ownership at the earliest possible opportunity and with the least cost and inconvenience to those Maori owners (app I, para 5(2)(a)(iii)); and
- the failure on the part of the Crown to offer land taken compulsorily back to the original landowners once it had served the immediate purpose for which it was taken (app I, para 5(3)(1)).

The first grievance relates to a deficiency in the legislation in force at the time. The second relates to the failure of the Crown, until relatively recently, to offer to return any such land.

### **17.4.2 No offer back provisions in the Public Works Act 1928 or the Turangi Township Act 1964**

Neither the Public Works Act 1928 nor the Turangi Township Act 1964 contained any provision obliging the Crown to offer to return compulsorily acquired land which it no longer required.

Section 4(1) of the Turangi Township Act 1964 did, however, provide that any land acquired under the Act might be declared Crown land subject to the Land Act 1948 or be dealt with in accordance with the provisions of the Public Works Act 1928. Land so declared Crown land could be alienated by the Crown pursuant to the Land Act. There was no provision in the Land Act requiring the Crown to offer back to the former owner land it no longer required. However, a mechanism existed in section 436 of the Maori Affairs Act 1953 whereby Crown land could be revested in Maori by the Maori Land Court if the Crown should choose to apply for a revesting order.

### **17.4.3 Provision for and aspects of returning land compulsorily acquired**

Claimant counsel submitted that, whenever Maori land is compulsorily acquired in the public interest, the strongest possible imperative exists for the land to be returned to the Maori owners at the earliest opportunity (C2:11). She contended that appropriate mechanisms to ensure that such returns take place with minimal delay and inconvenience to the former owners or their successors is a necessary incident to this imperative.

Ms Wainwright argued that an important aspect of any return mechanism is affordability and that it was inappropriate for the Crown to demand from Maori owners a market price for land compulsorily taken (C2:12). She invoked certain comments by Judge Carter of the Maori Land Court, which were cited with approval in the *Te Maunga Railways Land*



*Report* at page 79. Judge Carter observed that where land becomes surplus to requirements the Crown has a duty to its Treaty partner to return it on reasonable terms and conditions and for a reasonable price, having regard to the cost of acquisition and to a reasonable return on that cost. He also thought that the Crown should endeavour to come to arrangements which might facilitate the owners in being able to take up the offer made to them.

#### **17.4.4 Public Works Act 1981 offer back regime**

Claimant counsel was also critical of the offer back regime in the Public Works Act 1981 (C2:14). We note here the main provisions of sections 40, 41, and 42 of the Act, as subsequently amended. Section 40 reads:

(1) Where any land held under this or any other Act or in any other manner for any public work—

- (a) Is no longer required for that public work; and
- (b) Is no longer required for any other public work; and
- (c) Is not required for any exchange under section 105 of this Act—

the chief executive of the Department of Survey and Land Information or local authority, as the case may be, shall endeavour to sell the land in accordance with subsection (2) of this section, if that subsection is applicable to that land.

(2) Except as provided in subsection (4) of this section, the chief executive of the Department of Survey and Land Information or local authority, unless—

- (a) He or it considers that it would be impracticable, unreasonable, or unfair to do so; or
- (b) There has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or is held—

shall offer to sell the land by private contract to the person from whom it was acquired or to the successor of that person—

- (c) At the current market value of the land as determined by a valuation carried out by a registered valuer; or
- (d) If the chief executive of the Department of Survey and Land Information or local authority considers it reasonable to do so, at any lesser price.<sup>1</sup>

Section 41 relates to the disposal of former Maori land no longer required. It concerns Maori freehold land or general land owned by Maori (as defined in section 4 of *Te Ture Whenua Maori Act 1993*) and beneficially owned by more than four persons and not vested in any trustee. The chief executive of the Department of Survey and Land Information or the local authority must, in respect of such land, comply with the requirements of section 40 of the Public Works Act or apply to the Maori Land Court for an order under section 134 of *Te Ture Whenua Maori Act*.<sup>2</sup>

Section 42 provides that where an offer to sell land under section 40(2) has not been accepted within 40 days, or such further period as the chief executive considers reasonable, or where any land is no longer required and subsections (2) and (4) of section 40 do not apply, the chief executive may offer to sell the land to an adjacent owner or offer it for sale by public auction or public tender or by public application at a specified price.<sup>3</sup>

#### **17.4.5 Difficulties for multiple owners**

Claimant counsel referred to the difficulties multiple owners of land experienced in raising money to purchase land (C2:14). Ms Wainwright contended that special time provisions and payment terms should be available. She further submitted that the overriding tribal interest in Maori land should be acknowledged by providing for the offer back right to pass to wider tribal interest groups in the event that the original owners or their direct descendants were unable to effect the purchase. In short, she urged the Crown to facilitate, by whatever means possible, the return to Maori ownership of compulsorily taken land.

#### **17.4.6 'Loopholes'**

Claimant counsel next referred to the absence of any offer back procedures of any kind before the Public Works Act 1981 was passed. She characterised as 'loopholes' certain provisions in section 40(2)(a) and (b) which exempted the Crown from the obligation to offer land back (C2:14). These exemptions are when the chief executive considers it impracticable, unreasonable, or unfair to offer land back or where there has been a significant change in the character of the land arising from the public work or purpose for which the land was acquired.

#### **17.4.7 Sales of surplus land without offers back**

It is not known in how many instances the Crown has relied on section 40(2)(b) of the Public Works Act 1981 as justification for not making an offer back to former claimant owners. Mahlon Nepia gave evidence of some instances of which he was aware when the Crown, in reliance on section 40(2)(b), had bypassed the Maori owners and sold land directly to third parties. He cited some nine properties, mostly vacant sections, which were sold as surplus properties without any offers back to former Maori owners. These sales took place from 1984 to 1986 (A21(3):23).

Mr Nepia also produced evidence of some 15 surplus Department of Education properties which were sold off by the Crown. The Office of Crown Lands advised Mr Nepia that these sales, some of which dated back to February 1989, were not offered back to former owners because the Crown was exempt under the provisions of section 40(2)(b) of the Public Works Act 1981 (A21(3):24, app 43). The Office of Crown Lands claimed in a letter to Mr Nepia on 15 March 1994 that there had been correspondence between the Crown and him and his solicitors late in 1993. Mr Nepia told the Tribunal that he knew of no such correspondence, nor did he understand how these properties had been 'cleared for disposal' by the Crown (A21(3):23).

#### **17.4.8 Recreation reserve land**

Other claimants gave evidence about land that was compulsorily acquired for the township but has not been offered back. Eileen Duff and Tuatea Smallman referred to the Crescent Recreation Reserve, which is made up of their respective families' land. The efforts of the former owners to secure the return of this land have included protracted negotiations involving several Cabinet Ministers (A22(2):8–10). On 17 July 1987, the Taupo district conservator advised the Taupo County Council that the Department of Conservation would 'concede the land is not fully serving its intended purpose and on reassessment accepts the bulk of the land is not required' (A22(2):L). The department stated that it would be receptive to an application for the return of this land to the former owners under the conditions set out in the Public Works Act 1981. However, the Tribunal has been told nothing has happened. The department still has this land, which it does not require for the purpose for which it was taken from the owners. The least the Crown can do is offer it back to the former owners, who have a special attachment to it.

#### **17.4.9 Te Rangi whanau struggle**

Other instances were cited to us of land lying idle for many years and the long struggle of the Te Rangi family to get some of their land back. Ultimately, the intervention of the Chief Ombudsman was obtained to overcome the sustained objection of the Crown to the return to the Te Rangi family of any part of the surplus land. As Crown consultant David Alexander noted, the Chief Ombudsman found that continued possession of the land by the Crown was not justified and he recommended that the Department of Lands and Survey should return the land to the descendants of Sonny Te Rangi, the original owner (B7:20).

#### **17.4.10 Pony club land**

The problems arising from the failure of the Crown to act promptly in offering to return land no longer required is well illustrated by the retention of an area of some 120 acres, part of which was commonly known as the pony club land. This land fronted on the former SH1. Evidence concerning this land was given by Arthur Grace (A21(1):15–17), Mahlon Nepia (A21(3):20–21), and David Alexander. The following account is drawn principally from the evidence of Mr Alexander (B7:21–23).

The land in question is at the southern end of old Turangi and consists of a large area of paddocks between Taupahi Road and the realigned SH1. Most of the land was taken in 1965 and over three years later, in 1968, the owners of the 120 acres were paid \$21,965 (\$183 per acre) (A21(1):C). The land was not immediately required and was zoned deferred residential. A planning report in February 1967 noted that it was acquired by the Crown to hold in reserve until the number of residential sections needed was known more exactly. It was envisaged that if the area were to be used for residential purposes in connection with

the power scheme only temporary accommodation would be erected for the duration of the scheme, after which the land would revert to non-urban use (B7:21). Some 82 acres of the land were leased out for grazing purposes and the Turangi Pony Club had a sublease on part of it.

In March 1973, the pony club sought a lease of part of the land comprising 26.5 acres. The roll value of the land as at 1 April 1967 was \$1250 an acre, but the Crown's assessment of the value for grazing and farming purposes was \$100 per acre. In June 1973, 55.5 acres of adjoining land was leased by the Crown to J Thorby for grazing purposes, the respective roll values and Crown assessment for grazing and farming purposes being the same as noted for the pony club leasehold land (B7(a):145–148).

By August 1973, the 82 acres had been declared surplus to TPD requirements by the project engineer. While it was thought that the land might still be needed for the future development of the town, it was considered more appropriate to transfer it to the Department of Lands and Survey for future control. It was proposed by the district land purchase officer that the 82 acres be transferred to the department for \$39,000, less 6 percent for administration. The price reflected a special Government valuation of 16 July 1973, of which the unimproved value was \$37,500 (\$457.30 per acre) (B7(a):149–151). A recommendation from the Ministry of Works' Wanganui office that the land would have to be held by Lands and Survey for the purpose for which it had been acquired, that is, the development and establishment of the Turangi township, was not thought necessary by the Ministry's head office. However, Mr Alexander notes that this question held up the transfer of the land. The block did not become Crown land under the Land Act 1948 until 1979. The land was transferred to Landcorp in 1987 (B7:23, B7(a):153–155).

The Crown, and from 1987, Landcorp, continued to hold the land until 1994, when, very belatedly, an offer was made by Landcorp to Arthur Grace and two others in terms of section 40 of the Public Works Act 1981. The total area offered was 25.29 hectares (approximately 62 acres). The purchase price was \$258,000, plus GST of \$32,250, a total of \$290,250 (A21(3): app 34). This offer was received by the former owners during our first hearing in March 1994. Although the land, apart from some fencing, was basically in the same condition as when it was entered by the Crown in 1964, its value had increased enormously. As noted earlier, the owners were paid \$21,965 for 120 acres. They were invited in 1994 to pay \$290,250 for 62 acres, being land which was not necessary for the township development. The Tribunal believes the land should have been offered back in 1973 when the Ministry of Works no longer required it in connection with the Tongariro power project. At that time, the 82 acres was valued at \$39,000. The increase in value over the 21-year period, to which inflation no doubt contributed, was \$251,250. The real increase is even greater because the Crown offer was for 62 acres and the 1973 valuation was for 82 acres. It is difficult to accept that the Crown, by deliberately delaying any offer to return the land for a further 21 years, is in good faith entitled to reap the reward of its failure to meet its Treaty obligation to protect Maori rights to their land.

#### **17.4.11 Turangitukua House**

Considerable evidence was given by Mahlon Nepia concerning the sale of a 2.9827-hectare property, being part of Ohuanga North 5B2C2, on which stood Turangitukua House. It was erected to house the project office of the Ministry of Works during the construction period. It is important to record briefly the background to the sale of this property because it was news of its impending sale which triggered an application to the Tribunal for an urgent hearing. That application was granted on 20 August 1993 (2.10). The following account, unless otherwise indicated, is taken from the evidence of Mr Nepia, who produced considerable documentation in support (A21(3):3–8, 14–17, 19–20).

- Turangitukua House is located at the intersections of SH1 and SH41. The three-hectare site was part of the industrial area which the Crown had undertaken it would lease and later return to the Ngati Turangitukua owners. As we saw in chapter 6, the Crown failed to honour this undertaking and took the land compulsorily by proclamation.
- On 20 May 1985, the Minister of Works, pursuant to section 52 of the Public Works Act 1981, declared the three-hectare site to be set apart for 'Government Office Accommodation'. A certificate of title was issued on 7 April 1989 in the name of the Queen and, on 16 August 1989, Government Property Services Ltd was registered as the owner of the land. The title was noted as being subject to section 27B of the State-Owned Enterprises Act 1986 (A21(3): app 25).
- Government Property Services in or about November 1987 advertised the property for auction on 24 February 1990, but three days prior to this date cancelled the auction. This may have been as a result of representations made by Mr Nepia to the Ministers of Lands and Internal Affairs in the preceding November and later to the Minister for State-Owned Enterprises (A21(3):3–4).
- On 20 April 1990, the Minister of Justice advised Mr Nepia that the Turangitukua House site had been withdrawn from sale in order that the Commissioner of Crown Lands could carry out a review of section 40 of the Public Works Act 1981 (A21(3): app 3).
- On 25 October 1990, Valuation New Zealand sent a valuation of the property to the Department of Survey and Land Information. Details were (A21(3): app 6):

|                       |           |
|-----------------------|-----------|
| Value of improvements | \$175,000 |
| Land value            | \$275,000 |
| Capital value         | \$450,000 |

- On 14 March 1991, the Crown made an application to the Maori Land Court under section 436 of the Maori Affairs Act 1953. It asked the Court to identify the persons in whom the land should be vested and to stipulate the price to be paid for the land and the terms and conditions of the sale to the former owners (A21(3):6).
- On 15 October 1991, a meeting took place between Mr Nepia, representing the former owners, and Jennifer Desborough, a property officer in the Office of Crown Lands. Subsequently, on 7 November 1991, Ms Desborough sent Mr Nepia a letter

intended for circulation to the Maori owners. In this letter, she advised that the three-hectare site under offer was part of Ohuanga North 5B2C2, which had an area of 67 acres at the time it was taken by the Crown. Compensation paid for this particular block was \$9543, or approximately \$140 an acre. She asked whether the owners were agreed on the price of \$450,000. As noted above, the then land value was \$275,000 for three hectares (approximately 7.5 acres). The price had increased from the \$150 per acre paid by the Crown in 1965 to \$36,667 per acre in 1991. Not surprisingly, the claimants preferred to persist with their claim to this Tribunal, particularly as this was part of the industrial land which the Crown had categorically assured the then owners in 1964 would be returned to them after being leased for some 10 to 12 years (A21(3):7, app 9).

- On 23 September 1992, the Maori Land Court at Turangi determined that the owners entitled, should the land be returned, were the previous owners of Ohuanga North 5B2C2 and adjourned the application sine die, pending a determination of the claim before the Waitangi Tribunal (A21(3): app 31).
- On 4 May 1993, the Office of Crown Lands wrote to R Downs, K M Grace, and Arthur L Grace, as trustees of Ohuanga 5B2C2. The letter contained a formal offer in terms of section 40 of the Public Works Act 1981 to sell the three-hectare site for the sum of \$300,000 plus GST, a total of \$337,500. At that time, the application under section 436 of the Maori Affairs Act 1953 was still before the Maori Land Court. However, the deputy chief judge of that court had ruled that it would be in order for the land to be offered to the trustees under section 40 and then on the open market if this offer were not accepted (A21(3):16–17, apps 25, 31).
- On 8 June 1993, the Office of Crown Lands applied to the Maori Land Court for leave to withdraw its section 436 application (A21(3): app 31).
- In March 1994, the claimants learned that Landcorp had sold Turangitukua House in January of that year. The title to the property has endorsed on it a memorial pursuant to section 27B of the State-Owned Enterprises Act 1986, making it amenable to an application for a resumption order under the Treaty of Waitangi Act 1975 (A21(3):20).

## **17.5 CONCLUSIONS RELATING TO THE OFFER BACK PROCEDURE**

In 1981 belated recognition was given by the Crown to the desirability of compulsorily acquired land being returned to its former owners when it was no longer required by the Crown. While much of the Turangi township land would be on-sold by the Crown for commercial or residential use or for the provision of public amenities, it is apparent that significant quantities of land were not so needed. Given the high value placed by the Ngati Turangitukua claimants on their ancestral land and the desirability of surplus land being returned to the owners from whom it had been compulsorily taken, the Tribunal considers that the Crown should have made provision for such returns to Maori ownership. In the

present case, it was particularly important that such provision should have been in place because:

- the claimants lost an appreciable part of their ancestral land to the Crown;
- their economic base was seriously eroded;
- their traditional way of life was seriously disturbed;
- the Crown was under a Treaty obligation actively to protect the claimants' rangatiratanga over their land;
- appropriate provisions for the prompt return to claimants of land no longer required were essential to meet the Crown's Treaty obligation to Ngati Turangitukua owners; and
- the absence of such provisions prejudicially affected the claimants in that many such properties were sold to third parties and were not first offered back to the former Maori owners or their successors.

## **17.6 TRIBUNAL'S FINDING**

The Tribunal finds that the claimants have been prejudicially affected by the omission of the Crown to make provision, when exercising its powers of compulsory acquisition under the Public Works Act 1928 and the Turangi Township Act 1964 over the claimants' land, for any such land no longer required for the public work for which it was taken to be returned to Maori ownership at the earliest possible opportunity and with the least cost and inconvenience to those Maori owners and that such omission was inconsistent with the Crown's Treaty obligation under article 2 actively to protect Maori rangatiratanga over their ancestral land.

## **17.7 DEFICIENCIES IN SECTIONS 40, 41, AND 42 OF THE PUBLIC WORKS ACT 1981**

The Crown, to its credit, finally made provisions in sections 40, 41, and 42 of the Public Works Act 1981 for surplus compulsorily acquired land to be offered back to former owners in certain circumstances. But these provisions are deficient in a number of respects.

- The requirement to offer back surplus land need not be met if the chief executive of the Department of Survey and Land Information considers it impracticable, unreasonable, or unfair to do so. The chief executive appears to be the sole judge of these criteria and former Maori owners need not be consulted.
- The chief executive need not offer the land back if there has been a significant change in the character of the land. Why this should be so is not readily apparent. Again, the decision appears to rest solely with the chief executive. There is no provision for consultation with former Maori owners.
- Various instances of Maori owners being bypassed and surplus land being sold directly to third parties have been given in evidence.

- The chief executive is to offer to sell the land to the previous owners or their successors at its current market value or, if he or she considers it reasonable to do so, at any lesser price.
- The evidence as to the pony club land and Turangitukua House graphically illustrates the problems facing former Maori owners when land is offered back at current market prices. In the case of the pony club land discussed earlier (see para 17.4.10), the Maori owners were paid \$21,965 for 120 acres, or \$183 per acre. In August 1973, 82 acres were declared surplus to the TPD's requirements. It was proposed to transfer the 82 acres to the Department of Lands and Survey for \$39,000, or \$457.30 per acre, for the unimproved value. Instead of offering the land back, it was retained and transferred by the Crown to Landcorp in 1987. In 1994 Landcorp offered to sell to the former owners some 62 acres for \$290,250, or \$4681.40 per acre. This compares with the \$183 per acre paid by the Crown to the Ngati Turangitukua owners in 1968.
- The Turangitukua House property was three hectares (approximately 7.5 acres) in area. The Ministry of Works' project office was erected on this site, which was part of the Ohuanga North block of some 67 acres taken by the Crown in 1965. In November 1991, the Crown proposed to sell the three-hectare property to those thought by the Crown to be the previous owners or their representatives at the October 1990 Government valuation of \$450,000, of which \$275,000 was the land value. This amounted to \$36,666 per acre, which contrasts with the \$150 per acre paid to the owners by the Crown on the 1965 value. This was part of the industrial land which the Crown had undertaken to lease for 10 to 12 years and then return to the owners.
- In May 1993, the Crown made a formal offer to the trustees of Ohuanga 5B2C2 to sell the site for \$337,500, including GST. It is not known what proportion of this sum was for the land only. While it represents a considerable reduction on the earlier proposal to sell at \$450,000, it was clearly a price beyond the capacity of Maori owners of modest means to pay. In effect, it was an offer incapable of acceptance, as was the offer in respect of the pony club land.
- The Public Works Act 1981 provisions are defective in that no allowance is made for the fact that, as in the case of the present claimants, much of the land compulsorily taken by the Crown was in multiple ownership. Nor, as claimant counsel submitted, is there any provision for the right of purchase extending to the wider tribal or hapu group in the event of the former owners not having the means to buy back the land. Such a provision might enable the wider group to secure the return of valued ancestral land.
- It appears from the evidence that, in a significant number of instances, surplus Crown properties were on-sold to third parties without first being offered back to the former owners or their successors. No evidence was called by the Crown as to the reasons for the former owners being bypassed.
- The claimants in this case agreed to the acquisition of their land by the Crown on the basis of a series of undertakings, many of which, in whole or in part, were not honoured by the Crown. On the basis of such undertakings, the claimants anticipated



a very different outcome from that which eventuated. In the event, they lost much of their ancestral land. Since 1981, when surplus land has been offered back at the current market value, they have been faced with asking prices for the land vastly greater than the sums they were paid by the Crown. It is, of course, accepted that the Crown is entitled in normal circumstances to seek to recoup its reasonable development costs. But it appears that, in demanding the current market value, it is making no allowance at all for the fact that the claimants' land was compulsorily acquired to erect a permanent township at Turangi. It is clear, however, that it was not necessary for a permanent town to be erected to generate electricity. A temporary construction town would have sufficed to service the Tongariro power project. It could have been built at either Rangipo or Hautu (Turangi East), in either case on Crown land. No evidence was placed before us that it was essential in the national interest that a permanent town be built on Ngati Turangitukua land. The principal reason for preferring to build a permanent town on the claimants' land was that the Crown believed this would yield a better return on the funds invested in such a town.

- If, as a result of such compulsory acquisition of the claimants' ancestral land, the Crown obtained more land than it needed or now needs, the Tribunal considers that such land should be returned to the former Maori owners on terms and conditions which secure to such owners a generous share in the enhanced value of the surplus land and improvements.
- The price, if any, to be paid for the return of surplus Crown land to former Maori owners should be set with regard to the following:
  - The national interest did not require the Crown to build a permanent township at Turangi West.
  - If the Crown chose to acquire the freehold of the land and to build a permanent town to secure a better return on its investment, it should not seek to penalise the Ngati Turangitukua owners on that account.
  - If a temporary township had been erected on Crown land, the Ngati Turangitukua owners would not have lost their land.
  - If a temporary township had been erected on the Ngati Turangitukua owners' land, there would have been no need for the Crown compulsorily to acquire the freehold of the Maori owners' land.
  - It has not been established in evidence that it was essential for the Crown to acquire the freehold of the Ngati Turangitukua owners' land to build a permanent town.
  - If no town had been built on the Turangi West site, over time the Turangi village would have expanded to meet the growth in population arising from the completion of the Tongariro power project and from tourism and related matters such as fishing.

## **17.8 TRIBUNAL'S FINDING RELATING TO THE PUBLIC WORKS ACT 1981**

The Tribunal finds that the claimants have been prejudicially affected by the offer back provisions of sections 40, 41, and 42 of the Public Works Act 1981, which:

- (a) permit the Crown, in certain circumstances, without consultation with former Maori landowners or their successors, not to offer surplus land back to such former owners;
- (b) permit the Crown to retain the whole of the profit from the sale of such surplus land at current market value, whether sold back to the former Maori owners from whom the land was compulsorily taken or on-sold to a third party;
- (c) fail to require the Crown to make allowances for the circumstances surrounding the compulsory acquisition of the land from former Maori owners, including the need for the compulsory acquisition of the land or, if the use of the land was essential, whether it was necessary to acquire the freehold of the land;
- (d) permit the Crown to offer to sell such surplus land at a price or on conditions which are manifestly in excess of the ability of the former Maori owners or their successors to meet;
- (e) fail to require the Crown to have regard to the special circumstances of multiple Maori owners of such land and to seek to accommodate such circumstances; and
- (f) fail to permit the Crown to offer to sell the land to the wider hapu or tribal group to which the former Maori owners belong, if such owners are unable or unwilling to purchase surplus land offered to them by the Crown.

The Tribunal further finds that the offer back provisions of the Public Works Act 1981 are inconsistent with the Treaty obligation of the Crown to act reasonably and in good faith towards its Treaty partner and actively to protect the rangatiratanga of Ngati Turangitukua over their ancestral land.

## **References**

1. Section 40, as amended by section 2 of the Public Works Amendment Act 1982; section 2(7) and (8) of the Public Works Amendment Act (No 2) 1987; section 12 of the Public Works Amendment Act 1988; and section 9(3) of the Survey Amendment Act (No 3) 1989.
2. Section 41(a) to (e), as amended by section 13 of the Public Works Amendment Act 1988; section 9(3) of the Survey Amendment Act (No 3) 1989; and section 362(1) of Te Ture Whenua Maori Land Act 1993.
3. Section 42(1), as amended by section 14 of the Public Works Amendment Act 1988 and section 9(3) of the Survey Amendment Act (No 3) 1989.



## CHAPTER 18

# CROWN TREATY BREACHES AS TO CONSULTATION

### 18.1 INTRODUCTION

In this chapter, we consider whether the Crown met its Treaty obligation to consult fully with Ngati Turangitukua owners prior to Cabinet approving the Crown's acquisition of the claimants' land for the Turangi township.

Crown counsel submitted that adequate consultation by the Crown in fact took place with the Ngati Turangitukua owners before it compulsorily acquired their land for the township (C3:21). Claimant counsel, however, submitted that such consultation as took place was inadequate and not in conformity with the Crown's Treaty obligations (C2:26).

Crown counsel acknowledged that no provision was made in the Public Works Act 1928 or the Turangi Township Act 1964 for any public consultation or objection procedures. Nor was there any provision for private consultation with the Maori owners. Crown counsel also accepted that, in this claim, consultation is a key element in the duty to act reasonably and in good faith in the exercise of kawanatanga, so as to ensure the willing participation of the tangata whenua in that exercise of kawanatanga by the Crown. It was said that consultation between partners in a claim such as this is vital to the Treaty itself and to the spirit of the Treaty. It was further submitted that the Crown's duty to consult was, like its other duties, bounded by what is reasonably practicable in the circumstances. It was the Crown's contention that adequate consultation with the owners in fact took place and that the discussion enabled the Crown to proceed with the acquisitions on the basis of agreement, informed consent, and consensus (C3:26). This evidence was reviewed in some detail by Crown counsel. We now consider it.

### 18.2 1955 MEETING AT HIRANGI MARAE

Crown counsel first referred to a meeting at Hirangi Marae on 11 October 1955. This was described as a preliminary meeting to seek Tuwharetoa support for the storage of water in Lake Rotoaira (C3:15). Counsel claimed that approximately 100 landowners of Ngati Turangitukua were present. It was further claimed that it was against this context of initial knowledge that later meetings occurred. We would note from our discussion in chapter 2 that:

- The meeting was of the owners of Lake Rotoaira, of whom only some of the 100 Maori present were of Ngati Turangitukua. Several other hapu have interests in Lake Rotoaira and at least two have marae on the lakeshore (see para 2.3.4).
- The meeting was not concerned with the taking of land at Turangi.
- The resolution passed at this meeting of Lake Rotoaira owners, while expressing sympathy with the proposals outlined, felt that, as there were no concrete plans available in connection with the use of the lake for the hydroelectric purpose proposed, the matter should be deferred for further consideration at some future date (see para 2.3.4).
- The meeting, which was principally concerned with the possible raising of the level of Lake Rotoaira, was of no direct relevance to the events which took place in Turangi some nine years later.

### **18.3 1964 CORRESPONDENCE AND MEETINGS**

#### **18.3.1 Jack Asher's role**

Counsel then turned to consider the consultation with Ngati Turangitukua. The first step in this consultation was said to be a letter from Jack A Asher, the secretary of the Tuwharetoa Maori Trust Board, to the Prime Minister and Minister of Electricity dated 24 March 1964 (C3:17). In this letter, Asher, writing on trust board letterhead, said Tuwharetoa 'feel we should give extended support regarding the upper Tongariro River hydro project' (B2(a):51). Crown consultant David Alexander, after referring to this letter, commented that it was to be the start of a close working relationship between Ministry of Works officials and Asher over the next nine months (B2:14). He further noted that because Asher usually wrote on trust board letterhead he would have given the impression to Ministry of Works officials that he was speaking on the board's behalf. Mr Alexander also stated that Asher was an owner of township site land, the secretary of the Lake Rotoaira Trust, and the local riding member (and past chairman) of the Taupo County Council, 'so the possibility that he was continuing or even mixing his various roles, cannot be excluded' (B2:15). The Tribunal notes:

- Jack Asher was not an owner of township site land. His son, John Takakopiri Asher, said in evidence that his mother was Ngati Turangitukua of the Pourini family. He did not claim his father Jack was also of Ngati Turangitukua (A12(1):1). John Asher's sister Ringakapo (Nan) Payne in evidence said that her father Jack was Ngati Pikiao and Ngati Pukenga (A12(4):1). We accept the submission of claimant counsel in reply that:

any interest in the land around Turangi that Mr Asher had, he had through marriage. He was a man essentially without manawhenua in these lands . . . who had reached some prominence within Pakeha – designed organisations such as councils, boards and committees. He was also clearly in favour of the project going ahead. (C9:4)

- The Tribunal considers that it is difficult to determine with certainty in what capacity Jack Asher was speaking in his dealings with the Crown officials. He was not speaking as an owner. Nor, it appears, was he speaking with the authority of the trust board. John Asher told us in evidence:

The Ministry of Works met with the Ngati Tuwharetoa Trust Board in February and March of 1964 in the Trust Board offices at Tokaanu. I was present at those meetings. The Ministry of Works explained the ramifications of the scheme, and asked if the Trust Board would help them to see it through. The Trust Board was very wary about that. The Ministry of Works wanted the Trust Board to act as liaison between the Ministry of Works and the Ngati Turangitukua people and others in the district, but the Trust Board was unwilling to adopt that role. They very firmly said 'no'. They were aware that there were too many pitfalls for them in such a role, because the Public Works Act provided the Ministry of Works with power to ride roughshod over people, and the Trust Board did not want to be implicated in that sort of thing. (A12(1):2)

- Jack Asher had previously been the chairman of the Taupo County Council and in 1964 he was still a member of the council. It appears most likely that he was speaking primarily as a member of the Taupo County Council. It is clear from the evidence that he was an enthusiastic supporter of the development of the township in the riding he represented.

#### **18.3.2 15 April 1964 meeting**

On 15 April 1964, a meeting was held in the trust board's offices in Tokaanu. Present were Jack Asher, his son John, Arthur Grace, Lang Grace, and Hepi Te Heuheu, together with officials from the Ministry of Works and the Departments of Maori Affairs and Electricity. John Asher was in due course to succeed his father as the trust board secretary. He appears to have mistaken the dates of the meetings he attended with the Ministry of Works and the Tuwharetoa Maori Trust Board. The first such meeting was, it appears, on 15 April 1964. Preliminary discussions were held but it was in no sense a consultation with owners, only three or four of whom were present. The Ministry of Works officials sought an unequivocal undertaking by somebody present that there would be no objections once the notice of intention to take the land was advertised. 'They were informed that this would be a matter for the Maori owners' (B2(a):54). Clearly, those present had no authority to bind the Ngati Turangitukua owners. Accordingly, a special meeting of owners was to be arranged by Jack Asher.

#### **18.3.3 24 April 1964 letter from Jack Asher to the Ministry of Works**

Crown counsel next referred to a letter of 24 April 1964 to the Ministry of Works which Jack Asher wrote on trust board letterhead. In it, he suggested that a valuable area at Turangi lying between the Turangi to Tokaanu highway and the western bank of the Tongariro River might be made available by the owners (A7:203). It seems very doubtful that in making this suggestion Asher had consulted the owners. As Crown counsel later

noted, at a meeting of Ngati Turangitukua owners on their own, they made it clear that they wished the above land to remain in their ownership because '[the] locality is a residential area owned by certain families, some of whom have already built their homes thereon [with] more to follow' (A7:145).

#### **18.3.4 7 May 1964 meeting**

The next meeting took place on 7 May 1964 at the trust board's offices. Present were three trust board representatives, Ministry of Works and other Crown officials, and Taupo County Council representatives. No owners were represented. No decisions were made at the meeting, which was chaired by Warren Gibson. At the meeting, Jack Asher is reported as saying that 'most landowners were prepared to negotiate with the Department but some could prove difficult' (A7:190). The next day, G J McKellar from the Department of Maori Affairs recorded that the Maori Affairs Board:

Would fall into line with the proposal but would prefer the MOW to negotiate with the owners and lessee and to reach agreement as to price . . .

. . . I appealed to Mr Gibson not to exercise any legal power under the Public Works Act but if this was exercised then the Maori Trust[ee] would then act for the owners. (B2(a):59)

On 12 May, in Gibson's absence, a member of his staff sent a telegram to head office advising that 'Mr Asher does not expect any trouble in persuading his people to sell the land at Turangi we require'. He added that the main objector was A Grace Jnr but that Asher did not expect to have too much difficulty with him.

Crown counsel cited Asher's conclusion that the meeting 'was very well attended, and all grounds [were] more or less fully discussed with a good deal of satisfaction' (B2(a):60). Conspicuous by their absence from the meeting were any representatives of the owners as such. Asher, who appears to have played a prominent part, was not himself an owner. His authority to appear to be speaking on the owners' behalf is not known. Even if one or more of the three trust board representatives happened to be Ngati Turangitukua owners, they were there on behalf of the trust board, not the owners. They had no authority to bind other owners to alienate land except at a properly constituted meeting of owners under Part XXIII of the Maori Affairs Act 1953 then in force.

#### **18.3.5 8 May 1964 notice to Maori owners**

Following the 7 May meeting, a notice dated 8 May 1964 signed by A W Gibson, the project engineer, and J A Asher, as the secretary for the Tuwharetoa Trust Board, was sent to the Maori owners of the blocks which were to be affected by the construction of the Turangi township and the TPD (see para 3.3). It advised that the inception meeting between the Maori owners and the Electricity Department would be held at the Tuwharetoa Maori Trust Board Hall in Tokaanu on 24 May 1964. Among other matters, it referred to various stages in the proposals for the Tongariro River hydro scheme. The first stage was said to be the preparation of a permanent town with an area of some 800 acres freehold and a

further area of 200 to 300 acres leasehold for the temporary erection of workshops and so on during the construction stages, 'after which the area shall revert to the owners'. It added that 'possibly part of this area will be declared a permanent industrial area for future erection of factories' (B2(a):61).

#### **18.3.6 12 May 1964 letter from Asher to Gibson**

On 12 May 1964, Asher took the trouble to write to Gibson advising that the previous Sunday he was present at an informal meeting with:

some of [the] owners . . . more or less as a sounding out or preliminary to the 24th inst. On the whole I consider it was most successful with a strong inclination to meet your needs regarding the Turangi town site. (B2(a):62)

We do not know how many owners were present, but no Crown officials were there.

Asher's anxiety to cooperate with and encourage Gibson is again evident from this correspondence.

#### **18.3.7 24 May 1964 meeting**

On 24 May 1964, the first meeting took place between Ngati Tuwharetoa and Crown officials. It was held at the Tuwharetoa Maori Trust Board Hall in Tokaanu. There was no separate meeting of landowners under Part XXIII of the Maori Affairs Act 1953 to consider the alienation of the Ngati Turangitukua land. Crown counsel submitted that this meeting could be described as the next stage in the process of consultation. It was not, however, the next stage of consultation by the Crown with the owners. This was to be the first time that Ngati Tuwharetoa generally would hear from the Crown what it proposed and the first opportunity that the Ngati Turangitukua owners would have to question and discuss the proposals. During the lengthy meeting, a wide variety of matters were raised and discussed.

##### *(1) The Tongariro power development project*

The discussion, which was led by Gibson, first dealt at some length with the proposed Tongariro power development project (A7:177–179). Gibson gave details of the various stages the development would take and the effect it would have on Tuwharetoa land and rivers in the area. Reference was made to previous hydro development work in various parts of the country. Estimated starting and completion dates for the various phases of the scheme were explained. Details of the various railways, highways, and access roads needed to serve the development work and proposals for the upgrading of State highways in the area, including the Rangipo to National Park State highway and SH1, were given. Topographical details, which involved a description of mountains and rainfall in relation to the proposed power project, were discussed.



*(2) Three stages of development*

Gibson then proceeded to explain the three proposed stages of the development (A7:179–180). The first was to be the western diversion, which was designed to channel additional water into Lake Taupo, resulting in Waikato River power stations having an enhanced generating capacity. The lengths and routes of the proposed tunnels and aqueducts were outlined. Then followed details of stage 2, which involved the Tokaanu power project; stage 3, the Moawhango diversion project; stage 4, the Rangipo power project; and stage 5, the Kaimanawa power project.

*(3) Construction of the township*

After this lengthy and quite detailed discussion of the TPD, Gibson outlined the proposals for the construction of a township on the claimants' land at Turangi West. A principal objective of the Crown officials present was to obtain the consent of the Maori owners to the construction of a new permanent township on their land. While there was some fluidity about some aspects, a number of assurances or undertakings were made to the owners (these were discussed in detail in chapter 4). Some matters were presented in such a way as to appear non-negotiable. It was, for instance, made clear that the freehold of some 800 acres required for residential and commercial purposes would have to be acquired. By contrast, it was said that the further area of 200 to 300 acres for the industrial area would be taken on leasehold and later revert to the owners.

*(4) Plan of the township*

At the time of this meeting, a revised draft plan of the township had superseded an earlier plan. But it was the earlier plan, and not the then current plan, which was shown to the owners at the meeting. The up-to-date plan was not revealed. It showed additional land required between Hirangi Road, the Tongariro River, and the realigned SH1 and SH41. A shift in the location of the industrial area was also envisaged (B2:14–15). The actual plan was not shown to the owners until the second and last meeting with them on Sunday 20 September 1964, the day before Cabinet approved the project. Neither plan could be located by Crown consultant David Alexander.

*(5) Sites considered for the township*

Earlier in the 24 May meeting, Gibson gave details of the four sites considered suitable for the proposed township: the Lake Rotoaira site, the Rangipo Prison Farm, the Hautu Prison Farm (Turangi East), and the Turangi village (Turangi West). He advised that the Turangi West site was the most favoured and the one most likely to remain a township (A7:180). Lynch later reiterated Bennion's remarks on the desirability of the Turangi West site.

Towards the end of this meeting, Dick Lynch emphasised that an early decision on whether or not the owners would be prepared to sell was required. If there were any serious objection, it was said, the Crown would have to select one of the alternative town sites which were being considered (A7:183). As we have recorded in chapter 12, several claimants who attended the meeting stated in evidence that they were told Rangipo would

be the alternative site if the owners did not agree to Turangi West. Ministry of Works officials made a persuasive case for the town proceeding at Turangi West and the impression was given that if the Ministry had to build at Rangipo it would be only a temporary town, which would be removed at the conclusion of the project (see para 12.2.2). While the reference to Rangipo is not recorded in the minutes of the meeting, we have no reason to doubt the recollections of Bill Asher, Arthur Grace, and Terewai Grace, each of whom heard it spoken of as the alternative site. The minutes do not purport to be a verbatim account of all that the Crown officials or the others present at the meeting said.

*(6) Resolution passed*

At the end of the meeting, a resolution was passed unanimously approving the Crown's proposal for the establishment of a town at Turangi 'along the lines outlined to the meeting' and accepting the assurance given that the owners would be reasonably and fairly compensated (A7:84). In addition, a committee comprising some 13 members was appointed to confer without delay with the Ministry of Works on any matters of tribal importance. We note that the resolution passed by the owners accepting the proposal 'along the lines outlined to the meeting' was based on an already superseded plan.

**18.3.8 Tribunal's comment on 24 May 1964 meeting**

The Tribunal is left with a very real doubt that, at the end of this meeting extending over many hours, the people, especially the older people, were able to absorb all the detail or to appreciate fully the implications for them of what was proposed. As noted earlier, they were expected to follow much technical detail about the five-stage Tongariro power project in addition to the proposals for the new town. It is likely that many failed to appreciate the magnitude of change involved and the implications of the township proposals. This is apparent from the evidence referred to earlier (see para 12.2.4). While no doubt acting in good faith at the time, we believe that the Crown officials, who by now had a strong conviction that a permanent township should be developed at Turangi West, did all they could to persuade the people to agree and held out assurances which were intended to overcome their doubts and concerns. At the same time, they warned that, should the owners not approve the Crown's proposals, a temporary township only would be built at Rangipo, the inference being that Ngati Turangitukua would miss out on the advantages of a permanent town.

**18.3.9 24 May 1964 liaison committee meeting**

Immediately after the termination of this meeting of owners, the newly appointed liaison committee met. Also present were two solicitors for the Maori owners and two officials of the Ministry of Works. Most of the time was spent considering how much land should be retained for the Hirangi Marae area. It was agreed that this and other matters raised should be referred to a full meeting of owners. A separate meeting of Ngati Turangitukua for this purpose was arranged for 31 May 1964 (see para 3.4).

#### **18.3.10 31 May 1964 meeting**

At the 31 May meeting, the owners agreed to offer the Crown 30 acres of the marae site's 50 acres, subject to valuations being prepared as a basis for negotiation. Resolutions were passed on other matters, and the meeting agreed that these should be put to a meeting to which Dick Lynch and other officials would be invited. This meeting was to have been held at Hirangi on 14 June 1964, but it did not take place (see para 3.5).

#### **18.3.11 Correspondence relating to the cancelled 14 June 1964 meeting**

On 14 August 1964, Arthur Grace Snr wrote to the Minister of Works. His opening paragraph signified some impatience with the Minister's department. It said:

Owing to the numerous criticisms and complaints that are continuously being received by your Department over the above scheme, it is to be presumed that your Departmental Officers have not found the time at present to meet the Maori owners of the Turangi lands that are required for the new Hydro township for the purpose of finalising the take over of the actual area required and location for the site. (A7:144-145)

Arthur Grace Snr advised the Minister of the discussion at the owners' meeting on 31 May 1964 concerning the proposed sale of the 30 acres of the marae site and he also detailed the other important matters which the owners wished to discuss with Lynch and the officials at the meeting proposed for 14 June 1964 (see para 3.5). He noted that this meeting did not take place, as he understood it, because it did not fit in with Lynch's programme, and the owners were still waiting for the meeting to occur (A7:144-145).

It seems that Arthur Grace Snr was unaware that the meeting did not take place because it was cancelled by Jack Asher. In a letter of 2 June 1964 to Lynch, Asher, who had been in contact with R E Tripe, the Tuwharetoa Maori Trust Board's solicitor, indicated that it would not be possible for the Maori owners of Hirangi Marae to have the valuation proposed in time for the meeting. He went on to say:

Confidentially I prefer that any discussions along these lines are better deferred as it is just possible it could conflict with the general principle adopted at the meeting of the 24 [May] . . . At the present junction I feel that the matters of any negotiations where valuations are entered upon would be somewhat dangerous . . . (A7:150)

#### **18.3.12 Failure of communication**

The Tribunal concludes that there was a failure of communication between Jack Asher, who appears to have acted unilaterally and on a confidential basis, and Arthur Grace Snr and other Ngati Turangitukua owners. It is difficult to escape the conclusion that, during this critical period when important decisions were being made by the Ministry of Works, not only about the proposed new town but also about the larger Tongariro power project, the Ministry officials avoided consulting the owners. Instead, they preferred to deal with Jack Asher, as the secretary of the Tuwharetoa Maori Trust Board and a Taupo County Council

riding member, as their liaison person to deal with the owners. But we were told by Jack Asher's son John, his successor as the trust board's secretary, that the board had no wish to take on that role. In effect, Jack Asher was acting on his own.

#### **18.3.13 18 June 1964 meeting between Asher and Lynch**

Instead of the proposed meeting with the owners taking place, Jack Asher and Dick Lynch met on their own on 18 June 1964 despite the fact that the 13-member liaison committee had been appointed on 24 May for the very purpose of discussing matters of importance to Ngati Turangitukua owners (A7:154). At this meeting, Asher appears to have raised various matters which the owners at their meeting on 31 May had expressed anxiety to discuss with Lynch and other officials. Lynch recorded his attitude to these various issues in a memorandum attached to his 23 June 1964 report to the Commissioner of Works; he was favourable to some and not to others (A7:155–157). These matters were passed to the Ministry's planners on 23 June 1964, and their letter dated 17 August 1964 was sent to the District Commissioner of Works at Wanganui on 24 August 1964 (A7:148–149). Some of the owners' proposals were agreed to in whole or in part, while others were rejected. None of the owners had been consulted on any of these matters.

#### **18.3.14 Secret negotiations**

The Tribunal has no evidence that Asher or any Crown official reported the outcome of the 18 June meeting to the owners or the owners' liaison committee. Had this been done, Arthur Grace Snr would not have written in the way he did to the Minister of Works on 14 August. There, he raised a number of the matters of concern from the 31 May meeting. Secret negotiations of the kind which took place between Asher and Lynch fall far short of consultation with the owners. Grace's sense of exasperation at the delays in the Crown meeting with the owners is entirely understandable. It was not shared by Asher, however, whose attitude is clearly revealed in a letter dated 26 August 1964. Writing on his personal notepaper to Lynch, he confirmed the date for a proposed meeting with the owners and then said:

Some complaints have reached the Hon Mr Allen at Wellington making some cheap suggestion at the prolonged delay of such a meeting. Your Dept already have had too much criticism to handle which has considerably delay [sic] the general lay out. I am contacting over phone the Hon Minister tomorrow morning in order he can be assured the complaints are groundless. (A7:118)

This letter reveals Asher to be very much a partisan and on the defensive. The reference to the 'cheap suggestion at the prolonged delay of such a meeting' is no doubt a reference to Grace's letter to the Minister of Works. Asher may or may not have realised that the reason for Grace writing to the Minister was because he, Jack Asher, had failed to consult with the liaison committee of which he was a member. He evidently preferred to negotiate independently with Ministry officials. If, as he suggested he would, he advised the Minister

that the complaints were 'groundless', he could not have failed to mislead the Minister. Ngati Turangitukua had been waiting since 31 May for a meeting with Crown officials. That it had not taken place was the responsibility of Asher, who took matters into his own hands unknown to the owners he purported to represent.

#### **18.4 FURTHER CORRESPONDENCE IN 1964**

##### **18.4.1 The Minister's response to the 14 August 1964 letter**

Arthur Grace Snr's letter of 14 August 1964, which reached the Minister's office on 18 August, resulted in a flurry of activity. The Minister responded by telegram on 20 August, advising that:

- the Government had been working on the basis of the motion passed at the 24 May meeting;
- the suggestion in Grace's letter that compensation should be settled before the land was taken 'envisages long delay' and was unacceptable – under those circumstances, there would be no alternative but to build the town on Crown land elsewhere (A7:134); and
- he would discuss the matters in Wellington on 24 August.

The Tribunal observes that the delay involved would have been tolerated. It also indicates that the Crown did own land suitable for a town.

##### **18.4.2 Arthur Grace Snr's responses**

Arthur Grace Snr replied to the Minister's telegram by telegram the next day, noting that:

- the Minister appeared unaware of what transpired at the meeting of owners on 31 May, minutes of which were recorded in his letter of 14 August; and
- if the actual siting and location were now finalised, the owners should be taken more into the Ministry's confidence by disclosing the information at a final meeting at Turangi (A7:134).

In a second telegram, dated 24 August, Grace informed the Minister that it was most essential that the Ministry officials should meet the owners at Turangi to tidy up the various questions raised at the 24 and 31 May meetings, 'thus leaving no misunderstanding' (A7:135). The Minister replied by telegram, advising that his officials were only too happy to disclose to owners the plans being prepared for the new town and the early meeting would be arranged. He stressed that it was vital for the continuing employment of the Mangakino workers and the prosecution of the power scheme that work on the construction town should commence as soon as the Government approved the scheme. The Minister did not address any of the points in Grace's letter.

#### **18.4.3 The Commissioner of Works' correspondence**

Following this spate of telegrams on 26 August, G J Hallewell, on behalf of the Commissioner of Works, Mr Gilkison, in turn sent a telegram to Gibson containing the full text of Grace's 14 August letter and the ensuing telegrams (A7:130–135). In this telegram, Hallewell said that:

- a meeting should be arranged with Asher in the chair 'if possible but certainly with his knowledge and to his direction if possible'; and
- a meeting between the special committee (the Ngati Turangitukua owners' liaison committee), Gibson, and Lynch, representing the Ministry, would meet all requirements (A7:130).

Meanwhile, on the same day, other telegrams were being sent. One was from Hallewell at head office to the Commissioner of Works in person at Hamilton (A7:128). It advised that:

- Asher had informed Gibson that the Ministry should not deal with 'Mr Arthur Grace and his faction separately'; and
- Asher considered that the only ones who needed to be at the meeting were the elders forming the committee to consider 'exceptions and requirements in the area' (A7:128).

Also on the same day, Gibson advised his head office that Asher had told him of his intention to inform the Minister personally that 'no urgency is required in finalising matters with the owners'. He further suggested a meeting with the principal owners on 20 September. Gibson proposed to have Lynch visit 'important individuals separately to give some reassurances' (A7:129).

#### **18.4.4 Crown counsel's submissions on this further correspondence**

Crown counsel stated in their closing submission on the consultation issue that, between 14 June 1964 (presumably a reference to the 18 June 1964 meeting between Asher and Lynch) and the next large meeting on 20 September 1964, the planning for the township proceeded, with the liaison committee continuing to meet (C3:22). Counsel appears to be under the impression that these meetings of the 'liaison committee' were meetings of the Ngati Turangitukua liaison committee appointed at the meeting on 24 May 1964. Reference to Crown counsel's chronology of meetings in appendix 1 of their submissions shows that four meetings of the 'Liaison Committee between MOW and Taupo County Council not referred to in evidence' were held on 31 July 1964 and on 3, 4, and 6 August 1964 (C3(app 1):2). There is nothing to suggest that any Ngati Turangitukua owners were present at these meetings or had any knowledge of what transpired at them.

Crown counsel also stated (presumably as evidence of continuing consultation) that, prior to the meeting of 20 September 1964, Arthur Grace Snr had met with Lynch on 1 September (C3:22). This was no doubt an attempt to repair the Crown officials' failure to consult with the Ngati Turangitukua owners for some months and was also in response to the directive from Gibson (noted above) that important individuals should be visited separately to give some reassurances.

## **18.5 20 SEPTEMBER 1964 MEETING**

### **18.5.1 Notice to owners**

A notice dated 28 August 1964 over the name of A W Gibson, project engineer, was posted to some 53 Ngati Turangitukua owners (A7:120). The list was provided by Jack Asher, who advised that it would cover the main families (A7:118). The notice announced that a meeting would be held in the Tuwharetoa Maori Trust Board Hall at Tokaanu on Sunday 20 September 1964 for the purpose of advising of the progress of the Tongariro hydro scheme and the proposed Turangi township. This was to be the first occasion in almost four months that the owners were to be consulted by Crown officials and informed of what, by now, was virtually a fait accompli.

### **18.5.2 Two venues for the meeting**

The meeting, which began at 11 am in the trust board hall, did not get off to a good start. It was chaired by Asher in his capacity as secretary of the trust board. Some Maori owners were present, along with two solicitors for the owners and Ministry of Works and Department of Maori Affairs officials. However, most of the owners were assembled at Hirangi Marae at Turangi (some kilometres away) because it had been decided at a meeting of Maori elders the previous Sunday that 'all matters concerning the Turangi Township should be decided there' (A7:76).

Gibson was called on to address the meeting and proceeded to discuss roading, the creation of new lakes, the creation of canals and dams, and other matters associated with the power scheme. At one point, Asher reminded Gibson that there was a standing committee of owners' representatives which could be approached from time to time. 'They would like to be consulted,' he said (A7:74). This is somewhat ironic, given Asher's earlier failure to facilitate a meeting between the committee and the Crown.

### **18.5.3 Calls for meeting to reconvene at Hirangi Marae**

When Gibson started to discuss proposals for the township, Arthur Grace Snr advised him that the owners were waiting at Hirangi Marae to decide on all matters concerning the township.

Gibson thanked the members of Ngati Turangitukua 'very much' but suggested that he run through the Turangi details first and consider a move a little later on. He was obviously disinclined to accommodate the owners' wishes to move at that time to the marae (A7:76).

Shortly thereafter, John Grace remonstrated, saying that he thought the matter 'should be discussed at the marae . . . in fairness to the people who had been so kind to assemble there' (A7:76). Gibson assured the gathering that 'he was there to do whatever the Tuwharetoa people wanted' but immediately contradicted himself by suggesting that perhaps a further half hour should be given to considering the town plan before moving to Turangi. Fearon Grace then intervened. He thought the meeting should be moved to Turangi Pa (Hirangi Marae). At this stage, Asher said he thought they should hear Gibson's

explanations and then move to Turangi. Arthur Grace Snr thought the meeting should move in a quarter of an hour. Gibson proceeded with his explanation of the Turangi township in the absence of the Maori elders and owners, who were kept waiting at the marae. Only after he had completed what he wanted to say and answered questions from the floor did the gathering adjourn for lunch and thereafter re-assemble at Hirangi Marae in the presence of the owners.

Claimant counsel submitted that the attitude displayed by Gibson towards the Ngati Turangitukua people did not augur well for the future. She suggested that the best construction that could be placed on his conduct was that he was impolite and ignorant as to Maori protocol. At worst, this was a deliberate slight to the Ngati Turangitukua owners and elders, showing them from the beginning who was boss and whose preferences counted. The Tribunal is not disposed to dissent from this analysis.

#### **18.5.4 The meeting at Hirangi Marae**

When the meeting finally reconvened at Hirangi Marae, a variety of matters were discussed. Assurances were given that Dick Lynch and John Bennion would be available the next week to discuss any matters with individual owners. Assurances were also given on conservation matters, the leasing of the industrial block, the water supply, relief from flooding, the protection of wahi tapu, and the likely area to be taken. These, and other related matters, have been considered in chapter 4.

The next day, Monday 21 September 1964, Cabinet approved the construction of the first three stages of the TPD and the acquisition of the freehold of about 900 acres and the leasehold of some 200 acres of Maori land for the construction of the Turangi township with a view to its continuing existence as a permanent town (A7:95).

### **18.6 24 SEPTEMBER 1964 MEETING**

On 24 September 1964, another meeting was held at Tokaanu (A7:55–59). This meeting was notable in that it involved two Crown officials, Bennion and Lynch, and the Ngati Turangitukua liaison committee established at the 24 May 1964 meeting. It was the only meeting of the committee with Crown officials since the very brief meeting immediately following its appointment, although it had been expressly formed to hold discussions with Ministry of Works officials on township matters. Some other owners also attended the meeting. Jack Asher was not present owing to illness. His son John was appointed secretary for the meeting.

Considerable discussion centred around the amount of land to be sold from the marae area. A subcommittee was appointed to discuss further the possibility of some four or so acres being retained for an urupa at Hirangi out of the 31 acres previously agreed on for sale to the Crown. Then, in the latter stages of the meeting, Lynch said that it was possible the Crown would want to freehold a portion of the industrial site proposed to be leased (and so approved by Cabinet only three days earlier) for use by private industry. He said that the



proposal must be given some thought by the committee, 'however not at present but at a later date' (A7:58) (see para 6.6).

There was no discussion on this topic and no further meeting took place with this committee.

## **18.7 CROWN COUNSEL ON CONSULTATION**

In summary, Crown counsel submitted that the discussions which the Crown conducted with the landowners of the Turangi area constituted 'consultation', whether that procedure is understood in common law terms or in Treaty terms. As this Tribunal is concerned with claimed breaches of Treaty obligations by the Crown, we will confine our consideration to whether such 'consultation' met the Crown's Treaty obligations to consult with the owners. As indicated earlier, the Crown's obligation is to have full discussion with the owners of any Maori land it wishes to acquire (see para 15.2.3). This is accepted by the Crown.

As we have noted earlier (see para 18.2), Crown counsel went on to submit that the process of 'consultation' enabled the Crown to proceed with the acquisitions on the basis of agreement, informed consent, and consensus. The Crown further contended that this enabled the Maori owners to proceed on the basis of undertakings by the Crown that full compensation, as allowed for by the statutory regime of the Public Works Act 1928, would in fact be fair compensation. This last submission is considered in chapter 19.

## **18.8 TRIBUNAL'S CONSIDERATION OF CONSULTATION CONDUCTED BY THE CROWN**

### **18.8.1 Salient points noted**

We now consider whether, in the light of the evidence, Crown consultations up to and including the meeting of 20 September 1984, which preceded by one day Cabinet's approval of the Turangi township development, met the Crown's Treaty obligation of full consultation with the Ngati Turangitukua owners of the land proposed to be taken.

The lengthy discussion of this question has been occasioned in part by the strong and insistent submissions of Crown counsel that the necessary consultation did take place. We now note the salient matters previously referred to in this chapter:

- The preliminary meeting on 11 October 1955 sought Tuwharetoa support for the storage of water in Lake Rotoaira. Members of several hapu, including Ngati Turangitukua, were present. No commitment was made to support the proposal, although sympathy was expressed. The meeting was not concerned with the taking of land at Turangi (see para 18.2).
- The Crown invoked a letter of 24 March 1964 from Jack Asher, the secretary of the Tuwharetoa Maori Trust Board, to the Prime Minister expressing the support of

Tuwharetoa for the proposed hydro project as the first step in consultation with the claimants, Ngati Turangitukua, a hapu of Ngati Tuwharetoa (see para 18.3.1).

Because of the dominant role that Jack Asher played in the discussions with the Crown, we note here the main aspects of his recorded involvement:

- Asher was not an owner of township site land at Turangi and had no mandate to speak for the owners. Nevertheless, as Crown consultant David Alexander correctly observed, this was the start of a close working relationship between Ministry of Works officials and Asher (see para 18.3.1).
- On 24 April 1964, Asher wrote to the Ministry of Works on trust board letterhead suggesting that additional land might be made available by the owners. He had no authority to do this and the suggestion was later countermanded at the owners' meeting when it was brought to their notice (see para 18.3.3).
- On 12 May 1964, Asher wrote to Gibson to advise him that he had held an informal meeting with 'some' owners, which he considered 'most successful' because it showed 'a strong inclination to meet your needs regarding the Turangi town site'. By this time, it had become evident to the Crown that Asher, as a member of the Taupo County Council as well as the secretary of the trust board, was a strong supporter of its proposals (see para 18.3.6).
- At their meeting on 31 May 1964, the owners sought to discuss a number of important issues with the Crown officials and a meeting with them was proposed for 14 June 1964 (see para 18.3.10).
- In a letter of 2 June 1964 to Dick Lynch, Asher, after saying a valuation relating only to one proposed item for discussion was not available, gave confidential reasons why in his opinion the meeting should not take place. No meeting was held (see para 18.3.11).
- Asher had no authority from the owners or their liaison committee to write as he did on 2 June 1964, nor did he disclose to them that he had done so (see para 18.3.12).
- As a result, Arthur Grace Snr felt it necessary in August 1964 to write on behalf of the owners directly to the Minister of Works, complaining of the lack of consultation by the Crown and asking that it be remedied (see para 18.3.11).
- When Asher learned of Grace's letter to the Minister, he wrote to Lynch confirming a meeting between the owners and Crown on 20 September 1964 and referring to complaints to the Minister 'making some cheap suggestion at the prolonged delay of such a meeting' (see para 18.3.14).
- On 26 August 1964, Asher advised Gibson that he intended to advise the Minister personally that no urgency was required in finalising matters with the owners. There is nothing to suggest that he was acting either on behalf of or in the interests of the owners in so doing.

### **18.8.2 Tribunal's conclusion concerning Jack Asher's role**

The conclusion is inescapable that in relying principally on Jack Asher, as the Crown officials chose to do, they were not effectively consulting with the Ngati Turangitukua owners. Asher appeared to have his own agenda and sought to do all he could to ensure the project for a new permanent township at Turangi went ahead. Only Arthur Grace Snr's direct intervention with the Minister ensured that a further meeting between the owners and the Crown took place.

### **18.8.3 Salient points relating to meetings between April and September 1964**

Crown counsel pointed to two meetings which preceded the first meeting with owners on 24 May 1964 as part of the consultation process. We now note the salient points of the various meetings between April and September 1964:

- Two meetings took place before the meeting on 24 May 1964. The first was on 15 April 1964 in the trust board's offices with Jack Asher present, along with three or four owners and Crown officials (see para 18.3.2). It was largely by way of a background briefing and in no sense a consultation with the owners. Officials sought an unequivocal undertaking that no objections would be made to the compulsory taking of the land. They were told that that was a matter for the Maori owners.
- A second preliminary meeting took place at the trust board's offices on 7 May 1964 (see para 18.3.4). Three trust board representatives were present, along with Crown and Taupo County Council officials. No owners as such were represented. No decisions were taken at the meeting, which seems to have been intended to get various interest groups together to exchange ideas.
- The first meeting of Ngati Turangitukua owners and Crown officials was held on 24 May 1964 (see para 18.3.7). This was the first occasion on which consultations took place with the numerous owners who were to be so seriously affected by the Crown proposals. There was a lengthy presentation by the Crown but it was marred by being based on an out-of-date plan. The revised current plan then in existence was not disclosed.
- At the end of the meeting, a unanimous resolution was passed approving the proposal of the Crown for the establishment of the Turangi township 'along the lines outlined to the meeting'. We note that this resolution was based on a plan which was no longer operative and was passed without knowledge of the current plan (see para 18.3.7(6)).
- Following the passing of the resolution, the owners appointed a committee comprising 12 owners and Jack Asher. The committee met for a short time immediately after the meeting, when two Crown officials were present to discuss the Hirangi Marae lands (see para 18.3.9). They referred the issue to a meeting of all Ngati Turangitukua on 31 May. No Crown officials were present at that meeting (see para 18.3.10).
- No further owners' meetings were held until 20 September 1964, when Crown representatives were also present. The meeting commenced at the trust board's premises at Tokaanu (see para 18.4.2). When Warren Gibson commenced discussion

of the new and final plan for the Turangi township, an owner asked that the meeting reconvene at Hirangi Marae where most of the owners were assembled. Despite repeated requests that the meeting so adjourn, Gibson insisted on continuing his presentation until the luncheon adjournment, thereby reducing the time available to the owners for discussion (see para 18.5.3).

- The meeting reconvened at Hirangi Marae after lunch before the assembled owners, who had been waiting there for some hours (see para 18.5.4). Gibson said he was going to reveal the final plan for the township. This he proceeded to do. The specific plan before this meeting has not been located but it was probably similar to the October 1964 plan redrawn in figure 9. The meeting took until 5.30 pm, during which time many matters were discussed. Various undertakings were given on matters raised by owners.
- The owners were advised that Dick Lynch and John Bennion would be available to discuss matters with individual owners the following week. Regrettably, many problems in fact arose through a lack of adequate consultation. Details are to be found in chapter 12.

## **18.9 CONCLUSIONS ON CONSULTATION**

The Crown held only two meetings with the Ngati Turangitukua owners. The first on 24 May 1964, while generally informative, was based on an out-of-date plan and left a number of unanswered questions. At the end of the meeting, after giving their approval in principle to the proposals (so far as they were aware of them), the owners appointed a liaison committee of 12 owners and the trust board secretary to consult further with the Crown. By this means, the owners expected to be kept informed and also expected that further meetings with the Crown could be arranged.

In fact, the Crown, apart from a very brief discussion with the owners' liaison committee immediately after its appointment on 24 May, did not meet again with the committee until after Cabinet had authorised the building of the permanent Turangi township. Nor at any time during the almost four-month interval between the 24 May meeting and the 20 September meeting did Crown officials meet or consult with the owners.

The only Crown communication in this lengthy period appears to have been with Jack Asher. Asher was clearly an early and persistent advocate for the township proposal. During the critical period of four months when the plans were being developed and finally settled, he was the only person with whom any consultation was carried out. When, in desperation, Arthur Grace Snr felt obliged to write over the heads of the officials directly to the Minister, the Minister to his credit reacted with alacrity. Asher, however, sought to denigrate Grace's action for making a 'cheap suggestion at the prolonged delay' and he sought to persuade the Minister that the complaints of a lack of meeting were groundless and that no urgency was required in finalising matters with the owners. The conclusion is inescapable that Asher and the various Crown officials were almost completely out of touch with the owners and their concerns during the critical months. They simply ignored them.

Thanks to Grace's intervention, a second meeting was held between the owners and the Crown officials on 20 September 1964, when various matters of concern were raised. By then it was too late for any adjustments other than relatively marginal ones to be made to what had become, without the prior knowledge of the owners, the final plan. The next day, Cabinet put its seal of approval on the project. Thereafter, the Crown was in an extremely strong position to exert its will, and as events were to show, this is largely what it did.

The following passage from the cross-examination of Crown consultant David Alexander is instructive. It starts immediately after his reference to the Hautu Prison Farm property being the Crown's second choice for the township site (5.1:3):

D Alexander: Once they had got very encouraging noises from the 15th April meeting, plus the unanimous consent of the 24th May meeting, the whole idea of going to the prison land just disappears off the files altogether. They solely focused on the Turangi West site even though the decision to go to Turangi West was not given by Cabinet until the 21st September.

C Wainwright: Right, But when the Ministry of Works talked about land requirements and its plan and so on, those plans were developed completely in isolation from the tangata whenua:

D Alexander: Yes. I just refer in my concluding remarks to some – that I think of as relatively minor – input from tangata whenua coming out of the meetings, yes. But otherwise, yes, it was developed by Ministry of Works.

C Wainwright: And that was the Ministry of Works policy of the day that those plans were formulated in isolation from the owners of the land? I mean one might have thought that in order to persuade people that it was a good idea to have what you wanted to have there, that you involve them in the process of working out what it was going to be. But that doesn't seemed to have arisen as a possibility?

D Alexander: No.

## **18.10 TRIBUNAL'S FINDING**

The Tribunal finds that between March 1964, when the proposal to develop a township at Turangi was first mooted, and 21 September 1964, when the final plan was approved by Cabinet, the Crown failed in its obligation actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty. In particular, it finds that the Crown failed to consult fully with the Maori owners of the land proposed to be taken before deciding to take the land for a township and, as a consequence, the owners were thereby prejudicially affected.

## **18.11 CROWN CONSULTATION DURING THE CONSTRUCTION OF THE TOWNSHIP**

The matter of the Crown's consultation during the construction of the township is considered in the next chapter (see para 19.3.2). There we record in fuller detail our finding that the Crown acted in breach of its Treaty obligation to consult fully and effectively with Ngati Turangitukua during the construction and development of the Turangi township.

It follows from our findings that at no stage, whether during the discussions which preceded the Crown's decision to take the claimants' land or during the construction of the township, did the Crown fulfil its Treaty obligation to consult fully with Ngati Turangitukua.



## CHAPTER 19

# FURTHER CROWN TREATY BREACHES

### 19.1 THE STATEMENT OF CLAIM: INTRODUCTION

In paragraph 5(3) of their statement of claim, the claimants allege that they have been prejudicially affected by certain acts or omissions on the part of the Crown. We note here each of those allegations, some of which have been considered in earlier chapters. Where we have elsewhere made findings which sufficiently cover a particular allegation or allegations, we record those findings. Others call for discussion in this chapter. We have grouped together allegations that cover similar matters. Thus, in paragraph 19.2, we list sub-subparagraphs (a) and (b) of paragraph 5(3) of the statement of claim. Successive sub-subparagraphs follow as indicated.

### 19.2 PARAGRAPH 5(3)(a)–(c)

#### 19.2.1 Paragraph 5(3)(a), (h)

In paragraph 5(3), the claimants allege:

- (a) failure on the part of the Crown to honour undertakings that were made to Maori land owners by the Ministry of Works which amounted to terms and conditions upon which those owners agreed to sell the initial 700 acres of land at Turangi;
- (b) the compulsory acquisition by the Crown of more land than
  - (i) Maori land owners were told at the commencement of the Project (when their agreement to the Project proceeding was given) would be required; or
  - (ii) was strictly required for the purposes of the Project.

The various assurances and undertakings of the Crown are considered in chapter 4. The Tribunal's findings, which substantially uphold these claims, are recorded in paragraph 4.11.

#### 19.2.2 Paragraph 5(3)(c)

Paragraph 5(3)(c) concerned the way in which Ministry of Works officials dealt with the tangata whenua during the construction of the Turangi township and, in particular, claimed that the traditional authority of kaumatua was undermined or ignored.

In chapter 12, the evidence of various witnesses such as Arthur Grace, John Asher, Hono Lord, Kahukuranui Te Rangi, Terewai Grace, Raymond Wade, Joe Eru, Taima Bell, and



Dulcie Gardiner testified to the failure of the Ministry of Works to treat the kaumatua and kuia with the consideration and respect due to them, and to the gross indignities suffered by various of them at the hands of the Crown during the construction of the township. The Ministry and its agents insisted on pursuing their large-scale operations without adequate consultation with, or notice to, the people whose property they sought to demolish; scant or no regard was paid in many cases to wahi tapu of great spiritual value; and officials were often reluctant to agree to proposals put to them by the people. Twenty years on, the hurt and distress of the people at the treatment of their elders and others are still deeply felt.

### **19.2.3 Tribunal's finding relating to paragraph 5(3)(c)**

The Tribunal finds that the claimants were prejudicially affected by the failure of the Ministry of Works, acting on behalf of the Crown, to deal with the Ngati Turangitukua people during the construction of the Turangi township in a manner that paid them the respect due to their mana as tangata whenua. In particular, the Ministry failed to recognise and protect the sensibilities of kaumatua. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.

## **19.3 PARAGRAPH 5(3)(d)–(g), (i)**

### **19.3.1 Paragraph 5(3)(d), (i)**

Paragraph 5(3)(d) and (i) alleges a failure on the part of the Crown to keep the Ngati Turangitukua people properly informed of the Crown's actions and intentions. Sub-subparagraph (i) of paragraph 5(3) of the statement of claim alleges a failure by the Crown to consult fully and effectively with those having mana whenua in the Turangi lands about any issue or at any stage since the commencement of the project.

It is proposed here to confine our consideration of these allegations to events subsequent to Cabinet's approval, on 21 September 1964, of the construction of the Turangi township. To the extent that these allegations relate to a failure by the Crown to consult fully with the tangata whenua up to the time the final approval for the development was given, the Tribunal's finding, made after a detailed consideration of the evidence, is recorded in paragraph 18.9. It upholds the claim.

To a considerable extent, these allegations about the failure to inform the claimants properly of the Crown's actions, and to consult fully and effectively with them, overlap with the preceding claim in sub-subparagraph (c) (see para 19.2.2). Again, chapter 12 (on the impact of the Ministry of Works' construction and related activities) demonstrates a failure on the part of the Crown to consult adequately with Ngati Turangitukua and to keep them properly informed. We refer also to where we have noted that there was a marked lack of consultation, particularly with multiple owners of land (see para 4.8.2). We noted there the statement of Crown consultant David Alexander that 'the Ministry was largely impervious to suggestions other than those it came up with itself'. See also our finding that

the Crown failed to honour adequately its undertaking to work in a cooperative and friendly manner with owners affected by the Ministry's works and to negotiate and consult with individual owners on important issues (see para 4.11).

### **19.3.2 Tribunal's finding relating to paragraph 5(3)(d)**

The Tribunal finds that the claimants were prejudicially affected by the failure of the Crown to keep Ngati Turangitukua people properly informed of its actions and intentions and by its failure to consult fully and effectively with those having mana whenua in the Turangi lands during the construction and development of the Turangi township. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.

### **19.3.3 Paragraph 5(3)(e)**

Paragraph 5(3)(e) alleges a failure on the part of the Crown to protect Ngati Turangitukua people in the maintenance of their wahi tapu.

This is the subject of considerable discussion in chapter 8. We note here the final paragraph of that chapter, which encapsulates the conclusions reached by the Tribunal:

The desecration and destruction of wahi tapu was, in Maori terms, a significant part of the human cost of the construction of the Turangi township and the TPD. When the Ministry of Works did respond, as in the case of the removal of bones from the urupa at Waiariki, it was only because there was no alternative. The Ministry was not proactive in efforts to protect wahi tapu. Local people had to make the effort to persuade the Ministry people to protect such sites. Their desecration and, in some cases, wholesale destruction symbolised the loss of rangatiratanga over their own lands experienced by Ngati Turangitukua.

In chapter 4, we upheld a complaint by the claimants that the Crown failed to honour its undertaking that their wahi tapu would be protected. We found that the Crown signally failed in numerous instances to honour its undertaking to protect the wahi tapu of the Ngati Turangitukua people and, as a result, the Crown failed to act reasonably and in good faith towards its Treaty partner. Further, it failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby (see para 4.11).

### **19.3.4 Paragraph 5(3)(f)**

In paragraph 5(3)(f), the claimants allege:

failure on the part of the Crown to provide a co-ordinated response to the claimants' grievances concerning the recontouring of land and the rerouting of streams in the area by the Ministry of Works, both of which have led to widespread flooding and pollution problems on land still in Maori ownership.

In chapter 4, we considered complaints that the Crown had failed to honour various undertakings. These concerned an assurance that there would be no pollution problems arising from the oxidation ponds (para 4.5.2); that conservation values were of high importance to the Ministry of Works (para 4.8.3); and that the flood relief measures planned would ensure that property owners would not be flooded (para 4.9.3).

After careful consideration, the Tribunal found that the Crown failed in significant ways to act upon the high importance which it assured owners it placed on conservation values (see para 4.11). As a consequence, the waterways and fishing are degraded and increased flooding has occurred. The Crown, therefore, failed to act reasonably and in good faith towards its Treaty partner and further failed to protect the rangatiratanga of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby.

### **19.3.5 Paragraph 5(3)(g)**

Paragraph 5(3)(g) alleges:

failure on the part of the Crown to

- (i) anticipate;
- (ii) endeavour to minimise; or
- (iii) provide protection from the effects of

the trauma and social repercussions for Ngati Turangitukua people resulting from the rapid expansion of population and change of lifestyle occasioned by the Project and the development of the Town.

At the heart of this allegation is the failure of the Crown to consult adequately with, and encourage the active participation of, the local people in decision making. Right from the outset, the Crown, having decided that it wished to develop the township in its present site, did nothing to involve the claimants in considering the merits of an alternative site. Having consulted with the people at the 24 May 1964 meeting, the Crown, apart from announcing and discussing the final plan at the 20 September 1964 meeting, largely avoided involving the people in decisions which vitally affected them.

We accept the submission of claimant counsel that much of the trauma which undoubtedly occurred, and which even today is not yet dissipated, could have been avoided by better communication.

As we have noted in chapter 12, the construction of the TPD, including the township, proceeded without any social or environmental impact assessment. In the 1960s, the need for such an assessment was not adequately appreciated. There was not then, as there is now, a requirement for the careful assessment of the impact of a development on the physical and human aspects of the local environment. The process of environmental impact assessment and the audit of environmental impact reports became well established by the late 1970s. By the early 1980s, an increasing emphasis on social impact assessment had developed.

The Tribunal considers that it would be unrealistic to expect the Ministry of Works to have implemented such impact assessments before embarking on the Turangi township

development in 1964. The perceived need for such procedures, which was soon to be recognised, had not crystallised at that time. This does not, however, excuse the low level of consultation by the Ministry with the Ngati Turangitukua people at all stages of the township development.

Evidence was given by Mary-Jane Rivers, a social assessment and social policy analyst (A25). She confirmed that the social effects of developments such as the Turangi township and the TPD were given less attention in the 1950s and 1960s than in the late 1970s and the 1980s. On the basis of her experience, Ms Rivers cited a number of principles which she has found to be inherent in the concept of meaningful participation by a local community. Among these principles are:

- using culturally appropriate methods;
- being prepared to make changes in response to feedback;
- listening rather than promoting;
- respecting local knowledge and expertise; and
- ensuring that information about a proposal is accurate, honest, and presented clearly.

In the brief summary of her evidence, Ms Rivers stressed that an integral part of assessing social effects is meaningful consultation between the developer and the host community, with the community participating in decision making. The Crown and its officials owed the claimants a Treaty duty to consult fully with them at all stages of the township development. Had the Crown done so, the claimants would have had an opportunity to make known their concerns and would have, or should have, been listened to, because true consultation is not a one-way procedure. As a consequence, while not all tension or trauma would have been avoided, the Tribunal considers that it would have been greatly reduced.

#### **19.3.6 Tribunal's finding relating to paragraph 5(3)(g)**

The Tribunal finds that the claimants were prejudicially affected by the failure of the Crown, as a result of inadequate consultation with Ngati Turangitukua people, to mitigate the trauma and adverse social repercussions which resulted from their activities in Turangi, and, as a consequence, the Crown failed actively to protect the rangatiratanga of its Treaty partner under article 2 of the Treaty.

#### **19.4 PARAGRAPH 5(3)(h): THE 'ANCILLARY CLAIMS'**

In paragraph 5(3)(h) of their statement of claim, the claimants allege that they have been prejudicially affected by the Crown's denial of responsibility for the many adverse consequences for Ngati Turangitukua people flowing from the project and the development of the town.

With the agreement of the claimants and the Crown, David Alexander was appointed as investigator from 29 October 1994 to inquire into a large number of issues on which the claimants held a grievance against the Crown. Many of these were specific to individual

families or to particular pieces of family land. As noted in chapter 21, Mr Alexander reported that 25 of the 83 identified ancillary claims (30 percent) were wholly settled or were in negotiation as at 21 April 1995 (see para 21.7) (D11). He anticipates that some of the 27 claims not responded to at the time of his report will be settled. Others may settle after our report is published.

Given the somewhat fluid state of some of the ancillary claim grievances, the Tribunal thinks it inappropriate to make any finding on the paragraph 5(3)(h) claim at this stage. It is sufficient to note that some 25 claims are now recognised as being justified in whole or in part or are in negotiation, and others may well be settled. The Tribunal indicates in chapter 21 how it proposes the outstanding ancillary claims might be resolved (see para 21.8).

## **19.5 PARAGRAPH 5(3)(j)(i), (ii)**

### **19.5.1 Introduction**

In paragraph 5(3)(j) of their statement of claim, the claimants allege that they have been prejudicially affected by the failure on the part of the Crown:

- (i) to provide proper or adequate information to land owners about the consequences of the compulsory acquisition of their land;
- (ii) to identify fully the land being acquired, and in respect of which land compensation was being paid in each case . . .

### **19.5.2 Claimant counsel's submissions in support**

In her submissions in support, claimant counsel referred to the lack of adequate notice given to the owners by the Crown and the Crown's failure to keep owners properly informed of its intentions. Ms Wainwright also invoked part 2 of undertaking 10. This concerned a complaint that the owners were not given specific information as to the deductions for the repayment of mortgages and rates which would be made from compensation payments. We have earlier stated that we are unaware of any evidence that the Crown gave any undertaking or assurance in respect of the deductions referred to (see para 4.6.2).

As we have seen, only two meetings were held by the Crown with the Ngati Turangitukua owners before town construction commenced. The minutes of the first meeting, on 24 May 1964, note that Dick Lynch advised the owners as to the procedure that would be followed in ascertaining the amount of compensation which would be paid. If agreement could not be reached, the Land Valuation Court would arbitrate (A7:182). Later, R E Tripe, described as the solicitor for the Maori owners, confirmed Lynch's description of the steps which had to be followed in fixing compensation (A7:183).

At the second meeting, on 20 September 1964, the minutes note that J E Cater, for the Maori Trustee, advised that where there was more than one owner the trustee 'becomes the

statutory owner to obtain compensation'. He said that the trustee would listen to the wishes of the owners and would employ counsel (A7:86). Tripe also spoke and, among other matters, pointed out that the Crown would first have to obtain valuations, but they could not do anything until the proclamation taking the land was made. He referred to valuers being engaged on behalf of the owners and the steps which would be taken and confirmed that only the Maori Trustee could represent multiple owners (A7:86).

Dick Lynch also spoke about compensation, which he said had been so ably explained by Cater and Tripe. Among other matters, he said that owners must expect a delay of three to four months before receiving any further contact on land values. The Department of Works, he said, would be able to do a great deal of work on the valuations during that time. He expressed his gratitude to Cater and Tripe, who he said had taken a great deal of work out of his hands (A7:88).

There is no record of the owners being told at either meeting of what deductions would be made from compensation payments, nor does it appear that they were so subsequently advised by the Crown.

Both meetings were lengthy and covered a wide variety of topics. It would have been difficult for the owners present to assimilate the mass of detail, and the minutes do not record that the owners themselves raised the question of deductions for arrears of rates and the repayment of mortgages.

### **19.5.3 Role of the Maori Trustee**

In submissions in support of this claim, claimant counsel focused on the role of the Maori Trustee, who acted for the bulk of the landowners. She pointed out that this was not a matter of choice on their part but a statutory requirement, and suggested that the Maori Trustee seemed to have taken a reactive role, communicating with owners once compensation was received rather than discussing the situation with them beforehand. In addition, Ms Wainwright submitted that even if the trustee was doing a thorough job on behalf of the owners, the owners' frustration with the long delays was inevitable, because they were not kept informed as to what was going on.

### **19.5.4 Recapitulation of the role of the Maori Trustee**

In chapter 14, we recorded the problems faced by the Maori Trustee in exercising his statutory responsibility to represent the many Ngati Turangitukua multiple owners. We briefly recapitulate here the more significant of those problems:

- The Maori Trustee could not act on behalf of multiple owners until after a proclamation taking the land was gazetted (see para 14.3.4).
- There were approximately 80 titles affected by land takings or occupied for the Turangi township with effect from 1 October 1964.
- In addition, there were some 120 titles affected by the TPD (see para 14.3.5).

- Between 1965 and 1971, there were 12 separate proclamations taking land within the Turangi township area and numerous others relating to TPD works, roads, and river protection works and other TPD purposes (see para 14.3.5).
- The Maori Trustee appointed C I Patterson, a leading Wellington solicitor, to represent him in the compensation negotiations. In addition, the Tuwharetoa Maori Trust Board's solicitor, R E Tripe, and his successor, R T Feist, represented various individual owners. Other sole owners had their own solicitors (see para 14.3.4).
- The Ministry of Works issued its proclamations on the basis of Land Transfer Act titles, with no reference to Maori Land Court titles. As a consequence, the Maori Trustee had to do a great deal of preliminary work to ascertain the actual Maori lands affected by the proclamations and the Maori owners concerned (see para 14.3.5).
- By December 1966, the Crown had completed its valuations and, by June 1967, the solicitor for the Maori Trustee had all the valuation reports for land taken in 1965 and 1966 (see para 14.3.6).
- The Maori Trustee sent out letters to all owners for whom he had an address on 28 July 1967, advising the amount that would be claimed for the land in which they had an interest. He advised that there would be negotiations with the Crown by the solicitors, with a view to reaching agreement. Failing agreement, proceedings would be issued in the Land Valuation Court (see para 14.3.6).
- On 23 February 1968, the Maori Trustee's solicitor lodged with the Crown a schedule of compensation claims for 40 separate titles, being all Maori lands in multiple ownership in the Turangi township for which proclamations had been gazetted in 1965 and 1966 (see para 14.3.8).
- Protracted negotiations followed. J E Cater, representing the Maori Trustee, later recorded that, at a meeting on 11 July 1968 between his solicitor C I Patterson, two Ministry of Works representatives, the trustee's valuers, and himself, 'it became obvious that there were fundamental differences between the valuers and there was such . . . rigidity on the part of Mr Lynch that further progress became almost impossible' (D12) (see para 14.3.8).
- Substantial agreement on all the Maori Trustee's claims on behalf of owners for compensation for land taken was eventually reached by the end of January 1969. Final payments followed. In a significant number of cases, advance payments had been made sometime earlier (see para 14.2.5).

#### **19.5.5 Status of the Maori Trustee in relation to the Crown**

The claims in paragraph 5(3)(j)(i) and (ii) of the statement of claim relate in part to alleged acts or omissions on the part of the Maori Trustee. We note that the Maori Trustee was a corporation sole constituted under the Maori Trustee Act 1953. The question of his status in relation to the Crown was not argued before us, and accordingly we express no opinion on the question. The trustee was acting under a statutory requirement that he represent the owners of multiply owned Maori lands.

In exercising his statutory powers on behalf of the multiple owners, the Maori Trustee was handicapped by the constraints of the Public Works Act 1928 provisions as to compensation. He could not commence his duties until the Crown formally took the land by proclamation. Much time was involved in ascertaining what land was encompassed in the various proclamations and who the owners were.

The Maori Trustee engaged an able and experienced solicitor to advise him on valuations and formulate the claims. Because of the confusion arising from the Crown's proclamations and, it appears, the rigidity of the Crown's representatives in negotiations, a lengthy period elapsed before agreement was reached and final payments could be made by the trustee. The Tribunal is satisfied that the claimants received the compensation to which they were legally entitled under the legislation then in force.

It is likely that many of the owners did not fully comprehend the complicated process which the Maori Trustee was required to follow on their behalf. It is also likely that the trustee did not, when sending the final payment to the owners, give them sufficient information as to the nature of the deductions, if any, made from the payments on account of rates arrears or mortgage commitments. While this is unfortunate, the Tribunal considers, on the evidence before it, that the Maori Trustee did all and perhaps more than might reasonably have been expected of him in ensuring that the owners received the compensation to which they were legally entitled. In the circumstances, we do not make any finding in respect of paragraph 5(3)(j)(i) and (ii) of the statement of claim.

## **19.6 PARAGRAPH 5(3)(j)(iii), (iv)**

### **19.6.1 Introduction**

We turn now to consider the remaining allegations in paragraph 5(3)(j)(iii) and (iv) of the statement of claim. These are related and will be considered together. They allege a failure by the Crown:

- (iii) to value the land taken and the interests affected at their proper value; and
- (iv) to compensate the owners adequately for what was being taken from them.

### **19.6.2 Claimant counsel's submissions**

We consider first the specific matters advanced by claimant counsel in support of these allegations.

Counsel criticised the policy implicit in section 79 of the Public Works Act 1928 whereby the Crown did not recognise any legal liability to restore land to the condition it was in before the public work, but merely compensated for any diminution in the value of the land as a consequence of the public work (see para 14.1.2). Counsel claimed that this could result in an owner being left worse off, notwithstanding both the Crown's policy that



an owner should be left no better or worse off than he or she was previously and the undertaking given by Crown representatives to Ngati Turangitukua that people would be left no worse off (B10:5).

### **19.6.3 Evidence of Stephanie McHugh**

Crown historian Stephanie McHugh stated in evidence that the diminution in value principle was not generally used as a basis for settlement in the Turangi township claims. She pointed out that in three cases the Ministry agreed to settle on the basis that the Crown either returned or paid the cost of returning the land to its former state. Ms McHugh knew of only one situation where a claim was settled on the basis of diminution of value. That claim, of which she gave full details, was settled by the Maori Trustee after he abandoned his claim to recover the cost of full reinstatement and was in respect of damage arising from the extraction of metal from Waipapa 1j2B (B10:104–108).

Another complaint concerned the Ministry's policy in relation to the reimbursement of solicitors' and valuers' fees. Ms McHugh told us that the extent of the Crown's liability for the valuation fees incurred on the owners' behalf was only resolved after the threat of court action by the Maori Trustee. Even then, the Crown would only agree to pay the scale fees for two valuers, rather than the actual fees charged by the three valuers and one forestry consultant engaged by the trustee on behalf of the owners. C I Patterson's legal fees were reimbursed in full. The Maori Trustee deducted the shortfall of some \$2000 in valuation and forestry consultants' fees from moneys due to the owners, which he had retained on a contingency basis, and the balance of \$6000 was distributed to the owners (B10:46, 60).

### **19.6.4 Tribunal's consideration concerning professional fees**

The Tribunal considers that, unless there was no justification for the owners' representative engaging the services of a third valuer and a forestry consultant, the Crown should have reimbursed their fees in full. The Crown, after all, had taken the owners' land and hence put them to the expense of retaining the services of these experts. There was no evidence before us that the Maori Trustee acted irresponsibly in employing them or that their fees were excessive. The Tribunal considers that the Crown should have met their fees in full, instead of requiring the owners to pay them out of their compensation moneys.

### **19.6.5 Valuation of Arthur Grace's land**

The third matter invoked by claimant counsel was a complaint by Arthur Grace about the valuation of his pine trees and a block of land which was prime residential land. The pine trees were valued as a shelter belt and the residential land was valued as farm land.

Ms McHugh stated in evidence, firstly, that as at 1 October 1964 the land was zoned rural; secondly, that the Crown's valuers had valued the land at a higher rate than had Mr Nathan (the owners' valuer); and thirdly, that, as the apparent result of a meeting in late March 1968, the Maori Trustee had raised his claim for those two blocks (B10:51).

The Tribunal observes that Mr Grace was advised by highly experienced and competent legal and valuation experts and we have no reason to believe that the decisions taken in relation to this land were, in their opinion, unreasonable.

#### **19.6.6 Extraction of metal**

The fourth matter related to the Ministry of Works' attitude to the extraction of metal. The Ministry followed a policy of not compensating owners for such extraction – a policy which was declared unlawful in *Ministry of Works and Development v Hura* [1979] 2 NZLR 279. Owners who had metal extracted from their land prior to this decision in 1979 were not compensated while those whose metal has been taken since have been. The injustice is manifest.

#### **19.6.7 Compensation for hardship**

Lastly, claimant counsel stated that, for most of the time when this land was being taken and compensation was being made, no provision existed for compensating owners deprived of their land for hardship. We have noted earlier the provisions introduced by section 6 of the Public Works Amendment Act 1970, which allowed for some modest recognition of hardship as an element in compensation for land taken under the Public Works Act 1928 (see para 14.2.7).

The Tribunal considers that these provisions were a belated recognition by the Crown that the compensation provisions hitherto in force were inadequate. However, in the Tribunal's opinion, they were inadequate in a number of other respects, which we now discuss.

#### **19.6.8 Tribunal's conclusion relating to compensation provisions**

As we have noted earlier, section 42(1) of the Public Works Act 1928 provided that every person having land taken for a public work is entitled to 'full compensation' (see para 14.1.1). A Government committee in 1969 interpreted this provision as requiring that an owner should be paid a sum of money which leaves her or him no better or worse off than previously. That is to say, no better or worse off financially. A later provision in section 29(1) of the Finance Act (No 3) 1944 stipulates that, in assessing compensation, 'no allowance shall be made on account of the taking of any land being compulsory' (see para 14.1.4).

The Tribunal considers that these provisions afford no appropriate recognition of the nature of Maori association with, and veneration for, Maori ancestral land. Nor do they recognise that Maori have rights under article 2 of the Treaty which the Crown is under a duty to protect. The Act fails to recognise that the expenditure of money does not fully compensate Maori who have been displaced from their ancestral land by the Crown.

Nor does the legislation allow for the fact that ancestral land is being taken compulsorily. As we have discussed earlier, the Crown was not obliged to build a construction town on the claimants' land and, if it insisted on doing so, it need not have

built a permanent town (see para 17.7). If, for its own purposes, the Crown chose to disperse the claimants from their land, it was under a heavy obligation to compensate the Ngati Turangitukua people generously, and every effort should have been made to provide land in exchange. Suggestions from some owners that this might be done were rejected by the Ministry of Works.

The legislation is also defective in that it fails to take into account the fact that, in the circumstances of the present claim, it was effectively foreclosing on major farming operations which were steadily becoming more viable. In so doing, it seriously eroded the economic base of the community. The disparate valuation of separately owned blocks of land makes no allowance for this permanent deprivation. At the same time, the Crown insisted on deducting a share of the development mortgage debt over the land from the compensation payments made to many multiple owners. In at least one instance (the settlement on 30 November 1972), the Crown waived the recovery, but this appears to have been the exception rather than the rule. Had the land not been taken, that debt would presumably have been repaid out of income.

For these reasons, the Tribunal concludes that the Public Works Act 1928 failed to make adequate provision for the compensation of Maori owners deprived of their ancestral land as a consequence of its compulsory acquisition by the Crown.

## **19.7 TRIBUNAL'S FINDING RELATING TO ADEQUATE COMPENSATION**

The Tribunal finds that the Public Works Act 1928 failed adequately to recognise the relationship of Ngati Turangitukua to their ancestral land and to provide for adequate compensation for their loss of land and that such failure is in breach of the Treaty obligation of the Crown adequately to recognise and protect the rangatiratanga of the claimants, who have thereby been prejudicially affected.

## **19.8 TRIBUNAL'S CONSIDERATION OF PARAGRAPH 5(3)(k), (m)**

### **19.8.1 Paragraph 5(3)(k)**

In paragraph 5(3)(k) of their statement of claim, the claimants allege a failure on the part of the Crown to use land for the purpose for which it was taken.

In support, claimant counsel referred to evidence which it was said demonstrated that the Crown failed to use some land for the purpose for which it was taken. Much of the evidence cited has already been canvassed in chapter 17, where the absence of offer back provisions in the Public Works Act 1928 is considered and findings are made (see paras 17.4, 17.6). Having regard to these findings, the Tribunal does not consider it necessary to make a further finding in relation to this particular allegation. We do, however,

record that in some instances, for example, the Crescent Recreation Reserve (see para 17.4.8) and the pony club land (see para 17.4.10), the Crown has failed to use land for the purpose for which it was taken.

### **19.8.2 Paragraph 5(3)(m)**

The last claim is paragraph 5(3)(m), in which it is said that the Crown failed to ensure that the whanau of Ngati Turangitukua retained sufficient land for their economic wellbeing and in order to maintain their lifestyle and community.

As we have noted earlier, one effect of the compulsory acquisition of the claimants' land was that major farming operations arising from the aggregated use of substantial areas of multiply owned land, which were steadily becoming more viable, were destroyed by the construction of the township on the land. The viability of the land left in the possession of Ngati Turangitukua has been adversely affected in part by its reduction in size, by the removal of topsoil and the failure to restore soil and pasture after gravel or pumice excavations, and by flooding problems.

In their closing submissions, Crown counsel referred to statements in the *Waiheke Island Report*, *Muriwhemua Fishing Report*, and *Ngai Tahu Report 1991* as to the Crown's Treaty obligation both to ensure that each tribe maintained a sufficient endowment for its foreseeable needs and to provide financial assistance to restore the tribes to a 'proper economic base' (C3:26–27).

Crown counsel submitted that, in the case of the Ngati Turangitukua owners, the Crown in the 1960s recognised their right to retain their land if they so wished. However, Crown counsel said that rights to land also include the right to sell and it was that right which was exercised, on the basis of informed consent, by the Ngati Turangitukua owners. The essence of the Crown's evidence, it was submitted, is that the people of the Turangi area were 'willing sellers' (C3:27).

The Tribunal has, however, rejected the Crown's contention that Ngati Turangitukua were willing sellers. At the 24 May 1964 meeting, the owners approved in principle the proposal for the establishment of a town at Turangi 'along the lines outlined to the meeting'. This was a conditional approval only. But as the Tribunal found in paragraph 20.2.6, the taking of the township land by the Crown was, both in fact and in law, a compulsory acquisition. In particular, the Crown failed in whole or in part to honour many of its undertakings, in reliance on which the owners conditionally approved the township being developed at Turangi. As a consequence, their approval in principle was undermined and negated. They did not give their informed consent or agreement to such non-fulfilment of the Crown's undertakings or to the subsequent taking of their land. In short, they were not willing sellers.

Among the undertakings which the Crown failed to honour was an assurance that the maximum area needed for the township was 1200 acres, including a leasehold industrial area of approximately 200 acres. In fact, the land taken by proclamation was the substantially greater area of some 1665 acres, including the industrial area, which was not returned as promised (see para 13.6).

Moreover, the Crown submission overlooks the fact that there was no compelling need for the Crown to construct a permanent township at Turangi or, indeed, to construct a temporary township there. Either could have been constructed elsewhere on Crown-owned land. The Crown failed to give adequate consideration to adopting either of these alternatives but, had they done so, the Turangi landowners would have been left with much of their land intact. In addition, the Crown gave inadequate consideration to acquiring a leasehold interest only in the new township.

As we have noted earlier, no consideration at all appeared to have been given by the Crown's town planners to the location of existing houses, to family relationships, or to the viability of the existing Ngati Turangitukua community related to Hirangi Marae (para 12.5).

Had the Crown honoured its undertaking to take no more than 1000 acres on a freehold basis and to return the additional 200 acres required on a temporary basis for industrial purposes, and had it exercised more care and consideration in the planning of the town, the Ngati Turangitukua people would have been left with an appreciably greater area of land, which could have been put to economic use and which would have enabled more of them to maintain their lifestyle and community.

## **19.9 TRIBUNAL'S FINDING**

The Tribunal finds that the Crown, when deciding where the TPD construction town should be sited, failed to give adequate consideration to the need to ensure that the Ngati Turangitukua hapu as a whole, and each whanau individually, was left in possession of as much of its land as possible. The Tribunal further finds that, in deciding to construct a permanent township at Turangi, the Crown failed to ensure that it did so in such a way as would best preserve an economic base for Ngati Turangitukua and maintain their lifestyle and community. As a consequence, the Crown failed in its obligation actively to protect the rangatiratanga rights of Ngati Turangitukua under article 2 of the Treaty, and the owners were prejudicially affected thereby.

## CHAPTER 20

# TREATY CONSTRAINTS ON THE CROWN'S POWER TO TAKE MAORI LAND

### 20.1 INTRODUCTION

#### 20.1.1 Treaty principles

In our discussion of the relevant Treaty principles in chapter 15, we adopted the view of the Tribunal in the *Ngai Tahu Ancillary Claims Report 1995* that, 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. However, it is plain that even if exceptional circumstances justified the Crown's wish to utilise Maori land for the purposes of a public work this would not justify the use of the far-reaching powers in the Public Works Act 1928 and the Turangi Township Act 1964, which afford no recognition to the article 2 rights of the Maori owners. We accept claimant counsel's submission that if the Crown seeks to use Maori land for such purposes it must be able to show the minimum possible interference with the Treaty partner's rangatiratanga (C2:10).

#### 20.1.2 Provisional view on public works takings by the Ngai Tahu Tribunal

In the *Ngai Tahu Ancillary Claims Report 1995*, the Tribunal, in the absence of in-depth argument by counsel, expressed the provisional view that:

Given the clear and unequivocal terms of article 2, however, it would seem that:

- if the Crown wishes to acquire Maori land for a public work or purpose, it should first give the owners notice and seek to obtain their consent at an agreed price;
- if the Maori owners are unwilling to agree, the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest; and
- if the Crown does so seek to acquire the use of Maori land for a public work, it should do so by acquiring a lease, licence, or easement, as appropriate, on terms agreed upon with the Maori owners or, failing agreement, by appropriate arbitration. Should there be exceptional circumstances where the acquisition of the freehold by the Crown is considered to be essential, Maori should have the right to have that question determined by an appropriate person or body independent of the Crown.<sup>1</sup>

### **20.1.3 Consideration of the Ngai Tahu Tribunal's proposals**

In this claim, the Tribunal has had the advantage of much fuller argument from counsel on the relevant provisions of the Public Works Act 1928. While the Public Works Act 1981 now in force has modified some of the more objectionable features of the 1928 Act, we consider that the Ngai Tahu Tribunal's proposals are relevant to both Acts. We have not, however, attempted an exhaustive examination of the 1981 Act. The claim before us relates to the 1928 Act and the Turangi Township Act 1964 then in force. We now consider each of the three Ngai Tahu Tribunal proposals in the light of the evidence. We also consider whether and to what extent the Crown may have complied with them in relation to the Ngati Turangitukua people.

## **20.2 PROPOSAL 1: NOTICE, CONSULTATION, AND CONSENT**

### **20.2.1 The proposal**

The first of the propositions in the *Ngai Tahu Ancillary Claims Report 1995* is:

if the Crown wishes to acquire Maori land for a public work or purpose, it should first give the owners [adequate] notice and [by full consultation] seek to obtain their [informed] consent at an agreed price.

We have added the words in brackets. We now discuss the various elements of this proposal.

### **20.2.2 Notice to owners**

The exemption of the Crown from the notice requirements in sections 22 and 23 of the Public Works Act 1928 has been noted earlier (see para 13.2.2).

The question of whether notice of entry on the claimants' land was required was considered in paragraph 13.4. The Ministry of Works took the view that there was no legal requirement to give notice, but that courtesy notice should be given. For some time, the Ministry relied on verbal notification only but, in practice, for some owners, their first knowledge of the Ministry's entry was when a bulldozer arrived. It was not until April 1966, when much of the bulldozing was over, that notification procedures were improved, although the Crown remained under no legal obligation to comply with these voluntary procedures.

### **20.2.3 Crown submissions**

Crown counsel submitted that:

- the discussions the Crown conducted with the Ngati Turangitukua owners constituted consultation (see para 18.1);

- the process enabled the Crown to proceed with the acquisitions on the basis of agreement, informed consent, and consensus (see para 18.1); and
- the process enabled the Maori owners to proceed on the basis of undertakings by the Crown that full compensation, as allowed for by the statutory regime of the Public Works Act 1928, would in fact be fair compensation (C3:26).

Claimant counsel contested these claims.

#### **20.2.4 Full consultation**

The question of whether, as it claims, the Crown consulted fully with the Ngati Turangitukua owners is discussed in considerable detail in chapter 18. The first finding of the Tribunal on the question of consultation reads (see para 18.10):

The Tribunal finds that between March 1964, when the proposal to develop a township at Turangi was first mooted, and 21 September 1964, when the final plan was approved by Cabinet, the Crown failed in its obligation actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty. In particular, it finds that the Crown failed to consult fully with the Maori owners of the land proposed to be taken before deciding to take the land for a township and, as a consequence, the owners were thereby prejudicially affected.

The second finding, which relates to consultation during the construction period, reads (see para 19.3.2):

The Tribunal finds that the claimants were prejudicially affected by the failure of the Crown to keep Ngati Turangitukua people properly informed of its actions and intentions and by its failure to consult fully and effectively with those having mana whenua in the Turangi lands during the construction and development of the Turangi township. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.

#### **20.2.5 Agreement, informed consent, and consensus**

In chapter 4, the Tribunal gave detailed consideration to the numerous undertakings which the Crown gave to the Ngati Turangitukua owners and on which they relied when giving their approval to the Turangi township being developed on their ancestral land. The Tribunal has concluded that the Crown failed in whole or in part to honour many of these undertakings.

Crown counsel submitted that the Ngati Turangitukua landowners exercised their right to sell on the basis of informed consent and that they were willing sellers (C3:13).

Claimant counsel invoked a passage from the *Te Maunga Railways Land Report* in which the Tribunal said at page 74 that 'the test of "willing sellers" is not whether they engaged in negotiation, but whether they concluded a legal contract in circumstances free of duress, fraud or misrepresentation' (C2:20). Counsel contended that this test was applicable to the present case and that the owners were the victims of a series of key misrepresentations.



We do not believe that it was in the contemplation of either the Crown or the Maori owners that, as a result of the discussions at the two meetings, the owners were entering into a legal contract to sell their land. The Crown was anxious to find out whether the Ngati Turangitukua owners would be prepared to approve the Crown's building of a township on their land. The officials gave various undertakings as to what the Crown would or would not do should the owners give their approval. The owners at the 24 May 1964 meeting approved in principle the proposal for the establishment of a town at Turangi 'along the lines outlined to the meeting'. They also accepted the assurance given that they would be reasonably and fairly compensated (see para 3.4).

It is clear that the owners approved the proposal conditionally, that is, the town would be established along the lines outlined by the Crown representatives. Claimant counsel Ms Wainwright, after submitting that the Crown made a series of misrepresentations, put the matter another way. She submitted that the owners agreed to the deal conditionally, and the conditions were not fulfilled. In either case, she argued, what they agreed to was not what they got and the taking of the land at Turangi was in every sense a compulsory acquisition (C2:20).

The Tribunal accepts Ms Wainwright's submission. The evidence discussed in chapter 4 establishes that various important conditions, that is to say, undertakings or assurances, which the Crown represented would be fulfilled were not fulfilled. As a consequence, the Crown proceeded, not, as its counsel submitted, on the basis of 'agreement, informed consent and consensus', but on a basis which differed in many very material respects from that on which it had undertaken to the owners it would proceed. Far from agreeing, the claimants protested vigorously at the failure of the Crown to honour its undertakings, on which they had relied, and of which many were important inducements to the claimants' approval of the establishment of a town at Turangi. In such circumstances, it cannot be held that the owners were 'willing sellers' or that they gave informed consent to what the Crown actually did, as contrasted with what it had undertaken it would do.

#### **20.2.6 Tribunal's finding**

The Tribunal finds that the taking of land for the Turangi township under the Public Works Act 1928 and the Turangi Township Act 1964 was, both in fact and in law, a compulsory acquisition. In particular, it finds that:

- (a) the Crown failed in whole or in part to honour many of the undertakings that it gave to the Ngati Turangitukua owners, in reliance on the fulfilment of which the owners approved the Turangi township being developed on their ancestral land;
- (b) as a consequence, the owners' approval was undermined and negated; and
- (c) the owners did not give their informed consent or agreement to such non-fulfilment of the Crown's undertakings or to the subsequent taking of their land by the Crown pursuant to the said Acts.

As a result, the Crown failed to act reasonably and in good faith towards its Treaty partner and, further, failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty, and the owners have been prejudicially affected thereby.

See also our earlier, more detailed findings concerning undertakings and assurances (see para 4.11).

## **20.3 PROPOSAL 2: COMPULSORY ACQUISITION**

### **20.3.1 The proposal**

We now consider the second Ngai Tahu Tribunal proposal. It is:

if the Maori owners are unwilling to agree, the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest.

### **20.3.2 In the national interest**

We should state at once that the Tongariro power project as such was clearly in the national interest. There was an established need for the early generation of more electricity to serve the country's growing needs. Given the large workforce involved, it was necessary to build a construction town to house the workers over the quite lengthy construction period. But, as we have pointed out, it was not necessary for a permanent town to be erected to generate electricity (see para 17.7). A temporary construction town would have sufficed to service the power project. It could have been built on Crown land at either Rangipo or Hautu (Turangi East). No evidence was placed before the Tribunal that it was essential in the national interest for a permanent town to be built on the claimants' land. If, for its own reasons, the Crown preferred to build a permanent town, it could have done this on its own land at Hautu.

### **20.3.3 Urgency**

Crown counsel stressed that there was an urgent need to proceed with the Tongariro power project and the construction of a town to service it. David Alexander stated that the Ministry of Works and its client, the Electricity Department, were working under tight deadlines set by the power planning committee and the future employment needs of the Waikato Dam's workforce, whose work was winding down. The overwhelming feature of 1964, he said, 'was that planning was being done "on the run"' (B2:119). Claimant counsel referred to the evidence showing that the Ministry of Works, on receiving a feasibility study on hydroelectric power in the Tongariro area in 1963, concluded that it was 'unlikely to fit into the projected design and construction programmes for at least the next five years' (B2(a):10; C2:26). But four months later, the Crown changed its mind in the light of another report showing an increasing demand for electricity. In September 1963, the power

planning committee recommended that discussions with the various authorities should take place forthwith (B2:6).

Given the sudden change of mind and the perceived need for urgency, it is surprising that the Crown elected not to build the township on its own land at Turangi East. Mr Alexander told us that the Ministry of Works, while having a preference for Turangi West, 'were always keeping at the back of their minds the fact that they might have to go for their second choice which was across the river at the Hautu Prison property' (5.1:2-3). The Turangi East site was bare land and, apart from the need for a bridge, could have been readily and speedily developed as a township without any obvious complications.

#### **20.4 TRIBUNAL'S CONCLUSION REGARDING URGENCY AND CHOICE OF SITE**

The Tribunal considers that if the Crown deliberately chose to develop ancestral land occupied by the Ngati Turangitukua people, notwithstanding the availability of the Turangi East site, it should have been mindful of its Treaty obligations and been prepared to have regard to them. Urgency could not serve as a valid reason for disregarding its obligations to Maori under the Treaty, particularly given the fact that an alternative site was available to the Crown. We believe an important factor in deciding to acquire the Ngati Turangitukua land was that the Crown considered it could invoke the unfettered power of the Public Works Act 1928, enabling it to enter and acquire the land without notice or objection and compulsorily take the land by Order in Council. In other words, it had statutory authority to disregard its Treaty obligations. In all the circumstances, we are not satisfied, given the availability of an alternative site which it owned, that the Crown's decision to take the Ngati Turangitukua land was justified by exceptional circumstances as a last resort. Had it been so disposed, the Crown could have used its own land for the construction of the township, which need not have been permanent. If, nevertheless, the Crown preferred the Turangi West site, it should have proceeded only after full consultation with the Ngati Turangitukua owners was held, their full and informed consent was obtained, and a price was mutually agreed upon. This, the Crown failed to do. Instead, it persuaded the Maori owners to approve in principle the construction of a permanent township on their land without full consultation and on the basis of assurances and undertakings, many of which, in varying degrees, were not honoured – contrary to the requirement of good faith in a Treaty partner. In this, the Crown had the full weight of the Public Works Act 1928 behind it, the exercise of which effectively rendered the Ngati Turangitukua owners powerless. Their rangatiratanga over their land was largely ignored.

## **20.5 PROPOSAL 3: FREEHOLD AND INDEPENDENT ASSESSMENT**

The third of the Ngai Tahu Tribunal's proposals states that:

if the Crown does so seek to acquire the use of Maori land for a public work, it should do so by acquiring a lease, licence, or easement, as appropriate, on terms agreed upon with the Maori owners or, failing agreement, by appropriate arbitration. Should there be exceptional circumstances where the acquisition of the freehold by the Crown is considered to be essential, Maori should have the right to have that question determined by an appropriate person or body independent of the Crown.

We have earlier upheld the claimants' contention that the Crown failed to ensure that all practicable alternatives to purchasing the land, including taking a leasehold interest in the land required, had been exhausted (see para 17.3.5).

The proposal that the right of the Crown to acquire Maori land compulsorily as a last resort should be referred to an appropriate person or body independent of the Crown avoids the Crown being a judge in its own cause and should ensure an outcome consistent with the Treaty.

## **20.6 A FURTHER PROPOSAL**

In addition to the three requirements proposed in the *Ngai Tahu Ancillary Claims Report 1995*, which we endorse, we would propose a fourth requirement which logically should precede the first of the Ngai Tahu Tribunal's requirements. It is that:

The Crown should not seek to acquire Maori land without first ensuring that no other suitable land is available as an alternative.

The choice of the Turangi township site has earlier been discussed in some detail, and the salient points summarised (see paras 2.4, 17.2.2). The Tribunal's finding is recorded as follows (see para 17.2.4):

The Tribunal finds that the Crown's policy decision to take the Maori-owned land at Turangi West for public works without first ensuring that no other land, in particular the Crown-owned Turangi East site, was available as an alternative was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga and that the claimants were thereby prejudicially affected.

The Tribunal considers that compliance by the Crown with the requirement to ensure that no other suitable land is available before seeking to acquire Maori land is consistent with its Treaty obligation actively to protect Maori rangatiratanga and should be followed as a matter of course.

## **20.7 TRIBUNAL'S FINDING REGARDING THE PUBLIC WORKS ACT 1981**

While the Tribunal considers that the three requirements proposed by the Ngai Tahu Tribunal and the further requirement considered above should be adhered to by the Crown, the better to ensure compliance with its Treaty obligations when seeking to acquire the use of Maori land for public works, they are not necessarily sufficient in themselves.

Earlier we referred to the *Te Maunga Railways Land Report* (see para 16.4.5). There, the Tribunal, after reviewing the provisions of the Public Works Act 1981 (including subsequent amendments), stated that the most significant omission from that Act was the failure to acknowledge in any way the Crown's obligations and responsibilities toward Maori as a partner under the Treaty of Waitangi.

Not only the Crown but also local authorities exercising statutory powers of compulsory acquisition of land should be obliged to conform with Treaty principles. This Tribunal endorses the Tribunal recommendation in the *Ngai Tahu Ancillary Claims Report 1995* that the Public Works Act 1981 should be amended to provide that it should be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.<sup>2</sup>

Our recommendations as to necessary amendments to the Public Works Act 1981 appear in chapter 22.

## **References**

1. Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, Wellington, Brooker's Ltd, 1995, pp 10–11
2. Ibid, p 366

## CHAPTER 21

# AN OVERVIEW

### 21.1 INTRODUCTION

#### 21.1.1 The Treaty of Waitangi ignored

Many claims before the Tribunal concern events in the last century. The Ngati Turangitukua claim, however, centres on relatively recent happenings in the 1960s, within living memory of many of the claimants. However, a common feature of many historical claims, and this near contemporary one, is that the Treaty of Waitangi was all but ignored by the Crown in its dealings with Maori. In this case, the Crown, in fulfilling its wish to construct the Turangi township on the claimants' ancestral land, had the unqualified backing of statutory powers to take the land compulsorily.

#### 21.1.2 Draconian statutory powers of the Crown

These draconian statutory powers, many of which were exercised by the Crown in whole or in part, lay in the Public Works Act 1928 and the Turangi Township Act 1964. These Acts gave the Crown the power to take the claimants' land compulsorily for the establishment of a permanent Turangi township. This could be done without any notice to the owners or any right of objection by them; without any obligation to consult the owners; without the owners' consent; without any obligation to return land not required for the purpose for which it was taken; at a price negotiated with a statutory official on behalf of multiple owners rather than with the owners themselves; and on conditions laid down by legislation and not freely negotiated. The Crown could insist on taking the freehold of the land, irrespective of the preference of the owners. In addition, the Crown asserted the right, which was of dubious legality, to enter the claimants' lands with its bulldozers, without notice to or the consent of the owners, well before any proclamation taking the land had been gazetted. Against these powers, the Maori owners had no defence. It is not possible to reconcile these far-reaching powers with the Crown's Treaty obligation actively to protect the rangatiratanga of Maori in and over their land.

### **21.1.3 Grievous spiritual and material loss**

Many of the Ngati Turangitukua people, who had a substantial part of their lands taken from them by the Crown for the purpose of building a permanent township at Turangi, suffered grievous spiritual and material loss, the scars of which remain today. Had the Crown been conscious of and had regard to its Treaty of Waitangi obligations, much of this could have been avoided.

## **21.2 MAJOR ISSUES**

### **21.2.1 The choice of the township site**

By late 1963, when it became clear the Tongariro power project should go ahead, four possible sites had been identified by Crown officials for a construction town to house the many workers involved. Two of these, those at Lake Rotoaira and Turangi West, were in Maori ownership and occupation, while two were on Crown-owned prison farm lands at Rangipo and Hautu (Turangi East). Lake Rotoaira was the least favoured site. Turangi East and Turangi West were thought suitable for either a permanent or a temporary construction town; Rangipo for a temporary construction town only. A temporary town was all that was needed to service the Tongariro power project, yet the Crown preferred to erect a permanent township. The claimants' land at Turangi West became the preferred site, with Turangi East the alternative. It was envisaged from the outset that, if a permanent town were to be constructed on the claimants' land, the land would be taken under the compulsory powers in the Public Works Act 1928. Had the Crown chosen to erect either a permanent or a temporary township at Turangi East (where there was plenty of Crown land available) or a temporary township at Rangipo, none of the claimants' land would have been needed for the town.

### **21.2.2 Crown insistence on acquiring the freehold**

Apart from the approximately 200 acres of industrial land which the Crown undertook to lease and return to the owners, the Crown insisted on the need to acquire the freehold of the balance of the land, up to 1000 acres, which it required for the township. Ngati Turangitukua claimed that the Crown policy of taking Maori land for the establishment of the township without first ensuring that all practicable alternatives to purchasing the land, including taking a leasehold interest in the land required, had been exhausted was in breach of the Treaty. The claimants called evidence from an experienced valuer, who testified that, provided the terms of a lease are fair to both sides and are quite clear, leasehold tenure can be a very satisfactory form of occupation. He referred to a number of examples where substantial residential, commercial, industrial, and rural areas of land are occupied under leasehold tenure and have been for a long time. Among the examples he cited was one-fifth of the central business district of Rotorua city, which is occupied under 21-year leases. That area contains multi-storey office blocks, shops, large hotels, and motels. A further, quite substantial, area slightly to the south of the central business district is similarly occupied

under leasehold. This land is used for warehousing, retail warehousing, and recreational purposes. The valuer clearly regarded leasehold as a viable option for the whole Turangi township. His evidence was not challenged by the Crown. We have upheld the Maori owners' claim.

### **21.2.3 Consultation over the Turangi West site**

#### *(1) First meeting with owners*

The first meeting of Crown officials with Ngati Turangitukua owners took place on 24 May 1964. Proposals for the TPD and a new permanent township at Turangi were outlined over several hours. The township proposals were based on a plan which was out of date, but the current plan was not disclosed. The owners, many of whom were elderly, were asked to absorb a mass of information in relation to both the power development project and the township proposal. It is likely that many were confused or had difficulty in assimilating the detail or fully appreciating the implications for them and their lifestyle of such massive changes. The advantages to local Maori were stressed. Many undertakings were given as to what would and would not happen. The hope was expressed by Crown officials that Ngati Turangitukua would agree to having the township on their land. The people were told that if the town were to be built there, the land would be taken under the Public Works Act 1928. At the end of the meeting, those owners present resolved that the Crown proposal for the establishment of a town at Turangi was approved along the lines outlined to the meeting. They accepted the assurances given by the Crown that the owners would be reasonably and fairly compensated. A committee comprising 12 owners and Jack Asher, the secretary of the Tuwharetoa Maori Trust Board, was appointed to liaise with the Crown on matters of tribal importance.

The owners' desire to meet with Crown officials again was frustrated when Asher, on his own initiative, cancelled a meeting proposed for 14 June 1964. Virtually all discussions with Ministry of Works officials concerning the interests of owners took place between Ministry officials and Asher alone. It took a strong protest from a senior kaumatua of Ngati Turangitukua sent directly to the Minister of Works to secure a further meeting between owners and Crown officials. This was held on 20 September 1964.

#### *(2) Second meeting with owners*

By the time of this meeting, Crown officials would have been aware that a Cabinet decision was imminent. Nearly four months had elapsed since the only other meeting between the Crown and the owners. The second and final meeting before construction began took place on the day before Cabinet was to meet. While the owners were shown the latest plan and questions were answered and further assurances given, they were, in reality, faced with a fait accompli. No resolution was passed signifying the attitude of the owners.



*(3) Cabinet approval*

The next day, Cabinet approved the construction of the first three stages of the Tongariro power project and the compulsory taking of about 900 acres and the lease of some 200 acres of Ngati Turangitukua land for the Turangi township, with a view to the township becoming permanent.

*(4) Consultation grossly inadequate*

The level and extent of consultation by the Crown with the Maori owners, confined as it was to two meetings some four months apart, was grossly inadequate. Important decisions were made during this period without any input from the owners whose land was to be taken. By the time the second meeting took place, the critical decisions had been made.

**21.2.4 The bulldozers arrive**

By 1 October 1964, a mere 10 days after the Cabinet decision, the Ministry of Works' bulldozers were on site at Turangi. Their authority to enter the owners' land before proclamations formally taking it were gazetted was doubtful. Proclamations were issued intermittently between 1965 and 1980. From 1 October 1964, however, the bulldozers went to work. The next two years were traumatic for the Ngati Turangitukua community. Land was levelled, and a new town was formed and constructed almost literally under their feet. The gentle rural landscape was transformed almost overnight into an embryonic town. The pace was frenetic. Bulldozers took precedence over people in many instances. On occasion, the huge machines arrived at a house site, ready to bulldoze it, only to find the dwelling still occupied. Too often, the people had insufficient knowledge of what was happening. Some fought, not always successfully, to save their family homes. Others found themselves in crowded temporary accommodation. Wahi tapu were desecrated or obliterated. Crown contractors worked single-mindedly to meet tight – perhaps unrealistic – deadlines. The community was in a state of shock and deeply hurt. Kaumatua were largely ignored; the mana and rangatiratanga of the tangata whenua were trampled upon. With a few notable exceptions, Crown officials maintained their distance from the people and were largely impervious to suggestions from them. Consultation with the Maori landowners was sporadic and inadequate. The Crown held all the power and exercised it at will. It was to be 3½ years from the September 1964 meeting before the project engineer met again with the Ngati Turangitukua owners in March 1968. This meeting was arranged by the district officer of the Department of Maori Affairs because of the high level of dissatisfaction and frustration over various unresolved issues.

## **21.3 THE CROWN'S UNDERTAKINGS**

### **21.3.1 Crown's failure to honour important undertakings**

During the two meetings with the owners in 1964, Crown officials gave the people upwards of 20 undertakings or assurances. These concerned what the Crown would or would not do in relation to the proposed new town. Many of the undertakings arose from questions or expressions of apprehension by Ngati Turangitukua, who sought assurance on matters that concerned them. The undertakings and assurances given by the Crown were relied on by the people. They played a large part in persuading the people to give their approval in principle at the May 1964 meeting to the Crown proceeding with the construction of a town on their land. It was essential that the Crown should honour its undertakings. Unfortunately, the Crown failed in whole or in part to do so. Such failure undermined and negated the earlier approval in principle, which the people had given in reliance on those undertakings. There was an unacceptable gap between what the people were told the Crown would do and what the Crown actually did, and the owners did not give their informed consent or agreement to such non-fulfilment of the Crown's undertakings or to the taking of their land by the Crown.

### **21.3.2 Amount of land taken more than Ngati Turangitukua agreed to**

Of critical concern to the Ngati Turangitukua owners was how much of their land the Crown required for the township. Although not precise, the Crown on various occasions assured the people that it would need between 800 and 1000 acres freehold and up to 200 acres leasehold for industrial purposes. The leasehold land, the owners were assured, would be returned to them after 10 to 12 years. In September 1964, Cabinet approved the Crown's acquisition of about 900 acres freehold and the lease of some 200 acres.

In December 1964, however, the Turangi Township Act 1964 authorised the Crown to take 1540 acres of Ngati Turangitukua land compulsorily. By April 1967, the Crown occupied 1766 acres and by 1974 a total of some 1642 acres had been compulsorily acquired for the township and for township purposes. A further 23 acres were taken in 1980. In all, the Crown acquired the freehold of 1665 acres of the claimants' ancestral land, despite having promised to take no more than 800 to 1000 acres freehold. It is a major grievance of the claimants that the Crown took between two-thirds and twice as much freehold land as it had assured owners it would take.

### **21.3.3 Assurance concerning industrial land not honoured**

Repeated assurances by Crown officials that the land required for industrial purposes would be leased and returned after 10 to 12 years were not honoured by the Crown. Despite protracted protest and resistance by Ngati Turangitukua, the Crown insisted on compulsorily taking the freehold of some 186 acres occupied for the industrial area. The action of the Crown in resiling from its unequivocal undertakings to return this valuable land is also a major grievance of the claimants.

#### **21.3.4 Other dishonoured undertakings**

Other failures by the Crown to honour undertakings to Ngati Turangitukua in whole or in part include:

- the failure in numerous instances to protect the wahi tapu of the people (sacred taonga were desecrated or destroyed);
- the failure to honour the high importance the Crown assured owners it had for conservation values (as a consequence, the waterways and fishing were degraded and increased flooding has occurred);
- the failure to honour adequately the Crown's undertaking to work in a cooperative and friendly manner with owners affected by the Ministry of Works' operations and to negotiate and consult with individual owners on important issues; and
- the failure to make provision for water to be supplied to Ngati Turangitukua people living in Hirangi Road and the action of the Crown in later excluding residents from the Turangi township boundary without consultation or their consent.

### **21.4 FURTHER MAJOR ISSUES**

#### **21.4.1 Crown failure to respect the mana of Ngati Turangitukua**

Crown officials dealt with the Ngati Turangitukua people during the construction of the township in a manner that failed to afford them the respect due to their mana as tangata whenua. In particular, Crown officials failed to recognise and protect the sensibilities of Ngati Turangitukua kaumatua.

A further consequence of the inadequate consultation with the Maori people was the failure of the Crown to mitigate the trauma and adverse social repercussions which resulted from its activities in Turangi. The bitterness and hurt live on to the present day.

#### **21.4.2 Crown failure to preserve an economic base for Ngati Turangitukua**

The Crown also failed, when deciding where the construction township should be sited, to give adequate consideration to the need to ensure that Ngati Turangitukua whanau, and the hapu as a whole, were left in possession of as much of their land as possible. As a consequence, the Crown failed to act in a way which would best preserve an economic base for Ngati Turangitukua and maintain their lifestyle and community.

#### **21.4.3 Inadequate compensation**

The compensation provisions of the Public Works Act 1928 governed the amount the Crown was liable to pay for the land it took from Ngati Turangitukua. These provisions were restrictive in nature and were made even more so by certain rules for determining compensation imposed by the Finance Act (No 3) 1944. This wartime measure was still in force when compensation was fixed for the land taken for the Turangi township in the late 1960s and early 1970s.

The Tribunal believes that in most, if not all, cases the compensation paid to owners was generally in accordance with the legislative provisions then in force. However, we do not consider those provisions resulted in Ngati Turangitukua owners being fairly and fully compensated for the compulsory taking of their land. The basic defect was that the legislation failed to recognise adequately the relationship of Ngati Turangitukua to their ancestral land and to provide adequate compensation for the loss of that land. We have identified a number of defects in the legislation. Here we mention only some.

A basic premise of the compensation provisions was that every owner should be paid a sum of money which left her or him no better or worse off than previously. That is to say, no better or worse off financially. This made no allowance for personal hardship, particularly in being unable to afford alternative housing. Some modest recognition of hardship as an element of compensation was introduced in 1970, but this was too late for Ngati Turangitukua claimants.

No allowance could be made for the fact that the land was taken compulsorily. This ignored the nature of Maori association with and veneration for their ancestral land. The Crown was not obliged to build a construction town on the claimants' land; it had suitable land of its own nearby. If, as occurred, it chose to remove the claimants from their land, it was under a heavy obligation to compensate them generously and every effort should have been made to provide land in exchange. The Crown rejected suggestions from some owners that this might be done.

Nor did the compensation provisions allow for the fact that in this case it was effectively foreclosing on major farming operations which were steadily becoming more viable. As a result, the economic base of the community was seriously eroded. The disparate valuation of separately owned blocks of land made no allowance for this permanent deprivation.

#### **21.4.4 Absence of legislative provisions for the return of surplus land**

There was no provision in the Public Works Act 1928 or the Turangi Township Act 1964 for land no longer required for public works to be returned to Maori ownership. The Tribunal considers that the Crown should have been obliged to return such surplus land at the earliest possible opportunity and with the least cost and inconvenience to the Maori owners. Instead, an appreciable number of properties which should have been returned have been sold off by the Crown.

The Public Works Act 1981, which repealed the 1928 Act, does have offer back provisions. These, of course, were not applicable to Ngati Turangitukua owners until 1981. The Tribunal considers that these provisions, while welcome, are inadequate to meet the circumstances of Maori and the Tribunal recommends legislative changes designed to assist in meeting the Crown's Treaty obligation to protect Maori rangatiratanga over such land.

## **21.5 CONCLUSION**

In chapter 22, the Tribunal records 13 findings of breaches of Treaty principles by the Crown. Most stem from a failure actively to protect the rangatiratanga of Ngati Turangitukua over their ancestral land. A few relate to a lack of good faith and reasonableness on the part of the Crown towards its Treaty partner. Some relate to serious defects in the legislation invoked by the Crown as the source of its authority to enter and compulsorily take the claimants' land. Others relate to Crown policies or practices and Crown acts or omissions to protect and respect the rangatiratanga of Ngati Turangitukua. At the heart of the claim lies the failure of the Crown to honour many of the undertakings and assurances it gave to the owners, which formed the basis of the approval in principle they gave to the construction of a township on their land. This failure effectively vitiated such approval.

As a result, the Crown took up to double the amount of land that it had undertaken to take and valuable industrial land was not returned after 10 to 12 years as promised. Compensation was inadequate; the economic base of the people was seriously eroded; irreplaceable wahi tapu have been destroyed or desecrated; waterways and fisheries are degraded and flooding has occurred; and the lack of adequate consultation with the tangata whenua and the failure to respect the mana of the people throughout the whole distressing experience has increased their level of alienation.

We note that the Tribunal granted urgency to the hearing of this claim because of the claimants' concern that the Crown and its agencies were engaged in selling Crown properties within the claim area at Turangi. It is regretted that, through circumstances beyond its control, the hearings were delayed and the Tribunal has not been able to report sooner on the claimants' grievances.

## **21.6 REMEDIES**

Clearly the claimants are entitled to be compensated for the losses and injury they have suffered. The return of Crown land would, no doubt, be a central element in such compensation. In addition, on 23 August 1994, the claimants gave notice of their application for the resumption under the Treaty of Waitangi Act 1975 of land covered by this claim and vested in or transferred to a State-owned enterprise under the State-Owned Enterprises Act 1986.

## **21.7 ANCILLARY CLAIMS**

During the hearing, there emerged numerous grievances of individual claimants which required further investigation and discussion between the parties affected and the Crown. Accordingly, the Tribunal proposed, and the Crown and claimants agreed, that these 'ancillary claims' should be directly addressed by the Crown or the other agencies involved in the hope that they might be resolved. By agreement, David Alexander was appointed as investigator to identify the particulars of the grievances, refer them to the appropriate agencies for their response, and facilitate a resolution, where this was possible. The Tribunal expresses its appreciation of the Crown's making Mr Alexander's services available. They have resulted in worthwhile progress being made towards the settling of various of the individual grievances.

Mr Alexander's final report, dated 21 April 1995, has been filed with the Tribunal (D11). He advises that the process followed has been partially successful in that 25 of the 83 ancillary claims (30 percent) have been wholly or partly settled or are in negotiation. It is anticipated that some of the 27 claims not responded to at the time of his report will be settled. Others, he considers, may be settled after the Tribunal reports its findings.

There is clearly a need for Mr Alexander's useful work to be followed up. It may well be that some of the outstanding grievances can now be settled in the light of this report without further intervention by the Tribunal, while others may be withdrawn.

## **21.8 A NEGOTIATED SETTLEMENT?**

Prior to the final submissions of claimant and Crown counsel in October 1994, the Tribunal advised the parties that the claimants' application for the resumption of land vested in State-owned enterprises in the claim area and the question of remedies generally would need to await the Tribunal's report on its findings of fact and any Treaty breaches. Accordingly, no submissions were made by counsel on the question of remedies.

The Tribunal believes that, in the interest of facilitating an early settlement on the question of remedies, it would be appropriate for the claimants and the Crown to enter into direct negotiations at this stage. Any such negotiations would need to encompass outstanding ancillary claims as well as wider claims and should include the application in respect of land vested in State-owned enterprises in the area. Should this proposal be acceptable to the claimants and the Crown, the Tribunal is hopeful that a settlement satisfactory to both parties will be reached without undue delay. If at any stage the parties are unable to reach agreement on the whole or any part of the matters in issue, the Tribunal would be amenable, on the application of the claimants, to setting a date for hearing the parties on the question of remedies and for making appropriate recommendations.

Alternatively, if either party prefers not to enter into direct negotiations with the other at this stage, leave is reserved to the claimants to apply to the Tribunal to set a date to hear the parties on the question of remedies and to make appropriate recommendations.

We conclude by noting that in the next chapter we make certain recommendations relating to the Public Works Act 1981.

## CHAPTER 22

# FINDINGS AND RECOMMENDATIONS

### 22.1 INTRODUCTION

The Tribunal's findings of Treaty breaches by the Crown are contained in chapters 4 and 16 to 20. For ease of reference, they are listed here under appropriate headings. We would stress that for a full understanding they need to be read in the context of the chapters in which they appear. A number are interrelated.

The claimants filed a detailed statement of claim in which they alleged that certain legislation, the Public Works Act 1928 and the Turangi Township Act 1964, was inconsistent with article 2 of the Treaty of Waitangi. They further alleged that certain policies and practices adopted by the Crown and various acts and omissions on the part of the Crown were inconsistent with Treaty principles. Not all of these claims have been upheld by the Tribunal. We list those which the Tribunal considers are well-founded. The appropriate chapter reference is indicated after each.

### 22.2 THE TRIBUNAL'S FINDINGS

#### 22.2.1 The Public Works Act 1928 and the Turangi Township Act 1964

The Tribunal finds that:

- (a) the claimants have been prejudicially affected by the provisions of the Public Works Act 1928 and the Turangi Township Act 1964, in that both Acts were and are fundamentally inconsistent with the basic guarantee given in article 2 of the Treaty of Waitangi that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown;
- (b) the Turangi Township Act 1964 permitted the Crown to acquire land compulsorily without direct consultation with the Maori landowners, thus contravening the Crown's duty to act in good faith and consult with the Treaty partner in respect of matters affecting Maori; and
- (c) the Turangi Township Act 1964 further breached the principles of the Treaty by excusing the Crown from the notice requirements of sections 22 and 23 of the Public Works Act 1928 (see para 16.7).



#### **22.2.2 Legislative provision for the return of surplus land**

The Tribunal finds that the claimants have been prejudicially affected by the omission of the Crown to make provision, when exercising its powers of compulsory acquisition under the Public Works Act 1928 and the Turangi Township Act 1964 over the claimants' land, for any such land no longer required for the public work for which it was taken to be returned to Maori ownership at the earliest possible opportunity and with the least cost and inconvenience to those Maori owners and that such omission was inconsistent with the Crown's Treaty obligation under article 2 actively to protect Maori rangatiratanga over their ancestral land (see para 17.6).

#### **22.2.3 Compensation provisions in the Public Works Act 1928**

The Tribunal finds that the Public Works Act 1928 failed adequately to recognise the relationship of Ngati Turangitukua to their ancestral land and to provide for adequate compensation for their loss of land and that such failure is in breach of the Treaty obligation of the Crown adequately to recognise and protect the rangatiratanga of the claimants, who have thereby been prejudicially affected (see para 19.7).

#### **22.2.4 Offer back provisions of the Public Works Act 1981**

The Tribunal finds that the claimants have been prejudicially affected by the offer back provisions of sections 40, 41, and 42 of the Public Works Act 1981, which:

- (a) permit the Crown, in certain circumstances, without consultation with former Maori landowners or their successors, not to offer surplus land back to such former owners;
- (b) permit the Crown to retain the whole of the profit from the sale of such surplus land at current market value, whether sold back to the former Maori owners from whom the land was compulsorily taken or on-sold to a third party;
- (c) fail to require the Crown to make allowances for the circumstances surrounding the compulsory acquisition of the land from former Maori owners, including the need for the compulsory acquisition of the land or, if the use of the land was essential, whether it was necessary to acquire the freehold of the land;
- (d) permit the Crown to offer to sell such surplus land at a price or on conditions which are manifestly in excess of the ability of the former Maori owners or their successors to meet;
- (e) fail to require the Crown to have regard to the special circumstances of multiple Maori owners of such land and to seek to accommodate such circumstances; and
- (f) fail to permit the Crown to offer to sell the land to the wider hapu or tribal group to which the former Maori owners belong, if such owners are unable or unwilling to purchase surplus land offered to them by the Crown.

The Tribunal further finds that the offer back provisions of the Public Works Act 1981 are inconsistent with the Treaty obligation of the Crown to act reasonably and in good faith towards its Treaty partner and actively to protect the rangatiratanga of Ngati Turangitukua over their ancestral land (see para 17.8).

**22.2.5 Crown's choice of township site**

The Tribunal finds that the Crown's policy decision to take the Maori-owned land at Turangi West for public works without first ensuring that no other land, in particular the Crown-owned Turangi East site, was available as an alternative was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga and that the claimants were thereby prejudicially affected (see para 17.2.4).

**22.2.6 Crown's failure to consider acquiring a leasehold interest in the township site**

The Tribunal finds that the Crown failed to give adequate consideration to the desirability, in the interest of protecting the rangatiratanga of Ngati Turangitukua owners over their land, of acquiring the leasehold instead of the freehold of the land taken for the township and the water supply reserve, that such failure was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga, and that the claimants were thereby prejudicially affected (see para 17.3.5).

**22.2.7 Crown's failure to consult fully with owners before deciding to take land**

The Tribunal finds that between March 1964, when the proposal to develop a township at Turangi was first mooted, and 21 September 1964, when the final plan was approved by Cabinet, the Crown failed in its obligation actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty. In particular, it finds that the Crown failed to consult fully with the Maori owners of the land proposed to be taken before deciding to take the land for a township and, as a consequence, the owners were thereby prejudicially affected (see para 18.10).

**22.2.8 Crown's failure to consult fully with owners during township construction**

The Tribunal finds that the claimants were prejudicially affected by the failure of the Crown to keep Ngati Turangitukua people properly informed of its actions and intentions and by its failure to consult fully and effectively with those having mana whenua in the Turangi lands during the construction and development of the Turangi township. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner (see para 19.3.2).

### **22.2.9 Undertakings of the Crown**

The Tribunal finds that:

- (a) The Crown failed by a wide margin to honour its undertaking as to the amount of land to be taken for the township and it resiled from its undertaking that the industrial area would be leased and returned to its owners after 10 years.
- (b) The Crown signally failed in numerous instances to honour its undertaking to protect the wahi tapu of Ngati Turangitukua.
- (c) The Crown failed in significant ways to act upon the high importance which it assured owners it placed on conservation values. As a consequence, the waterways and fishing are degraded and increased flooding has occurred.
- (d) The Crown failed to honour adequately its undertaking to work in a cooperative and friendly manner with owners affected by the Ministry's works and to negotiate and consult with individual owners on important issues.
- (e) The Crown failed in some cases to honour its undertaking that, if owners had to move, advance warning would be given and they would be fully compensated. In a few cases, the Crown failed to meet its undertaking to give owners a prior right of purchase when selling sections or to make sections available to returning members of Ngati Turangitukua. In a number of cases, the Crown failed to meet its undertaking that owners affected by the works would be left as well off as before.
- (f) The Crown failed to make provision for water to be reticulated to Ngati Turangitukua residents in Hirangi Road and later excluded such residents from within the Turangi township boundary without consultation or their consent, thereby making it more difficult for such residents to be supplied with water.
- (g) As a result of the foregoing, the Crown failed to act reasonably and in good faith towards its Treaty partner and, further, failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby (see para 4.11).

### **22.2.10 Crown's failure to honour its undertakings and owners' lack of informed consent**

The Tribunal finds that the taking of land for the Turangi township under the Public Works Act 1928 and the Turangi Township Act 1964 was, both in fact and in law, a compulsory acquisition. In particular, it finds that:

- (a) the Crown failed in whole or in part to honour many of the undertakings that it gave to the Ngati Turangitukua owners, in reliance on the fulfilment of which the owners approved the Turangi township being developed on their ancestral land;
- (b) as a consequence, the owners' approval was undermined and negated; and
- (c) the owners did not give their informed consent or agreement to such non-fulfilment of the Crown's undertakings or to the subsequent taking of their land by the Crown pursuant to the said Acts.

As a result, the Crown failed to act reasonably and in good faith towards its Treaty partner and, further, failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty, and the owners have been prejudicially affected thereby (see para 20.2.6).

**22.2.11 Crown's failure to respect the mana of Ngati Turangitukua as tangata whenua**

The Tribunal finds that the claimants were prejudicially affected by the failure of the Ministry of Works, acting on behalf of the Crown, to deal with Ngati Turangitukua people during the construction of the Turangi township in a manner that paid them the respect due to their mana as tangata whenua. In particular, the Ministry failed to recognise and protect the sensibilities of kaumatua. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner (see para 19.2.3).

**22.2.12 Crown's failure to mitigate the trauma and adverse social repercussions experienced by Ngati Turangitukua**

The Tribunal finds that the claimants were prejudicially affected by the failure of the Crown, as a result of inadequate consultation with Ngati Turangitukua people, to mitigate the trauma and adverse social repercussions which resulted from their activities in Turangi, and, as a consequence, the Crown failed actively to protect the rangatiratanga of its Treaty partner under article 2 of the Treaty (see para 19.3.6).

**22.2.13 Crown's failure to preserve an economic base for Ngati Turangitukua**

The Tribunal finds that the Crown, when deciding where the TPD construction town should be sited, failed to give adequate consideration to the need to ensure that the Ngati Turangitukua hapu as a whole, and each whanau individually, was left in possession of as much of its land as possible. The Tribunal further finds that, in deciding to construct a permanent township at Turangi, the Crown failed to ensure that it did so in such a way as would best preserve an economic base for Ngati Turangitukua and maintain their lifestyle and community. As a consequence, the Crown failed in its obligation actively to protect the rangatiratanga rights of Ngati Turangitukua under article 2 of the Treaty, and the owners were prejudicially affected thereby (see para 19.9).

## **22.3 PROPOSED LEGISLATIVE AMENDMENTS**

As indicated in chapter 21 (see para 21.8), at this stage the Tribunal does not propose to make any recommendations as to remedies by way of compensation to the claimants for Treaty breaches by the Crown. But it is appropriate that we make certain recommendations concerning amendments which the Tribunal considers should be made to the Public Works Act 1981 in relation to the compulsory acquisition of Maori land for public works, the compensation payable for the compulsory acquisition of such land, and the provisions relating to the offering back of surplus land. These do not purport to be exhaustive. The Tribunal is aware that the Crown is presently considering its policy on public works legislation in so far as it affects Maori land. We have had the advantage of perusing the report 'Public Works Takings of Maori Land, 1840–1981', which was prepared for the then Treaty of Waitangi Policy Unit by Cathy Marr in December 1994 (D9). Clearly, wide consultation with Maori is called for on this topic before any policy decisions are taken by the Crown. The Tribunal believes that it is essential, if Maori Treaty interests in their land are to be appropriately protected, to ensure that the Crown and local authorities exercising powers of compulsory acquisition of land are required to give effect to Treaty principles. Our recommendation below endorses a similar recommendation made by the Tribunal in chapter 9 of the *Ngai Tahu Ancillary Claims Report 1995* (para 9.4.6). Other of our recommendations adopt or enlarge upon views expressed in that report, which we have discussed in chapter 20.

## **22.4 RECOMMENDATIONS**

### **22.4.I First recommendation**

Firstly, the Tribunal recommends that Part II of the Public Works Act 1981 should be amended to provide that:

- (a) The Crown or a local authority should not seek to acquire Maori land without first ensuring that no other suitable land is available as an alternative.
- (b) If the Crown or a local authority wishes to acquire Maori land for a public work or purpose, it should first give the owners adequate notice and, by full consultation, seek to obtain their informed consent at an agreed price.
- (c) If the owners are unwilling to agree, the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest.
- (d) If the Crown or a local authority does seek to acquire the use of Maori land for a public work, it should do so by acquiring a lease, licence, or easement, as appropriate, on terms agreed upon with the Maori owners or, failing agreement, by appropriate arbitration. Should there be exceptional circumstances where the

acquisition of the freehold by the Crown or a local authority is considered to be essential, Maori should have the right to have that question determined by an appropriate person or body, independent of the Crown or local authority, as the case may be.

#### **22.4.2 Second recommendation**

Secondly, the Tribunal recommends that the offer back provisions in Part III of the Public Works Act 1981 should be amended:

- (1) To require the Crown or local authority, as the case may be:
  - (a) to consult with former Maori owners or their successors before deciding not to offer surplus land back to such owners; and
  - (b) to offer to return surplus land to Maori ownership at the earliest possible opportunity with the least cost and inconvenience to the former Maori owners; andin determining the price at which the land is offered back to the former Maori owners, the Crown or local authority is to:
  - (c) share with such owners the increased value in the land arising from the use and development of their land;
  - (d) have regard to the means of such former Maori owners;
  - (e) have regard to the circumstances surrounding the compulsory acquisition of such land; and
  - (f) have regard to the special circumstances of multiple Maori owners and to seek to accommodate such circumstances.
- (2) To permit the Crown or local authority, as the case may be, to offer back the land to the wider hapu or tribal group to which the former Maori owners belong, if such owners are unable or unwilling to purchase surplus land offered to them by the Crown or local authority.

#### **22.4.3 Third recommendation**

Thirdly, the Tribunal recommends that the Public Works Act 1981 should be amended to provide that it should so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

In accordance with section 6(5) of the Treaty of Waitangi Act 1975, the registrar is directed to serve a sealed copy of this report on:

- (a) The claimant, Mahlon Kaira Nepia
- (b) The Minister of Maori Affairs  
The Minister of Justice  
The Minister in Charge of Treaty Negotiations  
The Minister of Lands  
The Minister of Conservation  
The Minister for the Environment  
The Minister for State-Owned Enterprises  
The Solicitor General



DATED at Wellington this 11<sup>th</sup> day of September 1995

A handwritten signature in cursive script, appearing to read "G S Orr".

G S Orr, presiding officer

I H Kawharu, member

A handwritten signature in cursive script, appearing to read "I H Kawharu".

H R Young, member

A handwritten signature in cursive script, appearing to read "H R Young".

E M Stokes, member

A handwritten signature in cursive script, appearing to read "E M Stokes".





APPENDIX I

**STATEMENTS OF CLAIM**

Waitangi Tribunal

Claim Wai 367

CONCERNING      The Treaty of Waitangi Act 1975

AND                A claim by Mahlon Kaira Nepia on behalf  
of Ngati Turangitukua of Ngati Tuwharetoa tribe

**FURTHER AMENDED STATEMENT OF CLAIM**

1. The claimants are the Ngati Turangitukua hapu of the Ngati Tuwharetoa tribe. The claimants' turangawaewae is located at the southern end of Lake Taupo in and about the present township of Turangi. Their principal marae is Hirangi Marae, which is located in the township of Turangi.

2. The claimants have been prejudicially affected in their capacity as former Maori owners, descendants of former Maori owners, or current Maori owners of lands in the Turangi area. The lands at issue are coloured pink and green on the Claim Map (Document A5 in the Tribunal's Record of Inquiry).

3. The lands coloured pink on the Claim Map were acquired by the Crown between 1965 and 1983 pursuant to the Turangi Township Act 1964. The land was taken for the purpose of the Tongariro hydro-power development project ('the Project') and establishment of the Turangi township ('the Town'). Much of the land has now been sold by the Crown, but the claimants seek to prevent the sale of further land which they consider is rightly theirs.

4. The lands coloured green on the Claim Map remain in Maori ownership. The claimants' interests in these lands have been prejudicially affected because the works associated with the Project and establishment of the Town have had a detrimental effect on the land, limiting the use that can be made of it by current owners and lessees for farming and forestry purposes.

5. In particular, the claimants have been prejudicially affected by:

(1) The following Acts of the Crown:

- (a) the Public Works Act 1928; and
- (b) the Turangi Township Act 1964;

in that

(i) both Acts were and are fundamentally inconsistent with the basic guarantee given in Article the Second of the Treaty of Waitangi that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown;

(ii) the Turangi Township Act 1964 permitted the Crown to acquire land compulsorily without direct consultation with the Maori land owners thus contravening the Crown's Treaty duty to act in good faith and consult with the Treaty partner in respect of matters affecting them;

(iii) the Turangi Township Act 1964 further breached the principles of the Treaty by excusing the Ministry of Works from the notice requirements of section 22 and section 23 of the Public Works Act 1928.

(2) The following policies and practices adopted by the Crown:

(a) the policy of taking Maori Land for the establishment of public works, and in particular the policy of taking such land without first ensuring

(i) that no non-Maori land was available as an alternative;

(ii) that all practicable alternatives to purchasing the land, including the alternative of taking a leasehold interest in the land required, had been exhausted; and

(iii) that provision existed for the land, when no longer required for the public work for which it was taken, to be returned to its Maori ownership at the earliest possible opportunity and with least cost and inconvenience to those Maori owners; and

(b) the policy decision to site the Tongariro Power Project ('the Project') and the Turangi Township ('the Town') in their current location when other locations were available which did not involve the wholesale taking of Maori land.

(3) The following acts and omissions on the part of the Crown:

(a) failure on the part of the Crown to honour undertakings that were made to Maori land owners by the Ministry of Works which amounted to terms and conditions upon which those owners agreed to sell the initial 700 acres of land at Turangi;

(b) the compulsory acquisition by the Crown of more land than:

(i) Maori land owners were told at the commencement of the Project (when their agreement to the Project proceeding was given) would be required; or

(ii) was strictly required for the purposes of the Project;

(c) failure on the part of the Ministry of Works, acting on behalf of the Crown, to deal with the Turangitukua people in a manner that paid the respect due to

*Statements of Claim*

- their mana as tangata whenua and partners under the Treaty of Waitangi, and in particular failure to recognise and protect the sensibilities of kaumatua;
- (d) failure on the part of the Crown to keep Ngati Turangitukua people properly informed of the Crown's actions and intentions;
  - (e) failure on the part of the Crown to protect Ngati Turangitukua people in the maintenance of their wahi tapu;
  - (f) failure on the part of the Crown to provide a co-ordinated response to the claimants' grievances concerning the recontouring of land and the rerouting of streams in the area by the Ministry of Works, both of which have led to widespread flooding and pollution problems on land still in Maori ownership;
  - (g) failure on the part of the Crown to
    - (i) anticipate;
    - (ii) endeavour to minimise; or
    - (iii) provide protection from the effects of the trauma and social repercussions for Ngati Turangitukua people resulting from the rapid expansion of population and change of lifestyle occasioned by the Project and the development of the Town;
  - (h) denial by the Crown of responsibility for the many adverse consequences for Ngati Turangitukua people flowing from the Project and the development of the Town;
  - (i) failure on the part of the Crown to consult fully and effectively with those having manawhenua in the Turangi lands about any issue or at any stage since the commencement of the Project;
  - (j) failure on the part of the Crown
    - (i) to provide proper or adequate information to land owners about the consequences of the compulsory acquisition of their land;
    - (ii) to identify fully the land being acquired, and in respect of which land compensation was being paid in each case;
    - (iii) to value the land taken and the interests affected at their proper value; and
    - (iv) to compensate the owners adequately for what was being taken from them.
  - (k) failure on the part of the Crown to use land taken for the purpose for which it was taken;
  - (l) failure on the part of the Crown to offer land taken compulsorily back to the original land owners once it had served the immediate purpose for which it was taken; and
  - (m) failure on the part of the Crown to ensure that the whanau of Ngati Turangitukua retained sufficient land for their economic wellbeing, and in order to maintain their lifestyle and community.

6. In summary, therefore

(1) The legislation under which the Ngati Turangitukua lands were taken is inconsistent with the principles of the Treaty of Waitangi;

(2) The legislation should not have been employed to take the land by compulsory purchase without full exploration of other sites and other land-holding mechanisms;

(3) Where land was not compulsorily acquired, actions of the Crown often resulted in a reduction in the land's use and value;

(4) The Crown's dealings with the Ngati Turangitukua people have been characterised by breach of its Treaty duty to consult, to act in the spirit of partnership, and with the utmost good faith, causing the claimants both individually and jointly to experience distress, inconvenience, expense, and a loss of the mana that is rightly theirs as tangata whenua of these Turangi lands.

7. Wherefore the claimants seek

(1) an immediate recommendation that the Crown and its agencies refrain from further sale of any land within the claim area;

(2) return to the claimants of the remaining Crown land without payment;

(3) compensation for the owners of land the value and use of which has been adversely affected by the Crown's actions, and for the owners of land who were inadequately compensated for its compulsory acquisition; and

(4) reimbursement of the claimants for their legal costs, valuation expenses, and disbursements.

Dated this 22nd day of December 1993

Carrie Wainwright  
Counsel for Claimants

*Statements of Claim*

Waitangi Tribunal

Claim Wai 367

CONCERNING      The Treaty of Waitangi Act 1975

AND                A claim by Mahlon Kaira Nepia on behalf  
of Ngati Turangitukua of Ngati Tuwharetoa tribe

**SECOND AMENDED STATEMENT OF CLAIM**

1. This Second Amended Statement of Claim amends the Further Amended Statement of Claim dated 22 December 1993 in the following particulars:—

(1) A further Claim Map (Claim Map #2) is appended, showing land taken for and affected by the establishment of the Turangi township ('the Town') and the Tongariro hydro-power development project ('the Project'). The map is variously coloured to show the particular interest in the land of different whanau of Ngati Turangitukua;

(2) The claim extends to all land compulsorily acquired both for and consequential upon the establishment of the Town and the Project whether taken pursuant to the Turangi Township Act 1964 or otherwise.

2. In addition to the matters already particularised as having prejudicially affected the claimants, they were and are also prejudicially affected by the Crown's failure to comply with its fiduciary obligations to them.

3. In addition to the remedies already sought, the claimants seek

(1) recommendations as to the matters affecting the claimants in respect of which they should be fully consulted by the Crown and other agencies in future;

(2) compensation for land taken which cannot now be returned;

(3) compensation for trauma, humiliation, loss of enjoyment of life and associated suffering; and

(4) compensation for lost opportunity to develop their land and establish an economic base.

Dated this 1st day of March 1994

Carrie Wainwright  
Counsel for Claimants



## APPENDIX II

# RECORD OF HEARINGS

### FIRST HEARING, HIRANGI MARAE, 5-8 APRIL 1994

Members: Professor Gordon Orr (presiding officer)  
Sir Hugh Kawharu  
Dr Evelyn Stokes  
Mrs Hepora Young  
Division staff: Pam Wiki  
Researcher: Paul Hamer  
Claimant: Mahlon Nepia  
Claimant counsel: Carrie Wainwright, Sarah Giles  
Crown counsel: Camilla Owen, Andra Mobberley

#### 5 April 1994

Claimant counsel's opening submission (A27)  
Arthur Grace (A21)  
Terewai Grace (A21)

#### 6 April 1994

Site visit in the morning at 9.30 am  
Resumed hearing on the marae at 2 pm

A Grace (cross-examined by C Owen)  
M Nepia (A21)  
R Biddle (A21(a))  
J Asher (A12)  
B Asher (A12)  
D Asher (A12)



**7 April 1994**

N Payne (A12)  
G Chapman (A12)  
D Gardiner (A19)  
T (Jim) Rawhiti Rangataua (read by E Duff) (A22)  
J Eru (A14)  
T Bell (A14)  
T Smallman (A23)  
B Duff (A16)  
K Te Rangi (A13)  
E Duff (A13)

**8 April 1994**

G Ketu (A18)  
J Whaanga (A20)  
R Wade (A20)  
B Cleghorn (A24)  
Mary-Jane Rivers (A25)

**SECOND HEARING, THE BRIDGE FISHING LODGE, 5–9 SEPTEMBER 1994**

Claimant counsel: C Wainwright, S Giles  
Crown counsel: C Owen, B Gordon

**5 September 1994**

Crown counsel's opening submission (B1)  
D Alexander (B2)

**6 September 1994**

D Alexander (B3)  
D Alexander (B4)  
D Alexander (B5)

**7 September 1994**

D Alexander (B6)  
D Alexander (B7)  
D Alexander (B8)  
D Alexander (B9)

**8 September 1994**

S McHugh (B10)

S McHugh (B11)

**9 September 1994**

S McHugh (B11)

**THIRD HEARING, HIRANGI MARAE, 26–28 OCTOBER 1994**

Claimant counsel: C Wainwright, S Giles

Crown counsel: C Owen, B Gordon

**26 October 1994**

D Alexander (further evidence) (C1)

Claimants closing (C2)

**27 October 1994**

B Gordon, C Owen: Crown closing (C3)

**28 October 1994**

C Wainwright (handwritten notes on reply to Crown's closing)



## APPENDIX III

# RECORD OF PROCEEDINGS

## 1 CLAIMS

- 1.1 Wai: 84  
Date: 4 August 1987  
Claimants: Te Reiti Grace, Mahlon Nepia, and others  
Representing: Ngati Tuwharetoa and Ngati Turangitukua hapu  
Affecting: Hautu lands
- 1.1 (a) Further particulars of claim, 6 October 1987  
(b) Further particulars of claim, 2 January 1988  
(c) Further particulars of claim, 22 December 1987  
(d) Further particulars of claim, 22 October 1988  
(e) Further particulars of claim, 28 August 1989  
(f) Further particulars of claim, 17 January 1989  
(g) Further particulars of claim re Taupo timberlands, 8 September 1989  
(h) Request for urgency re proposed marina development, Taupo, 14 September 1989  
(i) Claim re Turangi township, 25 December 1989  
(j) Request for urgency re Turangi office site, 31 December 1989  
(k) Further particulars re Turangi office site, 1 January 1990  
(l) Request for urgency re Turangi township, 2 January 1990  
(m) Further particulars re Turangi township, 10 January 1990  
(n) Further particulars and urgency request re Turangi township lands, 6 February 1990  
(o) Further particulars and urgency request re Turangi township, 12 February 1990  
(p) Vacant  
(q) Vacant  
(r) Request for urgency re Turangi Crown lands, 9 December 1991  
(s) Further particulars of claim re wahi tapu, 15 May 1992  
(t) Amended statement of claim, 20 August 1992  
(u) Further amended statement of claim, 22 December 1993  
(v) Second amended statement of claim, 1 March 1994  
(w) Application for resumption of land under the Treaty of Waitangi Act 1975

**2 PAPERS IN PROCEEDINGS**

- 2.1 Tribunal direction to register claim, 8 August 1989
- 2.2 Tribunal direction responding to urgent request re Turangi township, 9 February 1990
- 2.3 Tribunal direction re urgent request and related Lake Taupo claims, 5 June 1991
- 2.4 Tribunal direction re urgent request related to Turangi Crown lands and to commission J Koning research, 3 March 1992
- 2.5 Tribunal direction to release J Koning report, 10 June 1992
- 2.6 Claimant request for urgency re Ohuanga 5B2C2, part of Turangi lands, 22 July 1993
- 2.7 Tribunal direction to convene conference re urgency request Turangi lands, 26 July 1993
- 2.8 Letter, Rotoaira Forest Trust outlining position re urgency, 17 August 1993
- 2.9 Crown memorandum relating to disposal of lands at Turangi, 18 August 1993
- 2.10 Tribunal memorandum following conference held 18 August 1993 to discuss nature of claim, 20 August 1993
- 2.11 Memorandum of claimant counsel addressing Tribunal direction of 20 August 1993, 24 September 1993
- 2.12 Further memorandum of claimant counsel clarifying information requested from Crown, 21 October 1993
- 2.13 Correspondence confirming hapu support from Ngati Turangitukua hapu and Ngati Tuwharetoa, 13 October 1993
- 2.14 Tribunal memorandum to convene conference, require further particulars, 19 November 1993
- 2.15 Tribunal directions re urgency request, 17 December 1993
- 2.16 Direction to release exploratory report, 10 June 1994

*Record of Proceedings*

- 2.17 Tribunal direction to constitute a Tribunal and arrange hearing
- 2.18 Tribunal memorandum following conference on 21 February 1994, 22 February 1994
- 2.19 Statement of issues of claimant counsel, 10 March 1994
- 2.20 Statement of issues of Crown counsel, 31 March 1994
- 2.21 Crown response to submissions made by claimant counsel, 8 April 1994
- 2.22 Memorandum of Tribunal, 27 April 1994
- 2.23 Notice of second hearing
- 2.24 Notification of second hearing
- 2.25 Memorandum of Crown counsel, 10 August 1994
- 2.26 Memorandum of Tribunal, 22 August 1994
- 2.27 Memorandum of claimant counsel, 23 September 1994
- 2.28 Memorandum of Tribunal, 26 September 1994
- 2.29 Letter from claimant counsel to the Department of Survey and Land Information, Wanganui, 22 August 1995
- 2.30 The Department of Survey and Land Information's response to claimant counsel's letter of 22 August 1995, 24 August 1995
- 2.31 Letter from M Nepia, 28 August 1995
- 2.32 Tribunal report re land sales, 8 September 1995
- 2.33 Application from claimant counsel for an urgent chambers hearing, 8 September 1995
- 2.34 Memorandum of claimant counsel filed in support of the application for an urgent hearing, 8 September 1995

**3 RESEARCH COMMISSIONS AND AGREEMENTS**

- 3.1 Research commission, John Koning, 3 March 1992
- 3.2 Research commission, Tarah Nikora, 4 February 1994
- 3.3 Research commission, Paul Hamer, 1 August 1994

**4 SUMMATION OF PROCEEDINGS**

Nil

**5 TRANSCRIPTS AND TRANSLATIONS**

- 5.1 Transcript of selected cross-examination of D Alexander
- 5.2 Transcript of additional evidence and cross-examination of W Cleghorn

## APPENDIX IV

# RECORD OF DOCUMENTS

\* Document confidential and unavailable to the public without a Tribunal order

† Document held at the Waitangi Tribunal library, Waitangi Tribunal Division offices, second floor, Seabridge House, 110 Featherston Street, Wellington

### DOCUMENTS ADMITTED TO END OF FIRST HEARING

- A1 John Koning, 'Part Turangi Lands', exploratory report commissioned by the Waitangi Tribunal, 5 June 1992
  - (a) Document bank: footnotes to 'Part Turangi Lands', compiled by T Nikora, 10 March 1994
- A2 Copy of minutes from Aotea minute book 26, pp 228–230, 23 September 1992
- A3 Information relating to Ohuanga North 5B2C2, supplied by Maori Land Court, Wanganui, 13 October 1993
- A4 Taupo County District planning map showing Turangi urban area, land retained in Maori title, land no longer in Maori title, 13 October 1993
- A5 Information from Maori Land Court, Wanganui, relating to Part Ohuanga North 5B2C2 and various areas of Maori freehold land, 30 November 1993
- A6 Plan of Turangi township showing areas of Maori freehold land taken for establishment and development by the Crown, 30 November 1993
- A7 Works consultancy file PW 92/12/67/6, pt 1, May 1956 to October 1964
- A8 Works consultancy file PW 92/12/67/6, pt 3, January 1966 to May 1968
- A9 Works consultancy file PW 92/12/67/6/0/1, pt 2, May 1969 to October 1971
- A10 Works consultancy file PW 92/12/67/6, pt 5, July 1970 to March 1972



- A11 Map (refer to amended statement of claim, 1 March 1994) showing particular interests of Ngati Turangitukua whanau (claimants)
- A12 Evidence of Asher family (claimant counsel)
- A13 Evidence of Te Rangi family (claimant counsel)
- A14 Evidence of Ngaumu family (claimant counsel)
  - (a) Extract from the Tokaanu minute book showing the partition of land in 1942 by Rangiita Waka
- A15 Evidence of Church family (claimant counsel)
  - (a) Letter and accompanying attachments from R Church, 18 August 1994
- A16 Evidence of Duff family (claimant counsel)
- A17 Evidence of Hallet family (claimant counsel)
- A18 Evidence of Rihia family (claimant counsel)
- A19 Evidence of Kumeroa family (claimant counsel)
- A20 Evidence of Rota family (claimant counsel)
- A21 Evidence of Grace family (claimant counsel)
  - (a) Evidence of Rangi Biddle (claimant counsel)
- A22 Evidence of Rawhiti Rangitaua family (claimant counsel)
- A23 Evidence of Smallman family (claimant counsel)
- A24 Valuation evidence, William Cleghorn
- A25 Sociological evidence, Mary-Jane Rivers
- A26 Taupo County District planning map: Turangi urban area
- A27 Claimant counsel's opening submission
  - (a) Written transcript of submission made orally by claimant counsel on 8 April 1994
- A28
  - (a) Map of Turangi in 1964
  - (b) Map of Turangi in 1966

**DOCUMENTS ADMITTED TO END OF SECOND HEARING**

- B1 Opening submissions of Crown counsel
  - (a) Documents referred to in Crown's opening submissions
- B2 Evidence of David Alexander on the Turangi township and the Public Works Act 1928 (Crown counsel)
  - (a) Supporting papers to B2
  - (b) Turangi township sequence of entry on land
- B3 Evidence of David Alexander on the industrial area (Crown counsel)
  - (a) Supporting papers to B3
  - (b) Lions symposium, 12–13 May 1973
  - (c) Plan of Turangi urupa site
- B4 Evidence of David Alexander on the rubbish tip and the water supply reserve (Crown counsel)
  - (a) Supporting papers to B4
- B5 Evidence of David Alexander on the Tongariro River and north of Hirangi Road (Crown counsel)
  - (a) Supporting papers to B5
  - (b) Map: Metal extraction from Tongariro River: Hut Pool to Jones Pool
- B6 Evidence of David Alexander on the sewage treatment oxidation ponds (Crown counsel)
  - (a) Supporting papers to B6
- B7 Evidence of David Alexander on east of the realigned State Highway 1 (Crown counsel)
  - (a) Supporting papers to B7
- B8 Evidence of David Alexander on west of the township (Crown counsel)
  - (a) Supporting papers to B8
- B9 Evidence of David Alexander on the Tokaanu tailrace (Crown counsel)
  - (a) Supporting papers to B9
- B10 Evidence of Stephanie McHugh on negotiations on compensation claims under the Public Works Act 1928 between 1964 and 1981 (Crown counsel)
  - (a) Supporting documents: vol 1
  - (b) Supporting documents: vol 2
  - (c) Supporting documents: vol 3

- (d) Ministry of Works head office file 92/12/67/6/0/22
- (e) List of files consulted by S L McHugh
- B11 Evidence of Stephanie McHugh on the negotiations regarding the claims for Tokaanu B2D2 and Ohuanga North 5B1D3C1, 1974–84 (Crown counsel)
- B12 Report of Paul Hamer on the Tokaanu development scheme 1930–68
  - (a) Supporting documents
- B13 Aerial photograph of Turangi 1958 with overlay of block boundaries (Crown counsel)
- B14 Aerial photograph of Turangi 1984 with overlay of block boundaries (Crown counsel)
- B15 Letter from Buddle Findlay to B Robinson, Department of Lands and Survey Information, 21 September 1994
- B16 English and Maori versions of whakatauki relating to Te Puke a Ria (claimant counsel)

#### **DOCUMENTS ADMITTED TO END OF THIRD HEARING**

- C1 Further evidence of David Alexander
- C2 Final submissions of claimant counsel
  - (a) Compensation vouchers
- C3 Closing submissions of Crown counsel
- C4 Memorandum from Crown counsel relating to the Crown's closing submission
- C5 Taupo District Council, waste water treatment plant analytical tests, Turangi Lagoon
- C6 *Minister of Works and Development v Hura* [1979] 2 NZLR 279–283
- C7 Document relating to correct spelling of the Hangarito Stream (claimant counsel)
- C8 Korero relating to Te Puke a Ria (claimant counsel)
- C9 Closing submission of claimant counsel

- C10 Letter to G Andrews, Maori Land Court, 11 August 1994
- C11 Letter from A E Tatana, Maori Land Court, 30 August 1994
- C12 Letter to A E Tatana, Maori Land Court, 13 September 1994
- C13 Reply to letter of 13 September 1994 with attachments, 21 October 1994

**DOCUMENTS ADMITTED FOLLOWING THE THIRD HEARING**

- D1 Letter to Environment Waikato Regional Council, 15 November 1994
- D2 Letter to the Secretary of Justice, 16 November 1994
- D3 Reply by G R Brough with certificates of title for Tongariro Prison (Hautu) and Landcorp farm (Mangamawhitiwhiti), 17 November 1994
- D4 Response from Environment Waikato Regional Council, 5 December 1994
- D5 Letter to the Secretary of Justice, 6 December 1994
- D6 Letter to Landcorp Farming, 6 December 1994
- D7 Reply by Secretary of Justice to letter re document D5, 17 December 1994
- D8 Schedule and map of lands transferred to State-owned enterprises (Crown counsel)
- D9<sup>†</sup> C Marr, 'Public Takings of Maori Land 1840–1981', report for Treaty of Waitangi Policy Unit, December 1994
- D10 Reply from Landcorp to letter of 6 December 1994 regarding Hautu Prison site, 8 December 1994
- D11 Report by David Alexander on ancillary claims
- D12 Department of Maori Affairs file 36/0, vol 10, re Tongariro power scheme



## APPENDIX V

# **ENVIRONMENT WAIKATO STATEMENT ON THE TURANGI SEWAGE TREATMENT SYSTEM**

This application was publicly notified in the *Taupo Times* on 3 July 1990, the closing date for submissions was the 1 August 1990, and no submissions were received.

Turangi township has a sewage reticulation system with effluent from the township entering a two oxidation pond system. The effluent after treatment in the ponds is pumped to one of two distribution lines. These distribution lines divide into two resulting in four lines which access four separate irrigation areas. The effluent is distributed from these onto approximately 7.5 hectares of irrigation beds. The irrigation beds are dosed alternately with the grass cover being harvested for composting on a regular basis. The irrigation beds were rebuilt in 1985 to enhance the existing impervious layer beneath the topsoil layer and to create a series of ridges and channels. Effluent that runs off the beds is collected in drains that direct the effluent to a low lying area which provides additional treatment. The effluent flows from this low lying area to a natural wetland which the effluent passes through before entering Lake Taupo. The system was designed to treat the waste using an overland flow system, not through land infiltration. The overland flow system was considered, by the designers, as providing the highest level of effluent treatment.

The treatment system was originally designed by the Ministry of Works and Development and was intended to treat domestic sewage from about 10,000–12,000 workers from the Tongariro Power Development project. With the completion of the scheme the population utilising the system has decreased with the maximum population of 5,000 persons occurring during holidays. The maximum discharge volume recently estimated from pumping records is 1,395 cubic metres per day. The volume applied for is sufficient to cater for an increase in the present population.

The treatment system has been monitored by the applicant with effluent quality from samples taken from the low lying area prior to reaching the natural wetland since 1990 being as follows:

|                     | Typically*                  | High*                         |
|---------------------|-----------------------------|-------------------------------|
| BOD <sub>5</sub>    | 20 grams per cubic metre    | 35.8 grams per cubic metre    |
| Suspended solids    | 25                          | 46.8                          |
| Total nitrogen      | 12                          | 26.5                          |
| Ammoniacal nitrogen | 6                           | 12.7                          |
| Total phosphorus    | 6                           | 7.8                           |
| Faecal coliforms    | $5 \times 10^3$ per 100 mls | $8.5 \times 10^3$ per 100 mls |

The system design was intended to produce a high quality effluent with a low nutrient content. When operating as intended the above monitoring results show the system can provide a significant reduction in contaminants including nutrients. However at times the treatment system is unable to achieve this higher standard for various reasons including climatic conditions, shock loading rates etc.

The impervious sealing layer placed under the irrigation area is expected to prevent percolation of effluent into the ground with effluent that does not evaporate being channelled to collection drains. The collected effluent is channelled to a natural wetland area which will provide some additional treatment. As such the volume of contaminants, especially nutrients reaching the lake from this source is likely to be less than measured in effluent samples. The present disposal system has been in operation since the 1960s and no direct monitoring has been undertaken to identify what if any adverse impacts there are.

The treatment system reduces the contaminant loading that would otherwise enter the environment. As such the treatment of this waste is in line with Council policy. However policy also requires the protection and enhancement of significant water bodies and protection of wetlands. By allowing a discharge to a wetland which will eventually enter Lake Taupo there is potential for degradation of water quality. As such to protect and enhance water quality it may be necessary to prevent any discharge to surface water.

The application has not been processed to date as no specific investigations have been undertaken by the applicant to determine the destination of the contaminants or the actual effect of the discharge on the receiving environment. At this time the Council is considering granting a permit prior to the end of December 1994 to authorise this discharge. This permit will require the applicant to put in place a monitoring programme to more accurately identify the effects of this discharge on the environment.

- \* The figures quoted for 'typical' and 'high' values in this statement (on the Tribunal's record of documents as D4) are a summary of more detailed figures provided by the Taupo County Council, through Crown counsel, to the Tribunal (C5). These represent a monthly monitoring of samples taken from the 'lagoon' between March 1990 and July 1994. No other monitoring appears to have been done to ascertain what levels of nutrients may be entering Lake Taupo, either by groundwater flows into the tailrace or through drains or by surface flow into the Tokaanu swamps.

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