

WAI 143 #M30

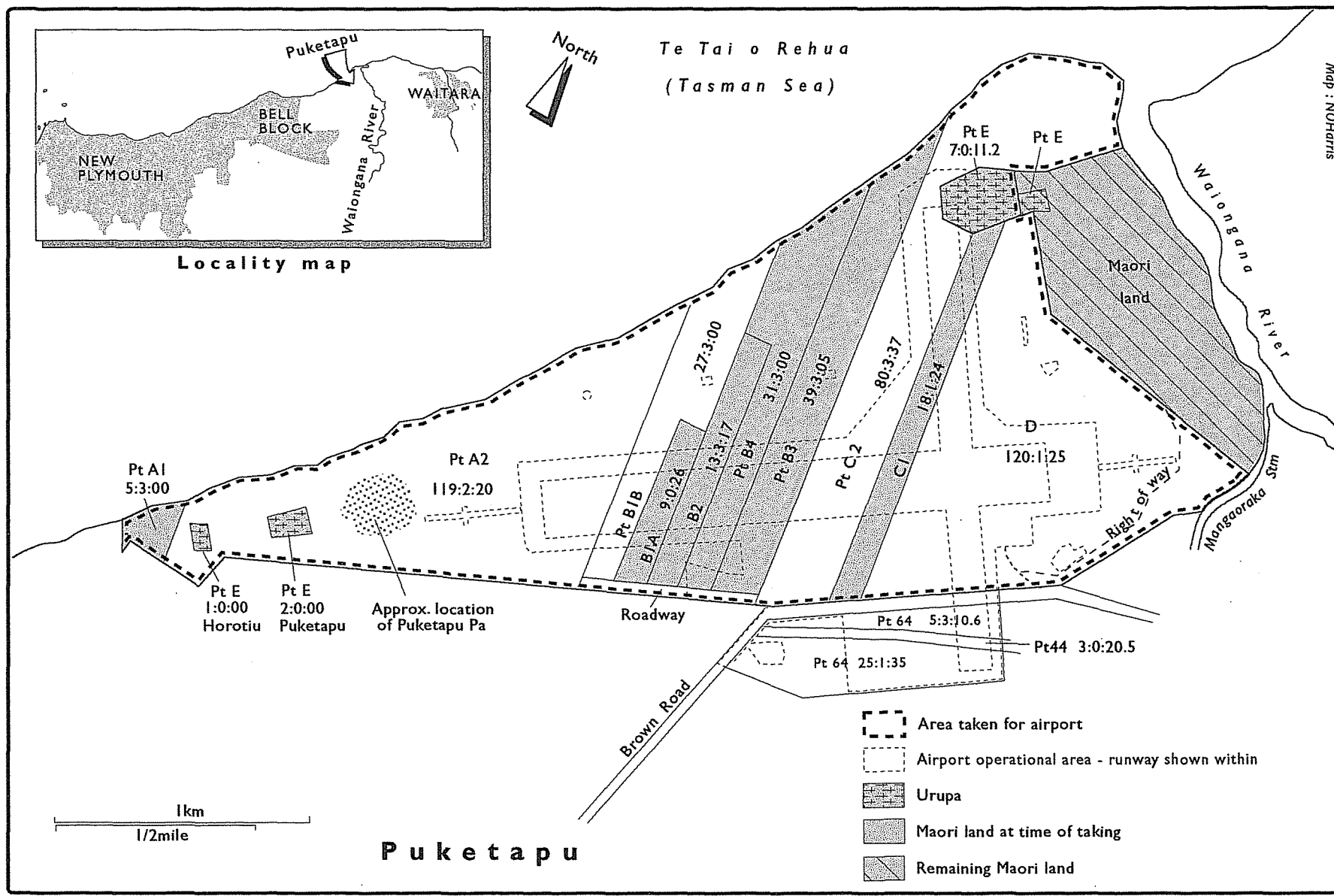


A Report Commissioned by the Waitangi Tribunal
for the Taranaki Claim (Wai 143)

**The acquisition of the Puketapu
blocks for the
New Plymouth Airport**

*By Suzanne Woodley and Ben White
April 1996*

Any conclusions drawn or opinions expressed
are those of the authors



Introduction

1. The Authors

Suzanne Woodley

I completed a Bachelor of Arts majoring in sociology at Canterbury University in 1987, and an honours degree in history at Victoria University in 1995. I worked at the Waitangi Tribunal as a researcher from February 1992 until September 1995. Previously I had been employed as a claims administrator for the Tribunal for eighteen months. I have completed exploratory reports for the Tribunal on the Sewerage Rates claim (Wai 115), the Whangarae 1C claim (Wai 184), the Manaia 1C claim (Wai 148), the Manaia 1B and 2B claim (Wai 285), the Tuhua claim (Wai 158) and the Matakana Island claims (Wai 228 and 266). In August 1993 I was commissioned by the Tribunal to produce reports on this claim and other Taranaki ancillary claims.

Ben White

Upon Ms Woodley's resignation from the Waitangi Tribunal in September 1995, I took over the task of completing this report. After graduating from Canterbury University in 1992 with a degree in New Zealand history, I completed a Masters degree in resource management at Lincoln University and Canterbury University. As part of this program I took honours papers in New Zealand history and Maori studies. Since the commencement of my employment with the Waitangi Tribunal in April 1995, I have completed reports on the McKee oilfield and the West Coast Settlement Reserves, both being aspects of the Taranaki consolidated claim (Wai 143).

2. Location

Puketapu is located between Bell Block and Waitara. Its legal description is section 134 Waitara West District, Block III Paritutu Survey District. When the Crown grant was first made, its area was 566 acres, 3 roods and 25 perches.

3. The Claim

On 19 October 1964, the following portions of the Puketapu block were taken pursuant to the Public Works Act 1928 for use as an aerodrome. The land was vested in the Mayor, Councillors and citizens of the City of New Plymouth. The blocks marked with an asterisk were Maori freehold land at the time of the taking (see map 1):¹

* Part Puketapu A1	5 acres, 3 roods
Part Puketapu A2	119 acres, 2 roods and 20 perches
* Puketapu B 1A	9 acres and 26 perches
Part Puketapu B1B	27 acres, 3 roods
* Puketapu B2	13 acres, 3 roods and 17 perches

¹ *New Zealand Gazette*, 15 October 1964, p 1797

* Part Puketapu B3	39 acres, 3 roods and 37 perches
* Part Puketapu B4	31 acres, 3 roods
* Puketapu C1	18 acres, 1 rood and 24 perches
Part Puketapu C2	80 acres, 3 roods and 37 perches
Puketapu D	120 acres, 1 rood and 25 perches
Puketapu Roadway	1 acres, 2 roods and 5 perches
* Parts Puketapu E	7 acres and 11.2 perches
* Parts Puketapu E	2 acres
* Parts Puketapu E	1 acre

The total amount of land taken was 478 acres 1 rood and 10.2 perches, of which 128 acres 3 roods and 3.2 perches were Maori freehold land. The land taken included three urupa. A plaque at the airport acknowledges that the airport stands on Puketapu, the scene of many battles, a famous fishing village and the home of Puketapu hapu of Te Atiawa.

In May 1991, Aroha Harris of the Tribunal research staff met with Aila Taylor, Ted Tamati, Moki White and Grant Knuckey and discussed several issues that have subsequently been included in the *Amended Statement of Claim o Nga Iwi o Taranaki*. At these meetings many issues and concerns were identified in connection with the acquisition of the Puketapu blocks.

The first issue relates to the nature of the taking. According to the claimants the local authority concerned (the then New Plymouth County Council) already had land intended for use as an airport. Instead the old airport site became an industrial site. The way in which the owners were threatened with the Public Works Act, and subsequently dispossessed of their land through the operation of the Act, is a major source of grievance for the claimants.² Further it was stated that in representing the owners in dealings with the New Plymouth City Council, the registrar of the Maori Land Court “sold us out” and failed to offer a clear view of what the proposed purchase would mean.³

The second concern is in connection to the compensation paid for the land taken. The claimants contend that the compensation for the taking was inequitable given that other farmers who had land taken for the airport received £70 per acre, while the amount received by Maori was only £30 per acre. When Maori said that their land was tupuna land they were “scoffed at and told it was rubbish, waste land”.⁴

Thirdly the claimants are concerned with the urupa within Puketapu A2. There are two urupa at the western end of the runway named Puketapu and Horotiu which were included in the taking.

² Aroha Harris, *Notes on visits to Owae Marae to meet Aila Taylor, Ted Tamati and Moki White on 21 and 23 May 1991*, Waitangi Tribunal Record of Documents for the Taranaki Claim (Wai 143), doc M22, 1991, pp 7, 5-6

³ Ibid, pp 9-10

⁴ Ibid, p 9

According to Grant Knuckey, the claimants want the urupa returned as freehold land and not merely protected by a caveat on the title as they are currently.⁵

The fourth concern is that some of the land taken for the airport is now being leased to dairy farmers. The claimants argue that “instead of satisfying themselves [the then New Plymouth City Council] with the minimal amount required for the airport, they had to take everything. No consideration, they state, was given to those who did not want to sell.”⁶

Subsequently, the grievance concerning the acquisition of the Puketapu blocks has been included in the *Amended statement of claim of Nga Iwi o Taranaki*. At section 16.76 it states,

That of 566 acres originally reserved as the Puketapu block, 125 acres of Maori land were taken under public works legislation for an aerodrome in 1964, without proper consultation with the Maori owners and without consideration being taken of their concern that this was tupuna land including an urupa. Some of [the] land taken is now leased to dairy farmers.⁷

During the fourth hearing of the Taranaki claim at Owae Marae, Waitara, Aila Taylor recounted how Te Atiawa had been recently dispossessed of many of their sacred sites by actions of both central and local government. In connection with the Puketapu blocks and the New Plymouth Airport, he stated that he was “a descendant from that area” and that “the Puketapu pa. . . was levelled at the time of construction.” Continuing, he recounted how “the land titles hadn’t even changed hands and the bulldozers came in” and that he “was actually there when it happened.” While he conceded that “there were some who wanted it [the airport]”, he contended that “there was a big majority who didn’t want to be part of it, but [that] with the powers of the approach of local authority, that was soon dealt with”.⁸

4. Structure of Report

The report begins with a block history of Puketapu, including an examination of the alienation of some areas of the block. This is followed by a brief description of the legislation pertaining to the compulsory acquisition of Maori land under the Public Works Act 1928. Part three is concerned with the acquisition of the Puketapu blocks for the new airport. It sets out the reasons why a new airport was considered necessary, and a description of the process by which the New Plymouth City Council took the land and negotiated compensation with the Maori Trustee. The report concludes with a discussion of issues germane to the claim, in particular those identified by the claimants.

⁵ Ibid, p 6

⁶ Ibid, p 7

⁷ *Amended statement of claim of Nga Iwi o Taranaki*, Waitangi Tribunal Record of Proceedings for Taranaki claim (Wai 143), doc 1.7(c), 21 December 1995, section 16.76, p 62

⁸ Aila Taylor, oral evidence on behalf of Te Atiawa, fourth hearing (Wai 143), 9 April 1991, tape D3A

Part one: block history prior to 1964

1. Crown Grant

The Crown Grant for the almost 567 acre Puketapu block was issued on 28 October 1885 pursuant to the West Coast Settlement Act 1880 and the West Coast Settlement Reserves Act 1881. The block was reserved for Roera Rangi and eight others in trust for the Puketapu tribe and was deemed “absolutely inalienable”. As with all the West Coast Settlement Reserves, Puketapu was vested in the Public Trustee pursuant to the West Coast Settlement Reserves Act 1881. The Native Land Court assessed the relative shares and interests of the owners in December 1902.

In 1907 part of the block (145 acres and 3 roods) was leased by the Public Trustee to Thomas and Arthur Western. The remainder of the block (421 acres and 1 rood) was leased to Charles and Walter Hoskin. The certificate of title does not state whether the land was leased prior to this, although the Native Land Court minutes of a hearing in 1918 said that the Westons had been on the land for 50 years. This would indicate that the Weston family had leased the land since the 1880s.⁹

2. Partitioning

On 30 March 1917 Native Land Court Judge John Bain Jack ordered the partitioning of Puketapu. Puketapu was divided into five parts: Puketapu A (144 acres), B (126 acres), C (99 acres), D (120 acres, 1 rood and 25 perches) and E (77 acres, 2 roods).¹⁰

As well as containing the land contiguous with the Waiongana River, Puketapu E included two urupa (Horotiu and Puketapu) within the Puketapu A block. In the immediate vicinity of the Puketapu urupa lay a small hill which was the site of the Puketapu pa.¹¹ According to Percy Smith, the pa was one of the earliest settlements on the west coast and was of great significance because of its proximity to a burial ground where “the chiefs of many parts found a final resting place”. The pa, however, was devastated by epidemics around 1790–1795 and 1820, and appears to have been abandoned from about this time.¹² In the correspondence and negotiations concerning the acquisition of the Puketapu lands for the purposes of the New Plymouth Airport, there appears to have been some confusion between the Puketapu pa site and the Puketapu urupa, the two often being conflated. However, it is the understanding of the current authors that they were in fact distinct sites (see map 1).

⁹ Tar MB 27, 22 October 1918, fol 360

¹⁰ Tar MB 26, 30 March 1917, fol 81

¹¹ Personal communication, Grant Knuckey, Trustee for the Puketapu E Reserve, 29 March 1996

¹² Percy Smith, *History and Traditions of the Maoris of the West Coast of the North Island*, New Plymouth, Polynesian Society, 1910, pp 268–269

Puketapu was partitioned pursuant to the West Coast Settlement Reserves Amendment Acts 1913 and 1914. Pursuant to section 15 of the 1913 Amendment Act, the Public Trustee was directed to forward to the Chief Judge of the Native Land Court a list of West Coast Settlement Reserves and the names of their owners. The Native Land Court was then, "without further application or direction", to partition the reserves. Initially this applied only to those reserves which were leased (like Puketapu) or deemed "unsettled".¹³ The West Coast Settlement Reserves Amendment Act 1914, however, brought all West Coast Settlement Reserves under the 1913 Act.

In order to expedite the alienation of the land, the 1913 Act required that land comprised in any partition order was to be vested in the Maori owners and the certificate of title was to contain no restrictions upon alienation. This meant that land such as Puketapu was no longer administered by the Public Trustee, although owners could direct that the certificate of title be issued to the Public Trustee if they so desired.¹⁴

In addition, section 3 of the 1914 Act stated that when lands were partitioned pursuant to the 1913 and 1914 Acts, the Native Land Court could then "exercise all the powers of exchange, consolidation of interests, laying of road-lines and private ways, appointing successors, or otherwise howsoever which the Native Land Court might exercise in its ordinary jurisdiction".¹⁵ Also, the land, by virtue of now being Maori freehold land, became subject to the Public Works legislation.¹⁶

In her report concerning the administration of the West Coast Settlement Reserves, Janine Ford stated that "extensive partitioning" resulted from the 1913 Act. She argued that an impact of partitioning and freeholding of the reserves was the "speedy alienation of land" directly to Pakeha.¹⁷ However, just how widespread the alienations to Pakeha (as opposed to the Crown) were during this period, requires further research.¹⁸ One can conclude, however, that the legislation's impact on the Puketapu block was significant. Just over 321 acres (56 percent) of the block were alienated to lessees within ten years of the partitioning of Puketapu.¹⁹

¹³ Pursuant to section 21 of the 1913 Act, 'unsettled reserves' were defined as those reserves subject to short term leases and occupational licenses.

¹⁴ West Coast Settlement Reserves Amendment Act 1913, ss13,15

¹⁵ West Coast Settlement Reserves Amendment Act 1914, s3

¹⁶ Janine Ford, *The Administration of the West Coast Settlement Reserves in Taranaki by the Public/Native/Maori Trustees, 1876-1976*, Waitangi Tribunal Record of Documents for Taranaki Claim (Wai 143), doc M18, 1995, p 85

¹⁷ Ibid, p 84

¹⁸ Ford states that the Crown acquired over 125,000 acres, or 64 percent of the total land reserved in Taranaki, in the twenty year period between 1911 and 1931. Ibid, p 83

¹⁹ Ibid, p 85

3. Puketapu A

On 22 October 1918, the 144 acre Puketapu A block was partitioned by the Native Land Court into two further parts. The partitioning was a result of a decision by some owners to sell Puketapu A. Before examining the meeting of owners where it was decided to alienate Puketapu A, it is important to consider the applicable legislation. Pursuant to section 209 of the Native Land Act 1909, Maori land owned by more than ten owners could be alienated by a meeting of owners. The provisions relating to meetings of owners were outlined in part XVIII of the Act. Pursuant to section 342(5), five owners constituted a quorum at a meeting of owners. A resolution was deemed to be carried if owners who voted in favour of the resolution owned a larger aggregate share of the land affected than those owners who voted against the resolution. A resolution was then forwarded to the appropriate Maori Land Board for confirmation. Section 341(3) of the Act stated that no resolution passed at a meeting of owners could be invalidated or affected if owners did not receive a notice advising them of the meeting where the resolution was passed. Thus, according to the Act, even if owners had not been told about the meeting, they had no recourse.²⁰

Of the 40 owners of Puketapu A, 12 (30 percent) attended the meeting of owners held on 19 December 1917 to consider the alienation at a rate of £10 per acre. These owners held just over 401 shares out of a total of 689.²¹ Seven owners, representing 197 shares (28.5 percent), voted in favour of the resolution to sell. Two voted against the proposal. They were Tamati Whanganui and Pera Pehimana who between them owned 21 shares or about 7 percent of the total interest. The two owners who moved and seconded the motion to sell were not included in the list of seven who agreed to the proposal. Their shares were also not included in the total given by the minute taker of those who agreed to the sale. The two owners concerned, Taupiri Ihaka and Kaha Tamangara, respectively owned 110 and 47 shares. If one assumes that they too agreed to the sale by virtue of moving and seconding the motion, then owners representing 51 percent of the shares agreed to the sale. The minutes however, concluded that the resolution to sell was “carried by a majority of 155 [shares]” – that is 197 shares of the 7 owners favouring the sale, less the 42 shares of the 2 owners who dissented. The minutes of the meeting do not include any reference to the twelfth person who attended.

The shares of the two owners who did not agree to the sale, Tamati Whanganui and Pera Pehimana were partitioned pursuant to section 348 of the Native Land Act 1909. They were awarded 8 acres and 3 roods which became Puketapu A1. At the partition hearing, Tamati Whanganui stated that he objected to the sale because his tupuna were buried in the Horotiu urupa located in Puketapu A. He initially proposed that Puketapu be divided into three parts but the Westons – the lessees who were endeavouring to acquire the freehold – claimed that the proposal was “obstructive”. At the meeting of owners Tamati Whanganui also stated that

²⁰ Native Land Act 1909

²¹ The minutes of the meeting incorrectly stated that 430 shares were represented at the meeting.

All this land is a big urupa: dead bodies are buried every where. The orders made by the Court for the urupa are only to fence in recent dead buried there.²²

The two dissenters also wanted their area cut off “near or around the pa”.²³ This presumably is a reference to the Puketapu pa, which was located in the immediate vicinity of the Puketapu urupa.

At the partition hearing, it was ordered that access to the urupa be allowed in favour of the owner of Puketapu E and Puketapu A1 blocks. Thus access to two urupa, Horotiu (1 acre) and Puketapu (2 acres) within the European-owned Puketapu A2, both known as part Puketapu E, was preserved.²⁴ However it appears that this order was not immediately given effect to. An addendum to the minutes of that hearing by Judge Acheson dated 5 May 1921, stated that an “Amendment [had been] made under section 27 of 1909 Act to give effect to [the] intended decision of [the] Court re access to [the] urupas.”²⁵

Before the Aotea District Maori Land Board would confirm the alienation, Judge Browne required a list of other land held by those who were selling, and a government valuation of the block. The land was valued at £1062, (£862 unimproved valued and £200 in improvements). The alienation was confirmed on 3 February 1919 which was over a year after the meeting of owners. In confirming the alienation, the Board stated that it had had “regard to the public interest and to the interests of the owners” and that it was “satisfied that the said resolution is in accordance with law and is [therefore] fit to be confirmed.”²⁶ No appeal was lodged against the partition. The owners were paid £1312-15, £6-6-0 of which was retained to cover the cost of surveying the partition.

In 1964, 5 acres and 3 roods of the Maori-owned Puketapu A1 were taken for the airport. The remaining three acres had, according to the Maori Land Court, been eroded by the sea.

At the same time the Puketapu A2 block (119 acres, 2 roods and 20 perches) was also taken for the aerodrome. This land was owned by J Mooney. Included in the taking were the two urupa located on Puketapu A2 (part of Puketapu E) and the site of the Puketapu pa. The block had previously been 135 acres, 1 rood in size, but 15 acres, 2 roods and 20 perches had also presumably eroded away.

²² Minutes of Meeting of Owners to consider selling Puketapu A2, MLC-WG 1, 3/1917/467

²³ Ibid

²⁴ Tar MB 27, 22 October 1918, fol 360-362

²⁵ Addendum to minutes, Tar MB 27, 22 October 1918, fol 362

²⁶ Confirmation of a resolution passed by Assemble Owners, 3 February 1919, MLC-WG 1, 3/1917/467

4. Puketapu B1A and B1B

The 126 acre Puketapu B block was partitioned on 28 May 1919 by Judge Wakelin Browne into four parts: B1 (38 acres, 2 roods and 23 perches – 16 owners), B2 (13 acres, 3 roods and 17 perches – 3 owners), B3 (40 acres, 1 rood and 7 perches – 14 owners) and B4 (33 acres, 33 perches – 14 owners).

B1 was divided further into two parts on 19 January 1933. Puketapu B1A consisted of 9 acres and 26 perches and was taken for the airport in 1964. At the time of the taking, the land was Maori-owned and leased to farmer Laurice Jury.

Puketapu B1B consisted of 29 acres, 1 rood and 37 perches. In 1964 27 acres and 3 roods were taken for the airport. The remaining 1 acre, 2 roods and 37 perches most likely eroded away. Just prior to the taking, Puketapu B1B was alienated to Laurice Jury. A meeting of owners was held on 12 August 1960. The meeting had several options to consider. These included selling or leasing the land to Laurice Jury; leasing the land to Hanataura Loveridge (an owner who had previously leased the block); or selling or leasing the land to another owner, Tonga O'Carroll. The land was valued at £360 in October 1958. Initially the owners decided that they wanted to sell to another owner, so the motion to lease or sell the land to Mr Jury was defeated. The owners decided to sell the land to Mr O'Carroll for £700. O'Carroll however, chose not to accept this offer so the land was offered to Mr Jury at the price of £800 which he accepted. The decision to sell to Mr Jury was unanimous. Present at the meeting were eight owners and one proxy. They represented about 57 percent of the shares (79.3 shares out of a total of 138.25).

The Maori Land Court confirmed the alienation on 30 November 1960. In March 1961, an owner Teetu Hapimarika, wrote to the Court and stated that they had "made a mistake" and no longer wished to sell.²⁷

5. Puketapu B2, B3 and B4

The Maori-owned Puketapu B2 block consisted of 13 acres, 3 roods and 17 perches and was also taken for the airport in 1964. Prior to its compulsory acquisition by the Crown it was leased to Leonard George Walker who subleased the land to Jury. The lease, dated 22 October 1954, was for a period of 10 years at an annual rental of £10.²⁸

In 1964 the Maori-owned Puketapu B3 block consisting of 39 acres, 3 roods and 5 perches, was taken for the aerodrome. The remaining 2 roods and 2 perches had been lost through coastal erosion. At the time of the taking, Puketapu B3 was leased to Edward Tamati. The lease was for a period of ten years from 1961. One of the conditions of the lease, insisted upon by the owners, was that if after ten years the land was required for a housing subdivision, the lease would not be renewed. At the meeting where the owners decided on the leasing arrangements, there was an

²⁷ Puketapu B1B Alienation file, 3/6350, Maori Land Court, Wanganui

²⁸ Puketapu B2 Alienation file, 3/6875, Maori Land Court, Wanganui

opportunity to sell the land. However, the owners, were “definitely against a sale”, the majority being “in favour of a lease to a Maori”.²⁹

Puketapu B4, which was also Maori land at the time of the taking, consisted of 33 acres and 33 perches and was also leased to Edward Tamati from 1 December 1961 for a term of 15 years. One acre, 1 rood and 33 perches was lost through erosion, and the remaining 31 acres, 3 roods were taken for the aerodrome.³⁰

6. Puketapu C and D

Sale of Puketapu C2 and D

An application was made on 27 October 1924 by Rangiteihinga, an owner of the Puketapu block, to call a meeting of owners to consider the alienation of Puketapu B, C, D, and Part E to Percy Sole, a Pakeha farmer. The meeting of owners to consider the alienation considered each block separately. Eight owners of Puketapu B were present at the meeting. They represented 162 shares and unanimously decided not to sell. The owners of Puketapu E also decided not to sell, stating as their reason that the block was an urupa.

Five out of 39 owners of Puketapu C were present at the 22 January 1925 meeting. The five owners represented 132 of the 452 shares, about 30 percent of the total shares.³¹ A partition order of 30 March 1917 had awarded the land to 20 people but this was increased considerably by the succession of 17 people to the 21 shares of Tohuka Tuapa in 1918.

At the meeting, owner Kapui Awariki Niutene (21 shares) moved that the land be sold as per the resolution but there was no seconder. Another owner, Tikawetaua (31.5 shares), moved that the land be sold at the government valuation so long as this was not less than £10 per acre. Rohea te Hikongarangi (31 shares) seconded Tikawetaua’s motion. Two owners, Te Teira Uenuku (21 shares) and Iwikahu Rukuwai (28 shares), stated that they did not wish to sell. Following this, Tikawetaua and Kapui Awarikito, who had both moved that the land be sold, left the meeting. The meeting was then called off as only three people remained and this did not constitute a quorum.³²

Thus at this meeting, owners representing just 18.5 percent of the shares voted in favour of selling. It was not stated why the two owners left the meeting though their absence meant that the alienation could not proceed. These two owners did not attend the next meeting of owners held one week later.

²⁹ Puketapu B3 Alienation file, 3/5384, Maori Land Court Wanganui

³⁰ Puketapu B4 Alienation file, 3/5385, Maori Land Court Wanganui

³¹ Particulars of title of owners, Puketapu A- E Alienation file, 3/1106, Maori Land Court Wanganui

³² Minutes of Meeting of Owners concerning the alienation of Puketapu B, C, D and E, 22 January 1925, Puketapu A - E alienation file, 3/1106, Maori Land Court Wanganui

The meeting resumed on 30 January 1925. None of the owners present at the 22 January meeting were present at this meeting apart from Rangiteihinga who, although he had not featured in the Puketapu C meeting, had spoken concerning Puketapu D and E. At the 30 January meeting there were four owners present in person and two represented by proxy. The owners present were Mihi Rameka who owned 4 shares, Ihaka Niutene who owned 21 shares, and Paerangi Rameka and Rangiteihinga who were the successors to Tohuka Tuapa and owned 1.23 shares (0.27 percent) each. Those represented by proxy were Pikake Rameka who owned 3 shares (0.6 percent) and Te Wihi Rameka who had succeeded to Tohuika Tuapa and therefore represented 1.23 shares (0.27 percent) as well.

Rangiteihinga moved that the resolution to sell be passed and informed the meeting that, although some of the owners objected to selling, they were not present. He said that these owners were “making use of the land, without however effecting any improvement or paying off the rates.”³³ Selling, Rangiteihinga continued, would ensure all owners would receive benefit, but leaving it as it was meant only two owners received benefit. The land, according to Rangiteihinga, was overgrown with noxious weeds and no effort had been made to eradicate them. Paerangi Rameka seconded the motion. The resolution was then put to the meeting. The minutes state that objections were called for but there were none. The chairperson therefore declared the resolution carried unanimously.³⁴ An assessment was later made as to how much other land the alienees held as this was required under the landless Natives provisions included in the Native Land Act 1909.

Thus at this meeting, six out of 39 owners representing 31.69 shares out of 452, or just 7 percent of the total shares, were able to alienate Puketapu C pursuant to the Native Land Act 1909. It is important to note that the two owners who had refused to sell the land at the meeting held the week before, owned over 10 percent of the shares in the block, so had they been present at the 30 January meeting, the land could not have been sold.

A letter from Judge Browne to the Registrar of the Native Land Court of 13 October 1925, stated that on 11 February 1925, the Native Land Court had been notified that Teira Uenuku on behalf of himself, Heni Watene (42 shares or 9 percent of the block) and Matiria Hohua (21 shares or 4.6 percent of the block), objected to the sale of Puketapu C. Teira Uenuku had attended the first meeting of owners. Judge Brown asked whether the objection had been withdrawn as there was no record of the withdrawal on the file. He was also not satisfied with the information supplied by the registrar concerning the other lands held by the owners of Puketapu C, and told the Registrar that the Maori Land Board could not confirm the alienation until it was supplied with “information as to the circumstances of those owners who have not sufficient other lands”.

³³ Minutes of Meeting of Owners concerning the alienation of Puketapu C, 30 January 1925, Puketapu A - E alienation file, 3/1106, Maori Land Court Wanganui

³⁴ Ibid

Nothing further has been located on this matter. The alienation was confirmed over a year later on 21 May 1926.³⁵

Puketapu C was divided on 1 February 1926 into two parts. The shares of Te Teira Uenuku, Heni Watene and Matiria Hohua were partitioned out on the recommendation of the Maori Land Board. They were awarded 18 acres, 1 rood and 24 perches which was known as Puketapu C1.³⁶ The remainder of the original block became known as Puketapu C2. It consisted of 80 acres, 2 roods and 16 perches, and was sold to Sole in 1926.

Puketapu C1 was later taken for the airport. By the time of the taking in 1964, Sole had succeeded in acquiring 76.125 shares. The remaining 7.875 shares were owned by a Maori by the name of Mrs Brand. Apparently Sole had acquired his interest "some years ago", but according to the Maori Trustee, had not taken any steps to have his interest partitioned from that of Brand. Puketapu C1 was considered to be Maori land by the Maori Trustee, despite the fact that a European owned most of the block. The Maori Trustee stated that there was nothing to prevent the Council and the owners entering into an agreement concerning compensation without the assistance of the Maori Trustee. Nothing further has been located concerning the alienation of the majority of the shares to Sole.

Sale of Puketapu D

Puketapu D, which consisted of 120 acres, 1 rood and 25 perches, was also sold pursuant to the Native Land Act 1909 to Percy Sole. Present at the meeting of owners of 22 January 1925 were five out of 54 owners who represented 105 out of a total of 536 shares (20 percent). One share represented 35.942 perches. Four people agreed to the sale and they represented 63 or almost 12 percent of the shares. One owner, Mary Ann Skelton who held 42 shares (8 percent), did not agree to sell at the meeting. However, the resolution was declared to have been carried on 22 January 1925.³⁷ Later, on 30 September 1925 Mary Skelton signed a form stating that she withdrew her objection to the sale.

7. Puketapu E

When first partitioned in 1917, Puketapu E consisted of 77 acres and 2 roods and was vested in 138 owners. There are three discrete urupa within the Puketapu E appellation: one in the main part of the block adjacent to the Waiongana River (7 acres, 11 perches); and the two urupa located within Puketapu A2 – Puketapu (2 acres) and Horotiu (1 acre). Further, it was stated before the Maori Land Court in 1956, that within the part of Puketapu E block between the Waiongana River and Puketapu D, there are other urupa scattered throughout. It was stated that

³⁵ Judge Brown to Registrar of Wanganui Maori Land Court, 13 October 1935 Puketapu A-E Alienation file, 3/1106, Maori Land Court Wanganui

³⁶ Tar MB 38, 1 February 1926, fol 78-79

³⁷ Minutes of Meeting of Owners concerning the alienation of Puketapu B, C, D, E, 22 January 1925, Puketapu A - E alienation file, 3/1106, Maori Land Court Wanganui

these urupa were known locally as Waikapua, Rewatapu and Waitapu, and were those of older times.³⁸ It is possible that these urupa were in fact the seven acre urupa referred to above. This urupa only became a discrete block as a result of being taken for the airport in 1964. The seven acre urupa was farmed in conjunction with Sole's property, while Horotiu and Puketapu were contained within Puketapu A2 and managed in conjunction with that block. Horotiu was enclosed by a fence while Puketapu was not. The area of Puketapu E taken for the airport consisted of the three urupa, which in total comprised 10 acres, 11.2 perches. The part of the block not acquired by the New Plymouth City Council comprised 66 acres, 1 rood and 29 perches, being that land contiguous to Puketapu D and the Waiongana River (see map 1).

It is apparent that both the owners and the Maori Land Court were of the belief that Puketapu E was a Maori reserve. Subsequent to an application being made by the block's owners, the Maori Land Court on 19 February 1957 vested the land in ten trustees pursuant to section 439(7) of the Maori Affairs Act 1953, being the section of the Act concerned with Maori reserved land. However, subsequent to compensation having been paid to the Maori Trustee for the land taken for the airport, "no trace could be found of the original Order setting aside Puketapu E as a Maori reserve."³⁹ The Registrar of the Aotea District Maori Land Court claimed that this was so even though minutes from Court hearings in 1915 and 1956, "clearly show that the owners wanted Puketapu E to be reserved."⁴⁰ Furthermore, on at least one occasion a meeting of owners had prevented the land from being sold.

Right of Access

In 1917 a roadline was created to allow access to Puketapu A. The roadline proceeded in an easterly direction from the south eastern corner of Puketapu A to Brown Road and affected Puketapu, B1A, B2, B3, B4, and C2 blocks.⁴¹ The roadline was varied in 1961 to allow access to the severed portions of Puketapu E within Puketapu A – ie the Horotiu and Puketapu urupa.⁴²

An order dated 11 April 1961 under section 418 of the Maori Affairs Act 1953, laid an undefined right of access over Puketapu C1 (European land) to provide access to the eastern part of Puketapu E. Leave was reserved to the beneficial owners of C1 to apply to the Court for a variation of order.⁴³

³⁸ Tar MB 65, 23 October 1956, fol 185-186, cited in Huirua (Court Section) to Dark (Trust Section), 21 November 1965, MA 12B/25

³⁹ B Herlihy (for the Maori Trustee) to Buddle, Anderson, Kent and Co, 6 March 1969, MA 12B/25

⁴⁰ Submission of the Registrar, Aotea District Maori Land Court, in the matter of a section 438 application for the Puketapu E block, 24 January 1968, MA 12B/25

⁴¹ Tar MB 26, 30 March 1917, fol 81

⁴² Tar MB 71, 11 April 1961, fol 157-159

⁴³ Ibid

Provisions made for access to Puketapu E subsequent to the taking of the land and the construction of the airport, are discussed further below.

8. Land left in Maori ownership today

At the time of writing, Puketapu A1 consisting of 8 acres and 3 roods (3.5409 hectares) and part of Puketapu E consisting of 67 acres, 1 rood and 28.8 perches (27.2879 hectares) remained in Maori ownership. Thus just 13.4 percent of the original Puketapu block remains Maori-owned land.

Part two: the Public Works Act

1. Acquisition

Under the Public Works Act 1928, both central Government and local authorities were empowered to acquire lands for public purposes. This could be done either by prior agreement and subsequent purchase, or by compulsion. In 1935 the definition of 'public work' had been expanded to include aerodromes.⁴⁴

Part 2 of the Public Works Act provided for land to be acquired either by agreement or compulsion. Under section 32, the Minister or local authority could enter into an agreement with persons who owned or held interests in lands required for a public work. In such instances the usual notification provisions of section 22 did not apply. Upon being satisfied that the agreement was adequate, the Governor General could issue a proclamation taking the land.⁴⁵

Alternatively land could be purchased, taken, or leased by the Minister upon such terms and conditions as he or she thought fit. In the provisions for compulsory taking in the Act, distinctions were made between European freehold land and Native customary land, to the latter of which far fewer protections applied. However, as Cathy Marr observes, "even for Crown granted Maori land, where for the most part normal protections applied, there were some significant differences that resulted in lesser protections."⁴⁶ Generally these related to particular types of work such as railways and roads.

Compulsory taking procedures set out in section 22 required that a plan be prepared showing the lands that were to be taken and the names of all affected owners. Notice was then to be published in the *New Zealand Gazette* and twice in local newspapers. Further, notice was to be served upon all landowners. Provision also existed under this section for objections to be lodged and heard by the Minister or local authority.

Section 23 held that in the absence of any objections being made, or if after due deliberation it was considered "expedient that the proposed works should be executed", the Governor General could issue a proclamation taking the land. Subsequent to the issuance of the proclamation, the lands were vested in the Crown. Section 18(b) held that nothing in the 1928 Act authorised the taking of land which was the site of a building or garden without the consent of the Governor General or the owners. This section was amended in 1948 to include cemeteries and burial grounds.⁴⁷

⁴⁴ Public Works Amendment Act 1935, s 2(27)ii

⁴⁵ Cathy Marr, *Public Works Takings of Maori Land, 1840-1981*, Report for the Treaty of Waitangi Policy Unit, December 1994, p 117

⁴⁶ *Ibid*, p 118

⁴⁷ Public Works Amendment Act 1948, s 14(b)

2. Compensation

Part 3 of the 1928 Act set out procedures for the negotiation of compensation with regard to lands taken for public purposes. Subsequent to an affected landowner filing a claim for compensation, the Minister of Works or local authority offered a sum they considered to be adequate. If that offer was refused the matter was referred to the Land Valuation Court.

These procedures made an active distinction between Maori land – be it held by customary title or by Crown-derived freehold title – and European land. Under the 1928 Act, compensation claims in connection with Maori land were heard by the Maori Land Court. Another major difference between the way Maori and European land was treated was that when Maori land was taken, it was up to the taking authority and not the owner to make a claim for compensation.⁴⁸ However, subsequent to the enactment of the Public Works Amendment Act 1962 (which took effect on 1 April 1963), claims pertaining to Maori land were dealt with under the same provisions as for European land. Importantly this meant that compensation claims ceased to be heard by the Maori Land Court and were dealt with instead by the Land Valuation Court.⁴⁹ The 1962 legislation also required that the Maori Trustee negotiate compensation on behalf of Maori holding land in multiple ownership. Marr notes that the Maori Trustee had no power to enter into negotiations prior to the actual taking of the land as was common practice in the case of compensation claims for non-Maori land.⁵⁰ Where the Maori Trustee acted on behalf of the owners, compensation was to be paid to that office and subsequently distributed to the owners of the affected lands.

3. The Public Works Act and Maori land

Marr states that it was apparent during the period from 1928 till 1981, when the Public Works Act 1928 was largely overhauled, that generally Maori interests were given low priority; there were delays in the payment of compensation; that the policies and procedures associated with public works takings “seemed to have resulted in relatively harsher treatment for owners of Maori land”; that “taking authorities typically attached little weight to concerns of special importance to Maori”, such as the culturally specific value of remaining ancestral land or wahi tapu; that policies and procedures continued to be developed “almost solely from the view point of their impact on general or European land takings”; and that taking authorities appear to have followed legislative assumptions that administrative difficulties were a justification for abandoning even normal protections for Maori land and that no alternative accommodations were required to take account of the special features of Maori title.⁵¹

⁴⁸ Marr, p 123

⁴⁹ Public Works Amendment Act 1962, s 6

⁵⁰ Marr, p 123

⁵¹ Marr, pp 142-143

Part three: the new airport at New Plymouth

In total 479 acres and 10.2 perches of the Puketapu block were taken for the New Plymouth airport in 1964. At the time of the taking Puketapu A1, B1A, B2, B3, B4, C1 and E were held in Maori ownership. In total these sections covered an area of 128 acres 3 roods and 35.2 perches.

1. Background – The New Plymouth Airport prior to 1960

Prior to the Crown's compulsory acquisition of the Puketapu block for the New Plymouth Airport, a number of other areas had been used for this purpose.

In August 1933 an Order in Council was issued which consented to the acquisition by the New Plymouth Borough Council of 117 acres, 3 roods and 35 perches along with 60 acres transferred by the New Plymouth Aero Club, for use as an airport.⁵² This land was located further inland from the site of the present day airport, on the southern side of National State Highway 3. It was anticipated that the area (177 acres, 3 roods and 35 perches) would allow runways of up to 1400 yards (1280 meters) in length to be built. When the airport was completed, however, the length of the main runway was just 850-950 yards which was considered inadequate for larger planes. The Borough Council thus proposed an extension to the airport.⁵³ The extensions would, the Mayor of New Plymouth said, make the airport one of the largest in the country, make it available for trans-Tasman flights ahead of Wellington, and be "sufficient for all purposes for many years."⁵⁴

There was some criticism by officials that the extension was unnecessary and that public money had already been spent on providing New Plymouth with one of the "largest civil airports in New Zealand". Semple, Minister of Public Works, however, argued that the development of the New Plymouth airport was farsighted and necessary.⁵⁵

The proposal involved the taking of two areas of land. One portion (110 acres) was owned by Mrs I Barclay and the other (13 acres, 1 rood and 3.7 perches) was owned by Ngaronga Kahau. The Department of Works stated that both owners had offered to sell their lands but at an amount considered "grossly excessive" by the Council. Both were also unwilling to have their land taken under the Public Works Act and for compensation to be assessed by the Compensation Court.

⁵² *New Zealand Gazette*, 1933, p 2099

⁵³ Notes of Deputation from New Plymouth Borough Council to the Minister of Public Works and the Minister of Defence, W1 23/381/5 part 2

⁵⁴ Statement of E Gilmour (Mayor of New Plymouth) concerning Extension of New Plymouth airport, 18 November 1935, W1 23/381/5 part 2

⁵⁵ Notes of Deputation from New Plymouth Borough Council to the Hon. Minister of Public Works and the Hon. Minister of Defence, W1 23/381/5 part 2

Barclay's land was described as being the "best farm land in Bell Block".⁵⁶ The *Taranaki Herald* reported that when surveyors attempted to lay survey pegs at the proposed site of the extension in November 1935, they were met by Maori protest and refused entry to the land. The article stated that Mrs Karena [presumably Kahau] had

explained through an interpreter. . . that before European settlement of the Dominion, her ancestors held a large block of land in the locality. Most of it had been taken from them [with] only 21 acres remaining and on that a large number of Maoris depended for an existence. She felt that the taking of any more of the land savored of confiscation, and her mind immediately raced back to the time when her ancestors lost much of their property. There is another reason, however, and it is probably as strong as the first. About nine months ago one of Mrs Karena's sons died, and he is buried on the part of the property which it was proposed to take.⁵⁷

After the failure to negotiate a purchase, Mrs Barclay's land was taken under the Public Works Act. She objected to the taking, claiming that the offer of compensation by the New Plymouth Borough was denotative "of the fact that the Borough does not desire either an amicable or fair settlement: it desires compulsion".⁵⁸ Mrs Barclay was awarded compensation of £9,454 which was for both the land and "injurious affection".⁵⁹ However, it does not appear that Mrs Kahau's land was ever taken.

During World War II the airport was vested in the Defence Department but was later returned to the New Plymouth Airport Board. In 1939 the Minister of Public Works, Mr Semple gave further support to the then completed extensions. He stated that

The outbreak of war and the acquisition of the New Plymouth airport by the government as a training center for pilots was a complete vindication of the New Plymouth Borough Council's foresight in spending money and forming the aerodrome on such an ambitious scale.⁶⁰

⁵⁶ Summary of expert advice re New Plymouth Airport extensions, W1 23/381/5 part 2

⁵⁷ 'Maori opposition: Land for airport, Surveyors kept off, objections at Bell Block', *Taranaki Herald*, 27 November 1935, p 5

⁵⁸ Barclay to Minister of Public Works, 1 March 1936, W1 23/381/5 part 3. The land comprised of 109 acres, 3 roods and 8.6 perches, being parts of sections 73, 77, 78B and 79 of Waitara West District, Block II and III Paritutu Survey District in titles 139/85, 22/101 and 76/211; and 13 acres, 1 rood and 3.7 perches being part section 133, Waitara West District, block III Paritutu Survey District (part of the Kaipakopako Native Reserve) contained in title 10/222. New Plymouth Borough Council to Minister of Public Works, 12 December 1935, W1 23/381/5, part 2

⁵⁹ 'Award of £9454, extension of Airport, owners compensation, cost to the Borough', *Taranaki Daily News*, 18 November 1937

⁶⁰ 'Cost justified, New Plymouth airport, Borough Council's foresight, comment by Minister', *Taranaki Herald*, 12 October 1939

In 1948 there was another proposal to extend the airport. This time the extension involved the acquisition of 50 acres of European land and 148 acres of Maori land. Cabinet approved the purchase but it was not agreed by all officials that the extension was necessary. The Air Department stated that there was

no foreseeable requirement for a larger aerodrome at New Plymouth. . . nevertheless the Department had no objection to the acquisition of land in the vicinity of the aerodrome provided that the land is not necessarily put out of production and that the financing of the purchase does not in any way prejudice the Department's more urgent requirements.⁶¹

On 19 June 1950 the Crown acquired section 17 Bell District, Block II Paritutu Survey District, for the purpose of an aerodrome. The land was 50 acres 2 roods and 38 perches in size and was owned by Mrs D S Blight. Blight was paid £2,284 plus an ex gratia payment of £562.16.0. The Crown also agreed to lease the land to the vendor until March 1951.⁶²

The New Plymouth Borough Council, however, was unable to purchase or compulsorily acquire the Maori land. The Department of Works was aware of the significance of the site to Maori and anticipated difficulties. The Department noted that the land contained a cemetery, a "substantial" meeting house, and was owned by approximately 20 owners. In July 1950 it was reported that the Maori owners were unwilling to sell. The Minister of Works refused the request of the Council to invoke the compulsory acquisition provisions of the Public Works Act in order to obtain the land. The Minister stated that the land could only be acquired with the permission of the owners.

Despite continued complaints from the Council, the Minister's decision remained unchanged. A reason given by the Minister for his decision was that

The land will not be required for some considerable time for the purposes of constructing the aerodrome extensions and its is not considered that compulsory acquisition at this stage is warranted. The Government has also decided not to purchase Maori leasehold interests until there is a reasonable prospect of obtaining the freehold.⁶³

The land in question was the Kaipakopako block. A letter on behalf of the owners stated that

They feel and understand that the underlying principle of the Airport's endeavor is confiscation in a different guise and as you are aware, the people of Taranaki suffered under

⁶¹ Director of Civil Aviation to Secretary to the Treasury, 21 March 1950, W1 23/381/5/1, part 1

⁶² Commissioner of Works to Leger Reeves, Barristers and Solicitors, 17 March 1954, AAQB Acc W3950, box 32, 23/381/5/1, part 3

⁶³ WAS Goosman (Minister of Works) to EP Aderman (MP New Plymouth), 15 August 1952, W1 23/381/5/1, part 2

confiscation and the Descendants today have not yet outgrown the throbbing effects thereof.⁶⁴

2. Reasons for a new airport at Brown Road in the 1960s

In the early 1960s it was proposed that a new airport be built on the land between Brown Road and the coast, encompassing most of the Puketapu block.

One of the main reasons given for the construction of a new airport was to accommodate aircraft “up to Fokker Friendship standard”. The Minister of Finance was also of the opinion that the new airport would be of “both national and local importance”. The Director of Civil Aviation said in 1962 that there was some “local pressure” to develop a new site for an airport, which would have had a number of advantages over the current site.⁶⁵ The Commissioner of Works, however, gave the reason for the shift as “to permit industrial development near the present site”.⁶⁶

In December 1964 an agreement between the Crown and the Council was entered into to provide for the construction of the new airport. The airport was to be financed equally by the Council and the Ministry of Works and its completion of the works was set at January 1969. When Cabinet approved in principle the development of the Brown Road site in July 1963, the cost of constructing the airport was estimated at £650,000. Although the airport was to be paid for equally by the new City Council and the Crown, the Council accepted responsibility for negotiating the land purchase. The Council was, however, not to settle compensation until the Minister had accepted the award of the Land Valuation Court.⁶⁷ In February 1964 it was thought that 624 acres was required and that additional land for the terminal area would have to be purchased at a later date. However, just over 478 acres was later acquired. The Crown and the Council also agreed that the current aerodrome at Bell Block could be alienated or leased, contingent upon the approval of the Minister of Civil Aviation being granted.

The first mention to the Maori Land Court of the new airport and where it was proposed to be built, was on 23 January 1962. On this occasion the New Plymouth City Council advised the Maori Land Court that the Council intended to recommend that the New Plymouth Airport be relocated from its present site to one adjacent to Brown Road, Bell Block. The advice came because the Council understood that the Court was considering an application for confirmation

⁶⁴ Submission to Minister of Maori Affairs by owners of Kaipakopako block, 3 February 1953, W1 23/381/5/1 part 2

⁶⁵ Director of Civil Aviation to Commissioner of Works, 10 April 1962, AAQB Acc W3590, box 32, 23/381/5/1 part 3

⁶⁶ Commissioner of Lands to Air Department, 12 October 1962, AAQB Acc W3590, box 32, 23/381/5/1 part 3

⁶⁷ New Plymouth Airport: Deed between the Crown and the New Plymouth City Council, December 1964, AAQB W3950, box 32, 23/381/5/4/3

of a lease of part of the land. However, the order confirming the resolution of assembled owners to lease Puketapu B3 to Edward Tamati was still made.⁶⁸

3. Initial consultation with the Maori owners

In July 1963 a meeting was held between the aerodrome engineer, the Mayor, the Town Clerk, various Ministry of Works and Civil Aviation officials, and several of the Maori owners. These included Mrs J Jenkins, Mrs B Koea, Mr P Tamati, Mr G Koea Snr, Mr R Watson, Mr C Puke, Mr A Taylor, Mr T Tamati and Mr E Tamati. The minutes of the meeting reported that the areas known to be urupa "may be avoided". The minutes also stated that

The Maori people, while asking that these areas be treated with respect, seemed prepared to help as much as possible, and most were keen to see the aerodrome be built there. It was realised that if the tapu areas could not be excavated, the whole site was rendered valueless as an airport. They undertook to present the matter favourably to the other Maori people interested, and expected to be successful.⁶⁹

At the meeting mention was made of rights to maintain the burial grounds, but it was decided that as this was a routine matter, the Council would consider it at a later date. The Town Clerk also asked Mr Koea about giving the airport a Maori name, for example Puketapu Airport. NC McLeod, the District Commissioner of Works, stated at the meeting:

that if required, an official from the Resident Engineer's office would be available to explain the construction to the owners; that if during construction any human remains were found, these would be reinterred in the two other cemetery areas; and that when work started on the airport a representative of the Maori Trustee could be present while the bulldozer was used to search the ground surface.⁷⁰

In August 1963 the Mayor reported back to the Airport Committee about the meeting and extracts of his report were adopted by the Council. The Council minutes said, that while the Maori owners had still to report back to their people, "no objections would be raised to the present siting of the runways provided the Council or Ministry of Works . . . reverently re-interred any remains found on or adjacent to Puketapu in the burial ground to the west", ie Horotiu, and "reverently re-interred any remains found adjacent to the north-south runway in the burial ground to the east of that runway." However, it was doubted whether any remains would be found.⁷¹

⁶⁸ Puketapu B3 Alienation file, 3/5384, Maori Land Court Wanganui

⁶⁹ File note of 31 July 1963 meeting, 1 August 1963, AATC Acc W3457, box 223, 16/2/15/0

⁷⁰ Ibid

⁷¹ Town Clerk to Mr G Koea Snr, 20 August 1963, MA 1 Acc W2490, 54/19/6

The minutes of this meeting concluded that

The History of the area gave every reason for expecting very serious opposition but relations appeared to be very good and this should facilitate subsequent negotiations between the city and the Maori trustees and owners.⁷²

There was some awareness by the Ministry of Works of the significance of Puketapu to Maori. A letter to the Commissioner of Works from the District Commissioner of Works referred to a passage from Percy Smith's *History and Traditions of the Taranaki Coast*. The letter stated that

Puketapu (the hill) is the burial ground of many chieftains and is one of the oldest and most sacred historical spots on the Taranaki coast. The large area adjoining [the] Waiongana River is the site of the original Puketapu Pa which was virtually wiped out about 150 years ago by an epidemic. A Lands and Survey report mentions many skeletons exposed by sand drifts. Whole area said to be very tapu.⁷³

In 1963, the Wanganui District Commissioner of Works asked the Commissioner of Works in Wellington whether, given the presence of urupa on Puketapu, and the likelihood of strong opposition to interference with these sites, the runways should be relocated to "obviate encroachments onto Urupa areas". However, when the Ministry of Works official visited the site he found that

to shift the E.W. runway sufficiently far south to avoid Puketapu, would involve taking about 300 acres of existing farmland, which was founded on brown ash and therefore worth £125 an acre, while the present proposal was to use sandy, low-value areas. It was agreed this would not be further discussed unless raised by the Maori representatives.⁷⁴

The District Commissioner, in justifying the proposed compulsory acquisition, stated in 1963 that "the bulk of the land comprises small blocks in multiple Maori ownership and the only practicable means of acquisition would be under the compulsory provision of the Public Works Act."⁷⁵ On 30 July 1964 the Resident Engineer stated that as per section 18(b) of the Public Works Act 1928, all of the Maori land referred to apart from parts Puketapu E was "not occupied for any of the purposes set out" in the aforementioned section.⁷⁶ While originally section 18(b) held that only land which was the site of a building or garden could not be taken under the Act

⁷² Minutes of 31 July 1963 meeting, AATC Acc W4357, box 223, 16/2/15/0

⁷³ District Commissioner of Works (Wanganui) to Commissioner of Works (Wellington), 12 July 1963, AATC Acc W4357, box 223, 16/2/15/0

⁷⁴ File Note of 31 July 1963 meeting, AATC Acc W4357, box 223, 16/2/15/0

⁷⁵ District Commissioner of Works (Wanganui) to Commissioner of Works, 4 March 1963, AAQB Acc W3950, box 32, 23/381/5/4/0

⁷⁶ Resident Engineer to District Commissioner of Works (Wanganui), 30 July 1964, AATC Acc W3457, box 223, 16/2/15/0/3

without the consent of the Governor General or the owners, this had been broadened in 1948 to include cemeteries and burial grounds.⁷⁷

On 22 November 1963, the New Plymouth City Council gave public notice of its intention to take the Puketapu blocks for the purpose of an airport, and that any objections had to be received by the Council within forty days.⁷⁸ A fortnight later notice was served upon the Maori Trustee's Head Office by Govett Quilliam and Co – the solicitors who represented the New Plymouth City Council throughout the proceedings. The Maori Trustee was advised that “the opportunity has been taken to serve copies of the formal notice on all Maoris who are likely to have any interest.”⁷⁹ The letter continued:

The proposal has been under consideration for a considerable time and discussions have taken place with the various owners and particularly all Maoris who may have any interest in any of the lands required. For the most part the latter appreciate the importance of the matter to the Council, the Government (which will be an equal partner with the Council) and to Taranaki and substantial co-operation has been received.⁸⁰

The Maori Trustee replied that the matter would be handled by its Wanganui office.

In 1963, the Commissioner of Works was advised by the Resident Engineer, that the District Land Purchase Officer in Wanganui was handling the acquisition of the land, and that his research indicated that “encroachment on burial grounds by both strips” could present “considerable difficulties”.⁸¹ However, on 24 November 1964 the Town clerk advised the Department of Civil Aviation that

By tacit consent of the Maoris we are taking over three areas which are either tapu or are ancient burial grounds. It was agreed that all remains would be re-interred in adjoining ground. Some mention should be made of this in so far as the earth-moving contract is concerned. It was also agreed that any artifacts which were uncovered should become the property of the Taranaki Museum. It would be appreciated if some reference was made to this in the contract documents. The land is still subject to the rights of the Maoris to cross to their burial grounds. Alternative access is to be given to all areas but this is a detail which can be fixed at a later stage. There are also rights still existing over the Hardwick-Smith land to draw water from the well adjacent to Brown Road. This is a matter which must also be resolved

⁷⁷ Public Works Amendment Act 1948, s14

⁷⁸ ‘Land required for aerodrome at Brown Road, Bell Block – Public Notice’, 22 November 1963, MA 12B/25

⁷⁹ Govett, Quilliam and Co to Maori Trustee, 6 December 1963, MA 12B/25

⁸⁰ Ibid

⁸¹ New Plymouth Airport investigations: monthly progress report, Resident Engineer to District Commissioner of Works, 25 July 1963, AAQB Acc W3950, box 32, 23/381/5/4/1

but I see no insuperable difficulties in this.⁸²

4. Objections to the taking

In spite of the perceived “tacit consent of the Maoris”, there clearly was some opposition to the proposed taking. Section 22 of the Public Works Act 1928 contained provisions for objections to be lodged by landowners who were to have their land taken under the Act. The New Plymouth County Council heard objections from owners whose land was to be taken for the new airport on 20 February 1964.

Earlier, in December 1963, the Maori Trustee advised its Wanganui office to establish whether there were “substantial grounds” for the Maori Trustee to object to the land being taken.⁸³ No evidence as to whether or not any attempt was made by the Wanganui office to establish this was found in that office’s files pertaining to the acquisition of the Puketapu blocks. It would appear, however, that objecting to a taking was in fact outside of the Maori Trustee’s jurisdiction. This was noted by an internal memorandum from Nelson to Mainwaring, both employees of the Maori Trustee’s Wanganui District Office. Nelson stated that as none of the affected blocks were West Coast Settlement Reserve lands, the Maori Trustee would only have an agency in relation to the claiming of compensation, and that “In this capacity the Maori Trustee cannot object, and must act only after the taking”.⁸⁴

In spite of this, the Wanganui District Office of the Maori Trustee instructed the Resident Officer in Hawera to prepare a report which, inter alia, was to consider “Whether the taking is appropriate to the circumstances, that is to say, whether it is reasonable that that particular area and no other should be taken.”⁸⁵ However, the report, prepared by Ayson, in fact did not address this issue.⁸⁶

A letter from Govett Quilliam and Co, the New Plymouth City Council’s solicitors concerning the acquisition of the Puketapu blocks, listed the names of owners who had lodged objections with the Council in connection with the compulsory taking of their land. The letter listed one

⁸² Town Clerk to Department of Civil Aviation, 24 November 1964, AAQB Acc W3950, box 32, 23/381/5/4/3

⁸³ Maori Trustee (Head Office) to Maori Trustee (Wanganui), 12 December 1963, MA 1 Acc W2490, box 76, 54/19/6

⁸⁴ Nelson to Mainwaring (Internal memorandum of the Maori Trustee’s Wanganui District Office), 22 January 1964, MA 12B/25

⁸⁵ District Officer, Department of Maori Affairs (Wanganui) to Resident Officer, Department of Maori Affairs (Hawera), 28 January 1964, MA 12B/25

⁸⁶ New Plymouth Airport: Compensation, a report prepared by JFC Ayson, Resident Officer, Department of Maori Affairs (Hawera), 17 February 1964, MA 12B/25

objector in connection to Puketapu B2, ten to Puketapu B3 and six in relation to Puketapu B4.⁸⁷ A memorandum from the Hawera District Office of the Department of Maori Affairs to the Department's Wanganui Office, stated that no one from that office attended the hearing. According to the memorandum, however, "The meeting was to consider the objections pertaining to Maori Urupas and burial grounds only."⁸⁸ Peculiarly, though, the aforementioned letter from the Council's solicitors records no objections in connection to the taking of the urupa within Puketapu E. However, it is evident that at the hearing the Council held, the issue of the urupa within the Puketapu appellation was in fact considered.

The *Daily News* report of the New Plymouth City Council's hearing of objections to the taking, stated that EP Tamati, represented by RJ Brokenshire,

objected as an owner and also on behalf of the community to the disturbance of the three-acre Maori burial ground on the airport site. He asked that the runways be sited so as to leave the burial ground undisturbed. An objection was also lodged to the section under which the land was to be taken. Mr Brokenshire said his client felt action should be taken by the Minister of Maori Affairs under a different section and the compensation divided up by the Maori Land Court. . . On behalf of the eight other objectors to the disturbing of the burial ground, Mr E Tamati said the value of the land was not in pounds, shillings and pence but in the fact that the owners had inherited the land from their ancestors and had no wish to sell.

According to the article, R Kopu also objected to the taking of the burial ground. Another objector, P Ruakere,

said she had not been notified of the meetings at which the taking of Maori land was discussed. 'I think the Maori should put up a greater fight for his land', she said. The matter should be deferred and all Maori owners be given a chance to be heard, she said.⁸⁹

However, the objections were not upheld by the Council. A newspaper report of the Council's decision stated:

The first [resolution], which dealt with the objections, was to the effect that the Council was of the opinion that the proposed works should proceed, that no private injury would be done for which compensation was not allowed for under the Public Works Act, and that the objections were not well grounded.

⁸⁷ Govett, Quilliam and Co to Maori Affairs District Officer (Wanganui), 30 January 1964, MA 12B/25. The *Daily News* reported on 4 February 1964 that the objections of 19 individuals were to be heard at the meeting, including, T Taylor, R Preston, D Nartin [sic], N Riwaka, J M Broughton, H Watson, H Riwaka, TT Riwaka, P Riwaka, B Nuku, E Tamati, R Kopu, P Ruakere, D Matangi, LB Jury, JN Mooney, PB Sole and EP Tamati. 'Objections to taking of land', *Daily News*, 4 February 1964

⁸⁸ Maori Affairs Resident Officer (Hawera) to Wanganui District Office, 10 September 1964, MA 12B/25

⁸⁹ 'Counsel alleges Airport land transactions mishandled', *Daily News*, 24 February 1964

With reference to the burial grounds within the site of the proposed airport, the Council resolved that there would be no interference to the grounds unless it was necessary for the purpose of the aerodrome and that all reasonable care would be taken to ensure that there would be no desecration and where necessary the remains found would be buried in some other suitable place with proper reverence and care.⁹⁰

Subsequent to the proclamation of October 1964 by which the land was acquired, the *Daily News* ran a story that detailed the opposition of Dormia Robson, a woman with ancestral ties to Puketapu, to the compulsory acquisition of the land for the purposes of the airport:

‘I protest’, Miss Robson told the *Daily News*. ‘Last century they confiscated our lands in Taranaki; now why shouldn’t we retain the ownership of some of our sacred places?’

Robson was of the opinion that the land should have been leased from the owners rather than taken so that any land that turned out to be surplus to requirements could be easily returned to its owners. Further, she stated that “the Maoris will have no rights of decision should a proposed subsequent use of the sacred places be offensive to them.” The article included several narratives of past events which accounted for the site’s special significance to the Puketapu people today. Robson claimed, for example, that the soil of Puketapu had special healing qualities for people of Puketapu decent. If the soil was taken away, however, it would lose its curative power.⁹¹

5. The land is taken by proclamation and work begins

The land was taken officially by proclamation on 15 October 1964.⁹² There were two proclamations; one listing all the land taken under the Public Works Act 1928 for the purposes of an aerodrome, and a second proclamation which listed the parts of Puketapu E known to be urupa. In this instance the proclamation stated that the Governor General consented to the land (Part Puketapu E) being taken for the purposes of an airport. This was pursuant to section 18(b) of the Public Works Act which stated that burial grounds could only be acquired with the consent of the Governor General.

Work began immediately.⁹³ As the Council had promised, guarantees as to how the urupa were to be treated during any earthworks were written into the contract with the Ministry of Works. In a document titled ‘Special Conditions of contract’ for the construction of the New Plymouth Airport, the contractor was instructed that

⁹⁰ Unidentified newspaper article, March 1964, AATC Acc W3457, box 223, 16/2/15/0

⁹¹ ‘Historical Maori land to become airport’, *Taranaki Daily News*, 22 May 1965 (copy), MA 12B/25

⁹² *New Zealand Gazette*, 15 October 1964, p 1797

⁹³ In a letter to the Maori Trustee’s Wanganui office, the New Plymouth City Council’s solicitors assured that office that “Entry was not made onto the various properties until the date mentioned in the proclamation.” Govett, Quilliam and Co to Maori Trustee District Officer (Wanganui), 21 October 1966, MA 12B/25

Part of the construction work will be within or adjacent to Maori Burial Grounds. The Contractor shall take special precautions and exercise every care while excavating in these areas, and if any remains or signs of ancient artifacts are discovered, he shall notify the Engineer immediately. The two areas, in particular where earthworks are to be carried out within known Maori Burial grounds are at the Northern end of the subsidiary strip and on the top of the high knoll known as Puketapu on the Western approach to the main strip.⁹⁴

A farmer, Alen Budden, who lived near the Brown Road airport site was nominated in February 1965 to be the person responsible during the construction of the airport "for the care and preservation of Maori artefacts and liaison on these matters."⁹⁵ No mention was found by the present authors as to how acceptable this man was to the Maori owners. However, Cater, the Maori Trustee's District Officer in Wanganui, in a letter to the Maori Trustee's head office stated that "We do not know who the Mr Button [presumably Budden] referred to is, but it is quite evident from the above that the Council is taking considerable pains to preserve, and provide access to, the urupas."⁹⁶

6. The Maori Trustee's initial claim for compensation for the Puketapu blocks

As noted in part two of this report, pursuant to the Public Works Amendment Act 1962, the Maori Trustee became the mandatory agent to negotiate compensation for Maori land held in multiple ownership taken for Public Works.

There was, however, some discussion about the Trustee's jurisdiction in terms of Puketapu. The Maori Trustee's Wanganui office advised head office that the lands in respect of which the Maori Trustee was required to act were Maori freehold lands. The Maori Trustee was not the registered proprietor but according to the District Officer, Wanganui, was required to act as the agent for the owners, except for cases of sole ownership, pursuant to section 104(2) of the Public Works Act 1928.⁹⁷ However, the Maori Trustee head office stated that pursuant to section 32 of the Public Works Amendment Act 1928:

The Maori Trustee is not authorized to enter into agreements on behalf of owners; he becomes their agent if, there being no agreement, it is necessary to pursue a claim for compensation. Where there are a few owners only, it is probably easy enough for the taking authority to get an

⁹⁴ Special conditions of contract, nd, AAQB Acc W3950, box 32, 23/381/5/4/3

⁹⁵ Department of Civil Aviation to Commissioner of Works (Wellington), 9 February 1965, AAQB Acc W3950, box 32, 23/381/5/4/3

⁹⁶ Maori Trustee's Wanganui District Office to Maori Trustee Head Office, 16 November 1966, MA 12B/25

⁹⁷ Maori Trustee (Wanganui) to Maori Trustee (Head Office), 28 January 1964, MA 1 Acc W2490, box 76, 54/19/6

agreement with them, and so save the need for the Maori Trustee to enter.⁹⁸

As noted above, construction began immediately after the proclamations taking the land were issued. However, in spite of several letters being written by the Maori Trustee to its District Officer in Wanganui asking how they were proceeding with the compensation negotiations, things do not appear to have been set in motion until April 1965. A letter from the Maori Trustee to Govett, Quilliam and Co indicates that as late as December 1964, that office had not received notification of the proclamation issued two months earlier.⁹⁹

In April 1965 the Maori Trustee instructed its Wanganui Office to get “onto this [compensation] business without any further fiddling about”.¹⁰⁰ In May 1965, W N Wright was commissioned to act as valuer for the Maori Trustee. As well as assessing the bare value of the Puketapu blocks, Cater instructed him to assess: whether the taking involved any severance; whether fencing would be interfered with; whether there existed grounds for claiming compensation in excess of the bare value of the land such as whether the land possessed a special suitability or adaptability for any purpose; and whether there was any circumstances brought about by the taking which would render valuable the residue areas remaining vested in the Maori owners.¹⁰¹ Further, Wright was advised by the Maori Trustee’s Wanganui office “that the valuations should be made strictly according to the value of the land, . . . ignoring the sentimental aspect.”¹⁰²

⁹⁸ Maori Trustee (Head Office) to Maori Trustee (Wanganui), 20 February 1964, MA 1 Acc W2490, box 76, 54/19/6

⁹⁹ Maori Trustee to Govett, Quilliam and Co, 8 December 1964, MA 12B/25

¹⁰⁰ Maori Trustee to Maori Affairs District Officer (Wanganui), 27 April 1965, MA 1 Acc W2490, box 76, 54/19/6

¹⁰¹ Cater to Wright, 14 May 1954, MA 1 Acc W2490, box 76, 54/19/6

¹⁰² Minute sheet – Puketapu Airport compensation, 28 September 1965, MA 12B/25

Wright Valuation, October 1965

On 1 October 1965 the Maori Trustee received Wright's valuation of the Maori-owned Puketapu lands. Mr Wright explained that no severance was involved because the whole of each section had been taken.¹⁰³

Mr Wright valued the freehold land as follows:

	Unimproved value	Improvements	Special Value	Total
Puketapu A1	£230	£72	£300	£602
Puketapu B1	£720	£495	nil	£1215
Puketapu B2	£845	£770	nil	£1615
Puketapu B3	£2340	£1750	nil	£4090
Puketapu B4	£1885	£1283	nil	£3168
Puketapu C1	£1060	£710	nil	£1770
Puketapu E	NA	NA	NA	£500

The lessees' interests were valued as being:

	Capital value	Lessor's interest	Lessees interest
Puketapu B1 (A Jury)	£1215	£1011-10-0	£203-10-0
Puketapu B3 (E Tamati)	£4090	£3257	£833
Puketapu B4 (E Tamati)	£3168	£2322	£846

With regard to his valuation of Puketapu E, Wright observed that the three areas taken were urupa and had obviously not been used for farming. Consequently he was of the opinion that the land had "no value as such" and that he did not consider himself "sufficiently well versed in Maori folk lore to place a value in £ s d on the value of the loss of the land to compensate the people concerned for the loss of such historic prominences."¹⁰⁴ He indicated, though, that the

¹⁰³ W R Wright to Maori Trustee Wanganui, 6 July 1966, MA 1 Acc W2490, box 76, 54/19/6

¹⁰⁴ Valuation of W R Wright, 1 October 1965, MA 1 Acc W2490, box 76, 54/19/6

14. Discussion of compensation

The following table sets out the compensation initially claimed by the Maori Trustee (based on the Wright valuation), the New Plymouth City Council's original offer, the compromised figures that constituted the settlement, and those figures expressed as pounds per acre. By way of comparison, the figures for Puketapu A2 owned by JN Mooney, the compensation for which was assessed by the Land Valuation Court, are included.¹⁴⁰

Block	Area	Council offer, May 1966	Wright valuation, Oct 1965	Compensation paid	Compensation per acre
Puketapu A1	5a 3r (5.75a)	£230	£602	£290	£48
Puketapu B1A	9a 26p (9.16a)	£690	£1,215	£820	£91
Puketapu B2	13a 3r 17p (13.86a)	£1,040	£1,615	£1,170	£83
Puketapu B3	39a 3r 37p (39.98a)	£2,980	£4,090	£3,100	£77
Puketapu B4	31a 3r (31.75a)	£2,060	£3,168	£2,220	£69
Puketapu C1	18a 1r 24p (18.4a)	£1,290	£1,770	£1,440	£68
Parts Puketapu E	7a 11.2p 2a 1a (total 10a)	£70	£500	£180	£18
Puketapu A2 (land of JN Mooney)	119a 2r 20p (119.625a)	£7,920 (land valued at £4,900)	NA	£12,400 (less £4,000 for disturbance)	£70 for value of land (£104 total)

Total area of Maori land taken totalled 128 acres, 3 roods, 3.2 perches, for which a total of £12,960 was paid.

¹⁴⁰ With the exception of the price per acre for Mooney's land (Puketapu A2), these figures come from an untitled typewritten document found in MA 12B/25 that lists the Wright valuation figures, the New Plymouth City Council original offer and the eventual compensation paid. The figures for Puketapu A2 were taken from the oral judgement of Judge Archer in the claim by JN Mooney against the New Plymouth City Council in the Land Valuation Court, 16-17 November 1965, pp 2-3, MA 12B/25

owners of the remainder of Puketapu E would have a claim for injurious affection – presumably because the right of way to part of the block would disappear as a result of the taking.

In making his valuation, Wright stated that he had taken into consideration that he was valuing land seven months after it was officially taken, because land such as Puketapu deteriorated rapidly if not farmed actively. Further, the intervening period had embraced the “growthy period of the year” and consequently the land’s deterioration was likely to have been more pronounced. He also noted that since his valuation had been made, numerous land sales at new high figures had taken place in the area. Thus he stated, it “could be desirable to re-assess the values as presented in the light of these new comparisons.”¹⁰⁵ In response, however, the Maori Trustee advised its office in Wanganui that the claim for compensation had to relate to the state of affairs as at 19 October 1964, and that it was up to Wright to state “how far the recent sales can or should be looked at”.¹⁰⁶

7. Meeting of owners to form a committee to negotiate compensation, October 1965

On 2 October 1965 a meeting was held at the Mururaupatu Marae to discuss compensation and other matters relating to the taking of the land.¹⁰⁷ In attendance were Messrs Cater, Simmonds and Dark of the Maori Trustee’s office in Wanganui and 32 “other visitors”, including some of the Maori owners. Those owners in attendance included George Koea, who presided, Percy Tamati, Reuben Kopu, Reweti Ritai, Mrs Brand, Edward Tamati, Percy Ruakere, Peggy Ruakere, Noki Sally Karena, Mataria Jones, Taka Tamati, Ropu Watson, C Puke, Eara Taylor and Moki White.

At this meeting Cater explained how the Maori Trustee acted as agent for the owners when the land was owned by more than one person, but by virtue of recent changes, only in cases where there was no agreement between the taking authority and the Maori owners. Also outlined was the change whereby the values for Maori land were fixed by the Land Valuation Court and not the Maori Land Court. He also stated that the Maori Trustee could not act for sole owners or the lessees. The owners were advised that the Maori Trustee had employed Wright as a valuer, and that although a valuation had already been made, it could not be disclosed because negotiations with the New Plymouth City Council were still in progress. It was noted that over 200 people had interests in the affected land.¹⁰⁸

¹⁰⁵ W R Wright to Maori Trustee Wanganui, 27 September 1965, MA 1 Acc W2490, box 76, 54/19/6

¹⁰⁶ Maori Trustee (Wellington) to Maori Trustee (Wanganui), 11 November 1965, MA 1 Acc W2490, box 76, 54/19/6

¹⁰⁷ A letter from Cater to George Koea pertaining to the organisation of the meeting, stated that as many of the owners as possible were to be notified by post, and that advertisements were to be placed in the *Taranaki Daily News* on two consecutive days. Cater to Koea, 17 September 1965, MA 12B/25

¹⁰⁸ Note for file – New Plymouth Airport compensation, 7 October 1965, MA 12B/25

At the meeting it was agreed that a committee of owners consisting of at least one owner per block, be established to work with the Maori Trustee "so that the owners could be kept in touch with future negotiations".¹⁰⁹ The owners were advised that the Maori Trustee would not make any decision concerning the compensation until after having consulted the committee. The committee was duly appointed and consisted of Taka Tamati, Ropu Watson, Ted Tamati, George Koea, C Puke, Mrs Brand, Pei (Percy) Tamati, Reweti (Joe) Ritai, Eara (Aila) Taylor and Moki White.¹¹⁰

Mr Tamati inquired as to Puketapu E which had recently been vested in ten trustees pursuant to section 439 of the Maori Affairs Act 1953. Tamati was told that the question of ownership was still undecided as it was not clear whether the trustees for the land represented one entity or were to be regarded as "several owners in common." It was also noted that there appeared to be "injurious affection" in regard to part of Puketapu E block because the right of way that formerly existed had disappeared as a result of the taking. Compensation for this would therefore be required.¹¹¹

Peggy Ruakere asked whether, instead of money, the owners could receive land for land. The Maori Trustee representatives replied that if all owners were in agreement this might be possible, otherwise a cash settlement would be made. The owners were also told that "The Crown will not give area for area taken, only value for value of area taken."¹¹²

Other owners asked that they receive an equivalent area from part of the Puketapu D block in exchange for those parts of Puketapu E already taken, being mistakenly of the belief that parts of D which lay adjacent to E were not required by the Crown. The owners present also stated that "The Crown appears to have gone outside the proclaimed area into part of the part E Reserve. The main reason appears to be the laying of sewage pipes."¹¹³

The minutes of the meeting recorded that Peggy Ruakere "read out to those present a verse passage expressing her sentiments on the loss of the sacred Puketapu lands."¹¹⁴ The issue of the name for the new airport was also discussed. Both Koea and Ritai agreed that the airport should be called Puketapu airport. They said that "the Pakeha consistently praised the beauty of the Maori language, but then declined to perpetuate many well known and beautiful Maori place names."¹¹⁵

¹⁰⁹ Ibid

¹¹⁰ 'Maori land owners want land in return', *Taranaki Daily News*, 5 October 1965, (copy), MA 12B/25

¹¹¹ Ibid

¹¹² Minutes of meeting held at Mururaupatu Marae, 2 October 1965, MA 1 Acc W2490, box 76, 54/19/6

¹¹³ Ibid

¹¹⁴ Ibid

¹¹⁵ Ibid

8. New Plymouth City Council's valuation and initial offer

The Maori Trustee was informed on 6 September 1965 by Govett, Quilliam and Co, that they had received valuations from the District Valuer for the lands concerned, and that these had been submitted to the government for consideration. On 9 May 1966, Govett Quilliam and Co, on behalf of the New Plymouth City Council, offered the Maori Trustee compensation based upon this valuation.¹¹⁶ Wright's valuation is listed so a comparison can be made:

	Council offer (May 1966)	Wright valuation (October 1965)	Difference
Puketapu A1	£230	£602	£372
Puketapu B1A	£690	£1215	£525
Puketapu B2	£1040	£1615	£575
Puketapu B3	£2980	£4090	£1110
Puketapu B4	£2060	£3168	£1108
Puketapu E	£70	£500	£430

An offer for Puketapu C1, owned by Sole and Brand, was not made. Sole, through his solicitors Nicholson, Kirkby, Sheat and Ewart, advised the Maori Trustee that he was satisfied with Wright's valuation and was happy for the Maori Trustee to act for him and his Maori co-owner in claiming compensation for Puketapu C1. Mr Sole was paid £13,800 on his original agreement of 3 July 1964 but was claiming further compensation.

On 15 July 1966 the Maori Trustee advised Govett, Quilliam and Co that the valuations received from them were so far removed from the Maori Trustee's own figures, that the matter be referred back to the New Plymouth City Council. The Maori Trustee stated that "Unless the New Plymouth City Council is prepared to submit fresh figures relating to all the blocks in question and narrow the gap at present existing, the Maori Trustee may have to consider abandoning all further negotiations and seek his legal remedies in the appropriate quarter."¹¹⁷

9. Compensation claim by farmer, November 1965

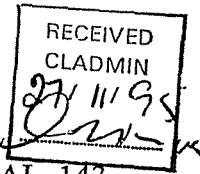
In making its compensation offer, the New Plymouth City Council was, to a large extent, guided by the decision of the Land Valuation Court in the claim of Joseph Mooney, a farmer who owned

¹¹⁶ Govett, Quilliam and Co to Maori Affairs District Officer (Wanganui), 9 May 1966, MA 12B/25

¹¹⁷ Maori Trustee to Govett, Quilliam and Co, 15 July 1966, MA 12B/25

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WAITANGI TRIBUNAL

CONCERNING

the Treaty of
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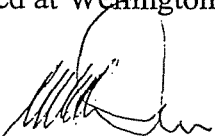
the Puketapu E
block claim

DIRECTION COMMISSIONING RESEARCH

- 1 Pursuant to clause 5A(1) of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions Ben White of Wellington, a member of staff, to complete a research report started by Suzanne Woodley but not yet completed. The report for this claim will cover the taking of land from Puketapu E block for an aerodrome.
- 2 This commission commences on 15 December 1995.
- 3 The commission ends on 30 January 1996 at which time one copy of the report will be filed in unbound form together with an indexed document bank and copy of the report on disk.
- 4 The report may be received as evidence and the commissionee may be cross examined on it.
- 5 The Registrar is to send copies of this direction to:

Ben White
Claimants
Counsel for Claimants
Solicitor General, Crown Law Office
Director, Office of Treaty Settlements
Secretary, Crown Forestry Rental Trust

Dated at Wellington this 25th day of November 1995.


Chief Judge E T J Durie
Chairperson

WAITANGI TRIBUNAL

the 119 acre part Puketapu A2 block that was taken for the purposes of the airport. The hearing was held at the Land Valuation Court before Justice Archer on 16 and 17 November 1965.

The New Plymouth City Council had initially offered Mooney £5,200 – this figure being the June 1964 valuation of the District Valuer. When Mooney did not accept this, a counter offer of £7920 was made based on the District Valuer's revised valuation. A valuation was also made for the Council by valuers FA Rodie and EWD Lond. They valued the land at £13,170. However, the Commissioner of Works, considered the District Valuer's figure of £7920 to be "better based".¹¹⁸

Mooney's claim was for £10,950 for the land itself; £6500 for "potential"; £3615 for severance and £3150 for loss on the sale of two brood mares. The two latter claims were claimed under the heading "Injurious Affection". In total his claim was for £24,215.¹¹⁹

Justice Archer stated that no claim for potential value could succeed because any potential value was part of the value of the land itself and was included in the price of the land paid by a purchaser. The claim concerning potential value was based on the potential for subdivision and for industrial use. The evidence concerning this, Justice Archer said, was unsatisfactory. He also stated that

We appreciate that in this case the value claimed for the land purported to be its productive value, and therefore not to include potential value; but we cannot agree that the productive method was a sound basis for valuing the subject land. The land was not an economic unit and it has always been recognized that land which is not an economic unit cannot be valued on a productive basis. No satisfactory budget was drawn up or could have been drawn up in connection with this land, and we cannot accept the valuation of £10,950 which was claimed to have been assessed on a productive basis as its true value.¹²⁰

The Judge stated that he also considered the valuation made by the Council's valuer RA Court of £4900 as being "considerably too low", and that the valuation by Fougere of £7000 – which "properly took into account" its potential for improvement – was more accurate. However, he did not consider the comparable sales shown by Mooney's valuers to be convincing. The figure of £70 per acre was thus adopted by the Judge as being an appropriate value for the land.

In regard to the claims for severance and loss on the sale of mares, Justice Archer found that the adjoining land of the claimant had not been injuriously affected in any way by the taking of the

¹¹⁸ Commissioner of Works to Secretary of Department of Civil Aviation, 14 June 1965, AATC Acc W3457, box 223, 16/2/15/0/3

¹¹⁹ Oral Judgement Delivered by Archer J in the matter of a claim by *Joseph Neil Mooney v The New Plymouth City Council* for compensation for land taken, 16 and 17 November 1965, MA 1 Acc W2490, box 76, 54/19/6

¹²⁰ Ibid

119 acres, though the claimants business as a farmer had been affected. Judge Archer found that Mooney was therefore entitled to be compensated for disturbance in the carrying on of his business. Consideration was also made for "disturbance" of Mooney's concerns relating to the "unavoidable loss in respect of the sale of the mares", although the Judge stated that he was "surprised that Mr Mooney did not find means to keep the mares and believe that he could have done so". The Court awarded Mooney £4000 for disturbance.¹²¹

Thus Mooney was awarded a total of £12,4000 less £5,900 already paid. In terms of the value of the land, he was compensated at a rate of £70 per acre which totalled £8,400 for the 119 acres. A further £4,000 was awarded for disturbance. Interest at 5 percent was payable from the date of possession to the date of payment. Mooney also received £350 for legal costs and other expenses.

10. Negotiation between valuers, November 1966

On 23 November 1966, the District Valuer RA Court, advised the New Plymouth City Council's solicitors that as per their request, he had met with the valuer acting for the Maori Trustee. At this meeting the two valuers had reached an agreement, subject to the consent of the Maori Trustee, as to the valuations of the Maori-owned Puketapu blocks. The valuations agreed to were as follows:

Puketapu A1	£290
Puketapu B1A	£820
Puketapu B2	£1170
Puketapu B3	£3100
Puketapu B4	£2220
Puketapu C1	Mrs Brand's share only, to be based on the valuation of £1440
Puketapu E	£180 (total for the three parts affected)

Court stated that the limit agreed between the Council and the Valuation Department had "generally been exceeded by a small margin". He claimed that Wright apparently had

made much of the point that the Maoris had been deprived of their ownership of land, with consequent loss of face (!) and as the amounts involved were small, I thought it better to try to settle. No doubt you will be able to induce Civil Aviation to agree to the increases.

¹²¹ Ibid

Court, however, said that he had just been advised by Cater of the Department of Maori Affairs in Wanganui, that it was unlikely that the Maori committee appointed to consider the compensation would agree to the figures. Court commented that "if, as seems possible, the Maori Trustee hangs out for the last shilling, I would recommend going to Court on my original figures".¹²²

In a letter to the Maori Trustee's Wanganui office, Wright set out his reasoning for accepting the compromises that he did in his negotiations with Court. Generally he noted that "Mr Court was very difficult to shake from the results of the [Mooney Land Valuation] Court case and I feel that if the Maori Trustee should take these valuations to Court [that] the Court is bound to be consistent with its previous ruling." In the letter he explained why he made such large concessions in the cases of Puketapu A1 and E. The figure of £290 for Puketapu A1 was accepted, he wrote, because "there was no road accesses available to this section, hence it would have little appeal to outside purchasers." Apparently he had been unaware of this previously. With regard to Puketapu E, he "felt that because the Maoris were still to be granted access to these areas that a higher valuation could hardly be upheld and considering that they had not derived any income from these lands, and that their use as urupas had not been proved the figures compromised at would be considered satisfactory by me but that this figure may not have been agreed to by more knowledgable Maori elders."¹²³ The Maori Trustee's Wanganui office, in reporting recent developments to head office, explained that another reason why such a large concession had been made in regard to Puketapu E, was that "the Council had paid considerable respect to the sacred nature of the urupas".¹²⁴

11. Meeting of owners' committee to consider revised offer, November 1966

Subsequent to the agreement reached between Court and Wright, Cater duly presented the offer to the owners' committee that had been convened in October 1965 to consider the matter of compensation. On 27 November 1966, Cater, along with Simmonds, Dark and Pritchard, met with the committee at Mururaupatu. The committee was told by Cater that Wright had been "able to persuade Mr Court. . . to increase his values quite considerably in some cases." In outlining the compromise figures agreed to by Court and Wright, Cater stressed that they related very much to the compensation awarded by the Land Valuation Court in the claim of JN Mooney. Although it was conceded that "in some cases the variance between these compromised figures and Mr Wright's original valuation were considerable", it was argued by Cater that "it may not be worth the cost and risk of going to the Land Valuation Court with the possibility of getting less than the compromised figures." Cater expressed the view that "If [the revised offer was]

¹²² Court (District Valuer, New Plymouth) to Govett, Quilliam and Co, 23 November 1966, AATC Acc W3457, box 223, 16/2/15/0

¹²³ Wright to Maori Trustee (Wanganui), 19 November 1966, MA 12B/25

¹²⁴ Cater to Maori Trustee, 1 December 1966, MA 12B/25

rejected by the Committee the Maori Trustee would probably have no option but to take action in the Land Valuation Court.”¹²⁵

In his discussion with the Committee, Cater repeatedly stressed the disadvantages of taking a claim to the Land Valuation Court; especially that there was no right of appeal against the Court’s decision, and that there was an inherent difficulty in arguing matters of valuation in court. The committee then discussed the matter amongst themselves. Clearly they were either already cognisant of the problems associated with making a claim in the Valuation Court, or were persuaded in this regard by Cater. Earra Taylor for example stated that the owners “may lose if we take Court proceedings”. Similarly Moki White expressed the view that “There is no point in taking it any further. We may get less.” Although having stated earlier in the meeting that “No amount of compensation would be adequate to satisfy Maori sentiment”, George Koea later observed that

The compromised values are similar to the Mooney case and must therefore be taken as acceptable. If we do not accept now, more expense and time will be involved.¹²⁶

Earlier Koea had suggested that a meeting of all owners be called to discuss the matter. To this Cater replied that because “the compromised figures are without prejudice” he was “therefore not rightfully in a position to discuss settlement of these figures at a meeting of all owners – the present Committee meeting is far more satisfactory.” This appears to have been accepted by the committee, and each member, speaking as a representative for each block, proceeded to state whether or not they accepted the compensation offer vis-a-vis the land they held interests in. The minutes record that all spoke in favour of accepting the offer and noted the number of shares that person held in the particular block they spoke for.

The details were listed as follows:

Puketapu A1	Takaterangi Tamati	22.5 out of 52.5 shares (42.9%)
Puketapu B1A	Mrs Watson	0.5 out of 1.0 shares (50%)
Puketapu B2	Ed Tamati	22.0 out of 65.0 shares (33.8% – largest shareholder)
Puketapu B3	George Koea	5.25 out of 189.0 shares (2.8% – one of 60 owners)
Puketapu B4	No owners present	
Puketapu C1	Mrs Brand (Owhiti Te Teira)	7.875 out of 84.0 shares (9.4% – part owner with Percy Sole)

¹²⁵ Minute of meeting of Committee held at Mururapatu on 27 November 1966, p 1, MA 12B/25

¹²⁶ Ibid, pp 1-2

Cater concluded the meeting by thanking the Committee “and commented that he thought the Committee’s decision was a wise one.”¹²⁷ Immediately after the meeting, the Wanganui office sought the consent of the Maori Trustee to the compromise figures. On 16 December 1966, Blane, for the Maori Trustee, informed the Wanganui office to proceed with the claim based on the compromise figures.¹²⁸

12. The Puketapu Roadway

In September 1966, the Maori Trustee alerted its Wanganui office to the fact that an area totalling just over 1.5 acres designated as a roadline was taken in the proclamation for the airport, that had hitherto been overlooked by the Maori Trustee in its negotiations.¹²⁹ This roadline was created by the Maori Land Court at the time of the partition of the original block in March 1917 (see map 1).¹³⁰ As was noted in a memorandum from the Maori Land Court to the Maori Trustee’s office in October 1966,

The purpose of the roadline was to provide access for the owners of [Puketapu] A in particular to and from Brown Road. As far as it affected A, C and D, the roadline was varied by extending it through A to the severed portions of E within A, those severed portions being Urupas.

The memo continued, that

While there is no doubt that the land absorbed in the roadline is Maori land, there is no separate title and it must remain part of A which similarly remains subject to the right of way or roadline, but the land remains in the ownership of A.¹³¹

In a letter to the New Plymouth City Council of 1 February 1967, Govett, Quilliam and Co stated that the Maori Trustee was claiming compensation to be paid for the Puketapu roadline. The letter stated that the Maori Trustee had been informed by Govett, Quilliam and Co that

as these blocks were entirely dependent on this roadway for access, in our view, the compensation for the blocks must include compensation for the road. This view has not

¹²⁷ Ibid, p 2

¹²⁸ Maori Trustee to Maori Affairs District Officer (Wanganui), 16 December 1966, MA 12B/25

¹²⁹ Maori Trustee to Maori Affairs District Officer (Wanganui), 1 September 1966, MA 12B/25

¹³⁰ Tar MB 26, 30 March 1917, fol 81, (extract) MA 12B/25

¹³¹ M Huirua (Maori Land Court) to Dark (Maori Trustee’s office), 27 October 1966, MA 12B/25

been accepted by the Maori Trustee who stated that he would accept any reasonable amount suggested by Mr Court as being the value of this land.¹³²

At the November 1966 meeting of the owners' committee at which the New Plymouth City Council's revised offer was accepted, Cater explained the situation vis-a-vis the roadline, "in particular that the Maori Trustee did not consider he was required to claim compensation for this area."¹³³ In March 1967 Cater wrote to the Maori Trustee and recommended that the claim for the roadline be withdrawn.¹³⁴ Consequently the area was expressly excluded in the settlement of the compensation claim detailed in Govett, Quilliam and Co's April 1967 letter to the District Officer in Wanganui.¹³⁵

13. Compensation is finalised

Govett Quilliam recommend to the New Plymouth City Council that the valuations be approved, pointing out that interest at the previously agreed rate of 5 percent had already accrued to £900, and that any further delays would cause unnecessary expense to the Council. They also recommended that in the interests of expediency, the fee claimed by the Maori Trustee both for Wrights's valuation and his own services be paid, although they considered it doubtful whether payment was in fact necessary in terms of the law.¹³⁶ After the New Plymouth City Council obtained the concurrence of the Commissioner of Works,¹³⁷ a letter from the Council's solicitors was sent to the Maori Trustee, informing that office that their client had agreed to the compensation claim negotiated between the two parties' valuers. In addition to the figures agreed to by Court and Wright, the letter stated that the Council was also prepared to pay interest as described above, the Maori Trustee's valuer's fee (£ 103.5.9) and disbursements (£3.11.6), but not the Maori Trustee's fee of £100.¹³⁸ A letter from Cater to Govett, Quilliam and Co of 23 May 1967 acknowledged that the compensation had been received by the Maori Trustee.¹³⁹

¹³² Govett, Quilliam and Co to New Plymouth City Council, 1 February 1967, AATC Acc W3457, box 223, 16/2/15/0

¹³³ Minute of meeting of Committee held at Mururaupatu on 27 November 1966, p 1, MA 12B/25

¹³⁴ Cater to Maori Trustee, 2 March 1967, MA 12B/25

¹³⁵ Govett, Quilliam and Co to Maori Affairs District Officer (Wanganui), 3 April 1967, MA 12B/25

¹³⁶ Govett, Quilliam and Co to New Plymouth City Council, 1 February 1967, AATC Acc W3457, box 223, 16/2/15/0

¹³⁷ District Commissioner of Works (Wanganui) to Commissioner of Works (Wellington), 6 March 1967, AATC Acc W3457, box 223, 16/2/15/0

¹³⁸ Govett, Quilliam and Co to Maori Trustee (Wanganui), 3 April 1967, MA 12B/25

¹³⁹ Maori Affairs District Officer (Wanganui) to Govett, Quilliam and Co, 3 May 1967, MA 12B/25

As is clear in the preceding section, in computing the compensation for the Maori-owned Puketapu blocks, the valuers of both the Maori Trustee and New Plymouth City Council used the Land Valuation Court's decision in the Mooney case as a benchmark. As is quoted in the decision, the figure of £70 per acre was taken as the value of the land with a further £4,000 awarded for disturbance. So although on the face of it, it appears that the owner of Puketapu A2 received substantially more in the way of compensation than the Maori owners, when it is considered that only £70 per acre was paid for the actual value of Mooney's land, the Maori owners of most of the blocks affected appear to have been fairly well compensated. Only in the case of Puketapu A1 and E were they paid over two pounds an acre less than what Mooney received, and in the instance of Puketapu blocks B1A, B2 and B3, the owners received between £7 and £21 per acre more than Mooney. Presumably the differences in these values can be accounted for in terms of variances in the quality of the land of the particular blocks.

The valuation and compensation for Puketapu E

There are several issues pertinent to the assessment of the compensation that was paid to the beneficial owners of Puketapu E. Importantly, work on the new airport had already commenced when the initial valuations were made, and was well progressed by the time the Maori Trustee and the New Plymouth City Council reached an agreement. It appears that most of the earthworks had in fact been completed by this time. The relatively small extent of disturbances to the urupa that had occurred during construction, was seen as being a justification for offering the owners of Puketapu E a small amount of compensation. Also, as the owners were to continue to enjoy access to the urupa, the Council believed that the sacred nature of the sites was not being compromised and therefore compensation did not have to make provision for these values.

A letter from the Council's solicitors to the Wanganui District Officer of the Department of Maori Affairs, stated in relation to the parts of Puketapu E taken, that

The Council has been well aware of the sacred nature of these Urupas and has gone to considerable efforts not to offend the local Maoris' feelings regarding same. We are informed that agreement was reached that the Urupas could be used for the airport providing that due care and respect was paid to any remains which may have been uncovered. As a result no work was done on the areas covered by the Urupas except in the presence of a Mr Button who represented the Maoris. In fact the 1 acre area has not been disturbed and subsequent inquiries have disclosed that the two acre area was not in fact a [sic] Urupa. Part of the seven acre area was disturbed but no remains were found and hence no reinterment was necessary. In our submission as these rigorous precautions have been taken the Council can only offer compensation for these areas at the normal rate. Indeed it is quite impossible to assess in terms of money the sacred aspect of these Urupas. In addition their sacred nature has been protected by the Council with the agreement of the owners.¹⁴¹

This also seems to have been the attitude adopted by the Maori Trustee's representative in Wanganui. In justifying to its head office why such a large concession was made in the case of

¹⁴¹ Govett, Quilliam and Co to District Officer, Department of Maori Affairs (Wanganui), 21 October 1966, MA 12B/25

Puketapu E, he stated:

it was felt that because the Council had paid considerable respect to the sacred nature of the urupas. . .and that [as] access to the areas taken from this block had been granted to the Maoris, the original valuation of £503-10-0 (£50 per acre) could not be upheld. The fact that the Maori owners had not derived any income from the areas taken from E was also taken into account when compromising at £180 (£18 per acre).¹⁴²

This was very similar to the rationale Wright had employed in explaining the compromise he had made in his negotiations with the District Valuer which eventually constituted the compensation agreed to by the Maori Trustee and the Council. However, he also stated of the areas in question, that given “their use as urupa had not been proved”, he considered the figure to be satisfactory, “but that this figure may not have been agreed to by more knowledgeable Maori elders.” Later in his report he stated that because the owners were still to enjoy access to the urupa, he could not see “that the Maoris can claim that they have been deprived of it so in all the negotiations must be considered as reasonably satisfactory.”¹⁴³

Although the Maori Trustee’s offer to settle compensation for Puketapu E was made subject to the matter of access being satisfactorily resolved,¹⁴⁴ as is discussed in the next section, this matter was in fact not finalised until June 1981.

15. Access to the urupa and the Maori-owned section of Puketapu E

Access to the two urupa in the western corner of the airport precinct appears not to have been an issue for the owners given that the defined roadline that existed previous to the taking was expressly excluded from the settlement of compensation.¹⁴⁵ It would therefore seem that it could still be used by the owners.

Access to the seven acre urupa located on the eastern boundary of the airport, and the 67 acres of Puketapu E remaining in Maori ownership, became somewhat problematic as a result of the taking and later construction of the airport. Previously the block’s owners had enjoyed an undefined right of access across Puketapu D. It would seem that this was rendered impractical as a result of the taking. In December 1964, the Town Clerk stated that “The Maori owners are

¹⁴² Maori Trustee (Wanganui) to Maori Trustee (Head Office), 1 December 1966, MA 12B/25

¹⁴³ Wright to the Maori Trustee (Wanganui), 19 November 1966, MA 12B/25

¹⁴⁴ Maori Trustee (Wanganui) to Maori Trustee (Head Office)

¹⁴⁵ see footnote 135 above, Govett, Quilliam and Co to Maori Affairs District Officer (Wanganui), 3 April 1967, MA 12B/25

aware of the fact that the existing rights are to be cancelled and a new agreement is to be entered into”, and that it would “be the subject of negotiations at a later date.”¹⁴⁶

Subsequent to this there exists evidence of several options being considered that would have provided access to the eastern urupa and land remaining in Maori ownership. In August 1965 it was proposed that access to the urupa would follow an existing paper road – being an unformed part of Brown Road. This would provide a simpler and more straight forward bridging site and ultimately provide speedier access. It was also cheaper. A “slight” disadvantage to the scheme was that it did

not have a completely separate access for the Maori owners. Their access on this road would be inside Airport land, but outside the Airport safety fencing, and presumably Civil Aviation would not object to this. The City Council does not consider that the Maori owners undefined access rights entitle them to a very high standard of access, and is of the opinion that a route following the inside of the Airport boundary as shown, would be adequate. The Chief Surveyor, Lands and Survey also considers this to be satisfactory for the purpose.¹⁴⁷

The Commissioner of Works, however, was not satisfied with these proposals for access to the urupa or the part of Puketapu E remaining in Maori ownership. The Commissioner stated that he was advising the Land Purchase Branch to consider dedicating a road inside the Airport along the boundary from Brown Road to Mangaoraka stream and then following the stream.¹⁴⁸ In reply the District Commissioner of Works stated that there were difficulties with this proposal as it was expensive, the road would be of no value to the airport, and it would provide the owners of Puketapu with an amenity they did not previously enjoy.¹⁴⁹

It appears to have been decided that two existing paper roads (Brown and Mahoetahi) were to be extended to the airport boundaries, and provision made for the owners of Puketapu E to cross the airport land to reach the severed portions of the block.¹⁵⁰ However, the matter then appears to have been put on hold by direction of the Commissioner of Works. In December 1965 he informed the District Commissioner of Works in Wanganui that it had “been agreed that action should be deferred until required.” This, he stated, was because until such time as the runway

¹⁴⁶ Town Clerk (New Plymouth City Council) to Taranaki County Council, 10 December 1964, AATC Acc W3457, box 223, 16/2/15/0

¹⁴⁷ Resident Engineer to District Commissioner of Works, 19 August 1965, AATC Acc W3457, box 223, 16/2/15/0

¹⁴⁸ Commissioner of Works to Department of Civil Aviation, 27 August 1965, AATC Acc W3457, box 223, 16/2/15/0

¹⁴⁹ District Commissioner of Works (Wanganui) to Commissioner of Works, 27 September 1965, AATC Acc W3457, box 223, 16/2/15/0

¹⁵⁰ Govett, Quilliam and Co to Department of Maori Affairs District Officer (Wanganui), 21 October 1966, Ma 12B/25

lights had been installed, it was not possible to designate a right of way given that the law required there be a distance of at least 14 feet between such lights and vehicle tracks.¹⁵¹

A letter of January 1967 from the Maori Trustee's District Officer in Wanganui to Govett, Quilliam and Co in connection with the negotiations concerning compensation, set out the above proposal. Further he stated that he was "anxious to ensure that the owners of Puketapu E are not denied access to that part of the block not taken for the Airport", and that "The Maori Trustee's offer to settle compensation for this block is made subject to this question being satisfactorily resolved."¹⁵² Subsequent to this letter the New Plymouth City Council's solicitors informed the Department of Maori Affairs' Wanganui Office that their client had undertaken "that a gateway will be provided on the boundary of the Airport to enable access" to the part of Puketapu E not taken for the airport.¹⁵³

The records of both the Maori Trustee and the Ministry of Works indicate that subsequent to these proposals and assurances, nothing happened until the late 1970s. In 1978, Morrill, a District Officer of the Department of Maori Affairs in Wanganui, informed the New Plymouth City Council that they had received a letter from E Tamati, a trustee for the part of Puketapu E remaining in Maori ownership, complaining that access had not been provided to the land in question and that his letters to the City Council had not been answered. Morrill's letter stated that Tamati had "been advised that for what it was worth" the Department of Maori Affairs would write to the Council, but that "any arrangement about access appears to have been on a gentleman's agreement – with tenuous legality through your solicitors letter [of 3 April 1967]". Continuing, Morrill contended that as it appeared the Council did "not intend to honour this agreement" he had "suggested to Mr Tamati that he apply to the Maori Land Court for a Maori Land Court Roadway" over the airport land.¹⁵⁴

Morrill's letter raised the ire of the Town Clerk, who responded that he found the statement "for what it was worth", "quite offensive". He claimed to have only received one letter from Tamati, and that the matter had been "passed over to the City Solicitors some years ago." The Town Clerk assured Morrill that he was "pursuing this matter".¹⁵⁵

¹⁵¹ Commissioner of Works to District Commissioner of Works (Wanganui), 23 December 1965, AATC Acc W3457, box 223, 16/2/15/0

¹⁵² Department of Maori Affairs District Officer (Wanganui) to Govett, Quilliam and Co, 20 January 1967, MA 12B/25

¹⁵³ Govett, Quilliam and Co to the District Officer, Department of Maori Affairs Wanganui, 3 April 1967, MA 12B/25

¹⁵⁴ District Officer, Department of Maori Affairs (Wanganui) to Town Clerk, New Plymouth City Council, 12 May 1978, MA 12B/25

¹⁵⁵ Town Clerk, New Plymouth City Council to District Officer, Department of Maori Affairs (Wanganui), 16 May 1978, MA 12B/25

Tamati duly lodged an application with the Maori Land Court that a roadway be laid over the airport land to enable access to Puketapu E. The application was heard by Deputy Chief Judge Smith at New Plymouth on 28 February 1980. At the hearing Laurenson, counsel for the New Plymouth City Council, informed the Court that his clients agreed to the roadway and that a plan had been submitted to the Taranaki territorial authority upon whose consent they were waiting. Grant Knuckey, a trustee for the land in question, stated that negotiations were continuing between the trustees and the Council. In view of this progress Judge Smith stated that when the details were finalised, the Court would issue a roadway order as ought.¹⁵⁶ This was subsequently done, appearing on the certificate of title for the airport lands as an order of the Maori Land Court dated 12 June 1981.¹⁵⁷ This roadway enabled the owners of the Puketapu E reserve to access the contiguous seven acre urupa that had previously been in their ownership.

Thus, sixteen years after the proclamation was issued taking the land which caused the part of Puketapu E remaining in Maori ownership to become landlocked, the New Plymouth City made provision for access to be provided. Also, the condition upon which the Maori Trustee had accepted the relatively low compensation for the parts of Puketapu E taken (ie the urupa) that access to these portions would be ensured, was finally met.

16. Attempted further acquisition of Puketapu E, 1965

There was a bid to acquire further portions of Puketapu E in 1965 for use as a site for a transmitting station. In April 1965, preliminary enquiries with the Maori owners failed to interest them in selling the freehold of land, although they did indicate that there was a possibility of a lease and/or an easement. The Wanganui office of the Ministry of Works stated, that although the acquisition of the freehold was preferable, because the land was a Maori reserve, they would accept the leasehold or easement offer.¹⁵⁸ That the owners were unwilling to alienate part of the block was again reported by the District Commissioner of Works in a letter of 14 June 1965. However, he suggested that were equivalent land made available for an exchange, the Puketapu E trustees would be more likely to relinquish the land. Included with the letter was a plan that showed the area required from Puketapu E and an area adjacent to it which could possibly be used in an exchange.¹⁵⁹

¹⁵⁶ Tar MB 83, 28 February 1980, fol 381

¹⁵⁷ Certificate of Title, B3/369, Taranaki Land Titles Office, Department of Survey and Land Information

¹⁵⁸ District Commissioner of Works (Wanganui) to Commissioner of Works, 27 April 1965, AAQB Acc W3950, box 32, 23/381/5/4/0/1

¹⁵⁹ District Commissioner of Works to Commissioner of Works, 14 July 1965, AAQB Acc W3950, box 32, 23/381/5/4/0/1

However, later in June the New Plymouth City Council was advised by the Ministry of Works that the non-directional beacon could be sited within the existing boundaries of the airport, and thus there was no need acquire the land.¹⁶⁰

17. History of Puketapu E subsequent to the construction of the airport

As was detailed above, the New Plymouth City Council claimed that during the course of the airport's construction, the Horotiu urupa was not interfered with, and the disturbance of the seven acre urupa on the eastern perimeter of the airport resulted in no remains being exposed. As for the contention that the Puketapu urupa was in fact not an urupa at all, the present authors have found no evidence of the Council having been informed of this, or that this was the belief of any owners or kaumatua of the Puketapu hapu. Interestingly, in neither the correspondence nor the negotiations vis-a-vis the Puketapu blocks, is mention made of the fact that the Puketapu pa site near the Puketapu urupa, was levelled during the construction of the airport. This, as is set out in the introduction of this report, has been identified more recently as an issue by the claimants. Apparently no artefacts were lodged with the Taranaki Museum as per the special conditions of contract if any were found during excavations. However, it is the belief of Grant Knuckey that some were found but were kept by those workers who discovered them.¹⁶¹

Subsequent to the taking of part of Puketapu E for the airport, attempts were made for the part of the block remaining in Maori ownership to be constituted a reserve, a state of affairs that the owners had wrongly believed existed at the time of the taking in 1964. In April 1967 an application was made to the Maori Land Court that the 67 acres of Puketapu E remaining in Maori ownership be made a reserve pursuant to section 439 of the Maori Affairs Act 1953. The Court favoured the application and recommended to the Minister of Maori Affairs that such a course of action be taken. The Minister, however, turned down the application on the grounds that the area was too large. He had apparently "considered the fact that graves are scattered throughout the block" but decided that "in his opinion [this] was not sufficient reason for the reservation" to be made.¹⁶²

Following the failure of their application that the land be formally constituted a reserve, some of the owners of Puketapu E applied to the Maori Land Court for the lands to be vested in nine trustees under section 438 of the Maori Affairs Act 1953. This provision could be implemented in the case of any block of Maori freehold or customary land, regardless of whether or not it had been formally constituted as a Maori reserve. In his submission pertaining to this application, the Registrar of the Aotea District Maori Land Court stated that this was desirable on the grounds that:

¹⁶⁰ Director of Technical Services, Ministry of Works to Town Clerk, New Plymouth City Council, 14 June 1965, AAQB Acc W3950, box 32, 23/381/5/4/0/1

¹⁶¹ Personal communication, Grant Knuckey, Trustee for the Puketapu E Reserve, 29 March 1996

¹⁶² Ibid

(1) The section 438 order would bring to logical conclusion action begun 50 years ago; (2) Trustees have been appointed for this land under the misapprehension that the land was in fact a Reservation; (3) The land is of no use, consisting as it does, of windswept sandhills; and (4) The size of the area has little bearing on the desirability of a Reservation.¹⁶³

On 24 January 1968 an order was issued that vested in nine trustees the parts of Puketapu E not taken for the airport – that is the land between the eastern boundary of the airport and the Waiongana River – for the purpose of urupa, papakainga and recreation grounds.

In 1980 another application was made to have the land constituted a reserve under section 439 of the Maori Affairs Act 1953. At the hearing it was noted that the Court had previously recommended to the Secretary of Maori Affairs that such a course of action be taken but that the recommendation had not been implemented because it was considered that the area of land was too large. However, it was noted that since that time, the policy of the Department had changed considerably, and the recommendation was duly made again.¹⁶⁴ This time the Secretary of Maori Affairs was in favour of the land being reserved, and the land was set apart as a reserve for the common use and benefit of the Puketapu hapu, for use as a burial ground and bathing place and because it was a place of historical interest.¹⁶⁵ The purposes of the reserve were broadened in January 1982 to include papakainga, recreation grounds, fishing grounds, horticulture and silviculture.¹⁶⁶

As well as the owners wanting the part of Puketapu E remaining in Maori ownership to be constituted a Maori reserve, there was also a desire on the part of some of them that the Horotiu and Puketapu urupa be made reserves. Although subsequent to the proclamation of 1964 the New Plymouth City Council had become the sole owner of these urupa, the Maori Land Court had been empowered by the Maori Purposes Act 1973 to recommend that general land not in Maori ownership be constituted a reserve under the Maori Affairs Act 1953. The application, made by Grant Knuckey and Edward Tamati, was heard by Deputy Chief Judge Smith at Hawera on 4 June 1980.

However, the application, opposed by the New Plymouth City Council, was eventually disallowed by Judge Smith. In his decision he observed that “The New Plymouth City Council freely permits the members of the Puketapu hapu to visit the burial grounds but will not permit any further burials there.”¹⁶⁷ Although at the time the western end of the runway was “about 1000 feet from the nearer of the two urupa”, a long term possibility that had been allowed for from the time the new airport was planned, was that the runway could be extended to a length of 6000 feet. Were this to happen, the western end of the runway could be

¹⁶³ Ibid

¹⁶⁴ Tar MB 83, 28 February 1980, fol 382

¹⁶⁵ *New Zealand Gazette*, no 69, 26 June 1980, p 1875

¹⁶⁶ *New Zealand Gazette*, no 7, 28 January 1982, p 275

¹⁶⁷ Tar MB 84, 7 July 1980, fol 76

within 100 yards of one of the urupa and some interference with the urupa may become necessary in the interests of safety. It is possible also that radar installations could be made on or near the urupa.¹⁶⁸

While the New Plymouth City Council claimed they were “very conscious of the importance of these burial grounds”, the Town Clerk stated in his submission before the Court that the Council had “acquired the land under the provisions of the Public Works Act for the purpose of an airport for the whole community” and therefore, “would not be happy about a reservation over the land being promulgated”. Although he assured the applicants that there was “no short term plan for an extension” of the runway, he could not guarantee that it would not “ever happen at some stage in the future.”¹⁶⁹ Investigations of the present authors, however, show that the runway has not been extended.¹⁷⁰

18. The airport today

Of the original lands taken by proclamation for the purposes of the airport in 1964, all of these lands are still in the ownership of the New Plymouth District Council – the territorial authority that replaced the New Plymouth City Council when local government was reformed in 1989. According to the District Council’s Management Services Engineer, this land is divided into two categories – that “which is used for primary airport purposes; runways, terminals, hangars etc”, and that “which is used for secondary airport purposes; navigation aids, noise buffer etc.” These secondary uses “are not incompatible with other uses and much of the land has been leased for restricted grazing and hay making since the airport opened. It is considered “essential that the Airport Authority retain appropriate control over the facilities and the uses to which it is put. Retaining ownership of the land and allowing lessees restricted use is the most flexible option and has been used since the airport was opened in the 1960s.” While the Council does not preclude the possibility of this secondary-use land being owned privately, this would only “be possible subject to strict and readily enforceable restrictions.”¹⁷¹

¹⁶⁸ Ibid, fol 76

¹⁶⁹ Tar MB 84, 4 June 1980, fol 54

¹⁷⁰ Personal communication, Ray Shanks, Chief Air Traffic Controller, New Plymouth Airport, 21 March 1996

¹⁷¹ Personal communication, NA Fagan, Management Services Engineer, New Plymouth City Council, 25 March 1996

Part four: discussion of issues

The claim by Puketapu hapu of Te Atiawa concerning the compulsory acquisition of the Puketapu blocks under the Public Works Act for the purposes of the New Plymouth Airport involves several complex issues. Further, the history of the land prior to the acquisition, believed to be necessary by the authors to establish a context in which to understand the claim, also raises several issues that quite possibly involve Treaty breaches. While these have not been identified by the claimants, they are considered by us to be noteworthy.

Obviously a major issue in this claim is the Public Works Act 1928 vis-a-vis the Treaty of Waitangi. As well as being the subject of a major report by Cathy Marr, the Waitangi Tribunal has recently considered it in depth in both the *Ngai Tahu Ancillaries Report* and the *Turangi Township Report*.¹⁷² Ralph Johnson, in his report concerning the acquisition of Maori land for the Kaikohe aerodrome, presents a useful summary of the Tribunal's findings in these claims.¹⁷³ In light of this extensive literature, it is not proposed to reconsider the issue in this report.

1. Block history

The early history of the Puketapu block is typical of much land that was held by Maori in Taranaki under the West Coast Settlement Reserves legislation. While the Settlement Reserves have been the subject of three substantial research reports, it is useful to consider a specific example of such lands, given that hitherto the reserves have mainly been dealt with in a general sense.¹⁷⁴

The land was reserved to the original beneficiaries pursuant to the West Coast Settlement Act 1880 and the West Coast Settlement Reserves Act 1881. The Crown Grant for the land, issued in 1885, vested the land in the Public Trustee and stated that the land was "absolutely inalienable". However, as a result of a myriad of legislative changes, as with many of the West Coast Settlement Reserve lands, much of the Puketapu block was in fact later alienated.

¹⁷² see Marr, *Public Works Takings of Maori Land, 1840-1981*; Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, Wellington, Brooker's Ltd, 1995; Waitangi Tribunal *Turangi Township Report*, Wellington, Brooker's Ltd, 1995

¹⁷³ Ralph Johnson, *Kaikohe Aerodrome*, Waitangi Tribunal research report for the Kaikohe Aerodrome claim (Wai 302), 1995, pp 20-26

¹⁷⁴ Ford, *The Administration of the West Coast Settlement Reserves in Taranaki by the Public/Native/Maori Trustees, 1876-1976*; Hazel Riseborough, *Background Papers: West Coast Settlement Reserves*, Waitangi Tribunal Record of Documents for Taranaki Claim (Wai 143), doc A2(iii), 1990; Ben White, *Supplementary Report on the West Coast Settlement Reserves*, Waitangi Tribunal Record of Documents for Taranaki Claim (Wai 143), doc M20, 1996

serious injustice. Further, no mention was even made in the negotiations for compensation of the fact that an important pa site of the Puketapu hapu had been erased from the physical landscape during the construction of the airport. Interestingly, though, this matter was not raised by any of the owners at the time.

The settlement of the compensation for the parts of Puketapu E taken for the airport was conditional upon access provisions being made for the owners. However, as was detailed above, in the case of the seven acre urupa in the eastern corner of the airport, this was not finalised until 1980. This would similarly appear to constitute an injustice suffered by not just the owners of Puketapu E, but the hapu as a whole given the site's significance as a burial ground.

Today the claimants have several concerns about the status of the airport lands generally, and the Puketapu and Horotiu urupa in particular. They are correct in asserting that some of the lands taken are now leased to farmers. As is set out in part three of this report, this land is let by way of short term leases and the airport authority retains a high degree of control over this land, given that it is still important to the airport's operation. While the Council has indicated that some of this secondary-use land could be privatised, this would be subject to strict controls on how the land could be used. This may be a possible course of action for the claimants to pursue. However, it is important to realise this land is not in the same category as land acquired under the provisions of the Public Works Act which is now surplus to the requirement for which it was first acquired.

It has also been stated by the claimants that they desire the freehold of the Puketapu and Horotiu urupa to be returned to the original owners, and not simply protected by a caveat on the title as is the situation at present. However, an examination of the certificate of titles for the airport lands show that no such caveats exist on the urupa lands. As was described above, an application to the Maori Land Court that title to the urupa be returned to the Puketapu hapu and constituted as a Maori reserve, was refused on the grounds that an extension to the runway that had been allowed for since the airport was first planned, could mean the land was required in the future. If vesting title to the urupa in the Puketapu hapu is not feasible, a formal agreement should be entered into between them and the airport authority guaranteeing access to the urupa and that they will be consulted if any further disruption to the urupa is considered necessary.

The acquisition of the Puketapu blocks for the purposes of the New Plymouth airport can be viewed as a continuation of the confiscations begun in Taranaki a century earlier. Although the Puketapu lands were returned to their owners subsequent to the initial confiscations, they were again taken by the Crown in 1964 for the airport. This was in spite of the blocks being part of the few lands remaining in the ownership of the Puketapu people and that they were known to be of such great significance to both the Puketapu hapu and Te Atiawa more generally. As the claimants have asked: "Why did 'they' have to want our last pieces of land? Why couldn't 'they' use some other piece of land?"¹⁹³

¹⁹³ Harris, *Notes on a visit to Owae Marae*, M22, p 10

The partition of the Puketapu block was enabled by the passing of the West Coast Settlement Reserves Amendment Acts of 1913 and 1914. Lands partitioned under these acts were to be vested in the beneficial owners. Once the land was no longer subject to the trusteeship of the Public Trustee, however ineffective that may have been in terms of securing for the beneficial owners either an equitable income or land to occupy, the owners, as well as being able to sell their interests if they so desired, were also made much more vulnerable to pressure from lessees. The subsequent history of the Puketapu blocks show that the desire to sell on the part of some owners, seldom being a majority, led to more and more partitioning of the original appellation until by the time it was acquired for the airport in 1964, there were 12 parts to the original block, four of which were in Pakeha ownership.

In terms of the powers of the owners to alienate their interests in a particular block, the Puketapu lands were subject to the Native Land Act 1909. This legislation meant that any land vested in more than 10 owners could be alienated by a meeting of owners – the quorum for which was set at just five owners. At such a meeting, a motion to alienate was carried so long as those in favour had a higher aggregate share holding than those opposed. Further, an owner had no recourse if they were ignorant of a meeting at which the other owners present voted to sell.

It was by such meetings of owners that the four Puketapu blocks that were in Pakeha ownership by 1964 had come to be so. Puketapu C and D were alienated by meetings of owners at which those favouring the sale represented only 7 and 12 percent respectively of the total shares in the blocks. The Puketapu A block was alienated by owners whose aggregate share holding represented 51 percent of the total interests, and Puketapu B1B by a group whose interests were 57 percent of the total. Further, it appears that the requirement that alienations of such land should not have been confirmed until it was ascertained that the owners had sufficient lands elsewhere, may not have been met in the case of Puketapu C.

Not only then was the stipulation of the Crown Grant for the Puketapu block that the land be “absolutely inalienable” deliberately overlooked by successive governments, but legislation was enacted that meant the land could, as was the case with Puketapu C and D, be alienated by owners with a minority share holding. This would appear to represent a failure on the part of the Crown to adequately protect the interests of the Puketapu owners.

In the case of Puketapu E, evidence exists that the owners were frustrated in their attempts to manage their lands in accordance with their expressed preferences. Prior to the taking, it is apparent that both the owners and the Maori Land Court were of the belief that the land was a reserve under the Maori Affairs Act 1953. Maori Land Court minutes of hearings concerning the block in both 1915 and 1956 show that the owners desired the land to be reserved. Subsequent to the acquisition of part of the block for the airport, attempts were made to realise the situation that hitherto they had thought existed. Although their 1967 application that the land be constituted a reserve was favoured by the Maori Land Court, it was turned down by the Minister on the grounds that the block was too large. This was in spite of him being cognisant of the significance of the area to its owners and other members of the Puketapu hapu. Although the land was finally constituted as a reserve in 1980, this was 65 years after the first known request to the Maori Land Court that the land be designated as such, and after the loss of part of the land for the airport.

2. The new airport

In both the decision to acquire the Puketapu blocks for the new airport at Brown Road and the actual process of acquiring the land and compensating the Maori owners, several important issues arise.

The actual decision to relocate the New Plymouth Airport must firstly be considered. The claimants contend that although the New Plymouth City Council already had land intended for use as an airport, this land instead became an industrial site. However, as was established at the beginning of part three of this report, the situation was in fact that the Council had acquired some land in order to extend the existing airport, but had been unable to acquire another section of Maori-owned land, to enable the extension. It would appear then that the Council and the Crown were justified in attempting to acquire another site for a new airport so as to enable a longer runway to be built. However, a comment by the Commissioner of Works in a letter to the Air Department that the reason for acquiring another site was to "permit industrial development near the present site",¹⁷⁵ suggests that there may be some truth in the claimants' contention. It would seem though that the objective of industrial development only came about subsequent to the failure of the Council to acquire the necessary land to enable an extension of the existing runway.

A related issue is the question as to why, in the search for a new site, land that was predominantly in Maori ownership was targeted. No doubt in many instances, Maori land was favoured for public works because it was less developed, and could therefore be compulsorily acquired and require the payment of less compensation. In the case of the new airport on the Puketapu blocks, in order to obviate the need to disturb the urupa within the appellation, the possibility of acquiring adjacent land was in fact considered. However, a Ministry of Works official who visited the site to investigate this possibility reported that this would necessitate acquiring a further 300 acres worth £125 an acre, compared to the Maori-owned Puketapu blocks which he considered would be worth around £30 an acre.¹⁷⁶ In this instance then it would seem that the Puketapu blocks were at least in part favoured as a site for the new airport because of their relatively low economic value.

It must also be asked if the Puketapu blocks, by virtue of being in Maori ownership, were targeted because it was considered that they could therefore be more easily acquired. The New Plymouth City Council who were charged with negotiating the acquisition of the land had been forced by the Department of Works to abandon their attempts to acquire Maori land to enable the extension of the old airport, because it was recognised as being of such high significance to its owners. It would appear, therefore, that Maori land was unlikely to have been targeted specifically because it was considered to have been easier to acquire.

A major issue in the instance of this claim is the extent and nature of the consultation undertaken by both the New Plymouth City Council and central government agencies in the process of

¹⁷⁵ Commissioner of Lands to Air Department, 12 October 1962, AAQB Acc W3590, box 32, 23/381/5/1 part 3

¹⁷⁶ File Note of 31 July 1963 meeting, AATC Acc W4357, box 223, 16/2/15/0

acquiring the Maori-owned Puketapu blocks. A statement of the District Commissioner of Works in 1963 that because the Maori-owned blocks were in multiple ownership, the use of the compulsory provisions of the Public Works Act was a necessity, suggests that from the outset it was considered that consultation with the owners was a low priority.¹⁷⁷

The records of the initial meeting with a group of owners in July 1963 are somewhat ambiguous, and given that they were written by government officials and not the owners, the possibility of bias must be considered. Statements such as that “most [of the owners present] were keen to see the aerodrome be built there”¹⁷⁸ and subsequent to the meeting that it was “By tacit consent of the Maoris” that the urupa were being acquired,¹⁷⁹ afford reason to question the Council’s claim that the owners agreed to relinquish their lands. Clearly consultation was limited in this regard. Although at the end of 1963, the Council claimed to have held discussions “with the various owners and particularly all Maoris who may have any interest in any of the lands required”,¹⁸⁰ there is evidence of at least one Maori owner, Peggy Ruakere, who “had not been notified of the meetings at which the taking of [the] Maori land was discussed.”¹⁸¹ This indicates that not all owners were informed of the taking – the Council’s solicitors claim to have informed “all Maoris who are likely to have any interest”, being typically ambiguous.¹⁸²

Certainly the perceived “tacit consent” of the owners, and the Council’s stated opinion that “no objections would be raised to the present siting of the runways provided the Council or Ministry of Works . . . reverently re-interred any remains found”¹⁸³, are hard to reconcile with the fact that several objections to the proposed taking, especially of the urupa, were in fact lodged with the Council. While the Department of Maori Affairs was informed by the Council’s solicitors, that of the 19 owners who had lodged objections to the taking, none of these were in connection with Puketapu E, accounts of the actual hearing show that there was much opposition to the taking of the urupa as well as the other blocks.¹⁸⁴ Under the Public Works Act, the Council, in considering

¹⁷⁷ District Commissioner of Works (Wanganui) to Commissioner of Works, 4 March 1963, AAQB Acc W3950, box 32, 23/381/5/4/0

¹⁷⁸ File note of 31 July 1963 meeting, 1 August 1963, AATC Acc W3457, box 223, 16/2/15/0

¹⁷⁹ New Plymouth Airport investigations: monthly progress report, Resident Engineer to District Commissioner of Works, 25 July 1963, AAQB Acc W3950, box 32, 23/381/5/4/1

¹⁸⁰ Ibid

¹⁸¹ ‘Counsel alleges Airport land transactions mishandled’, *Daily News*, 24 February 1964

¹⁸² Govett, Quilliam and Co to Maori Trustee, 6 December 1963, MA 12B/25

¹⁸³ Town Clerk to Mr G Koea Snr, 20 August 1963, MA 1 Acc W2490, 54/19/6

¹⁸⁴ Govett, Quilliam and Co to Maori Affairs District Officer (Wanganui), 30 January 1964, MA 12B/25; ‘Counsel alleges Airport land transactions mishandled’, *Daily News*, 24 February 1964

it “expedient that the proposed works should be executed”, could simply ignore this clearly stated opposition.¹⁸⁵ This is yet further evidence of the unjust nature of the legislation.

Compensation

Several issues surround the matter of compensation paid for the land taken. The claimants contend that while they received only £30 per acre, Pakeha owners of adjacent blocks received £70. The investigations of the present authors, however, revealed that this was in fact largely incorrect: with the exceptions of Puketapu A1 and E, the Maori owners were paid, the same if not more than the £70 per acre paid to Pakeha farmer, JN Mooney. However, the compensation that the Maori Trustee accepted for Puketapu A1 and E, and the extent of consultation that the Maori Trustee undertook with owners in negotiating compensation on their behalf for all the blocks, must be afforded some consideration.

While the Maori Trustee was charged by statute to negotiate compensation on behalf of persons holding interests in multiply owned Maori freehold land, that office was not compelled to undertake any consultation with the actual owners. In the case of the Puketapu blocks, however, the Maori Trustee did meet with an ad hoc group of owners in the course of negotiations vis-a-vis compensation. So although legally the question of the extent and nature of that consultation is largely inconsequential, it is important in terms of Treaty principles such as that of active protection and consultation.

In connection with the committee of owners, convened in October 1965 to consider the matter of compensation, it is important to consider whether or not they had a mandate from the entire corpus of owners. No evidence has been found that the committee tried to contact all owners. Further, during the November 1966 meeting at which the New Plymouth City Council’s revised offer was accepted by the committee, George Koea suggested to Cater of the Maori Trustee’s Wanganui office that a full meeting of owners be called to consider the offer. To this request, Cater replied that he “was not rightfully in a position to discuss settlement of these figures at a meeting of all owners”.¹⁸⁶ That the matter should have been referred to all the owners involved, had earlier been stated by Peggy Ruakere.¹⁸⁷

Originally the membership of the committee was supposed to include a representative from each block. At the meeting at which the compensation was finalised, each member stated whether they accepted the offer vis-a-vis the block they represented. While the committee members representing blocks A1, B1A, and B2 respectively represented 42.9, 50 and 33.8 percent of the total shares in each, the owner who accepted on behalf of B3 held only 2.8 percent of the total share holding. As for B4, no owners of that block were actually present. Important issues in this regard are whether these representatives in fact had a mandate from the other owners of the blocks they purportedly represented, and whether it was fair that in the case of Puketapu B4 the revised offer was accepted without the block’s owners being represented.

¹⁸⁵ Public Works Act 1928, s23

¹⁸⁶ Minute of meeting of Committee held at Mururaupatu on 27 November 1966, MA 12B/25

¹⁸⁷ ‘Counsel alleges Airport land transactions mishandled’, *The Daily News*, 24 February 1964

From a reading of the minutes of the November 1966 meeting, it is evident that the Maori Trustee placed considerable pressure upon the owners present to accept the Council's offer. Repeatedly Cater stressed the inherent problems in taking a compensation claim to the Land Valuation Court and warned that it was conceivable that the Court could possibly award lower compensation than what was being offered. Whether this in fact constitutes the Maori Trustee having "sold out" the owners, as is contended by the claimants, is unlikely. The Council, in making its revised offer, was heavily guided by the compensation awarded to Mooney in his claim before the Land Valuation Court, and as detailed above, their revised offer was largely comparable to what Mooney was awarded in that case.¹⁸⁸

It is outside of the expertise of the present authors to say whether or not the low compensation paid for A1 (£48 per acre) was justified given that it was landlocked prior to being taken for the airport. However, the reasons stated for only £18 per acre being paid for Puketapu E, have been considered in this report. As discussed above, the valuation was only supposed to reflect the land's utility value and not its "sentimental aspect".¹⁸⁹ The New Plymouth City Council and the Maori Trustee appear to have been of the belief that because the owners were guaranteed access to the urupa and that provision had been made for any remains uncovered during excavations to be reinterred, the sacred nature of these places had been preserved and therefore these cultural values did not need to be compensated for.

However, it would seem that even if the Council had acted with disregard to the significance of the lands to the Puketapu people, they would not have been prepared to pay compensation for the loss of those cultural and spiritual values. The Maori Trustee, for example, stressed the significance of the fact that the owners had not derived any income from the parts of the block taken.¹⁹⁰ As Ben White has argued in the context of the West Coast Settlement Reserves, official thinking in connection with Maori land was determined almost exclusively by economic imperatives during the 1960s. Concomitantly, the importance of the retention of land in Maori ownership to furnish a sense of identity and self was constantly downplayed.¹⁹¹ But even if the owners' loss of the freehold of the urupa in Puketapu was considered to be significant to them in terms of their turangawaewae, there are inherent difficulties in establishing such values in monetary terms. This was in fact stated on several occasions by both the Maori Trustee and the New Plymouth City Council.¹⁹² In spite of these problems, that the compensation for all the Maori-owned Puketapu blocks was computed solely on economic values, would appear to be a

¹⁸⁸ As detailed in the introduction to this report, the claimants in fact stated that it was the Registrar of the Maori Land Court who "sold us out". Presumably they meant the Maori Trustee given the Land Court had a very small involvement in the actual acquisition and compensation for the land.

¹⁸⁹ Valuation of W R Wright, 1 October 1965, MA 1 Acc W2490, box 76, 54/19/6

¹⁹⁰ Maori Trustee (Wanganui) to Maori Trustee (Head Office), 1 December 1966, MA 12B/25

¹⁹¹ White, *Supplementary Report on the West Coast Settlement Reserves*, pp 26-32, 40-43

¹⁹² see for example Govett, Quilliam and Co to District Officer, Department of Maori Affairs (Wanganui), 21 October 1966, MA 12B/25; W R Wright to Maori Trustee Wanganui, 6 July 1966, MA 1 Acc W2490, box 76, 54/19/6

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WAITANGI TRIBUNAL

CONCERNING the Treaty of
Waitangi Act 1975

AND
CONCERNING Wai 143 claims

DIRECTION COMMISSIONING RESEARCH

Pursuant to clause 5A(1) of the second schedule of the Treaty of Waitangi Act 1975, Suzanne Woodley of Wellington is commissioned to prepare research reports concerning the following matters in respect of the Taranaki claims:

- i) The twenty-three ancillary claims lodged to date by the claimants
- ii) Twentieth Century alienations

This commission commenced on 1 July 1993 and ends on 30 March 1994 at which time the work completed (in word perfect format) will be filed. The filing date however is subject to amendment in the light of other urgent tasks which may be allocated to the commissionee.

The report may be received as evidence and the commissionee may be cross examined on it.

The Registrar is to send copies of this direction to

Wai 143 Claimants
Crown Law Office
Crown Forest Rental Trust
Phillip Green
National Maori Congress
NZ Maori Council
Suzanne Woodley

Dated at Wellington this 20th day of August 1993



Chief Judge ETJ Durie
Chairperson
WAITANGI TRIBUNAL