

TE UREWERA

PART III

TE UREWERA

PRE-PUBLICATION

PART III

*From self-governing native reserve
to national park*

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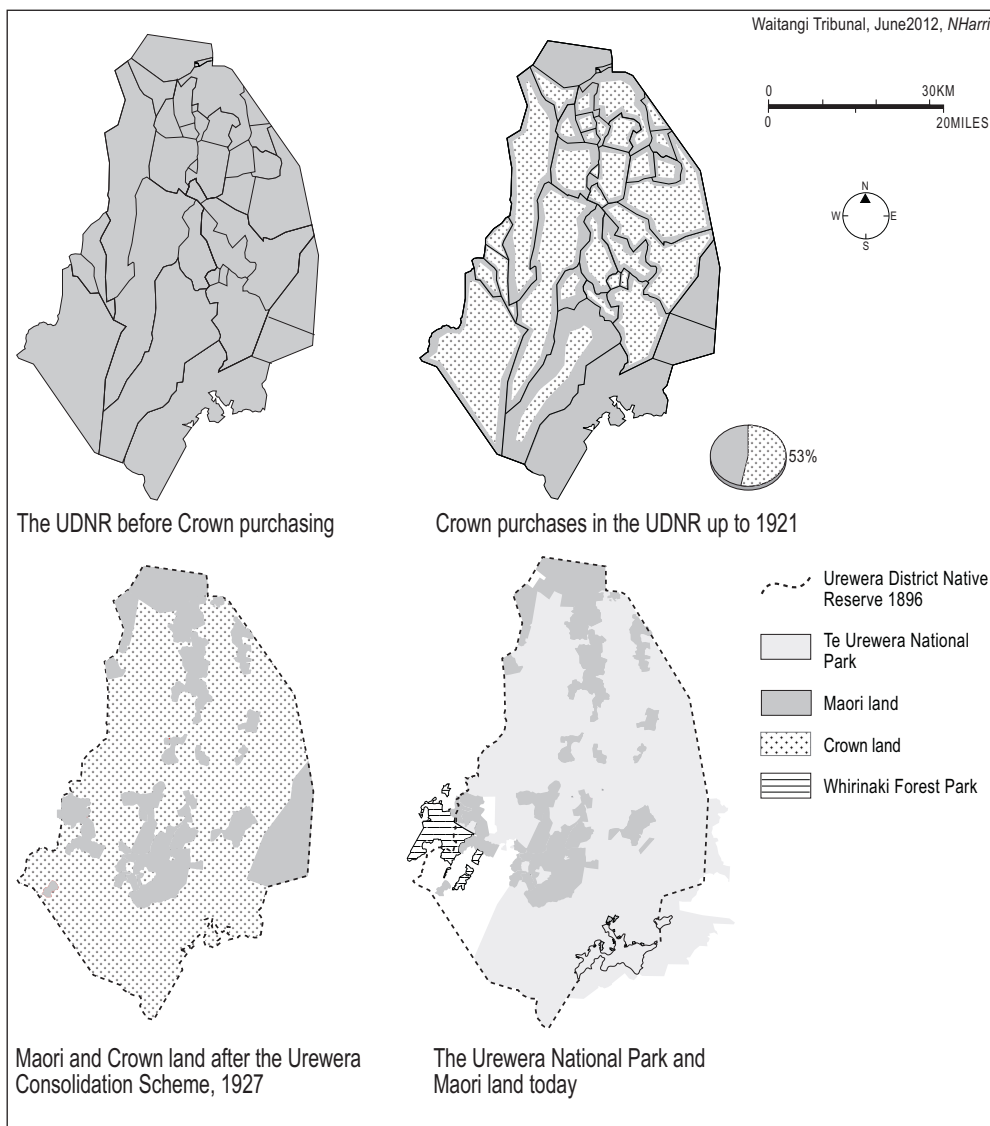
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PREFACE

This is part III of a pre-publication version of the *Te Urewera* report and constitutes chapters 13 to 16 of the report. As such, parties should expect that in the published version headings and formatting may be adjusted, typographical errors rectified, and footnotes checked and corrected where necessary. Photographs and additional illustrative material may be inserted, and some maps may be modified, added, or replaced.

The Tribunal is releasing a pre-publication version of its report at the request of the Crown and claimants in *Te Urewera* in order to assist them in their negotiations. The remainder of the pre-publication report will be released in further parts.



Map 13.1: From self-governing native reserve to national park. This map illustrates the sequence of events that led to the creation of Te Urewera National Park. The Urewera District Native Reserve, created in 1896, remained in full Maori ownership until 1910. By July 1921, the Crown had acquired 53 per cent of the Reserve in undivided interests. At the end of the Urewera Consolidation Scheme, the Crown had acquired a total of 482,300 acres (73 per cent). The majority of this land, with the further acquisition of the Manuoha and Paharakeke blocks, became Te Urewera National Park. Maori remain owners of approximately 20 per cent of the land that was originally the Urewera District Native Reserve.

The Honourable Dr Pita Sharples
Minister of Maori Affairs
Parliament Buildings
WELLINGTON



The Waitangi Tribunal
141 The Terrace
WELLINGTON

19 October 2012

Tēnā koe e te Minita e tū nei i te kei o te waka,

Me huri tuatahi ki tō tātou kaumatua a Tuahine Northover. Ko ia te amokapua o te taraipi-unara i ārahi i a mātou i ngā wā o te raru. Nā tōna ngākau pāpaku, me tōna matatau, i ārahi ia i a mātou i ngā piki mē ngā heke. E kore e warewaretia ngā pōraruraru mē ngā wero a te hunga kawē take a te iwi, i tūtaki ai mātou i runga i ngā marae puta noa i Te Urewera. Nō reira, mei kore ko koe ka hinga te tāhūhū o te whare. Ko koe te pou a te iwi i tū ai hei āhuru mōai mō mātou. Haere atu rā Tuahine 'he kokonga ngākau e kore e kitea'. He koha tēnei ki a koe.

I must first speak of the passing of our kaumatua, Tuahine Northover. He was the spirit of this Tribunal guiding us forward through many difficult days. It was his quiet grace and wisdom that carried us through many stormy seas. We will never forget the tribulations and the challenges that we faced as we went from marae to marae in Te Urewera hearing the claims of the people. On reflection it is clear that we could not have functioned properly without him. We would have stumbled and fallen. We were sheltered by the respect and love given to him by the people, and we are bereft at his loss. Farewell Tuahine, our thoughts are ever of you. This part of our report is for you.

In this, the third part of our report, we address one of the central grievances brought by the claimants to this inquiry: much of the land that in 1896 was protected by legislation as a self governing reserve for the iwi of Te Urewera, had been acquired by the Crown three decades later, and the Crown subsequently created Te Urewera National Park on that land.

The demise of their reserve through the Crown's relentless land purchase is a long-held grievance for the peoples of Te Urewera, and Tuhoe in particular. The question put to us by claimants during our hearings forms the title of this part of the report: how was it that a self-governing native reserve became a national park?

The grief and anger the people expressed to us can be appreciated only when it is understood how their self-governing aspirations were undermined by the Crown, and how they have become marginalised in their homeland. The Crown's actions during the

period covered by this part of our report represent a long-unfolding betrayal of the Treaty relationship between the Crown and the peoples of Te Urewera established in 1896. This betrayal has played out over a 100-year period through to today, and is made worse in the context of the multiple Treaty breaches that took place in the 30 years before the agreement was entered into in 1896.

Four themes run through our report:

- ▶ the Crown's defeat of promised self-governance;
- ▶ its repeated broken promises;
- ▶ extensive land loss; and
- ▶ the creation of a national park in Te Urewera which has come to symbolise dispossession.

In this part of our report, we reach the point where our findings on the loss of land by the peoples of Te Urewera are complete. It is a stark fact that by 1930, they retained just 19 per cent of the 1,266,000 acres in our inquiry district; and 25 per cent of the 656,000-acre reserve that Premier Richard Seddon had promised would be their permanent homeland only a generation before.

As a nation, we must be shamed by these events. To the peoples of Te Urewera who held such high hopes for a Treaty relationship with the Crown, they were a shattering blow.

You will recall that in the second part of our report we described Premier Richard Seddon's visit to Te Urewera in 1894. Tuhoe and Ngati Whare leaders met with him in the hope that they would finally see the policies of their governing council – Te Whitu Tekau – recognised. These policies, developed over a twenty-year period, were designed to give effect to mana motuhake in the management of tribal affairs, but also in partnership with the Crown. Terms for the self-governing Urewera District Native Reserve were agreed and legislation followed in 1896. The Reserve was to be managed by its peoples through elected hapu committees and a tribal General Committee, and to be effectively protected from alienation. We described this as a high water-mark in the relationship between the peoples of Te Urewera and the Crown. It was of national significance, because of the support the Crown gave at that time to the self-governing aspirations of Tuhoe. For the first time, the Crown placed its relationship with the peoples of Te Urewera on a genuine Treaty-based, and unique, constitutional footing.

But the great promise of this arrangement quickly dissipated; though not for lack of enthusiasm among Te Urewera leaders, who were anxious to see the institutions provided for in their special legislation take shape. The Crown subverted self government, first by its inaction, but later quite deliberately. It failed to take active steps to ensure that the tribal General Committee was set up expeditiously, in accordance with the steps in the Act. And it finally moved only when the Committee seemed to be needed to assist the Crown acquire land for settlement and to permit prospecting for gold.

Ten years after the Urewera District Native Reserve Act was passed, there was growing public pressure to 'open' land in the Reserve for settlement. And because there had been no tribal or hapu committees, and no opportunity to begin economic development in Te Urewera, some leaders were prepared now to sell land to raise funds for that purpose, although the general preference was to lease. The spiritual leader Rua Kenana, in particular, offered to sell some blocks in the hope of developing Maungapohatu lands for community farming. The protected status of the Reserve quickly became an inconvenience to the Crown, which began to develop new objectives for Te Urewera. By 1909, it had successfully orchestrated a route to achieving these objectives. The Crown finally allowed the General Committee, which was the only body that could authorise and conduct land sales, to be established, and members favourable to sale (including Rua) appointed to it. The first sales took place in 1910.

What followed in the next 10 years was a determined Crown assault on Te Urewera reserve lands, conducted with complete carelessness for the well-being of an entire tribal community. From 1915, after a pause, the Crown established a ruthless and efficient machine to buy shares in blocks from individual Maori owners. It could buy from individuals because the special commission it had set up under the 1896 act to determine ownership of Reserve blocks did not provide the hapu titles that Te Urewera leaders wanted and expected. Instead it determined lists of individual owners for each block. This reflected the practice of the Native Land Court, which cast a long shadow over the commission's proceedings. The General Committee should have protected both individual owners and their communities, as it was designed to do, because only the Committee had the legal power to sell. But the Crown now decided to bypass the General Committee. The Crown thus breached its fundamental undertaking not to purchase from individuals but to recognise and respect tribal collective control and management of tribal lands. The Native Land Court and individualised titles were supposed to have been banished from the Reserve for this very reason, but collective management was bypassed all the same and tribal leaders were unable to prevent the bleeding of individual interests. The Crown intended to buy as much of the Reserve as possible, and to do so from individuals; all for a pastoral farming scheme for settlers comprising several hundred large farms, on over half of the Reserve lands. For anyone with a passing knowledge of the terrain and quality of Te Urewera lands, this plan was pure folly. It must rank among the most ill-informed schemes in New Zealand's history.

Over a seven-year period, the Crown's land purchase officer combed ownership lists and pursued individual owners with great zeal. The Crown was completely undeterred by the impossible position of the sellers, who had been through famine and epidemics, and who continued to live in a state of abject poverty. They used the money to survive. The Crown's actions were contrary to Seddon's promises, and for a time, its purchasing activities were

unlawful. In 1916, the Crown simply legislated retrospectively to validate its purchase of individual interests. By the time Maori owners began to rally, petitioning the Crown to stop purchasing and coordinating opposition to the activities of the Crown's purchase agent, it was too late. By July 1921, the Crown had purchased 54 per cent of the Reserve.

The destructiveness of the Crown's purchasing campaign is worse because ultimately it was quite futile. It is a sad irony that when the Crown finally tried to sell land in the 1920s for farming, it could not sell a single block. Eventually, another purpose was found for the land. We have found that the Crown breached the Treaty principle of active protection by predatory purchasing in the great majority of blocks in the Reserve, by controlling valuations and prices, valuing Reserve lands by unlawful and flawed processes, and being quite unable to justify the prices it paid. It failed also to assign any value to the timber on Reserve blocks other than Te Whaiti 1 and 2; and it paid the Te Whaiti owners unjustifiably low prices for their very valuable timber, without considering the present and future importance of the timber resource to its owners.

The Crown conceded during our hearings that its failure to establish effective self-governing institutions and its purchase of interests from individuals was a breach of the Treaty. We have welcomed these as among the most significant Crown concessions in our inquiry. But they do not capture the depth or seriousness of the Treaty breaches committed during this period. For this reason, these events have received our full attention in this part of our report.

By 1921, with Maori owners steadfast in their refusal to part with any more shares, the Crown had a significant problem on its hands. It had purchased over half of the Reserve, but only in the form of undivided shares in many blocks. It had acquired a large interest, but it could not point to any piece of land it owned on the ground.

The Crown's answer to this dilemma was a consolidation scheme: that is, it would separate its interests from those of Maori, and pool them all in one large block. In this scheme, the Crown appointed its own commission, which was not independent and which controlled the proceedings and made the decisions and awards, even though the Crown was a co-owner in the land and thus an interested party. Maori owners, in our view, entered the scheme at a disadvantage. They had little choice, since they too had to know which blocks were theirs. But they did bargain hard at the start, and secured the pick of their lands in some areas (particularly the river valleys).

We have found, however, that the Urewera consolidation scheme as a whole was conceived and carried out in breach of Treaty principles.

The Crown argued in our inquiry that the consolidation scheme was designed and implemented to bring mutual benefits to Maori and the Crown. The one exception was the Crown's failure to complete the promised arterial roads, though this, in the Crown's view,

did not detract from the scheme's overall outcome. We were told that much of the historical research on the scheme commissioned for our inquiry was inadequate to resolve the issues raised by the claimants. The Crown commissioned no research of its own, but submitted extensive document banks, and asked us to inquire into the issues before us. We were left to pick laboriously through the opaque and often incomplete documentation produced at the time of the scheme in an attempt to understand how it worked. We note also that we have been further delayed by the diversion of Tribunal resources in 2012 to a flurry of urgent inquiries which have been given priority over other inquiries in progress.

The consolidation scheme took place over a period of four years. At its conclusion, 183 Maori-owned blocks had been created in nine areas of the former Reserve, totalling 106,287 acres. In 1927, the Crown's award of 482,300 acres was made. It included 71,500 acres that Maori owners had contributed to pay for arterial roads and surveys for their new titles. These were two cornerstone promises made to the Maori owners by the Crown at the start of the scheme. The roads would provide the newly made Maori-owned blocks with access to markets, and surveys would be done to give owners state-of-the-art land transfer titles, which would allow them to develop their land in the modern economy.

But the Maori owners were never issued with land transfer titles, and the roads were never completed. The Crown's cornerstone promises were not only completely dishonoured; they were also misguided from the start. Maori owners bore the full cost of surveying for titles they did not need. The type of survey plans produced for the Maori-owned blocks meant that they could never be registered in the land transfer system. The people were deprived of 31,500 acres for little benefit – a fifth of the land they were entitled to on entering the scheme. We asked ourselves whether Maori would have agreed to the scheme had they known they would lose one acre in every five of their remaining land to pay for surveys that would be of little practical benefit, and for titles they would never receive. We think not.

But a more significant failure – as the Crown acknowledged – was the fate of the two roads that Maori hoped would form the arteries for modern farming enterprises. They contributed land toward the cost of construction because they were misled into thinking if they did so the work would get started more quickly. But in fact they should never have been asked for a contribution towards the roads. Main roads at the time were often built by central government funds without a local contribution. Work on the roads was gradually abandoned shortly after it had begun. In exchange for 40,000 acres, between a quarter and a third of the arterial roads were built; much of which quickly fell into disrepair. The Crown later acknowledged its liability and reached a settlement in 1958 over this dishonoured promise; but the settlement did not take into account the impacts on owners who got dairy or sheep farming under way but were left stranded in some of their settlements without roads.

The consolidation scheme itself had other grave impacts. The Crown took advantage of the scheme to acquire prized forest assets in the Te Whaiti valley and lands in the Ruatahuna region. And the Crown acquired the large Waikaremoana block on the north of the lake in the course of the scheme, even though it had never purchased a single interest there, threatening compulsory acquisition of the block under scenic preservation legislation. The block was acquired from its Tuhoe, Ngati Ruapani and Ngati Kahungunu owners, who each reached their own settlement (under duress) with the Crown. This series of transactions left Waikaremoana peoples with only 4.3 per cent of their land surrounding the lake. Ngati Ruapani lost most heavily. The Crown broke its promise to find them more useable land to the south of the lake in exchange for their interests in the Waikaremoana block, and refused to make reserves of the size Ngati Ruapani wanted in that block. Instead, they were paid in debentures (a form of government debt). But in the last of what can only be considered as a series of shameful events, Ngati Ruapani beneficiaries were at times not paid interest due to them, and were left without an income during the depression when they needed it most. Over a period of sixty years the land holdings of Waikaremoana peoples were reduced to a mere fragment of their original size and for very little return.

By the end of the Crown's purchasing and the Urewera Consolidation Scheme Maori owners were left with only 25 per cent of their former Reserve. They were gravely prejudiced by land loss on this scale and the defeat of self-government that was so closely tied to it. The people's economic base suffered a crippling blow, especially on the back of large-scale losses (of lands outside the Reserve) in the nineteenth century. They have suffered endemic long-term deprivation. And as claimants to our inquiry repeatedly told us, any enthusiasm for a Treaty relationship with the Crown was significantly diminished in the wake of a betrayal of this magnitude.

This is the inconvenient and uncomfortable history that lies behind the creation of the Te Urewera National Park, so valued today. We hope that our report lays to rest the myth that the Crown acquired the park lands in fair and clean transactions. The Crown admitted in our inquiry that it obtained most of the park lands in breach of the Treaty, and this needs to be more widely known if grievances are to be properly acknowledged and resolved.

In 1952, the National Parks Act was passed, under which Te Urewera park was created in two stages. The first was in 1954 – a park of approximately 150,000 acres – centred around Lakes Waikaremoana and Waikareiti, established in the national interest and for the national benefit. The rest of its land was added to the park in 1957, thus forming the boundaries of the park as we know it today.

We have found that Te Urewera National Park was established in breach of the Treaty. But what was wrong was not a park per se, but the kind of park that was established. There need have been no inconsistency between the establishment of a park, in the national interest,

and the active protection of Maori interests in lands they will always regard as their ancestral lands, despite the Crown's title. Both interests could have been provided for. There was much Tuhoe support for conserving the forest resource provided they were able to utilise the timber assets on their remaining lands. But the park could have been smaller so as not to enclose significant parts of their lands. It could have been differently designed, perhaps as a forest park (like Tararua forest park, created at exactly the same time), which would have allowed for a greater range of public uses – including some milling. If a state forest had been established, there could have been controlled logging and pest control to protect enough forest to prevent erosion and control flooding. These were the twin key purposes of the park at the time – to protect the low-lying farmlands of the Bay of Plenty and Hawke's Bay, and the electricity-generating capacity of Lake Waikaremoana.

And if Tuhoe had been consulted, and the options discussed with them, a solution might have been found at the beginning. But they were not consulted, though the Crown had a clear Treaty duty to consult in such a case, where the entire fate of their remaining ancestral lands was at stake. The Crown missed a unique opportunity for a unique circumstance. No other national park was designed to enclose significant Maori communities and Maori land within its borders. It was obliged to have considered the fundamental needs and interests of those communities – ongoing customary use of the natural resources of the area and ongoing economic benefit from their remaining lands. But in the end a national park was established to protect and preserve the indigenous forests of Te Urewera; and Maori were overlooked, or inadequately provided for.

The prejudicial impacts on those communities, especially Tuhoe, have been severe. Public fears about milling led to Maori being denied the use of their own forest lands from the 1960s. And the Crown pressed to buy these lands too for the park. In the 1960s and '70s, its policy was to secure a mass-surrender of all Maori land in or adjacent to the park. It failed, though not for want of trying. When logging ended on Tuhoe lands in the 1970s it no longer needed to worry. Tuhoe lands, as one official said, had become virtual national park. The Crown breached the Treaty and its duty of active protection in restricting Tuhoe ownership rights and land development without sufficient cause.

Nor have the people derived much economic benefit from the park in return. There has been some opportunity in the past for income earning through pest control, and (on a small scale) from tourism. While we have not found a Treaty breach here, we think the Crown should take the necessary steps to ensure the park becomes an economic boon for its Maori neighbours, to the fullest extent practicable.

We have found that the national parks legislation also is in breach of Treaty principles. We understand that the legislation reflected not only the national interests, but the ideals of those interest groups who worked so hard for it to ensure the preservation of unique

landscapes. But we are surprised that Maori interests were so completely ignored. The peoples of Te Urewera should not have been put in a position where their customary uses, generations old – harvesting plants, and hunting- were transformed into offences unless they were authorised by park staff. This caused huge resentment from a feeling that the people had been marginalised in their own ancestral lands, with which their links had been maintained in the intervening years in a way that settlement would have precluded. Yet their rights and interests seemed to be accorded less recognition than those of park visitors. There was wide provision in the legislation, after all, for recreational uses and for modifying the environment to provide for visitors' needs. We are at a loss to account for the Crown's failure over time to amend the national park legislation to accord recognition and standing to Maori communities' responsibilities as kaitiaki, and to their sustainable resource use.

Finally, the Crown failed to provide for the peoples of Te Urewera to participate fully in the governance and management of the park. The minister appointed one or two Tuhoe representatives to the park board after 1961, and a Ngati Kahungunu member from 1974, and these members worked hard for their people. But it was minority representation, and it was not of right; they were too few to have any real power. In the day-to-day running of the park, local Maori have a greater involvement now than in the past, but they are still without statutory representation in the park's governance.

To the peoples of Te Urewera, particularly Tuhoe, the national park is the symbol of all that has gone wrong in their relationship with the Crown. To them, it is just a further stage in their dispossession, an extension of the raupatu of their northern lands in the 1860s, the brutal war that followed it, the work of the Native Land Court and large-scale land alienation in the 'rim' blocks, the defeat of their promised self-government, predatory purchasing in their Native Reserve and the resulting consolidation scheme, which further reduced their remaining core lands. And with that has come an embittered relationship with a Crown which has failed to honour its Treaty obligations and repeatedly broken explicit promises.

The Wai 262 Tribunal, in its recent report, stated that title-return and joint management arrangements have been carried out successfully for national parks in Australia, and could also be carried out here in appropriate situations. We can think of no more appropriate situation than that of Te Urewera National Park.

Heoi ano, naku na



P J Savage
Presiding Officer

ABBREVIATIONS

AJHR	<i>Appendix to the Journals of the House of Representatives</i>
app	appendix
ch	chapter
comp	compiler
doc	document
DOC	Department of Conservation
DSIR	Department of Scientific and Industrial Research
ed	edition, editor
fn	footnote
fol	folio
GPS	global positioning system
LINZ	Land Information New Zealand
ltd	limited
MA	Department of Maori Affairs file, master of arts
no	number
NZFS	New Zealand Forest Service
NZPD	<i>New Zealand Parliamentary Debates</i>
NZLR	<i>New Zealand Law Reports</i>
p, pp	page, pages
para	paragraph
PEP	Project Employment Programme
pt	part
s, ss	section, sections (of an Act of Parliament)
sec	section (of this report, a book, etc)
sess	session
TEP	Temporary Employment Programme
UCS	Urewera Consolidation Scheme
UDNR	Urewera District Native Reserve
UDNRA	Urewera District Native Reserve Act
UNESCO	United Nations Educational, Scientific, and Cultural Organisation
vol	volume

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, footnote references to claims, papers, and documents are to the Wai 894 (Te Urewera) record of inquiry, a copy of which is available on request from the Waitangi Tribunal.

CHAPTER 13

**TE NGAKAU RUKAHU (THE CROWN'S PROMISE PROVES FALSE):
THE FATE OF THE UREWERA DISTRICT NATIVE RESERVE**

13.1 INTRODUCTION

In the history of relations between the peoples of Te Urewera – particularly Tuhoe – and the Crown, the Urewera District Native Reserve Act 1896 (UDNR Act) was a watershed. It was a unique piece of legislation passed by the New Zealand Parliament to provide for Tuhoe self-government through a General Committee (te Komiti Nui o te Iwi) and local committees (nga Komiti Hapu) to protect and manage their lands within a formally constituted tribal district. The Native Land Court was to be excluded from the rohe, and titles would be determined instead by a commission comprising two Pakeha and five Tuhoe commissioners. The land defined as the Urewera District Native Reserve (the Reserve) was to provide permanent protection for the peoples, their lands, forests, birds, their taonga, and their customs and way of life. The passing of the legislation followed negotiations over a considerable period between Te Urewera leaders, Premier Seddon, and Native Affairs Minister Timi (James) Carroll. It seemed to herald a new era in Te Urewera, in which a lasting relationship between iwi and the Crown would be founded on mutual recognition of their rights and responsibilities.

But the promise of the UDNR Act – and the hopes of the peoples of Te Urewera – were not fulfilled. The undermining of the Reserve happened, at one level, with considerable speed – by 1900, four years after the Act had been passed, there was still no General Committee (key to iwi control of their affairs and their lands), and no immediate prospect of one. At another level, it played out painfully slowly over a generation: it was 1922 before the final act signalling the end of the Reserve (the repeal of the special legislation) took place. What went so badly wrong? And how far was the demise of the Urewera District Native Reserve, and the loss of so much of the land it was designed to protect, the Crown's fault? Why was there such a long delay – a delay that would be fatal – before the General Committee was set up, and why (after it was established in 1909) did the General Committee struggle to establish itself as a strong political force?

Why, from 1915, did the Crown embark on large-scale purchase of lands that in 1896 had been considered unsuitable for farming development and, in any event, were protected as a

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Maori reserve? Were the prices it paid for land and timber fair? We address these questions in this chapter. The Crown assisted us by making major concessions (as follows):

13.2 THE CROWN'S CONCESSIONS

The Crown conceded before us that in implementing its agreement with Te Urewera Maori as reflected in the UDNR Act 1896, it:

- ▶ Failed to establish an effective system of local administration and local governance.
- ▶ Made unilateral changes to key parts of the legislation, without effective consultation with Urewera Maori
- ▶ Purchased individuals' shares without the collective control of such actions by the General Committee. In purchasing, it did not follow the usual protective mechanisms applying to Crown purchases of Maori land between 1909 and 1921.
- ▶ These actions undermined the Crown's relationship with Urewera Maori and were a breach of the Treaty and its principles. The Crown did not act reasonably and in good faith.

In its concession of Treaty breach, the Crown ultimately accepted responsibility for the 'parlous state of affairs that existed in the Urewera district' as a result of its own actions and omissions in failing to implement the local governance provisions and in purchasing undivided shares in the Reserve. It added that: "The key points of difference lie in the explanations offered by claimants and the Crown for this state of affairs."

We return to these concessions – and these various explanations – in our discussion below. But the major points we take from the concessions are:

- ▶ that the Crown failed to deliver on its promise of self-government in the Urewera District Native Reserve, despite passing special legislation to give effect to it;
- ▶ that the entire purchase regime under which it subsequently conducted purchases in the Reserve was defective: purchases were made from individuals illegally, rather than from the General Committee, and all purchases between 1910 and 1916 were made in defiance of the provisions of the UDNR Act; and
- ▶ the Crown's acceptance of responsibility for the grim consequences of its acts and omissions in implementing the UDNR Act is of great significance for the claims before us. The Crown has accepted ultimate responsibility for the failure to ensure that the UDNR Act was implemented.
- ▶ this failure meant the peoples of Te Urewera did not have the opportunity to exercise the self-government which had long been so important to them, which they had negotiated with the Crown, and which they had been promised.

1. Crown counsel, closing submissions, June 2005 (doc N20), topics 14–16, p 9

These concessions vindicate the claimants' long-held view that the conduct of the Crown that destroyed the Urewera District Native Reserve constituted a direct attack on their mana motuhake. The concessions do not, however, acknowledge the breadth and seriousness of the claims, and therefore we must consider those claims in detail and decide whether they are well founded. It is particularly important to understand how and why the Crown failed so comprehensively.

13.3 ISSUES FOR TRIBUNAL DETERMINATION

Our two key questions for this chapter are:

- ▶ Why were the self-government provisions of the UDNR Act defeated?
- ▶ Why and how did the Crown purchase extensively in Reserve lands from 1910?

Our second question includes an analysis of valuations and prices paid for Reserve lands and timber.

The chapter concludes with our findings of Treaty breach. We defer until chapter 15 – that is, until after our discussion of the Urewera Consolidation Scheme in chapter 14 – our consideration of the extent of the prejudice caused by these breaches to the peoples of Te Urewera. This is because the consolidation scheme (by which titles in the former Reserve were completely reorganised as the Crown converted the thousands of interests it had purchased into a single massive block of land) was itself a product of the defeat of the Reserve by Crown acts and omissions.

13.4 KEY FACTS

13.4.1 Establishment and work of the first Urewera commission

The UDNR Act 1896 (Ture Rahui Maori o te Takiwa o Te Urewera 1896) established a Native Reserve estimated at the time to comprise approximately 656,000 acres. The Act provided for the establishment of self-government in the Reserve, through local committees (nga Komiti Hapu) and a General Committee (te Komiti Nui o te Iwi). The Native Land Court was excluded from the rohe (which was defined in a schedule to the Act). Instead, a special commission was empowered to divide the Reserve into blocks; to investigate their ownership 'with due regard to Native customs and usages'; and to make orders recording the names of owners of the blocks, and the relative share of each family and of each individual within that family. Blocks were to be defined, where possible, along existing 'hapu boundaries', and located on sketch maps prepared (and paid for) by the Crown.

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The commissioners were to appoint a provisional local committee for each block that would hold office until permanent local committees were elected. Each permanent committee would then elect one of its members to a General Committee that would have the power to 'deal with all questions affecting the reserve as a whole', and to alienate land to the Crown. Other powers and functions of the local and General committees were to be specified in regulations.

Membership of the first Urewera commission was not finalised till February 1898. In accordance with the Act, seven members (two Pakeha, five Tuhoe) were appointed. The five Tuhoe leaders had been elected quickly by the people by December 1896: Numia Kereru (Ruatoki); Mehaka Tokopounamu (Te Houhi); Kutu (Ruatahuna), later replaced by Tutakangahau (Maungapohatu); Hurae Puketapu (Waikaremoana); and Te Whiu (Waimana), later replaced by Te Pou Papaka. The non-Tuhoe members initially gazetted were Native Land Court Judge WJ Butler and JM Roberts, stipendary magistrate from Tauranga, though S Percy Smith (the Surveyor-General) replaced Roberts by February 1898. In December 1898, Elsdon Best, then employed by the Lands Department, was asked to act as secretary to the commission.

During this period a number of hui were held at which Tuhoe discussed the terms of the UDNR Act and considered their position on its provisions. Tuhoe leaders sent letters to Carroll and Wi Pere, the member of the House of Representatives for Eastern Maori, asking them to attend a meeting; and to Seddon to inform him of events in the district – including outbreaks of illness late in 1897, and the destruction of crops by unseasonal frosts across the entire district early in 1898 – which also badly affected Ngati Whare and Ngati Manawa. A slow Government response was finally galvanised by Seddon in April, and relief supplies (to be paid for by work on roads) and gifts of seed potatoes were sent.

In September 1898, a delegation of Tuhoe leaders met Seddon and other parliamentarians in Wellington. They reaffirmed their support for the UDNR Act, and urged that the commissioners begin work as soon as possible, and that the General Committee be brought into operation. The status of the Ruatoki block, where tensions had been rising, was discussed. Its title had already been determined by the Native Land Court in 1894, and appeals had then been heard by the Native Appellate Court, yet the boundaries of the Reserve had been drawn so as to include the block. The delegation also raised the question of the flag bearing the words 'Te Mana Motuhake o Tuhoe' (the separate authority of Tuhoe), which they sought in the wake of an earlier petition from Ruatahuna and Maungapohatu sent by Tutakangahau. Seddon replied at length to all the matters raised; in particular, he spoke about the work of the commission and processes for appointing the local committees and General Committee.

The Urewera commissioners first met between February and April 1899, and during this period sat in 10 locations in and around the district. Regulations were gazetted in December

1898: four commissioners (one Pakeha, three Maori) were to be a quorum; the chairperson would be a Pakeha; in his absence the other Pakeha would act as chairperson. By April 1899, when their initial sittings concluded, the commissioners had obtained lists of claimants in 57 blocks, and ‘learned approximately their boundaries.’² They had also decided that a full investigation of title for the whole Reserve would be needed to determine boundaries suitable for division into districts. Internal surveys began in October 1899, with three survey teams working continuously in the Reserve until 1902.

In 1900, the Urewera District Native Reserve Act (UDNR Act) Amendment Act was passed – the first of a number of amendments to the principal Act. The amending Act’s preamble highlighted the need to clarify matters relating to the Ruatoki block. It brought the block within the jurisdiction of the Urewera commission, and cancelled all previous land court orders affecting the ownership of the block. The scope of the amending Act was broader, however. The powers of the commissioners were extended. Because of the delay in settling titles, the commissioners were empowered to take on ‘all matters which the [General] Committee, if appointed, might deal with’; their decisions would be binding on all owners. Maori commissioners with an interest in any block were required to abstain from sitting or voting. In such cases, instead of deciding matters themselves, the European commissioners might, with the approval of the Native Minister, appoint two Maori ‘not members of the Tuhoe tribe’ to assist in title determination; they would, for the time being, be full members of the commission.

The Urewera commission sat for a further 176 days between February 1900 and October 1902, hearing claims on a block-by-block basis. Percy Smith retired at the end of the 1900 hearings and was replaced by Judge Scannell, who was elected chairman of the commission. Gilbert Mair replaced Judge Scannell for the Ruatoki block hearings, with Judge Butler as chairman. The commission delivered its final report on 6 August 1902, including a sketch plan of the district now divided into 34 blocks. Orders had been made for all blocks except the Ruatoki blocks (held over till later in the year). The awards were published in the *Kahiti* and *Gazette* on 5 June 1903; under the Act, Maori had 12 months within which to appeal to the Minister of Native Affairs. There were 172 appeals in respect of the main blocks, and 49 in the Ruatoki blocks.

In October 1902, the commission, in accordance with section 16 of the UDNR Act, recommended members for each of the provisional local committees, which in turn were based on lists of names submitted to them by the conductors of cases. In 1903, the commission’s awards were gazetted (as was required by section 9 of the 1896 Act) but nothing further was done to appoint the committees.³

2. The Commissioners gave the figure of 57 blocks in their June 1899 report (‘Annual Report on Department of Lands and Survey’, AJHR, 1899, C-1, p xi); in their 1902 report they referred to claims for 58 blocks (AJHR, 1902, G-6).

3. Section 16 of the Act provided that the provisional committee members were to be appointed by the Commissioners ‘in the prescribed manner’. No regulations were made prescribing the manner of appointment.

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13.4.2 The hearing of appeals

It was late in 1906 before a second commission – variously referred to as the second Urewera commission, or the Barclay commission – was appointed to inquire into the appeals. It comprised Gilbert Mair, Paratene Ngata of Ngati Porou, and David Barclay (a clerk and interpreter for the Native Land Court and an interpreter in the House of Representatives). The commission sat between December 1906 and March 1907 at Wairoa, Whakatane, and Te Whaiti, while Ngata and Barclay heard the appeals relating to the Ruatoki blocks at Ruatoki in February and March 1907, reporting in May and June respectively.

Among the appeals were those in respect of Te Whaiti block by Ngati Manawa, Ngati Whare, and Tuhoe, and those of Ngati Kahungunu, who had had only limited representation before the first commission in respect of the Maungapohatu and Tauranga blocks, and none at the Waikaremoana hearings. The second commission's awards resulted in an increase in the number of named owners in the blocks overall, and the commission recommended boundary changes in 10 of the blocks. The awards were confirmed by the Minister of Native Affairs (Carroll), and in 1908 the appointment of more than 30 provisional local committees, in accordance with the commission's recommendations, was validated. A number of changes had been made to membership of the various committees since the 1902 lists were recommended.

The UDNR Amendment Act 1910 was passed specifically to provide for a limited right of appeal from orders of the commissioners under the principal Act. Such appeals might be heard by the Native Appellate Court, though the chief judge could grant leave to appeal only with the prior consent of the Governor in Council.

In 1912, the chief judge of the Native Land Court reviewed 70 applications for appeal, refusing those that did not meet the threshold required for a hearing by the Native Appellate Court. (Section 50 of the Native Land Act 1909 provided that the chief judge could grant an appellant leave to appeal if he was satisfied there was a prima facie case of error of fact or of law in any final order of the court.) Forty-four applications obtained leave to proceed to the appellate court on a full or limited basis. Mostly the successful appeals resulted in the adjustment of owners or of relative shares. They were heard from November 1912 to February 1913 in Taneatua by Chief Judge Jackson Palmer and Judge WE Rawson.

A number of petitions appealing the decisions of the Urewera commission in respect of several blocks were later presented to Parliament, and went before the select committee, but these were ultimately unsuccessful.

13.4.3 The establishment of the General Committee, 1909

The election of provisional local committees was not validated until 1908, following the awards of the second commission. By this time, the Crown was concerned about

prospecting and mining within the Reserve. Seddon himself had been interested in these possibilities, and his memorandum of 25 September 1895 (appended as a schedule to the Act) confirmed that the Government intended sending a mining expert to teach Maori how to prospect for gold and other minerals, if they wished to do so; and that the hapu should share in any returns from gold-mining operations in Te Urewera.⁴ Though the Government had warned private prospectors against trying to enter the district from 1896, there were renewed applications from prospectors from 1905. Carroll went to meet Tuhoe at a major hui at Ruatahuna in March 1906, where the opening of Te Urewera for gold prospecting and the setting up of the General Committee were discussed. As there were still no local committees, a general committee could not be elected under the provisions of the UDNR Act, but Tuhoe elected a large representative body, Te Komiti Nui o Tuhoe, with 94 members and Numia Kereru as chairperson. It seems that Carroll submitted proposals to the hui and that agreement was reached on framing regulations. A delegation of chiefs was selected to go to Wellington in June to work with the Government on the matter, but doubtless because of Seddon's death early that month, the meeting did not take place. It did, however, take place later. In November 1907, the Urewera district became subject to the Mining Act 1905.⁵

From the beginning of 1908, a number of hui were held between Te Urewera leaders and Government representatives. By this time, the second Urewera commission had completed its hearings of appeals and had issued its report; it had also made its recommendations for the membership of provisional local committees. In January 1908, Apirana Ngata, then a member of the Native Land Commission, met with Te Urewera leaders at Ruatoki. This commission, comprising the Chief Justice Sir Robert Stout and Ngata, had been appointed a year earlier to report on the best way of using 'unoccupied or not profitably occupied' Maori land throughout the North Island, and to categorise Maori land in one of several ways: required by its owners; available for their future settlement; or available for Pakeha settlement.⁶ Ngata put several matters to the leaders, including the need to move quickly to establish the General Committee and the amount of money owed to the Government for survey and Urewera commission hearing costs, which owners might assist with by ceding some land, since there was a great demand for it. A considerable measure of agreement was reached at the hui, and Stout and Ngata reported formally on the visit (as they did at the conclusion of their visit to every district). They advised that the local committees and the General Committee should be set up to exercise their powers (specifically powers of alienation) under the UDNR Act, and suggested that to avoid delay the provisional committees (rather than the permanent local committees) should now proceed to elect the General

4. Urewera District Native Reserve Act 1896, sch 2

5. By section 7 of the Maori Land Claims Adjustment and Maori Land Laws Amendment Act 1907.

6. 'Interim Report of the Commission Appointed to Inquire into the Question of Native Lands and Native-land Tenure', 21 January 1907, AJHR, 1907, G-1, pp 1-ii (quoted in Donald M Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), p 51)

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Committee. Ngata told the chiefs that his Commission could report only in a general way on Reserve lands, because they were outside its jurisdiction.

At the end of March 1908 a further hui was held to elect the General Committee. It was preceded by a visit by Premier Joseph Ward to Whakatane. Here he met the spiritual leader Rua Kenana, who had attracted a widespread following throughout Te Urewera and the Bay of Plenty, and founded his new community, the City of Zion, at Maungapohatu. On the face of it, this was a surprising meeting, given that the Government had earlier perceived Rua as a ‘disruptive authority figure.’⁷ A group led by Numia Kereru was also present, and the Premier addressed both Rua’s group and Kereru’s at the end of his private interview with Rua. Two days later, the provisional committees elected 32 members to the General Committee, with the agreement of all at the hui. Carroll, who had attended the first day of the hui, stressed the importance of such a committee for ‘opening up the vast area of Urewera country for settlement and prospecting for minerals.’⁸ Prospecting and mining rights were a major topic at the hui, and it was agreed that the Reserve be opened for prospecting in accordance with regulations made by the General Committee. It was also agreed that some parts of the Reserve be leased.

In fact, the new General Committee was not immediately gazetted. It had not been elected by permanent local committees as the UDNR Act required – the committees were still provisional committees. An amendment to the Act later in 1908 deemed the provisional local committees to be permanent local committees. At the same time, the Native Minister substantially reduced the number of members of the General Committee (to just 20), and it was provided that the members be appointed, rather than elected. Numia Kereru, the chairperson of the informal General Committee, was invited to choose the 20 members to be appointed.

The General Committee was officially established in March 1909, more than 12 years after the UDNR Act was passed. None of Rua’s followers were members of the local committees, and none therefore was eligible for the General Committee. Shortly after the General Committee was gazetted, the Governor, Lord Plunket, visited Ruatoki (Tauarau), evidently at Kereru’s invitation. Rua and some 200 of his followers stayed at another marae in Lower Ruatoki, and the vice-regal party stopped at the marae on their way back to Whakatane. Ngata introduced Rua to the Governor. Later, Ngata met with Rua and Kereru separately. He then reported that, to bring the two parties together, he had expanded the General Committee to 34 – one member for each block – and asked Rua’s people to nominate 14 to act with the 20 legally appointed members. The additional members were to be ‘consultative,’

7. Cecilia Edwards, ‘The Urewera District Native Reserve Act 1896, pt 3: Local Government and Land Alienation Under the Act’ (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(b)), p 17

8. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 57

that is they would not have voting rights.⁹ Ngata said the district was at once to be opened to prospecting.

In November 1908, Rua was reported to have offered some 100,000 acres for sale to Carroll. In February 1910, he complained that he had not understood that the General Committee retained a power of consent over the sale of land to the Crown; he did not wish the mana to sell to lie with the committee and therefore indicated that he was withdrawing his proposals to sell. Soon afterwards, in May 1910, Ngata met with the General Committee. The Government had by this time made a further amendment to the UDNR Act (the UDNR Amendment Act 1909) empowering the Governor to remove any member of the General Committee and appoint any other owner of land within the Reserve in his place. Ngata moved that five of Rua's people (including Rua himself) be appointed to replace five vacant seats; this was done, with the agreement of the chairperson. The meeting then approved the proposed sales, including those of land at Maungapohatu and Tauranga (both moved by Rua), as well as at Otara and Paraoanui North.

These developments triggered the dispatch to Te Urewera of a Government official, Andrew Wilson of the Lands and Survey Department, to value Reserve blocks so that purchase prices could be set. The Crown then began buying in designated Reserve blocks from individual owners. It did not buy from the General Committee, as the law required. Further offers of shares in Ruatoki 1, 2, and 3, and the Waipotiki, Karioi, and Whaitiripapa blocks were made to Carroll by Rua and some of his followers during a visit to Wellington in August 1910. In September, the Native Land Purchase Board (which conducted purchases on behalf of the Crown) decided to purchase the interests and advance payments to the owners, though the General Committee had not yet agreed to the purchase of land in the blocks, as required by the UDNR Act. Meantime, the General Committee had met at Waimana in August 1910, and agreed to sales in four other blocks – Waikarewhenua, Tauwharemanuka, Paraoanui South, and Omahuru. All the sales were moved by Mika Te Tawhao and three were seconded by Rua, and the offers were confirmed at a later meeting of the General Committee. Thus, by September 1908, the General Committee had approved the sale of eight blocks – or, more probably, of portions within them. Purchasing did not begin in every block offered; by 1912, when the first phase of Crown purchasing was over, it had extended into 13 blocks.¹⁰

9. Ngata telegram, 31 March 1909, MD1, file 6/4/6, Archives New Zealand, Wellington (quoted in Edwards, 'Urewera District Native Reserve Act 1896' (doc D7(b)), p 82)

10. Undated return circa 1913, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (cited in Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 126–127); see also the summary attached to Native Minister, prime ministerial briefing paper, March 1915. Blocks not included in these lists were Whaitiripapa (one of those approved for sale by the General Committee in September 1910) and Tauwhare-Manuka (approved in August 1910): see Herries to Prime Minister, 20 March 1915, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington (Edwards, comp, supporting papers to 'The Urewera District Native Reserve Act 1896, pt 3: Local Government and Land Alienation Under the Act' (doc D7(b)(i)), pp 156–161); Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 120–122, 141.

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Purchasing was halted initially because of lack of funds, and then because the Government was waiting for appeals from awards of the second Urewera commission to be heard in the appellate court, so that titles to all blocks would be finalised. Between 1910 and 1914 the General Committee did not meet, and it met only once in 1914 – its last meeting. From the beginning of 1915, the Reform Government stepped up Crown purchasing in the Reserve. Officials were sent to Te Urewera again to value Reserve blocks and standing timber. Their report envisaged a farming settlement scheme for much of the Reserve, suggesting that some 370,000 acres would settle about 350 settler families, and assigning valuations to over 30 Reserve blocks. They stated that the timber had no commercial value, except for that of the Te Whaiti blocks, which was clearly superior. The officials advised the Government to secure the Te Whaiti timber – though the price paid to owners should be discounted because the Crown would not need to mill it for some time to come.

The Crown proceeded with purchase in accordance with the provisions of the newly passed Native Land Amendment Act 1913 (which governed Crown purchase throughout the country but did not, in fact, apply to the Reserve), and bought from individual owners – ignoring the specific provisions of the UDNR Act, which required it to deal with the General Committee. In 1914, the Native Land Purchase Board decided to acquire individual interests in Reserve blocks already under purchase, and over the rest of the decade, purchasing was extended into nearly every block – a job entrusted to Crown agent W H Bowler. The Crown's earlier and future purchases were validated by a section in a washing-up Act, the Native Land Amendment and Native Land Claims Adjustment Act 1916. The Native Minister stated in the House that the clause was necessary because there was 'some doubt' as to whether Crown purchases were legal under the UDNR Act, and its purpose was to validate earlier purchases and to ensure that future ones would be considered valid.

From 1910 to March 1921, the Crown purchased shares equivalent to some 330,000 acres in Reserve blocks. Te Urewera owners retained the equivalent of some 322,000 acres. Blocks not subject to Crown purchase amounted to approximately 130,000 acres.

Growing Crown anxiety about applications by Maori owners for partition of blocks, which were perceived as increasing the risk that purchasing might be impeded, or that the Crown might not ultimately be able to secure parts of blocks it wanted, led to the revoking in 1916 of the land court's jurisdiction to partition land in certain blocks. Maori owners secured the partition of only six blocks before 1921, including Te Whaiti and Ruatoki. Special provision was made for the land court to partition these two blocks by the Native Land Claims Adjustment Act 1911, which directed the court to do so on hapu and iwi lines. After 1915, Crown officials held back from seeking partition of Crown interests in the many blocks it was buying into, hoping to purchase a greater number of Maori shares and thus increase the amount of land it could secure. Eventually, it was obvious that it could not buy

all the shares in any one block, and by the end of 1919, officials were considering a scheme to consolidate all the interests the Crown had purchased in the Reserve.

In 1922, the UDNR Act and all its amendments were repealed by the Urewera Lands Act 1921–22 (as recommended in a report on a proposed Urewera Lands Consolidation Scheme). The ordinary law was now to be applied to Reserve lands.

13.5 ESSENCE OF THE DIFFERENCE BETWEEN THE PARTIES

13.5.1 Why were the self-government provisions of the UDNR Act defeated?

The claimants submitted that there were delays in key appointments both to title-determining and appeal bodies (the commissions) and to self-governing bodies (the committees). The establishment of the committees depended on title determination being completed. Counsel for Wai 36 Tuhoe claimants submitted that the Crown failed to provide interim committees during the lengthy period when title determination was being conducted, though this was requested by Tuhoe, and it would have been easy to provide for – the UDNR Act was, after all, amended without difficulty when the Crown wished to do so for its own purposes. The unanticipated delays in determining ‘ownership’ under the UDNR Act were ‘allowed’ by the Crown to become a direct cause of delays in establishing local committees and the General Committee. The Urewera commission’s approach to its task contributed greatly to delays, since the commissions operated in a similar manner to the Native Land Court, determining ‘best and exclusive interests’ rather than simply providing for hapu interests within the overall Reserve.¹¹

Once the local committees and General Committee were established, counsel argued, they were unable to be effective because they lacked the ‘genuine support’ of Carroll and Ngata. The General Committee was never an effective vehicle for the exercise of rangatiratanga within the Reserve. Its membership was manipulated by Ngata and the Crown, once legislative changes had been made to allow Crown interference with Tuhoe’s right to elect the General Committee. And by the time the Committee was established in 1909, the Crown was only interested in its role in facilitating land alienation to the Crown.¹² The Tuawhenua claimants stated that the Urewera commission’s approach was inconsistent with the Act and took far too long, yet the Crown did nothing to fix the situation. It failed to require the commission to review its procedures and objectives in light of its interim report to the Crown of 1899, and the results of that report, when the divisiveness, and inadequacies of the commission had become clear.¹³ In fact, the claimants submitted, the Government withheld the establishment of the General Committee ‘precisely because of Tuhoe’s focus

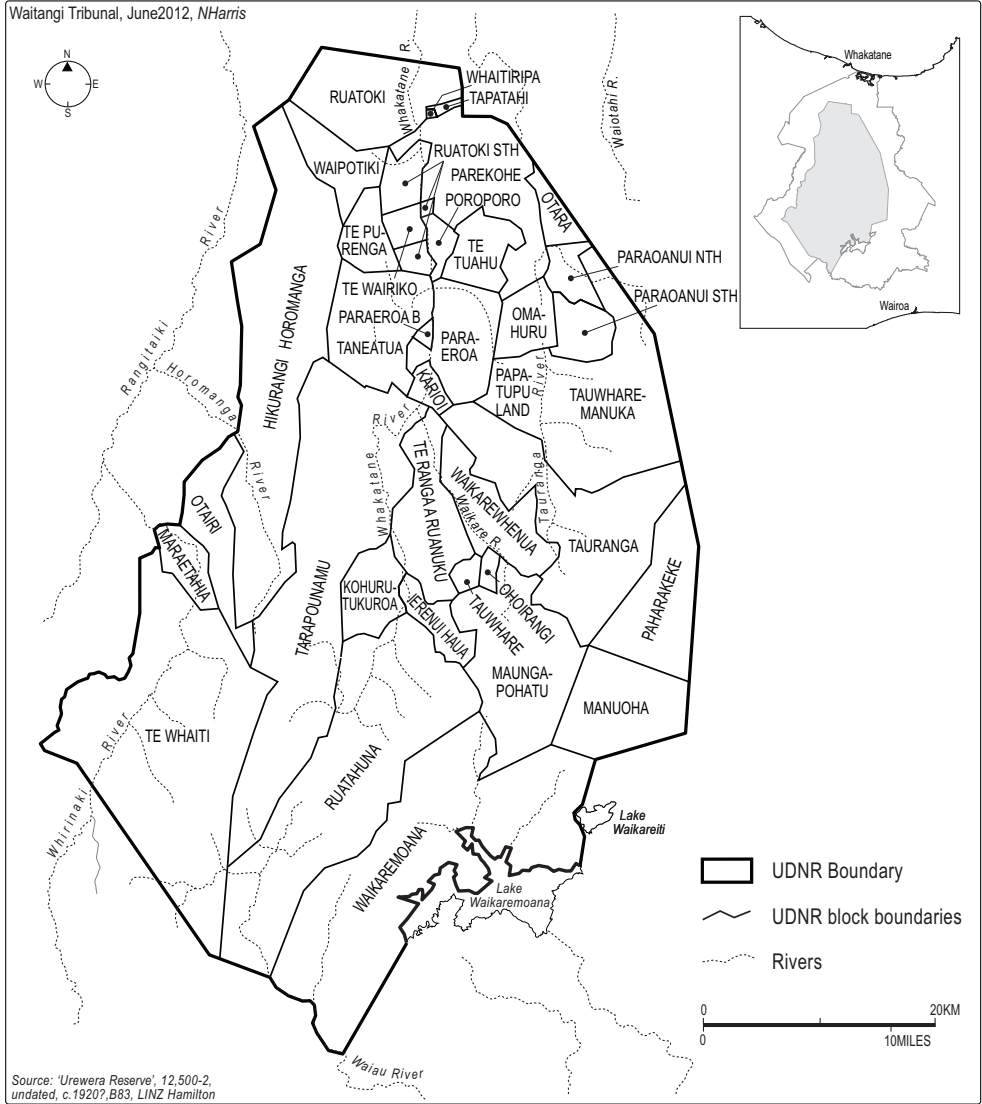
11. Counsel for Wai 36 Tuhoe, closing submissions, 31 May 2005 (doc N8(a)), pp 89–90

12. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 89–90

13. Counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), pp 143–145

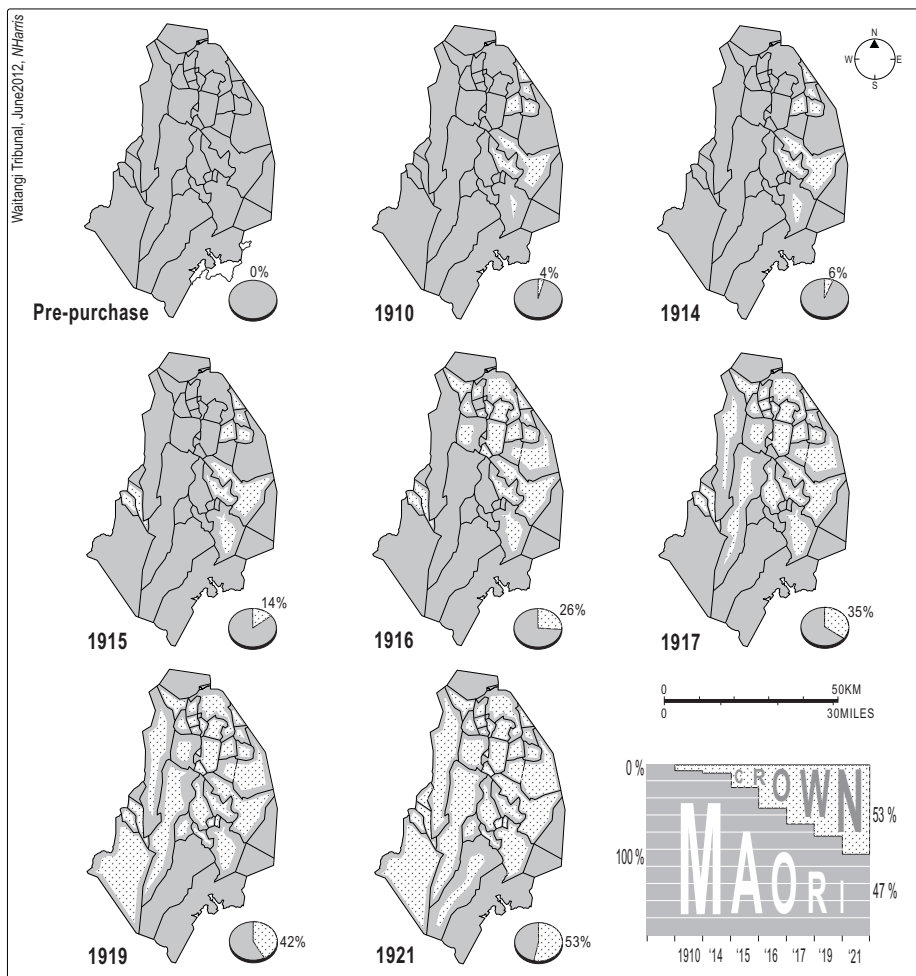
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13.3 THE BLOCKS OF THE UREWERA DISTRICT NATIVE RESERVE

The first Urewera Commission created 34 blocks in the UDNR, which increased to 40 by the end of the second Commission. This map shows the boundaries of the 40 blocks as they were given in 1907.



13.4 CROWN PURCHASING IN THE UREWERA DISTRICT NATIVE RESERVE 1910-1921

This map illustrates the extent of Crown purchasing in different UDNR blocks in various years. Crown purchases and remaining Maori interests are visual representations and do not indicate which particular land within each block was acquired by the Crown or which remained in Maori ownership. The Crown's purchases remained as undivided interests until the Urewera Consolidation Scheme.

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on the . . . committee as the mechanism to maintain unity and protect their lands.¹⁴ Only when the committee could serve the Government's own purposes of enabling the purchase of Tuhoe land was it finally established in 1909.¹⁵

Ngati Whare submitted that the relationship between the process of title investigation, the kind of title that would result, and the mechanisms of self-government was not well thought through, and not well articulated before the Act was passed. The commission hearings were drawn out and stressful. The Crown could have done something about the delays in setting up the first and second commissions that inhibited the development of local self-government entities. There was no good reason for the four-year delay before appeals were heard by the second commission.¹⁶ The Crown then meddled with the governance structure set out in the UDNR Act by various amendments to the Act – without consulting Ngati Whare at all. The Crown failed to ensure the timely creation of a local committee for Te Whaiti as well as of the General Committee.¹⁷

The Crown stated that the three obstacles in the way of fulfilling the local government principle were 'the length of time it took to settle the titles, the decision to derogate from the principle of defining hapu boundaries in favour of larger land blocks that included multiple hapu groupings, and government's decision to purchase undivided interests in the Reserve'.¹⁸ In the Crown's view, the length of time it took to settle titles and the decision to opt for larger blocks was a 'reasonable response to the local circumstances as the Commission found them to be'. And the first commission made an informed choice on this. The Crown acknowledged, however, that an 'unduly long' time elapsed between the passage of the Act and the convening of the first commission, and again before the establishment of the appeals body (the second commission). These delays 'contributed to the failure to fulfil the local governance principles under the Act'.¹⁹ Counsel were prepared to concede that '[a]n opportunity was missed' in 1902, when provisional local committees were not appointed (as the owners had recommended). Even though appeals were being lodged, there did not appear to be any obstacle to appointments being made at that time.²⁰

The Crown identified the 'key failures' of the title-determination process adopted by the Urewera commission as the:

apparent failure to provide a process that included all claimant communities before the Urewera Commission's investigation, the delay in dealing with the appeals . . . and the work

14. Counsel for Tuawhenua, closing submissions (doc N9), pp 131–132

15. Counsel for Tuawhenua, closing submissions (doc N9), p 132

16. Counsel for Ngati Whare, closing submissions, undated (doc N16), pp 60, 64

17. Counsel for Ngati Whare, closing submissions (doc N16), p 69

18. Crown counsel, closing submissions (doc N20), topics 14–16, p 49

19. Crown counsel, closing submissions (doc N20), topics 14–16, pp 49–50

20. Crown counsel, closing submissions (doc N20), topics 14–16, p 61

required to complete the titles (full survey and registration) in order that they [could] function as Maori freehold titles after the changes to the Act in 1909 (which was not undertaken).²¹

Counsel denied, however, that the commission was really like the land court; and, above all, they did not concede that there was anything wrong with the kind of title defined by sections 6 and 8 of the Act, or with the implementation of the title-determination provisions of the Act. They made no explicit concessions about the nature of the title-determination process, but argued that the process adopted by both commissions, and the provision of an appeals process through the appellate court, were appropriate.

The Crown conceded that the Government failed, at a critical point, to provide regulations ‘that might have assisted the Local Committee and the General Committee to begin to work as effective corporate bodies, enjoying the confidence of both the community of owners and the government’s representatives’. Such failure might indicate that it was never intended that the structures should work successfully, or might be the outcome of ‘neglect, oversight and bad advice’. The Crown submitted that the evidence suggested that the latter reason was more likely.²² The failure of the General Committee as a mechanism, moreover, ‘cannot be fully explained by an absence of regulations’. Counsel pointed instead to the strains within the General Committee, ‘graphically illustrated by the divisions between the traditional leadership structure and Rua and his leadership of a very significant portion of Urewera Maori’.²³

The Crown rejected what it called ‘allegations . . . of conspiracy’ levelled against Ngata by the claimants: that he played off Numia Kereru and Rua Kenana against each other with the object of encouraging land sales; and that he cut a deal with Rua (whom he despised) whereby Rua would not be prosecuted under the Tohunga Suppression Act 1907 provided he sold land to the Crown. Crown counsel denied there was any ‘probative evidence’ to support such allegations. In fact, they maintained, it would appear from the evidence that every encouragement was given to Numia Kereru and Rua to settle their differences.²⁴ Counsel for Wai 36 Tuhoe denied arguing a ‘grand conspiracy’ on Ngata’s part; their case simply was that Ngata’s primary motive was to acquire Maori land, ‘and that he exploited the opportunity that Rua presented’.²⁵

Finally, in broad terms, the Crown, while accepting responsibility for the failure of the UDNR Act, denied that failure had been intended. The Crown did not set out to subvert the agreed principles embodied in the UDNR legislation. Failure was the result of many factors, including delays, lack of institutional knowledge, changing local circumstances, lack

21. Crown counsel, closing submissions (doc N20), topics 14–16, p 7

22. Crown counsel, closing submissions (doc N20), topics 14–16, p 72

23. Crown counsel, closing submissions (doc N20), topics 14–16, p 76

24. Crown counsel, closing submissions (doc N20), topics 14–16, pp 8, 71–75

25. Counsel for Wai 36 Tuhoe, closing submissions in reply, 9 July 2005 (doc N31), p 18. Counsel referred to his cross-examination of Crown witness Cecilia Edwards: see Edwards, under cross-examination by counsel for Wai 36 Tuhoe, Taneatua School, 4 March 2005 (transcript 4.14), pp 242–273.

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of appropriate consultation, the failure of ministers and officials to pay attention at key times, placing Crown interests in buying land ahead of the needs of owners, and a lack of unity within Te Urewera communities. Thus, among the factors working to undermine the success of the General Committee was the challenge of managing the ‘tensions, competing visions and disputes’ within it.²⁶

13.5.2 Why and how did the Crown purchase extensively in Reserve lands from 1910?

The claimants submitted that the Crown undermined the protections against alienation contained in the UDNR Act: indirectly by refusing to appoint the General Committee until 1909, and directly by negotiating with Rua for the purchase of land and then by undertaking the purchase of ‘shares’ from individuals. The commissions’ title orders transformed land held in accordance with tikanga into land in which individuals held undivided but saleable ‘shares’; this undermined the corporate governance intended by the committee structure in the UDNR Act; and this in turn meant that as a collective, Tuhoe could not control alienations. They had no say in deciding which land (if any) was to be sold, prices to be paid, how benefits should be distributed, and how reinvestment in the tribal reserve should be managed.²⁷ The true impact of the shortcomings of the title system would not have been immediately apparent to Tuhoe, and would not be felt until purchasing began. By then the local committees and the General Committee were in complete disarray, and Tuhoe were demoralised by the Act and living in poverty. Bowler’s success in purchasing ‘shares’ was inevitable, given that the title and governance protections that had been contemplated were not in place. Initially, the Crown manipulated the membership of the General Committee – the only body empowered to deal with the alienation of land within the Reserve – and pressured the Committee to approve alienations; subsequently it embarked on the purchase of individual shares, despite knowing this was illegal and would require validating legislation.²⁸

Counsel submitted also that the Crown’s revoking of the jurisdiction of the Native Land Court in 1916 to partition Urewera blocks (granted earlier by Orders in Council of 1910, 1911, and 1913) denied Urewera ‘non-sellers’ the right that existed under ordinary Native land laws to seek to partition out their interests. This meant that the Crown was likely to acquire more interests than if partitioning had proceeded. It was also anxious that owners should not secure the best part of blocks in the court, and leave the Crown lower quality land when it intended to open the district to settlement.²⁹ The Crown accepted that revocation of the powers of the land court in 1916 prevented ‘non-sellers’ partitioning out their interests. It conceded also that the revocation, along with the absence of a functioning governance

26. Crown counsel, closing submissions (doc N20), topics 14–16, p 76

27. Counsel for Wai 36 Tuhoe, closing submissions, pt B: response to statement of issues, 30 May 2005 (doc N8(a)), pp 95–96

28. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 98

29. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 100

structure under the Act, the Crown's monopoly purchase powers and its purchase of undivided shares, 'placed limitations on the exercise of property rights'.³⁰

The Tuawhenua claimants stated that the Crown breached the Treaty in refusing to relinquish its right of monopoly purchase when asked to do so; in failing to cease purchasing interests in Ruatahuna land when asked to do so in late 1918 and in 1920; in purchasing when the people of Ruatahuna were affected by a severe epidemic, and in purchasing at the land's unimproved valuation, when a significant proportion was developed.³¹ Counsel for Ngati Whare submitted that under the purchase regime instituted by the Native Minister Herries, Ngati Whare fell victim to a calculated Crown strategy aimed at securing the valuable timber of the Te Whaiti block at the lowest possible cost. The purchases breached the provisions of the UDNR Act not just because they were illegal but also because the Crown set about maximising its advantage in the purchase 'in every conceivable way'.³² The Crown, exercising its monopoly over purchase in the UDNR, bought from individuals, and circumvented the protective mechanism of collective decision-making that ought to have applied. It purchased at a time of severe economic need; and imposed restrictions both on the use of timber in the Te Whaiti block and on leasing, throughout the period of purchase. Its suspension of the land court's powers to partition blocks while the Crown was purchasing prevented Ngati Whare from extracting their interests from those of the Crown.³³

Claimants and the Crown differed on the matter of valuations, and thus the fairness of prices the Crown paid for UDNR land. The claimants submitted that the Crown's valuations of Te Urewera land were flawed and unfair, and were strictly speaking not valuations but estimates of value compiled by department officers. There was no market in Te Urewera in which to measure value, owing to the Crown's monopoly and prohibition of private purchase.³⁴ But the Crown disputed the claimants' view of valuations. It stated that valuations, and hence purchase prices, were fair and in some cases even 'generous'. Counsel challenged historian Bruce Stirling's claim that Lands Department officials who made valuations were unqualified to do so. They stated that valuations used for Crown purchasing between 1910 and 1920 were based on unimproved value, but questioned whether it was relevant (as the claimants argued) that unimproved values nationally moved markedly during the period, given that the Reserve remained 'comparatively undeveloped'. Nor is there enough evidence that land values were lower than they should have been, given the remoteness and quality of the land involved in sales between 1910 and 1921–22.³⁵

30. Crown counsel, closing submissions (doc N20), topics 14–16, p 87

31. Wharekiri Biddle of Ruatahuna on behalf of the Tuawhenua Block owners, amended statement of claim, 3 March 2003 (SOC 12), p 75

32. Counsel for Ngati Whare, closing submissions (doc N16), p 72

33. Counsel for Ngati Whare, closing submissions (doc N16), pp 72–74

34. Counsel for Wai 36 Tuhoe, closing submissions (doc N8), p 99

35. Crown counsel, closing submissions (doc N20), topics 14–16, pp 80–85

In respect of timber valuations, Ngati Whare submitted that the Crown failed to ensure that a fair and equitable valuation of the timber on Te Whaiti block took place. Its valuation of the timber (made by Pollock) was ‘manifestly incorrect’, as the evidence of timber valuation expert Canning revealed. Pollock ‘severely underestimated’ the amount of merchantable timber available on the block. The result was that the amount paid to Ngati Whare and Ngati Manawa individuals for their shares was ‘significantly lowered.’³⁶ The Crown responded that the Te Whaiti blocks were valued on the basis of ‘current value, not prospective value’, which was not unusual. Crown procedures were reasonable at the time; the Crown’s valuers seem to have done their best using the methods of their day. Counsel acknowledged that the evidence ‘supports a view that the timber estimates may have been underestimated’, but suggested that Canning’s own estimate appeared to be ‘on the high side.’³⁷

The Crown, as we have seen, conceded that its unilateral changes to key parts of the UDNR Act without consultation with Urewera Maori, and its purchase of individual shares without the collective control of such actions by the General Committee, and without observing the usual protective mechanisms applying to purchases of Maori land during the period, were in breach of the Treaty. But it submitted that differences remained between claimants and the Crown as to how best to explain the ‘parlous state of affairs’ in Te Urewera which resulted from Crown actions and omissions.

13.6 WHY WERE THE SELF-GOVERNMENT PROVISIONS OF THE UDNR ACT DEFEATED ?

Summary answer: *The establishment of local committees and the General Committee, both of which were essential to implementing self-government, was tied in the UDNR Act 1896 to the completion of the process of title determination. How the first Urewera commission approached its task, therefore, was crucial. In fact, though conscious that it was supposed to be facilitating the establishment of committees, it quickly adopted a course of action focused on determining lists of individual owners for each block, and their relative shares. This was standard practice in the Native Land Court, which cast a long shadow over the work of the Urewera commission. Though it was obvious by mid-1899 that the commission’s work would be slow, the Crown failed to intervene to ensure that interim committees were appointed; it passed amending legislation in 1900 without addressing the problem. By 1900, it was four years since the UDNR Act had been passed; by 1902, when the commission made its final report, six years had passed. The Crown failed to act even in 1902 – and then allowed several years to go by before the appeals process got under way. Its wish to open Te Urewera to prospecting and mining (which*

36. Counsel for Ngati Whare, closing submissions (doc N16), pp 75–76

37. Crown counsel, closing submissions (doc N20), topic 31, pp 2, 27, 29

The Fate of the Urewera District Native Reserve – Kaumatua Accounts

Wharekiri Biddle passed away during the first week of the Tribunal hearing at Ruatahuna. His daughter Hinerangi spoke for him about the foundation and significance of his claim:

Kei te puku o tana kereme, ko te whakakahore i te mana motuhake, kare i rereke i etahi o nga kereme a Tuhoe. Kore rawa ia e whakaae kia riro ma te Karauna e tohu te huarahi mo nga whenua, me tana iwi. . .

At the heart of his claim lies the prejudice against te mana motuhake o Tuhoe. . . He has never been able to accept that the Crown should be able to direct what has happened to the lands of his ancestors, and the fate of his people.

She identified the following matters as among those covered by his claim:

- ▶ Te ngakau rukahu o te Ture Rahui a-rohe o Te Urewera, me tona hapa ki te tawharau i te Rohe Potae o Tuhoe;
- ▶ Te whakatakoto tikanga mo te whenua, e pa ana ki te Tuawhenua, me te whakakahore i nga tikanga whakahaere rauemi i raro i te mana motuhake;
- ▶ Te whakakiki kia totarawahirua nga rangatira o Tuhoe, me te kore e aro mai ki nga wawata o Tuhoe ki te whakatu i tona ake kawanatanga. . .
- ▶ Te hoko whanako i nga whenua o te Tuawhenua.
- ▶ The deceit of the Urewera District Native Reserve Act and the failure to protect Te Rohe Potae o Tuhoe
- ▶ The imposition of land tenure systems on the lands of the Tuawhenua with little regard for our own ways for managing resources under mana motuhake
- ▶ The fuelling of the division in the leadership in Tuhoe, and the failure to acknowledge or support Tuhoe's wish for its own local government
- ▶ The illegal and unfair purchase of interests in the Tuawhenua lands.¹

Tamaroa Nikora, who gave evidence at several of the Tribunal hearings, delivered this indictment of the Crown's actions:

since Tuhoe were ever known as a tribe they fought and died for their land. They were still prepared to do so up to 1895. The Tuhoe 'Chiefs' visited Wellington in that year and had discussions with Premier Seddon which led to the passage of the Urewera District Native Reserve Act 1896. That Act promised Tuhoe a Komitinui, to be responsible for Tuhoe lands and whose consent was required before Tuhoe land could be alienated to the Crown. These promises pacified Tuhoe.

When the Urewera Commissioners first commenced their tasks in 1899, the Tuhoe Commissioners asked for a flag inscribed with the words: 'Ko te Ture motuhake mo Tuhoe.' This indicated that Tuhoe expected the Act would be honoured and be particular and special for them.

However, their trust in the law was misplaced. The Urewera Commissioners created a series of 44 Urewera blocks and vested each in a list of individual owners, and not in hapu. In other words, the property right was devolved from the tribe and from hapu to long lists of individual owners without governance, which was to leave them in a vulnerable position. With that done, the Crown ignored the Komitinui and the UDNR Act 1896, and raided the individual shareholders in Te Urewera. The Crown's intent was to acquire Tuhoe land for the settlement of Pakeha. What the colonialists could not achieve by war was now being achieved by policy and legal trickery. The UDNR Act could be ignored because the colonialists had the majority in the House to validate their illegal actions.²

1. Hinerangi Biddle, Kaikorero, undated (doc D31(a))(Maori), pp2–3, doc D31 (English), pp2–3, Te Whai a te Motu, Mataatua Marae, Ruatahuna

2. Tamaroa Raymond Nikora, 'Te Urewera Lands and Title Improvement Schemes', August 2004 (doc G19), pp 4–5

required General Committee consent and thus the resolution of appeals, the issue of title orders, and the election by block owners of local committees which could in turn elect the members of the General Committee), rather than any sense of urgency about the appeals themselves, seems to have been the final prompt. By 1906, when appeals were heard, the time for successful implementation of the self-governing provisions of the UDNR Act was all but over. Tuhoe had expected this would be done soon after the Act was passed, but the Crown seemed to have lost interest in the implementation of provisions which were so important to the people.

By 1906, indeed, the whole political landscape had changed. Seddon died that year; Carroll, the Native Minister, was under siege in Parliament for policies designed to assist Maori retain their remaining land; and the Liberals faced great pressure to ensure that more Maori land was made available for settlement. In this context, the Government convinced itself that Pakeha settlement and farming in the Reserve was a practical proposition, despite its assurances to Te Urewera leaders 10 years before that the Reserve (then considered useless for close settlement) would be preserved to them. By the time the appointments of the local committees and the General Committee were finally validated in 1908 and 1909 respectively, there were new pressures within Tuhoe. Rua Kenana, the spiritual leader whose influence was widespread, wanted to sell land to achieve development – a policy which the new General Committee had hoped to keep at bay; and pervasive poverty meant that many owners were ready to sell interests. The Government played a questionable role in establishing the General Committee, intervening to change its composition. It passed a series of amendments to the UDNR Act in 1908–09 which provided (notably) for a reduction in size of the General Committee from 33 to 20, thus removing the representation of 13 local committees. The Governor's new power (1908) to appoint

members from among the local committee members was extended in 1909 to allow him to remove members and appoint replacement members who did not need to be local committee members. This undermined the key principle of self-government by elected representatives. On the ground Ngata, by then a member of the Executive Council, intervened in 1909, informally adding 14 members 'from Rua's section' to the General Committee as 'consultative' members; and then arranging instead in 1910 – after the law had been changed to provide for further Government intervention – for the formal appointment to the Committee of Rua and four of his people. The Government made no secret of its wish to buy Te Urewera land, and Rua, once appointed, was able to secure approval of the first land sales by the General Committee, which had hoped to lease, not sell land. The General Committee faced all these challenges without having had the opportunity to establish itself as a fully functioning body – or to devise a plan for the development of any of the Reserve lands. Ultimately it would be ignored by Government altogether when it resumed purchasing in 1915 – and by 1916 the Native Minister could state (unopposed) that it had never existed. There was no longer any interest in Wellington in making a self-governing Reserve work. Indeed, it had been actively subverted.

The essential story, then, is one of inadequate legislation and a stalling of administrative action, followed by the Crown forgetting its promises and moving to engineer the failure of the self-governing Reserve that Seddon had agreed with the peoples of Te Urewera.

Our analysis of this issue proceeds from our understanding that the real failure of the self-government provisions occurred in the early years of the history of the UDNR. We consider the reasons for this – and thus examine the connection between the work of the Urewera commissions in determining titles to UDNR lands and hearing appeals, and the delays in establishing the local committees (1908) and the General Committee (1909). We ask why, when the committees were finally set up, they were not able to function effectively.

Our analysis is based round the following sub-questions:

- ▶ Why were there delays in establishing the first Urewera commission?
- ▶ Why was the work of the Urewera commission slower than expected?
- ▶ What was the Crown's responsibility, once the extent of the delays became evident?
- ▶ In what circumstances was the General Committee finally established, and why did it struggle to establish itself as a strong political force?

13.6.1 Why were there delays in establishing the first Urewera commission?

More than two years went by between the passing of the UDNR Act in October 1896 and the start of title investigation in February 1899. The Government, in our view, was largely responsible for the delay. There was certainly dissension within Te Urewera about the

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meaning of the Act during 1897, as Professor Judith Binney suggested, but this emerged in the absence of Government engagement with tribal leaders at a crucial time.³⁸

Once the Act was passed, Tuhoe moved quickly to elect their commissioners. From as early as November and December 1896, community representatives were writing to Seddon informing him of the outcome of elections. Each commissioner was to represent one of five regions within Te Urewera: Ruatoki, Waimana, Ruatahuna, Galatea and Te Houhi, and Waikaremoana. Numia Kereru was chosen for Ruatoki; Te Pou Papaka for Waimana; Mehaka Tokopounamu for Galatea and Te Houhi; and Hurae Puketapu for Waikaremoana. The fifth elected commissioner was Kutu for Ruatahuna, who would be replaced in 1898 by Tutakangahau of Maungapohatu.³⁹ Te Hokotahi Te Puehu, and two others from Ruatoki, who reported the election result to the Premier, also conveyed their anxiety that the work of the commission should get under way: they wanted the names of the European commissioners notified, and a seal issued for the 'Committee'.⁴⁰

But the Government was slow to appoint Pakeha commissioners. It was February 1898 before the seven members of the commission were appointed by Order in Council.⁴¹ There were two changes from the original draft Order dated 28 December 1897. In mid-January, Carroll sought to substitute the name of Te Pou Papaka for that of Te Whiu, and the Surveyor-General, S Percy Smith, for JM Roberts, stipendiary magistrate from Tauranga.⁴² Te Wharekotua had asked Smith to accept appointment as a commissioner (a request that Smith drew to the attention of the Under-Secretary for Justice); while Rakuraku and Tamaikoha informed Seddon that Te Pou had been elected for Waimana, Tawhana, and Ohiwa, and they were determined he should be appointed.⁴³ Smith had been involved both at the southern end of Te Urewera (supporting purchase in the Waipaoa block, and greatly interested in scenic reserves at Waikaremoana) and in the north (carrying out disputed surveys in Ruatoki).⁴⁴ The appointments were gazetted on 10 February, and the commissioners

38. Judith Binney, 'Encircled Lands, Part Two: A History of the Urewera, 1878–1912' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2002) (doc A15), pp 222–223

39. Binney, 'Encircled Lands, Part Two' (doc A15), p 222. Binney cited Te Makarini Tamarau, Te Whenuanui, and others to Seddon, 22 November 1896; Te Hokotahi Te Puehu to Seddon, 11 December 1896, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington

40. Te Hokotahi Te Puehu et al to Seddon, 11 December 1896, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington (quoted in Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 14)

41. Draft Order in Council, 28 December 1897, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 700–702)

42. Amended draft Order in Council, 4 January 1898, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 699)

43. Te Wharekotua to Smith, 25 January 1898, AADS W3562, box 274, file 22/697, pt 1, Archives New Zealand, Wellington; Rakuraku Rehua, Tamaikoha, et al to Seddon, 13 January 1898, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington (Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 15–16). Also see Smith's note (written on the letter from Te Wharekotua) to the Under-Secretary for Justice, suggesting a draft reply to Te Wharekotua.

44. Cathy Marr, 'The Urewera District Native Reserve Act 1896 and Amendments, 1896–1922' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A21), p 126

notified on 11 February 1898.⁴⁵ But there would still be a year's delay before the commission actually met.

The delay in making appointments reflected a general failure on the part of ministers to proceed to implement the UDNR Act with any sense of urgency. Yet Tuhoe, who had waited two years for the Act to come to fruition, were anxious to understand how it would work. Two major groupings emerged among Tuhoe by mid 1897, each with differing views on how it should be interpreted, how self-government should be given effect to, and how extensive the powers of the new title-determination body were.

One grouping was centred on the leaders of Ruatahuna, including Mehaka Tokopounamu, Tamarau Te Makarini, Hurae, Kutu, Tutakangahau, Te Whenuanui II, Te Wharekotua, Te Ahikaiata, and others. These leaders called for the acceptance of a 'Kaunihera', an authoritative decision-making body for all the hapu which was appointed at the Ruatahuna hui held in July 1897. And they appointed a committee which studied the Act closely, sorting out 'the bad clauses from the good' ('kua wehea e ratau nga rarangi kino me nga rarangi pai'),⁴⁶ and wanted the UDNR Act returned to Parliament for revision. They compiled a list of the sections that they wanted removed – including those relating to the survey of blocks and the creation of title, requiring the specifying of block owners and relative shares – though they accepted the appointment of the Urewera commissioners by the Governor, the division of the land into blocks, and the investigation of ownership by the commissioners, in accordance with hapu boundaries. They rejected the sections which related to the issue of certificates of title and the involvement of the land court in the registration of certificates of title (though they confirmed the section which gave the Government power to allow the land court to determine succession claims). Sections about the creation of local committees and the General Committee were accepted, though those that allowed the Government to make regulations about how members of committees should be elected, and other matters under the Act, were rejected. Nor did the Committee approve of sections that empowered the Government to take land for roads, tourist accommodation, and camping places. The final section they 'struck out' was section 25 relating to the Government paying expenses under the Act from moneys appropriated by Parliament.⁴⁷ As Binney noted, 'Mehaka and Makarini . . . raised serious doubts about the Act, arguing that it did not fulfil the promises made that it would benefit the people.' Above all, as Makarini warned Carroll, there were fears that the new Act might ultimately lead to Government taking of the land.⁴⁸

45. Binney, 'Encircled Lands, Part Two' (doc A15), pp 230–231; Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 15–16; 'Commissioners under the Urewera District Native Reserve Act, 1896, Appointed', 19 February 1898, *New Zealand Gazette*, 1898, no 9, p 241

46. Petition to Carroll, 31 July 1897, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington (Binney, 'Encircled Lands, Part Two' (doc A15), p 224)

47. Binney, 'Encircled Lands, Part Two' (doc A15), p 223–234; petition headed 'Ruatahuna' to Carroll, 31 July 1897, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington; the list of sections is cited in Numia Kereru's petition protesting against these decisions, 4 August 1897, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington.

48. Binney, 'Encircled Lands, Part Two' (doc A15), p 224

The second grouping was led by Tamaikoha and his son Hakeke, and included Numia Kereru, Te Whiu Maraki, Rakuraku Rehua, Harehare Aterea of Ngati Manawa, and Paora Kingi. Binney characterised this grouping as ‘a broad-based democratic movement’,⁴⁹ supported by ‘hapu from Te Houhi, Galatea, and Te Whaiti on the west; Ruatahuna, Maungapohatu, and Tawhana in the interior; and Ruatoki, Waimana, and Ohiwa to the north.’⁵⁰ This group rejected the proposed ‘Kaunihera’ to represent all hapu, and in the middle of the meeting sent an urgent petition to James Carroll, stating that ‘the people as a whole’ should exercise the mana (‘kia homai te mana ki te iwi katoa’).⁵¹

But these divergent views developed in the absence of any visit from Wellington. A hui had originally been called for February 1897 – and it was expected that Carroll and Wi Pere would attend to explain the final provisions of the Act. Both had been invited. Doubtless, this was because their role in explaining appointments of a commissioner, and election of the committees under the Act had been referred to in Seddon’s letter of 25 September 1895, reprinted as Schedule 2 of the Act: ‘The regulations for the appointment of a Commissioner, and for the election of members of Local Committees and of the General Committee, will be communicated later on, after an Act has been passed giving effect to what is here set forth, which will be explained by the Hon Mr Carroll and Wi Pere, member for the Eastern Maori Electoral District, to Tuhoe.’⁵² (‘Ko nga ritenga whakahaere mo te mahi whakatu Komihana me te pootitanga i nga mema mo nga Komiti takiwa me te tino Komiti, ka whakaaturia ena a muri ake nei ina ka paahitia he ture hei whakamana i enei kupu whakaatu, ma te Hon Timi Kara raua ko Wi Pere te Mema Maori mo te Tai Rawhiti e whakaatu atu ki a Tuhoe.’⁵³)

The hui was postponed, however, at Pere’s request – first till March, and then till July (the middle of winter). Quantities of prized foods had been prepared, but still the two leaders did not come. From the point of view of Tuhoe, February would have been the preferred date, for already there were two major causes of anxiety. First, the appeals against the judgment of the Native Land Court (about the Ruatoki blocks) were about to be heard by the appellate court (the case began on 5 April 1897). These were of importance to many hapu but it was not certain that the appellate court could hear the appeals since the Ruatoki blocks had been included within the Reserve boundary.⁵⁴ Secondly, Tuhoe – as Binney has shown – came under pressure from private prospectors soon after the UDNR Act was passed. Under the Act, only the General Committee could make concessions for mining purposes. The Government had taken the position during the 1890s (before the UDNR Act was passed)

49. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 230

50. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 226–227

51. Petition to Carroll, 31 July 1897, MA 1/1907/152, pt 2, Archives New Zealand, Wellington (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 226)

52. Urewera District Native Reserve Act 1896, sch 2

53. Ture Rahui Maori o te Takiwa o Te Urewera 1896, kupu apiti tuarua

54. Chief Judge Davy later decided that the appellate court decision could have no effect because the Ruatoki block had been removed from the jurisdiction of the land court by section 3 of the UDNR Act 1896: Steven Oliver, ‘Ruatoki Block Report’ (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A6), p 85.

that Te Urewera came under the Mining Act 1891 and therefore the Government must have evidence of the owners' consent before prospecting licences were issued.⁵⁵ Both Seddon and Carroll had assured Tuhoe at the time the UDNR legislation was passed that the Government would not permit prospecting until 'clear rules [had] been established'; Tuhoe had the right to turn private prospectors away, and the Government would support this. The arrival of Henry Vercoe, a surveyor, at Maungapohatu in November 1896, offering to teach the people how to prospect, and the payment by a mining syndicate to Numia Kereru and Hetaraka Te Wakaunua of £100 for the right to prospect at two places *outside* the borders of the Rohe Potae (one of which, however, was Ruatoki), highlighted the importance and the potential divisiveness of the issue, and the need to establish Tuhoe authorities to deal with it appropriately. Seddon was well aware of the kind of concerns leaders like Te Makarini had about private prospecting; and Wi Pere wrote to Te Makarini and Te Wharekotua urging them to stand strong on the issue.⁵⁶

What is clear from all of this is that after the Act was passed, Tuhoe needed the reassurance of Government engagement and guidance on how to prepare to get an unknown process off the ground. In the absence of such engagement, people were nervous about protecting their rights, and about initiatives taken by others trying to do the same. Everyone was aware that the new process was subject to an Act of Parliament; they could not, or should not, simply go ahead on their own terms. So there was close study of the Act itself. But, above all, Tuhoe wanted Government representatives to come to talk to them. Numia's letter to Carroll and Pere in August urged that they attend a hui at Ruatoki 'to explain the sections of the Act . . . Your presence is required to explain it to the people so that the small and the great may understand it.'⁵⁷ And when Tamarau Te Makarini and Te Ahikaiata Tamarau wrote to the Premier in October reminding him that Carroll and Pere must communicate with Tuhoe, their anxiety was evident: 'the people from outside, the knowing ones say that this land will suffer through you, the Hon Mr Carroll and Wi Pere.'⁵⁸

In the end, Tuhoe had to go to Wellington instead. In October 1897, both major groups sent their leaders – Numia Kereru on the one hand, and Mehaka Tokopounamu and Te Amo Kokouri on the other – to meet Carroll. Historian Cecilia Edwards suggested that Kereru returned home without seeing Carroll, and Binney noted that Tokopounamu and Kokouri remained after Kereru had left, in the hope of talking separately with the Minister.⁵⁹ It appears that the Tuhoe differences were not resolved in Wellington, but Carroll and

55. Binney, 'Encircled Lands, Part Two' (doc A15), p 361

56. Wi Pere to Makarini and Te Wharekotua and all the chiefs, 17 February 1897, MA 1, file 1907/152, pt 2, Archives New Zealand, Wellington (cited in Binney, 'Encircled Lands, Part Two' (doc A15), pp 366–368)

57. Numia Kereru to James Carroll and Pere, 4 August 1897 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 2' (doc D7(i)), p 708)

58. Tamarau Te Makarini and Te Ahikaiata Tamarau to the Premier, 11 October 1897 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 2' (doc D7(i)), p 726)

59. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 32; Binney, 'Encircled Lands, Part Two' (doc A15), p 230

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Seddon finally moved to set up the Urewera commission at the end of 1897 partly to try to defuse the situation.⁶⁰

Why, then, did Carroll and Pere not go to Te Urewera – especially when they had been urged repeatedly to do so, and were aware of developing tensions as the delays went on? Carroll later explained, in a letter he wrote to the Te Whaiti people, that 1897 was the year of celebration of Queen Victoria's reign (her 60th Jubilee) and, as a result, 'a lot of Govt work had to stand still'. Establishment of the commission had therefore been delayed, but the Government would 'push the matter as soon as it can'.⁶¹ This explanation was echoed in a department letter to the Te Whaiti people.⁶² This seems unconvincing as a reason for Carroll's and Pere's failure to get to Ruatahuna. But it may be, as Marr suggested, that Carroll and Pere held back in the absence of Seddon who, as the Native Minister, was important to the implementation of the Act, and whose influence was of great importance to Carroll in Cabinet. Seddon was out of the country several times between 1896 and 1898 (in particular between April and September 1897, when he attended Queen Victoria's Diamond Jubilee and the Imperial Conference). As Premier he had a great deal of political business (local and international) on his plate, and when he did begin to travel to Maori districts again in 1898, he was preoccupied with promoting legislative change to meet the concerns of the leaders of the Paremata Maori (the Maori parliament established by the Kotahitanga movement), whose sustained push for institutional autonomy at both national and community levels had put the Government under considerable pressure.⁶³

In short, the Government took its eye off the ball during 1897. At what was a crucial time for Tuhoe, after the UDNR Act had been passed, they did not have the Government's attention. Ministers missed opportunities to debate points on which there was uncertainty – about the establishment of the Urewera commission, how it might work, when its work would start, what the purpose of land titles was, how to achieve titles without getting bogged down in Native Land Court-style processes, when the committees would be elected, how they would operate, and above all, how a Tuhoe committee would best represent hapu authority. This was a reprehensible failure. It seems to highlight a key difference between Tuhoe and Crown attitudes to the Act. The Crown had got the Act passed, and perhaps ticked the box and moved on to other matters. But for Tuhoe the passing of the Act marked a new beginning – and what was crucial was how it was implemented. They were bitterly disappointed that Carroll and Pere did not come to their hui. Te Wharekotua and others attributed the collapse of the Ruatahuna meeting to the 'deceptive action' ('mahi tinihanga')

60. Binney, 'Encircled Lands, Part Two' (doc A15), p 231

61. James Carroll to Under-Secretary for Justice, undated (June 1897) (Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 26)

62. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 26

63. Marr, 'Urewera District Reserve Act 1896 and Amendments' (doc A21), pp 124–125; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage I*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 374, 381

of Carroll and Pere in failing to keep their promises and come to fully explain and discuss the Act.⁶⁴ According to Binney: ‘The two postponements, and the failure of either man to attend, despite the huge preparation of special food (taha of preserved pigeon, pigs, and fish) that had been arranged, added to the growing level of distrust as to the Government’s intentions.’⁶⁵ She also suggested that ‘in general, the Tuhoe leaders had expected the hui at Ruatahuna to be part of an ongoing consultation process with the Government.’⁶⁶ And despite the emerging divisions within Tuhoe over how best to proceed, both parties appeared to be fundamentally concerned to protect ‘the *general* authority which was understood to reside collectively with *all* the Urewera hapu’ (emphasis in original).⁶⁷

By March 1898, Tuhoe in fact reached a consensus to endorse the Act. The appointment of the commissioners (gazetted in February) seems to have been an important catalyst. Tutakangahau (nominated as a commissioner in December) called a hui at Maungapohatu in January 1898 to unite the hapu of Maungapohatu and Ruatahuna ‘under the law of the Rohepotae (i runga i te ture mo te rohe potae).’⁶⁸ The hui agreed to accept the Act as a whole, and that their decisions should be ratified at Waimana in March. A further hui of chiefs and representatives of all hapu at Waimana was described as the ‘final meeting’ to discuss the Act.⁶⁹ Seddon, Pere, and Carroll did not attend; nor did Percy Smith (though he had been told he was expected). But the importance attached to the hui was evident from the fact that it was held despite widespread famine after summer frosts destroyed crops throughout Te Urewera.⁷⁰

In September 1898, Tuhoe sent yet another delegation to Wellington. They did meet Seddon, and also H Tomoana, a member of the Legislative Council, Wi Pere and Henare Kaihau, members of the House of Representatives. The agitation of their leaders is evident in their korero. Tutakangahau urged that the commissioners get on with their work so that, in Numia Kereru’s words, ‘the Tuhoe people may as speedily as possible enter into the exercise of mana assured to them under this Act.’⁷¹ We agree with Edwards that it seems clear Numia meant the system of ‘local government’ which was to be established under the Act once title had been determined.⁷² Te Wakaunua echoed this: ‘the Great Committee of Tuhoe should be empowered by the Government to watch, with the assistance of the Government, the interests of the people in the event of any calamity befalling them.’⁷³ On this occasion,

64. Te Wharekotua to James Carroll and Pere, 4 August 1897 (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 223

65. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 223

66. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 226

67. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 229

68. Tutakangahau to Seddon, 17 January 1898 (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 232)

69. Te Wharekotua to Carroll and Pere, 4 August 1897 (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 232)

70. Edwards, ‘The Urewera District Native Reserve Act 1896, pt 2’ (doc D7), pp 33–35, 42

71. ‘Meeting Between the Premier and Chiefs of the Tuhoe Tribe, at Parliament Buildings, Wellington, 26 September 1898’ in *Notes of Meetings Concerning Native Land Legislation* (Wellington: Government Printer, 1899), p 61 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7(i)), p 18)

72. Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), p 48

73. ‘Notes of Meetings’, p 61 (Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), p 48)

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the setting up of the 'Great Committee' and the work of the commissioners was discussed. Seddon apologised for the delay in holding the meeting, and also for the delay in the commissioners' work; he explained that Judge Butler had been held up by another inquiry, but he would be free shortly to go to Te Urewera. Seddon promised that the commissioners would be able to start by the end of the year.⁷⁴

After this meeting, as Edwards noted, there were no more letters to the Government calling for the Act to be amended or threatening to withdraw from it. The people of Te Urewera, she stated, appear to have been focused on making their preparations for putting claims before the commission.⁷⁵

13.6.2 Why was the work of the Urewera commission slower than expected?

After this initial delay of two years, the commission began work in February 1899. It reported its completion of title determination in the Reserve in 1902 – six years after the UDNR Act was passed. It appointed provisional local committees, but these appointments were not gazetted. Not even the first steps towards the election of a General Committee were taken. Thus, Tuhoe were not empowered to manage their lands or affairs through committees either locally or tribally. This was a crucial failure.

In this section, we examine the work of the Urewera commission. We do not intend to undertake a detailed study of the commission's processes, block by block, because we do not think this is necessary to an understanding of the failure of the UDNR Act. We should understand the approach of the commission to its task – and why it was that it took until 1902 for it to complete its report, and to recommend title orders. More important, however, is the failure of the Crown to intervene once it became clear that the commission's work would delay the establishment of the committees. We address this matter in our next section.

No timetable was indicated at the outset for the commission to complete its work. But it is clear that there was a general expectation that it would be a speedy process. The first case heard in full by the commission, the Waipotiki block, produced an alarmed response from the chairman, Percy Smith, that the case was taking as long as it would have in the land court. At this rate, he said, they would take three years to hear the cases! (It was ironic that in fact it did take that long.) In particular, he stated that there should be no more questioning of witnesses by conductors of the various cases, and minor cases should be consolidated

74. 'Notes of Meetings', p 61 (Edwards, 'The Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 48; Marr, 'Urewera District Native Reserve Act 1896 and Amendments, 1896–1922' (doc A21), p 129; Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 48

75. Cecilia Edwards, summary of 'The Urewera District Native Reserve Act 1896, pt 2: Title Determination Under the Act, 1896–1913', 27 January 2005 (doc L3), p 8

into one claim.⁷⁶ And we agree with Marr that Smith's reaction indicates the commissioners were under instructions to complete their work as quickly as possible.⁷⁷ Butler would report in 1902 that title determination had been a more complex and lengthy process than he had anticipated.⁷⁸

How did the Urewera commission conduct its work, and was it slow because it followed land court procedure, as Smith charged? This raises a major point at issue between the claimants and the Crown: that the commission was in fact little more than the land court by another name.

(1) *The commission's processes*

In broad terms, the first phase of the commission's work lasted from the beginning of February till the beginning of April 1899. During this time it sat for a total of 63 days at 10 locations chosen by the Tuhoe commissioners: Whakatane, Ruatoki, Tauaurau, Rewarewa, Te Waimana, Te Houhi, Te Whaiti, Ruatahuna (Mataatua), Maungapohatu (Toreatai), and Waikaremoana (Waimako).⁷⁹ Eventually, this was deemed the preliminary phase of its inquiry. It was followed by what were referred to as full investigations of title. These began in February 1900 and continued till 1902. In 1900, the commission sat for 71 days spread over four months; in 1901 for 42 days spread over three months; and in 1902 for 63 days spread over three months, with a few extra days in each of two other months.⁸⁰

The minutes of the first meetings of the commissioners themselves are brief, and shed little light on how their crucial decisions about process were taken. At their initial meeting on 1 February 1899, the commissioners 'proceeded to consider some of the clauses of the Act . . . and the best method of carrying out its provisions'. A list of 'the hapus of Te Urewera tribe was then drawn out', each of the five Tuhoe commissioners putting in a list of hapu, and specifying their districts (variously Ruatoki, Te Houhi, Ohaua, Ruatahuna, Te Waimana, Tawhana, Maungapohatu, Te Waiiti, Te Whaiti, Waikare, and Galatea). At a meeting on 7 February, the commissioners 'proceeded to consider the best means of carrying out the work before them'. The first decisions about the commission process that Percy Smith conveyed to Tuhoe claimants when the 1899 hearings began are telling. As early as the morning of 8 February, at the first hearing at Ruatoki, there is reference in the minute book to drawing up hapu boundaries and 'name lists' – that is, lists of owners ('nga rarangi ingoa

76. Urewera commission, minute book 3A, 26 February 1900, p138 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930' (commissioned research report, Wellington: Waitangi Tribunal, July 2001 (doc A86(a)), pp 249, 252); Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp102–104

77. Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), p140

78. Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), p143

79. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 57

80. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp100–101

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o nga tangata e whai paanga ana ki aua whenua’).⁸¹ Then, on the afternoon of 8 February, the chairman explained to those present the ‘best method of making out the lists of names of land owners’ (‘nga tikanga mo te tuhituhi i nga rarangi ingoa’). Unfortunately, that is all the minutes tell us.⁸² On the afternoon of 9 February, after a meeting in the morning, the commission held an open session, dealing first with boundaries, ‘the majority of the natives leaving in order to complete the lists of names demanded by the Commissioners.’⁸³ In other words, there had been a rapid shift from a focus on the hapu names provided by the Tuhoe commissioners to drawing up lists of owners’ names.

As the commission moved throughout the district, hapu spokesmen submitted boundaries and lists of names, and the commission responded to requests for further clarification on the provisions of the Act. The chairman would read out publicly the lists of boundaries and the lists of names. (A map of the district subject to the UDNR Act had been sent to Smith for use by the commission.⁸⁴) It seems that this dual approach – the recording of the lists of names put in by individual groups against specific areas of land, as Edwards puts it⁸⁵ – created the conditions for many objections, which were duly recorded.

The outcome of these hearings was a decision that further hearings would have to be undertaken. By the beginning of April at least (perhaps earlier), it had been decided that the commission would investigate boundaries and the lists of names the following year.⁸⁶ The chairman Smith, in his other capacity as Secretary for Crown Lands and Surveyor General, reported on the commission’s progress in his Annual Report on the Department of Lands and Survey, 1899, which covered the 12 months to 31 March 1899. What the commission had achieved to date was that ‘[p]ractically, the owners of the Urewera country are now known by name’ though some names might have been omitted from the lists. The names, moreover, still had to be arranged alphabetically, and duplicate names eliminated. But, Smith said, defining hapu boundaries was going to be difficult:

It was soon found that practically there are no such things as defined hapu boundaries such as were acknowledged by the people as belonging to any given hapu to the exclusion of others. As a matter of fact, nearly the whole area is subject to overlapping claims, sometimes

81. Urewera commission, minute book 1, 1, 7, 8 February 1899, pp 4, 6–7, 15–16 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(a)), pp 2–4, 11–12)

82. Urewera commission, minute book 1, 8 February 1899, pp 16–17 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(a)), pp 12–13)

83. Urewera commission, minute book 1, 9 February 1899, p 18 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(a)), p 14)

84. Part of the eastern boundary had not yet been drawn in, as plans for Tahora 2, Waipaoa, and Waiiau blocks (which bordered the UDNR) were still in Hawke’s Bay district office of the survey department: see Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), p 43. We have been unable to locate the map in the file cited by Edwards.

85. Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), p 62

86. Urewera Commission, minute book 1, 6 April 1899, p 203 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(a)), p 91); ‘Annual Report on the Department of Lands and Survey’, AJHR, 1899, C-1, p xi

three or four claims one on top of the other with discordant boundaries; and the hapu are so mixed by intermarriage that it is difficult to say to what hapu any particular individual of the tribe belongs.⁸⁷

Thus, it had been decided to hold more detailed title investigations, which would take ‘considerable time’; sketch surveys of the ‘most intricate and disputed boundaries’ would have to take place. ‘As the work progressed it became apparent that the title to the whole area would require investigation before any boundaries could be determined suitable for a division into districts.’⁸⁸

The commission’s subsequent title hearings, as we have seen, took place over three successive years. Our discussion of the commission’s approach to its task during this period will be brief. As it moved from one location to the next, taking one block at a time as sketch plans became available, various groups put in their lists of names; objections were noted; new lists were read out; and further objections to names were noted. Evidence was then taken in support of objections, or in support of whanau whose names had been objected to. It might be quite detailed evidence relating to the rights of particular individuals, their whakapapa, and their occupation (the latter was especially important to the commission); some witnesses set their evidence in the broader context of Tuhoe history. If the commissioners decided objections had not been sustained, names remained on the lists. Lists to which there were no objections were also inserted among the permanent lists for the block.

When the lists were finally settled (though, even then, this did not mean a claimant might not seek to reopen a list on a later occasion), the interest of each person named was quantified. In the Waipotiki block, the chairperson invited the conductors of cases to define shares for each individual. This was done by marking each name ‘B’ (Big Share) or ‘S’ (small share); in Waipotiki there were 729 names, which were later increased to 794.⁸⁹ Sometimes, as in the Maungapohatu block, the commission intervened to arrange shares if the people themselves ‘did not seem able to manage’ it, or if there was a dispute between various case conductors.⁹⁰ Or it allowed the people to postpone arrangement of relative shares if this was sought (as in Waikaremoana).⁹¹ In Taneatua, we note some interesting advice by the commission, that the claimants should ‘arrange the hapu shares in the block themselves’. Later, lists were read out, according to the minutes, ‘so as to arrange the shares of each owner, must be determined in this block [*sic*]. Each person’s shares were read out and were individualized in portions of

87. ‘Annual Report on the Department of Lands and Survey’, AJHR, 1899, C-1, pp x-xi

88. ‘Annual Report on the Department of Lands and Survey’, AJHR, 1899, C-1, pp x-xi

89. Urewera commission, minute book 4, 2-3 April 1900, pp 171-173 (Berghan, comp, supporting papers to ‘Block Research Narratives’ (doc A86(b)), pp 474-476)

90. Urewera commission, minute book 5, 8 May 1901, p 343 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(c)), p 1000)

91. Urewera commission, minute book 6, 20 May 1901, p 5 (Berghan, supporting papers to ‘Block Research Narratives’, various dates (doc A86(d)), p 1082)

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the block to which the said person is entitled.⁹² But of course they could not be assigned to portions of the blocks unless the block were partitioned. This was the case even in a block like Taneatua–Kanihi (17,200 acres), where the claimants applied to ‘arrange amongst themselves certain boundaries within the block defining the interests of certain groups of names in the lists, which practically are the boundaries of the various hapus concerned.’⁹³ Though the commission entered each individual’s interest in a particular named division on the map, such agreements were lost sight of in the long lists of block awards which were the end product of the commission’s work. This exercise of allocating shares might be followed by applications for more shares for persons on particular lists. Edwards’ study of the published lists of owners led her to conclude that the commission did not in fact define family group entitlements to shares before dividing the shares between the individual family members, as the Act required. Instead, the shares were awarded to individuals and then aggregated to family names.⁹⁴

Why, then, the preoccupation with lists of names – and, before long, with relative shares – when it is clear, as we noted in chapter 9, that the peoples of Te Urewera had wanted the award of titles at a hapu level, to facilitate hapu and tribal control of lands. Their overwhelming wish, as expressed during negotiations with the Crown in 1894 and 1895, had been against individualisation of title. And section 6 of the UDNR Act must have seemed reassuring at the time. It required the commissioners to divide the UDNR into blocks and ‘with due regard to Native customs and usages, investigate the ownership of each block, adopting as far as possible hapu boundaries.’ (‘Me roherohe a poraka taua takiwa e aua Komihana, a i runga i nga tikanga me nga ritenga Maori me kimi e ratou nga tangata whitake ki ia poraka ki ia poraka, a ki te taea me whakatau ia poraka i runga i nga rohe o ia hapu.’)

In our view, there were two factors which shaped the direction the commission took. Both had their origin in the mainstream native land legislation and the work of the land court over the previous decade.

The first factor was the requirements of section 8 of the UDNR Act, that the commissioners should make orders for each block within the district, declaring:

- (1) The names of the owners of the block, grouping families together, but specifying the name of each member of the family;
- (2) The relative share of the block to which each family is entitled;
- (3) The relative share to which each member of the family is entitled in such family’s share of the block.

92. Urewera commission, minute book 4, 21 March 1900, p 96 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(b)), p 394)

93. Urewera commission, minute book 4, 9 April 1900, p 194 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(b)), p 497)

94. Edwards, summary of ‘Urewera District Native Reserve Act 1896, pt 2’ (doc L3), p 12

The Creation of Relative Shares under Native Land Legislation

In its report *He Maunga Rongo*, the Waitangi Tribunal wrote about the creation of relative shares:

The land court, in accordance with the Native land legislation or Rules of the Court, had in the past decade been engaged in a more determined process of individualisation through the creation of relative shares. The land legislation had increasingly refined provisions for ascertainment of relative interests since 1873. An Act amending the 1886 Native Land Court Act in 1888 required the court, when making orders, to decide relative interests, whether such procedure had been applied for, or not. This Act was repealed in 1894. Rules of the court under the Native Land Court Act 1894 stated that it was the duty of the court 'on every investigation of title or partition, and on determining any succession' to define relative interests of owners or successors. Such interests were to be expressed in shares or fractional parts of a share.¹

1. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, pp 725–726

(1) Nga ingoa o nga tangata no ratou te poraka, a ko aua tangata me whakanohonoho-a-whanau i roto i ia ota, a me tuhi marire te ingoa o ia tangata o ia whanau.

(2) Nga hea o ia whanau i roto i ia poraka.

(3) Te hea o ia tangata i roto i te hea o tona whanau.⁹⁵

The names of all owners in a block had been listed since the Native Land Act 1873 required that memorials of ownership should be drawn up. But beginning a title investigation process by drawing up lists of individual names was unusual. In the land court, a block hearing began with the identification of parties with claims, the hearing of evidence, and the cross-examination of witnesses. Only after the court delivered its judgment as to which parties were the owners of the land were lists of names prepared. We must assume that in the Reserve the commissioners took their cue from section 8 of the UDNR Act. The Pakeha members would undoubtedly have played a leading role in discussions on interpretation of the Act – and both were steeped in land court procedure. Perhaps Smith hoped that, given the wording of the section, he might leapfrog straight to the lists, and avoid the prolonged hearing of historical evidence; his comment at the end of the Waipotiki hearing suggests this may have been the case.

Likewise, the emphasis on relative shares in section 8 reflected the entrenchment of such provisions in mainstream legislation, or in rules of the court, by this time (see sidebar). But

95. Ture Rahui Maori o te Takiwa o Te Urewera, 1896

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as we said in chapter 9, there was no compelling reason why the UDNR Act should have made provision for the identification of individual owners' shares.

The second factor which influenced the operation of the commission was thus the work of the land court in Te Urewera in the 'rim blocks' in recent years –reflecting the provisions of the legislation and the court Rules. This context is crucial to our understanding of the commission's work. The commission did not, and could not, begin proceedings with a blank slate. There was more to excluding the land court from operating in the Reserve than denying it a formal role; in fact it cast a long shadow over the commission. The intricacies of the land court were well known to the commissioners and to Te Urewera people. Reference to two of many cases will be sufficient to demonstrate this point.

In the Tuararangaia case heard by the court (1890–91), for instance, the judgment was followed by parties putting in their lists of names, by objections to some names on the lists – and, in one case, by evidence given by those seeking inclusion, followed by a court decision. Finally, the court issued orders for relative shares to 715 owners listed for Tuararangaia 1, to 406 owners of Tuararangaia 2, and to 293 owners of Tuararangaia 3.⁹⁶

The case of Ruatoki is of particular relevance, because so many hapu had claims there – and, as we have seen, the land had been highly disputed even before it went before the court. (It was the best remaining land of Tuhoë, and had become doubly valuable in the wake of the 1866 confiscation. The confiscation had also, as we have shown, put considerable pressure on displaced hapu and their neighbours.) After Judge Scannell gave his preliminary judgment in this case, in September 1894, lists of names were put in by those key claimants deemed to have established rights in partitions of the block (now designated as Ruatoki 1–4) and the court's decision was given on those lists. These were subject to objections over a number of days between 15 October and 1 December 1894, and a further judgment was given on those lists. The parties were then charged with considering 'relative interests' among themselves. This led to considerable difficulty and dispute as parties attempted to resolve allocations internally, and relative to one another.⁹⁷ In the end, the land court ordered that the block be divided into four parcels, and each awarded to those found to be owners 'in the relative proportions already determined.'⁹⁸ The lists show the total number of shares for each block (for example, 363 and a half for Ruatoki 1, and the distribution of shares in that block: two and a half for one owner; two shares for each of 54 owners; one share for

96. Whakatane Native Land Court, minute book 4, 22 to 29 January 1901, pp157–164, 166–167, 177–200, 218–229, 268–276 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(p)), pp 5382–5436)

97. Some idea of these difficulties and the mental gymnastics involved in resolving them can be gained from the following interchange in Whakatane Native Land Court, minute book 4B, 4 December 1894, pp124–125: 'Te Wakaunua says he will agree to three persons one for each hapu receiving 100 shares; all the rest of the owners to receive 50 shares each . . . or two shares and one share respectively. Shares to be 150 and 100 respectively.'

98. Regarding Ruatoki 4 (five acres), which a number of owners wished to be a school site, the court hesitated to make an immediate order, given that assent of a majority of owners was required: see Whakatane Native Land Court, minute book 4B, 4 December 1894, pp126–127, 129.

each of 251 owners; and one half-share for each of four owners).⁹⁹ The Ruatoki judgment was appealed (both by Ngati Rongo and by Mehaka Tokopounamu and Tamaikoha ‘for the Tuhoe hapus generally’, as the judge put it),¹⁰⁰ and the appeal was heard by the appellate court in April and May 1897. This led to the addition of names to the various lists of owners in Ruatoki 1–3 blocks already passed by the court, and awards by the court of specified shares to each of those admitted.¹⁰¹ This resulted in reductions of shares previously awarded to some owners.¹⁰² Many Tuhoe hapu had claimed interests in the Ruatoki block, and had attended the court hearings and the appeal. Most of the Tuhoe commissioners had been involved in the cases. They came into the commission with the experience of compiling lists of individual names, of having to defend their lists, and of considering ‘relative shares’ at the court’s instruction. The earlier court cases were very fresh in their minds. Many of those who gave evidence to the commission referred to evidence given earlier in the land court, and to the lists of names approved in the court; the commission itself stated that it had to look at the court minute books. And it is hard to avoid the conclusion that Tuhoe had been taken too far down the path of lists of names and shares to be able to retreat and make a fresh start. Later, when Judge Butler wrote in the 1902 commission’s report that title determination took much longer than expected, he put it down to the fact that Tuhoe ‘were new to the work’ and thus ‘fought out’ the ownership of each block to the ‘bitter end’.¹⁰³ We are inclined to the view that the opposite was the case. It was precisely because Tuhoe were *not* ‘new to the work’ – and by that we mean the work of title determination as presided over by the land court – that tensions sometimes ran high.

(2) *The role of the Tuhoe commissioners*

It is also our view that the history of conflict over names and shares was compounded by the fact that the Tuhoe commissioners did not, after all, play a full role in the workings of the commission. This is not to agree that their role was always secondary to that of the Pakeha commissioners, for the minutes show that on occasion they engaged in vigorous discussion. But there were structural problems. The first was the leading role accorded the Pakeha commissioners in the legislation and regulations. The Tuawhenua researchers highlighted this, agreeing with Professor Binney that the root of the first commission’s problems, and of its Native Land Court-style investigation, lay with the undue influence of the European commissioners. The researchers argued that:

99. Whakatane Native Land Court, minute book 4B, 5 December 1894, pp 131–141. The minute book notes that the names of 12 persons, who had no personal claims were added, to share with some owners at the request of those owners: Whakatane Native Land Court, minute book 4B, pp 125, 141.

100. Whakatane Native Land Court, minute book 5, 4 May 1897, p 185

101. Whakatane Native Land Court, minute book 5, 8 May 1897, pp 205–218

102. Whakatane Native Land Court, minute book 5, 8 May 1897, pp 207–209

103. ‘Report of the Chairman of Commissioners under The Urewera District Native Reserve Act, 1896’, 6 August 1902, AJHR, 1902, G-6, p 1

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Although Tuhoe had a majority on the First Urewera Commission, the Pakeha commissioners and their procedures quickly dominated its way of working. Smith became the chair of the first Commission. The regulation specified that the chair had to be one of the 'European' commissioners, and that if the chair was absent he was to be replaced by the other 'European' commissioner. As Binney comments, 'European leadership, procedures and participation drove it from the start'.¹⁰⁴

The second problem was that the balance of five Tuhoe to two Pakeha commissioners was undermined at the outset. During the commissioners' first week it was decided that Tuhoe commissioners should take no part in discussion or decisions affecting boundaries or relative interests in lands where they had interests. Numia Kereru put the motion and Mehaka Tokopounamu seconded it. We have only a summary (in both te reo and English) of these early commission minutes, not a complete transcript, so we are in the dark as to the discussions which preceded the decision, or who raised the matter. There was no such provision in the Act, or in the 1898 regulations – the latter simply specified that four commissioners, including one European, were to constitute a quorum.¹⁰⁵ What we do know is that the decision changed the nature of the Urewera commission. What had been envisaged was a Tuhoe-dominated body. In practice, this would no longer necessarily be the case. During the hearing of any given block, one, two, or more Tuhoe commissioners had to recuse themselves. In the case of the Ruatoki and Ruatahuna blocks, so important to many Tuhoe hapu, only one Tuhoe commissioner did not have interests, thus there was little Tuhoe participation in those hearings.¹⁰⁶ The recusal decision was formalised later: first in regulations approved on 15 January 1900 (Tuhoe commissioners must not vote if they had interests in a block, and the quorum requirements were set aside in such circumstances), and then in a section in the UDNR Act Amendment Act, passed in October 1900. The amending Act, in other words, offered an opportunity to fix a problem which the commission had evidently identified: how were those who appeared before it to have confidence in its decisions if some of the members had interests in the blocks being adjudicated on? Ultimately this dilemma was an outcome of the compromise reached between Te Urewera leaders and the Government on the process of deciding titles: the leadership had wanted the hapu to make the decisions, assisted by a single commissioner; Seddon had wanted the commissioner to adjudicate. In the end, Seddon, as we noted earlier, was prepared to accept that 'the owners

104. Tuawhenua Research Team, 'A History of the Mana of Ruatahuna from the Urewera District Native Reserve Act 1896 to the 1980s', vol 2 of 'Ruatahuna: Te Manawa o te Ika' (research report, Rotorua: Tuawhenua Research Team, 2004) (doc D2), p 26

105. 'Regulations under the Urewera District Native Reserve Act 1896', 25 November 1898, *New Zealand Gazette*, 1898, no 87, p1944

106. Hurae Puketapu was the only commissioner not interested in the Ruatoki blocks, and Te Pou was the only commissioner who sat on the Ruatahuna block hearing: see Urewera Commission, minute book 6, 15 April 1902, p 329 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(d)), p 1353); Urewera Commission, minute book 6, 3 March 1902, p 260.

of the land' would ascertain ownership themselves.¹⁰⁷ But we also accepted that the degree of Maori involvement and control in commission processes was not well articulated in the Act. And with the switch from an informal hapu-controlled process to commissioner adjudication, concern about commissioner conflict of interest had surfaced. It would still be evident the following year, as the spectre of a yet another contest over the disputed Ruatoki lands loomed – this time in commission hearings. Binney rightly stated that the question of ownership at Ruatoki became 'explosive', and had a major impact on the internal 'row' over the structure of the commission. To some leaders, it even seemed that the solution was to replace the Tuhoe commissioners with those from other iwi.¹⁰⁸ This apparent abandonment of a principle which the hapu had been so anxious to see recognised in law must point to the grave limits of the commission model in practice.

In 1900, the Government, in our view, had to address these concerns. It might simply have increased the pool of Tuhoe commissioners so that the balance of membership within the commission was preserved, although this would not have addressed the problem that would soon surface of there being Ngati Kahungunu claims to determine in some blocks. Instead, section 4 of the amending Act provided that if all the Tuhoe commissioners were interested in land being investigated, ownership would be decided by European commissioners alone, and the quorum would not apply. But the European commissioners could, with the approval of the Native Minister, appoint any one or two Maori 'not members of the Tuhoe Tribe' to assist in such cases: they might sit on the commission and vote. The commission was the poorer for the Government's failure to ensure that a local majority was maintained. Instead of amending the Act to waive the quorum requirements, the Crown could and should have provided for a pool of alternate or substitute commissioners, in the event of a sitting commissioner disqualifying himself from hearing a particular case. Such a pool, elected in the same manner as the original commissioners, that is, by hapu with interests in Reserve blocks, should also have provided for commissioners of all tribal affiliations, so that all were guaranteed involvement in the decision-making process.

The commission would have been a stronger body had it operated throughout with five Te Urewera commissioners, and the principle of majority tribal participation in the decisions had been assured. The alternative scenario, in which commissioners with interests in a block became conductors on behalf of their own claimant group, presenting their case, or were not involved at all, was more a recipe for suspicion and increased tension.

(3) *The commission and self-government in the Reserve*

By 1899, as we have seen, Smith's report flagged to the Government that the title-investigation process was going to take 'considerable time'. But what he did not do was draw attention

107. Seddon to Tuhoe delegation, 25 September 1896, J1 1896/1073, Archives New Zealand, Wellington (Binney, supporting papers to 'Encircled Lands, Part Two' (doc A15(a)), pp 50–51)

108. Binney, 'Encircled Lands, Part Two' (doc A15), pp 237–238, 240

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explicitly to the fact that there would therefore also be ‘considerable’ delays in establishing the basis for the operation of ‘the local government of the tribes’. This was despite the fact that he stressed the Urewera commission had a dual function: ‘combin[ing] the two objects of ascertaining the ownership of the large block of land included within the boundaries described in the schedule to the Act (656,000 acres), and . . . dividing the country into areas which are to serve as the basis for the local government of the tribes.’¹⁰⁹ We add that Smith reiterated this publicly at a commission hearing (the Waipotiki block) the following year:

We are not to investigate these lands so that they may be sold or leased but we are here to ascertain the electorate localities in this land.¹¹⁰

But he did no more than draw attention to the problem; he did not suggest a better way of proceeding to achieve local government, given the new circumstances he flagged. He did not take advantage of the Government’s willingness to listen to the commission’s recommendations about how to implement the Act properly. Carroll had specifically said in the 1896 debates that because quite unforeseen matters might arise when commissioners were determining title, they had been left ‘the power to suggest a set of regulations to meet every contingency’, which the Governor in Council would give effect to.¹¹¹ As we have noted, section 16 of the Act stipulated how provisional committee members were to be selected (namely, from the owners of each block) so, until that section was repealed, a regulation to different effect would not be valid. And it would take the Crown until 1908 to amend the Act for the purpose of expediting local government of the Reserve.

Smith indicated instead that the commission was poised on the brink of a substantial process of surveys and hearings throughout Te Urewera which would not even begin till February 1900. By then it would be three and a half years since the UDNR Act was passed. The Urewera commission was now set on a path which saw it prioritise the determination of individual ownership (according to its own interpretation of the UDNR Act), rather than facilitating the establishment of local committees and the General Committee, which Tuhoe were anxiously awaiting, by identifying hapu districts. The UDNR Act provided for two outcomes, as its short title underlines: An Act to make provision as to the ownership and local government of the Native lands in the Urewera District (He Ture hei whakatakoto Tikanga e mohiotia ai nga Tangata no ratou nga Whenua Maori o te Takiwa o Te Urewera, a hei whakatu Kawanatanga Takiwa mo taua iwi). The establishment of local government could not simply be ignored while a title investigation process slowly unfolded.

And the process did unfold slowly – though we do not think this reflects badly on the commission. Given the requirements of the UDNR Act, and given the pervasive influence of

109. ‘Annual Report on the Department of Lands and Survey’, AJHR, 1899, C-1, p xi

110. Urewera commission, minute book 3A, 26 February 1900, p137 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(a)), p 247)

111. Carroll, 24 September 1896, NZPD, 1896, vol 96, p159

land court procedure in Te Urewera, it had a complex task. It was dealing with a great deal of land, estimated at 656,000 acres at the time,¹¹² and with many blocks (initially 57, reduced by 1902 to 34).¹¹³ (By contrast, there were 11 ‘rim’ blocks in our inquiry district, encircling what became the Reserve, amounting to 377,271 acres. These blocks were heard in two clusters (1878–82 and 1889–94) over a 16-year period.) Nor was the commission particularly slow in its individual block investigations. Even the Waipotiki case, about which Percy Smith protested, took just two and a half weeks. The commissioners seem to have been anxious to press on with their work – and Tuhoe commissioners agreed with the principle of a shorter process. Tutakangahau voiced what was probably a general concern that all the old people might pass away if the commission was too slow.¹¹⁴

The commission’s work was drawn out because it sat for relatively brief periods each year, as we noted above, during the summer and autumn. It was under-resourced. It would not sit in the winter months (the lack of weather-proof venues in some places was a factor, as the chairman first pointed out in 1899).¹¹⁵ In his final report in 1902, Butler wrote that:

The work of the Commission was also retarded by the want of a suitable building. Sittings were held in the open air, and there were many interruptions through wet weather, strong winds, and other causes.¹¹⁶

These were also times of severe crop failures in Te Urewera. The first was in summer 1898, when two unseasonal frosts struck nearly all the major Urewera settlements, destroying crops and rendering potatoes useless as seed for the following season. The result was famine. (We discuss this further in a later chapter.) In May 1900, a flood in the Ruatoki district ruined crops and drowned cattle; tons of potatoes were lost. In January 1901, frost again destroyed potato and corn crops.¹¹⁷ Accordingly, the commission chairman may have been concerned about the burden on host communities of feeding manuhiri – as well as the burden on all those involved of sitting for more than 10 to 14 weeks at a stretch. People had to prepare for hearings, too. In one case (Waikarewhenua), Numia Kereru, who was on this

112. Urewera District Native Reserve Act 1896, sch 1

113. Official sources give different figures for the number of blocks at different times. The 1899 figure given by the commission was for 57 blocks (AJHR, 1899, C-1, p xi). The commission reported in 1902 that it had reduced claims for ‘fifty eight’ blocks to 34 (though the names of the blocks were not given) (AJHR, 1902, G-6). But the 1903 report stated that there were now 35 blocks (AJHR, 1903, G-6). Binney stated that the 1902 report omitted Waitiripapa and counted Ruatoki 1–3 as one block. (which would explain the discrepancy between the 1902 and 1903 figures). Binney, ‘Encircled Lands, Part Two’ (doc A15), p 244.

114. Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), p 104

115. In May 1900 the Chairman said that the commission would ‘not return to sit in such a house as this’. Urewera commission, minute book 4, 18 May 1900, p 338 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(b)), p 643). In January 1902 the commission could not begin sittings until ‘materials for tents’ had arrived and its staff was accommodated. (See Urewera commission, minute book 6, 15 January 1901, p 7 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(d)), p 1084)

116. ‘Report of Chairman of Commissioners under The Urewera District Native Reserve Act, 1896’, 6 August 1902, AJHR, 1902, G-6, p 1

117. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 287–295

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occasion a conductor for claimants, spoke of disputed lists having already taken a month to be arranged.¹¹⁸ Inevitably, however, restricted sitting periods meant that the overall work of the commission would take longer.

All of this underlines how unreasonable it was to expect the peoples of Te Urewera to wait for their committees until the commission had finished. The Crown had to intervene when the problem became clear. It did not do so in 1900. And it did not do so even in 1902, when the commission finally named members of provisional local committees. We turn now to the final stage of the commission's work.

It has to be said that its work had a rather untidy end. Judge Butler wrote his final report to Parliament on 6 August 1902, reporting that claims to all hapu blocks had been heard, and orders made for 33 of the blocks; the interests of families and individuals had been defined in accordance with section 8 of the Act. But the commissioners had deferred their decision on the Ruatoki block. And, as all the commissioners' orders were deemed by the 1900 amending Act to be interlocutory (provisional) and might yet be revised by them, they wished to consider some applications for revision – and so had adjourned until October for that purpose. Thus, the commission had yet to hold its final hearing. It sat for five days between 3 and 14 October in Whakatane, during which time it ran through each block and heard any requests for reconsideration. In some cases, new names were added to lists and minor adjustments made to shares. In others, the commissioners determined that no alteration be made, and recorded that some claimants notified their intention to appeal the commission's decisions under the Act.¹¹⁹ The awards were confirmed and published in the *Kahiti* on 5 June 1903 – long lists of individuals, with family groupings alongside, showing the number of shares awarded each, arranged by block (see appendix III). By sections 9 and 10 of the 1896 Act, Maori had 12 months to appeal to the Minister of Native Affairs.

In 1902, finally, the commission addressed the question of the appointment of provisional local committees. It seems that at this point it may have considered the relationship between the certificates of ownership which would be issued once the final block orders were made, and the membership of local committees and the General Committee. In May, it decided to group the 30-plus blocks for which it had finalised title orders; it would make a separate order for each group of blocks. It identified and named 10 groups: Te Whaiti-nui-a-Toi, Ruatahuna-Waikaremoana, Maungapohatu, Ohaua Te Rangi, Tauwharemanuka, Parekohe, Paraeroa, Ruatoki, Hikurangi Horomanga, and Tarapounamu Matawhero. The last two did not comprise smaller groupings at all, whereas the others included up to six existing blocks. Each group was to form a 'division' under section 6 of the UDNR Act. Section 6 does not in fact refer to 'divisions'; it required the commissioners to 'divide the

118. Edwards, 'Urewera District Native Reserve Act 1896' (doc D7), p 135

119. Urewera commission, minute book 7, 3 to 7 October 1902, pp 42–58; Edwards, 'Urewera District Native Reserve Act 1896' (doc D7), pp 101, 126–127

said district into blocks' and to investigate the ownership of each, 'adopting as far as possible hapu boundaries.'¹²⁰ This was the basis on which the commission had initially identified 57 blocks, and then, over time, reduced the number to 34 for which it had identified lists of owners. Edwards stated that there is no evidence on file to suggest why the commissioners decided they should move in 1902 to a smaller number of what it called 'divisions'. Perhaps, she suggested, it was because the commission 'sought to minimise the number of General Committee members an individual hapu could have, and that they deemed the new groupings to be more efficient.'¹²¹ If so, the commission had finally returned to considering the electoral significance of its work, but was considering a change to the basis on which the General Committee was elected (which was beyond its powers).

In October, however, the commission changed its mind.

There being some doubt as to the jurisdiction of Commissioners to group blocks together under one title . . . as was proposed at last sitting, it is decided to issue separate titles for each division and to appoint provisional local Committees for each.¹²²

In other words, it would issue orders for each of its final blocks, rather than for larger groupings – and would appoint a provisional local committee for each block. The Act made it clear that each block was to have its own committee (sections 16, 17, and 18); under section 13, the names of members of the local committee for each block (and of the General Committee) were to be recorded on the certificate of title for the block. Because the local committees were tied under the Act to block certificates of ownership, the commissioners realised that they had no power to appoint committees for any grouping larger than a block (see appendix 11).

On 8 October 1902, when it had completed its review of blocks, the commission 'appointed' provisional local committees for each of 31 blocks, listing the names for each committee. Names were those submitted by conductors of cases before the commission.¹²³ Six days later, having finalised the awards for Ruatoki 1–3 and Waipotiki, the commissioners appointed committees for those four blocks too.¹²⁴ The members included many senior Tuhoe and Ngati Whare leaders in their various localities.¹²⁵ This was in fact the commission's last act. The minutes of 14 October recorded: 'Title to whole reserve complete.'¹²⁶

120. Urewera commission, minute book 7, 2 May 1902, pp 23–24 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(h)), pp 2770–2771)

121. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 125

122. Urewera commission, minute book 7, 3 October 1902, p 43 (Edwards, 'Urewera District Native Reserve Act 1896' (doc D7), p 126).

123. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 7

124. Urewera commission, minute book 7, 8 October 1902, pp 59–66, 14 October 1902, pp 69–70. For the lists of members' names, see Edwards, 'Urewera District Native Reserve Act 1896' (doc D7(b)), pp 9–15.

125. Binney, 'Encircled Lands, Part Two' (doc A15), p 246

126. Urewera commission, minute book 7, 14 October 1902, p 70

Then, remarkably, the lists of provisional committee members were not gazetted with the Commission's awards.¹²⁷ We do not know why. Binney suggested that the many appeals lodged against those awards meant that 'the first provisional committees were simply shelved'.¹²⁸ If so, this seems inexplicable. We discuss this further in the next section.

By the end of 1902, then, the first Urewera commission had finished its work. The provisional committees – though their members had been named – remained in limbo. It was six years since the UDNR Act had been passed.

13.6.3 What was the Crown's responsibility, once the extent of delay was evident?

The first Urewera commission, as we have seen, was well aware that a key part of its job was to facilitate elections so that committees could begin their work. It also knew, and had reported by June 1899, that its processes of title determination were going to take 'considerable time'.¹²⁹ As far as we are aware, however, there were no suggestions about how this problem might be solved. We noted above that the UDNR Act would have needed amendment before provisional committee members could have been selected otherwise than from among the owners.

What, in these circumstances, was the Crown's responsibility? The Crown, as we have seen, acknowledged before us that the 'unduly long' time that elapsed after the passage of the UDNR Act contributed to the failure to fulfil the local governance principles under the Act.¹³⁰ In particular, it conceded that '[a]n opportunity was missed' in 1902. The provisional committees could have been appointed at that time (as the owners recommended); there did not seem to be any impediment to this.¹³¹ Given the sequence of sections in the UDNR Act, it seems to us that the provisional local committees (appointed by the commission) were provided for *so that* they could function while appeals (for which provision had been made) were heard. Why otherwise would there be provision for both provisional and permanent committees? The Act does not spell out why both kinds of committee were required. But it specifies (section 17) that 'provisional Local Committees shall hold office until the election of a permanent Local Committee by the owners of the block'. In other words, the permanent committees were to succeed the provisional committees.

In our view, the Crown should have revisited the question earlier. If the commission's initial proceedings had revealed a weakness in the Act such that there was a threat to the timely establishment of the local committees and therefore the General Committee, the onus was on the Crown to act. The Premier and ministers had a good grasp of what Tuhoe wanted

127. Binney, 'Encircled Lands, Part Two' (doc A15), p 246

128. Binney, 'Encircled Lands, Part Two' (doc A15), pp 246–247

129. 'Annual Report on Department of Lands and Survey', 21 June 1899, AJHR, 1899, C-1, p xi

130. Crown counsel, closing submissions (doc N20), topics 14–16, pp 49–50

131. Crown counsel, closing submissions (doc N20), topics 14–16, p 61; Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 7

to achieve with the UDNR Act. They knew that Tuhoe wanted their General Committee quickly. Carroll told the House in 1896 that the commissioners appointed to investigate title and subdivide the Reserve would ‘cease to exist’ as soon as they had done this, and had appointed provisional committees. At that point, the Act ‘w[ould] be self-working amongst the Natives, and in their interests.’¹³² Tuhoe anxiety that committees be established had been impressed on Seddon again after the Act was passed – both in late 1897, when a dispute erupted between Tuhoe and Ngati Whare over land at Te Whaiti, and in September 1898, when the leaders met him in Wellington.

In the course of the 1897 dispute, Makurata Hineore, a 50-year-old Tuhoe woman, struck Ngawati (Pika) Puru of Ngati Te Karaha (Ngati Whare) after ‘severe provocation’, and was sentenced to one month’s imprisonment with hard labour by two newly appointed justices of the peace.¹³³ Te Wharekotua (in his capacity as secretary for Tuhoe’s union, according to Binney) wrote to Seddon from ‘Tari mo nga tikanga maori’ (Mataatua Native Office (Ruatahuna)). He told Seddon that the trouble had arisen because of delays in appointing ‘an authoritative Committee to deal with the troubles in the Rohe Potae’ (‘te komiti whaimana hei whakahaere i nga raruraru e pa ana ki te Rohe Potae’); local committees must be formed in Te Urewera for such matters.¹³⁴ Seddon also received a letter from Himiona Tikitu, Paitini Wi Tapeka (Makurata’s husband), and others complaining that ‘incompetent’ Pakeha should not try cases within the Rohe Potae, and urging the appointment of the commissioners.¹³⁵ And in Wellington in 1898, Te Wakaunua spoke to Seddon of the principles adopted at the hui held to discuss the UDNR Act:

that the *mana* should be established from the top to the bottom; secondly, that the Commissioners should be sent to perform their duties; and, thirdly, that the great committee of Tuhoe should be empowered by the Government to watch, with the assistance of the Government, the interests of the people in the event of any calamity befalling them.¹³⁶

We think the Crown had a clear obligation, in light of its considerable interaction with Te Urewera leaders, and its promises as embodied in the UDNR Act, to ensure that the committees that were the key to self-government under the UDNR Act were appointed expeditiously.

Various courses of action were open to the Crown once delays in the commission processes were signalled. Given that the UDNR Act processes were experimental, and that Carroll had indicated that he expected them to evolve, the Crown ought to have monitored the commission’s progress. Smith’s first report of 1899 sounded a warning that progress towards establishment of the committees was lagging. In fact, Carroll did take on board

132. Carroll, 24 September 1896, NZPD, 1896, vol 96, p 159

133. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 256–257

134. Te Wharekotua to Seddon, 13 October 1897 (Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 258–259)

135. Himiona Tikitu, Paitini Wi Tapeka, and others, 22 October 1897 (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 259)

136. Notes of Meetings, p 61 (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 241)

what Smith had said. He told the House in 1900, when he introduced the Bill amending the UDNR Act, that some considerable time was going to elapse before the commission made final title orders.¹³⁷ It is thus clear that legislative amendment was a practical option for fine-tuning the UDNR system. But Carroll completely missed the opportunity to put things back on track. Though he reconsidered what to do about the local committees, all he did was bestow on the commissioners the powers that should have been exercised by the committees. Section 9 of the amending Act read:

Until such time as the Committees contemplated by the principal Act are appointed, the Commissioners shall have power to deal with all matters which the Committee, if appointed, might deal with, and their decision in all such matters shall be binding on all the owners.

Carroll might have been alerted to the problem by opposition member William Herries's somewhat cynical remarks about the committees at the heart of self-government in the Reserve:

This is one of the most important blocks of native land that is still held by the Natives. It has been the subject of special legislation since 1896, and I never myself could see exactly the object of this special legislation. . . . With regard to the Bill now in our hands, it seems to me it is directed to remedying several defects in the original Act. In the original Act there was a system of Committees to be set up. Up to the present time I do not think any Committees have been set up, and the original Act gave them very little power. It is evidently contemplated now by clause 9 that these Committees will be abandoned . . .

This is a wise decision, as I think the two pakeha gentlemen on the Commission will have the respect of both races, and I think the Government are to be congratulated on appointing these two gentlemen.¹³⁸

As far as we know, that provision was not used – but that is not the point. The Crown's response at a crucial point was to empower the commissioners (who were chaired by a Pakeha judge, and whose job was quite different from that of the General Committee), to appropriate the functions of a tribal decision-making body. Carroll seemed to have forgotten the importance of the UDNR Act to Tuhoe and Ngati Whare.

In 1900, when the amending legislation was prepared, the Crown might readily have amended the provisions for establishing local committees – and thus for the election of the General Committee – to ensure that Tuhoe had the opportunity to embark at once on management of their lands and their own affairs. (It certainly showed itself to be quite flexible in respect of the membership of the General Committee once it finally turned its attention to the matter in 1908.) Section 16 of the UDNR Act 1896 provided that the commissioners were to appoint provisional local committees from among the 'owners' of each block – that is,

137. Carroll, 18 October 1900, NZPD, 1900, vol 115, pp 424–425

138. William Herries, 18 October 1900, NZPD, 1900, vol 115, p 425

those found to be owners by the commission. We do not see why the commission might not, for instance, have been empowered instead to select provisional committees from leaders of hapu which were clearly associated with particular districts (in the te reo version of the Act, after all, the committees were ‘Komiti Hapu’). This could have been done in consultation with those present. Seddon apparently thought temporary local committees were to be appointed by the commissioners right at the start – before they began identifying block boundaries and investigating title. That, at any rate, was what he told the Tuhoe delegation in Wellington in September 1898.¹³⁹ That might not have been what the Act provided, but Seddon still thought it would have worked. Tuhoe, we add, had had no trouble selecting their five commissioners – they had done so within two months of the Act being passed. And when the Tuhoe commissioners put in the names of 46 hapu at the start of the commission process, they identified the areas with which those hapu were associated, 11 in all: Ruatoki, Ruatahuna, Te Waimana, Maungapohatu, Te Houhi, Ohaua, Tawhana, Te Waiti, Te Whaiti, Galatea, and Waikaremoana.¹⁴⁰ Why could those areas not have been used as the basis for electoral districts? Or as the basis for committee selection by the commission, in conjunction with those present?

Alternatively, once it became apparent that section 16 of the UDNR Act was not going to produce provisional committees swiftly, the section could have been repealed, leaving the question of how to appoint provisional committees to be worked out by the Governor in Council and prescribed in regulations. The Act was characterised by the generality of its provisions for the Reserve: very little detail was prescribed as to how the self-governing institutions would operate. Instead, section 24 empowered the Governor in Council to make regulations in the broadest of terms:

24. The Governor in Council may from time to time make such regulations as he thinks necessary for the following purposes:—

(1.) The mode of election of members of the Local Committees and the General Committee, and fixing their term of office:

(2.) Giving effect to anything which by this Act is expressed to be prescribed:

(3.) Any other purpose for which regulations are contemplated by this Act, or which he deems necessary in order to give full effect to this Act: and also

(4.) For giving effect to a certain memorandum from the Honourable Richard John Seddon, Premier of the Colony, addressed to the representatives of the Tuhoe people, bearing date the twenty-fifth day of September, one thousand eight hundred and ninety-five . . .

It would have been entirely consistent with the Act’s skeletal structure for the manner of establishing the provisional committee to be left to be specified in regulations. The commissioners would have been the obvious source of advice on the matter. Had they turned

139. ‘Notes of Meetings’, p 64 (Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), p 50)

140. Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), pp 57–59

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their minds to elections, rather than *selection*, of committee members, they should have discussed with Tuhoe leaders a mechanism to ensure that people voted in only one district, or in no more than a certain number of districts in which they had the strongest connections.

Regulations were gazetted in 1898 and 1900, but they dealt only with the procedure of commission hearings. Clearly, they could have been used to give effect to the broader purpose of the legislation.

The importance of these Crown failures at the turn of the century cannot be over-estimated. The 1900 opportunity passed by, and two years later not even the publishing of the commission's report and the provision of lists of committee members' names could spur the Crown to action. It is hard to avoid the conclusion that ensuring self-government in the Reserve no longer mattered to the Crown. The impetus of the mid-1890s had quickly ebbed away. Tuhoe, who had confidently and impatiently awaited the institutions through which they would govern themselves, were left in limbo. Four years was, in our view, too long to wait for committees to be established. Six years was at the outer edges. And by the time the General Committee was appointed (not elected), the entire political context had changed. We return to this point in the next section.

13.6.4 In what circumstances was the General Committee finally established in 1909?

Even after the Urewera commission completed its title investigation in 1902, it would be 1907 before provisional local committees were named, 1908 before they were validated, and 1909 before Te Komiti Nui o te Iwi, or the General Committee, was established. As the Crown has acknowledged, this delay in addressing appeals 'contributed to the failure to fulfil the local governance principles under the Act'.¹⁴¹

But we cannot focus simply on the appeals process: we have to look beyond this to explain why the General Committee was finally established so many years after the UDNR Act was passed – and why, by then, the circumstances were less than ideal for Te Urewera leaders to embark on implementing policies of self-government and tribal land management. We have to look, in other words, at the kinds of political change which took place in the first decade of the twentieth century, both within the iwi and within the nation.

(1) Political change

Nationally, the winds of political change were gathering force in the period between 1900 and 1905. The Opposition applied increasing pressure to the Liberal Government in respect of its 'Native land' and settlement policies. The Central North Island tribunal has pointed to settler reaction to policies which were themselves a Liberal attempt to reach some accommodation with the Kotahitanga parliament – which sought Government recognition

141. Crown counsel, closing submissions (doc N20), topics 14–16, pp 49–50

of Maori control of their own affairs and own lands – during the latter part of the 1890s. Kotahitanga leaders had been unsuccessful in securing that recognition through a series of Bills introduced into the New Zealand Parliament, but the meetings of their own parliament, and their determined pressure against the Native Land Court and the scale of land loss, continued. The establishment of Maori Land Councils in 1900 under the Maori Lands Administration Act was designed to assist Maori owners (whose titles the land court had individualised) to manage their lands and to stem the purchase of land, replacing it by leasing. But within only a few years the Liberals found themselves under heavy pressure from the Opposition, and from the press, both of which accused the Government of retarding settlement of the North Island and the progress of the country, encouraging Maori owners to keep the best land (with which they did nothing) and to be ‘idle’ landlords rather than active citizens.¹⁴² Native Minister Carroll came in for particular criticism for keeping Maori in a state of ‘tutelage’, compelling them to work through councils. Such criticism was unqualified by any recognition of the considerable compromise Maori leaders had made in 1900 when they gave up their parliament in the hope of achieving collective control of their affairs and lands through the new Maori Councils and Maori Land Councils.¹⁴³

By 1905, the Liberals were in retreat from the 1900 policies. The Land Councils (which had been the outcome of extensive negotiation with Maori leaders) were replaced by small Land Boards which did not have the strong regional Maori representation the Land Councils did, and Crown purchase was reintroduced. Early in 1907, a commission charged with a ‘stocktaking’ of Maori land was appointed. The underlying rationale for the commission was that there were ‘surplus’ Maori lands which could be identified and made available for Pakeha settlement. The Native Land Settlement Act 1907 was passed to enable such land to be vested in Maori Land Boards and thus made available for settlement. Once land had been so vested, the board would lease roughly half of it, and sell the other half. This provision amounted to compulsory sale. The two commissioners, Chief Justice Robert Stout and the member of Parliament for Eastern Maori, Apirana Ngata, were to engage in broad consultation with Maori throughout the North Island and, in conjunction with the owners, were to select which lands the owners needed to retain, and to farm, and which might be alienated. The results of the commission’s work were a disappointment to those who had hoped it would produce large tracts of land for settlement – for Stout and Ngata were anxious that Maori retain enough land to farm themselves. But, as we will see, this did not deter the advocates of ‘small farmers’, and by 1912 the Reform Government took power and tried to make up for lost time in its purchasing of Maori land.

Within Te Urewera, too, there was a change in the political landscape from about 1906, with the emergence of spiritual leader Rua Kenana. Professor Binney described him as a ‘voice of protest: protest against specific Government policies, and protest against an

142. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 677–678

143. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 681

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entrenched aristocratic leadership' – notably Numia Kereru of Ruatoki. She outlined his emergence as a 'prophet-leader', his early visions, his claim to be Te Kooti's son – that is, his chosen successor¹⁴⁴ – and his 'messianic dreams for his people [which] incorporated other more pragmatic and comprehensible schemes.'¹⁴⁵ During 1907 he reconstructed Maungapohatu as his 'City of God': it would be the 'active centre of Rua's religious and prophetic teachings.'¹⁴⁶ Many Tuhoe – and many beyond Tuhoe – were attracted to his teachings, and by the summer of 1908 Maungapohatu was surrounded by 'well-made clearings', with clearings also 'on the broad flood-plain'¹⁴⁷ of the eastern branch of the Whakatane river: fields of corn, orchards, potato crops, and sheep, cattle, and horses.¹⁴⁸ A large settlement, with streets and water supplied by the diversion of a stream, had sprung up beneath the maunga.

Rua's following was not universal among Tuhoe. Key Ruatahuna leaders, for instance, would not support him, adhering instead to the Ringatu faith.¹⁴⁹ And, as we will see, his contest with Numia Kereru of Ruatoki was to be longstanding – and to have a marked impact on Tuhoe relations with the Crown. But Rua's charismatic leadership had wide appeal at a time when natural disasters had taken a great toll on Tuhoe: famine in 1898 following frosts in mid-summer which destroyed crops; a major flood in Ruatoki in May 1900; unseasonal frosts again in January 1901; and, in 1904, floods which ruined the potato crops of Ruatoki, Waimana, and the Rangitaiki communities. In addition there was a measles epidemic, and an influenza epidemic, in 1897. The impact on the population of Te Urewera of famine and the resulting vulnerability to disease was severe; we estimate that between 1896 and 1901 approximately 16 per cent of the population, one person in six, lost their lives.¹⁵⁰

Against this broad background, our analysis will focus on the Crown's progress towards the establishment of the General Committee in two phases:

- ▶ its moves to open Te Urewera to prospecting and mining, and
- ▶ its preparations for the alienation and settlement of Te Urewera land.

This new Crown interest in the economic possibilities of the Reserve generated a concern to see appeals finalised, and committees established.

144. Binney, 'Encircled Lands, Part Two' (doc A15), p 352

145. Judith Binney, Gillian Chaplin, and Craig Wallace, *Mihaia: The Prophet Rua Kenana and his Community at Maungapohatu* (Auckland: Auckland University Press and Bridget Williams Books, 1990), p 15 (doc A112, p 10)

146. Binney, 'Encircled Lands, Part Two' (doc A15), p 378

147. JM Bell, *The Wilds of Maoriland* (London: Macmillan, 1914), p 125 (Binney, 'Enclosed Lands', vol 2 (doc A15), p 379)

148. Binney, 'Encircled Lands, Part Two' (doc A15), p 379

149. Tuawhenua Research Team, 'A History of the Mana of Ruatahuna' (doc D2), pp 108–111

150. Between 1896 and 1901, the census recorded a drop in population of some 23 per cent of the 'Urewera' tribe (from 1421 in 1896 to 1094 in 1901, but the 1901 return was highly likely to be an underestimate since it recorded (incorrectly) that no 'Urewera' lived in Wairoa county; the overall percentage of peoples of Te Urewera who lost their lives would therefore not have been as great: see population census 1986; population census 1901; Brian Murton, 'The Crown and the Peoples of Te Urewera: The Economic and Social Experience of Te Urewera Maori, 1860–2000' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc H12), p 1049.

(2) Crown moves to open Te Urewera to prospecting and mining

Our first task is to explain the circumstances in which appeals from the decisions of the first Urewera commission were finally heard in 1906 and 1907, thus clearing the way for the second listing of members of the local committees. In broad terms, the election of local committees was necessary before the General Committee could be elected.

We have referred above to the delay before appeals from the Commission's decisions were addressed. Section 9 of the UDNR Act provided for appeals to be made to the Minister of Native Affairs up to 12 months from the date of the awards being published. Under section 10, the Minister could direct 'such expert inquiry and report as he thinks fit' and, after considering 'such report', might confirm the original order or amend it as he saw fit. So, both the procedure for dealing with appeals and the ultimate decision were in his hands.

There was an initial delay between the commission's completion of its work in October 1902 and the publication of its awards in June 1903. This pushed the time for making appeals out to June 1904. Between 1901 and 1904, a large number of appeals were received. Native Minister Carroll notified 172 appeals for the main blocks, plus 49 in respect of Ruatoki 1–3 blocks.¹⁵¹

Despite the early indications that there would be a substantial number of appeals, Carroll was slow to initiate an inquiry process. We might have expected that inquiries would be under way before the end of 1904. But in fact Carroll did not consider appointing a panel of experts until 1906. We received no evidence on the reason for this hiatus, but what is more to the point, perhaps, is why in 1906 Carroll did belatedly take an interest in the appeals process.

The short answer seems to be that in 1906 Carroll had reason to concern himself with the establishment of the General Committee, because he was reminded of its unique functions under the UDNR Act. In particular, it had to be involved in decisions about mining inside the Reserve, as was apparent from sections 18 and 21 of the Act and Seddon's own promises, recorded in the second schedule (see appendix 11).

Gold prospecting in Te Urewera had been an issue since the end of the 1880s, and had resurfaced in the wake of the passing of the UDNR Act. Private mining syndicates were anxious to win prospecting rights, and at least one payment was made to two Te Urewera leaders for the right to prospect *outside* the boundaries of the Reserve. But on 7 January 1897 Seddon issued instructions to the police to stop all unlawful prospecting inside Te Urewera, and he informed seven leading chiefs that he had done so: no prospecting would be allowed without the consent of the owners and the Governor. Cadman, the Minister of Mines, stated, when responding to a particular application, that until the Commission had ascertained ownership within the Reserve he 'could not possibly obtain the required

151. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 159–160

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consent of the “Tuhoe tribe”¹⁵² In Government eyes, therefore, Te Urewera was closed to gold prospecting.

At the end of 1905, however, the prospecting issue resurfaced. Binney recounted the interest of George Spotswood (none other than Seddon’s Australian brother-in-law) and James Mackay, who had been civil commissioner for Hauraki and played a key role in having Maori land there opened up for goldmining; from 1896 he became a miners’ agent in Paeroa before retiring.¹⁵³ Spotswood and Oliver Creagh, a contract surveyor, formed the ‘Urewera District Gold Prospecting Syndicate’ and travelled to Urewera to try to get Tuhoe consent to prospecting. They had a successful meeting at Ruatahuna, and obtained a handful of signatures at Te Whaiti, but also found that:

the Tuhoe Natives have a very great respect for . . . the Premier, and strictly adhere to an agreement made with him, that no mining, or consent to prospect for gold, should be given by them unless with his consent.¹⁵⁴

Mackay’s approach to Seddon for a letter of authority to conduct further negotiations was not successful. But his visit provoked a letter of protest to Carroll from Tuhoe chiefs Te Whenuanui, Te Wharekotua, Mehaka Tokopounamu, and others. They were concerned that Mackay would bring trouble, and asked Carroll to ensure that ‘that pakeha’ stayed away from them.¹⁵⁵ And officials reminded the Minister that Commission appeals had not been disposed of: until they were, the land ‘should not be dealt with in any way’.¹⁵⁶

As a result of these developments, Carroll decided to visit Te Urewera, and met with Tuhoe in March 1906 at Ruatahuna.¹⁵⁷ He had by now received a briefing paper that officials in the Mines Department had prepared for their Minister, emphasising that the ‘Native owners’ had to consent to their lands being opened to prospecting and mining: ‘the locality would have to be included in a Mining district upon such terms as the Native owners might agree to’.¹⁵⁸ But Carroll sought that Maori grant ‘an absolute right over any likely area to the extent of 10,000 acres for prospecting and mining purposes’, though (in line with the Mines

152. Cadman to JM Shera, 6 May 1897 (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 369)

153. ‘James Mackay’, 1769–1869, vol 1 of *The Dictionary of New Zealand Biography* (Auckland: Auckland University Press; Wellington: Department of Internal Affairs, 1998), pp 252–253

154. Mackay to Minister for Mines, 23 December 1905, MD 1, file 6/4/6, Archives New Zealand, Wellington (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 370)

155. Te Whenuanui et al to Carroll, 14 December 1905, MD1, file 6/4/6, Archives New Zealand, Wellington (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 371)

156. Sheridan’s file note, 17 February 1906, MD 1, file 6/4/6, Archives New Zealand, Wellington (Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 28)

157. The meeting took place on either 25 or 26 March; two sources gave different dates: Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 28.

158. Briefing paper to Minister of Mines, undated [December 1905], MD 1, file 6/4/6, Archives New Zealand, Wellington (Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 28)

Department recommendation) a royalty of sixpence per ounce of gold should be paid to the owners.¹⁵⁹

It is clear that Tuhoe regarded the hui as a crucial one: 1000 people were present. This was a huge turnout given the population of Te Urewera at the time. According to Numia Kereru's account, Tuhoe established a committee ('te Komiti o Tuhoe') – or, as Binney put it, a large council, consisting of 94 members. Numia was elected the chairman. According to his own account of decisions taken: 'The matters which were completed were the opening of the land of Te Urewera to permit of the Gold being searched for; and the setting up of the General Committee of the tribe.'¹⁶⁰ Carroll, he said, agreed to these decisions, and a delegation of five was chosen to discuss them further with the minister in Wellington.¹⁶¹ Kereru was to lead the delegation, and the other members were to be Taua Rakuraku (Waimana), Hori Wharerangi, Te Wharepouri Te Amo, and Mika Te Tawhao from Te Houhi.¹⁶² While the wording of Numia's letter about the setting up of the Committee is somewhat ambiguous, we agree with Binney that it was not set up under the UDNR Act.¹⁶³ But it is clear that Tuhoe – still, after 10 years without any committees, and doubtless tired of waiting for the Government – took matters into their own hands at this point, and set up a body similar to Te Whitu Tekau. It seems they hoped Carroll would either formalise their komiti or take steps to get a General Committee constituted, and that this was one of the things they hoped to achieve in Wellington. Nor had they agreed to the Government having 'absolute control' over prospecting, as Carroll seems to have requested; agreement was limited to the district being opened for prospecting, and the delegation was to progress matters further.¹⁶⁴

The meeting in Wellington was to have taken place in June, but it is not surprising, given Seddon's death on 10 June 1906, that it was postponed.¹⁶⁵ Numia Kereru wrote to Carroll in July, reminding him that although it was agreed at the Ruatahuna hui that Tuhoe lands should be opened for prospecting, 'a General Committee should first be appointed and five chiefs of Tuhoe [should] visit Wellington in August'. He added that land issues – presumably titles – should now be settled, 'so that peace may rest upon the people and the land.'¹⁶⁶ A newspaper report of the delegation's meeting in Wellington stated that they 'did not want

159. Carroll, file note on briefing paper to Minister of Mines, undated, MD 1, file 6/4/6, Archives New Zealand, Wellington (Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 28)

160. Numia Kereru to Waldegrave, 2 [April] 1906 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 435). Binney stated that though the letter is dated 2 March, internal evidence makes it clear that it should read 2 April.

161. Numia Kereru to Waldegrave, 2 [April] 1906 (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 435); Binney, 'Encircled Lands, Part Two' (doc A15), p 372

162. Binney, 'Encircled Lands, Part Two' (doc A15), pp 372–373. Taua Rakuraku had adopted his father's name, Rakuraku Rehua, after the old man's death in February 1901.

163. Binney, 'Encircled Lands, Part Two' (doc A15), p 375

164. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 30

165. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 30

166. Numia Kereru to Native Minister, 23 July 1906, MA 1, file 1906/582, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 436)

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any Pakeha plan for settlement allowed in the district until a committee of incorporation [as the paper understood it] for the land was established and the inquiry into the grievances of the Rohe Potae was completed.¹⁶⁷ Edwards stated that little is known of the details of this meeting but that what was at issue ‘was not whether Tuhoe would approve of prospecting being carried out; it was a matter of the terms upon which it would be carried out.’¹⁶⁸

We do not hear of the Tuhoe Komiti again (though the iwi made a second attempt to constitute their own komiti in 1908, as we will see). What did happen was that Carroll finally initiated the titles appeals process. Why? It seems clear that the prospecting issue had brought home to him the consequences of there being no General Committee in Te Urewera – namely, that prospecting and mining could not take place.¹⁶⁹ He seems to have hoped initially that the issue could be sorted out with the chiefs who came to Wellington. As he was reported as saying after the March hui:

The stipulation made by the natives is that the Government shall be responsible with a certain number of their chiefs for the proper opening up of the country, they relying on the Government to conserve them due rights by framing regulations suitable to the circumstances . . . The natives . . . would appoint their own chiefs to work with the Government in the matter.¹⁷⁰

But that was not what Numia Kereru had insisted on: his July letter had stated that the General Committee would come first, and the opening of Te Urewera for prospecting second.¹⁷¹ And in October 1906 the Native Department gave its view of the legal position to the Mines Department: the Reserve could not be declared open to prospecting or mining until title appeals had been completed. Only then could certificates of ownership be issued, so that the legal owners would be able to give their consent to prospecting.¹⁷² This raises the question whether the Department had properly considered section 21 of the UDNR Act, which provided that the General Committee ‘shall have power to alienate any portion of the district to Her Majesty, either absolutely or for any lesser estate, or by way of cession for mining purposes’. But we conclude that Carroll, however he interpreted the legislation, had reached a decision that he must have a General Committee constituted under the UDNR Act if he wished to achieve the Government’s objectives. We do not think this new interest in the Committee reflects well on the Crown. It underlines the lack of political will to see the titles process completed, and to ensure self-governing institutions were up and running in

167. Ranginui Walker, *He Tipua: The Life and Times of Sir Apirana Ngata* (Auckland: Viking, 2000), p 116 (Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 30)

168. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 32

169. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 29–30

170. *New Zealand Herald*, 31 March 1906, p 5 (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 372)

171. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 374

172. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 374; Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 31

Te Urewera within a realistic timeframe. Only, it seems, when it suited the Crown – when prospecting and mining was at stake – did the Minister, turn his mind to these matters. The contrast between the Crown's lack of interest in self-government in the Reserve, left to languish for years, and its immediate response to mining interests, is striking.

(3) *The titles appeals process, 1906–07 and 1912–13*

Our main concern in this chapter is not the fate of appeals that were lodged against decisions of the first Urewera commission, but rather the impact of delays in hearing appeals as a further factor in the very slow establishment of self-governing institutions in Te Urewera. Clearly there had to be provision for appeals, but the process was allowed to drift – so that the hearing of appeals in the wake of awards made by the second commission was not concluded till 1913, 10 years after the first commission's awards were gazetted. It is true that the further delays in hearing appeals after 1907 were not a factor in obstructing the final establishment of the local and general committees, but they played their part in impeding the ability of the General Committee to establish its authority before the Reform Government introduced policies of aggressive purchase in the Reserve. How the Crown could justify a 10-year delay in finalising appeals, but was willing to leap into action for its own political ends, is startling.

The way in which the first Urewera commission operated shaped the kind of appeals that were lodged against its decisions, and the kind of body constituted to deal with those appeals. The preoccupation of the commission with lists of names and relative shares was reflected in the appeals. The great majority of appeals sought additional names to be added to, or deleted from, ownership lists, or an increase in or reduction of shares. Edwards found that, on appeal, the number of both family groups and individuals admitted generally increased (an average increase of 16 family groups per block, and of 48 individuals per block, compared with an average decrease – where there was a decrease – of 18 family groups per block and of 30 individuals per block).¹⁷³ Less than one-fifth of the appeals were based on contested hapu or ancestral claims, or sought a boundary adjustment.¹⁷⁴ We add that the concern of claimants with names and shares was still evident in appeals against second Urewera commission awards: of 103 appeals received, 89 related to the inclusion or exclusion of names, or sought increased or reduced shares.¹⁷⁵ As a result of the appellate court hearings, no reductions were made to the number of individuals found to be entitled; in a number of blocks, notably blocks in the Ruatahuna district and Ruatoki South, the number of individuals entitled to awards increased.¹⁷⁶

173. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 190

174. These figures are derived from Edwards' analysis of the appeals: Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 160, 194.

175. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 203

176. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 212–213

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Of those appeals which sought recognition of ancestral claims, two areas stand out: Te Whaiti-nui-a-Toi and the south west.¹⁷⁷ At Te Whaiti, Ngati Whare appealed against an award which gave them one third of the shares, while just over two thirds had been awarded to Tuhoe. Ngati Manawa, who had been excluded altogether from the main section of the block (though not from the small piece later known as Tawhiuau), also appealed. And Tuhoe claimed the whole of the block. At issue were the rights of the descendants of the ancestors Wharepakau and his nephew Tangiharuru, and the nature of the Tuhoe rights. In the south west, major Ngati Kahungunu claims were led by Wi Pere in respect of the Maungapohatu, Tauranga, and Waikaremoana blocks.¹⁷⁸ These claims also raised issues of process. Why, in particular, had Ngati Kahungunu appellants not put their case before the first commission? This question was put to them by the commissioners when hearings began at Wairoa, since Tuhoe challenged the right of Ngati Kahungunu to appeal when they had not appeared at the original hearings. Dr Grant Young and Associate Professor Michael Belgrave argued in their evidence that kin groups associated with Ngati Kahungunu (Ngati Hinaanga and Ngati Hika) had in fact been represented during the Maungapohatu hearing by Eria Tutara Kauika – and it could not be said that Ngati Kahungunu did not attend the first commission.¹⁷⁹ But no Ngati Kahungunu representative, they stated, appeared to assert claims to the Waikaremoana block. At the 1906 hearing, various explanations were given for Ngati Kahungunu's absence – and they all pointed to poor process. One speaker, Haenga Paretipua, stated that Hurae Puketapu was supposed to represent Ngati Kahungunu interests, though added that he 'belongs to both sides' and that Ngati Kahungunu in fact sent no one specifically charged with presenting their claims.¹⁸⁰ But Haenga said also that Ngati Kahungunu failed to appear because they were too 'lazy'.¹⁸¹ This may have reflected 'ambiguity in the translation', as Young and Belgrave suggested – perhaps an expression of the people's reaction to a very real obstacle to participation, namely the distance to Te Whaiti and Ruatoki, where the Waikaremoana hearing was held. And it was held in winter, which compounded the problems of distance.¹⁸²

Both of these explanations suggest lack of familiarity with the commission process – the importance of turning up to hearings to support one's case, and to ensure there were witnesses present that the conductor of a case could call on. But one further explanation was

177. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), app B, tbl 44, pp 247–254

178. Richard Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi: A History' (commissioned research report, Wellington: Crown Forestry Rental Trust, June 1999 (doc A27), pp 24, 107–114

179. Grant Young and Michael Belgrave, 'The Urewera Inquiry District and Ngati Kahungunu: Customary Rights and the Waikaremoana Lands' (commissioned research report, Wellington: Crown Forestry Rental Trust, July 2003 (doc A129), pp 85, 92

180. Barclay minute book 1, 11 December 1906, p 23 (Young and Belgrave, 'Urewera Inquiry District and Ngati Kahungunu' (doc A129), p 99)

181. Barclay minute book 1, 11 December 1906, p 23 (Young and Belgrave, 'Urewera Inquiry District and Ngati Kahungunu' (doc A129), p 99)

182. Young and Belgrave, 'Urewera Inquiry District and Ngati Kahungunu' (doc A129), pp 98–99

given. Rewi Tamihana told the commission that three hapu of Ngati Kahungunu had in fact sent representatives off to Ruatoki, but that at Gisborne they had met Carroll himself, and Wi Pere – who told them to go home but to ‘ask for an appellate Ct to sit at Te Wairoa.’¹⁸³ This, they did. Wi Pere corroborated this account in his own evidence, stating that Carroll had agreed to arrange a sitting of the commission at Wairoa to hear southern claims ‘but neglected to instruct the Commissioners so to act’. He and Carroll had indeed turned back Ngati Kahungunu representatives on their way to Whakatane for a hearing, telling them that it had been arranged ‘that all our part of the Reserve will be heard in Wairoa.’¹⁸⁴ This was evidence which implicated the Native Minister in meddling in commission title-determination processes and giving Ngati Kahungunu poor advice. The result, of course, was that the commission did not have all the evidence before it when it proceeded to hear the Waikaremoana claims. A re-opening of the case could hardly be avoided.

Decisions made about the composition of the first commission were also reflected in the composition of the appeals body. The selection of commissioners appears not to have been straightforward, and the initial choices of Native Minister Carroll were subject to several changes. The appointees (by notice gazetted on 15 November 1906) were Gilbert Mair; DFG Barclay (an interpreter for the House of Representatives, and a clerk and interpreter for the land court); and Native Land Court assessor Paratene Ngata; Barclay and Ngata alone would hear the Ruatoki block appeals (since Mair had already sat as a commissioner on those blocks).¹⁸⁵ Carroll, Binney argued, deliberately appointed no Tuhoe commissioners – in short, this was his response to the strains within the first commission which Carroll may have attributed simply to personal tensions, and may have blamed (at least in part) for delays in its work.¹⁸⁶ Our view, as we have explained, is that the tensions stemmed rather from the restricted composition of the commission, and from commission processes, notably its focus on resolving the claims of individuals and whanau, and specifying their relative shares. In any case, Carroll exercised the power to ‘direct [an] expert inquiry’ into appeals (UDNR Act, section 10) by appointing a three-man, non-Tuhoe body.

We think that was the wrong response. The fact that the UDNR Act allowed the Minister to design an appeals process that departed from the principle of majority local participation in decision-making, was a weakness. Just as the Crown had not (in 1900) turned its mind to how to preserve that principle and yet avoid conflicts of interest on the part of Tuhoe commissioners, so it now failed to consider how to preserve that principle when appeals were considered. A useful role might have been played by the local committees approved by the first commission (which could still have been gazetted even at this late date), either

183. Barclay minute book 1, 12 December 1906, p 30 (Young and Belgrave, ‘Urewera Inquiry District and Ngati Kahungunu’ (doc A129), pp 107–108)

184. Barclay minute book 1, 15 December 1906, p 51 (Young and Belgrave, ‘Urewera Inquiry District and Ngati Kahungunu’ (doc A129), p 113)

185. Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), p 170

186. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 247; see also pp 237–238.

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in resolving appeals themselves or in assisting an appeals body on which Te Urewera representatives comprised a majority, drawn from a pool of sufficient size that conflicts of interest would not be a problem. The committees would have been well placed to assist, given that so many appeals were about names of owners and shares, As we will see, the distance between appellants and decision-making bodies would increase even further when the Crown determined how to deal with appeals against awards of the second commission: such appeals would finally be heard by the Native Appellate Court.

The Crown's handling of the appeals process – delays in getting it under way, and in ensuring its completion in a timely fashion – is of concern to us. Delays occurred both before the second commission was appointed and before final appeals were referred to the Native Appellate Court. It was November 1906 before Carroll appointed his panel to hear titles appeals against decisions of the first Urewera commission. The evidence before us offered no real explanation for this delay. There was certainly a legal constraint: the UDNR Act provided that Maori had 12 months from the time commission awards were gazetted to lodge appeals. (This in itself was a long time, and the delay between the end of the commission's work and the gazetting of its awards meant that the clock did not start ticking for another seven months.) We also note that more than 70 per cent of appeals had been received by the end of 1903 – which might indicate that all appellants could have met a shorter timeframe.)¹⁸⁷ The first commission had in fact finished all its work (including its decisions on the Ruatoki blocks, which it deferred) by October 1902, but the awards were not gazetted until 5 June 1903. But even after the stipulated year was up, there was a further delay of over two years before Carroll moved to appoint an appeals body. Even if Carroll was uncertain about how to handle appeals, this would hardly account for such a hiatus. In the meantime, he had ample opportunity to consult Te Urewera leaders as to how the principles of the Act could best be reflected in the composition and processes of an appellate body.

We are left to conclude that Carroll simply attached no importance to expediting Reserve appeals. When it did matter to the Government, there was an extraordinary urgency to get the second commission hearings under way and completed. The hearings were to begin at Wairoa on 5 December 1906, and the commissioners were to report by 31 March 1907. Mair, aware that the start date left little time for claimants to be notified and to prepare their cases, protested to Judge HF Edger, then the Under-Secretary for Native Affairs. He doubted whether 'proper warning can be given Ruatahuna & Maungapohatu Natives to ensure their attendance particularly as weather is very uncertain.'¹⁸⁸ But even the extra two weeks he suggested were not acceptable, and since Mair himself was not able to get to Wairoa in time, Barclay and Ngata were instructed to begin the first hearing without him. The tight timeframe, as Mair had anticipated, made no allowance either for adverse weather – severe

187. Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), pp 152–155

188. Mair to Edger, 14 November 1906 (Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), p 171)

Providing for Appeals from Orders of the Second Urewera Commission: A Legislative Blunder

Originally, the 1896 UDNR Act provided that an order of the Urewera Commission could be appealed to the Native Minister, who could direct an 'expert inquiry and report as he thinks fit' and make a final decision confirming or varying the original order 'as he deems equitable' (sections 8 to 10).

Then, in 1908, the Maori Land Laws Amendment Act provided (in section 20) that the appeal provisions of the Native Land Court Act 1894 (in section 39 of that Act) would apply to any order (of the Urewera commission) or decision (of the Native Minister) made under sections 8 to 10 of the 1896 UDNR Act.

The effect of this was to give the chief judge of the Native Land Court jurisdiction to review, and remedy errors in, Commission orders and Native Minister decisions. Specifically, the chief judge could remedy any 'mistake, error or omission', and the effect of any error on a point of law in an order of the Commission or a decision of the Minister that identified the owners of a block and their relative shares. The chief judge's decision was to be final unless he gave leave to appeal to the Native Appellate Court.

That provision was repealed in 1909 by the Native Land Act 1909 (section 431 and the schedule). In its place, the 1909 Act provided that the chief judge might grant leave to an applicant to appeal to the Native Appellate Court against any final order of the Native Land Court where the applicant showed a prima facie case of error of law or of fact (section 50).

No provision was made, however, for the chief judge to review, and remedy mistakes and errors in, orders of the Urewera commission or decisions of the Native Minister under the UDNR Act 1896, or to grant leave to appeal from the chief judge's review decision to the Native Appellate Court.

When that gap in the law was identified, section 3 of the UDNR Amendment Act 1909 was enacted to fix it. It provided that Commission orders and Native Minister decisions made under the UDNR Act and its amendments 'shall have, and shall be deemed to have had' the same effect as a freehold order of the Native Land Court. However, as Dr John Findlay, the Attorney-General, later explained upon the introduction of the UDNR Amendment Act 1910, the Solicitor-General had later advised that the section did not empower the chief judge to review and remedy mistakes and errors in a Commission order or the Minister's decision, and so it could not empower the chief judge to grant leave to appeal from his own remedying decision.¹

Therefore, a new provision for appeals was enacted, in section 2 of the 1910 UDNR Amendment Act. It extended the application of section 50 of the 1909 Native Land Act (see above), with some modification, to Commission orders and Native Minister decisions under the UDNR Act. Its effect was that the chief judge of the Native Land Court could, with the consent of the Governor in Council, grant leave to appeal from those orders and decisions where the applicant established a prima facie case of error of law or fact.

1. Dr John Findlay, 22 November 1910, NZPD, 1910, vol 153, p 862

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floods occurred in January 1907, destroying crops inland so that a planned hearing at Te Whaiti had to be rescheduled – or for tangi. The passing of the great leader Te Whenuanui at the very beginning of the month led to a reluctant commission adjournment, and also to extra night sittings the following week to ‘make up for lost time.’¹⁸⁹ The Te Whaiti hearing was finally held in March, when all parties were subjected to hearing days of 11½ hours. Despite the commission’s best efforts, its term had to be extended, and after its return to Wellington at the end of March it finally reported on the majority of block appeals by 28 May 1907. The Ruatoki block appeals report was completed by 10 June.¹⁹⁰ All up, the process had taken six months.

After this burst of activity, the finalising of appeals from awards of the second commission also took some years. This time the delays were caused primarily by the Crown’s failure to ensure appropriate legislative provisions were in place. It had, in fact, made such provision in the Maori Land Laws Amendment Act 1908, then inadvertently removed it when that Act was repealed by the Native Land Act 1909. It then tried, but failed, to cure the defect with an amendment to the UDNR Act in 1909, and finally succeeded in the UDNR Amendment Act 1910.

The Attorney-General, Dr John Findlay, explained when introducing the 1910 amending legislation in the Legislative Council, that it was necessary because the power given to the chief judge in the 1908 amendment to correct errors and omissions (such as inadvertently excluding owners from lists) had been repealed by the Native Land Act 1909 and was not otherwise provided for. The Solicitor-General had advised that section 3 of the UDNR Amendment Act 1909 did not extend the provisions of section 50 of the Native Land Act 1909 to the commission’s awards. That is, it did not provide for the chief judge to correct errors and amendments.¹⁹¹

Because of the time it took to empower the appellate court to hear appeals from orders made by the Urewera commissioners – the 1910 Act did not come into operation until 3 December 1910 – it was 1911 before Chief Judge Jackson Palmer was able to consider appeal applications, under section 2 of the UDNR Amendment Act 1910. Of 70 that came before him, he granted leave to appeal to the appellate court to 44; of these, 28 were to be heard in full. The hearings were held in Taneatua from November 1912 to February 1913 over 53 sitting days, presided over by Chief Judge Palmer sitting with Judge W E Rawson.¹⁹²

Reserved judgments were delivered in Wellington some 10 years after the first commission’s awards were published.

189. Barclay minute book 2, 25 January 1907, p28 (Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), p178)

190. Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), pp181–182

191. Findlay, 22 November 1910, NZPD, 1910, vol153, p862

192. Edwards, ‘Urewera District Native Reserve Act 1896, pt 2’ (doc D7), pp200, 205

(4) How did delays in hearing appeals impact on the establishment of committees?

The delay in hearing appeals, and the further delay in establishing local committees under the UDNR Act, had particular implications for the formation of the General Committee.

The second Urewera commission, like the first, recommended the appointment of *provisional* local committees, and appended the lists of members to the report which it sent to the Native Minister on 28 May 1907.¹⁹³ The lists of members' names (many of them the same as recommended by the first commission) had been submitted by the conductors of cases; they were read out, and few objections were received. The lists (minus those for four blocks, not yet decided on) were submitted to the Native Minister 'for him to take such action as may be necessary for their permanent appointment as Committees, either by election as provided by Section 17 of the Urewera District Native Reserve Act 1896 or by taking such other further steps as may be necessary.'¹⁹⁴ We agree with Edwards that this comment appears to indicate the commission's expectation that the committees might be deemed to be permanent local committees. This underlines the fact, in our view, that the progression from provisional to permanent committees provided for in the UDNR Act had been thrown out of kilter. As we have stated, provisional local committees should have been appointed – at the very latest – after the first commission finished its work in 1902. When they were finally gazetted in 1907, and the election of a General Committee was contemplated (which could only be done once permanent local committees were established), the second commission evidently contemplated telescoping the processes, so that provisional committees were in fact appointed permanent committees. But this was not what the Act had outlined. By section 16, the original commissioners were to appoint provisional local committees, and by section 17, those committees would hold office until the block owners elected permanent local committees.

The Minister signed the second commission's recommendations (under section 10 of the UDNR Act), on 30 August 1907 and confirmed that the committees named were to be the provisional local committees. The orders were also dated 30 August; but the provisional committee lists were not dated and their appointment was not validated until the following year.¹⁹⁵ If the Government now sought the election of a General Committee, section 17 required, as a first step, that permanent local committees be elected by block owners 'at such time and in such manner as the Governor prescribes'. The Governor had thus to issue regulations so that elections could occur, for only elected permanent committees could elect the General Committee. We turn now to the immediate circumstances in which the General Committee would finally be set up.

193. This was its main report; the commission was yet to report on the Ruatoki block appeals: Marr, 'Urewera District Native Reserve Act 1896 and Amendments' (doc A21), p 157.

194. Barclay minute book 2, 8 March 1907, pp 372–373 (Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 7, 8, 16)

195. The lists were validated by section 21 of the Maori Land Laws Amendment Act 1908.

(5) *The establishment of the General Committee (1908–10) – Crown preparations for the alienation, settlement, and possible mining, of Te Urewera land*

By the beginning of 1908, there were new pressures in Te Urewera: renewed pressure to open Te Rohe Potae to mining; a new determination on the part of Government to open the land, especially round Ruatoki and Waimana, to Pakeha settlement; and internal pressures within Tuhoe as Rua Kenana emerged as a strong political force.

In January 1908, there were two separate developments, both of which were to have their impact on moves to set up the General Committee. First, Carroll became aware that a representative of a private mining company, the Waihi Gold Mining Company, was negotiating with Rua Kenana about prospecting for gold. This gave rise to disquiet among Tuhoe chiefs, which led Carroll to ask the Minister of Mines what had happened to planned regulations so that illegal prospectors such as these could be turned away. (Carroll referred here to the Crown's new powers under section 7 of the Maori Land Claims Adjustment and Laws Amendment Act 1907: subsection (1) made the Urewera district subject to the Mining Act 1905 and subsection (2) provided for the Governor to regulate in order to give effect to the intention of Seddon's memorandum of September 1895 so far as it related to gold prospecting and mining, appended as a schedule to the UDNR Act 1896.)

By February, Rua was reported to have met with two representatives of the company (Seaver and Macpherson), and Te Wharekotua (who Binney said often acted as spokesman for Tuhoe's 'collective entity')¹⁹⁶ urged swift Government action against Rua and his people, who were 'transgressing the law of the Rohe Potae . . . which has been passed by the Government as a permanent law for New Zealand ('e takahi ana ratou i te ture o te rohe potae kua oti nei i te Kawanatanga te pahi hei ture tuturu mo Nui Tireni').¹⁹⁷ We accept Binney's argument that Rua, 'the Maori Messiah for his times', was 're-asserting their [Tuhoe's] autonomous enclave as a separate 'kingdom'.¹⁹⁸ And he had staked his claim to control the exploitation of the supposed wealth of Te Urewera. Seddon's 1895 letter, we note, spoke of the benefits accruing from any gold discovery being shared with the 'hapus owning the land' – not the General Committee. If Rua had not been aware of Seddon's memorandum appended as a schedule to the UDNR Act, it is very possible that one of the would-be prospectors brought it to his attention. And section 7(1) of the Native Land Claims Adjustment and Maori Land Laws Amendment Act 1907 referred to above deemed the UDNR a Native Reserve within the meaning of section 24 of the Mining Act 1905, providing for payment of royalties and other moneys received under the act to Native owners. In any case, Rua clearly saw the possibilities for establishing an economic base for his community, and for fulfilling his own vision for their destiny.

196. Binney, 'Encircled Lands, Part Two' (doc A15), p 380

197. Te Wharekotua to Native Minister, 20 February 1908 (Binney, 'Encircled Lands, Part Two' (doc A15), p 380)

198. Binney, 'Encircled Lands, Part Two' (doc A15), p 384

The second development at the beginning of 1908 was to have long-term significance for Tuhoe and their lands. In January, Apirana Ngata met with Tuhoe chiefs at Ruatoki. It seems clear, as Edwards stated, that he was there in his capacity as commissioner representing the Native Land Commission (see our discussion of Political Change above). He was accompanied by the commission interpreter (Pitt); and the report subsequently sent to the Governor was part of the series of reports the commission submitted on its meetings and investigations in every district it visited and was in the names of both Stout and Ngata.¹⁹⁹ The question of the commission's role in Te Urewera arises because the Reserve was excluded from the operation of the Native Land Settlement Act 1907 – the Act was passed after the commission had started its work. This Act provided that land the commissioners reported was not 'required for occupation by the Maori owners' could be vested by the Governor in Maori Land Boards, which were required to sell roughly half any area of land so vested, and lease the rest.²⁰⁰ Edwards noted, however, that the commissioners referred in their general report of July 1907 to the extension of the scope of their inquiry into certain lands held under 'special Acts', and raised the question whether the administration of such lands 'can be brought into line with that of other lands'.²⁰¹ In fact, the Native land commissioners did not consider themselves precluded from reporting on lands excluded from the Native Land Settlement Act 1907 by special legislation. This is evident in their meetings with Te Arawa in 1908, and the reports they submitted on Rotorua lands which fell under the Thermal-Springs Districts Act 1881 (also excluded from the 1907 Act).²⁰²

Ngata's meeting at Ruatoki with Tuhoe leaders in January 1908 was to prove a crucial factor triggering land alienation in the Reserve. It appears from the minutes that Ngata took the initiative at the hui, putting five matters before the chiefs:

1. Since the powers of alienation were by the Special Act vested in a General Committee not yet elected would they agree to a proposal for expediting the setting up of this Committee? Viz:—Let the Provisional Block Committees set up at Whakatane and Te Whaiti in March 1907 meet at Ruatoki say in March 1908, and there elect the General Committee?
.
2. Now that the titles to the Reserve lands were ascertained under the Act and it was contemplated to vest jurisdiction in the Native Land Court in regard to succession, partition and exchange, could any use be made of the Block Committees for the purpose of partitioning some of the blocks, subject to report to the Native Land Court.
.

199. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 37–43
200. Native Land Settlement Act 1907, ss 4, 11
201. Stout and Ngata, 11 July 1907, 'Report on Native Lands and Native Land Tenure', AJHR, 1907, G-1C, p 23 (Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 39)
202. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 708–709

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3. There was a large sum of money owing the Government in connection with the survey of the Reserve Blocks, investigation of title and so on. The time was [ripe] owing to the great demand for land to arrange for the cession of some of the Urewera lands to compensate the state.

4. Section 6 of the Urewera District Native Reserve [Act] Amendment Act 1900 empowered the Native Minister to set apart areas for leasing for 21 years with perpetual right of renewal for further terms of 21 years.

The Tuhoes could consider the term there proposed, as in the case of all Native lands outside the 'Rohe Potae' the term was limited to 50 years.

5. As to prospecting gold in the district. The effect of last year's legislation was explained and seemed satisfactory to the Tuhoes. They said that Rua had given permission to a European to prospect for gold – & he was now going through the district. They wished the government to stop the prospector's illegal operations.²⁰³

Thus, the need for haste in setting up the General Committee was tied explicitly to the need to provide for land alienation – 'owing to the great demand for land', as it was put in the third point. Ngata suggested to the leaders that they might speed up the establishment of the General Committee by letting the provisional local committees elect the General Committee within a couple of months. The leaders, through Numia Kereru, agreed to this proposal. Then, out of the blue, Ngata suggested that the people owed the Crown 'a large sum of money' for survey costs – and for title-investigation costs (ie, for Urewera commission hearing costs). And because the Crown needed land, Te Urewera land should be ceded for this purpose. The people also agreed to this, according to the minutes, '[a]fter consideration', recognising 'their obligation'. They then offered to lease part of the blocks, as they did not wish to sell at present: the revenue from the leases, therefore, 'would go towards refunding the Government the money due.'²⁰⁴ According to the minutes, Tuhoe leaders offered land to lease in 10 blocks, amounting to 28,000 acres.²⁰⁵

There does not seem to be any question that Ngata's proposal triggered the offer of land to lease, specifically to pay the costs he referred to. Edwards, the Crown's historian, pointed out that Stout and Ngata later reported that Tuhoe recognised their responsibility

203. Ngata, Royal Commission on Native Lands and Native Land Tenure, minute book 2, MA 78/4/5, Archives New Zealand, Wellington, pp 33–36 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 694–696). Edwards stated in cross-examination that these matters were recorded in the minutes in English (probably recorded by Pitt); there is no version in Maori: see Edwards, under cross-examination by counsel for Tuawhenua claimants, 13 April 2005 (transcript 4.16(a)), p 318.

204. Ngata, Royal Commission on Native Lands and Native Land Tenure, minute book 2, 23 March to 23 October 1908, pp 33–36 MA 78/4/5, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 694–696)

205. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 41–42, 50–51

for ‘survey and other charges, amounting to over £7,000’,²⁰⁶ which was roughly the amount given in returns tabled in the House on 28 July 1908. From studying those returns, Edwards concluded that the costs Ngata referred to in Ruatoki were ‘the costs of preparing the sketch plans . . . and title investigation by both commissions.’²⁰⁷ A substantial part of the sum was £4,243 13s 2d for survey costs. The Crown told us in its closing submissions, citing sections 7 and 25 of the UDNR Act 1896, that the owners of blocks within the Reserve were not liable for survey or commission costs incurred for determining titles or for appeals. Section 7 of the UDNR Act Amendment Act 1900 (which Edwards suggested Ngata may have relied on) was ‘confined to the payment of the expenses of administration and costs associated with leasing under either Act.’²⁰⁸ But counsel suggested that it was not clear why the chiefs would have considered themselves obliged to repay such costs. Nor had any evidence been found to show whether the Crown had taken steps to ‘correct the misleading impression left by Ngata, other than the government did not in fact make any attempts to recoup the costs of title determination within the period in which the Act was in force.’²⁰⁹

In our view, there is not much doubt about what happened. The chiefs felt obligated because Ngata told them they were. That same day, when Mehaka Tokopounamu told Ngata at the hui, which blocks they would lease, he specified which rents were to go toward survey costs.²¹⁰ Whether Ngata (a lawyer) had misunderstood the UDNR Act or the UDNR Act Amendment Act 1900, we do not know. But he was wrong. Carroll should have known he was wrong, given that the ‘liability’ of the Tuhoe tribe for costs, and their resulting willingness to offer land for settlement, had been flagged in the commissioners’ report but this was totally at odds with the provisions of the UDNR Act 1896. The Act, which Carroll knew intimately, made it very clear that the costs were to be borne by the Crown.²¹¹

In this context, moves towards forming the General Committee gathered momentum. In Ngata’s discussions at Ruatoki, and in the commissioners’ joint report, the link was drawn between Tuhoe land being available for settlement and the establishment of the General Committee. Stout and Ngata advised the Governor that he should set aside the procedure for electing permanent local committees and the General Committee (the only body that could agree to alienation of land) to expedite the acquisition of land for settlement. There would otherwise be ‘serious’ delays if block elections had to be held for all blocks.²¹²

206. Stout and Ngata, 13 March 1908, ‘Native Lands and Native Land Tenure: Interim Report on Native Lands in the Urewera District’, AJHR, 1908, G-1A, p 2 (quoted in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 51)

207. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 45

208. The Crown cited sections 7 and 25 of the UDNR Act 1896: see Crown counsel, closing submissions (doc N20), topics 14–16, p 70.

209. Crown counsel, closing submissions (doc N20), topics 14–16, pp 70–71

210. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 41–42

211. Stout and Ngata, 13 March 1908, ‘Native Lands and Native Land Tenure: Interim Report on Native Lands in the Urewera District’, AJHR, 1908, G-1A, p 2 (Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 51)

212. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 50

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The third crucial context for the setting up of the General Committee is the tension between Rua Kenana and the established Tuhoe leadership – and the impact of that tension on Crown–Tuhoe relations. This was epitomised in the fact that just prior to the hui called to elect the General Committee, none other than the Premier, Joseph Ward, invited Rua to meet him at Whakatane. In a dramatic meeting on the beach front, Ward arrived to find Rua’s people at one end of the beach, Numia Kereru’s people ‘a little distance away’, and Rua himself seated on a wooden chair in the centre, close to the water’s edge. Part of their interview was conducted privately, through an interpreter. It was on this occasion that Ward famously told Rua – and, according to Binney, convinced Rua – that there could be only one Government and one king: ‘There can be no other Government or king . . . there can’t be two suns shining in the sky at one time.’²¹³ Rua later called this the ‘Ceremony of Union’ between himself and Ward, and emphasised that it was a promise that Maori and Pakeha would enjoy the same laws. Hence he would later fly the flag of Tutakangahau at Maungapohatu with its message ‘Kotahi Te Ture mo Nga Iwi e Rua’: ‘One Law for Both Peoples.’²¹⁴ At the end of the interview, Ward addressed both parties separately, and thanked Kereru’s people for their loyalty to the Government.

This was a remarkable meeting, the symbolism of which was clearly not lost on Rua. Only the year before, in 1907, when Parliament was debating the Tohunga Suppression Bill – a Bill aimed at combating the practices of dubious tohunga whose influence might be harmful to those on whom they ‘preyed’ – the ‘notorious’ Rua Kenana had been singled out.²¹⁵ Carroll and Ngata had both been highly critical of his influence.²¹⁶ That the Premier should come to meet him now spoke volumes about his new standing. It was a message to Tuhoe leaders about the importance of reaching an accommodation with Rua.

But why did the Government go to such lengths to be seen to establish a relationship with Rua at this point? This is best answered, in our view, after an analysis of the events that followed. But it heralded a period of constant interaction between Tuhoe leaders and the Government.

The first such meeting had already been arranged, at Carroll’s request, to discuss the establishment of the General Committee; the Premier’s meeting was timed to precede it.²¹⁷ On 25 March, Carroll attended the hui at Ruatoki, with officials. He later informed the Minister of Mines that he had:

213. Binney, ‘Encircled Lands, Part Two’ (doc A15), p387. According to the *New Zealand Herald* account, Ward repeated his remarks to Rua’s people when he spoke to them subsequently: see ‘Premier and “Prophet”’, *New Zealand Herald*, 24 March 1908 (Edwards, supporting papers to ‘Urewera Native Reserve Act 1896, pt 1’ (doc D7(a) (i), vol 3), [pp 503–504]).

214. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp387–388

215. Carroll, 19 July 1907, NZPD, 1907, vol139, p510 (quoted in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p19)

216. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp17–25

217. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp52–53

notified all the owners interested that I would meet them at the latter end of March last to discuss the whole question respecting their lands – as to opening up the same for prospecting and mining, and selecting an Administrative Committee as provided for under Section 18 of ‘The Urewera District Native Reserve Act, 1896’ [that is, the General Committee] such Committee to work in conjunction with the Government in framing and arriving at rules and regulations for the proper conduct and carrying out of mining in the said District.²¹⁸

Again, he spoke of the General Committee, the opening of Te Urewera, and prospecting and mining, in the same breath. We discuss the establishment of the General Committee shortly. But we turn first to the handling of the mining issue at Ruatoki. Carroll reported to the Minister of Mines that the hui had decided that regulations should be framed by the Government, though he enclosed a copy of ‘certain terms’ which Tuhoe had agreed on, indicating ‘the direction in which the Natives consider the regulations might be shaped.’²¹⁹ These were set out in a letter, signed by Numia Kereru and 13 other chiefs, which stated that the terms on which Te Urewera Reserve was to be ‘thrown open for prospecting’ had been agreed by all the block (local) committees, and by the chiefs, hapu, and the people. Among them was the provision that the Native Minister forward all mining rights to Taneatua Post Office, and send a seal for the General Committee to the chairman’s office; a person taking mining rights (Maori or Pakeha) must have his right sealed by the chairman, and would be valid for just one year.²²⁰

Doubtless, the Committee expected to discuss the terms and regulations further. When Kereru’s delegation later visited Wellington in July, according to Edwards, Carroll explained that there had been some delay with the regulations. To accommodate the arrangements the chiefs had reached with Seddon, the Mining Act would have to be amended.²²¹ In fact, regulations bringing the Reserve under the Mining Act 1908 were finally issued on 13 April 1909. They included some ‘special Regulations’ – some sought by Tuhoe, others not, but still protective of their rights. Miners’ rights were to be valid for a year and specific to the Reserve; timber was protected, along with native and imported ‘game’ (including birds); and there was to be no mining on any land used for cultivations, residence, or burial grounds. Royalties of sixpence for every ounce of gold were to be paid to the ‘Native owners’ as provided in the Mining Act. What had gone was the right of the General Committee to some oversight of mining rights within the Reserve.²²² It does not seem that the committee

218. Native Minister to Minister of Mines, 23 May 1908, MD1, file 6/4/6, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 1203)

219. Native Minister to Minister of Mines, 23 May 1908, MD 1, file 6/4/6, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), pp 1203)

220. Numia Kereru to Native Minister, 26 March 1908, MD1, file 6/4/6, Archives New Zealand, Wellington (quoted in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 59); Binney, supporting papers to ‘Encircled Lands, Part Two’, (doc A15(a)), pp 59–70

221. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 63, 65

222. ‘Bringing the Urewera District Native Reserve under the operation of the Mining Act 1908 and making Special Regulations relating thereto’, 13 April 1909, *New Zealand Gazette*, 1909, no 31, p 1022

had sought to issue rights itself, but rather to affix its seal to such rights at Taneatua on behalf of the iwi. There was no provision in 1909 for that symbolic exercise of authority.

(6) Tuhoe elect their General Committee, March 1908, and the UDNR Act is amended

We return now to the election of the General Committee at the hui of March 1908. Numia Kereru referred to it variously as ‘te Komiti nui Kawanatanga o Te Urewera’ and ‘te komiti nui o Tuhoe.’²²³ Carroll, as we have seen, called it ‘the Administrative Committee’, but a translation of Numia’s full report to the Minister gave ‘the General Committee.’²²⁴ Numia Kereru, who had been elected chairman, reported that the committee of 32 members had been selected ‘from the Block committees constituted under Section 18 of the UDNR Act 1896’. But Rua’s people, members of local committees who had left ‘the Law of the Government and have taken to the practices of Te Rua, and set up a Governor for themselves’, were excluded.²²⁵ This followed Carroll’s strong lead, before he left the hui, that he did not recognise the independent leadership of Rua. He was said to have told the meeting that Rua’s permit for prospecting (he reportedly charged £11,400 for a permit) ‘would be useless’. And according to the same newspaper report, Carroll advised Rua’s followers to leave him and to ‘open your lands, and improve them.’²²⁶ But it was agreed that Rua’s people would send a delegation to Wellington to talk further with Carroll.

With this election, the short cut to the General Committee that Stout and Ngata had recommended had been taken. What they had also recommended was that Parliament then validate the election (ie, retrospectively). This, as it turned out, required a two-step process because the second Urewera Commission had had no power to appoint committees (only the first committee had had that power). In fact, Carroll had informally instructed the second commission to appoint provisional local committees. His statements to the House in 1908 on the second reading of the bill that would validate those appointments (the Maori Land Laws Amendment Bill) suggest that he had only recently been advised that they were not in accordance with the UDNR Act.²²⁷

The provisions of the UDNR Act relating to committee appointments and membership were amended by inserting a section in the Maori Land Laws Amendment Act 1908 (see sidebar).

In section 21(2), as we might have expected – given the quick fix nature of these amendments – the provisional local committees were deemed to be permanent committees.

223. Numia Kereru to Native Minister, 26 March 1908, MD 1, file 6/4/6, Archives New Zealand, Wellington (Binney, supporting papers to ‘Encircled Lands’ vol 2 (doc A15(a)), pp 66–69)

224. Numia Kereru to Native Minister [translation], 26 March 1908, MD 1, file 6/4/6, Archives New Zealand, Wellington (Binney, supporting papers to ‘Encircled Lands, Part Two’ (doc A15(a)), p 61)

225. Numia Kereru to Native Minister, 26 March 1908 [translation], MD1, file 6/4/6, Archives New Zealand, Wellington (Binney, supporting papers to ‘Encircled Lands’ vol 2 (doc A15(a)), p 58)

226. *Poverty Bay Herald*, 28 March 1908, p 5 (quoted in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 57)

227. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 32, 67–68

**Provisions of the Maori Land Laws Amendment Act 1908
Relating to Self-government Committees**

Section 21 was inserted in the Maori Land Laws Amendment Act 1908 to fast-track the establishment of the General Committee and also to provide for the appointment of members of the committee by the Governor, rather than their election.

- ▶ The orders of 30 August 1907 (ie, stemming from the report of the second Urewera commission) relating to the appointment of members of the provisional Local Committees were validated (section 21(1)).
- ▶ The provisional local committees were deemed to be permanent Local Committees, as if they had been elected under section 17 of the UDNR Act (section 21(2)).
- ▶ The Governor was empowered to appoint from these committees 20 members to constitute a General Committee for the purposes of the UDNR Act, as if they had been elected under the UDNR Act (section 21(3)).

Logically, the next step would have been to deem the General Committee elected at the March 1908 hui to be properly constituted – if perhaps as a temporary measure until the Governor made regulations for elections of permanent local committees under the UDNR Act. It seems that after the hui the Native Department Under-Secretary had in fact expected the members elected there to be gazetted as a general committee.²²⁸ Edwards commented that the elections may not have been rigorously conducted, given the circumstances in which they took place.²²⁹ How could they have been, when there were no regulations? But the members were not gazetted, and section 21(3) did not validate their election. Instead, the sub-section provided for the Governor to *appoint* a smaller number of the elected local committee members to constitute a General Committee. It did not require that he appoint from among the General Committee members already elected by the local committees, the hapu, and the people. This was a major change to the UDNR Act, and the only explanation we have is Carroll's – that he thought 33 members 'too many for workable purposes'.²³⁰ Thus, the elections Tuhoe had held were set aside (to the extent that 13 members of their komiti were simply removed). Whether Carroll thought the number of members would make for an unwieldy body is, in our view, hardly the point. (And perhaps he had forgotten the broad composition of Te Whitu Tekau.) The UDNR Act 1896 provided that '[e]ach Local

228. See Fisher to Carroll, 27 July 1908, MA 13/91, Archives New Zealand, Wellington (cited in Binney, 'Encircled Lands, Part Two' (doc A15), p 391).

229. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 75

230. Carroll, 9 October 1908, NZPD, 1908, vol 145, p 1116

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Committee shall . . . elect one of its members to be a member of the General Committee. It is hard to avoid the conclusion that the Government took advantage of the opportunity to amend the UDNR Act, and made a first move to undermine the representative nature of the General Committee.

More unilateral changes to the UDNR Act were to follow. The Governor's powers would be extended the following year. Section 12 of the UDNR Amendment Act 1909 provided that:

The Governor may at any time, for any reason which he thinks fit, remove any member of the said General Committee, and may appoint in his place, or in the place of any other member who has in any manner vacated his office, such other person, being the owner of land subject to the principal Act, as he thinks fit.

Every such appointment shall be published in the *Kahiti*, and shall take effect as from the date of that publication thereof.

These new powers of the Governor not, we note, the Governor in Council – allowing him to appoint a new member of the General Committee whenever a vacancy occurred, were incompatible with the UDNR Act provisions. There was no requirement that an appointee even be a member of the local committee; the person had only to be a landowner within the Reserve. And by the 1909 provision, a member's term of office could be arbitrarily ended and a replacement member appointed. These changes followed Ngata's appointment of Rua's people as consultative members – when he flagged that Parliament would 'deal with the matter'.²³¹ It is clear, from the amendments of 1908 and 1909 together, that the basis of the relationship between the local committees and the General Committee had been stood on its head. The foundation of local self-government in Te Urewera – hapu corporate management of their own lands through hapu committees – had been entirely undermined.

The General Committee itself was finally gazetted on 18 March 1909.²³² In December 1908, Carroll had annotated the list of members he had been sent earlier to indicate who he thought should be appointed. When he knew Numia Kereru was visiting Wellington, on 13 February 1909 (Carroll himself was away), he instructed TW Fisher, the Under-Secretary for Native Affairs, to ask Numia to 'go through the names for main committee Urewera reserve & select twenty of the best for appointment'.²³³ It appears that Tuhoe had been having their own discussions about appointments, as Numia seems to have brought Fisher a list of names that 'had been decided upon as a general committee'.²³⁴ One nominee wished to

231. Ngata to [illegible], 31 March 1909, MD 1, file 6/4/6, Archives New Zealand, Wellington (quoted in Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 82)

232. 'Urewera District Native Reserve – Appointment of General Committee', 18 March 1909, *New Zealand Gazette*, 1909, no 22, p 799

233. Native Minister to Native Under-Secretary, 13 February 1909, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 636–637)

234. Native Under-Secretary to Native Minister, 15 February 1909, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 634–635)

retire, and one hapu wanted a different representative. Numia Kereru did not agree with the proposed changes; he stated that he left the decision to the Minister to settle, but his advice was accepted.²³⁵ These were already arbitrary decisions – though confined by the requirements in section 21(3). Nineteen of the 20 were elected members; one was a new member.²³⁶

But the story of the establishment of the General Committee does not end here. During the following year, Apirana Ngata, now a member of the Executive Council, ensured two further important changes to the Committee's composition.²³⁷ Rua was a key omission from the committee membership, and none of his followers was a member either. Ngata's changes were designed to include Rua and his people. The first was made the same month the General Committee was gazetted – March 1909. The second came in May 1910, when Ngata visited Te Urewera, and five new members were appointed to replace four who resigned and one who had passed away. Four of the new members were Rua's people, and the fifth was Rua himself.²³⁸

What were the circumstances in which these changes were made? The claimants and Crown, as we have seen, did not agree on Ngata's motives. Professor Binney pointed out that Rua had indicated in June 1908 that he wanted to make land at Maungapohatu available for settlement, and to raise money to develop 20,000 acres there; the implication is that he would sell.²³⁹ He was reported to have met with Carroll in Gisborne in November 1908, and offered to sell 100,000 acres of land to the Government; Carroll was reported to have accepted his offer.²⁴⁰ The General Committee, on the other hand, had offered to lease land: initially 28,000 acres over 10 blocks (January 1908);²⁴¹ then some 86,000 acres in 19 blocks by March 1908.²⁴² Binney saw Rua's offer to sell as a 'direct riposte to Numia's offer to lease.'²⁴³ She pointed to what she saw as the Government's dilemma in its dealings with Tuhoe: 'the *one* major Tuhoe leader who was prepared to sell land was shut out of the prospective General Committee.'²⁴⁴ Edwards disagreed: she saw Ngata as intervening in a

235. TW Fisher, memorandum for the Native Minister, 17 February 1909, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 634–635)

236. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 72–74

237. Ngata was appointed to the Executive Council in January 1909; he was designated Member of the Executive representing the Native Race.

238. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 82–83, 110–111

239. Binney, 'Encircled Lands, Part Two' (doc A15), p 394

240. *Poverty Bay Herald*, 26 November 1908 (quoted in Edwards, 'Urewera District Native Reserve Act 1896' (doc D7(b)), p 70)

241. Stout and Ngata, 13 March 1908, 'Native Lands and Native Land Tenure: Interim Report on Native Lands in the Urewera District', AJHR, 1908, G-1A, p 2

242. Binney, 'Encircled Lands, Part Two' (doc A15), p 393. Binney pointed out that there was a mix-up with the areas of two blocks in the English translation of the list of block offers; the list in the original report in te reo Maori shows the correct amounts (including 20,000 acres in Tauranga block omitted in the translated list). See also Numia Kereru report, 26 March 1908 (Binney, supporting papers to 'Encircled Lands, Part Two' (doc A15(a)), p 68).

243. Binney, 'Encircled Lands, Part Two' (doc A15), p 395

244. Binney, 'Encircled Lands, Part Two' (doc A15), p 396

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situation where the Tuhoe leaders were unlikely to sort matters out themselves in the short term. Ngata recognised that the General Committee could not ‘function effectively’ without the support of Rua’s followers, and that Rua’s people would have to agree to any alienations offered by the General Committee. He also hoped he could get them to cooperate on issues of land management. To all these ends, ‘he creat[ed] room for Rua’s followers on the General Committee’ – informally.²⁴⁵

The changes to the General Committee of late March 1909 followed a visit made by the Governor, Lord Plunket, to Tauarau Marae, Ruatoki, on the eve of the first meeting of the Committee. The Governor was accompanied by Ngata. He had been invited by Numia Kereru on what was a significant occasion. Binney saw it as his ‘entering into the Rohe Potae administered under the chairmanship of Numia’, who had retained authority over the Committee.²⁴⁶ Numia Kereru was seated next to the Governor in the official photograph taken at Tauarau.

Rua and his followers were not present, but were staying in lower Ruatoki at another marae. Rua had asked to meet the Governor, who arranged to meet him at the roadside on his way back. Ngata made the introductions. The Governor ‘congratulated Rua on the measures he had introduced in his Maungapohatu community (farming and sanitation) and²⁴⁷ “suggested that in order to achieve the most good, Rua should work in unison with the other leaders of the tribe”. Rua said he would like to do so ‘and thought the presence of Mr Ngata in the district would enable details to be arranged’.²⁴⁸

Following these meetings, Ngata reported to the Minister by telegraph that he had arranged an informal increase in the membership of the General Committee, to 34, so that there would be a member for each block. Rua’s grouping had been asked to nominate 14 of the members, who would be able to participate in discussions but have no voting rights (see sidebar). It seems remarkable and probably not coincidental that the General Committee, having been reduced from 34 members shortly before on the basis that it was unworkably large, was now increased to its original size.

We think it is clear that Ngata went to Ruatoki with the aim of making changes to the General Committee; he must have discussed them with Carroll before he left Wellington. Given that the membership had just been gazetted, such a major change – even an informal one – was bound to attract attention, and it was likely Carroll would have to defend it. Ngata referred to Parliament’s having to ‘deal with the matter’ eventually – which indicates that he thought further legislative change would be needed to secure the changes to the

245. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 82–83

246. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 397–398

247. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 81

248. *Poverty Bay Herald*, 6 April 1909 (quoted in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 81)

Ngata's Additions to the Membership of the General Committee, March 1909

In a telegram of 31 March 1909, Ngata wrote:

In continuation of my report of yesterday, I am glad to announce that I was able to bring the two sections of Tuhoë together last night and this morning. I took the responsibility last night of relieving the position by extending the Committee to thirty-four, one for each block, and asked Rua's section to nominate fourteen, who can act at once with the twenty legally appointed until Parliament can deal with the matter. The additional members will be consultative. Meantime, the legal formalities depending on the acts of the former twenty and the reports of their Chairman, while this enables the parties to come together it does not prejudice the legal standing of the Committee already gazetted. The assembled tribe and the extended Committee heartily approve the immediate opening of the Country for prospecting, and I have informed them that you have prepared everything for immediate gazetting. They desire to be supplied with copies of the *Gazette* and Regulations, also with samples of miners' rights to enable them to identify such rights when presented by prospectors. They ask that the guiding should be restricted to the Natives owning land in the District. You can therefore gazette all mining matter[s].

Proceeding to land settlement, there is the greatest eagerness to have land opened up. I have suggested to them the following procedure: That each block Committee convene the owners and decide what area should be reserved for papakainga and Maori settlement; what for general leasing and sale. The Block Committee will then report to General Committee who will advise you under its Seal. They are arranging the preliminaries today.¹

1. Ngata, telegram, 31 March 1909, MD 1, file 6/4/6, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1197)

composition of the Committee that he had made.²⁴⁹ There is more than a hint of choreography in the Governor's meeting with Rua, the tone of the Governor's remarks to Rua, and Rua's reply. It would seem that Ngata had already begun laying the groundwork for the changes he wanted to make – and we doubt that he would have sprung his proposal on Kereru, whose cooperation he needed, without warning. Perhaps Ngata suggested that Rua himself be brought onto the committee – it seems odd that so many of Rua's supporters were nominated, but not their leader – and perhaps he had to compromise on that point with Numia. If that is so, it was a short-term compromise. It is obvious that Ngata was anxious to acquire land for settlement (we say more about this in the next section). But

249. Ngata telegram, 31 March 1909, MD 1, file 6/4/6, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1197)

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his telegram of 31 March 1909 certainly indicates that he was nudging Tuhoe towards dealing with their land along the lines the Native land commissioners had been required to follow in their inquiry of 1907 to 1908 – and which had shaped their discussions with iwi throughout the motu. The element of compulsion was not there, however. Section 23 of the Maori Land Laws Amendment Act 1908 (which came into effect from 10 October 1908) brought the Reserve, upon the recommendation of the General Committee, under the provisions of the Maori Land Settlement Act 1905. Under section 8 of that Act, the Governor in Council might declare the land to be vested in a Maori Land Board in fee simple, to ‘be held and administered by the Board for the benefit of the Maori owners.’ The board might reserve any part of the land for the ‘use and occupation of the Maori owners, or for papakaingas [or other reserves]’; the balance it would classify by quality, subdivide, and lease for terms not over 50 years. Section 8 did not refer to sale, and this difficulty (from the Government’s point of view) was surmounted the following year in the UDNR Amendment Act 1909. Section 7 of the amending Act provided that – with the consent of the General Committee – the Governor in Council might vest any part of the land within the Reserve in the appropriate Maori Land Board for sale or lease under part XIV of the Native Land Act 1909.²⁵⁰ Ngata, introducing the Bill into the House, stated that among its provisions were those which made ‘extended provision for alienation.’²⁵¹

The General Committee did request reports from local committees, as Ngata advised, about their wishes for their lands: it distributed a circular.²⁵² Some committees sent responses – hapu of Ruatahuna began evaluating the lands from Te Waimana to Maungapohatu and Ruatahuna, and the east of the Tauranga River generally. By May 1909, when the president of the Waiariki District Maori Land Board, Judge JW Browne, travelled to Ruatoki to see how the General Committee was progressing with its work, the committee had received reports on four blocks: Ruatoki 1–3 and Parekohe. Browne recommended that these blocks be dealt with first, and reported also that Tuhoe were anxious for a road to be constructed up the valley from Ruatoki to Ruatahuna. But he told Numia there was little use asking the Government to construct the road ‘until some recommendation had been made as regards the settlement of the lands through which it will go.’²⁵³ No settlement, no road, in fact.

The General Committee met in May 1909, and confirmed the 1909 ‘cession’ (tuku) –eventually leases – of portions of the blocks, mostly along the route of the anticipated road

250. Section 7 further stated that, once the Governor had so vested land, all the provisions of part XIV of the Act should apply as if the land had been vested in the Board by a resolution of the assembled owners under part XV III of the Act.

251. Ngata, 21 December 1909, NZPD, 1909, vol 148, p 1386

252. Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 332

253. JW Browne to Native Under-Secretary, 25 May 1909, MA 13/91, Archives New Zealand, Wellington (Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 88)

from Ruatoki to Ruatahuna.²⁵⁴ At its August meeting at Rangitahi (Whirinaki), the General Committee considered reports from local committees regarding their wishes for land use in their blocks. These included the Paraoanui block, Tawhiuau, and the Maraetahia and Otairi blocks. The first block report to offer land for sale was that of the Paraoanui committee (signed by Rakuraku, Tamaikoha, Te Whiu, Te Hiko, and others) which offered 400 acres for sale, alongside 2,000 acres for lease and 1,000 acres to be set aside as a papakainga.²⁵⁵ So far, in other words, the local committees had hardly produced a flood of offers of land for sale.

Ngata's move to appoint Rua to the General Committee should be seen in this context. Ngata told the House in December 1909, when introducing the UDNR Amendment Bill, that three weeks earlier a deputation 'representing the majority of the owners of the Urewera country' had spoken with the Native Minister, and indicated that they would be prepared to sell between 80,000 and 100,000 acres.²⁵⁶ Edwards suggested that since Numia Kereru was reported to be in Wellington in November 1909, he may have made such an offer (though we think this unlikely), or that, as on other occasions, Rua and Kereru each led a deputation.²⁵⁷ Binney, who could not find any record of a deputation, surmised that the offer must have come from Rua. And she brought to our attention the oral evidence of John Ru Tahuri, Rua's adopted son, suggesting that 'a deal had been struck in 1909'. He recounted that Rua had been expressly invited to Wellington by Carroll and Ngata to discuss the sale of land.²⁵⁸ As he put it:

after Timi Kara [James Carroll] and Apirana [Ngata] failed to get him to sell land, they invited him down to Wellington in 1909. Did you know about that? And he went down. They did something – nobody knows what they did to him there, but they did something with him because he changed his stance. When he came back he called a big meeting at Maungapohatu with his followers. He said, sell the land.²⁵⁹

Binney's view was that the narrative 'seems to recall Rua's visit to Wellington late in 1909, that is, the Tuhoe delegation referred to by Ngata in parliament in December 1909': it fits, after all, with Ngata's account. And she pointed to 'the crucial memory of pressure brought by Carroll and Ngata' contained in the oral account. She hinted that the source of that

254. Numia Kereru and others, 3 June 1909, minutes of General Committee meeting of 26 May 1909, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 653–654). For the original document in Maori see Berghan, supporting papers to 'Block Research Narratives' (doc A86(i)), p 3108. Also see Binney, 'Encircled Lands, Part Two' (doc A15), p 406; Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 88

255. Miles, *Te Urewera* (doc A11), p 335

256. Ngata, 21 December 1909, NZPD, 1909, vol 148, p 1386

257. *Dominion*, 8 November 1909 (cited in Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 94)

258. Binney, 'Encircled Lands, Part Two' (doc A15), p 417

259. John Ru Tahuri, oral source, discussions with Judith Binney, 23–24 March 1998, tape 5A (quoted in Binney, 'Encircled Lands, Part Two' (doc A15), p 417)

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pressure may have been the Tohunga Suppression Act, a ‘weapon’ that Carroll and Ngata now had available to them, although in fact they never used it to have Rua investigated.²⁶⁰ Tahuri continued:

So Rua went to Wellington in 1909. I said earlier on that Rua had been pestered by government to sell the land under his influence, that’s all the Maungapohatu land down to Waimana, which is over 100,000 acres, up the Tauranga valley. Rua won’t budge. So they sent Tai Mitchell from Rotorua to Maungapohatu for the same thing.²⁶¹ Rua told him to go back . . . And Api [Ngata] was sent up, and he [Rua] said to him if you want to sell land, sell yours in Te Tai Rawhiti [East Coast]! So that was the end of the matter.

As time went by, old Timi Kara thought, by gosh, we’ll have to do something to break this barrier. So they invited him down to Wellington in 1909. They did something to him down there and he came back. He called a big meeting up at Maungapohatu . . . First thing he said, ‘sell the land; the land doesn’t belong to us. We’re just tenants in common.’ . . . He said, ‘You sell the land and make use of the money from the government from the Bank of New Zealand.’ There is a waiata about it. It said, the time will come.²⁶² He [Rua] said, ‘Get their money, the Bank of New Zealand, and use it – because the day will come’, he said, ‘those lands will come back to us.’ Well, because of that, they gave the mandate to sell.²⁶³

Binney told us that whereas Te Kooti had warned (in the waiata he referred to) of the consequences of sale, Rua ‘instead promised that the land would ultimately be restored by God, drawing on the scriptures for confirmation of the message’. She acknowledged, in placing this narrative before the tribunal, that while ‘[a] family or communal memory, of course, is not “proof” of an improper pressure . . . it does remember that Rua persuaded the people to sell after his talks with Carroll and Ngata; it certainly remembers an “arrangement”’. And what happened next was Rua’s dramatic withdrawal of his offer to sell when he considered the ‘arrangement’ to have been broken.²⁶⁴

Rua withdrew his offer by letter dated 15 February 1910. The letter was sent in the name of Rua and his followers, the Ihairaira (Israelites):

Mo nga whenua o Tuhoe i tuku[a] atu nei e ahau i runga i te tono mai, a whakaaetia ana e ahau 100,000 eka. I tenei ra kua kite iho ahau, matau katoa, i runga ano i te ripoata a Rapata Taute raua ko Ngata, e mau i te Ripoata, takawaenga a te Komihana Whenua

260. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 417–418

261. Tai Mitchell had accompanied Judge Browne, president of the Waiariki Maori Land Board, on his visit to Ruatoki in May 1909.

262. Binney explained that Rua’s reference was to Te Kooti’s song composed for Tuhoe in 1891, in which he sang sarcastically (in translation): ‘Get, go get the money belonging to the Governor at the Bank of New Zealand’ – warning of the consequences for the poor, who would lose their land: see Binney, ‘Encircled Lands, Part Two’ (doc A15), p 418.

263. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 417–418

264. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 419

Maori o te Takiwa o Te Urewera. 13 o Maehe nei 1908 G-1A. Kaore hoki i roto i te Urewera District Native Reserve Amendment ara, whakatikatika i te ture Rahui Maori o te Takiwa o Te Urewera 1909. Kei roto i te Ripoata G-1A e ki ana, 'E whai mana ana te Komiti nui ki te hoko, waahi whenua atu ki te Karauna mo enei take katoa.'

E te Minita mo nga mea Maori, kua mohio ahau kua whakarerekitia nga take i whakareitea ai e ahau ki to aroaro. Tuarua, kei roto i te *Auckland Star* te 3 o Pepuere, e ki ana koe i roto i tau nupepa, ka hoatu e Te Urewera te 100,000 eka kia hokona e te Kawanatanga. Kua tino marama taku titiro iho, kua riro ke ma te Komiti Nui te mana hoko o taua 100,000 eka; inara kua riro ke he mana ke. No konei ka inoi atu ahau ki a koe, whakahokia mai aku take katoa ki roto i toku ringaringa.

Heoi ano, na Rua Hepetipa me Te Iharaira katoa.

Referring to the 100,000 acres of Tuhoe lands which I offered as requested. I, that is to say, all of us, have now seen the Interim Report of Sir Robert Stout and (A T) Ngata, Native Land Commissioner, for the Urewera District, of 13th March 1908, G-1A, in which the following paragraph occurs: 'The General Committee has power to sell portions of land to the Crown for such purposes.' Now, that paragraph is not incorporated in the Urewera District Native Reserve Amendment Act, 1909.

O Minister of Native Affairs, I apprehend that the matters or proposals which I discussed and laid before you have been entirely altered. Secondly, in the *Auckland Star* of 3rd February, you are reported as having stated that: 'The Urewera people were handing over 100,000 acres of land to the Govt for sale.' It appears clear to me from this that the General Committee possesses the power to sell that 100,000 acres; what I object to is that the mana goes to others (that is to the General Committee, and is not retained by Rua, Translator). I therefore ask you to hand back to me all of my former proposals intact.

That is all, Rua Hepetipa, and all the Israelites.²⁶⁵

On the face of it, Rua's complaint was that he had just discovered that any sale – and he referred specifically to the 100,000 acres he had offered – must be made by the General Committee. The sale would thus become the Committee's sale, not his. Though it might seem surprising he had not known this before, it is clear that he thought Carroll had not been straightforward with him about what would happen in respect of his offer of land. He may have thought that Carroll was in fact prepared to accept his offer directly – and perhaps that the UDNR Amendment Act might allow for this. (As we have seen, that Act did reduce the powers of the General Committee in respect of alienations, in that the Governor in Council might vest land in a district Maori Land Board for sale or lease with the consent of the General Committee, but the Crown could still purchase land only from the

265. Rua Kenana and all the Israelites, 15 February 1910, MA 13/91, Archives New Zealand, Wellington (quoted in Binney, 'Encircled Lands, vol 2 (doc A15), pp 415–416); Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 662). Based on a contemporary translation.

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Committee.²⁶⁶) Or, as Binney suggested, Rua may have expected he would be appointed to the General Committee himself,²⁶⁷ so that the sale might still seem to be his, and he and his people would retain control of its terms and of the proceeds. Either way, it is clear there were deeper concerns underlying Rua's move. He wanted to sell some land to raise capital for development; he wanted his own people to control what land they sold, and what they kept.

By the beginning of 1910, Edwards stated, 'rifts amongst the communities in the Urewera Reserve, particularly in respect of support for the General Committee, appear to have deepened'.²⁶⁸ In the end Ngata went to Te Urewera in May 1910, after the 1909 UDNR Amendment Act had given the Governor power to appoint and dismiss General Committee members, and secured further changes to the composition of the Committee. His earlier move, to appoint the 14 Rua followers as consultative members, had been a failure as they had not attended the March 1910 meeting. Now Ngata had a new plan: he sought the Native Minister's authorisation for it and asked Carroll to take steps to secure the Governor's approval. At the meeting itself Numia Kereru reported that one member had passed away and two members had resigned.²⁶⁹ Rua was present, and moved that some of his people be appointed to replace the three members. In the subsequent debate, two further members resigned. Ngata then moved that five of Rua's people be appointed – among them Rua himself and Paora Kingi. Kereru agreed, and the appointments were made.²⁷⁰ We agree with Edwards that Kereru probably felt he had little choice in all of this. He doubtless considered the possibility that whether he agreed or not, Carroll might see that the new members were appointed on Ngata's recommendation. Neither Kereru nor his leasing proposals retained their earlier support.²⁷¹

The membership of the General Committee thus reverted to the original number of 20 with deliberative powers. The meeting then considered proposals for selling land to the Crown. Rua moved, and Paora Kingi seconded, the first two proposals – for the sale of Maungapohatu and Tauranga; the two other blocks were Otarā and Paraoanui North. Edwards stated that it is not clear from the minutes whether the Committee actually consented to the sales, but Ngata, in any case, understood as much, and reported that the General Committee had made the offer.²⁷² Thus, Rua finally became a member of the Committee, after the intervention of Ngata – and got his sales approved.

266. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp94, 99; The Urewera District Native Reserve Act Amendment Act 1909, ss7, 8

267. Binney, 'Encircled Lands, Part Two' (doc A15), p 417

268. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p106

269. For the minutes of the General Committee meeting held on 27 March 1910, see Numia Kereru to Native Minister, 4 November 1910, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp597–598).

270. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp110–111

271. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 112–113

272. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p113

Tuhoe leader Tamati Kruger spoke to us of his grandmother's korero, and those left behind by her brother Numia Pokorehu and Te Pukenui:

No reira ki a au, ka kite te Kawanatanga, he pai ake ta ratau tautoko i a Rua, he tere ake te whakaeke o ratau hiahia tera i te tautoko i a Numia, kua kite ratau te whakakeketanga o Numia ki te rihi, ki te hoko whenua. Tenei ka wahia te komihana, ka whatia te tuara o te komihana, ka utanga a te Kawanatanga kia uru atu ki runga i taua komihana, nga apataki a Rua. Kia riro tonu ai ma te komihana e whakaae i te hoko, te rihi whenua.

I tona mutunga ake ka riro tonu te Komihana ma te Kawanatanga e whakahaere, e taki. Ka noho pereweta taua komihana, ka noho hai keretao ma te Kawanatanga.

Rehu wairua atu ana nga moemoea, nga manako o Numia. I tera e whai ana, hai ora ana mo tona iwi, a kua wetewetekina, kua turakina.

Ko Numia he tauria ia mo te Rangatiratanga hou ki roto o Ngai-Tuhoe. Tona rereke ki ona papa ki ona tuakana, i noho katoa era i raro i te kawa i te tikanga o Tumatauenga.

Numia, i whai i te kawa a Rongo-ma-tane, a Tane-te-wananga, ko Tane e whai ana ko te pupuri te Mana Motuhake o Tuhoe ma te whakawhitiwhiti korero, ma te whakaaro, ma te hanga ture e tu ana i runga i te tika, i te pono, i te pai . . .

Engari ka tika nga korero, kotahi tonu te wairua i roto i nga mahi katoa a Numia he rapu i te ora, i te pai mo tona iwi.

It was there that the government saw that it was more rewarding for them to support Rua; they could get quicker results than supporting Numia as far as leasing and selling land. The government wanted to divide the committee to break its back. . . . In the end the committee was run and steered by the crown. That committee ended up being an agent and they became puppets of the Crown.

Numia's dreams went up in smoke; his desires and all that he pursued for the benefit of his people had been dismantled and overturned.

As for Numia, he was a good example of a chief of those days in Tuhoe. He was different from his fathers, his older brothers; they all stayed under the mantle of the teaching of Tumatauenga.

Numia pursued the teachings of Rongo-ma-tane and Tane-te-wananga – an advocate of mana motuhake of Tuhoe by the process of dialogue and reflection. By the passing of laws that were honourable, righteous and satisfactory. . . .

There was only one motive in all of the work of Numia: to seek benefits and welfare for his people.²⁷³

We consider the broader question of reasons for the Crown's success in purchasing in the next section of the chapter.

273. Tamati Kruger, transcript of additional evidence, pt 2 (Maori) (doc J48), pp 7–8; Tamati Kruger, transcript of additional evidence, pt 2 (English) (translated by Hori Uatuku) (doc J48(a)), pp 4–5

(7) Why did the General Committee struggle to establish itself as a strong political force?

We stated at the beginning of our analysis that the real failure of the self-government provisions of the UDNR Act took place in the early years after the passing of the Act. The Crown failed to ensure that the General Committee was established within a reasonable timeframe, and that it exercised the self-governing powers envisaged for it in the district, making decisions about the future of Te Urewera lands in broad terms. This failure was fatal to the ability of the peoples of Te Urewera to protect their lands when they had to deal with pressures of various kinds by the end of the first decade of the twentieth century.

The UDNR Act provided for the establishment of a district-wide series of committees, with a large representative General Committee. Time was needed for all the committees to establish themselves and, above all, their authority – and to establish a track record so that people had confidence in them and their respective roles.

The failure of the Crown to support Tuhoe in the establishment phase after the legislation had been passed, as well as its failure to amend the legislation as required so that title determination within the Reserve would not delay the formation of committees, and to ensure that appropriate regulations were in place when they were needed, would have long-term ramifications.

The huge sense of urgency, of iwi-wide enthusiasm, and commitment to ensuring the committees would work could not survive a delay of more than a decade. As things turned out, the timing was crucial. Tuhoe lost the opportunity to establish their committees when the circumstances nationally were propitious – when the Liberals had given their support (if qualified) to district Maori Councils and to holding back from land purchase.

By the time the committees were finally established, the situation was very different. Increased pressures for land settlement reached not just across the North Island but even into Te Urewera. And this led to a situation where internal tension and disputes between Rua, the prophetic leader, and Numia Kereru, the traditional chief, would be conducted *outside* the framework of self-governing institutions, and could thus be exploited by central Government.

Such disputes within the iwi might always have arisen. There were many dimensions to the tension between Rua and Kereru, and the leaders who were aligned with each of them; but at a time when the Government was anxious to push its settlement agenda, their differing views about land management were very evident. And in any iwi there might have been the same strongly held views that sales (on the one hand) might bring the most useful returns, both to help people in their everyday struggle for survival and for economic development; or that leases were much preferable because they did not involve land loss. But the point is that the UDNR Act was supposed to have ensured that debates over land use and alienation in Te Urewera were internal ones. The committees should have been making strategic decisions about land retention, land alienation, and development. Had their

authority been established (and recognised by the Crown) over a period of years, it should not have been possible for leaders to be making trips down to Wellington in 1908–09 to negotiate separately with ministers. It should not have been possible for Ngata and Carroll to play fast and loose with the UDNR Act – even though both were under pressure in parliament by this time, to show every effort was being made to open every possible acre to settlement. It should not have been possible for Ngata – a new player, whose background was the Stout–Ngata commission’s mission to convince Maori everywhere that they must ‘use’ their lands or lose them – to juggle appointments to the General Committee. It should not have been possible for Carroll to make individual payments to Rua’s people, as he would in 1910. The mana of the committees, their history of decision-making, would have protected them from such interventions. But because there had been no time for them to establish their authority, the Government could intrude into the affairs of Te Urewera without causing an outcry.

Clearly, it did intrude. Binney has suggested that Ngata used Rua to break through the resistance of the General Committee to sell and that Ngata’s willingness to ‘sacrifice’ Tuhoe land must be seen in the context of ‘older hostilities’ between Tuhoe and Ngati Porou. It suited Ngata, in her view, to be seen both as assisting the Liberals to advance their settlement agenda and as meeting Tuhoe’s needs to raise finance.²⁷⁴ The Crown, on the other hand, rejected what counsel called ‘serious allegation[s]’ about Ngata’s motives, citing the evidence of Edwards that every encouragement had been given to Numia Kereru and Rua to work together to overcome ‘serious divisions’ in the community. Even in 1910, when Ngata seemed to have given up on this aim, he hoped at least to secure the sales that Rua was prepared to make, so that these might have broad benefits for the iwi.²⁷⁵

We do not accept that the Crown was acting during this period as the honest broker. It had done so little for so long, and it is very evident that in the end it took an interest in the General Committee only because the law required its consent for both prospecting and land alienation. Whatever the motives of its ministers – and Binney, as she acknowledged, inferred Ngata’s motives, and produced no evidence to support her supposition – the Crown was quick to tamper with the rights of the people to elect the General Committee through their local committees, and to reduce or increase the size of the General Committee as it saw fit. The switch from an elected General Committee to an appointed one was a major violation of principle. It might have been acceptable if it had been temporary and if there was general agreement to it, but in fact it was permanent, and of lasting significance. The Crown, on the other hand, rejected counsel’s serious allegations.

Carroll can also be criticised, in Edwards’ view, for failing to ensure a ‘proper regulatory regime’ was established once the General Committee had been set up.²⁷⁶ The matter was

274. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 442–444

275. Crown counsel, closing submissions (doc N20), topics 14–16, pp 72–75

276. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 94

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raised by Judge Browne (the president of the Waiariki District Maori Land Board), who cited section 20 of the UDNR Act, which specified that the powers and functions of the General Committee, and the local committees, were to be prescribed by the Governor in Council. TW Fisher, then the Under-Secretary of the Native Department, advised Carroll that the UDNR Act 'had been modified in some respects by section 23 of the Maori Land Laws Amendment Act 1908, which provided for the lands to be vested in the Maori Land Board for leasing' on the recommendation of the General Committee. In other words, Fisher interpreted the amendment as 'indicative of a change of policy' since 1896, and added: 'it is probably not now the intention to confer such extensive powers on the Committee as was then intended.'²⁷⁷

What happened at this point was that the crucial importance of regulations to the functioning of the committee structure, so clearly signalled in the UDNR Act, was overlooked. Fisher focused only on the matter of alienation – perhaps because the prompt about regulations had come from the President of the District Maori Land Board. Having evidently failed to consider the matter of regulations himself now that the committees were all in place, Fisher then failed to remind the Minister of the Government's obligations under the UDNR Act to assist with empowering the committees in their local government functions. 'There is no evidence,' according to Edwards, 'that Fisher signalled to the Minister any need for formal consultation with [the] General Committee, the Local Committees or the communities of owners, on the possibility that the local government structures were not to be empowered in the manner envisaged in 1896.'²⁷⁸

Fisher gave Carroll poor advice, it is true. But on the other hand, Carroll had been closely involved in the negotiations leading to the UDNR Act and the shaping of the Act, and can hardly be absolved from responsibility at this point. In the end the regulations gazetted in September 1910 did no more than provide rules under which General Committee meetings were to be run. Crucially, there were no regulations on the functions of the local committees, or the relationship between the General Committee and the local committees.²⁷⁹ Perhaps, given all the circumstances by this time, this was hardly surprising. But the Crown thus passed up its last opportunity to breathe life into the General Committee and the local committees.

The way in which the General Committee finally came into being and, as we will see, its very short life, with its functions limited to land alienation decisions, all show that the time for establishing meaningful self-government in Te Urewera had passed.

277. Native Under-Secretary to Native Minister, 18 May 1909, MA 13/91, Archives New Zealand, Wellington (Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 84)

278. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 85

279. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 85–86

*Maku e ki atu, nohia, nohia!
No mua iho ano, no nga kaumatua!
Na taku, ngakau i kimi ai ki te ture,
No konei, hoki au i kino ai ki to hoko . . .
Hei! Hei aha te hoko!!
I say to you 'Remain, remain [on our land]!'
It is from former ages, from your ancestors!
Because my heart has searched out the law
And for this reason I abhor selling!
Never! Never (mind) selling!*

—Te Kooti, 'Te Morikarika'¹

*Whakarongo,
Whakarongo ra te taringa ki te hoko o te whenua e hau mai
nei kei Rotorua, hurihia
Hurihia ra to kanohi ki Te Whaiti, ki Ruatahuna, ki Maungapohatu, tikina
Tikina ra te moni a te Kawana kei te Peeke o Niu Tireni he koronga
He koronga no roto kia nohia nga whare tiketike o te rangatira
Listen,
Listen to the sound of the land sales taking place at Rotorua
Turn your face to Te Whaiti, to Ruatahuna, to Maungapohatu,
Then fetch the money from the Bank of New Zealand
For I have a strong desire to reside in the storied buildings of the wealthy.²*

1. Tuawhenua Research Team, 'A History of the Mana of Ruatahuna from Early Origins to Contact and Conflict with the Crown', vol 1 of 'Ruatahuna: Te Manawa o te Ika' (research report, Rotorua: Tuawhenua Research Team, 2003) (doc B4(a)), pp 296–297

2. Timoti S Karetu, 'Language and Protocol of the Marae', in *Te Ao Hurihuri: Aspects of Maoritanga*, ed Michael King (Wellington: Hicks Smith, 1975), p 47

13.7 WHY AND HOW DID THE CROWN PURCHASE EXTENSIVELY IN UDNR LANDS FROM 1910?

Summary answer: *Crown purchasing into UDNR blocks began in 1910, in the context of growing settler pressure (since 1907) for purchase and settlement in the Reserve. Rua Kenana, who offered a number of blocks for purchase initially, was hopeful of raising finance so*

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that Maungapohatu lands could be developed for farming by the community. The General Committee agreed in principle to the sale of some blocks, or more probably portions of those blocks, but the Government also made payments to individuals who were owners in a number of other blocks without the consent of the committee. Purchasing was formally halted in 1912 (though only a handful of shares had been purchased in 1911) until the final appeals against Urewera commission decisions were heard by the Native Appellate Court in 1912–13. By this time the Reform Government had assumed power. The new Native Minister, William Herries, was committed to vigorous Crown purchase in North Island areas which remained ‘unopened’, and in 1914 the Native Land Purchase Board decided to resume purchase in the Reserve for what by now was assumed to be large-scale farming settlement – though this had never been envisaged in 1896. The board decided also to buy individual interests, despite being aware that purchases could by law be made only from the General Committee – a tribal body. The Crown had in fact never provided the General Committee with legal power to enter into contracts to sell on behalf of the owners in Reserve blocks, and made its payments to individual sellers even in blocks the General Committee had agreed could be sold. It could do this because the Urewera commissions had identified individual owners in every block and listed their relative shares. But the interests of hapu-based communities of owners, as envisaged in the Act, had been not been located on the ground, so that those communities had no way of protecting core lands and no security of tenure once Crown purchasing began. Well over 100,000 acres were purchased illegally before the purchases were validated retrospectively by legislation in 1916.

From this time, the Crown was empowered to purchase individual interests in Reserve blocks, while individuals were empowered to sell – but only to the Crown. The key protective mechanism in the UDNR Act – that any alienation would be managed and effected by the General Committee – was thus removed. The General Committee ceased to have any purpose as far as the Crown was concerned, and its final meeting was held in 1914. The Crown’s purchase agent from 1915 was WH Bowler, who devoted himself to compiling lists of owners and travelling throughout the region (including visits to the east coast) to purchase shares. The Crown extended purchase into new blocks every year, and by March 1921 had purchased the equivalent of 330,264 acres in 47 blocks, or 51 per cent of the Reserve. The Crown’s failure to ensure that UDNR committees were set up quickly, and that hapu titles were located on the ground, meant that there was no collective planning for economic development. Natural disasters at the turn of the century only compounded economic difficulties. Many people left the district, and many sold block shares in order to survive. The Crown failed, however, to buy all the interests in any single block – testament to owners’ determination to retain interests in one or more blocks.

The Crown took advantage of the monopoly purchase right conferred on it by the UDNR Act (intended in 1896 as a protective measure for owners) to purchase at its own pace over a period of years, and its prices were based on valuations which did not meet the requirements of the

Native Land Act 1909, designed to protect Maori owners from selling at artificially low prices. Valuations were made not by Government valuers but by Lands and Survey Department officials, who had a clear conflict of interest. The process by which they reached valuations was not transparent, but their main concern was to ensure that prices paid to those who sold would not compromise the success of the planned Crown settlement scheme. In the Te Whaiti blocks, which contained very valuable standing timber, the Crown denied owners the right to sell cutting rights on the market, then substantially undervalued the timber (failing to use superior measurement techniques which were available at the time). It exercised its monopoly right of purchase to buy up individual interests at its own price from owners who were out of options – ensuring that the Crown, not the owners, would mill the greater part of the Te Whaiti timber from 1938 to 1984.²⁸⁰ The standing timber on all other UDNR blocks was accorded no value at all. Reserve owners generally were also denied protections provided in legislation for all other Maori owners; the Crown failed (quite deliberately) to apply protections in mainstream legislation to ensure that those who sold were protected from landlessness. And it also denied Reserve owners the right which all other Maori owners had to seek partitions in the land court, to protect their blocks from Crown purchase or secure portions to particular hapu. Given the nature of titles awarded by the Urewera commissions this was a damaging curtailment of owners' rights. By an amendment to the UDNR Act in 1909 the Crown extended the jurisdiction of the land court over Reserve lands, except that the court could not partition unless the Crown consented. This would enable it in the years that followed to continue purchasing in Reserve blocks without facing the problem (as it was considered) of Maori-initiated partitions. The Crown itself refrained from seeking partitions, in the hope of buying all the shares in as many blocks as possible, but by 1919 realised that it would not succeed in buying out the owners in any single block. From this time it began to think of consolidating all its interests in one large block of Crown land.

13.7.1 Introduction

Crown purchase in the UDNR took place in two phases. The first lasted through 1910 and 1911 (though the greater part of the purchases were made in 1910), and took place at a time when there was increasing settler pressure to open the UDNR lands for farming. At the same time Rua Kenana was offering some blocks for sale, hoping to raise finance for development. The newly established General Committee agreed in principle to the sale of eight blocks, evidently meaning portions of those blocks. Instead of negotiating terms and contracting with the General Committee, the Crown then made payments to individuals identified as owners by the Urewera commission, not only in these blocks but also in a number of others to the sale of which the Committee had not agreed.

²⁸⁰. John Hutton and Klaus Neumann, 'Ngati Whare and the Crown, 1880–1999' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A28), pp 11, 15

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The second phase of purchasing, which resulted in the alienation of far more land, took place during the Reform Government's administration, under the guidance of W Herries, the Native Minister. The Native Land Purchase Board decided to tackle the UDNR in 1914, once the Native Appellate Court had issued its judgments on the final appeals from decisions of the Urewera commissions. Purchases were made under Herries' Native Land Amendment Act 1913 (an Act of national application), which empowered the Crown to purchase undivided interests from individuals, and individuals to sell directly to the Crown. The UDNR was in fact excluded from the Act's operation, but the Crown bought from individual owners in the Reserve blocks anyway, ignoring the General Committee. In 1916, the law was changed (without consultation with Te Urewera leaders) to validate purchase from individuals in the Reserve. The General Committee no longer had the key protective role in sales which Tuhoe and Ngati Whare leaders had agreed to in 1896. From 1915 to 1921, the Crown expanded purchase into an ever-increasing number of blocks through its agent WH Bowler.

13.7.2 Why did the Crown purchase in Te Urewera from 1910?

The primary reason for Crown purchase in UDNR lands was to acquire lands for Pakeha settlement. As we have seen, pressure to resume purchase throughout the North Island had mounted during the first few years of the twentieth century when the Liberal Government, in response to widespread Maori anger and political action, had refrained from embarking on new purchases. Settler pressure, as reflected in the press, led to sustained attacks on the policy in Parliament, and to the setting up of the Stout–Ngata commission in 1907 to identify lands that could be quickly made available for settlement. What Carroll and the commissioners were able to salvage was some recognition that Maori should retain land for themselves, and for their future development as well as their present needs. In their reports, Stout and Ngata were to urge strongly the Crown's duty in this respect. But Government policy and land purchase practice over the next decade would hardly reflect this. In particular, the Reform Government embarked on determined Crown purchase in many North Island areas from 1913.

The Urewera District Native Reserve, in this context, attracted particular attention from 1907 on – both because it was a large region from which purchase had long been excluded and because it seemed that this was about to change. When the Urewera District Native Reserve Amendment Bill was given its second reading in the Legislative Council in December 1909, the Attorney-General, Dr Findlay, stated that:

The general purpose of the Bill is to enable the work of European settlement of large areas in the Urewera country to be proceeded with. I am not absolutely certain of the figures, but I believe I am right in saying that it is estimated that probably 100,000 acres of land will be

obtained in the district for the purpose of closer settlement, and the chief service this Bill performs is to make it possible by the conversion of the existing orders [ie, the orders of the Urewera commission] into freehold orders, to carry out that general purpose.²⁸¹

In the Lower House, Ngata had likewise argued that the passing of the Bill would promote settlement in the district, stating that ‘within a short time the Crown will be able to purchase between 80,000 and 100,000 acres in the district’ and that a further 150,000 acres had been offered for leasing. He acknowledged that without extensive survey, ‘one is not in a position to say whether the whole of that area – say, a quarter of a million acres – will be suitable, or such as can be readily made available for settlement’, concluding that, ‘[p]ower is now being sought from Parliament to enable that extensive tract of country to be opened up.’²⁸² William Herries, then in Opposition, objected to the fact that the Urewera country had been ‘placed under a separate law to any other Native land in the Dominion’ by the original UDNR Act and its amendments, particularly because it meant that land could not be alienated to private purchasers; nevertheless he would not oppose the passing of the Bill:

The Crown is the only person who can purchase land, and I am very glad to hear from the Minister [Ngata] that the Crown is going to purchase a large area. I hope that they will purchase an area of land where settlement is capable of taking place, and that they will not purchase mountain-tops. It is very rough country as a whole, and only small portions of it are really suitable for anything like close settlement. There is a part I hope they will purchase, and that is the head of the Whakatane Valley at Ruatoki, where there is a good flat that can carry a large number of settlers.²⁸³

William DS MacDonald, the member for the Bay of Plenty, seemed less concerned about establishing the quality of the land. He ‘trust[ed] the Government [would] find the money for the purchase and cutting up of this country in suitable areas to assist rapid settlement of this reserve [the UDNR], which has for such a long period been a bar to the progress of the district’ – that is, Whakatane and other ‘adjacent counties’. And he raised one of the perennial settler concerns at the time: the need to make Maori land pay its fair share of rates:

The settlers there have undergone very great hardships in connection with the blocking of land settlement in that district by the unopened Native areas . . . All that land will be available for pastoral or dairying purposes, and will soon be brought into profitable occupation. It will be only fair to the settlers who have been there so long, and are now paying the local and general rates and maintaining the roads, that this land should be brought into production, and so be made to bear its fair proportion of the local rates. The work of those settlers has greatly enhanced the value of the whole of the Urewera Block. Some of it is very

281. Findlay, 22 December 1909, NZPD, 1909, vol 148, p 1411

282. Ngata, 21 December 1909, NZPD, 1909, vol 148, pp 1386–1387

283. William Herries, 21 December 1909, NZPD, 1909, vol 148, p 1387

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valuable land, and will well repay the money spent on it; but it should bear its fair share of the local taxation.²⁸⁴

Ngata, though cautioning that the country had yet to be properly explored, and that it was therefore not clear whether the whole of the area offered for purchase would be made available for settlement, stated that, '[p]robably the bulk of it would be put on the market on the small-grazing-runs system.'²⁸⁵

A second reason for Crown interest in Te Urewera was mentioned by Ngata –though it does not seem that he meant the Crown should purchase the land he spoke of. He had 'no doubt', he said:

that if the Ureweras are properly approached they would consent to the reservation of a large tract of country between Lake Waikaremoana and Ruatahuna Valley for a national park similar to the Tongariro Park, and that would reserve for all time that interesting portion of country leading over the Huiarau Range. We must have somewhere in this country a portion of it through which no roads can be taken.²⁸⁶

From 1913, there were calls from various Chambers of Commerce to acquire all the land from water's edge to the skyline of Lakes Waikaremoana and Waikareiti as a fine scenic asset for tourism, in the national interest.²⁸⁷ The Royal Commission on Forestry added a further reason – that preservation of the forest would help 'conserve the water-supply of the lake.'²⁸⁸ The potential of the Lake's waters for the supply of electricity had already been recognised. The Government's enthusiasm for taking some 15,000 acres under scenery preservation mechanisms (replaced briefly in 1917–19 by proposals to buy the Waikaremoana block and reserve it) flagged in the face of Maori owner opposition – but all these factors raised the public profile of Te Urewera.²⁸⁹

Though the Liberals were enthusiastic purchasers by 1910, it was their successors in government, the Reform Party, who tackled purchase of Reserve lands in a truly single-minded manner from 1912. Herries, the new Native Minister, 'immediately embarked on a comprehensive programme of Maori land-buying, largely in order to give effect to the wishes of its farmer supporters.'²⁹⁰ Herries' views on Maori land have been summarised by Michael Belgrave in these terms:

284. MacDonald, 21 December 1909, NZPD, 1909, vol 148, pp 1387–1388; Miles, 'Te Urewera' (doc A11), p 338

285. Ngata, 21 December 1909, NZPD, 1909, vol 148, p 1387; Miles, 'Te Urewera' (doc A11), p 338

286. Ngata, 21 December 1909, NZPD, 1909, vol 148, p 1388

287. Tony Walzl, 'Waikaremoana: Tourism, Conservation & Hydro-Electricity (1870–1970)' (commissioned research report, Wellington: Waitangi Tribunal, October 2002 (doc A73), pp 130–135

288. AJHR, 1913, C-12, p xix (quoted in Walzl, 'Waikaremoana' (doc A73), p 134)

289. Walzl, 'Waikaremoana' (doc A73), pp 144–170

290. Richard Boast, 'The Crown and Te Urewera in the 20th Century: A Study of Government Policy' (commissioned research report, Wellington: Waitangi Tribunal, December 2002 (doc A109), p 46

All Maori land should either be taken into trust and leased to Maori and European alike, or individualised. Herries clearly preferred individualisation, blaming rental income for Maori indebtedness, an unwillingness to work and general moral turpitude. Once titles were individualised Maori would be free to develop their land; if it was not developed it should pass into Pakeha hands – by compulsion if necessary . . . Herries derided Maori landlords, denigrated Maori land boards, and vilified restrictions on the sale of Maori land.²⁹¹

And historians of the Maori Affairs Department have written that in the first six years of Herries' ministry, when he 'devote[d] himself heart and soul to the acquisition of Maori land . . . the [Native] Department was essentially a large land purchasing operation directed by the Native Land Purchase Board.'²⁹² The pressure to purchase Maori land increased at the end of the First World War, with newspaper reports pointing out the lack of land available for returned servicemen and condemning 'the curse of Maori landlordism.'²⁹³ In the case of Te Urewera, and with expectations raised by the initial Crown purchases under the Liberal Government, pressure was applied by Farmers' Union officers, the Whakatane Chamber of Commerce, Federated Farmers, the Bay of Plenty Development League, and others over the period from 1912 to 1919 to 'open up' the lands for the purpose of Pakeha settlement.²⁹⁴ In their 1921 report on the Urewera Consolidation Scheme (which was under consideration at the time), RJ Knight (of the Lands and Survey Department), H Carr (of the Native Department), and Raumoa Balneavis (private secretary to the Native Minister) reported that there had been 'a strong and insistent demand in the Press and by local bodies in the Bay of Plenty to have the areas purchased by the Crown made available for settlement.'²⁹⁵

We cannot over emphasise the significance of these developments. In the mid-1890s, the whole thrust of negotiations between Te Urewera leaders and the Crown had been premised on agreement that Te Urewera would be preserved to those whose tribal rohe it was. But some 10 to 12 years later, a quite dramatic shift was under way. Te Urewera, like other areas of the North Island where purchasing was not yet taking place, was assumed to be available for farming settlement. Any perception that the Urewera Reserve had been accorded a special status by agreement between its Maori leaders and the Crown, and by legislation giving effect to that agreement, was fast disappearing. By 1910, a settlement scheme was being assumed; by 1915 its scope had broadened considerably; and within a few years it would

291. 'William Herbert Herries', in *1901-1920*, vol 3 of *The Dictionary of New Zealand Biography* (Auckland: Auckland University Press and Department of Internal Affairs, 1996), p 213; Boast, 'The Crown and Te Urewera in the 20th Century' (doc A109), pp 47-48

292. Graham V Butterworth and Hepora R Young, *Maori Affairs: A Department and the People who Made It* (Wellington: GP Books, 1990), p 68

293. Editorial, *New Zealand Herald and Daily Southern Cross*, 17 April 1920, MA-MLP 1, file 1910/28/1, pt 3, Archives New Zealand, Wellington (quoted in Miles, 'Te Urewera' (doc A11), p 409)

294. SKL Campbell, 'Land Alienation, Consolidation and Development in the Urewera, 1912-1950' (commissioned research report, Wellington: Crown Forestry Rental Trust, July 1997 (doc A55), pp 5-8

295. RJ Knight, H Carr, and HRH Balneavis, 'Urewera Lands Consolidation Scheme (Report on Proposed)', AJHR, 1921, G-7, p 4

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extend even to Ruatahuna. In this context, the rapid expansion of purchase into the great majority of the Reserve blocks could be seen by officials as simply the justifiable pursuit of settlement goals. But this was not the future that Te Urewera leaders had agreed with the Crown.

13.7.3 How did the Crown purchase land in Te Urewera from 1910 to 1912?

Crown purchasing began at speed in 1910, after the General Committee had finally been established. At a key hui held in May 1910, Ngata intervened, as we have seen, to secure the appointment of five new members, including Rua Kenana, to the General Committee (following the death of one member and the resignation of four others). The Committee then considered proposals to sell four blocks (Maungapohatu, Tauranga, Otara, and Paraoanui North). As we have seen, it is not clear that the General Committee did consent to the sales; but Ngata ‘understood’ that that was what had happened.²⁹⁶ Ngata reported the offer of blocks to the Native Department and sought the service of District Surveyor Andrew Wilson to begin valuations so the Government could then make offers.²⁹⁷

Wilson was given instructions at once and was told to treat the matter as ‘very urgent’.²⁹⁸ He met with Maori at Waimana in late June, before submitting his report to Chief Surveyor Skeet in Auckland on 30 June.²⁹⁹ He enclosed a plan marking out the portions under offer, annotated with the Government’s valuations per acre, and showing a proposed road up the Waimana–Tauranga valley.³⁰⁰

From the outset, there was a strong focus in such reports on maximising Crown interests, and the interests of settlement, and Maori interests were given little weight. Thus, Wilson ‘strongly recommended that the government *not* build [the proposed road] until it had acquired all the valley land’.³⁰¹ Nor would he value other lands that Maori owners asked about at Ruatahuna, Te Whaiti, and Ruatoki, since he did not think the time was right for starting purchase in those blocks:

I have an idea that if the Government acquire isolated blocks within the Rohe-potae in odd pieces here and there, and as the Natives will only sell until they acquire sufficient money for their present requirements, and also for certain, great pressure will be brought

296. Edwards, ‘Urewera District Native Reserve Act 1895, pt 3’ (doc D7(b)), p 113. Edwards noted (pp 112–113) that Numia Kereru’s report of the Committee meeting records the proposals were considered at a stated price per acre for each block. The report was, however, written five months after the meeting and, therefore, ‘Either preliminary valuations were offered and later confirmed; or the prices were noted in the November report because by then they were known and had been accepted’.

297. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 422–424, 428

298. Lands and Survey telegram of instructions to Wilson, 1 June 1910, BAAZ 1108/221d, Archives New Zealand, Auckland (quoted in Binney, ‘Encircled Lands, Part Two’ (doc A15), p 428)

299. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 430–431

300. A copy of the plan can be found in Binney, ‘Encircled Lands, Part Two’ (doc A15), p 429.

301. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 430

Block name	Settlement name	Size
Otara	Hiakita's Taiope	150 acres
Paraoanui North	Omuruwaka	100 acres on one side of the river, 160 acres on the other
Omahuru	Ureroa	150 acres
Tauwhare–Manuka	Tauwhare–Manuka	200 acres
Tuaranga	Tawhana	300 acres on one side of the river, 100 acres on the other
Waikarewhenua	Taurawharona	100 acres

Table 13.1: Settlements as shown on Andrew Wilson's plan

to bear on the Government to start constructing roads and organising a settlement scheme. This would be a big mistake, as they would have to construct roads through large areas of Native land enhancing its value, and later would have to pay an increased price for the same land, made more valuable by our own roads. . . . Rua is the prime mover in selling the land under offer. His object is a most transparent one. He wants two things, a little ready money, and a road from Waimana to Mangapohuta [*sic*], and if the Government act up to what he expects they will have to construct 30 miles of road to give access to 34,000 acres, while if the whole valley was acquired the same length of road would give access to 90,000 acres.

So Wilson recommended to Maori that they sell all the land along the road up the Waimana valley to Maungapohatu if they wanted a better price – given the cost of roading. He estimated values for the various blocks (which we discuss further below), stating that he thought ‘this land will be rushed at 40/- per acre including roading’, and that the Waimana valley was ‘promising grazing and sheep country, while some parts will do for dairying.’ He then proposed:

That the Government start purchasing all the land which will be offered in the Waimana Valley. That Chief [Numia] Kereru be advised as to their intention. That the meeting he wants [to] be held be arranged for, which the Hon Mr Ngata should be asked to attend, and I think I am safe in saying most of the Valley will be disposed of to the Crown.³⁰²

But Wilson thought speed was of the essence, ‘while the Natives are in the humour to sell.’³⁰³

302. Andrew Wilson to chief surveyor, 30 June 1910, BAAZ, file 1108/221d, Archives New Zealand, Auckland, p 3 (Binney, supporting papers to ‘Encircled Lands, Part Two’ (doc A15(a)), p 73)

303. Ibid

In an attached plan, Wilson showed ‘old settlements’ which Maori wanted set aside from sale, though he claimed they had also given the Government ‘full power over the land they reserve with respect to roads’. The settlements as shown on Wilson’s plan are listed in table 13.1. Edwards noted that each of the settlements was located around the line of the proposed road.³⁰⁴

Wilson also reported separately to Ngata on 30 June 1910, reiterating his view of Rua’s motives, and outlining his explanation to the owners that if they sold all their lands in the Waimana watershed, except for their settlement, ‘the Government could afford to pay a better price, and on those principles I put from 12/- to 20/- per acre according to position & quality.’³⁰⁵

Wilson was thus aware that Maori owners were hoping to sell according to their own strategy, and for their own purposes. He aimed instead to persuade them to treble their offer of land in the Waimana valley so that the Crown’s proposed road would serve Crown land, leaving only small areas adequate for subsistence around Maori settlements.

(1) Rua’s and the General Committee’s offers to sell land, 1910

As a result of Wilson’s arrival in the district, offers for sale of land accelerated. In 1908–09, the focus was on leasing (‘cessions’ were referred to, which evidently were leases); the purpose of which was to discharge the survey debts and other Urewera commission costs that Ngata had wrongly raised as an issue. In June 1909, the General Committee confirmed ‘cessions’ in 18 blocks, ranging from 500 acres to 4,000 acres, plus 10,000 acres in Parekohe block.³⁰⁶ By 1910, things were different. Rua had invited the General Committee to meet at Te Waiti on 20 June to discuss matters relating to Waikaremoana, Te Whaiti, Ruatoki 2 and 3, and, as Numia Kereru put it in his report to Ngata, ‘that portion of Tauranga and Maungapohatu which was sold.’³⁰⁷ Though the minutes do not clarify all the discussions at the meeting, proposals were put for the Maungapohatu, Ruatahuna, and Te Whaiti blocks which involved setting aside portions of the land for Maori occupation and farming, and offering further land for lease (in addition to the portion already offered for sale). Rua and his people, Numia reported, handed over 1,000 acres of the Maungapohatu Block for lease and 1,000 acres for farming, at the southern end of the block.³⁰⁸ In one block, Te Whaiti, it was proposed to offer 6,000 acres for sale to the Crown.³⁰⁹ But other blocks were in the offing too. Numia Kereru reported that he had met Wilson, who ‘desires that portions of

304. Edwards, ‘The Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 115

305. Wilson to Ngata, 30 June 1910, Wilson’s Outwards letterbook, qms 2260, Alexander Turnbull Library; Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 116

306. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 88–89

307. Numia Kereru to Ngata, 28 June 1910, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington (Binney, supporting papers to ‘Encircled Lands, Part Two’ (doc A15(a)), pp 77–78)

308. Numia Kereru to Ngata, 28 June 1910, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington (Binney, supporting papers to ‘Encircled Lands, Part Two’ (doc A15(a)), pp 77–78)

309. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 116–117

Parekohe, Mahuru-Paraoanui South, Te Wharemanuka, and Waikarewhenua should be sold. Numia had received a letter from Rua agreeing to the sale.³¹⁰ Edwards concluded – we think rightly – that Wilson and Rua must already have discussed the sale, which meant that ‘by now Rua was orchestrating his sales strategy directly through Ngata and Wilson, as opposed to the General Committee.’³¹¹ Numia advised that a meeting would be held at Waimana in late August to discuss further proposed sales and leases.³¹²

Rua then jumped the gun. Before the scheduled meeting at the end of August, he travelled to Wellington and, on 17 August, met with Carroll and Ngata and ‘offered his interests and those of his followers in six other blocks: Ruatoki 1, 2, and 3; Waipotiki; Karioi; and Whaitiripapa (mostly land at or near the northern end of the Rohe Potae)’. He asked for an advance of £10 for each owner.³¹³ On 19 August, Carroll instructed Ngata to ‘arrange with Rua’ what he wanted, ‘and we can authorise same.’³¹⁴ Rua visited Ngata on 22 August to confirm the offer; cash advances were authorised by Carroll under the authority of the Native Land Purchase Board; and the money was paid that same day.³¹⁵ Binney noted that the fares and expenses of Rua and his party of 11 in Wellington were paid for by the Government.³¹⁶ The Native Land Purchase Board later authorised Ngata to purchase the six blocks on 12 September 1910.³¹⁷

The General Committee had not given its consent to these sales; though Edwards suggests that the Board may have thought it had. If so, she was not sure why, as Ngata was aware a week before the meeting that the General Committee had not consented to the sale of portions of, or shares in, these blocks.³¹⁸ She noted that ‘[t]he extant correspondence sheds no light on what role Carroll envisaged for the General Committee in respect of the proposed sale, when he chose to deal directly with Rua in Wellington’. Her view was that while there might be ‘no impropriety in Carroll meeting with Rua in Wellington in August 1910 and discussing potential sales’, what did present problems was ‘the making of advances to individuals before certain matters were settled and formalised’. Those problems included:

- ▶ the interests of the individuals had not been located on the ground
- ▶ the General Committee’s formal approval of the terms had not been obtained
- ▶ a process for identifying the interests on the ground had not been settled

310. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 117

311. Edwards, ‘The Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 117

312. Numia Kereru to Ngata, 28 June 1910, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (quoted in Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 431–432)

313. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 432–433

314. Carroll marginal note, not dated, on Wilson telegram to Under-Secretary of Lands, 19 August 1910, AADS w3562, file 22/697, pt 2, Archives New Zealand, Wellington (quoted in Binney, ‘Encircled Lands, Part Two’ (doc A15), p 433; Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 118)

315. Ngata to Carroll, 22 August 1910, Native Land Purchase Board 1910/35, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington; Binney, ‘Encircled Lands, Part Two’ (doc A15), p 433

316. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 433

317. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 435

318. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 121

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- ▶ the method of advance payment was payment for shares
- ▶ the Crown was in effect buying undivided shares, not a specified portion of the blocks in question.³¹⁹

These are crucial points. They draw attention to the fact that from the outset the Crown approach to purchase in the UDNR was wrong-headed. The problems Edwards draws attention to are evident not just in the Crown's response to Rua's offers in Wellington, but more generally. As we have seen, it was not clear whether the General Committee had in fact consented to the sale of the four blocks considered in May 1910. Edwards pointed out also that it is not clear with any of these offers, or later ones, whether 'portions of blocks, or shares' were being offered; the sources, she says, 'are frustratingly imprecise on this question.'³²⁰ We think it is clear that the Crown's processes for purchase were ill-considered. Ultimately, this reflected the fact that despite the unique role for the General Committee laid out in the UDNR Act, this did not prompt any assessment of how purchase from the General Committee should in practice be effected. (We consider this further in the next section.) Instead, there was an opportunistic falling back on earlier practices of purchasing individual shares. This is the more surprising, given that the Liberal Government had just passed the Native Land Act 1909, with its provision for meetings of assembled owners – the purpose of which, according to the Native Minister, was to revive the old runanga system, so that owners could again make decisions about their land collectively.³²¹ But in the UDNR, the retrograde step of purchasing individual shares – with or without the consent of the General Committee – apparently seemed an obvious solution, given that the Urewera Commission had not located hapu areas on the ground but had simply drawn up comprehensive lists of individual shares. This doubtless explains why proposals before the General Committee were couched in imprecise terms, and why Committee minutes are silent on the relationship between groups of owners willing to sell and precise portions of land offered for sale: sellers were not sure what they could offer, and the Committee was not sure what it was agreeing to.

Edwards suggested the General Committee might have considered it was consenting to 'the blocks in question being opened for purchasing and they were guided by the owners' indication that they wished to sell.'³²² In other words, the Committee had a broad idea which part of a block owners' interests were located in. They might thus have thought of partitioning out those owners' interests. We know that in the case of the Ruatoki offer (which Rua must have known was a challenge that would outrage Numia Kereru), the solution sought was partition. Early in September Wilson reported to the Department of Lands that:

319. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 118–119

320. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 122

321. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 688

322. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 123

Local [Ruatoki] owners object to valuation being made. Kereru & other chiefs advise that court must partition block first and define situation of sellers interests and that whole thing can be discussed at meeting held on twelfth [at Tanatana] local natives consider Maungapohatu natives have broken faith in selling without first consulting General Committee in terms of clause 7 of Urewera amended land act. I am leaving the Valuation over until after twelfth. So as not to cause friction.³²³

The Consolidation commissioners later gave their own view of the purchasing procedure adopted, stating that the intention was for the Crown to partition out the interests of individual owners who gave their written consent to sell, and received payment; at which point the General Committee would affirm the sale by resolution ‘and thus comply with the law.’³²⁴ But such a procedure would have been quite contrary to the UDNR Act; and it does not appear that any attempt was made to implement it.³²⁵

We are certain that both owners and the General Committee would have wanted to identify defined portions of blocks for sale – or for lease. We agree with Edwards on that point.³²⁶ We note also that Ngata told Parliament during the debate on the UDNR Amendment Bill in 1909 that the proposals set out in the Bill ‘are in the direction of obtaining from the whole of the owners of a block specified portions of the block.’³²⁷ In discussions between Te Urewera leaders and Wilson about sales, ‘portions’ of blocks had also been specified and, as we noted above, the land use proposals put before the General Committee, for lease or settlement of land in a few blocks, and the 1909 ‘cession’ proposals also referred to precise acreages of the blocks.³²⁸ But it soon became apparent that this was not the basis on which Crown purchasing would proceed.

In the wake of Rua’s offers to sell, Ngata attended the September meeting of the General Committee at Tanatana in the Waimana valley. By now the Native Land Purchase Board had authorised payment of advances to vendors of a number of blocks valued by Wilson, and the committee agreed to the sale in principle of four blocks: Omahuru (6,600 acres) at £1 an acre; Paraoanui South (5,510 acres) at 17 shillings an acre (corrected later to the Government’s valuation of 17s 6d); Waikarewhenua (12,500 acres) at 12 shillings an acre; and Tauwharemanuka (28,860 acres) at 15 shillings an acre. Mika Te Tawhao from Waiohau moved to sell each of the four blocks, and Rua seconded three of the four motions. The motion to sell the Tauwharemanuka block was seconded by Te Whetu Te Paerata. In the event, the Tauwharemanuka block would not be bought by the Crown in 1910.³²⁹ The blocks

323. Wilson to Under-Secretary of Lands, 6 September 1910, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington (quoted in Binney, ‘Encircled Lands, Part Two’ (doc A15), p 435)

324. ‘Report on the Proposed Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921–22, G-7, p 2

325. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 123

326. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 122

327. Ngata, 21 December 1909, NZPD, 1909, vol 148, p 1387

328. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 122–123

329. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 434–435

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offered for sale by the General Committee in September, as Binney observed, were not the same as the six blocks offered by Rua in Wellington in August. She noted that the minutes for the meeting of 13 September 1910 are ‘utterly silent’ about the six other blocks offered by Rua – a silence she categorised as ‘the absence of permission.’³³⁰ (The General Committee would, however, agree at its October meeting – after the Board had approved purchasing there – to the sale of Karioi block.³³¹)

Thus, the General Committee (under the guidance of its chairman Numia Kereru), had embarked on sales, abandoning its attempt to offer leases in the face of pressure from both the Government and from Rua. Numia had become involved in selling, in Binney’s view, ‘not only because he could not now stop the process but because he also presumed that the government would build the promised arterial roads into the Urewera from the eastern Bay of Plenty.’³³²

Purchase on the ground now began with speed. On 17 September, it was reported in the *Poverty Bay Herald* that Ngata had ‘successfully completed negotiations with the native owners for the purchase of 60,000 acres, comprising the basin of the Tauranga river, seven miles inland from Waimana settlement. The purchase operations are now in progress.’³³³ The day after the 13 September meeting, £30,000 was set aside by the Government under the Native Land Act for the purpose of buying Te Urewera land.³³⁴ The Lands Department’s chief accountant and native land purchase officer, RA Paterson, immediately began purchasing.³³⁵ And his own account makes it clear that he was buying from individual owners. In an interview published in the *Poverty Bay Herald* on 30 September 1910, Paterson described the process by which he had gone about purchasing interests in the blocks over the previous ‘eight days’:

‘we have put through no less than five hundred people. This meant the interpretation of nine deeds to each person, each time . . . As an instance I may say that we put through as many as eighty-five people in one day . . . and up there, we managed to put them through very fast indeed. To tell you the truth,’ continued Mr Paterson with a smile, ‘we were in a hurry to get out of it. Maori customs, Maori tucker, and Maori bedding didn’t quite appeal to us. Of course, remember the Natives were very kind to us, and did their best to make us as comfortable as possible . . . [W]e will be finished in probably two months. Later on we’ll be going into land purchases in the Whakatane Valley, and Ruatoki. We are practically in that now,’ he added.³³⁶

330. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 435

331. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 437

332. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 431

333. *Poverty Bay Herald*, 17 September 1910, p 5 (quoted in Binney, ‘Encircled Lands, Part Two’ (doc A15), p 436)

334. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 438

335. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 438

336. *Poverty Bay Herald*, 30 September 1910, p 5 (quoted in Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 438–439)

By 25 October 1910, Paterson reported that he had bought 27,070 acres in seven blocks and had already spent £20,911, that is, over two-thirds of his budget, half of it on the Tauranga block: ‘The amount was distributed over about 800 people. The largest payment would be about £250 covering seven blocks [that is, to an owner with interests in seven blocks], but that was exceptional.’ Paterson evidently anticipated that this land would be opened for European settlement in a short time. He stated that the Parekohe and Tauwharemanuka blocks were still ‘to be dealt with,’³³⁷ though he would in fact purchase only a few shares in the Parekohe block (approved for sale and lease by the General Committee at its meeting of 26 October) and none in the Tauwharemanuka block.³³⁸

Paterson (or his associate William Pitt) continued to buy shares, returning to the district in early November 1910, and a purchasing officer was still there in early December.³³⁹ But at that point, Ngata wrote to Numia that further selling in all blocks that had been valued from Parekohe to Maungapohatu would be deferred. The Crown, Binney suggested, had run out of money.³⁴⁰ Numia conveyed the gist of Ngata’s letter to the General Committee at its meeting of 12 December at Waikirikiri Marae, Ruatoki. Rua was not present. Numia moved in light of this that further motions for land sales not be put, which led to ‘uproar’ – some members opposing and some agreeing with his motion – so that he tried unsuccessfully to withdraw it. It was eventually decided – unanimously – that all the motions should be abandoned.³⁴¹ The General Committee did not meet again until March 1914.

On 31 March 1912, the Government formally suspended purchasing in Te Urewera due to the appeals before the Native Appellate Court.³⁴² Some shares were bought in 1911, including those of one owner in the Parekohe block, and of three owners in Te Whaiti block who were each paid for the equivalent of 450 acres by the Native Land Purchase Board in January 1911. The arrangement had been authorised in November 1910, on Ngata’s personal instruction to Carroll; the sale had not been authorised by the General Committee.³⁴³ Binney argued that: ‘the General Committee lapsed for four years because it was no longer needed by the government for land alienation. From the viewpoint of the government it had no other function.’³⁴⁴ Our view, as we have stated, is that the committees were set up years later than they should have been – and that this obstacle to their success was compounded by the Crown’s sudden

337. Paterson to Ngata, 25 October 1910, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(e)), p1718); Binney, ‘Encircled Lands, Part Two’ (doc A15), p 439

338. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 436–437, 448

339. Binney cited ‘Memos to this effect’, 3 November 1910, 7 December 1910, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington (Binney, ‘Encircled Lands, Part Two’ (doc A15), p 449)

340. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 439

341. Binney, ‘Encircled Lands, Part Two’ (doc A15), pp 437–438; Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 125

342. See Binney, ‘Encircled Lands, Part Two’ (doc A15), p 452; Knight, Carr, and Balneavis, ‘Report on Proposed Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921–22, G-7, p 3.

343. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 453

344. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 441

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Block	Area (acres)	Shares		Equivalent acres	Amount paid			Rate			Date of general committee consent
		Total	Acquired		£	s	d	Per acre	Per share	s	
Waikarewhenua	12,400	5,029	2,215 ³ / ₁₆₀	5,515	3,181	5	8	12	-	-	13 September 1910
Tauranga	39,020*	4,558	2,536 ³ / ₆	21,886	16,159	4	9	15	-	-	27 May 1910
Maungapohatu	28,462	6,238	823 ¹ / ₆	3,588	2,258	12	-	12	-	-	27 May 1910
Paraoanui North	3,300	918	474 ¹ / ₂	1,754	1,491	-	8	17	6	-	27 May 1910
Paraoanui South	5,410	1,733	1,014 ¹ / ₁₂	3,225	2,770	9	7	17	6	-	13 September 1910
Otara	2,530	2,660	1,635 ⁵ / ₆	1,651	1,597	2	-	20	-	-	27 May 1910
Omahuru	6,450	2,377	1,369 ³ / ₄	3,806	3,716	6	4	20	-	-	13 September 1910
Parekohe	20,960	6,655	12 †	?	35	-	-	-	-	Not stated	Not sighted
Waipotiki	8,200	4,126	31 †	?	23	-	-	-	-	14	Not sighted
Karioi	2,428	2,072	30 †	?	9	-	-	-	-	6	16 October 1910 [§]
Ruatoki 1	8,735	4,239	65 †	?	49	10	-	-	-	11	Not sighted
Ruatoki 2	5,910	4,512	60 †	?	29	2	6	-	-	9	Not sighted
Ruatoki 3	6,800	4,517	60 †	?	32	12	6	15	-	-	Not sighted
Totals	150,605	50,534	10,324 †	41,425	31,353	6	-	-	-	-	-

* Plus 300 acres in reserves

† Advances

‡ Excluding fractions

§ Val unknown

Table 13.2: Crown purchasing in the UDNR before 31 March 1912

interest only when it appeared that they were necessary to the Crown's agenda of opening Te Urewera to prospecting and settlement. Its calculated intervention in the operation of the General Committee at that point to ensure that it focused on land alienation (when no provision had been made for it to attempt land development) left the Committee in disarray.

A summary of all Crown purchasing in the UDNR before 31 March 1912, compiled from a number of sources, is set out in table 13.2.³⁴⁵

(2) *The resumption of Crown purchasing in the UDNR, 1914–21 – direct purchase from individual owners*

In November 1914, the Native Land Purchase Board, which conducted purchasing on behalf of the Crown, and included the Minister among its members, resolved to resume purchasing in the UDNR: 'That action be taken to acquire individual interests at prices fixed by District Surveyor for Crown Lands Department.'³⁴⁶ In other words, it would 'purchase direct from individual owners without reference to the General Committee.'³⁴⁷

The policy of Crown purchase from individual Native owners – as in the latter part of the nineteenth century – had been provided for in the Native Land Amendment Act 1913 which embodied Herries' determination to expand the Crown's powers of purchase generally. He had not approved of the Native Land Act 1909 and the channelling of Crown (and private) purchase through 'meetings of assembled owners' and Maori Land Boards, which had to approve owners' decisions.³⁴⁸ He thought it was a proper role for the Crown to buy Maori land and control the pace of settlement, and he tended to label private buyers 'speculators'. He had never approved of the special status of the Urewera Reserve. Herries indicated in Parliament in December 1909 that it had been intended that the UDNR Act 1896 should be

345. Binney, 'Encircled Lands, Part Two' (doc A15), p 449, tbl 4, see also pp 450–451. Binney's source was a summary compiled in June 1915, sent to WH Bowler (Paterson's successor) by the under-secretary of the Native Department, which had been copied in Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 17–18. This summary included amounts paid and rates, in addition to the figures compiled by Bowler showing the number of shares purchased in his 14 September 1914 memorandum to the under-secretary of the Native Department, where he first collated the information: Berghan, supporting papers to 'Block Research Narratives' (doc A86(e)), pp 1622–1623. For details of the equivalent acres and general committee consent, see Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 126–127, tbl 21. Edwards cited Under-Secretary of Lands to Under-Secretary, Native Department, 23 December 1914, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington. Binney noted a number of discrepancies in the June summary – for instance, the prices paid per share (or acre), do not calculate to the total sum paid for each block. There was also some confusion in the sources as to whether prices paid were calculated per share, or per acre. The prices paid for the first seven blocks were calculated by acre (her source for this was a map dated August 1915), but Binney stated that 'advances' paid to Rua and others on the last six weeks were paid for as shares. A further summary, compiled in December 1914, calculated the total paid at £31,403 19s 8d, plus an additional £366 3s, slightly higher than the total given in table 13.2 (which is sourced from the summary of 8 June 1915).

346. Native Land Purchase Board minutes, 7 November 1914, MA-MLP 5/2, Archives New Zealand, Wellington (quoted in Edwards, 'The Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 140)

347. Knight, Carr, and Balneavis, 'Report on Proposed Urewera Lands Consolidation Scheme', AJHR, 1921, G-7, p 2

348. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 685–687

repealed under the Native Land Act 1909 – a claim borne out by the first draft, in which the Act and the 1900 amendment Act are listed in the schedule of Acts to be repealed. Herries was a member of the Native Affairs Committee at the time, and it is possible he sought the repeal himself.³⁴⁹ But by 1914 he had come to see the advantages in the UDNR Act: it gave the Crown a monopoly to purchase in Reserve blocks. As a ‘matter of general policy’, He informed the Attorney-General that he believed that ‘it would be best for the Crown to purchase what it requires before the [UDNR Act 1896] is repealed.’³⁵⁰

In the UDNR, of course, purchasing from individual owners was not supposed to be possible. The Native Land Purchase Board was aware of this, as is evident in the instructions of the Under-Secretary of Lands to Land Purchase Officer Bowler in December 1914: ‘It will require to be left to future legislation to validate these purchases, the present state of the law plainly requiring that all purchases should be made through the General Committee of the Urewera natives.’³⁵¹

The Crown acknowledged in its submissions that the board knew at that time ‘that the law plainly required them to contract with the General Committee and no other party’. Moreover, the board intended to start buying anyway, without seeking legislative remedy. Counsel thought this ‘strange’ when the UDNR was expressly excluded from the 1913 Native Land Amendment Act’s provisions for purchase from individual owners.³⁵²

It is even more remarkable, in our view, when both the Attorney-General and the Solicitor-General were involved in consideration of this issue. The Attorney-General, A L Herdman, went to Te Whaiti on 3 March 1915 and met Maori owners. Among the matters raised were restrictions on their dealing with private companies, particularly timber companies, and the owners sought further meetings. It was this discussion which prompted the Attorney-General to seek advice on the status of the earlier purchases. Edwards drew our attention to the fact that Herries also responded to the matters raised by the Attorney-General, and sent a full briefing paper to the Prime Minister highlighting the anomalous status of the Te Urewera purchases – but he was preoccupied by the risk to the Crown, and focused particularly on what he called the inadequacy of sketch surveys which meant that exact block acreages – were not known.³⁵³ He referred to advice from the chief surveyor that, because of this, the Crown should pay only a proportion of purchase money until it had completed its purchases and a ‘ring survey’³⁵⁴ could be made of the interests it had

349. Miles, ‘Te Urewera’ (doc A11), p 354; Herries, 21 December 1909, NZPD, vol 148, p 1387

350. William Herries to Attorney-General, 22 March 1915, MA-MLP 1, file 1910/28/1, Archives New Zealand, Wellington (quoted in Miles, ‘Te Urewera’ (doc A11), p 362)

351. Under-Secretary of Lands to Bowler, 22 December 1914, MA-MLP 1, file 1928/10/1, pt 1, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 780)

352. Crown counsel, closing submissions (doc N20), topics 14–16, p 77

353. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 140–141

354. Chief surveyor to chief judge, Native Land Court, 29 July 1914, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 860); Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 134, 141

acquired. An attached summary outlined the history of the UDNR and Crown purchase in it. Edwards pointed out that it would have alerted the Attorney-General to the fact that the General Committee had power to sell to the Crown, but it contained no mention that the local government structures (specifically the General Committee) had been established, nor of the fact that the committee had been the contracting party for purchases already made.³⁵⁵ (It had not, in fact, been the contracting party; though it had been instrumental in some of the purchases.)

The Solicitor-General's advice to the Attorney-General on alienation powers under the amended UDNR Act was given on 25 March 1915. The Solicitor-General did refer to the:

exceptional provisions . . . made . . . for investigating titles to this area of Native Land and for establishing in the district a form of local government or control by the Natives themselves through the agency of a general committee and local committees for the different blocks.

The Solicitor-General noted that, by section 6 of the amending Act of 1909, the Reserve was inalienable except as provided by the UDNR Act 1896 and its amendments, and went on to list forms of alienation which were permitted by that legislation.³⁵⁶ Of most interest is his advice that section 109 of the Native Land Amendment Act 1913 empowered the Crown to purchase from individual owners even in the UDNR:

Finally, by Section 109 of the Native Land Amendment Act 1913 power has been conferred upon the Crown to purchase or lease any Native Land whatever, notwithstanding anything to the contrary contained in any other Act. When so acquiring land the Crown may negotiate either directly with individual owners or deal with the assembled owners under the provision in that behalf in the Native Land Act.

The Crown in submissions to us asserted that the Solicitor-General's statement was erroneous.³⁵⁷ But purchasing began again in mid-1915 in blocks opened to purchase earlier, on the basis of his opinion. Not until some time later, counsel said, was it realised that the UDNR was not subject to section 109 of the Native Land Amendment Act 1913. Edwards suggested that there are two possible dates for official recognition of the mistake. It might be August 1915 (the date Crown counsel favoured), when a minute of Native Under-Secretary Fisher (on the issue of landless provisions) could be interpreted to mean that he thought the provisions of the Act did not apply in the UDNR.³⁵⁸ We were not convinced, however, that

355. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 141-142

356. Solicitor General to Attorney General, 29 March 1915, Crown Law Opinions, vol 10, folios 526-527, Crown Law Office Library (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 17-19); Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 143

357. Crown counsel, closing submissions (doc N20), topics 14-16, p 77

358. Crown counsel, closing submissions (doc N20), topics 14-16, p 77

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the minute need be read in this way, or that it dated from August.³⁵⁹ We considered a letter Fisher wrote to the Under-Secretary of Lands on 12 August 1915 (quoted by Edwards), in which he indicated that he thought the provisions did apply in the Reserve, a more reliable guide to his views at that time. The alternative date is June 1916, when in Edwards' view the 'most explicit' statement was made by Fisher, pointing out that the acquisition of interests would need to be validated by legislation.³⁶⁰ We take it therefore that officials may not have realised till June 1916 (when Fisher said a fix was needed) that the Act applied, and that they then acted quickly to amend the legislation. But for some 15 months, until August 1916, the Crown bought illegally in Reserve blocks on the basis of the mistaken advice of the Solicitor-General.

In August 1916, a 'legislative fix' was applied to validate all prior and prospective purchases.³⁶¹ Section 4 of the Native Land Amendment and Native Land Claims Adjustment Act 1916 provided that:

Notwithstanding anything to the contrary in the Urewera District Native Reserve Act, 1896, or in any other Act, the Crown shall be deemed to have and at all times to have had power to purchase the interest of any individual owner in the land comprised in the First Schedule to the aforesaid Act, and every owner shall be deemed to have and to have had power to sell his interest to the Crown, but to no other person.

In Parliament, Herries explained the necessity for this amendment as follows:

Clause 4 enables the Crown to purchase the Urewera lands. We have been purchasing for many years, but there is some doubt as to whether under the original Urewera Act our purchases are legal. This is to validate the purchases and to enact that in future the Crown purchases shall be considered as valid.³⁶²

There was nothing wrong with the purchases, he underlined – but there was one problem:

the original Act provided that a general committee should be set up and that this committee should have power to sell to the Crown. The general committee has never been set up, and we are making provision to validate the purchases that we have made direct from the Natives.³⁶³

359. Fisher minute, undated, noted on Bowler to Native Under-Secretary, 16 July 1915 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1089)

360. Fisher to Under-Secretary for Lands, 12 August 1915 (cited in Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 195–196); Fisher to Under-Secretary for Lands, 19 June 1916 (cited in Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 145). Edwards, in response to Tribunal questions about this issue, revised her view of the period during which officials operated under the flawed advice of the Solicitor-General: Edwards, answers to questions of clarification from the Waitangi Tribunal on 'The Urewera District Native Reserve Act 1896, pt 3', 26 April 2005 (doc L33), pp 5, 10.

361. Crown counsel, closing submissions (doc N20), topics 14–16, p 77

362. William Herries, 3 August 1916, NZPD, 1916, vol 177, p 741

363. William Herries, 3 August 1916, NZPD, 1916, vol 177, p 741

Was Herries misleading the House when he made the remarkable claim that the General Committee had never been set up? Edwards thought not, because Herries was still making the assertion in internal correspondence a year later. He might have forgotten about the committee, she suggested, since he had seen only one report since he had been Minister which referred to the General Committee, relaying its consent for the grant of a timber license for Te Whaiti block (see later discussion). He might have relied on the briefing paper to the Prime Minister, which said nothing about the General Committee, rather than on the files. And T W Fisher, his under-secretary, was on paid retirement leave at the time the Bill was introduced and passed.³⁶⁴ By September 1916, C B Jordan, new to the job, was Acting Under-Secretary.³⁶⁵

All of which sounds plausible. But, on the same day, Ngata also spoke to the Bill, and gave it his support: ‘so far as the “washing-up” clauses of this Bill are concerned,’ he said, ‘I have found them, by investigation in the Native Affairs Committee, to be satisfactory, and, as far as the evidence goes, to be above suspicion.’³⁶⁶ Why did he say nothing about the General Committee, in the establishment and operations of which he had played such a key role? Probably there was more than one reason. At precisely that time, Rua Kenana was on trial in Auckland following his arrest at Maungapohatu in April by an armed police expedition. He was charged with offences including resisting arrest, using seditious language, and resisting arrest on an earlier occasion when summonsed on charges relating to the illicit sale of alcohol.³⁶⁷ Doubtless Ngata did not wish to risk drawing attention to the fact that Rua had been a member of the General Committee, and that he himself had been responsible for that. But his silence on the past history of the General Committee – and, indeed, on its role in previous land transactions – must be seen as contributing to the Government’s easy justification of its retrospective validation of the illegal purchasing carried out in the UDNR.

We might also suggest that Ngata – and perhaps Herries too – was eager to avoid questions about the Government’s role in the purchases of 1910–11, as well as those during 1915–16. Its role was, in fact, indefensible. The law required it to negotiate only with the General Committee for ‘any portion’ of land within the UDNR (UDNR Act, section 21); and, when it did purchase ‘any land . . . from the General Committee . . . the contract of purchase shall be carried into effect by a Proclamation in the same manner as in the case of a purchase from the assembled owners under Part XIX of the Native Land Act, 1909.’³⁶⁸ (We refer below to relevant provisions of part XIX.) The Crown, as we have seen, acknowledged that: ‘The [Native Land Purchase] Board knew at that time [1914] that the law plainly required them

364. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 146–147

365. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 147

366. Ngata, 3 August 1916, NZPD, 1916, vol 177, p 746

367. Judith Binney, ‘Rua Kenana Hepetipa’, 1901–1920, vol 3 of *The New Zealand Dictionary of Biography* (Auckland: Auckland University Press; Wellington: Department of Internal Affairs, 1996), p 446. We consider claims made in this inquiry in relation to the arrest and trial of Rua Kenana in a later chapter.

368. Urewera District Native Reserve Amendment Act 1909, s 13

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to contract with the General Committee and no other party.³⁶⁹ The Crown, in other words, could not as a matter of law contract with individual owners. Such a contract, though it bore all their signatures, was of no effect. The consent of the General Committee (which was given only to the sale of eight blocks, in 1910) was not enough. The Crown's failure to issue a proclamation in accordance with section 13 of the UDNR Amendment Act 1909, which counsel acknowledged as a further omission on its part, is doubtless explained by the fact that the Crown could not point to any contract with the General Committee as the basis for such a proclamation.

This concession by Crown counsel highlights the Crown's failure to take steps to ensure that the General Committee could exercise its powers under the law, should it wish to – that is, to contract to sell 'any portion' of land to the Crown. The Committee had been left, in fact, in a legal limbo. It was a unique tribal body empowered to alienate; by agreement between Te Urewera leaders and the Crown it was the sole conduit for alienation. But neither in the UDNR Act nor in mainstream native land legislation was provision made for legal tribal titles. The individualisation of title by the land court in accordance with native land legislation had left Maori owners everywhere unable to collectively manage their lands, or to transfer title collectively to purchasers or lessees. The Crown had eventually recognised this, and provided in 1894 for owners to incorporate, and in 1900 for Maori land councils (superseded in 1905 by Maori land boards) to act for Maori owners. Under the Native Land Act 1909 a Maori land board still had to act as the owners' agent in any legal transaction (see chapter 10).³⁷⁰ Despite these Crown attempts to solve the problem it had created for Maori owners elsewhere, it took no steps during the same period to empower the General Committee to transact sales or leases.

This was in our view, a startling omission, as the General Committee's role in alienations was the key mechanism in the UDNR Act 1896 designed to protect owners. The Crown has admitted some failure on its part to provide regulations under the UDNR Act; but it would seem that what was needed here was legislative change. Given the number of amendments made to the UDNR Act, we cannot see that this would have been a problem.

We have no evidence that the Crown turned its mind to this crucial matter. It failed to do so when it received the reports and title orders of the Urewera commission, showing that hapu titles had not been awarded. The Crown further failed to consider how to give effect to the powers accorded the General Committee in 1909 when it amended the UDNR Act (and provided for the General Committee to consent to vesting of land by the Governor in Council in a Maori land board for sale or lease by private purchasers – in effect, a recognition of the inability of the Committee to sell or lease itself). The Crown failed again in 1914, when it was prepared to acknowledge that contracts with the General Committee were necessary for legal alienation, and it failed also in 1916, when it simply validated its

369. Crown counsel, closing submissions (doc N20), topics 14–16, p77

370. Native Land Court Act 1894, s122; Maori Land Administration Act 1900; Maori Land Settlement Act 1905

earlier dealing with individual owners and provided also that individuals had power to sell their interests to the Crown from that time on, despite any provisions to the contrary in the UDNR Act or other Acts.³⁷¹

We are bemused by the Crown's limited concession that: 'All the sales in the period from 1910–1914 were therefore technically outside the provisions of the [UDNR] Act.' Therefore some 40,000 acres were illegally acquired during these years.³⁷² But that is not the full extent of it. The figure must be considerably higher – given the amount of purchasing that went on until the Act was amended in August 1916 – well over 100,000 acres. Bowler's figure as at May 1916 was 'over 100,000 acres',³⁷³ and to the end of 1916 was nearly 170,000 acres.³⁷⁴ We consider the position was in fact that sales in the period before and after 1916 were 'technically legal'. Those before were technically legal only because the Crown had retrospectively pardoned its earlier flouting of the law.

(3) How did Crown purchasing operate between 1915 and 1921?

The bulk of the Crown's purchasing in the Reserve blocks from 1915 was carried out by Bowler. Initially, Bowler's purchasing was confined to the blocks within which the Crown had already purchased interests: the Waikarewhenua, Tauranga, Maungapohatu, Paraoanui North, Paraoanui South, Otara, Te Whaiti, and Omahuru blocks. But, over the next few years, the Crown would extend its purchasing throughout the Reserve, opening new blocks to purchase until nearly all were included in its programme. Bowler conducted a very systematic purchase campaign on the ground, designed to ensure that as few owner interests as possible escaped the Crown's net. At the same time, the Crown took steps to enhance its position by revoking the land court's jurisdiction to partition numbers of Reserve blocks, because it came to see Maori owner applications for partition as a threat to its purchase programme. These various tactics, exercised in a district where there was widespread poverty, created a very uneven playing field.

Bowler alerted his superiors at the outset to difficulties that the Government might face securing the land it wanted for settlement. His first progress report to Under-Secretary Fisher, dated 13 June 1915, provides a useful insight into the seeming lack of any clear policy about how purchasing should be conducted within such an extensive region and also Bowler's personal attitudes towards both his task and the peoples and lands of Te Urewera.³⁷⁵ Bowler was less than optimistic – despite the fact that he had been 'rushed the whole time by Natives anxious to sell' and that for the first week he 'had to keep a man on the door to regulate the crowd, but [the man] was summarily discharged when I learnt he was accepting

371. Native Land Amendment and Native Land Claims Adjustment Act 1916, s 4

372. Crown counsel, closing submissions (doc N20), topics 14–16, p 77

373. Steven Webster, 'The Urewera Consolidation Scheme: Confrontations Between Tuhoe and the Crown, 1915–1925' (commissioned research report, Wellington: Waitangi Tribunal, May 2004, pp 196–197

374. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), app 2, app 3, pp 243–246

375. Edwards, 'The Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 154

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bribes for letting people in out of their turn.³⁷⁶ While Bowler thought it would be possible to acquire ‘considerable’ areas within the district, he thought his task would be ‘greatly facilitated’ if either Herries or [Maui] Pomare could visit Te Urewera and encourage the people to sell, as ‘[s]everal of the Natives whom I saw expressed a desire to discuss matters with one of the Ministers before considering the question of any further sales.’³⁷⁷ Bowler added this had worked well when earlier purchases began, leading to ‘considerable interests’ being acquired.³⁷⁸ Bowler estimated that the UDNR was owned by more than 1000 people, who, he claimed, ‘practically make no attempt to utilise it profitably, and are never likely to do so.’ He was concerned that some owners would never sell, and that many individuals had interests in multiple blocks. At this early stage, he was already flagging what he saw as a looming problem for the Crown arising from its purchase of individual interests: How would the Crown separate out its interests from those of Maori, on the ground, and how could it fund settlement in a cost-effective manner if it had to cope with Maori-owned lands in the midst of its own blocks? He wrote to the under-secretary:

What appears to me to be the worst feature of the Urewera area, from a purchase and ultimate settlement view, is the fact that it comprises so many individual blocks. The same families and groups of families appear in block after block. Obviously some of the Natives will never sell, and the most that can be ultimately hoped for is, after the geographical location of the Crown and Native-owned areas has been determined by the Court, a kind of chequer-board district owned alternately by the Crown and by Natives. Many of the Natives will own scattered interests in many blocks, without any reasonable possibility of consolidation, and the Crown will be faced with the necessity of roading, at the expense of its own areas and of the ultimate settler, the whole district.³⁷⁹

In light of these concerns, Bowler proposed that the Crown compulsorily acquire the whole of the UDNR, leaving reservations for its people in one locality.³⁸⁰ That extraordinary proposal went no further – though, as we will see, Bowler was not the only official to suggest some form of compulsory acquisition – and Bowler continued to purchase individual undivided interests.

376. Bowler to Native Under-Secretary, 4 July 1915, MA-MLP 1, file 1910/28/1, pt2, Archives New Zealand, Wellington

377. Maui Pomare, member of the House of Representatives for Western Maori, was a member of the Executive Council representing the Native race at this time.

378. Bowler to Native Under-Secretary, 13 June 1915, MA-MLP 1, file 1910/28/1, pt2, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development in the Urewera, 1912–1950’ (doc A55(b)), pp 19–21)

379. Bowler to Native Under-Secretary, 13 June 1915, p3, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington, p3 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 21)

380. Ibid

The Crown's short-term answer to the dilemma he had pointed to was to control the jurisdiction of the land court to partition. The UDNR Amendment Act 1909 – a major amending Act – empowered the court to exercise its jurisdiction over UDNR lands, but its powers in respect of the partitioning of land and the exchanging of interests could be exercised only if the consent of the Governor in council were obtained (section 5). In other words, the Crown in effect secured control on a case-by-case basis over the land court's power to partition Reserve blocks.

It is interesting that the 1909 legislation by which the Crown secured this power was passed in December; and that in June of that year the General Committee had drawn attention to the contentious matter of tribal and family subdivisions and had sought authorisation to inquire into and fix boundary issues on the basis of evidence before them. Numia Kereru wrote to Carroll that difficulties arose as the people considered the leasing and sale of their lands, and the setting aside of papakainga. People were anxious, he said, for the Committee to be able to make decisions.³⁸¹ But Carroll referred the letter to Fisher, and Fisher at once recommended against empowering the Committee 'to locate tribal and family boundaries'. He thought it best if 'the work of the Committee should be confined to the location of those areas which can be vested in the [District Maori Land] Board for purposes of settlement'. The question of tribal and family boundaries could be dealt with later by the court 'on partition'.³⁸²

Three points emerge from this correspondence. First, the request from the General Committee highlights the fact that the work of the Urewera commissions had not delivered the kinds of titles that were useful to the people – despite being empowered to partition blocks by the UDNR Act Amendment Act 1900. Its preoccupation with listing individual owners had left key issues unresolved. (Despite this, the offers to 'cede' land which they had recently made, as Edwards pointed out, were made because Ngata had told the leaders that they owed a considerable amount of money arising from survey and title investigation costs.³⁸³) Secondly, the Committee's suggestion to take over and fill a useful role in setting boundaries – to assist the people themselves – was immediately quashed in Wellington. Thirdly, the Government thought the Committee would be most usefully employed assisting the work of settlement, by vesting land in boards.

All of this was ominous for the future of the General Committee. As it turned out, the Crown's retention of the power to control the jurisdiction of the court to partition, and its denying the General Committee a role, would ultimately be of crucial importance in assisting the Crown's purchase programme. It was at this point that the imperfections in titles which were the outcome of the commission's work became very apparent. The Crown has

381. Numia Kereru to Native Minister, 2 June 1909, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 657)

382. Native Under-Secretary to Native Minister, 17 June 1909, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers in 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 656)

383. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 91

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admitted those imperfections – and, in particular, the problems they posed for owners once the Crown began purchasing in blocks:

Specifically, the ability of a group of owners to have security of tenure in respect of a given location within a block was not guaranteed once the Crown began buying undivided shares, because the title did not locate areas where specified rights were held by specific groups of owners.³⁸⁴

The Crown pointed to the fact that surveys were not sufficient to enable registration of titles under the Land Transfer Act (which the UDNR Amendment Act 1909 had provided for, deeming orders of the commissioners to have the same operation as a freehold order made by the land court under the Native Land Act 1909).³⁸⁵ It submitted that the failure to complete titles with full survey and registration so that they could function as Maori freehold titles was a key failure of the process of title determination as undertaken by the Urewera commission.³⁸⁶ As we will outline in chapter 14, we do not agree that such steps were or should have been necessary for owners of the Reserve, who had wished to retain and use their own lands and resources. But the Crown's acceptance of responsibility for failing to make regulations that allowed for location of a shareholding 'if that was required', and for 'more sophisticated land management arrangements', is properly made.³⁸⁷ This was where the General Committee might have played a useful role. Failing this, owners' right to seek partition had to be safeguarded so that they could re-establish hapu control over blocks to assist land management, or try and protect parts of blocks from Crown purchasing. Initially the Crown seemed to have no difficulty with partition applications. Three orders in council between September 1910 and January 1913 authorised the court to hear partition applications from owners in 19 blocks – notably Te Whaiti, Ruatoki, and Ruatahuna.³⁸⁸

In the case of Te Whaiti, which Ngati Manawa sought to have partitioned, the Government was anxious that the court proceed in light of Ngata's explanation to Carroll in September 1910 that it was essential to define the boundary between Ngati Manawa and Ngati Whare if any part of the large block were to be acquired 'for settlement'.³⁸⁹ In fact it was the

384. Crown counsel, closing submissions (doc N20), topics 14–16, p 62

385. Crown counsel, closing submissions (doc N20), topics 14–16, p 51

386. Crown counsel, closing submissions (doc N20), topics 14–16, p 7

387. Crown counsel, closing submissions (doc N20), topics 14–16, pp 53, 64

388. The court was authorised to partition Te Whaiti and Ruatoki 1, 2, and 3 blocks by Order in Council dated 12 September 1910: 'Conferring Jurisdiction on Native Land Court', 12 September 1910, *New Zealand Gazette*, 1910, no 84, p 3421. Orders in Council dated 30 September 1912 and 13 January 1913, made under the provisions of the Urewera District Native Reserve Amendment Act 1909, authorised the land court to partition the following blocks: Ruatahuna, Karioi, Paraeroa, Waikaremoana, Opoutea, Tiritiri, Maraetahia, Tarapounamu–Matawhero, Paraeroa South, Te Tapatahi, Maungapohatu, and Taneatua (1912), and Otairi, Omahuru, and Tauwharemanuka (1913): 'Conferring Jurisdiction on Native Land Court', 30 September 1912, *New Zealand Gazette*, 1912, no 75, pp 2830–2831; 'Conferring Jurisdiction on Native Land Court', 13 January 1913, *New Zealand Gazette*, 1913, no 3, pp 92–93.

389. Ngata to Carroll, 7 September 1910, MA 13/90, Archives New Zealand, Wellington (quoted in Richard Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi: A History' (commissioned research report, Wellington: Crown Forestry Rental Trust, June 1999 (doc A27), p 133)

block's rich timber resource the Crown had its eye on.³⁹⁰ Ngata also recommended that the Minister apply for the partition of Ruatoki 1, 2, and 3 blocks, as dairy farming had begun and there were disputes about land near the dairy factory.³⁹¹ But as we have seen, the sale by Rua and his followers of their shares in Ruatoki blocks led to a call by Numia Kereru and other leaders for sellers' shares to be partitioned out. (It is interesting that a section – section 12 – was included in the Native Land Claims Adjustment Act 1911 that 'directed' the land court, on partitioning the Ruatoki blocks and Te Whaiti, to 'define the tribal or hapu boundaries', cancelling existing orders if necessary, then allocating relative interests anew between members of a tribe or hapu. We assume this was Ngata's response to local concerns.)

In the case of both Te Whaiti and Ruatoki, the court partitions that followed were to be of great importance in the history of those lands: the Crown began purchasing in Te Whaiti soon after the block was partitioned, while at Ruatoki the first partitions heralded subdivision on a substantial scale – which in fact protected the blocks from purchase (see sidebar)

Once Crown purchasing began in earnest in 1915, however, the Crown's view of Maori partition applications changed. Crown officials insisted on protecting the Crown's interests as it purchased in Reserve blocks – by preventing owners from proceeding with partition applications in the land court. As a result few blocks were partitioned (only six by 1921), and Crown officials did not shrink from seeking cancellation of those partitions that Maori owners did manage to secure in the court. The stand-off that developed between the chief surveyor and Judge Browne over the partitioning of Tauwharemanuka block illustrates both unbending official attitudes and the readiness of the court on occasion to resist undue pressure and to protect Maori interests. On 7 August 1915, Skeet wrote to the under-secretary of the Lands Department stating that the Tauwharemanuka block 'separates the Crown's purchases and it is essential that this land should be acquired by the Crown to make a composite block for settlement purposes'. He had learned that the block had recently been partitioned into nine divisions,³⁹² and he recommended that the Native Land Purchase Board notify Judge Browne 'to refrain from making any further partitions in the reserve [the

390. Native Under-Secretary to Herries, 26 July 1912, MA 13/90, Archives New Zealand, Wellington (cited in Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p135)

391. Ngata to Carroll, 7 September 1910, MA 13/90, Archives New Zealand, Wellington (cited in Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p255)

392. Chief surveyor to Under-Secretary for Lands, 7 August 1915, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b) (i)), pp757–759); Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p195. Section 109 of the Native Land Act 1909 provided that the Native Land Court should have exclusive jurisdiction to partition Native freehold land; though section 110 provided that the court's jurisdiction should be discretionary; the court might refuse to exercise its jurisdiction in the public interest, or the interest of the owners, or of 'other persons interested in the land.'

The Partition of the Te Whaiti and Ruatoki 1, 2, and 3 Blocks

The Ruatoki and Te Whaiti blocks had very different histories after their initial partition. At Te Whaiti, Ngati Manawa had hoped to retain tribal control of their land, so that they – and not the General Committee – could deal with it. Ngati Whare, for their part, had been trying to make arrangements for their timber to be milled by private interests for some years. In 1913, Judge Browne partitioned Te Whaiti block between Ngati Manawa and Ngati Whare. He concluded that there was historically no internal hapu or tribal boundary, and the owners occupied the land ‘in common’. But the boundary line he drew reflected eventual consensus among those Ngati Manawa and Ngati Whare present. The new blocks were Te Whaiti 1 (45,048 acres), awarded to a ‘basically’ Ngati Whare list of (449) owners and Te Whaiti 2 (26,292 acres), awarded to a ‘basically’ Ngati Manawa list (262 owners). That is, the judge awarded the larger portion (in terms of its standing timber) to Ngati Whare, but by far the most valuable portion to Ngati Manawa – quite unintentionally, in Richard Boast’s view.¹ In 1914, Ngati Whare secured the consent of the General Committee to the sale of timber on 20,000 acres, but the matter stalled in the hands of the Native Department and the Native Minister. The Crown began buying Te Whaiti interests in September 1915, soon after it resumed purchase into Reserve blocks.² As we outline in a later section, Crown purchasing in the block was approved. Further applications for partition from Te Whaiti owners were received by the land court, evidently in 1915, and notified to the Native Department. The Native Under-Secretary advised Bowler – as he would do on so many occasions – that partition should not proceed ‘until after a fair run has been made for acquiring interests.’³ Purchase was particularly successful in Te Whaiti 2 (since Ngati Manawa mainly lived elsewhere); by 1918 they retained only 5,565 acres out of 26,292 acres, while Ngati Whare retained 15,708 acres out of a total of 45,048 acres of Te Whaiti.⁴

At Ruatoki, the hearing of Numia Kereru’s application for partition of the block in May 1912, led to agreement that Ngati Koura would have one portion of the block (Ruatoki 1A), and Ngati Rongo and Te Mahurehure the larger portion Ruatoki 1B).⁵

Subsequently, a great deal of division took place, as family groups began to fence and farm the land. There were 112 partitions in Ruatoki 1 by September 1917, 80 per cent of them under 100 acres; 32 in Ruatoki 2 and 3.⁶ The high quality of the land and the expense of the survey required for its division in fact protected it from purchase – though not from the social and economic impacts of excessive division, for which a separate consolidation scheme was later designed to rectify the particular problems facing Ruatoki owners. (We consider this in a later chapter.) By 1917, the Crown was interested in how to progress purchase at Ruatoki – but was advised by a staff surveyor from Lands and Survey Department that areas offered for sale to the Crown were ‘the most barren and unprofitable land on the Ruatoki.’⁷ He recommended against purchase unless the Crown could also buy Ruatoki 1.

The Crown decided initially it could not seek cancellation of existing partitions, but moved to prevent further partition of Ruatoki 2 and 3 to facilitate further purchasing. The court’s power to partition

in the two blocks, gazetted on 29 June 1916, was withdrawn by order in council of 27 September 1917.⁸ But the Minister directed purchase of individual interests in unoccupied subdivisions of the Ruatoki block in February 1918, and Bowler was authorised to apply for cancellation of partitions when he had completed buying, to assist cutting out the Crown purchases. Purchasing, however, did not go ahead. Bowler pointed out that the Crown had already met the survey costs for subdivisions of Ruatoki 1, 2, and 3 blocks; and that a) the costs were a charge on the land which would have to be deducted from purchase money, leaving little to pay to owners who sold; and b) if the partition orders were cancelled, the surveys would then be rendered useless, and the Government would 'again arrive at an impasse in regard to the survey costs'.⁹ In short, Crown purchasing in Ruatoki would be quite uneconomic. For the Crown, that was enough to put an end to the matter.

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1. Boast, 'Ngati Whare and Te Whaiti Nui-a-Toi' (doc A27), pp 136–139
 2. John Hutton and Klaus Neumann, 'Ngati Whare and the Crown, 1880–1999' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A28), pp 191–194
 3. Native Under-Secretary to Bowler, 9 September 1915, MA-MLP1, file 1910/28/4, Archives New Zealand, Wellington (quoted in Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 210)
 4. Boast, 'Ngati Whare and Te Whaiti Nui-a-Toi' (doc A27), p 132
 5. Oliver, 'Ruatoki' (doc A6), p 110
 6. Edwards, 'Urewera District Native Reserve, pt 3' (doc D7(b)), pp 200–203
 7. Wilkinson to Chief Surveyor, 5 April 1917 (quoted in Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 202)
 8. Edwards, 'The Urewera District Native Reserve Act, pt 3' (doc D7(b)), pp 203–205
 9. Bowler to Native Under-Secretary, 15 March 1920 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 1111)

UDNR].³⁹³ Skeet was also concerned that the land court, on partitioning the block, had allotted land on the Whakatane river 'on what will be one of the main roads through the country': if the 'Natives' retained those areas, he argued, the back portion of the block would have to be acquired at a 'very much reduced price' if settlement were to be successful.³⁹⁴ He continued to urge that Judge Browne be asked to cancel the Tauwharemanuka partitions to avoid a situation in which the Crown would face 'little bits of Maori land dotted over the block' – while Bowler took the same line.³⁹⁵ The danger from the Crown's point of view, Edwards stated, was that 'any kind of partition activity posed a risk'.

393. Skeet to Under-Secretary for Lands, 7 August 1915, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 152; Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 195)

394. Skeet to Under-Secretary for Lands, 11 August 1915, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (Berghan, supporting papers to 'Block Research Narratives' (doc A86(e)), p 1566)

395. Skeet to Under-Secretary for Lands, 4 December 1915, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 133); Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 197

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The nature of the risk was simply that having purchased shares in anticipation of cutting out suitable land to offer for settlement, the Crown would find that by the time it came to define its interests in a given block, the best parts would have already been taken, thus leaving the Crown with land that proved unsuitable for settlement purposes.³⁹⁶

In mid-December 1915, Skeet added a further reason for cancelling the Tauwharemanuka partitions. He was by now aware that the owners were prepared to sell the No 9 subdivision of 20,833 acres to the Crown, but intended to retain the rest of the block themselves. This, in his view, was an unlikely outcome:

I do not for a moment think that the Natives either will or do intend to retain this land. What really will happen will be that after the Crown have finished their purchases in the district, and roaded the country and got settlers into it, then the native owners in these eight subdivisions will approach the Crown to buy interests in their blocks at enhanced values, the Crown in fact practically buying their own improvements.³⁹⁷

Fisher, the Native Department Under-Secretary, sought Judge Browne's views as to how the owners generally felt about sale. The judge, clearly irritated, replied that the chief surveyor knew nothing of the facts of the case. Many of the owners of the block were living on the land, and all the owners had been represented before the court when the decision as to partition was reached. Most had 'little or no land outside the Tuhoe boundary', and many of the families would not sell. The court was unconcerned about the chief surveyor's views of its partitions, particularly in light of the fact that the Crown had not so far acquired any interests in the block. He added that the Crown seemed to forget that the land belonged to Maori:

As regards the memo by the Chief Surveyor at Auckland, he, in all his tirades against partitions of Native land by the Court consistently refuses (with an object no doubt) to recognise the fact that the land belongs to the Natives and not to the Survey Department or the Crown and that in making partitions the Court has to a very large extent to consult the wishes of the Native owners.³⁹⁸

Judge Browne's shot across the bows of the Crown purchasers is a graphic reminder of the way in which they marginalised the rights of Maori owners in the interests of Crown settlement imperatives. As the judge saw it, the Crown viewed owners merely as an obstacle to its plans; their wishes and interests were of little concern to officials. In such circumstances, he saw the court as protective of Maori owner interests against the Executive. The partitions

396. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p193

397. Skeet to Under-Secretary of Lands, 16 December 1915, MA-MLP 1, file 1910/28/3, Archives New Zealand, Wellington (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), pp 1774-1775)

398. Judge Browne to Native Under-Secretary, 14 January 1916, MA-MLP1, file 1910/28/3, Archives New Zealand, Wellington (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), pp 1770-1772)

were not cancelled, and the Native Land Purchase Board decided to begin purchase in all of them in February 1916.³⁹⁹

The chief surveyor, evidently unabashed, was still urging in June 1916 that partition was ‘inimical to Crown’s purchase operations and future settlement of land’. He asked that the two Orders in Council of 1912 and 1913 conferring on the land court jurisdiction to make partitions in certain Reserve blocks (see above) be revoked, and reiterated that the judge should be instructed ‘to refrain from making these partitions.’⁴⁰⁰ He echoed Bowler, in fact, on the importance of considering compulsory taking of blocks in some circumstances. And he went so far as to suggest that Maori would not need any land in the Reserve at all:

It is exceedingly doubtful whether any of the Urewera country will ultimately be used or required by the Natives at present residing there. In my opinion it must all, sooner or later, come into European occupation, and for this reason I beg to suggest that it is not advisable to subdivide the blocks, but rather that the Crown should be assisted in its purchasing operations by the enactment of some clause similar to section 20(2) of the Maori Land Settlement Act 1905, so that where the Crown has acquired the majority of the interests in any Block, they can compulsorily take the rest.⁴⁰¹

At the same time that the chief surveyor was contemplating Te Urewera without Maori (and thus the foolhardiness of allowing partition), Fisher, the Native Department Under-Secretary, also expressed his concern about partitions initiated by Maori owners. He wrote to the Minister that ‘serious inconvenience and delay’ might be caused to Crown purchasing by the Native Land Court’s jurisdiction to partition in a number of Te Urewera blocks.⁴⁰²

The Native Land Purchase Board, in response, recommended that the land court’s jurisdiction to partition be revoked. Accordingly, the Orders in Council permitting partition of a number of Reserve blocks were revoked by the *Gazette* of 29 June 1916.⁴⁰³ The Crown, in other words, took advantage of the special UDNR legislation to limit the rights of owners. As Edwards noted, under mainstream Native land legislation, non-sellers could have applied to partition out their interests. But that right was denied the owners of Reserve blocks.⁴⁰⁴

Bowler, meanwhile, had reported more success by July 1915, having purchased the equivalent of some 15,920 acres. He informed Fisher that owners were anxious to sell, although

399. By 1919, most interests had been purchased in Tauwharemanuka 9 and fewest in Tauwharemanuka 1, 2, and 4: see Berghan, ‘Block Research Narratives’ (doc A86), pp 294, 299.

400. Chief surveyor to Under-Secretary for Lands, 1 June 1916 (quoted in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 193)

401. Chief Surveyor to Under-Secretary of Lands, 1 June 1916 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), pp 126–127)

402. Fisher to Herries, 2 June 1916, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington (quoted in Miles, ‘Te Urewera’ (doc A11), p 396)

403. ‘Revoking three orders in council permitting partition of various blocks in the Urewera reserve’, 29 June 1916, *New Zealand Gazette*, 1916, no 72, p 2224 (cited in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 194)

404. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 195

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there was a 'tendency' for them to retain interests in the Maungapohatu block. He then suspended operations while Lands and Survey department officials led by Andrew Wilson conducted their valuation (discussed below).⁴⁰⁵

By the end of September, Bowler had acquired the majority of shares in the blocks under purchase.⁴⁰⁶ In January 1916, Te Pouwhare informed Herries of the outcome of a meeting at Taneatua at which it was agreed that owners wanted to sell interests in the Tauwharemanuka, Karioi, Parekohe, and Waipotiki blocks to raise money for the war effort.⁴⁰⁷ The Native Land Purchase Board immediately approved purchasing in these blocks.⁴⁰⁸ By April 1916, Bowler was also instructed to purchase in the Ruatoki South, Te Purenga, Te Wairiko, Poroporo, Te Tuahu, Taneatua, Pukepohatu, and Paraeroa blocks. While Herries preferred that Bowler secure interests in the blocks adjacent to those already purchased in, he was instructed to buy any interests in any of the approved blocks.⁴⁰⁹

Bowler's initial wish was to complete blocks he was doing well in, rather than to start new blocks. But the Native Minister continually instructed that purchase be opened in new blocks. In December 1916, Bowler advised the Native Department that while he thought purchasing should be pursued in all blocks except the Ruatoki subdivisions, he did not recommend opening up purchasing in new blocks, as this had the effect of slowing progress in older blocks. He reported that resident owners of the Te Whaiti, Maungapohatu, and Otago blocks were inclined to keep a 'portion' of their interests, but predicted that if no new purchases were commenced he could purchase most of these blocks.⁴¹⁰ In April 1917, however, Bowler reported that despite having thoroughly 'combed out' the district, his purchasing rate had slowed, and he suggested opening further blocks for sale.⁴¹¹ In May, the Native Minister approved purchasing in the Hikurangi Horomanga, Te Ranga a Ruanuku, and Tarapounamu Matawhero blocks at prices fixed by the Lands Department in 1915. In August, Bowler reported that while progress had slowed in the blocks that had been under purchase for some time, he had made good progress in purchasing interests in the three new blocks.⁴¹² This was a familiar pattern. Generally, Bowler reported a rush of sellers to

405. Bowler to Native Under-Secretary, 17 July 1915, closed file series 612, Rotorua Maori Land Court (Berghan, supporting papers to 'Block Research Narratives' (doc A86(h)), p 2728); Miles, 'Te Urewera' (doc A11), p 364

406. Miles, 'Te Urewera' (doc A11), p 369

407. Te Pouwhare and others to the Minister of Native Affairs, 15 January 1916, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington (cited in Miles, 'Te Urewera' (doc A11), p 369). Under section 5 of the Native Land Amendment and Native Land Claims Adjustment Act 1915, provision was made for Maori to contribute to patriotic funds from proceeds of alienations through the Maori land boards.

408. Miles, 'Te Urewera' (doc A11), p 369

409. Miles, 'Te Urewera' (doc A11), p 370

410. Bowler to Native Under-Secretary, 1 December 1916, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington; Miles, 'Te Urewera' (doc A11), p 397

411. Bowler to Native Under-Secretary, 26 April 1917, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 804); Miles, 'Te Urewera' (doc A11), p 399

412. Miles, 'Te Urewera' (doc A11), p 399

begin with, followed by a slower, careful process of picking up remaining interests and successions over the following years.

In September 1917, C B Jordan, the under-secretary of the Native Department from 1916 to 1921, recommended that purchasing be authorised for all the remaining Reserve blocks in which the Crown thought it might buy shares.⁴¹³ Geographically, the blocks in which land had not yet been purchased lay to the south and centre of the reserve: the Ierenui Ohaua, Kohuru Tukuroa, Manuoha, Ohiorangi, Paharakeke, Tapatahi, Tauwhare, Tawhiuau, Ruatahuna, Waikaremoana, and Whaitiripapa blocks.⁴¹⁴ In July 1918, approval was given for the purchase of the Ohiorangi, Tauwhare, and Kohuru Tukuroa blocks at a valuation of 10 shillings per acre; the Ierenui Ohaua block at eight shillings per acre; and the Ruatahuna block at an average of six shillings per acre. However, in the case of the latter block, the Crown was forced to undertake a new valuation.⁴¹⁵

The purchase of interests in the Ruatahuna block did not begin before mid 1919. The Crown had not regarded the block as a priority for purchase until Bowler's acquisition of the more accessible UDNR lands had slowed to a crawl. As recently as 1917, the Native Minister had instructed that purchase in Ruatahuna and a number of other blocks should not proceed because of the cost of roading and opening up the land, and their unsuitability for soldier settlement.⁴¹⁶ In light of this, it is not clear why the Crown decided to begin purchase in Ruatahuna at all. But here, as in Tauwharemanuka, existing partitions of the block were regarded – once the Crown found out about them – as a nuisance. The Ruatahuna block had been partitioned into five divisions at a sitting of the appellate court at Taneatua in 1913: Ruatahuna 1 (Arohana), Ruatahuna 2 (Kahui), Ruatahuna 3 (Huiarau), Ruatahuna 4 (Waiiti), and Ruatahuna 5 (Parahaki).⁴¹⁷ But this fact had somehow been completely overlooked by the authorities.

In October 1917, in ignorance of the 1913 partition, Judge Wilson travelled to Ruatahuna with the district valuer, Mr Burch, and Tai Mitchell, a surveyor, with the intention of partitioning the block to resolve a dispute between Ngati Tawhaki and Ngai Te Riu⁴¹⁸ – evidently a result of continuing tension after the first and second Urewera commissions had

413. Miles, 'Te Urewera' (doc A11), p 399. Also see Bowler to Native Under-Secretary, 26 April 1917, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 804).

414. Miles, 'Te Urewera' (doc A11), p 400

415. Miles, 'Te Urewera' (doc A11), p 400. Also see Jordan to Bowler, 20 July 1918, MA-MLP 1, file 1910/28/1, pt 3, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 976).

416. Native Under-Secretary to Bowler, 25 September 1917, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 796); Campbell, 'Land Alienation, Consolidation and Development' (doc A55), pp 27–28

417. Miles, 'Te Urewera' (doc A11), p 403

418. Heather Bassett and Richard Kay, 'Ruatahuna: Land Ownership and Administration, c1896–1990' (commissioned research report, Wellington: Waitangi Tribunal, June 2002 (doc A20), p 106

both rejected Ngati Tawhaki claims.⁴¹⁹ Wilson had earlier sent Raureti Mokonuiarangi to investigate, who reported that the owners wished the lands to be partitioned for each hapu and whanau.⁴²⁰ Wilson then proposed that some 1,000 acres of the Ruatahuna block be ‘partitioned off by the Native Land Court in favour of those Natives and their families who are actually living on the Block’, so as to ‘enable occupants to farm their lands without interference from other co-owners’. This would also assist the Crown, he said, to obtain the balance of the land (some 56,000 acres, as Bassett and Kay note wryly).⁴²¹ The Native Minister also hoped that if he revoked the 1916 order in council so that a partition could take place the owners would agree that no more than the 1,000 acres would be partitioned. On this understanding a new order in council was issued in October 1917, to allow partition of the Ruatahuna block.⁴²² But when the judge arrived at Ruatahuna, he learned to his surprise that the block had already been partitioned. He was able to confirm this in the court minute book, but why he had not done this earlier is a mystery to us. It appears the orders had never been drawn.⁴²³ At that point, he embarked on mediation among the owners. He then took the opportunity to inspect the Ruatahuna lands, which led him to urge that the people be allowed to secure their key lands from the impact of purchase of interests. He reported to Jordan with some surprise that all of the flat land was under close settlement, with ‘very large areas’ being fenced and grassed – evidently more than Wilson’s partition plan had allowed, Bassett and Kay suggested.⁴²⁴ His plan seems to have been prepared without a clear understanding of the situation on the ground. Wilson wrote:

After seeing the Block I feel impelled to suggest that the Natives should be allowed to cut out their holdings. There is a considerable settlement at Ruatahuna, and the fact that a Presbyterian Mission has opened a school there with an attendance of 77 pupils is strong evidence of the progress made by the Tuhoe people.

419. The Ngati Tawhaki claim was based on a gift from Tuiringa of Ngai Te Riu to their ancestors; they had remained in occupation in the area, according to the authors of the Tuawhenua report. The dispute was triggered when Ngati Tawhaki fenced off some two acres of land to cultivate at Tataramoa near the junction of Mangaorongo stream and the Whakatane River: see Tuawhenua Research Team, ‘A History of the Mana of Ruatahuna’ (doc D2), p137.

420. Bassett and Kay, ‘Ruatahuna’ (doc A20), pp103–104

421. Wilson to Native Under-Secretary, 7 August 1917, MA-MLP 1, file 1910/28/11, Archives New Zealand, Wellington (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(f)), pp2122–2126); Miles, ‘Te Urewera’ (doc A11), p403; Bassett and Kay, ‘Ruatahuna’ (doc A20), p105

422. Bassett and Kay, ‘Ruatahuna’ (doc A20), p105; Tuawhenua Research Team, ‘A History of the Mana of Ruatahuna’ (doc D2), p139

423. It is possible that the delay was the result of the Ruatahuna ‘Subdivision orders’ not having been forwarded to the chief judge with other orders made by the Native Appellate Court; they were temporarily ‘detained’, for reasons which were not explained to the chief judge: see WP Waitai to chief judge, 27 February 1914 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(e)), pp1626–1627). According to Bowler, the records were discovered in the chief judge’s office only in 1918; he reported in September that the orders were then being prepared: see Bassett and Kay, ‘Ruatahuna’ (doc A20), p106, 111.

424. Judge Wilson to Native Under-Secretary, 8 October 1917, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington (Bassett and Kay, ‘Ruatahuna’ (doc A20), p106)

I found the Natives a quiet, law abiding and industrious people.⁴²⁵

Crown officials, however, had no intention of allowing the Maori owners quiet enjoyment of their land. Bowler had already indicated his wish to start buying in Ruatahuna and Waikaremoana blocks, and in January 1918 had been instructed to commence purchasing in the five Ruatahuna blocks – though in the end he had to wait until the partitions were surveyed (by compass survey) and valued.⁴²⁶ Bowler had not been in favour of Wilson's intended partition for the residents of Ruatahuna in 1917, fearing that if the block were 'cut up into a number of subdivisions the position may be prejudiced if at any time the Crown decides to purchase'.⁴²⁷ Skeet echoed his concerns, fearing that the judge's partitions (aimed, we note, at preserving people's kainga and farms) would be 'cutting the eyes out of the block'.⁴²⁸ In August 1918, Bowler recommended that since the 1913 partition had been overlooked till recently, it should continue to be ignored. This would enable him to 'acquire very substantial interests' in the block.⁴²⁹

Bowler also disagreed with James Carroll, who was opposed to the purchase of the block and considered that the Government should leave it for Tuhoē. In Bowler's view, '[i]f the Crown does not commence operations now it is not unlikely that values will go up in the near future, and if the purchase is not gone on with at all the probabilities are that ultimately the block will be left to be exploited by the speculator'.⁴³⁰ This was a common refrain among those who advocated Crown purchasing as a 'protection' against private speculation. The Crown, accordingly, proceeded with its plans to purchase.

As soon as he had the new valuations, and despite the objections received from the people of Ruatahuna, Bowler began purchasing in the blocks early in 1919. By April 1920, he had purchased 1,930 acres of Ruatahuna 1, 1,697 acres of Ruatahuna 2, 3,023 acres of Ruatahuna 3, 609 acres of Ruatahuna 4, and 6,273 acres of Ruatahuna 5 blocks.⁴³¹

Maori objections to Crown purchasing were ignored. In September 1918, Rawaho Winitana and 99 others wrote to Herries from Waikaremoana, stating that 'the Ruatahuna Block should not be purchased':

Purchase has been going on in all of the other blocks in the Urewera Country. We agree to these other blocks being purchased, but as to Ruatahuna we implore you not to allow it

425. Judge Wilson to Native Under-Secretary, 16 February 1918, MA-MLP 1, file 1910/28/11, Archives New Zealand, Wellington; Miles, 'Te Urewera' (doc A11), pp 403–404

426. Bassett and Kay, 'Ruatahuna' (doc A20), pp 108, 113

427. File note, Bowler to Native Under-Secretary, undated, closed file series 620, Waiariki District Maori Land Court (quoted in Bassett and Kay, 'Ruatahuna' (doc A20), p 109)

428. Skeet to Department of Lands and Survey, 30 January 1918 (Tuawhenua Research Team, 'A History of the Mana of Ruatahuna' (doc D2), p 139)

429. Bowler to Native Under-Secretary, 12 August 1918 (Bassett and Kay, 'Ruatahuna' (doc A20), p 109)

430. Bowler to Native Under-Secretary, 9 September 1918, MA-MLP 1, file 1910/28/11, Archives New Zealand, Wellington (quoted in Miles, 'Te Urewera' (doc A11), p 404)

431. Miles, 'Te Urewera' (doc A11), pp 406–408

to be purchased. Portions of this Ruatahuna Block have been improved and sheep and cattle are depasturing on them. We are agreed that this land should be conducted as a farm.⁴³²

Similar letters were sent by Te Wao Ihimaera and 16 others, and by Te Amo Kokouri and 121 others.⁴³³ ‘Ruatahuna,’ Miles concluded, ‘was a centre of Tuhoe efforts to maintain control over their land and its administration but this did not seem a factor in Government considerations as to whether it would buy there or not.’⁴³⁴ In short, the Crown simply proceeded with purchase in the face of owner opposition and the pleas of community leaders. By this time, its primary focus was on completing its purchase programme, and on securing maximum economic benefit for the Crown before its interests were separated from those of the remaining owners.

By 1919, officials were starting to think of consolidating the Crown’s purchased interests, either by exchange between the Crown and Maori owners or by special legislation. By the end of May 1920, a consolidation scheme, rather than partitioning out the Crown’s interests in Te Whaiti blocks, was the preferred option.⁴³⁵ In August, the chief surveyor gave instructions that a preliminary study for a consolidation scheme should be made. The impetus for consolidation was growing.

(4) Bowler’s methods of purchasing

Claimant historians have described land purchase officer WH Bowler as predatory. When asked by counsel for the Wai 36 Tuhoe claimants if she agreed that ‘at the very least it seems that he [Bowler] was ruthlessly efficient,’ Crown historian Cecilia Edwards responded: ‘Oh, he was an amazingly efficient officer.’⁴³⁶ Elsewhere, Edwards described Bowler as ‘a diligent and enthusiastic purchasing officer.’ She noted that ‘[w]hile he invariably appeared to adhere to the rules and regulations, it seems as though he was not always entirely correct in the way that he applied them.’⁴³⁷

Before commencing purchasing in earnest in June 1915, Bowler prepared himself for his task by conducting a large amount of clerical work – compiling ownership lists, and such-like – to ensure, ‘among other things, that no double payments were made to those who had already sold their interests to the Crown.’⁴³⁸ Webster presented detailed evidence on Bowler’s ‘network of purchasing venues and agents’ who assisted him in his absence. In August 1915, Bowler reported favourably on help he had received from Tu Rakuraku of Waimana, who

432. Rawaho Winitana and 99 others to Herries, 23 September 1918, MA-MLP 1, file 1910/28/11, Archives New Zealand, Wellington (quoted in Miles, ‘Te Urewera’ (doc A11), p 407)

433. Miles, ‘Te Urewera’ (doc A11), p 407

434. Miles, ‘Te Urewera’ (doc A11), p 407

435. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 218–219

436. Cecilia Edwards, under cross-examination by counsel for Wai 36 Tuhoe claimants, Taneatua School, 4 March 2005 (transcript 4.1, p 272)

437. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 167

438. Miles, ‘Te Urewera’ (doc A11), p 363

‘identified the payees and detected two of three attempted cases of impersonation and was of great use in other ways.’⁴³⁹

Bowler’s headquarters was in the Auckland office of the Ministry of Lands, with an unofficial administration centre at the Waiariki District Native Land Court at Rotorua, and he remained in regular correspondence with the Native Land Court in Gisborne. He travelled extensively through the region:

Bowler set up purchasing operations mainly during the summer months, and mainly in Whakatane (where he usually stayed at the Whakatane Hotel), but for shorter periods he also set up operations at Taneatua, Waimana, and Ruatoki in the northern Urewera, occasionally at Te Houhi, Te Whaiti, Ruatahuna, and Maungapohatu in the interior, and even Wairoa, Gisborne, Nuhaka, Matapuna, . . . Napier, Hastings, and Taumarunui to contact Tuhoe working, traveling, or resident in those more distant East Coast centres.⁴⁴⁰

Webster noted that Bowler ‘was encouraged at least once (29 August 1917) to set up operations in locations where there were no hotels, so the Natives might be kept from coming under their improvident “influence”, but argued that most payments were ‘probably made in towns which Tuhoe frequented or where they could find him during visits which he publicised through his agents’. He found that deeds ‘were apparently signed by Tuhoe in a surprising variety of places, from post offices, offices of solicitors, and offices of Justices of the Peace in towns around the Urewera, to Native Land Court registries and Native Ministry offices in Rotorua, Gisborne, Napier, Auckland, and Wellington.’⁴⁴¹

Bowler also appears to have attended various special events and occasions at which people of Te Urewera were present in large numbers and possibly in need of cash. Webster noted that ‘it is likely that he attended some Tuhoe hui such as land meetings, weddings, tangi (funerals), and hurahunga kohatu (unveilings)’.⁴⁴² Miles suggested that many of those who sold were absentees, and a number of those appeared to live at Gisborne:

Bowler recorded excursions to the East Coast on a number of occasions in order to pick up stray shares in blocks under purchase. He would visit fairs, agricultural shows, markets,

439. Bowler to Native Minister, 6 August 1915, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (quoted in Steven Webster, ‘The Urewera Consolidation Scheme: Confrontations Between Tuhoe and the Crown, 1915–1925’ (commissioned research report, Wellington: Waitangi Tribunal, May 2004 (doc D8), pp 159–160)

440. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 153. Webster cited Fisher to Bowler, 29 August 1915, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington; Jordan to Bowler, 21 August 1917, closed file series 617 Waiariki District Maori Land Court; Fisher to Bowler, 5 February 1916, MA-MLP 1, file 1910/28/1, pt 1; Hinaki Ropiha to Bowler, 9 February 1916, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington; Bowler to Native Under-Secretary, 8 December 1916, closed file series 616 Waiariki District Maori Land Court; Bowler to Native Under-Secretary, 24 January 1917, closed file series 616 Waiariki District Maori Land Court; Bowler to Cook, 5 January 1919, closed file series 621, Waiariki District Maori Land Court; T Wilson to Lewis, 15 March 1920, closed file series 621, Waiariki District Maori Land Court.

441. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 154

442. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 154–155

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and the like offering to buy Urewera interests and obviously hoped to be able to purchase shares from those who needed cash on the spot.⁴⁴³

In January 1917, Bowler and his agents attended a carnival in Wairoa, at which, Bowler reported, he purchased a disappointing number of shares – the equivalent of some 2,000 acres at a cost of about £1,100.⁴⁴⁴ He wrote to his agents to seek out First World War recruits who might wish to sell before they embarked, and even encouraged them to visit wounded soldiers in military hospitals. It seems that sometimes he acted as a collector for the war effort at the same time as he made purchases.⁴⁴⁵ Later in 1917, Bowler went to Hamilton to attend the trial for perjury of some of Rua's followers but after their solicitor claimed the Crown was taking advantage of their plight 'to induce them to sell their land', he decided not to take signatures until the cases were decided.⁴⁴⁶ But Bowler was not above taking advantage of people's plight. In March 1918, he proposed calling a halt to the purchasing until the Native Land Court sat at Whakatane or Taneatua in July when, he said, Tuhoe 'will probably have exhausted their funds and will want to sell further interests'.⁴⁴⁷

A remarkable feature of Bowler's purchasing was the portable card index which he had instituted by 1917. It was his tool for on-the-spot identification of owners, their number of shares in each block, and the progress of purchase in each. In October 1917, he explained to Fisher that he would need some 3000 cards, and a tin sidebar with a leather case in which he could carry up to half this number of cards when travelling.⁴⁴⁸ Each card contained 'summary details of an individual block: acreage, valuation, value per share, and a running total of purchases'. In respect of purchases, the date of purchase, number of vendors and shares, and the total amount paid was recorded. He also kept a separate index with a card for each owner.⁴⁴⁹ The great advantage of the index, he explained to Fisher, was that he would be able to identify immediately all the interests an owner might have, and thus buy them all when he was dealing with an owner who was prepared to sell.⁴⁵⁰ In other words, he would not miss any interests an owner might have in other blocks.

A graphic illustration of how Bowler used this kind of information to pressure owners to sell is found in correspondence between him and Kahui Hakeke (son of Hakeke

443. Miles, 'Te Urewera' (doc A11), p 374

444. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 159

445. Webster, 'The Urewera Consolidation Scheme' (doc D8), p 155

446. Bowler to Native Under-Secretary, 30 March 1917, NLC file no 4, closed file series 616, Rotorua Maori Land Court (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1346)

447. Bowler to Native Under-Secretary, 26 March 1918, MA-MLP 1, file 1910/28/1, pt 3, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 983); Miles, 'Te Urewera' (doc A11), p 408

448. Bowler to Native Under-Secretary, 4 October 1917, closed file series 617, Waiariki District Maori Land Court (cited in Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 172–173)

449. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 160

450. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 172–174

Bowler's Attempt to Persuade Kahui Hakeke to Sell His Shares

In November 1920, Bowler wrote to Kahui Hakeke to try to persuade him to sell his shares in seven blocks:

Na reira pea e tika ana kia kiia ko ou paanga katoa ki Te Urewera e tata ana ki te rima rau eka.

Engari, koia nei te raruraru – e kore e taea e te tangata te whakatapu i enei paanga. Kei te takitaki haere nga paanga nei pena me te tapuae o te tangata. Me pehea e taea te whakaoti? Me pehea e taea te whakarite i tetahi tikanga pai mo te tahe ki a koe?

Ki taku mohio kotahi tonu te huarahi e puare ana. Me hoko i enei paanga ki te Kawanatanga, kia whai-moni koe mo etahi o ou take kei waho atu o nga whenua raruraru nei.

Na, mo te taha ki te hunga e nohoo ana i te kainga, e kaha ana ahau ki te kii kua hokona te nuinga o o ratou paanga.

Therefore perhaps it would be accurate to say that your total shares of the Urewera [lands] are nearly 500 acres.

But here is the problem – these shares cannot be gathered together by a person. The shares are scattered like the tapu footsteps of man. How should this be settled? How should we arrange some good provisions which suit you?

So far as I know, there is only one road open. Sell these shares to the Government, so you will have money for other goals away from the troublesome land.

Now, so far as those other living at your settlement are concerned, I can say with certainty that they have sold most of their shares.¹

1. Bowler to Kahui Hakeke, 11 November 1920, closed file series 627, Waiariki District Maori Land Court (translation by Steven Webster with Himaima Tumoana) (quoted in Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 78–79)

Tamaikoha, the eldest son of Tamaikoha) and Hakeke's younger relative, Poniu Tumoana. In February 1920, Poniu wrote to Bowler asking the value of his shares in seven named blocks. Subsequently, Bowler not only advised the total value of Poniu's shares in these blocks

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(£42 13s 8d) but added that he had shares in five other blocks (whose value also he specified). Poniu's reply, in English, was brief and to the point: 'no[;] selling only those blocks mentioned'.⁴⁵¹ To Kahui Hakeke, Bowler adopted the line that most of his shares, scattered as they were, would only be a nuisance: the sensible course would be to sell them, while keeping some just at his home Tauwharemanuka (see sidebar).⁴⁵² Doubtless, he had become practised at dispensing this advice over the years.

To identify all individual shares, Bowler also embarked on the compilation of a comprehensive, up-to-date list of all 'non-sellers', which he wanted published in the *Kahiti*.⁴⁵³ We note Bowler's use of the term 'non-sellers' (rather than, say, 'owners') and his pointed wording in the body of the notice – which would be echoed in later notices. This first published list was distributed in November 1916 (although it was not published in the *Gazette*). It was introduced in both English and Maori as follows:

Urewera Blocks.

Lists of Non-Sellers.

The Natives mentioned in the schedules hereto have not yet sold certain interests to the Crown. If they desire to sell, the Native Land Purchase Officer at Auckland will arrange to purchase their interests.

Nga Whenua o te Urewera

Rarangi Ingoa o Nga Tangata Kaore Ano i Hoko

Ko nga Maori e mau ake nei nga ingoa kaore ano i hoko i o ratou hea ki te Karauna. Ko nga mea o ratou e pirangi ana ki te hoko me tuhi atu ki te Apiha Hoko Whenua Maori a te Kawanatanga, kei Akarana, mana e whakarite he taima hei hokonga i or ratou hea.⁴⁵⁴

The 1916 list was incomplete (covering just nine of the 22 blocks under purchase by 1 December 1916), with Bowler concentrating his efforts on those blocks in which the fewest unsold shares remained.⁴⁵⁵ Below each block name were the names of non-sellers listed alphabetically, together with details of gender, age (in the case of minors), and the relative

451. Poniu Tumoana to Bowler, ca March 1920 (quoted in Webster, 'The Urewera Consolidation Scheme' (doc D8), p 78)

452. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 78–80

453. Bowler first suggested this in December 1915: Bowler to Native Under-Secretary, 14 December 1915, MA-MLP 1, 1910/28/1, pt 2, Archives New Zealand, Wellington (Binney, supporting papers to 'Encircled Lands, Part Two' (doc A15(a)), p 82).

454. Schedule, not dated, MA-MLP 1, 1910/28/1, pt 2, Archives New Zealand, Wellington (quoted in Webster, 'Urewera Consolidation Scheme' (doc D8), pp 170–171)

455. The list included 'non-sellers' in a tenth block, Tahora 2A (3), which was not within the UDNR, but was a rim block in which Bowler had been buying up individual interests since 1915; the Crown had proclaimed the block as under negotiation, making private offers illegal: see section 10.7.3.

interest of each person in the block.⁴⁵⁶ Where successors had been appointed, their relative shares, often fractionated, were also listed.⁴⁵⁷

Much more comprehensive lists of ‘non-sellers’ were published in the *Kahiti* of 17 October 1918. By this time, Bowler had compiled such lists for nearly every Reserve block (39 in all), and in a lengthy schedule he listed owners in alphabetical order, the blocks in which each held interests (identified by an assigned number), and the total monetary value of those interests.⁴⁵⁸ Bowler had evidently engaged in a great deal of painstaking arithmetic, dealing both with the conversion of complex fractions of shares held by successors and, in some blocks, with shares allotted to different lists of owners to which the commissioners had assigned different values. As he explained to the under-secretary, who noticed that the value of owners’ shares in the Maraetahia and Maungapohatu blocks varied:

One section of the owners, the Ngati Hape tribe, were awarded 352 acres *geographically undefined*. These persons numbered 70, and hold in equal shares. Consequently each of them is entitled to one-seventieth of 352 times 5/-, or (say) £1.5.2. In the list each owner’s interest is expressed as ‘2 shares’, so that the value of 1 share in the Ngati Hape list is 12/7d.

The remaining owners own the balance of the block, 5160 acres, and the relative interests total 1261, so that each share is in this case worth £1.0.5½.

The position, although not unusual, has arisen several times in connection with blocks in this district. In the Hikurangi–Horomanga block, now under purchase, there are *three* different sections of owners, and in each list the monetary value of a share is different. [Emphasis in original.]⁴⁵⁹

In November 1919, updated lists of ‘non-sellers’ were published in the *Kahiti* after Bowler urged that such lists be circulated before a land court sitting began at Whakatane late that month. The panui, Webster points out, covered 17 pages of fine print, listing over 2300 individuals as ‘non-sellers’. Bowler was finally sent 140 copies of the special *Kahiti* that contained his notice, with two schedules giving the same kind of information as the notice of the previous year: the first listed 44 blocks (the five Ruatahuna partitions had been added to the list), assigning each a number; the second listed in alphabetical order every owner who retained shares, identified the relevant blocks by number (rather than listing the names of owners under each block) and then gave the total value of each owner’s shares.⁴⁶⁰

Thus, personal information about the value of each owner’s shares was published in the Government *Gazette*, and it is clear that the Crown’s purpose was to encourage owners

456. Schedule, not dated, MA-MLP 1, 1910/28/1, pt 2, Archives New Zealand, Wellington

457. Webster, ‘Urewera Consolidation Scheme’ (doc D8), p172

458. 17 October 1917, *Te Kahiti o Niu Tireni*, 1918, no 58, pp 679–694. Where blocks had been subdivided, each subdivision was given its own number.

459. Bowler to Native Under-Secretary, 1 August 1917, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington (quoted in Miles, ‘Te Urewera’ (doc A11), pp 399–400)

460. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 164–165

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who had 'not yet sold' to do so without further delay, by tallying the cash value of all their shares. The claimants drew our attention to the tone of this notice; and we accept that it also implied that owners *should* in fact proceed to sell:

Ko nga tangata kaore ano kia hoko e whakaarohia ana he pai, me tae mai, me tuhi mai ranei ki te tangata e mau ake i raro nei tona ingoa kia whakaotingia te hokonga i o ratou paanga. Ka utua te moni mo te hokonga a muri tonu o te hainatanga i nga tiiti hoko.

For those persons who have not yet sold and who think that that is OK, you must go or write to the person whose name is below to complete the sale of their shares. Proceeds for your sales will be paid immediately after the signing of the deed of sale.⁴⁶¹

Possibly the most reprehensible of all was Bowler's attempt to buy minors' shares. He expressed an interest in them almost as soon as he took over purchase in the UDNR, in mid 1915. Fisher, replying to his query, doubted whether the Public Trustee could deal with the minors' shares. Bowler pursued the point (by telegram): 'do you not think it unwise to neglect opportunity obtaining further interests.'⁴⁶² Bowler approached the Public Trustee at Auckland in May 1916 (perhaps not for the first time), sending him a list of minors holding shares in a number of blocks, and urging him to sell the shares to the Crown. '[A]ll relatives,' he stated, had sold their shares, the Crown now held over 100,000 acres of the Reserve, and the remaining shares of minors were microscopic and would be useless if cut out of the Crown's interests.⁴⁶³ He appears subsequently to have asked the Native Land Court to forward the necessary trust orders sought by the Trustee, as well as the deeds for signature, as the Trustee returned 'at least two batches of receipts' and acknowledged receipt of purchase money due to minors listed for their shares in Te Whaiti 2, Tauranga, and other blocks.⁴⁶⁴ In 1917, Bowler was successful in securing the agreement of the Public Trustee in Wellington to the sale of minors' interests, even though he could not produce the special valuation of those interests required by law and sought by the trustee. This time he enlisted the help of Under-Secretary for Native Affairs Jordan, who informed the Trustee that the 'purchase of quite a number of blocks is well on the way to completion, and the principal outstanding interests appear to be those of minors for whom you are trustee.'⁴⁶⁵ If the Crown could not acquire those interests, they would remain scattered throughout the Reserve when the Crown's interest was partitioned out, greatly adding to the survey and roading costs that would have to be borne by minors when their interests were converted into land. As Webster has shown, there were far more owners who retained shares in blocks than Bowler implied. But his arguments must have seemed compelling to the trustee. Over the next few

461. *Te Kahiti o Niu Tireni*, 20 Noema 1919, no 48, p 811 (translation by Brenda Tahī, 25 April 2003) (Tuawhenua Research Team, 'A History of the Mana of Ruatahuna' (doc D2), p148)

462. Bowler to Fisher, 30 June 1915 (Webster, 'The Urewera Consolidation Scheme' (doc D8), p196)

463. Bowler to Public Trustee, May 1916 (Webster, 'The Urewera Consolidation Scheme' (doc D8), pp196-197)

464. Public Trustee to Bowler, 15, 22 June 1916 (Webster, 'The Urewera Consolidation Scheme' (doc D8), p197)

465. Jordan to Public Trustee, 26 March 1917 (Webster, 'The Urewera Consolidation Scheme' (doc D8), p198)

months, a ‘series of purchases’ from the Public Trustee was completed.⁴⁶⁶ Even he could not resist the insistent and unseemly demands of Crown purchase in a context which made the shares of every individual a target; the minors’ interests the trustee was responsible for were no less vulnerable than those of any other owner.

Bowler was always active, also, in ensuring that titles were current. As early as September 1915, he had identified out of date block titles as a problem. ‘Many of the Natives,’ he wrote, ‘do not know what blocks they are in. Others having come into the titles by numerous succession orders, are unaware that they still retain unsold interests.’⁴⁶⁷ His preoccupation with alerting owners to their holdings was, as we have seen, a key driver in his circulation of published lists throughout Te Urewera.

In October 1918, Bowler claimed to have ‘carded’ all deceased owners, and to have lodged in the land court applications for appointment of their successors – 1000 applications in all.⁴⁶⁸ He was able to do this because section 14 of the Native Land Act 1909 provided that the Native Minister might apply to the court to exercise its jurisdiction ‘in any matter’; the right to apply for succession was not limited to heirs. In January 1919, when reporting the heavy toll the flu epidemic had taken on the people of Te Urewera, Bowler pointed to the 400 succession applications he had lodged in its wake.⁴⁶⁹

(5) Why were Maori prepared to sell?

We refer finally to a question often posed: why did Maori sell? In light of the number of interests the Crown acquired in Reserve blocks, it is clear that many owners were prepared to sell. There were many reasons why. The Crown’s by-passing of the General Committee at the start of its major purchasing push in 1915, and then its legislative empowering of individuals to sell, were crucial. Without the shield of the General Committee and of functioning local committees, individuals – deprived of any collective planning which might have brought them economic benefits – faced poverty armed only with their scattered shares in various blocks, easy prey for a land purchase officer offering cash for a signature.

At the very beginning of the Crown’s push to secure land for settlement in Te Urewera, we should note the pressure exerted by Ngata, then a member of the Native Land Commission. We referred above to his attendance at a hui at Ruatoki in January 1908, when he told Tuhoe leaders, quite wrongly, that they were obliged to recompense the State for the costs of the Urewera commission, and survey costs. We noted that this was the trigger for the first offers to lease by the General Committee. Rua Kenana, when he offered land for sale, also referred

466. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp198–199

467. Bowler to Native Under-Secretary, 26 September 1915 (quoted in Miles, ‘Te Urewera’ (doc A11), p370)

468. Bowler to Native Under-Secretary, 4 October 1918 (quoted in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p162)

469. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p163

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to the need to meet survey costs.⁴⁷⁰ And it was given as a reason also by individuals who later offered to sell.⁴⁷¹

Crown counsel acknowledged that:

Potential prejudice arises from the fact that survey and commission costs were raised in the context of discussions about future land use in January 1908, and that it was made explicit that Tuhoe were under some kind of obligation to compensate the State for these costs (even though they were not).

While the government did not in fact make any attempt to recover these costs, survey costs were mentioned by many prospective vendors as a motivation for selling shares.⁴⁷²

Counsel for the Wai 36 Tuhoe claimants drew our attention also to the fact that Ngata's emphasis on the Tuhoe obligation to meet survey costs came at a particularly bad time for Tuhoe. He put it to Edwards that, when Ngata visited in January 1908, 'Tuhoe were feeling very vulnerable in terms of the loss of land through survey costs and through other mechanisms.'⁴⁷³ He referred specifically to the costs associated with the Ruatoki partitions; the loss of two-thirds of the Matahina C and C1 blocks for survey debts, and of 881 acres of Tuararangaia block in September 1907. In addition, the entire community of Te Houhi were ejected from their ancestral lands between April and June 1907 as a result of the Waiohau fraud (see chapter 11). Counsel suggested that, in this context of lands lost in lieu of survey and other debts associated with determination of title through the Native Land Court process, Ngata's statement that Tuhoe had an obligation to pay for the costs of the Urewera commission 'was received as an implicit, if not explicit, threat.'⁴⁷⁴ Edwards acknowledged as much: 'I do take your point about these other factors which, for Numia and certain of these chiefs appear to have, would have been adding quite a level of disquiet.'⁴⁷⁵ And she agreed with our presiding officer that the chiefs would have been 'highly apprehensive.'⁴⁷⁶ The evidence points to the fact that the chiefs felt themselves under pressure, and that this was a key factor in their initial agreement to alienate land.

Doubtless it was not the only factor. Rua, certainly, had decided he must sell land to raise capital for development. From the start, he had wanted to make his community economically autonomous. Binney noted in *Mihaia* that Rua had 'recognized the root problem of Tuhoe poverty; although they were wealthy in land, they were totally without the means to make it productive.'⁴⁷⁷ Thus, he persuaded families to pool their resources so that he

470. Binney, 'Encircled Lands, Part Two' (doc A15), p 396

471. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 172-173

472. Crown counsel, closing submissions (doc N20), topics 14-16, p 90. Also see Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 75-77.

473. Counsel for Wai 36 Tuhoe, cross-examination of Cecilia Edwards, 4 March 2005 (transcript 4.1), p 255

474. Counsel for Wai 36 Tuhoe, cross-examination of Cecilia Edwards, 4 March 2005 (transcript 4.1), pp 256-257

475. Cecilia Edwards, under cross-examination by counsel for Wai 36 Tuhoe, 4 March 2005 (transcript 4.1), p 257

476. Presiding officer, during questioning of Cecilia Edwards, 4 March 2005 (transcript 4.1, p 257)

477. Binney, Chaplin, and Wallace, *Mihaia* (doc A112), p 24

could buy stock and develop cooperative farming. He wanted to achieve the same success Ngata had on the East Coast with flocks of sheep. And he wanted money ‘to underpin the Maungapohatu bank, which he had transferred directly into the community’s authority in May 1909.’⁴⁷⁸ He came to hope that the sale of land would bring returns that would allow for large-scale development – based on export of produce – sufficient to secure the community’s future. We were told that many of the owners of Waikarewhenua, the hapu Ngai Tama of Waimana, sold their lands to fuel development at Maungapohatu, as Rua intended.⁴⁷⁹ Binney argued that Rua saw the official General Committee as ‘obstructionist: a team of old men and aristocratic chiefs’ who could not support his entrepreneurial vision.⁴⁸⁰ But, in the end, the committee was driven to offer land for sale too, though we are certain that it meant to sell only parts of blocks, as we have noted – clearly hoping to keep the greater part for the owners. The prejudicial economic impact of the Crown’s failure to ensure that the committees were all set up quickly was the loss of the opportunity to plan for and implement economic development through komiti hapu and the General Committee. Admittedly, this might have been difficult at the turn of the century, when frosts and flooding, by turns, had such a terrible impact on crops in various years. Murton pointed to impoverishment in this period – ‘the context within which people were having to make decisions’. By the early twentieth century, the peoples of Te Urewera had become more vulnerable to natural disasters and infectious diseases, and they were now ‘dependent on fewer resources from fewer areas.’⁴⁸¹ But collective management bodies from Te Whitu Tekau on down had been actively undermined by the Crown and could play no role in leading a recovery.

The reasons why individuals sold their interests in blocks from 1915 onwards are not hard to find. In July 1915, for example, two individuals sold their interests while in Wellington, as they needed the money to get home; others needed money for medical expenses.⁴⁸² Some sold their interests ‘because it was the only way to get money for European clothes and food supplies such as tea, sugar, flour and other commodities.’⁴⁸³ In February 1915, Pera Te Horowai offered to sell interests in the Te Whaiti block, informing the Native Department that the local people were facing starvation caused by heavy frosts and the high price of flour.⁴⁸⁴ In February 1916, Hinaki Ropiha wrote directly to purchase agent Bowler, inquiring when he was ‘likely to come along with the cheque-book’ as he had 40 people willing

478. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 420

479. Tuawhenua Research Team, ‘A History of the Mana of Ruatahuna’ (doc D2), p 150

480. Binney, ‘Encircled Lands, Part Two’ (doc A15), p 415

481. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), pp 380–381

482. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 380

483. Stokes et al, *Te Urewera* (doc A111), p 64

484. Boast, ‘The Crown and Te Urewera in the 20th Century’ (doc A109), p 64

to sell because 'they are short of both food and money'.⁴⁸⁵ In her analysis of letters written by individuals and groups requesting the sale of land, or the withholding of land from sale, Edwards likewise identified a range of reasons for selling shares: 'desire to obtain cash for short term needs (unspecified debt, survey costs, material need); and the desire to obtain capital for developing land outside the district'. Edwards found that '[t]he letters appear to more frequently cite the wish to obtain funds for land development than they do material need'.⁴⁸⁶ But Murton pointed out that while some individual sellers received substantial amounts for their interests in more valuable blocks, most sellers received little more than a couple of pounds.⁴⁸⁷ The value of an individual share varied from 2s 10d in the Ohiorangi block to £21 1s 4d in the Te Whaiti 2 block.⁴⁸⁸ Crown counsel concluded that '[g]iven the relatively small amounts earned, it seems less likely that the proceeds were used for investment purposes rather than subsistence'.⁴⁸⁹ We agree. The small sums that most people received for their sale of interests in a particular block also help to explain why the process of sale continued: people found it necessary to raise further cash over time. The Crown accepted the conclusion of Peter McBurney that 'Maori poverty was a significant factor in the sales, as was the inability of Maori to deal with the land collectively'.⁴⁹⁰

It is also clear that owners who had been awarded interests in a number of blocks were prepared to sell because they realised they could do so strategically. In other words, they sold in some blocks, while retaining interests in others. Bowler himself commented on this. And anthropologist Dr Stephen Webster described this reaction among Tuhoe as the development of 'counter-tactics in defence of their lands'. He was struck by the extent of part-selling among owners, pointing to the fact that in the 1919 panui published in the *Gazette* over 2300 individuals were listed as 'non-sellers' in 44 blocks, while a 1920 report of Bowler's pointed to 7488 'signatures required to complete' the purchase of the area. Webster calculated that, on average, owners retained shares in two or three blocks, but the actual number of blocks in which owners retained shares varied between one and 23.⁴⁹¹ He made a special study of alienation by the Tamaikoha whanau (or 'hapuu lineage') – an extensive kin-grouping within which Tamaikoha's children by his wives held shares inherited from both parents in 'most' of the 35 blocks of the Reserve.⁴⁹² From his data, he concluded that there was a pat-

485. Hinaki Ropiha to Bowler, 9 February 1916, 15 January 1916, MA-MLP 1, file 1910/28/1, Archives New Zealand, Wellington (SKL Campbell, comp, supporting papers to 'Land Alienation, Consolidation and Development', various dates (doc A55(b)), pp 56–57); Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 21; Murton, 'The Crown and the Peoples of Te Urewera', vol 1 (doc H12), p 380

486. Edwards, 'The Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 167–173

487. Murton, 'The Crown and the Peoples of Te Urewera', vol 1 (doc H12), p 371

488. Murton, 'The Crown and the Peoples of Te Urewera', vol 1 (doc H12), p 368

489. Crown counsel, closing submissions (doc N20), topics 14–16, pp 78–79

490. Peter McBurney, summary of 'Ngati Manawa and the Crown, 1840–1927' and brief of evidence, March 2004 (doc F7), p 19 (quoted in Crown counsel, closing submissions (doc N20), topics 14–16, pp 78–79)

491. Undated draft report in Bowler's hand, probably end of 1919 or 1920, closed file series 621, Waiariki District Maori Land Court (quoted in Webster, 'Urewera Consolidation Scheme' (doc D8), p 179)

492. Steven Webster, summary of evidence and response to statement of issues, 23 June 2004 (doc E6), pp 6–7

tern in the retention of shares among this grouping, in accordance with a ‘roughly graded range of such tactics’:

(i) retention of virtually all shares, apparently relatively unusual; (ii) retention of leading or strong rights but sale of lesser rights . . . ; (iii) retention of symbolic rights, or token shares . . . ; (iv) sacrifice of leading or strong rights for shares foreseen to have more practical value, near the promised roading or near centres of settlement or schooling; (v) ‘banking’, or selling shares piecemeal when needed for cash, often avoiding selling all shares in any block; (vi) selling everything . . . for some purpose or enterprise free of the troublesome land.

Most of these tactics, he concluded, were ‘different forms of the “part-selling” which frustrated Bowler’ and made his purchasing more difficult.⁴⁹³

These were useful strategies at a time when there were wider financial and social pressures on hapu and iwi which impacted on whanau. Counsel for Wai 36 Tuhoe referred to the cumulative pressures Tuhoe faced during the years 1916 to 1920 – a time when key leaders, including Numia Kereru and Te Whenuanui, were lost to them. The police incursion to Maungapohatu in 1916 and the arrest, trial, and imprisonment of Rua Kenana imposed substantial costs on the Maungapohatu community, while from 1915 to 1918 Tuhoe leaders were also engaged in lengthy and expensive preparations for taking their case for title to Lake Waikaremoana to the courts. The influenza pandemic also struck towards the end of the period.⁴⁹⁴ We note that it was one of the few events that produced a lull in Bowler’s activity – albeit short-lived. Bowler reported that the pandemic had been ‘very bad in the district at the back of Whakatane and I have abandoned any idea of pushing on with the Urewera purchases for the present, as it would be extremely dangerous to bring any number of the natives together.’⁴⁹⁵

And we might add that Tuhoe were also very conscious of the war effort: Te Pouwhare of Ruatoki wrote to the Native Minister in 1915 that Tuhoe had decided at a hui to subscribe funds for those engaged in the war through the sale of interests in Tauwharemanuka, Parekohe, Karioi, and Waipotiki blocks.⁴⁹⁶ As Te Pouwhare put it, ‘no scheme has, as yet been put forward for using the proceeds of these sales of the past’, so their idea of supporting the war effort seemed a good one.⁴⁹⁷ In other words, it was much easier to contribute donations through an established process, for a national cause, than to overcome the barriers to managing tribal economic development. This is a statement which speaks for itself.

493. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 186–187

494. Counsel for Wai 36 Tuhoe, closing submissions, part A, 31 May 2005 (doc N8), p 8

495. Bowler to Native Under-Secretary, 6 November 1918, MA-MLP 1, file 1910/28/1, pt 3, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 962); Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 163

496. Berghan, ‘Block Research Narratives’ (doc A86), p 288

497. Te Pouwhare to Native Minister, 20 November 1915, MA-MLP 1, file 1910/28/3, Archives New Zealand, Wellington (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(f)), p 1779); Berghan, ‘Block Research Narratives’ (doc A86), pp 288–289

Provisions to Ensure Maori Sellers Were Not Left ‘Landless’, 1909, 1913

A ‘Landless Native’, as defined by the Native Land Act 1909, ‘means a Native whose total beneficial interests in Native freehold land (whether as tenant in fee-simple or as tenant for life, and whether at law or in equity) are insufficient for his adequate maintenance’.

The Native Land Act 1909 provided that a land board or the land court could not confirm an alienation unless satisfied that ‘no Native will become landless within the meaning of this Act by reason of that purchase’. When the Crown was the purchaser, the Native Land Purchase Board also had to be satisfied that the purchase would not leave any Native landless, and it had a duty to make ‘due inquiry’ on that score (section 373(1)). The duty was watered down, however, by section 373(2), which provided that no purchase would be invalidated ‘by any breach of the requirements of this section’.

The Native Land Amendment Act 1913 repeated (in section 109) that it was the duty of the Native Land Purchase Board, before completing a purchase, to ascertain that it would not render any Native landless. The 1913 Act also spelt out how the board was to ascertain this: it was to get from the Registrar of the Native land district or districts in which any lands owned by the Native were situated, particulars of all land in which that Native was beneficially interested (section 109(10)). No change was made to section 373(2) of the principal Act, however, so that a board’s failure to ascertain whether a purchase would render a Native landless would still not invalidate the purchase.

(6) Did the Crown ensure that Maori sellers would not become landless?

The Crown has conceded that in purchasing undivided individual interests in the Reserve blocks, it did not follow the usual protective mechanisms applying to Crown purchases of Maori land during this period.⁴⁹⁸ These protections included the landlessness test, initially designed to ensure that Maori sellers retained ‘sufficient’ land, that had been in place since the 1870s. During the first years of the twentieth century, they changed rapidly (see sidebar). Counsel further conceded that ‘irrespective of the position at law it was incumbent on the government to have exercised due care in respect of the Urewera vendors, given the decision to purchase undivided interests in 1914 without the consent of the General Committee’⁴⁹⁹ – that is, without the ‘key protective feature of the UDNR Act 1896 (s21)’.⁵⁰⁰

Fisher, in fact, raised with Bowler the question of the position of a particular seller in the Tauranga block in July 1915, asking him to check whether the seller had ‘sufficient other

498. Crown counsel, closing submissions (doc N20), introduction and overview, p10, topics 14–16, pp 76–78

499. Crown counsel, closing submissions (doc N20) topics 14–16, pp 79–80

500. Edwards, answers to questions of clarification from the Waitangi Tribunal (doc L33), p3

land.⁵⁰¹ Bowler could not answer him, but he noted the significance of Fisher's request in relation to his purchase of other interests:

I take it as a general rule the Crown only undertakes the purchase of lands which are suited for settlement and of which the Natives are making no use. Am I to refuse to purchase, in cases of this kind, unless I have definite information as to the other lands owned by the alienors? If this principle is laid down, I am afraid that my operations will be considerably curtailed.

A pencilled note in the margin read: 'N[ative] S[ecretary] directed that no action should be taken re reply to this.'⁵⁰²

This remarkable interchange speaks volumes. We note that Bowler, having raised the question, and sounded his warning to Fisher about the possible dangers of taking the requirement in the legislation seriously, proceeded with purchase without much concern for the interests of Maori sellers. Bowler, as Edwards put it,

was, in accordance with his role as Land Purchase Commissioner, more concerned with the purchase of lands for settlement purposes (and protecting the Crown's interest in blocks where purchasing had occurred) than the impact of the sales process on the people from whom he purchased shares or co-owners in the blocks concerned.⁵⁰³

It is not surprising that, a year later, Judge Browne (in his capacity as President of the Waiariki District Maori Land Board), expressing his fears for the well-being of a particular vendor in a Waimana subdivision, spoke of the broader context that concerned him:

The Government is buying interests in the Urewera country and *as far as I am aware is making no enquiries as to whether the persons from whom it is purchasing will be left landless by reason of the sale or not*. Many of the Natives are I think selling under the impression that the Government will make reserves for them out of Crown land. [Emphasis in original.]⁵⁰⁴

Indeed, Ngata would raise the question of 'many' landless people in 1921, as plans for consolidation of the Crown's interests gathered momentum, suggesting that 20,000 acres should be set aside by the Crown for them. Then, as earlier, the Crown side-stepped the issue. When RJ Knight of the Lands and Survey Department inquired whether he should

501. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 145

502. Bowler to Native Under-Secretary, 16 July 1915, MA-MLP 1, file 1910/28/6, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1089); Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 145-146

503. Edwards, answers to questions of clarification from the Waitangi Tribunal (doc L33), p 3

504. Browne to Native Under-Secretary, 4 December 1916, MA 1, file 1916/4057, Archives New Zealand, Wellington (quoted in Jeffrey Sissons, 'Waimana Kaaku: A History of the Waimana Block' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A24), pp 91-92)

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turn down the request or ‘make an evasive non-committal reply’, Brodrick, the Under-Secretary of Lands, advised him to be ‘non-committal if asked about land for landless Natives.’⁵⁰⁵

Webster found it difficult to estimate how many people were left landless by the end of Bowler’s campaign. He pointed to two figures, however. A report of the consolidation commissioners in 1924 listed 31 war veterans who had ‘come forward to ask for the return of some Crown land to avoid dependency on their families.’⁵⁰⁶ In light of the uncomfortable nature of this request, he considered that would have been a minimum figure. Webster calculated also, comparing figures given at the time for owners who retained interests in the Reserve in 1919–20 with those calculated by Clementine Fraser for late 1921, that ‘as many as 185 additional Tuhoe were made landless/kore whenua’ between November 1919 and 1921.⁵⁰⁷ He did not attempt, he added, to calculate the number of those already landless before November 1919.⁵⁰⁸ The figures he did calculate, however, including the veterans, would equate to some 10 per cent made landless.⁵⁰⁹

Two hundred people of this rohe, at least, were without land within their rohe. This ominous state of affairs is in stark contrast to Seddon’s promise made at an 1894 hui in Te Urewera, when he pledged Crown protection of the people (see chapter 9):

I say they will never be landless – never be without money, food, or clothes. They will be more prosperous than Tuhoe have been since they have been Tuhoe.⁵¹⁰

But, 20 years later, as we have seen, officials quite deliberately decided against active steps to protect sellers against landlessness – which, given the Crown’s determination to buy as many interests in Reserve blocks as it could, was hardly surprising. Landlessness might have been more widespread had not owners themselves adopted strategies to retain some shares in the face of Bowler’s predatory campaign. We examine the short- and long-term effects of this campaign in chapter 15.

505. Knight to Guthrie, 21 June 1921 (quoted in Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 366); Under-Secretary of Lands to Knight, 16 July 1921 (quoted in Webster ‘The Urewera Consolidation Scheme’ (doc D8), p 366)

506. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 179

507. Webster’s sources for the number of ‘non-sellers’ (most of whom retained some interests) in 1919–20 were the lists in the *Kahiti* of November 1919, and Bowler’s later report. He referred to Fraser’s ‘careful tabulation and culling of “non-seller” names’ from primary sources on the consolidation to reach a comparative total of ‘non-sellers’ for late 1921: Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 179, 273.

508. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 179–180, 273

509. There are considerable difficulties in assessing the Maori population of Te Urewera, as we discuss in a later chapter. We rely on statistics of Whakatane County for the Maori population between 1906 and 1926, which was 2,403 in 1921. Though this poses problems (much of Whakatane County is not part of the Te Urewera inquiry district, and the county also excluded some parts of Te Urewera), the vast majority of the peoples of Te Urewera lived in Whakatane county – 92 per cent in 1901.

510. Seddon’s speech was reported in the AJHR of 1895: ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, March 1894, AJHR, 1895, G-1, p 55.

13.7.4 Crown purchasing in the Reserve and the fate of self-government – overview

We have looked carefully at how the principles of the UDNR Act 1896 were eroded over a period of 20 years by Crown policies and legislation. The Crown undermined the unique character of the UDNR Act: its provision for tribal self-government, for a better process of title determination in which owners participated as decision-makers – which would also result in hapu titles – for the safeguarding of Te Urewera land for its peoples, and protection of individual owners with few financial resources from relentless purchasing. It lost sight of, or ignored, the rights of Reserve owners and communities.

By March 1921, the Crown had purchased into the vast majority of Reserve blocks. Its purchases of interests in 47 blocks amounted to an equivalent of 330,264 acres, or 51 per cent.⁵¹¹ It made a start with purchasing in 1910 in selected blocks, consulting the General Committee and securing its consent for some but not all of these blocks. Officials made it clear that the Crown wanted sales, not the leases that the General Committee had initially hoped to transact. There was a pause in purchase from 1911 to 1915, when the Crown embarked on purchase with huge determination to maximise its land-holding in the Reserve. Such enthusiasm was not confined to its purchase agent on the ground, W Bowler, whose carefully worked out strategies to locate owners and acquire, if possible, virtually all their interests might seem unparalleled. But it is clear that the Native Minister and the Native Land Purchase Board were also single-minded in their approach to Reserve purchase. They were prepared to buy in defiance of the UDNR Act, which required the General Committee to contract with the Crown to sell, and were prepared also to legislate to validate purchases from individuals retrospectively. From 1915, purchase from individuals proceeded at speed – particularly when new blocks were opened and a number of owners saw the opportunity to raise badly needed cash, perhaps deciding they would prefer to sell in a new block while retaining interests in land with which they were reluctant to sever their connection. Crown officials were prepared even to abrogate the rights of Maori owners (well established in Native land legislation) to seek to partition out their interests, specifically because it would interfere with Crown purchasing. In other words, officials put the Crown's interests well ahead of owners' rights to farm and develop their own lands. Nor did they show any interest in protecting owners from landlessness, though this remained a statutory duty of the Native Land Purchase Board.

The Crown, having identified the particular resources it wanted to secure in the Reserve – initially gold (until it became clear there was none), then timber at Te Whaiti and the northern lands for settlement, and the lands adjacent to Waikaremoana for tourism and hydro-electric generation – created a 'controlled environment', as Miles put it, to ensure the success of its purchasing operations.⁵¹² (It refrained, however, from buying into the Waikaremoana

511. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), app 6: summary of purchases by March 1921, pp 251–253. Where blocks had been partitioned, each partition is counted separately.

512. Miles, 'Te Urewera' (doc A11), p 412

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block at this time.) The piecemeal approval of blocks to be purchased ensured that the Crown – through Bowler, and what can only be called his very well-oiled machine – was able to exert great control over the process. Gradual purchase over a period of years – which Bowler defended as being in the Crown’s best interests – was ‘aimed at preventing Tuhoe from only offering their least attractive interests (and speculating on the rest)’ which meant that the people had to adapt to the Crown’s purchasing timetable.⁵¹³ Some owners, Miles suggested, might have sold reluctantly in the northern blocks as they waited for the Crown to open purchase in the lesser-valued southern blocks.⁵¹⁴ That is not to say the Crown had things all its own way. It was unable to purchase any one of the 47 Reserve blocks in its entirety, and so had to implement a consolidation scheme to secure ownership of a single, large block of land of its own (as opposed to co-ownership of undivided shares in Maori blocks). Such incomplete purchasing, in Stephen Webster’s view, constituted ‘the little triumphs of the Tuhoe, despite the Crown’s acquisition of most of their land.’⁵¹⁵ This was a pyrrhic victory, of course. As Edwards put it: ‘At the end of the day, the sellers appeared . . . to have exercised one of the few options available to them in terms of their interests under the reserve legislation, as it was implemented: that was to sell part or all of their interests.’⁵¹⁶ No provision was made for local committees to manage their lands, or to incorporate owners for this purpose, or to ensure the provision of secure hapu titles so that development finance might be borrowed.

The General Committee itself suffered three body blows over a period of some 20 years. First, it was not set up when it should have been, in the years immediately following the passing of the UDNR Act. The Crown amended the Act in 1900, but failed to take the opportunity to separate the electoral provisions of the Act from the slow title-determination processes of the Urewera commission. It did nothing in 1902, even though the members of local committees had been named at the end of the commission’s work. In fact it waited for the outcome of the slow appeals process before setting up local committees. Thus, the committees were not established until 1908, and the General Committee not until the following year. Secondly, the General Committee – when it was finally set up – suffered Crown intervention in its constitution and membership; and neither it nor the local committees were provided with the regulations under the Act, as they should have been, to assist their respective roles and functions. The Crown made it clear that the General Committee mattered to it only to approve land alienations and the opening of Te Urewera to prospecting and mining. Thirdly, after a further hiatus until final appeals from Urewera commission orders were heard, the General Committee – which had never been provided with legal power to contract with the Crown to sell or lease land – was deprived even of its power to

513. Miles, ‘Te Urewera’ (doc A11), p 413

514. Miles, ‘Te Urewera’ (doc A11), p 413

515. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 212–213

516. Cecilia Edwards, summary of ‘Urewera District Native Reserve Act 1896, pt 3’, 28 January 2005, (doc L4), p 20

give or withhold consent to, and to manage, land alienations as the Crown moved to buy extensively into Reserve blocks.

In fact, the UDNR Act was eroded by a number of legislative amendments, the great majority of which were made without consultation with Te Urewera leaders, who nonetheless expected that consultation and discussions with the Government on matters so crucial to the well-being of their communities would continue. Some changes were incorporated directly into amending UDNR legislation; others were made in sections of native land Acts. Major changes were made to mainstream native land legislation during this period, and the Crown itself either was confused as to whether key provisions in native land Acts applied in the Reserve or simply failed to apply its own law. This meant that Reserve owners were denied some protections that were available to all other Maori owners (as the Crown has conceded). Because Reserve owners fell between two legislative regimes, and were uncertain of their rights, the Crown could ride roughshod over those rights. Examples of perils of this kind for Reserve owners include loss of protections in the valuation of land, and protections against landlessness. Valuations of Reserve blocks did not meet the requirements laid down in the Native Land Act 1909. And whether or not the Native Land Purchase Board had a statutory duty to protect Reserve owners against landlessness it was, as Crown counsel has conceded, incumbent on the Crown to protect any individuals among them who were selling their shares.

The Crown also manipulated the role of the Native Land Court in the Reserve to suit itself. The UDNR Amendment Act 1909 provided that the land court might exercise all the jurisdiction vested in it by the Native Land Act 1909, but excepted (in particular) its jurisdiction relating to partition unless leave of the Governor in Council was obtained. Thus, the Government secured power over the partitioning process in the blocks, which in time it would use to assist its purchasing policy. By subsequent orders in council (in 1912 and 1913) the court was authorised to partition named blocks in the Reserve. Maori owners, as we have noted, would take advantage of this provision for several reasons. They might seek partition to assist their own land use on the ground, or to resolve title dilemmas which they considered Urewera commission awards had visited upon them by awarding them undivided shares in large blocks rather than recognising community titles to smaller blocks. Partition, it was hoped, would allow better recognition of hapu rights to particular ancestral lands. And Maori owners might also seek partition to protect themselves from continuing Crown purchase of undivided shares, and safeguard kainga and lands of particular importance to them. Partition, in other words, was considered useful by owners. But when the Native Land Purchase Board later decided that partitioning (in response to Maori owners' applications) would interfere with the Crown's continued purchase of interests, new orders in council in 1916 revoked the court's authorisation to partition in Reserve blocks. This is an

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example of the Crown's cynical use of such a power to deny owners rights in the land court which owners in blocks outside the Reserve all possessed.

Above all, the Crown failed in practice to uphold the exclusive legal power of the General Committee to alienate land. From 1914, it used the newly created individual shares against the interests of the owners themselves, ignoring the General Committee. The Solicitor-General himself, however, advised that the purchases were in accordance with Native Land Amendment Act 1913, and therefore were in order. The Government eventually realised that this was not so, and retrospectively validated its purchases. But instead of encouraging the General Committee to take up the role legislated for it to manage alienation (if alienation were deemed necessary) on behalf of communities of owners, the Government increased the speed of its purchase from individuals.

In all these instances, the Crown put its interests before those of the owners. At the root of them all was a lack of commitment to preserving the spirit and purpose of the UDNR Act – a determination, in fact, to render it irrelevant. And the Crown certainly succeeded in that. The sidelining of the General Committee was the outcome of political and bureaucratic pressure for purchase and settlement over a period of more than 10 years, from 1908 to 1921. In retrospect, it is evident what a misguided policy this was. It was certainly not in the interests of Maori owners, though they got small amounts of cash to survive on as they sold their interests in various blocks. But they lost quantities of land, and exposed themselves to the aftermath of aggressive Crown buying in every block once the Crown sought to separate the interests it had purchased from those of the Maori owners – namely the Urewera Consolidation scheme (which we discuss in the next chapter). The Crown's determination to keep direct private purchasers out of the Reserve is mirrored in other districts in this period, such as in Taupo/Kaingaroa (where it used prohibition orders under the Native Land Act 1909 to secure control of the process of alienation by prohibiting all alienations other than those to the Crown)⁵¹⁷ – and we assume it was motivated by the same purpose. Also, as we have seen in Chapter 10, the Crown imposed block-specific monopolies in the Te Urewera rim blocks at this time, where it judged these necessary to protect and further its purchases. Bowler was quite certain that it was the Crown's role to acquire 'all large areas of virgin country' to protect settlers, not Maori, from speculators. And the Crown, he suggested, should be one jump ahead; if it bought ahead of demand, it could keep the costs of purchase down. Even if land was not very good, he wrote (in respect of several Taupo blocks), 'sooner or later [it would] become capable of being profitably utilized.'⁵¹⁸ The result was, as the Central North Island Tribunal pointed out, that much of the land bought between 1911 and 1928 remained idle. But it took until 1932, and the deepening of the Depression, before the newly established National Expenditure Commission delivered

517. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 689, 694, 698–703

518. Bowler to Native Under-Secretary, 17 April 1918 (quoted in Waitangi Tribunal, *He Maunga Rongo*, vol 2, p708)

a scathing criticism of the Government's general land purchase policy. It had failed, the Commission said, on a number of counts: the Native land settlement account had run up huge costs (over £1 million, including interest payable on the purchase price) it had failed to deliver completed blocks which could be made available for settlement in a timely manner; and it had failed to secure adequate returns on leased lands. The commission recommended that purchase of Native lands should cease until economic conditions improved.⁵¹⁹

For Maori owners, of course, it was by then too late. The saddest thing about the purchase campaign in Reserve blocks is that it was so futile. The farming settlement in Te Urewera the Crown had confidently banked on and promoted in the 1910s did not happen. While the Crown constantly held out for the purchase of more interests in the various Reserve blocks, and delayed partitioning out what it had bought, the market it had detected for farms evaporated. Or, perhaps, that market had not existed in the first place. The Government, after all, had not thought of Te Urewera as a suitable district for settler farming in the mid-1890s. Eventually in March 1924 the Crown put up 18 sections of third-class 'heavy bush' land (totalling 28,564 acres) for sale or lease, 12 in the Waimana Valley, and six in the vicinity of Te Whaiti; and a further three sections in the Waimana Valley (totalling 3,322 acres) were offered to settlers in May 1924.⁵²⁰ Despite extensive advertising, only three leases were taken up, and in July 1924 the decision was made that it was best to withdraw all the Crown's remaining bush-covered sections from the market.⁵²¹ There could be no more telling comment on the wrong-headed direction of purchase policy over the previous 10 years.

The economic cost of large-scale purchase to both the peoples of Te Urewera and the Crown was huge. As Dr Loveridge, considering Crown purchase policy generally at this time, put it: 'the country in general, and Maori in particular would have been much better off in the long run'⁵²² if in the early twentieth century the Crown had redirected its investment funds not into continuing Crown purchase of Maori lands, but into a 'rather different kind of investment which might have ensured full Maori participation in the colonial economy through development of their own lands.'⁵²³ We can only agree that the Crown, unable to jettison the colonial preoccupation with settler land acquisition and interests, missed its opportunity to include Maori who still retained tribal lands in the country's economic and political development at that time.

519. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 708

520. 'Opening National-endowment Lands in Auckland Land District for Sale or Selection, 6 March 1924, *New Zealand Gazette*, 1924, no 14, pp 640-641; 'Opening Lands in Gisborne Land District for Sale or Selection', 15 May 1924, *New Zealand Gazette*, 1924, no 33, p 1178

521. Philip Cleaver, 'Urewera Roding' (commissioned research report, Wellington: Crown Forestry Rental Trust, June 2002 (doc A25), p 77; Klaus Neumann, 'That No Timber Whatsoever Be Removed: The Crown and the Reservation of Maori-owned Indigenous Forests in the Urewera, 1889-2000' (commissioned research report, Wellington: Waitangi Tribunal, December 2001 (doc A10), p 57

522. Donald Loveridge, summary of 'The Development of Crown Policy on the Purchase of Maori Lands, 1865-1910', November 2004 (Wai 1200, doc A77(b)), pp 17-18 (quoted in Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 708)

523. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 708

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The great defeat of the UDNR Act was the Crown's wholesale undermining of the General Committee. Our view, as we have explained, is that the Crown's inordinate delay in taking the necessary steps to ensure the setting up of the Committee was enormously damaging to its prospects of establishing its authority – particularly given the unpropitious circumstances in which it was finally set up. The Crown looked to the General Committee only when it wished to open the Reserve to prospecting, mining, and settlement, and it seemed that the requirements of the UDNR Act to secure the consent of the Committee (that, at least, was how the Crown interpreted the Act) could not be evaded. At that point the Crown's collective actions were self-serving and unhelpful to a newly constituted body facing its own internal pressures:

- ▶ It suggested a fast-track process to the election of a General Committee at the beginning of 1908, and at the same time prompted Te Urewera leaders to consider land alienation ('cession') to meet what was presented as an obligation to meet survey and Urewera Commission hearing costs; and it did not subsequently explain to those leaders that the advice about costs, which was entirely contrary to the provisions of the UDNR Act, was wrong.
- ▶ It thus impressed upon the General Committee that its key purpose was to consider land alienation; and the Committee operated accordingly.
- ▶ It interfered with the composition of the Committee, reducing its size so that a number of local committees were no longer represented on it, then making appointments itself – a strategy which does not seem to have reduced tensions within the leadership, if that was what had been hoped.
- ▶ It failed to provide regulations (even when prompted by a Native Land Court judge) to define the powers and functions of the General Committee and local committees respectively (as provided by the UDNR Act 1896, and again by the UDNR Amendment Act 1909), thus leaving the committees without the kind of operational guidance that had been anticipated in 1896.
- ▶ It failed to empower the General Committee to inquire into and determine tribal and family boundaries, when that power was sought, which might have led to security of tenure on the ground for communities of owners and assisted them in land management and in protecting blocks from Crown purchase.
- ▶ It was inconsistent in seeking and securing the consent of the General Committee to the first alienations in 1909–1910, and failed completely to empower the Committee to transact alienations, which meant that it would prove easy to by-pass the Committee altogether in all its purchasing from 1915, dealing instead with individual owners.

The subsequent unhappy history of the General Committee shows that it could not survive this combination of Crown intervention (on some issues) and Crown failure to act (on others). What this led to was a succession of Committee meetings during 1909 and 1910

which dealt with alienation (first leases and then sales) – and which ceased altogether when Ngata indicated at the end of 1910 that no more sales would be proceeded with.

The final meeting of the General Committee in 1914 sums up the way in which it had by then been neutralised by the Crown. It met because it had an important proposal to consider: Ngati Whare, who had been hoping to begin commercial milling on their land for some time, thought they were finally in a position to do so. The proposal was debated in both March and April, the motion supporting the proposal passed and forwarded to Wellington. But the Crown (as we discuss in the next section) did not take it through the processes laid down in the 1909 Amendment Act, thereby ensuring that Ngati Whare would not enjoy a financial return from their timber, and clearing the way for its own purchase of the blocks.

Crown purchase from individual owners in Reserve blocks (including Te Whaiti), which started over a year later, confirmed the demise of the General Committee. Numia Kereru, its chairman, passed away in mid-1916.

Following Numia's death, the General Committee appears to have maintained what Miles has referred to as a 'de facto existence despite the Government's best efforts to ignore it'.⁵²⁴ Judge Wilson referred to the General Committee in August 1917 and described Te Amo Kokouri as a member at the time. Te Pouwhare wrote to the Native Minister the same year, advising that a Committee meeting was to be held; he would send a report of it. In 1918, Rawaho Winitana and 99 others of Waimako sought the reappointment of the Committee:

the General Committee, appointed under the Act of 1896, is non-existent, as also is the Provisional Committee. Twenty members were appointed to this Committee. The reason for its non-existence was on account of Kereru's decease. Wherefore, we pray that you re-appoint this committee to administer the Urewera Reserves Act in connection with the blocks hereinbefore referred to [Waikaremoana, Ruatoki 1, 2, and 3, Ruatahuna].⁵²⁵

Te Pouwhare wrote to the Minister again in July 1919, referring to a Committee set up to deal with tribal matters generally: such a body was needed to deal with local disputes, and some funding should be made available to it. Pouwhare asked for its members to be gazetted and for regulations. Edwards stated that the committee appeared to be a small number of original members of the General Committee.⁵²⁶ At this point Herries asked Judge Rawson whether the Committee actually existed; the land court said it had no record of the Committee, though the judge 'recalled the amended legislation under which they were to be set up'.⁵²⁷ Herries' response was to ask the judge to report when next he visited the

524. Miles, 'Te Urewera' (doc A11), p 407

525. Rawaho Winitana and 99 others to Herries, 23 September 1918, MA-MLP 1, file 1910/28/11, Archives New Zealand, Wellington (quoted in Miles, 'Te Urewera' (doc A11), p 407)

526. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 222

527. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 223

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district, but he had already reached the view that the Committee would not serve the interests of the Crown:

I think the existence of the committee might be at present a hindrance to purchasing interests. When consolidation of interests is wanted, the Committee might be called into existence.⁵²⁸

In May 1919, Te Amo Kokouri and 121 others requested that the General Committee and Provisional Committee again be set up to administer the blocks.⁵²⁹ But they had by then set up their own Komiti Kaumatua at Ruatahuna to deal with local affairs. Te Amo Kokouri was its chairman. The Tuawhenua researchers recorded that it continued in existence at least until 1924. The establishment of the Komiti, they said, was an important development. ‘This was the Ruatahuna people establishing their own mechanism for local governance, where the Crown had refused to reinstate the Komiti Nui o Tuhoe.’⁵³⁰

But there was no support from the Government for the reinstatement of the General Committee.⁵³¹ Why would there be? The Crown had consigned the General Committee to oblivion. With it went the aspirations of Tuhoe and Ngati Whare for self-government – aspirations recognised by the Crown in 1896 – at iwi and local level. And with it also went the protection which the iwi understood had been negotiated for the Reserve lands.

13.7.5 Were valuations of land and timber, and prices paid, fair?

The question whether the prices paid for UDNR lands from 1910 to 1920 were fair is closely related to the question whether the valuations on which prices were based were lawful and fair – though valuations alone did not determine prices. We pointed in our discussion of prices paid for Te Urewera rim blocks (see chapter 10) to the impact of a range of factors on prices: the Crown’s dealing with individuals in need of cash for food and other necessities – and by-passing of collective decision-making; its use of monopoly powers to exclude private competition and remove Maori choices about their land; and its single-minded determination to purchase Maori land, regardless of Maori interests or of whether the land was really needed for settlement. We examine here the impact of these factors on valuations and prices paid for Reserve blocks.

528. Native Minister to Native Under-Secretary, 23 September 1919, marginal comment on Rawson to Native Under-Secretary, 13 September 1919, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 576)

529. Te Amo Kokouri et al to Native Minister, May 1919, MA 13/91, Archives New Zealand, Wellington (cited in Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 222)

530. Tuawhenua Research Team, ‘A History of the Mana of Ruatahuna’ (doc D2), pp 141–142

531. Edwards, brief of evidence summarising ‘Local Government and Land Alienation under the Act’ (doc L4), pp 18, 20

There had been major changes in the law affecting the valuation of land, including Maori land, since the rim block purchases of 1881 to 1903. In 1896, a new Valuation Department was created by the Government Valuation of Land Act 1896. Its job was to create a general roll of all properties which would be the authoritative basis for land tax, stamp and estate duties, local authority rating assessments, and mortgage lending by Government bodies. The positions of Valuer-General and district valuers were created.⁵³² Nine years later, the Maori Lands Settlement Act 1905 provided that prices paid to owners of Maori land must be ‘not less than the capital value of the land as assessed under the Government Valuation of Land Act 1896.’⁵³³ For the first time, there was legal provision for a minimum price for Maori land, based on a Government valuation. This provision was carried forward into the comprehensive Native Land Act 1909. Also in 1909 there were changes to the law affecting Reserve blocks specifically. We begin with the valuations of Reserve blocks made in this new regime.

The claimants and the Crown gave opposing answers to the questions we consider here. Claimant counsel – drawing on the evidence of Tamaroa Nikora, Stephen Robertson, and Bruce Stirling – submitted that significant flaws existed in the valuation method adopted for Reserve blocks.⁵³⁴ Valuations (not strictly speaking valuations, in their view, but ‘estimates of value’ compiled by Lands Department officers with limited expertise) were too low, and development costs, including roading, were deducted from the land’s value, so that Maori owners were in effect paying the costs of development.⁵³⁵ Above all, there was no market in which to measure value, because the Crown had a monopoly on purchase. In light of this, the Crown had an added duty to ensure the price it paid for UDNR land (which was purchased illegally) was at market value.⁵³⁶

The Crown, as we have seen, rejected claimant ‘contentions’. Purchase prices, counsel submitted, were fair. Claimant criticisms that the Crown failed to obtain proper valuations for the land, and relied instead on officials who were not valuers and inappropriate methods of valuation, were unjustified. Such criticisms arose from confusion as to the method of valuation used.⁵³⁷ The Crown did not specifically address the impact of its purchase monopoly on its valuations. It suggested that Wilson based his ‘settlement value’ (evidently the value of the land when ready for settlement, minus the costs of development)) on his knowledge of comparable settlement values elsewhere; that it was not the practice to note the value of comparative land; and that there is insufficient evidence, given the quality and remoteness

532. Government Valuation of Land Act 1896, ss 2(2), 10, 11

533. Maori Land Settlement Act 1905, s 25

534. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 99

535. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 99, 113

536. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 99

537. Crown counsel, closing submissions (doc N20), topics 14–16, pp 81–82

This country on an average will carry two sheep to an acre, so that it is safe to say that when it is in grass it will be worth £5. per acre. I estimate the cost of getting it to that stage as follows:—grassing 40/-, roading 10/-, survey and administration 5/-, building 10/-, fencing 10/- per acre, total £3 /15/-, leaving a prairie value of 25/- per acre, but to be on the safe side, I take the different blocks individually and value them according to their quality and their positions with respect to roading. Parekohe 20/- per acre, Otara 20/-, Omahuru 20/-, Paraoanui North 17/6, Paraoanui South 17/6, Tauwharemanuka 15/-, Waikarewhenua 12/- and Mangapohuta [*sic*] 12/- per acre.

Source: Wilson to chief surveyor, 30 June 1910, MA-MLP1, file 1910/28/1 pt 1, Archives New Zealand, Wellington (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p2)

of the land, that land values on which sales were based from 1910 to 1921 were lower than they should have been.⁵³⁸

We are clear that the process by which Reserve blocks were valued was defective, unlawful, and did not adequately protect Maori land owners. So, we have concluded that we cannot accept the Crown's contention that the valuations were fair.

In respect of timber, we focus on the valuation of and prices paid for the valuable timber of Te Whaiti, though we also consider more briefly the issue of timber valuation across the whole of the rest of the Reserve. We uphold the claimants' submissions that the timber across blocks other than Te Whaiti was not valued, despite the fact that there were substantial quantities of merchantable timber on the blocks. The claimants submitted that the Crown was negligent in its valuations of Te Whaiti timber and very unfair in its methods of purchasing the land on which the timber stood.⁵³⁹ The Crown in response made a number of important acknowledgements, in particular that the valuation of the forests was such that the Crown paid a low price for them.⁵⁴⁰ Counsel conceded in their closings that Te Whaiti owners were 'actively constrained' in their ability to harvest their forests, in a way that had not been intended under the UDNR Act.⁵⁴¹

We heard a considerable amount of evidence on Te Whaiti timber valuation. We have concluded that the timber was neither properly measured nor properly valued. Moreover, the Crown in effect defeated the attempts of Te Whaiti owners to sell cutting rights to

538. Crown counsel, closing submissions (doc N20), topics 14–16, pp 84–85

539. Counsel for Ngati Whare, closing submissions (doc N16), pp 73–74; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 179–180

540. Counsel for Ngati Whare, closing submissions (doc N16), pp 88–89; Waitangi Tribunal, statement of issues, stage 2, undated (paper 1.3.6), p 125

541. Crown counsel, closing submissions (doc N20), topics 14–16, p 91

private buyers, deciding instead to buy individual interests in the blocks itself and secure the land and its timber in this way. The Crown did not even consider the desirability of securing their most valuable resource to the Te Whaiti owners.

We address the following questions about valuations and prices paid for Reserve land and timber:

- ▶ Was the process of valuing Reserve blocks lawful?
- ▶ Were valuations, and prices paid to Maori owners, fair?
- ▶ Were valuations and prices paid for standing timber fair?

(1) Was the process of valuing Reserve blocks lawful?

The issue here is whether the Reserve (governed by its own special legislation) was subject to provisions in the mainstream Native land legislation and, if it was, whether the valuations made of UDNR blocks complied with that law. We begin by outlining the main valuations of UDNR blocks.

The first valuations (of eight blocks in the Tauranga valley, northern Te Urewera)⁵⁴² were made in 1910 by District Surveyor Andrew Wilson of the Department of Lands and Survey after Ngata reported that the General Committee had consented to four proposals to sell land. The majority of the UDNR blocks were valued in 1915 by Wilson and Crown Lands ranger A B Jordan, accompanied by another ranger, R C Pollock, who valued the timber on Te Whaiti block. In addition, Wilson supplied new valuations for the nine subdivisions of Tauwharemanuka in 1916, after it was partitioned the previous year.⁵⁴³

District valuers were sent to the Reserve only occasionally, so the only Government valuations made were those based on district valuer J H Burch's valuation of the Te Whaiti block (July 1915), revised in August 1915 to show separate valuations for Te Whaiti 1 and 2; and Burch's valuation of the five partitions of the Ruatahuna block in 1919.⁵⁴⁴

Claimant counsel objected most strongly to the main sets of valuations in 1910 and 1915, in which Wilson played such a prominent role; counsel for Wai 36 Tuhoe described these as no more than 'estimates of value'.⁵⁴⁵ We consider these valuations first. Both sets of valuations were characterised by calculations designed to show that a Crown settlement scheme was financially viable, given the costs of buying the land, putting in roads, and surveying the land. Wilson explained his methodology in 1910. See sidebar.

542. See Wilson to chief surveyor, 30 June 1910, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (Stephen Robertson, comp, supporting papers to 'Te Urewera Surveys: Survey Costs and Land Valuations in the Urewera Consolidation Scheme, 1921-22', various dates (doc A120(a)), p 2)

543. Stirling stated that Wilson apparently supplied the new prices without a further visit to the land: Stirling, 'Te Urewera Valuation Issues' (commissioned research report, Whakatane: Tuhoe Waikaremoana Maori Trust Board, 2005) (doc L17), p 113.

544. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 115, 128

545. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 99

In other words, Wilson estimated the future price per acre of the land when developed as farms, then deducted estimated development costs from this nominal value, arriving at what he called a 'prairie value' (unimproved value, but see discussion below) of 25 shillings per acre. This was not how a Government valuer would have proceeded. First, Wilson was working with estimated, rather than actual, values – an estimated capital value and estimated development costs. Secondly, he deducted the estimated costs from his estimated capital value; in other words, he used what was called a 'residual' method. This method of determining unimproved value had been specified in the Government Valuation of Land Act 1896, which defined the unimproved value as the difference between the total capital value of the property and the capital value of improvements (section 5). But from 1900 the law required a different approach to valuing; the residual method could no longer lawfully be used. The unimproved value was defined in section 2 of the Government Valuation of Land Act Amendment Act 1900 as the selling price of land as if it bore no improvements, and both that value and the improvements had to be valued separately.⁵⁴⁶

Thirdly, as we have said, Wilson designated his final estimated value a 'prairie value' – a term he used in both his reports, though he never explained why, or what he understood by it. Nor, as far as we are aware, had the term featured in his instructions. 'Prairie value' is in fact an obscure term in the New Zealand context. The Crown assisted us by citing a textbook definition: '[prairie value] means the value of the land assuming both the land itself and the surrounding environment were in their original or unimproved state.'⁵⁴⁷ In counsel's view: 'The lands Wilson valued at 1910 and 1915 were mainly prairie lands by virtue of their size, remote location, and distance from developed lands and supporting infrastructure.'⁵⁴⁸ It does seem likely that Wilson adopted the term because he was trying to distinguish the value of lands in what he saw as a 'remote' and largely undeveloped district from the 'unimproved value' of lands in a rural area where development was already under way and where there was a market in land. Perhaps he used it also to underline the fact that he was not engaged in a standard valuation exercise.

But Wilson concluded by putting actual values on the individual blocks 'to be on the safe side', as he put it; he had, after all, to provide block values for Crown purchasers. His values were based, he said, on the quality of land and the ease of access.⁵⁴⁹ (These criteria, in fact, were among those laid down by the Valuer-General in a Memorandum to his valuers, which specified that when valuing particular pieces of land in a district, they must be take into account the 'quality of soil, situation, accessibility, configuration, or other natural

546. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 13–14, 101–102

547. Crown counsel, closing submissions (doc N20), topics 14–16, p 84

548. Crown counsel, closing submissions (doc N20), topics 14–16, p 84

549. Wilson to chief surveyor, 30 June 1910, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington (Robertson, comp, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 2)

The 1915 Estimated Values of 31 UDNR blocks

This area [suitable for settlement] of say, 370,000 acres would settle about 350 settlers giving them about 1,000 acres each, and it would take 200 miles of roading to serve this extent of country, taking the cost of roading at £800 per mile . . . surveying, advertising etc, will be about 5/- per acre, and we consider that the average price per acre will be about 10/- per acre, against this the average value of the land when ready for settlement will be 25/- per acre, so we have 370,000 acres @ 25/- – £462,500

370,000 acres @ 10/- prairie value	185,000
200 miles roading @ £800: per mile	160,000
Expenses, Surveys &c @ 5/- per acre	92,500
Balance	<u>25,000</u>
	£462,500

A schedule is attached giving the price of each block per acre at the present prairie value which will average out at 10/- per acre. This estimate as a whole is a very fair and equitable one, but we have endeavoured to place it so that there can be no loss to the Crown, and no possibility of disaster to any settlement scheme.¹

1. Wilson, Jordan, and Pollock to Chief Surveyor, 1 August 1915, MA 13/21, Archives New Zealand, Wellington (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 23–27)

peculiarities.⁵⁵⁰) We note that Wilson progressively reduced the value as the blocks became more remote from Waimana. These values averaged 15s 4d per acre. As we will see, the law provided that owners should not be paid less than the capital value of the land. This was what Wilson should have assessed, but he did not. He took no account of the improvements Maori communities had in fact made on the land at or near their kainga, such as clearing, grassing, fencing, and buildings.⁵⁵¹ The Crown suggested that Wilson assumed that the Crown, on partition, would not acquire Maori settlements and their improvements. Perhaps he did, but this strikes us as an ad hoc decision. We discuss this matter further below.⁵⁵² Wilson commented in his report that he considered the land 'will be rushed [by settlers] at 40/- per acre, including roading'.⁵⁵³ Given that the Crown's share of Wilson's estimated development costs (those for roading, survey, and administration) was estimated at 15 shillings

550. FW Flanagan, *Memorandum Explanatory of The Valuation of Land Act, 1908, and its Amendments* (Wellington: Government Printer, 1913, 1921), p 7

551. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 115–116

552. Crown counsel, closing submissions (doc N20), topics 14–16, p 84

553. Wilson to chief surveyor, 30 June 1910, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 2)

per acre – the remaining development costs would have been borne by individual settlers – the estimated total cost to the Crown (including land purchase) would have been 30 shillings an acre. There was thus a comfortable margin of 10 shillings an acre, averaged over the blocks, to cushion the Crown in case costs – possibly including the costs of paying owners for improvements – were higher than anticipated, with the possibility also of an attractive return. Wilson's construct, as set out in the first part of his report, (see sidebar) was thus basically an exercise in reassuring the Government that settlement of the Reserve lands it might acquire could be achieved without financial risk to the Crown, and with the prospect of profit.

In 1915, Wilson and other Lands Department officials engaged in a second valuation exercise, this time on a much larger scale: 31 Reserve blocks totalling 524,929 acres, or 80 per cent of Reserve lands, were involved.⁵⁵⁴ This evidently followed the recommendation of the Attorney-General, A L Herdman, who travelled from Murupara through Te Whaiti, Ruatahuna, and Waikaremoana to Wairoa in March 1915, that 'competent judges' be sent to the district to give their opinion of the land and the timber.⁵⁵⁵ Wilson, whose instructions came from the chief surveyor, did the valuations jointly with Crown lands ranger A B Jordan and Robert Pollock, also a ranger. (Pollock put his name only to the appended note on roading, and also, as instructed, supplied an additional report on the timber of Te Whaiti block.⁵⁵⁶) Four of the blocks (Waikaremoana, Te Whaiti, Manuoha, and Paharakeke), amounting to 182,732 acres, were deemed unfit for settlement 'at present'. The officials subtracted this amount from the overall area of the Reserve (which they gave as 653,000 acres), leaving a balance of 470,420 acres; then subtracted a further 100,000 acres for reserves for 'Native owners' and 'broken patches' suitable for 'scenic and climatic purposes'. That is, Maori were to be left with less than one-sixth of the Reserve. This left some 370,000 acres suitable for farming settlement. The officials calculated that the average value of this land 'when ready for settlement' would be 25 shillings per acre (see sidebar).⁵⁵⁷

In other words, Wilson and Jordan started with the projected income from sales of the land they expected the Crown to acquire, working on the basis of an actual settlement scheme with a specified number of potential farmers. They deducted estimated costs of acquiring the necessary lands and of servicing the estimated number of farms to be

554. Wilson schedule attached to Wilson and Jordan to chief surveyor, 2 August 1915, file 20/201, vol 1, LINZ (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 26)

555. 'The Urewera Country: Natives Want Settlement: Good Land and Timber', *Auckland Weekly News*, 18 March 1915, scrapbook 'Urewera 2', Whakatane District Museum and Gallery archives, Whakatane (quoted in Neumann, 'That No Timber Whatsoever Be Removed' (doc A10), p 36)

556. Robertson, 'Te Urewera Surveys' (doc A120), pp 53–54

557. Wilson and Jordan to chief surveyor, 1 August 1915, MA 13/91, Archives New Zealand, Wellington (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 23–27)

developed on those lands (including a remarkably high cost for surveying and ‘expenses’),⁵⁵⁸ which left an estimated balance of £25,000 (some 5.5 per cent of the total estimated cost of the scheme); that is, an allowance for contingencies – and a comfortable profit. In other words, the officials were still using the residual method, and were still not working with actual valuations. In their attached schedule, they did assign each block a ‘prairie value’, and then averaged them. The values put on the blocks varied widely, from a high of £10 per acre for some relatively flat and very good-quality land at Ruatoki, to five shillings an acre for a small number of blocks at the bottom end of the scale that were still deemed suitable for settlement.⁵⁵⁹ It appears that the average value was worked out only on blocks deemed suitable for settlement, despite the fact that the four blocks not deemed suitable were listed, with their values, in the schedule included with the report.⁵⁶⁰

The average value assigned to the blocks (about 10 shillings per acre) was considerably lower than the average value assigned in 1910. The average price officials had thought settlers would be prepared to pay, namely 25 shillings per acre, was also considerably lower. Accordingly, the Crown’s possible profit (at about 5.5 per cent of the estimated value of the land when ready for settlement) was a great deal lower than the profit margin of 25 per cent that had been indicated by the 1910 valuation.

The generally lower 1915 values may have been the result of several factors. First, it is doubtful how careful the officials’ appraisal of the land was. Though Wilson and the two rangers had travelled through Te Urewera, their viewing of the land – as they themselves pointed out – was hampered by two of ‘the largest floods on record’, and as they ‘travelled in mist and rain’ they ‘could not see the outlines of the country.’⁵⁶¹ Tamaroa Nikora noted that in 1922 the staff surveyor P W Barlow ‘disagreed with Mr Wilson’s opinion of this country’, reporting: ‘I have been informed by the natives that Mr Wilson on his tour of inspection did no more than follow the riding track from Waimana to Maungapohatu up the Tauranga Valley so his knowledge of this country only extends to that area in view as you ride along the track.’⁵⁶² As Mr Nikora pointed out: ‘Anyone who knows Te Urewera, would know that it was not possible for Wilson and Jordan to inspect Te Urewera within a short space of time

558. The schedule of surveying rates adopted by the Institute of Surveyors in February 1917 (New Zealand Gazette, 29 May 1919, pp1620–1621) suggests that the survey of 500 to 1000 acre sections of forested hill country would have cost around two shillings per acre (taking into account the difference in mileage rates for flat open country (ninepence per acre) and rough hill country under forest, a factor of 2.625).

559. Wilson and Jordan to chief surveyor, 1 August 1915, MA 31/21, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 23–27)

560. It is not possible to confirm the calculation of the average value because in the case of Ruatoki 1 and 3 blocks, two separate values were listed, obviously indicating assessment of different quality of land within them – but there is no indication of how much land in each block was valued at the higher or lower value.

561. Wilson and Jordan to chief surveyor, 1 August 1915, MA 31/21, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 23–27)

562. Barlow to chief surveyor, 18 July 1922, file 20/201, vol3, LINZ (quoted in Tamaroa Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), p17)

Section 372 of the Native Land Act 1909 (Part XIX)

(1) No interest of a Native in Native land shall be purchased by the Crown under the authority of this Part of this Act at a price which is less than the amount at which the capital value of that interest is valued under the Valuation of Land Act, 1908, in the district roll which is in force under that Act at the time of the contract of purchase.

(2) If no such valuation is then in force, the Native Land Purchase Board shall require the Valuer-General to make a special valuation of the interest proposed to be acquired, and the interest shall not be purchased at a less price than the amount at which it is so valued.

(3) No purchase shall be invalidated by any disregard of the requirements of this section, but the deficiency in the purchase-money shall constitute a debt due by the Crown to the owner of the interest, and recoverable accordingly in proceedings instituted within two years after that interest has become legally vested in the Crown.

or in the mist, rain and flood.⁵⁶³ Secondly, in their 1915 valuations, the officials seem to have taken account of the fact that Maori would doubtless wish to retain the lands they were already occupying, which were ‘the best portions.’⁵⁶⁴ The value of the remaining lands would therefore be lower. Finally, we have to consider the possibility that the valuations reflect the unsuitability of much UDNR land for pastoral farming on a large scale – despite the sudden and, as it turned out, rather short-lived political and settler enthusiasm for it.

Both the Crown and the claimants considered the question of the legal requirements for valuations within the UDNR. Crown counsel made submissions on the question whether in 1910 the Crown was obliged to obtain a valuation in terms of part XIX of the Native Land Act 1909. (This part dealt with purchases of Maori land by the Crown.) The Crown was not prepared to give an unequivocal answer about the position at law, though it pointed to the significance of section 13(1) of the UDNR Amendment Act 1909:

When any land subject to the principal Act is purchased by the Crown from the General Committee in pursuance of that Act, the contract of purchase shall be carried into effect by a Proclamation in the same manner as in the case of a purchase from the assembled owners under Part XIX of the Native Land Act 1909, and all the provisions of that Part of that Act shall apply accordingly in the same manner as if the land had been purchased by the Crown under the authority of that Part of that Act.⁵⁶⁵

563. Tamaroa Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), p 17

564. Wilson and Jordan to chief surveyor, 1 August 1915, MA 13/21, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 23–27)

565. Crown counsel, closing submissions (doc N20), topics 14–16, pp 79, 83

Counsel suggested that the valuation provisions in part XIX (section 372) of the Native Land Act 1909 ‘may . . . have applied’, pointing also to section 13(2) of the UDNR Amendment Act 1909 which specified that no land was to be purchased except in accordance with the principal Act.⁵⁶⁶ In light of this latter provision, Crown counsel stated, the requirements should have been clarified by regulations made under the UDNR Act.⁵⁶⁷ In other words, counsel suggested that in the absence of such regulations (for which the Crown did accept responsibility), it was unclear whether the valuation provisions of the 1909 Native Land Act applied. Relying on that uncertainty, Crown counsel submitted that while the Crown proceeded at the time on the basis that part XIX of the 1909 Act did apply (so that both the valuation requirements and those designed to protect Maori against landlessness should have been satisfied),⁵⁶⁸ it did not accept that any failure to meet those requirements would mean that the Crown had acted unlawfully. To us that argument seems unduly complicated and unconvincing. Our view is that section 13(1) extends all the possibly applicable provisions of the Native Land Act to Crown purchases from the General Committee; while section 13(2) reinforces the crucial point that, under the UDNR Act, the General Committee has to be the vendor. In any case, we consider that, had regulations been made under the UDNR Act, it is highly unlikely they would have exempted the Crown from the need to value the land in the manner prescribed by the Native Land Act, since it is clear that the valuation provisions in that Act were intended to be of universal application.

On the question whether the 1910 and 1915 valuations complied with section 372 of the Native Land Act 1909, Crown counsel placed weight on the instructions for valuing blocks given to Wilson and his colleagues by the Native Land Purchase Board (see sidebar).

We comment on the Crown’s obligations under section 372 as follows:

- ▶ It seems that section 372(1) did not apply, since we cannot find from the evidence before us that UDNR blocks were generally recorded on district valuation rolls before 1918. We have one example: Mr Stirling noted that two portions of Paraeroa block (6,000 acres and 5,311 acres) were recorded on Whakatane County Valuation Rolls for 1918, with unimproved values of £4,500 and £3,975 respectively.⁵⁶⁹
- ▶ It seems more likely, therefore, that section 372(2) applied, and that the Native Land Purchase Board should have required the Valuer-General to make a special valuation before embarking on purchase in the blocks. That, we note, was what the Public Trustee expected when he was approached about the purchase of minors’ interests. As the final

566. ‘Notwithstanding anything in part XIX of the Native Land Act, 1909, no land subject to the principal Act shall be purchased by the Crown otherwise than from the General Committee in pursuance of the principal Act.’ See Urewera District Native Reserve Amendment Act 1909, section 13(2).

567. Crown counsel, closing submissions (doc N20), topics 14–16, p 80

568. Crown counsel, closing submissions (doc N20), topics 14–16, pp 79, 83. We have considered the Crown’s obligations in respect of protecting Maori from landlessness in an earlier section.

569. Opouriao Riding, Whakatane Valuation Rolls, 1913 and 1918, BBBC, A150, bundle 245, rolls 1139 and 1140, Archives New Zealand, Auckland (cited in Stirling, ‘Te Urewera Valuation Issues’ (doc L17), p 118)

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words of the subsection provide, once a special valuation was made, it set the minimum price at which the Crown could purchase the interest so valued.

- ▶ The Crown pointed in submissions to official confusion, in that purchase agent Bowler understood the 1915 valuations had been ‘special’ valuations, while Jordan, the Native Under-Secretary, stated in 1917 that no special valuations had been carried out because ‘none of the blocks have been surveyed’ (ie, they had not been surveyed to the standard required for land transfer title). Crown purchases in the Reserve had therefore been carried out ‘on a basis of value estimated by high officials of the Lands Department’.⁵⁷⁰
- ▶ Whatever officials believed to the case, the fact remains that neither in 1910 nor in 1915 did the Native Land Purchase Board require the Valuer-General to make special valuations. If in fact the board was aware in 1915 that special valuations were a problem because surveys of Reserve blocks did not meet Government valuation standards, it failed to take the further option of advising the Crown that this was the case, and that special legislative provisions were needed to suit the unique circumstances of the blocks.
- ▶ Those circumstances were unique because it had never been envisaged that the Reserve would be subject to purchasing on a massive scale. Extensive, high-quality surveys had not been necessary. It will be recalled from chapter 9 that much of the force of the 1895 agreement rested on Seddon’s acceptance that survey costs had been excessive, and full surveys were not required for the kind of title determination process envisaged for the Reserve.
- ▶ The Crown suggested to us that, ‘irrespective of the position at law’, the fact that the Native Land Purchase Board included the Valuer-General as one of its members meant that its authorisation of purchases based on the valuations before it amounted to a ‘review process’.⁵⁷¹ We find this submission expedient and unconvincing. One public office cannot be equated with another when their roles are different – even though the membership may overlap. The mere fact that the Valuer-General was a member of the Native Land Purchase Board could not be said to absolve the board from meeting the requirements of section 372(2). (We add that since the quorum was three members, board meetings could have proceeded in the absence of the Valuer-General.)

We therefore find that the 1910 and 1915 valuations were not lawfully made. If Crown views of what was required were so riddled with error and contradiction, how could the peoples of Te Urewera hope to understand the process?

570. Crown counsel, closing submissions (doc N20), topics 14–16, p 83; Edwards, ‘The Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 189; see also Native Under-Secretary to Public Trustee, 26 March 1917, MA-MLP 1, file 1910/28/1, pt 2, Archives New Zealand, Wellington (cited in Webster, ‘Urewera Consolidation Scheme’ (doc D8), p 198

571. Crown counsel, closing submissions (doc N20), topics 14–16, p 83

Seddon's Explanation to Tuhoë of the Crown's Commitment to Fair Valuations and Prices, 1894

I will give you an explanation of the latest laws passed affecting the land of the Maoris [the Native Land Purchase and Acquisition Act 1893]. As you have no surplus land, it will not affect you, but I will tell you the law shortly. In the first place there is a Board established that has to decide whether the land is wanted for settlement purposes, and whether the Natives are utilising it or not. Then this impartial Board – upon which the Natives have direct representation (I think they have two representatives, the member for the district, and one appointed for minors), and a judge of the Supreme Court – these sit and decide upon the value of the surplus land which the Natives desire to dispose of. Then, when this is done, an election is held. The majority, at a meeting of all the owners of the surplus lands, elect whether or not they will hand over the land to the Government, either to sell it or lease it for them, the Natives retaining the ownership of the land, but leasing it to the Government at the price fixed by the Board. If the majority say they will not dispose of it, but want it for themselves, and decide to retain it, the law says, Very good, retain it. But if two-thirds say they do not desire to dispose of it to the Government – if they prefer to submit it to public auction and the world, so that it may fetch the highest price upon the market – the law says it shall be dealt with in that way. You will therefore see that, by the latest law passed, no advantage whatever is being taken of the Native race. All the Government desires is that the Natives should have ample land for themselves to cultivate and prosper by.¹

1. 'Pakeha and Maori: A Narrative of the Premier's Trip through the Native Districts of the North Island', 1894, AJHR, 1895, G-1, p 82

(2) Were land valuations, and resulting prices paid to Maori owners, fair?

Did an unlawful process mean that UDNR blocks were not fairly valued and that Maori owners did not receive fair prices? Crown counsel submitted that it could not be assumed that a Government valuer might have reached fairer, and therefore higher, valuations than Wilson and his colleagues.⁵⁷² Wilson and the officials he worked with might, in other words, have been more or less on target anyway.

Certainly, the new valuation requirements for Maori land introduced in 1905 were supposed to protect Maori. The requirement in the Maori Land Settlement Act 1905 that Maori land not be bought at less than Government valuation was seen as a major step forward, establishing a minimum price for the first time. As we have pointed out earlier, historian Don Loveridge concluded that the provisions led to a substantial increase in prices offered for Maori land (see chapter 10). During the first decade of the twentieth century, prices paid

572. Crown counsel, closing submissions (doc N20), topics 14–16, p 82

by the Crown almost doubled over pre-1900 averages – testament to the fact that prices paid before the reform were too low.

But were Government valuations still protecting Maori owners by the 1910s? Bruce Stirling suggested that the Valuer-General, during this period, was less helpful to Maori land owners than he might have been. On the one hand, he repeatedly urged on his valuers that Maori land must not be valued differently from Crown or freehold land. He was strongly critical of such practices as including the cost of buying the land as a factor in the valuation, and discounting the value of Maori land because of what valuers still regarded as costly difficulties associated with settlers getting title – the legacy, as Stirling rightly pointed out, of the Native Land Court system and the titles created by Native land legislation. But, as he also pointed out, the Native Land Act 1909 had greatly eased the process of alienation for private buyers.⁵⁷³

On the other hand, the Valuer-General was still anxious to hold down unimproved values, despite rising rural land prices during and particularly after the First World War (peaking in 1921).⁵⁷⁴ In Stirling's view, the Valuer-General was in fact sending mixed messages to his valuers, because ultimately he wanted to keep down the value of Maori land to ensure that settlement proceeded.⁵⁷⁵ Maori thus paid the price for the continuing Government pre-occupation with speeding up settlement, even in the 1910s.

We agree that Maori were undoubtedly the losers in this time of determined Government purchase, but we do not think this can be laid primarily at the door of the Valuer-General. He was charged with overseeing the principled setting of land values across the country, and he had a raft of fiscal considerations to take into account. As he stated to the 1915 Valuation of Land Commission, the Government could not accept 'boom' values for rural land; it could not pay high prices for land for settlement, because Government valuations were made for the purposes not only of taxation and revenue but also of public lending institutions.⁵⁷⁶ In other words, the Valuer-General had to strike a balance between upward and downward pressures: higher values would mean a bigger tax take but lower values would mean the level of Government lending to settlers for purchase could be reduced.

The real problem for the UDNR, in our view, was that the Crown's purchase monopoly, combined with its purchase of individual interests, deprived owners of the protection in negotiations of the General Committee or any other kind of community decision-making, such as the local committees, or a meeting of assembled owners. The Crown might not have

573. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 35–37; see also the 25 July 1913 circular in FW Flanagan, *Special Circulars Issued by the Valuer-General for the Guidance of District and Local Valuers [1917]* (Wellington: Government Printer, 1917), p 4.

574. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 162–164; Bryan Gilling, *Government Valuers: Valuation New Zealand, 1896–1996* (Wellington: Valuation New Zealand, 1996), pp 69–70

575. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 47, 53

576. Statement of the Valuer-General, minutes of evidence, Valuation of Land Commission, AJHR, 1915, B-17B, p16

been willing to pay top market prices for land, but it should not have denied Maori the right to seek market prices – as it did in the UDNR. Where the Crown was the monopoly purchaser, this generally had the further effect of keeping purchase prices down. By the end of the nineteenth century, there had been increasing official recognition that the Crown's exercise of such powers depressed prices paid to Maori sellers throughout the country. We have already cited (in chapter 10) Stout and Ngata's damning verdict on the re-introduction of Crown pre-emption in 1894, enabling the Crown to set its own terms without fear of competition or of robust Maori bargaining: The owners could not bolster their case for higher payments by reference to market prices, and they had to meet the costs of securing title, and of survey, though their only source of revenue was their lands.⁵⁷⁷

The Liberal Government's Native Land Purchase and Acquisition Act 1893, designed to facilitate the disposal of 'surplus' customary land, had, as we pointed out earlier, recognised the importance of affording Maori fair prices. Seddon stressed this when he visited Te Urewera in 1894 prior to the drawing up of the UDNR legislation: under the 1893 Act, he said, the people could have their land auctioned, either for lease or for sale to the highest bidder, or – if they dealt with the Crown – their land would be valued by an independent board, on which they would be represented (see chapter 9). The Act itself never came into force (see chapter 10), Seddon told Tuhoe that it would not affect them, because they had 'no surplus land', but we note his undertaking that Maori owners prepared to sell to the Crown might expect independent valuations and participation in the process of deciding values.

Though we have a limited basis on which to assess the fairness of the 1910 and 1915 estimates or 'valuations' – and the Crown's suggestion that they were 'possibly generous' for some blocks – we can make some comparisons.⁵⁷⁸ We can compare a Government valuation with a Lands and Survey Department estimate in the case of Ruatahuna, where Wilson and Jordan's 1915 per-acre average across the whole block was six shillings (total: £17,000).⁵⁷⁹ Heather Bassett and Richard Kay, working from district valuer Burch's unimproved values of the five Ruatahuna subdivisions in 1919, noted that the average value per acre, 6s 10d, represented only a slight increase on the 1915 average value; and considered that there was evidence Burch had been influenced by the Wilson and Jordan valuations, and by a conversation with Bowler.⁵⁸⁰ We do not think it surprising, however, that he knew of the earlier valuations, or that Bowler had talked to him. There was in any case a key difference between his valuation and the earlier one: Burch set out the unimproved value, value of improvements, and capital value, as required by law, on standard valuation forms. In Te Arohana,

577. Stout and Ngata, 'An Interim Report on Native Lands in the Rohe-Potae (King Country) District', 4 July 1907, AJHR, 1907, G-1B, p 4 (quoted in Stirling, 'Te Urewera Valuation Issues' (doc L17), p 28)

578. Crown counsel, closing submissions (doc N20), topics 14–16, p 82

579. Bassett and Kay, 'Ruatahuna' (doc A20), p 101

580. Bowler to Native Under-Secretary, 9 September 1918, MA-MLP 1, file 1910/28/11, Archives New Zealand, Wellington (Heather Bassett and Richard Kay, comps, supporting papers to 'Ruatahuna: Land Ownership and Administration, 1896–1990', various dates (doc A20(c)), p 26)

for instance, the unimproved value was £3,425; the value of improvements £1,150; and the capital value £4,575. In addition, Burch gave different per-acre values for different areas of each block: in Te Arohana he valued 3,700 acres at 15 shillings per acre, 350 acres at £1 per acre, and 300 acres at £4 16s 8d per acre.⁵⁸¹ Stirling, working from the capital value of the blocks, gave the total overall average as 8s 8d (total: £25,130) – a considerable increase on 6s 10d.⁵⁸² He pointed out also that the improvements to the blocks Burch valued – clearing, grassing, and fencing – amounted to £5,080 (one-fifth of the land's value) – and this did not seem to include buildings.⁵⁸³

But the Crown did not buy interests at capital valuation, despite the legal requirement that capital valuation be its minimum purchase price. When Bowler sought instructions as to whether he should buy at capital value, he was told to buy at the unimproved value. If the Crown acquired any improved land, compensation for the improvements could be assessed later.⁵⁸⁴ Stirling stated that it is not clear whether the Crown acquired any Ruatahuna land containing improvements, but since many unsold interests were consolidated in Ruatahuna, it may not have done.⁵⁸⁵

We draw two conclusions from the Ruatahuna Government valuation. First, the capital valuation and the valuing of improvements on these blocks highlights the fact that in 1910 and 1915 improvements on the land – even if quite substantial – were simply not factored in. The improvements on very few other blocks were valued until after purchasing had ceased. (Stirling added the example of a valuation of the main kainga on Te Whaiti block, with half a dozen other kainga, including some on the road to Waikaremoana on Tarapounamu block, assessed by a Lands Department surveyor in 1921. The whare, with associated clearing and fencing, covering some 270 acres, were valued at a total of £1,185, an average of more than £4 7s per acre.⁵⁸⁶) Secondly, the more exact valuation of different parts of the blocks is a reminder that purchase of individual interests, and Crown failure to negotiate purchases with the General Committee, removed from Maori owners the right to make a collective informed choice about which parts of a block they might designate for sale and what the returns to their community might be.

Beyond this, the historical evidence before us allows us to make only piecemeal comparisons with values and prices paid for blocks adjacent to the UDNR. For instance, Crown land in the Waimana district, just outside the UDNR, was leased in perpetuity to settlers, and as

581. J Burch, valuation forms, MA-MLP 1, file 1910/28/11, Archives New Zealand, Wellington (Bassett and Kay, supporting papers to 'Ruatahuna' (doc A20(c)), pp 43–47)

582. Stirling, 'Te Urewera Valuation Issues' (doc L17), p 115

583. Stirling, 'Te Urewera Valuation Issues' (doc L17), pp 115–116

584. Bassett and Kay, 'Ruatahuna' (doc A20), p 116. We assume that the Native Department, which gave this instruction, considered itself covered by section 372(3) of the Native Land Act 1909, which provided that a purchase would not be invalidated even if the requirements of the section were not met; but a Maori owner might subsequently recover an amount owing to him. (see sidebar)

585. Stirling, 'Te Urewera Valuation Issues' (doc L17), p 117

586. Stirling, 'Te Urewera Valuation Issues' (doc L17), p 116

early as 1913 its Government valuation for unimproved land was between £12 and £19 an acre; by 1918 it was £25 an acre. The best land in the neighbouring Ruatoki block, by contrast, was valued at just £10 an acre.⁵⁸⁷

In the absence of a market for UDNR lands, we also have to look beyond the Reserve to find market prices for comparable land bordering the Reserve – land that was similarly rugged and difficult to access unless roads were put in. Stirling, who carried out such a comparison, noted that the market was prepared to pay substantially more than the Crown paid within the UDNR. The Tahora block was one such example. Large parts of Tahora 2C were sold off in 1905, as the East Coast Native Trust sought to reduce its debt burden, at more than £1 per acre. In 1921, 6,711 acres of Tahora 2C3(2) were sold for more than £4 per acre, and a further 3,000 acres of the block were sold at £4 per acre by 1923 (see chapter 12). We note that this block, described by a surveyor at the time as ‘a fine piece of land,’⁵⁸⁸ was a success story in terms of its selling price among southern Tahora lands. The Crown’s attempt to ballot other parts of 2C blocks that it owned in 1922 was unsuccessful, and within a couple of years it withdrew the sections (downgraded from second- to third-class land) from the selection process.⁵⁸⁹ Government valuations of Tahora blocks varied considerably, as Stirling noted. Tahora 2AD(2) – a block described as ‘for the most part steep and broken’⁵⁹⁰ – was valued at just 9s 6d per acre in 1910. A special Government valuation in 1911 increased it to 12s 6d per acre. But later the same year, a private purchaser offered a price for Tahora 2AD(2) which was just on £1 per acre, and higher offers were made.⁵⁹¹ A sale was finally completed at just over £1 per acre in 1914.⁵⁹²

On the other side of the Reserve, Government valuations were also eclipsed by market prices, which were ‘typically closer to double the government valuation.’⁵⁹³ But prices could rise higher than that: about five times more than Government valuation for Waiohau 2, and three to eight times more than Government valuations for various Matahina subdivisions.⁵⁹⁴

Such examples, though indicative of how the market in land operated adjacent to Reserve blocks, must remain of limited use. Ultimately, there was no market in the Reserve, so, just as with many rim blocks, there is no basis for comparison of prices paid by the Crown. But,

587. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), pp 119–120. We note that Fisher, the Native Department Under-Secretary, queried the variation in values assigned in 1915 to Ruatoki 1 and 3 blocks (£10 and 7s 6d), and concluded that perhaps, owing to the partitions of the blocks, ‘there are certain choice spots cut out which are worth £10. per acre’. Fisher to Bowler, 2 September 1915, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 34–35)

588. Thomas Cagney to chief surveyor, undated, MA-MLP 1, file 1919/40, Archives New Zealand, Wellington (quoted in Peter Boston and Steven Oliver, ‘Tahora’ (commissioned research report, Wellington: Waitangi Tribunal, June 2002 (doc A22), p 256)

589. Boston and Oliver, ‘Tahora’ (doc A22), pp 245–251

590. John Dillicar, declaration under the Native Land Act 1909, 25 January 1912, BAJJ 11195/5/K, file 1911/241, Archives New Zealand, Auckland (quoted in Boston and Oliver, ‘Tahora’ (doc A22), p 201)

591. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), pp 120–121

592. Boston and Oliver, ‘Tahora’ (doc A22), pp 204–205

593. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), p 122

594. Stirling, ‘Te Urewera Valuation Issues’ (doc L17), p 122

as we concluded for the rim blocks, so we conclude for the UDNR: ‘it was precisely because the Crown had banished any market that it could set its own prices’ (see chapter 10).

We note also that there was contemporary criticism of the Crown’s prices. Both UDNR owners and their member for Parliament, Ngata, thought the prices paid were inadequate. Some UDNR owners were petitioning Parliament by 1916, seeking the removal of restrictions so that they might get better prices. A 1919 Tuhoe petition urged that restrictions on private purchasing be removed so that owners might get ‘full market value . . . the best price obtainable’ for their land, and that a ‘new and revised Government valuation’ be made before any further Crown purchasing took place. They went further, and sought an inquiry into UDNR purchases to determine ‘[w]hether any purchases so made by the Crown are unjust . . . and should be cancelled upon the Crown being refunded the purchase moneys paid.’⁵⁹⁵

Ngata was prepared to state in 1921 that Maori ‘would be amply justified in urging that . . . since 1914 the Crown has purchased Urewera lands at less than fair value,’ as he put it to Coates.⁵⁹⁶ He told the people themselves at a hui that the prices they were paid had been decided ‘as far back as 1910’ and were ‘pre-war’ prices that had ‘not advanced to the same extent as the general advance through the Dominion’. The Crown, he said, had been ‘making a very good bargain.’⁵⁹⁷ Crown counsel, in their submissions, acknowledged that unimproved values nationally ‘moved markedly’ in this period (as Stirling showed), but questioned whether this had ‘any relevance’ to Reserve lands, given the absence of infrastructure there.⁵⁹⁸ Bowler himself evidently thought it relevant: in 1918 he urged that purchasing start in Ruatahuna block at once as ‘it is not unlikely that values will go up in the near future’⁵⁹⁹ and in 1920 he suggested that purchasing be abandoned altogether because Maori were becoming aware of ‘the recent all-round rise in values,’ which ‘made negotiations harder.’⁶⁰⁰ Ngata’s view was that the Crown had in fact served its own interests by relying on out-of-date valuations – and in our view it is not surprising that he thought this.

595. Petition of Hori Hohua Aterea and 11 others, 20 September 1919, petition 312/19, MA 1, file 1919/603, Archives New Zealand, Wellington (SKL Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 98–100)

596. Ngata to Coates, 19 September 1921, MA 1, file 29/4/7, pt1, Archives New Zealand, Wellington (Vincent O’Malley, comp, supporting papers to ‘The Crown’s Acquisition of the Waikaremoana Block, 1921–25’, various dates (doc A50(b)), p 473)

597. ‘Notes of Meeting of Representatives of the Urewera Natives with the Hon DH Guthrie, Minister of Lands, and the Hon JG Coates, Native Minister, at Ruatoki, on the 22nd May, 1921’, 11 June 1921, MA 1, file 29/4/7A, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 133)

598. Crown counsel, closing submissions (doc N20), topics 14–16, p 85

599. Bowler to Native Under-Secretary, 9 September 1918. MA-MLP 1, file 1910/28/1, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 88–89)

600. Land Purchase Officer to Native Under-Secretary, 15 October 1920. MA-MLP 1, file 1910/28/1, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 111)

One thing, after all, is clear. The Crown's intentions towards UDNR owners in 1910 and in 1915, when values were assigned to the blocks, do not stand up to scrutiny. The primary concern was not that Maori should receive fair prices, but that the Crown should not be exposed to any risk as it embarked on the purchase of a very substantial quantity of Te Urewera land which was suddenly considered suitable for farmer settlement. Wilson, as the agent of that policy, had a clear conflict of interest: as a Crown official attached to a department whose prime concern was with settlement, he was not an appropriate decision-maker about prices to be paid to Maori sellers. In his official circulars addressed to district valuers, the Valuer-General had drawn attention to the importance of valuers having no conflict of interest: 'The strength and value of this Department lies in its absolute independence.'⁶⁰¹ The cautionary example he gave related to a firm of land agents and Native agents, two of whose partners were also local valuers, while the third was challenging a valuation made for Maori Land Board purposes by a district valuer. Such a case, he stated, showed that land agents should not be employed as local valuers.⁶⁰² We tend to think the principle is not far removed from that of an agent of the Lands Department buying for settlement. In 1910, Wilson emphasised that the Government must take care not to buy only the lands that Maori offered to sell at any given time; such a course of action would not be in its best interests:

I have an idea that if the Government acquire isolated blocks within the Rohe-potae in odd pieces here and there, and as the Natives will only sell until they acquire sufficient money for their present requirements, and also for certain, great pressure will be brought to bear on the Government to start constructing roads and organising a settlement scheme. This would be a big mistake, as they would have to construct roads through large areas of Native land enhancing its value, and later would have to pay an increased price for the same land, made more valuable by our own roads.⁶⁰³

Instead, the Government should buy large tracts of land. As he told the owners, they should sell all the land along a proposed road between Waimana and Maungapohatu: it would give them a better price. This, he told the Government, would avoid the danger of its bearing the cost of building a road to Rua's settlement. Wilson was very anxious that Maori should not benefit from the increased value that settlement and its associated infrastructure might give their remaining lands.

Such views were reiterated in the more detailed report of Wilson and his colleagues Jordan and Pollock in 1915. The purchase and settlement of Te Urewera lands would be

601. See circular of 24 November 1913 in FW Flanagan, *Special Circulars Issued by the Valuer-General for the Guidance of District and Local Valuers* (Wellington: Government Printer, 1917), p 6

602. See circular of 24 November 1913 in FW Flanagan, *Special Circulars issued by the Valuer-General for the Guidance of District and Local Valuers* (Wellington: Government Printer, 1917), pp 5-6

603. Wilson to chief surveyor, 30 June 1910, MA-MLP 1, file 1910/28/1, Archives New Zealand, Wellington (add supporting papers ref?)

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feasible only if costs were kept as low as possible. In particular, ‘no settlement should be undertaken or road making attempted until the purchasing of the land has been completed, and an effort should be made to define the area [each] native should be allowed to retain.’ Only once it was certain where new settlements would be should roads be built. Moreover, Maori should contribute to the cost of roads: ‘a proper system of loading all lands for the purpose of Roothing [should] be inaugurated and carried out, so that all lands reaping benefits from roading will bear a proportionate cost of same.’ Wilson and Jordan, as we have seen, were concerned above all that there should be ‘no loss to the Crown, and no possibility of disaster to any settlement scheme.’ In a separate section of their report, they reiterated that the Crown monopoly on purchasing in the Reserve must be maintained until it had secured as much land as it wanted so as to prevent ‘speculation.’⁶⁰⁴ (This term was often used by Crown agents to characterise dealings, or proposed dealings, by private parties in land and timber, where these might provide competition to the Crown and push up the price it had to pay.)

In this context, the claimants’ concerns – namely, whether the amount to be paid to Maori sellers was reduced to take account of the sums the Crown expected to pay for roads and surveys to service settlers’ farms – are entirely understandable. The recorded views of the chief surveyor – both before and after the report of Wilson and his colleagues in August 1915 – certainly indicate a determination to reduce the amount to be paid to Maori sellers so that roading and survey costs for new settlement blocks would not unduly increase the Crown’s overall costs. In May 1915, the chief surveyor had told Native Department Under-Secretary Fisher that he thought the cost of roading and surveying should be ‘charged up to the blocks and then the purchase money should be the nett amount after deducting amount assessed.’⁶⁰⁵ And when he forwarded Wilson’s and Jordan’s report to Wellington in August, he wrote bluntly that those costs (now shown to be over quarter of a million pounds) would have to be carried either by the land or by the taxpayer. He was quite clear that the land should carry them. But because the only kind of farming that would work would be pastoral, and holdings would have to be ‘fair-sized’, the land could only be sold to settlers at moderate prices. Thus, the price to be paid to Maori would have to be low enough ‘that all contingencies [costs] can be loaded on to the land.’⁶⁰⁶ It is probable that Wilson and Jordan had been told of the chief surveyor’s views about the cost of roading and surveying (to which we referred above) before they went to Te Urewera.

604. Wilson, Jordan, and Pollock to chief surveyor, 1 August 1915, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b) (i)), pp 145–150)

605. Fisher to Native Minister, 8 May 1915, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 17)

606. Chief surveyor to Under-Secretary of Lands, 11 August 1915, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 31)

Such views were not universally held by officials. Fisher expressed a number of qualms to the Native Minister when he forwarded both the chief surveyor's letter and the report of Wilson and his colleagues. Fisher seems to have wondered how the Government would get such a large settlement scheme off the ground; he was uncertain even that Maori owners would sell enough land for the purpose. In his view, it would be better to halve the costs of roading and general expenses proposed to be attached to the land, as this would 'increase the net valuation' now proposed to be fixed – that is, it would be better to increase the amount paid to Maori sellers by a sum equal to half the roading and survey costs. Most of the 'large block' (the Reserve) would after all, if all went well, pass into settler hands – and, he implied, it would be the settlers who would benefit from the roads and surveys.⁶⁰⁷

Stirling calculated that had Fisher's suggestion been acted on, Maori owners would have received an additional 7s 6d per acre – five shillings from the roading deduction, and 2s 6d from the survey and administration deduction. (He appears to have based this on the average price per acre, given in Wilson and Jordan's report, of 10 shillings.) This would have increased the average price the owners received by 75 per cent.⁶⁰⁸ But Fisher's views evidently carried no weight.

The prices paid by the Crown for the great majority of UDNR blocks were set on the basis of values assigned by Wilson in 1910, or Wilson and Jordan in 1915.⁶⁰⁹ There were a few exceptions, Edwards noted: in particular, where blocks were subdivided, valuations were then made of the various partitions before prices were set (Te Whaiti, Tauwharemanuka, Ruatahuna). In addition, the price paid per acre for Paraoanui South was slightly higher (just over 5 per cent) than the 1910 valuation.⁶¹⁰ But in general, the 1910 and 1915 valuations – of which we have been critical – stood.

The over-riding concern evident in the officials' valuation reports was with protecting the Crown's interests, and ensuring that the settlement and farming development now envisaged within the Reserve could be achieved without financial risk to the Crown. Having set out their overall calculations of the land's settlement value, officials in both 1910 and 1915 did also assign values to each of the blocks; but because the lists were embedded in reports so openly focused on the financial viability of the Crown's proposed scheme, it is difficult to be confident that block values were arrived at in isolation from such considerations. That is the result of the evident bias in favour of the Crown that characterised the valuation exercise in both those years.

And that is the bias that would have been avoided, in our view, if valuations had been lawfully made by independent valuers, and had been transparent. Government valuations would not have been set in the context of the costs of a Crown settlement scheme. That

607. Under-Secretary for Lands to Native Minister, 19 August 1915, MA-MLP 1, file 1910/28/1, pt 1, Archives New Zealand, Wellington (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 32–33)

608. Stirling, 'Te Urewera Valuation Issues' (doc L17), p 110

609. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 183–187

610. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 183

might have mitigated the claimants' concerns – even if it was not enough to overcome their justified mistrust of the Crown's purchase monopoly.

(3) *Were valuations and prices paid for Reserve standing timber fair?*

The broad issue before us here is timber valuation across the whole of the UDNR, and its impact on prices paid to owners. The more specific issue is the valuation of the Te Whaiti timber, the source of particular concern to some claimant groups, on which we had considerable evidence. This section, therefore, will primarily address Te Whaiti timber valuation.

We turn first, however, to timber valuation across all the rest of the UDNR blocks. The claimants submitted that when the Crown assessed the prices it would pay for land in the blocks in 1910, 1915, and (in the case of Ruatahuna) 1919, those prices did not include the value of standing timber. Yet there was an abundance of merchantable timber on the blocks, as evidenced by the timber cutting rights granted between 1913 and 1961.⁶¹¹ The Crown did not respond to these submissions.

We uphold the claimants' submissions: the timber was not valued, yet it is clear that there were substantial quantities of merchantable timber in the Reserve. In the main 1915 valuations, ranger Robert Pollock was charged with valuing the timber; his valuation report dealt exclusively with the Te Whaiti block.⁶¹² He did write an additional brief report on milling timber in 'Urewera country' in which he completely dismissed the timbers (other than those on Te Whaiti) as 'so scattered and isolated that they have no commercial value, and are not in millable quantities.'⁶¹³ Though most of the blocks the officials visited contained scattered rimu and kahikatea and some matai and odd totara, the land was so rough that the timber would be too expensive to extract, both now and in the future. The best use for 'some of the more heavily timbered parts' would be to reserve them for the requirements of settlers, if settlement went ahead.⁶¹⁴

Andrew Wilson and his colleague A B Jordan included a section on 'the forestry and timber of the Urewera' in their main report, stating that the 'whole country' was covered in forest – with the exception of some 4,000 acres in the middle of the Te Whaiti block, a strip of 'open scrub' along the western boundary, a few thousand acres at the Ruatoki end, and 'a great number of small clearings' the people had made everywhere. They wrote generally about the timber types in the Reserve, particularly from the 'Taumatamiere range and across to Parekohe and all the country south to the Rotorua-Waikare Moana Road' which

611. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp179–180; counsel for Tuawhenua claimants, closing submissions (doc N9) pp168, 174

612. Pollock to commissioner of Crown lands, Auckland, 2 August 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Hutton and Neumann, supporting papers to 'Ngati Whare and the Crown' (doc A28(b)), pp49–51)

613. Pollock to commissioner of Crown lands, Auckland, 3 August 1915 MA 13/92, Archives New Zealand, Wellington (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 29)

614. Pollock to commissioner of Crown lands, Auckland, 3 August 1915, MA 13/92, Archives New Zealand, Wellington (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 29)

they said was ‘covered’ with tawa, rata, rimu, and mixed bush, with ‘patches of Tawai or Black Birch on the higher places’. They recommended, however, that the Crown should offer to acquire the whole Waikaremoana block for conversion to a ‘forest and climatic reserve’ and to preserve the beauty of the Lake; the timber, which would be ‘of great value some day’ should be conserved. Their general conclusion – like Pollock’s – was confidently stated: ‘There are no milling timber areas worth considering except that on the Te Whaiti Block.’⁶¹⁵ The commercial value of the Reserve’s timber – with the exception of Te Whaiti – was nil.

As we will see in a later chapter, sawmillers’ applications for cutting rights in Te Urewera were being rejected by the Crown by the 1930s and 1940s, though this changed by the 1950s, when cutting rights were granted on part of most Ruatahuna blocks during the mid- to late-1950s.⁶¹⁶ There was millable timber in the Reserve well beyond Te Whaiti. But this had been evident to the State Forest Service (established by the Forests Act 1921–22) from the time it first undertook field trips to Te Urewera. Only six years after Wilson, Jordan, and Pollock wrote their report, H A Goudie, the Conservator of Forests at Whakarewarewa, investigating land use generally in the Reserve, reached a very different conclusion. After a week’s trip with two other officials which took him from Te Whaiti to Ruatahuna, back to Ruatoki and Opotiki and then up the Waioweka River, he reported that ‘[p]robably 95% of the total area’ of the country was forested. If the land were worked ‘as a national forest’ it would yield an income ‘far in excess of that to be procured from any other crop.’⁶¹⁷ A second trip was about to be made to blocks lying south of a line drawn between Te Whaiti and Maungapohatu. We also note here Goudie’s enthusiasm at some ‘magnificent stands’ of forest around Te Whaiti (mixed totara, matai, and rimu) – in contrast to Pollock’s disappointment with Te Whaiti because the forest contained less totara than he had expected; Goudie was particularly impressed with its density in the evidently small area of the block he saw.⁶¹⁸ (We are aware that by the mid 1930s the Forest Service was particularly interested in the forests for their value for water conservation, but they were no less valued as a national asset.)

Twenty months later, in May 1923, the director of forestry urged that the national interest would best be served by dedicating the Urewera country (650,000 acres) ‘as a permanent forest, to be used for timber-crop production, water conservation, stream-flow regulation, subordinate sylvo-pastoral settlement by Europeans and Maoris and for national recreational and sporting purposes.’⁶¹⁹ He described the ‘dominant forest type’ as tawa and rimu, with associated matai, totara, white pine, and rata; while above 2000 feet there were beech

615. Wilson and Jordan to chief surveyor, Auckland, 1 August 1915, MA 31/21, Archives New Zealand, Wellington (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 24, 26)

616. Tamaroa Nikora, ‘Te Urewera Lands and Title Improvement Schemes’, August 2004 (doc G19), p 19

617. Goudie, Conservator of Forests to Director, State Forest Service, 21 September 1921, ‘Report upon the Uriwera Country’ (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), pp 3409, 3420)

618. Goudie, Conservator of Forests to Director, State Forest Service, 21 September 1921 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), p 3409)

619. L MacIntosh Ellis, Director of Forestry, to Minister for Forestry, 3 May 1923 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), p 3422)

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forests which could not be considered of merchantable value. But the merchantable timber was widely distributed over the entire area. Its volumes ranged from 5000 to 10,000 superficial feet per acre. It was estimated, he reported, that merchantable timber in Te Urewera totalled between 5000 and 8000 million super feet, and comprised approximately 60 per cent rimu, matai, totara, white pine, and miro, and 40 per cent beech, tawa, maire, and miscellaneous. He concluded that: ‘The Urewera forest wealth indeed is one of the greatest national forest assets controlled today by the State. Its uniformity, compactness, wide distribution, health, vigour and age, combined with its favourable proximity to the centres of population should make it a most desirable entity for timber-crop production and other essential forestry uses.’⁶²⁰ This was a far cry from the official reports of 1915 – which were focused on the potential of Te Urewera for farming settlement. The value of standing timber, in that context (as outlined above), was completely overlooked. Prices for land other than the Te Whaiti blocks took no account of its valuable timber resource, and Maori owners who sold their interests received nothing for it. The warning sounded by the Stout-Ngata commission in their 1908 report that in focussing on the farming potential of land the Government had neglected to take proper account of the commercial value of timber on some Maori land had evidently not been heeded.⁶²¹

13.7.6 Were valuations and prices paid for Te Whaiti land and timber fair?

The specific issue we address in this section is timber valuation in Te Whaiti 1 and 2 blocks and prices paid for those blocks. In essence, the claimants’ grievance is that the Crown acted extremely unfairly by illegally purchasing individual interests in the Te Whaiti lands, then assuring itself of a monopoly to purchase the valuable standing timber, and fixing its price, but being negligent in its valuation – with the result that the price paid for the timber was substantially below its worth.⁶²²

Our analysis will focus on two issues: was the Te Whaiti timber accurately measured; and whatever measurement was used, were the prices fair?

Ngati Whare, in arguing their case, relied on the evidence of James Canning, ‘an expert witness of the very highest calibre in the specialised field of valuation’. Mr Canning, we were told, has had a lifetime of involvement in surveying and forestry, and forestry resource mapping, including work with the National Forest Survey conducted by the New Zealand Forest Research Institute in the 1950s.⁶²³ Mr Canning’s original research brief was to establish, for the Te Whaiti Nui a Toi Trust, whether actions of the Crown had prejudicially

620. Director of Forestry to Minister for Forestry, 3 May 1923 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), p 3424)

621. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1116–1117

622. Counsel for Ngati Whare, closing submissions (doc N16), pp 72–74; counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 177–183

623. Counsel for Ngati Whare, closing submissions (doc N16), p 93

affected Maori owners; in particular, whether the timber resource had been fairly valued and the owners properly paid for it.⁶²⁴ Canning's conclusion was that 'the Crown grossly underestimated the volume and value of the timber on the Te Whaiti No 1 and No 2 Blocks', with the result that the Crown underpaid the owners of those blocks who sold their interests by some £339,755.⁶²⁵ Counsel for Wai 36 Tuhoe claimants also criticised the Crown's underestimation of the 'volume and value' of the timber on the two blocks, as well as its deduction of the cost of providing a tram line to extract the timber, which was never built, the timber being extracted by road. The Crown deducted the costs of survey and roading ('including a road that [it] required to access its other holdings') from the purchase price.⁶²⁶

The Crown agreed with the claimants on a number of relevant matters, as counsel for Ngati Whare recorded in his closing submissions: that the valuation of timber in Te Urewera was acknowledged 'by all parties to be a matter of concern'; that the Crown's land purchase agent refused to carry out a valuation of Te Whaiti block in 1910; that the market value of the Te Whaiti blocks could not be tested because private purchasers were excluded from them by the Crown; that the Crown sought no contestable advice on valuation; that 'Ngati Whare were not consulted over the Crown's valuation of their land and timber assets'; and that the Te Whaiti forests were valued such that the Crown paid a low price for them.⁶²⁷ We welcome these important acknowledgements by the Crown. We note in particular its acknowledgement in closing submissions that it failed to give effect to the intention of the UDNR Act that Te Whaiti owners should manage and benefit from their own valuable resource:

Through a combination of events, owners of the Te Whaiti block, especially Ngati Whare, were actively constrained in their ability to harvest their forests under the UDNR regime. This kind of fetter was not the intention under the UDNR Act.⁶²⁸

In closing submissions, Crown counsel also addressed Canning's evidence about the Crown's failure to calculate correctly the volume and value of timber on the blocks, acknowledging that the evidence 'tends to support a view that the timber volumes may have been underestimated', but submitting that Canning's own estimate 'is not conclusive and appears to be on the high side'.⁶²⁹

We begin with the context in which the Crown took an interest in the standing timber of Te Whaiti. By 1915, when there was considerable, but largely misguided, Government

624. The resulting report was completed in 1993: see James Canning, 'Te Whaiti Nui-a-Toi Forestry Report' (commissioned research report, Rotorua: Te Whaiti Nui a Toi Trust, 1993) (doc A114).

625. James Canning, 'Te Whaiti Block: Report on Timber and Land Resources', brief of evidence concerning 'Te Whaiti Nui-a-Toi Forestry Report', August 2004 (doc G6), p 12

626. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 179

627. Counsel for Ngati Whare, closing submissions (doc N16), pp 88–89; Waitangi Tribunal, statement of issues, stage 2, undated (paper 1.3.6), p 125

628. Crown counsel, closing submissions (doc N20), topics 14–16, p 91

629. Crown counsel, closing submissions (doc N20), topic 31, p 29

interest in the Pakeha settlement of Te Urewera, there was evident interest also in its timber resource from both private concerns and the Government. Some years before, the second Urewera commission had reported that the Te Whaiti block was ‘one of the most valuable blocks of land contained within the Urewera District Native Reserve’, containing ‘quantities of totara, rimu, kahikatea, matai, maire and other valuable timbers.’⁶³⁰ By 1908, Ngati Whare rangatira Te Wharepapa Whatanui was writing to Carroll, the Native Minister, asking for advice on how to deal with Pakeha interest in the Te Whaiti timber – notably the interest of Fred Hall.⁶³¹ (This was at a time when appeals against title decisions of the second Urewera commission were outstanding and uncertainty about titles at Te Whaiti remained.)

Details of a 1909 agreement with private sawmillers, Messrs Hall, Morrison, and Lardelli of Gisborne, were spelt out in a 1938 petition to Parliament by Wiremu Paati and 44 others. By that agreement, timber on the Te Whaiti block was to be sold to the sawmillers at the rate of 2s 6d per 100 superficial feet⁶³² for totara; 1s 6d for rimu and matai; and one shilling for white pine.⁶³³ In 1910, Matekuare and Te Wharepapa Whatanui took a proposal to the General Committee to lease 12,000 acres of Te Whaiti to Maori, and sell 6,000 acres to the Crown, but it seems not to have proceeded further. There was some friction with Ngati Manawa at this time, because the Urewera commission had not separated the interests of the two iwi in the block – and it was after this that Ngata advised Carroll to take steps to define the boundary between Ngati Whare and Ngati Manawa.⁶³⁴ In April 1912, Te Wharepapa Whatanui again wrote to the Native Minister about the visit by Pakeha to Te Whaiti ‘to buy the timber-trees on the Te Whaiti block on a 30 years lease basis’ (‘ki te hoko i nga Rakau o Te Whaiti Poraka i runga i te tikanga riihi mo nga tau e toru tekau’), and citing the prices that had been agreed between the parties per 100 board feet: namely, 1s 6d for totara, one shilling for rimu, and sixpence for ‘other timbers.’⁶³⁵ It is clear from the rest of Te Whatanui’s letter that he was aware of the provisions relating to the lease of timber in the UDNR Amendment Act 1909 (which we outline below); perhaps he had discussed this with the Pakeha he referred to – among them, very probably, Hall, who maintained his interest in the timber over a number of years, and who perhaps by this time knew of the range of

630. ‘Report of Commissioners on the Urewera District Native Reserve’, AJHR, 1907, G-4, p 24 (quoted in Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p 178)

631. W Whatanui to James Carroll, 18 August 1908, MA 13/90, Archives New Zealand, Wellington (cited in Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p 181)

632. In cross-examination, Canning stated that superficial (or super) feet are synonymous with board feet – a board foot ‘is a piece of wood that is 12 inches square plus an inch thick. Super foot is the same thing.’ See James Canning, under cross-examination by counsel for Tuhoë Waikaremoana Maori Trust Board, 14 September 2006 (transcript 4.10, p 29; transcript 4.10(a), p 10).

633. Richard Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), pp 231–232

634. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 116–117, 121; see also Numia Kereru to Native Minister, 16 March 1910, MA 13/91, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), pp 601–604)

635. W Whatanui to Native Minister, 18 April 1912, MA 1, file 1912/1322, Archives New Zealand, Wellington (Hutton and Neumann, comps, supporting papers to ‘Ngati Whare and the Crown, 1880–1999’, various dates (doc A28(b)), pp 73–74)

royalties gazetted in Forest Regulations, which may have set lower values than he would have offered. He may also have been re-considering his extraction costs.⁶³⁶

In August 1912, the Ngati Whare rangatira Te Wharepapa Whatanui again asked the Native Minister, Herries, to arrange for the partitioning of the Te Whaiti block so that the milling timber could be sold to timber companies.⁶³⁷ (Partitioning had stalled while title appeals were heard.) And in 1915 Ngati Whare urged on the Minister of Justice the difficulties they faced trying to work their timber because of the perceived barriers to private company involvement.⁶³⁸ Ngati Manawa were also interested in the sale of cutting rights over Te Whaiti 2 and two other blocks to the same sawmiller, as well as in the sale of land itself. Later, Te Whatanui would state that companies had offered from £4 to £5 per acre 'for the timber alone' before the Crown prohibited the alienation of timber rights.⁶³⁹ And Crown land purchase agent Bowler would inform the Native Land Purchase Board (in a rather cynical tone) that the Te Whaiti owners had 'at different times been approached by speculative syndicates and would-be purchasers, with the result that those of them whom I saw have a very exaggerated idea of the value – the Murupara owners consider the value to be anything from £5 to £10 per acre.'⁶⁴⁰ These two statements give us an idea of the sorts of values and prices being discussed or offered at the time.

But the evidence suggests that the Crown itself moved to secure the land and its timber. Crown interest in the timber emerged after the Reform Government came to power in 1912 and decided to proceed with the purchase of individual interests in UDNR blocks. As we have seen, it waited until the final appeals about UDNR titles were heard by the Native Appellate Court, and the subsequent partition of Te Whaiti block by the Native Land Court. In March 1914, after Te Whaiti 1 (45,048 acres) had been awarded to a list of owners who were largely Ngati Whare,⁶⁴¹ Ngati Whare tried again to secure a milling agreement.⁶⁴² Section 9 of the UDNR Act Amendment Act 1909 provided that the Governor, by Order in Council, might with the consent of the General Committee, empower the relevant district Maori Land Board to grant licences for the removal of timber from UDNR land. Licences, which were not to exceed a term of 30 years, might be granted by public auction, public

636. The regulations specified the royalty rates to be paid by licensed sawmillers on Crown land, per 100 superficial feet, as two shillings for totara and matai (though one shilling for those timbers where less than 25 feet in length); sixpence for rimu; sixpence for a number of other named timbers: 'Forest Regulations under the Land Act 1908', 15 April 1909, *New Zealand Gazette*, 1909, vol 32, p 1075.

637. W Whatanui to Herries, 8 August 1912, MA 13/90, Archives New Zealand, Wellington (cited in Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 182, 190)

638. Minutes of a meeting between the Minister of Justice and 'Maories of the Urewera', 19 March 1915, and Minister of Justice to Minister of Native Affairs, 19 March 1915, MA-MLP 1, file 1910/28/1, Archives New Zealand, Wellington (cited in Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 194–195)

639. W Whatanui to Coates, 15 October 1925, MA 1, file 29/4/7, pt 2, Archives New Zealand, Wellington (quoted in Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 228)

640. Bowler to Native Under-Secretary, 13 June 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (quoted in Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 168)

641. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 136

642. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 191–192

tender, or private contract for such royalty payments as the board thought fit.⁶⁴³ Such provisions, John Hutton and Klaus Neumann argued in the report they wrote as supporting evidence for the Ngati Whare claim, would in theory have entailed ‘certain benefits’ for Ngati Whare, providing for an independent regulatory body (the district Maori land board) to protect their interests.⁶⁴⁴

But Ngati Whare were still unsuccessful in securing an agreement – despite proceeding in accordance with the Act. In March 1914, Te Wharepapa Whatanui put before the General Committee – at what effectively would be its last meeting – a motion to ‘lease or sell’ to Hall (or the Hall company, as it was referred to) the timber on some 20,000 acres of Te Whaiti 1.⁶⁴⁵ In April (when the meeting reconvened), the motion proposed was to ‘lease or sell’ the timber on some 20,000 acres ‘on a basis according to the different kinds of timber-trees’. Before the meeting ended, Te Whatanui increased the offer to the timber on 25,000 acres. After Numia Kereru explained the provisions of the Act about the sale of timber the motion was passed by a majority vote of 13.⁶⁴⁶ The General Committee thus consented to the sale (meeting the requirements of the 1909 Act), and the minutes of the meeting were sent to the Native Minister.

The matter should then have been put to the Executive Council, as was also required by the Act. Instead, Native Under-Secretary Fisher approached Judge Browne of the Waiariki District Maori Land Board, asking whether the title of the block was complete, and whether he was aware of any private parties’ interest in the timber. Judge Browne replied that an appeal against definition of relative interests remained before the court and that this would have to be disposed of before the land could be ‘dealt with’, though it would ‘not alter the position very materially’. He knew of Hall’s (but no one else’s) interests in the timber, and in his view there was ‘no objection to the issue of a license provided the necessary Order in Council was obtained’ – though he was not enthusiastic about the proposal to purchase the timber on a royalty basis.⁶⁴⁷ (He did not say why. The law provided, however, that payments to owners might be made ‘by way of royalty or otherwise.’) Fisher passed the General Committee’s resolution to the Native Minister, and added in his cover note that the Land Board ‘should recommend as to the issue of the Order in Council.’⁶⁴⁸

643. Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), pp188–189

644. Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p189. As the authors note, land boards were ‘not necessarily a beneficial body for Maori’ (we add that successive tribunals have made findings on their shortcomings); but the legislation ‘did set out certain protective mechanisms that they were supposed to follow’.

645. Minutes of General Committee meeting, 20 March 1914 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 509)

646. Minutes of General Committee meeting, 20 March 1914 (Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), pp 509–510)

647. Browne to Native Under-Secretary, 4 June 1914, MA-MLP 1, file 1914/1504, Archives New Zealand, Wellington (Hutton and Neumann, supporting papers to ‘Ngati Whare and the Crown’ (doc A28(b)), p 76)

648. Fisher to Native Minister, 8 June 1914, MA-MLP 1, file 1914/1504, Archives New Zealand, Wellington (Hutton and Neumann, supporting papers to ‘Ngati Whare and the Crown’ (doc A28(b)), p 75)

For reasons that are not spelt out in the evidence, no further progress was made with the General Committee's resolution once it left Ruatoki. It does not seem that the Land Board was consulted, or that the matter went before the Executive Council, meaning that the board could not proceed to grant a licence. There may have been a procedural difficulty (as Hutton and Neumann suggested), in that both the board and the Government had to be satisfied with the deal before an Order in Council was issued, or it is possible the matter lapsed through '[i]nertia'.⁶⁴⁹ But we do not accept that these are convincing explanations – or explanations which would excuse the Crown's inaction. In light of the Crown's own efforts at the time to acquire Te Whaiti land and timber, it is hard to avoid the conclusion that it did not want private interests to have cutting rights there. The Crown, in its submissions, acknowledged as much: 'the Crown saw this as an opportunity to purchase good timber land and did not provide for licensing through the agency of the Maori Land Board'.⁶⁵⁰

Instead, the Crown, as we have seen, embarked on its own valuations of UDNR timber. In March 1915, Herdman, Minister of Justice and Attorney-General, recommended that 'competent judges' be sent to the district to give their opinion of the land and the timber.⁶⁵¹ Wilson, Jordan, and Pollock visited a few months later, and wrote their report to assist the Government in determining the price it could pay Maori owners 'when acquiring the block [the UDNR]'.⁶⁵² As we have seen, he and his colleagues placed no value on the timber resource of the Reserve at all – except for Te Whaiti).

The valuation of Te Whaiti seems to have been done in the following manner. First, the three officials 'agreed as to the value of land and timber' on the entire Te Whaiti block (see sidebar 'Valuations of Te Whaiti Land and Timber, 1915' – section on 'Initial valuation'). The main component of this agreement was the valuation of the best 12,000 acres of millable timber, including the land, at £30,000, or £2 10s an acre.⁶⁵³ Next, Pollock wrote his report on the timber. Finally, an amended valuation was compiled (see sidebar), based on separate valuations of four areas that Wilson, Jordan, and Pollock distinguished within the Te Whaiti block, according to the quality of their timbers. The acreage and valuation of each area were recorded on a plan of the Reserve – which also showed how many acres of each area were estimated to be in the Te Whaiti 1 and Te Whaiti 2 blocks. (see sidebar, Valuations of Te Whaiti Land and Timber, 1915, section on Amended valuation') The crucial milling-timber area identified was the 12,000 acres (land and timber) valued at £2 10s an acre, of which 5,548 acres were estimated to be in Te Whaiti 1 and 6,452 acres in Te Whaiti 2. The largest of

649. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp193–194

650. Crown counsel, closing submissions (doc N20), topics 14–16, p 4

651. 'The Urewera Country: Natives Want Settlement: Good Land and Timber', *Auckland Weekly News*, 18 March 1915 (quoted in Neumann, 'That No Timber Whatsoever Be Removed' (doc A10), p36)

652. Native Under-Secretary to Native Minister, 19 August 1915, MA-MLP 1, file 1910/28/1, pt1, Archives New Zealand, Wellington (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p32)

653. Pollock to commissioner of Crown lands, Auckland, 2 August 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Hutton and Neumann, supporting papers to 'Ngati Whare and the Crown' (doc A28(b)), pp 49–50)

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the areas was 28,340 acres, valued at six shillings an acre (the greater part of which was in Te Whaiti 1). The third area was of 10,000 acres, valued at five shillings an acre; and the final area was of 21,000 acres, valued at 2s 6d an acre. Wilson, Jordan, and Pollock gave an average value of 12s 3d an acre for the 71,340 acres of Te Whaiti 1 and 2 blocks.⁶⁵⁴

Pollock, who had described himself two years earlier as a ‘Government timber-measurer’,⁶⁵⁵ wrote in his report on the timber of Te Whaiti that the block contained timber of ‘first-class quality’, though he was disappointed that it was ‘not a Totara forest’ as he had been led to believe. He described it as ‘mixed milling bush’, with rimu, kahikatea, matai, and totara – ‘rimu and totara preponderating’. He estimated the total timber volume at some 200 million feet: the area of milling timber was, in his view, approximately 12,000 acres, and the quantity from 6000 board feet per acre to 50,000 board feet per acre. Pollock strongly urged the Crown to buy the Te Whaiti timber. Though some 50 miles of tramway, or light railway, would be needed down the Whirinaki and Rangitaiki valleys to Te Teko to get the timber out, the cost would be worth it because the Government could also work the timber it owned on adjacent blocks (Whirinaki, Heruiwi, and Pohokura) which could be served by the same tramway. He valued the 12,000 acres of Te Whaiti ‘milling bush’ (land included) at 50 shillings per acre – a total of £30,000. (Thus, it is not clear exactly what value Pollock assigned to the timber alone.) His comments on the timber distinguished its present-day value (‘very low’) from its prospective value, assessed along with that of the other blocks (‘a huge total of timber . . . a very valuable timber asset suitable for future milling requirements of the Auckland District’).⁶⁵⁶

Two Government valuations were made at much the same time: the first in July 1915 for the whole Te Whaiti block, followed by a more detailed one in August which gave separate values for Te Whaiti 1 and 2 blocks. The overall valuation for the land and timber was the same, at £46,687. (see sidebar ‘Valuations of Te Whaiti land and timber, 1915’ – section on ‘Initial valuation’) District valuer JH Burch visited the block to view the land and timber before he made his July valuation, and reported that the land was ‘very mixed in quality’; its timber was its ‘most attractive feature’, with ‘some very fine rimu and matai and also a good deal of totara and white pine’. He ‘would not like,’ he wrote, ‘to definitely assert that this timber has no commercial value to-day’, but he had no doubt that it would be valuable in the future. He also pointed to the value of the Crown-owned timber on the Heruiwi and Whirinaki blocks, which would mean that purchase of the Te Whaiti timber ‘at a fair price

654. See map detail showing Te Whaiti valuations, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), p172).

655. Pollock gave evidence before the Royal Commission on Forestry: AJHR, 1913, C-12, p 52. The Department of Lands administered Crown forests at this time, and Crown lands rangers were forest rangers: ‘Forestry in New Zealand’, 8 September 1909, AJHR, 1909, C-4, p11.

656. Pollock to Commissioner of Crown Lands, Auckland, 2 August 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Hutton and Neumann, supporting papers to ‘Ngati Whare and the Crown’ (doc A28(b)), pp 49–50)

would undoubtedly cheapen the cost of working the adjoining country and should prove [a] profitable investment.' He cautioned the Crown not to buy interests at the average price per acre, as this might mean the Crown would ultimately 'get the useless country that has only been valued at a nominal figure.'⁶⁵⁷ Burch estimated the unimproved value of the land at £20,127, and the value of the timber at £26,560. The capital value was £46,687 – that is, just over 13 shillings an acre.⁶⁵⁸

Subsequently, after Fisher, the Native Under-Secretary, pointed out that the Native Land Purchase Board needed separate valuations of the partitions of the block,⁶⁵⁹ the Valuer-General sent valuations for Te Whaiti 1 and 2 which he stated had been 'compiled from data supplied by Mr District Valuer Burch.'⁶⁶⁰ (see 'Valuations of Te Whaiti land and timber, 1915' – section on 'Govt valuation revised') It is apparent from this comment that Burch had not visited the land again to meet the Board's request for separate valuations. The total Government valuation was slightly higher than Wilson, Jordan, and Pollock's. (see sidebar)

The Crown acknowledged in submissions that it would have been preferable that 'the valuation exercise conducted in August 1915 was informed by the knowledge that the Te Whaiti block had been partitioned.'⁶⁶¹ This is to beg the question why the Crown did not ensure its valuers were properly instructed. The block, after all, had been partitioned in 1913. Te Whaiti 1 (45,048 acres) was awarded to owners who were 'basically Ngati Whare', and Te Whaiti 2 (26,292 acres) was awarded to owners who were 'basically Ngati Manawa.'⁶⁶² It seems that the Native Department simply did not know this. In May 1915, the Under-Secretary wrote to land purchase agent Bowler that the Land Purchase Board had decided to acquire interests in the Te Whaiti block (singular), and he sought a valuation of the block from the Valuer-General at the same time.⁶⁶³

It appears the Department became aware of the partition only in June, after receiving a memorandum from the registrar of the Waiariki District Native Land Court, which listed separate lists of owners, with their shares, for the Te Whaiti 1 and 2 blocks. Fisher wrote immediately to Judge Browne, asking for a tracing showing the subdivisions, as valuations were urgently required. He stressed the importance of his being advised of all subdivisions

657. Burch to Valuer-General, 5 July 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), p1829)

658. Valuer-General to Under-Secretary, Native Department, 16 July 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Berghan, supporting papers to 'Block Research Narratives' (doc A86(f)), p1828)

659. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 178

660. Valuer-General to Native Under-Secretary, 23 August 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3', various dates (doc D7(b)(i)), p1051)

661. Crown counsel, closing submissions (doc N20), topic 31, p 25

662. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p136

663. Native Under-Secretary to Bowler, 19 May 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p1067); Native Under-Secretary to Valuer-General, 19 May 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington

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Valuation type	Description	Area (acres)		
		Te Whaiti 1	Te Whaiti 2	Total
Initial <i>(Wilson, Jordan, and Pollock's 'prairie value' of land and timber[†])</i>	Best timber area <i>(land and timber)</i>			12,000
	Residual area <i>(land and timber)</i>			59,340
Total		71,340		
Amended <i>(Four areas, allocated between Te Whaiti 1 and 2)</i>	Best timber area <i>(land and timber)</i>	5,548	6,452	12,000
	Area 2 <i>(land and timber)</i>	21,000	7,340	28,340
	Area 3 <i>(land and timber)</i>	7,000	3,000	10,000
	Area 4 <i>(land and timber)</i>	11,500	9,500	21,000
Total				71,340
Government (July)	Land Timber			
Total				71,340
Revised Government (August) <i>(7,850 acres best timber land, plus 5,030 acres fern land, 2,350 acres light bush country, and 11,062 acres birch country)</i>	Land	45,048	26,292	
	Timber			
	Other			
	Land			
	Timber			
Total				71,340

* The valuations of the four areas give a total value for Te Whaiti 1 of £23,357 10s and for Te Whaiti 2 of £20,269 10s: see Stirling, 'Te Urewera Valuation Issues' (doc L17), p 128.

† Jordan and Wilson to chief surveyor, 1 August 1915, AADS W3562, file 22/697, pt 2, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896: Part 3', (doc D7(b)(i)), p 149); Edwards, 'The Urewera District Native Reserve Act 1896: Part 3' (doc D7(b)), p 176

‡ We have calculated this total for the four listed acreages: see methodological note below. Stirling reached the same total. We believe that Canning erred in reaching a different total (£41,377): see Stirling, 'Te Urewera Valuation Issues' (doc L17), p 127; Canning, summary of 'Te Whaiti Nui-A-Toi Forestry Report' (doc G6), p 9.

§ Valuer-General to native under-secretary, 16 July 1915, MA-MLP1, file 1910/28/4, Archives New Zealand, Wellington (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896' (doc D7(b)(i)), p 1060). The total valuation given by the Valuer-General was £46,887, which is erroneous.

Table 13.3: Valuations of Te Whaiti land and timber, 1915. This table is based on actual figures given by Wilson, Pollock, and Jordan, and on the details provided in the Government valuation. We have made one addition of our own. Under 'amended valuations', we have added our calculations of the total valuations of each of the four areas, based on the value per acre the officials assigned those areas.

Valuation amount (£)			Price per acre			
Te Whaiti 1	Te Whaiti 2*	Total	£	s	d	
		30,000	2	10	–	
		13,695	–	4	7	
		43,695		12	3	
13,870	16,130	30,000	2	10	–	
		8,502	–	6	–	
		2,500	–	5	–	
		2,625	–	2	6	
		43,627 [‡]	–	12	3	
		20,127				
		26,560				
		46,687	–	13 [§]	–	
12,127		}				
6,560				8	3	
	3,925**	}				
	20,000			1	1	3
	8,000 ^{††}					
		46,687		13 ^{‡‡}		

|| Consisting of 7850 acres of best timber land, plus 5030 acres of fern land, 2350 acres of light bush country, and 11,062 acres of birch country.

†† Best area subtotal of £23,925 (£3 1 s per acre), plus other areas (land and timber): fern (six shillings per acre) = £1,500; light bush (8s 6d per acre) = £1,000; birch (2s 10d per acre) = £1,575.

** Valuer-General to native under-secretary, 23 August 1915, MA-MLP1, file 1915/28/4, Archives New Zealand, Wellington (cited in Edwards, 'Urewera District Native Reserve Act 1896: Part 3' (doc D7(b)), p 179)

TE UREWERA

13.7.6

of Urewera district blocks, given that they had to be valued and purchased separately.⁶⁶⁴ (This was because subdivisions of blocks had separate lists of owners, as identified by land court orders, who could only be paid in accordance with the valuation of the subdivision in which they had been found to have interests. Such valuations varied according to the size of the partitioned block, the quality of the land, and other resources on it.) The Crown's failure to inform itself earlier of the Te Whaiti partition meant that the prices it paid to owners were not based on valuations of the two blocks which reflected an on-the-ground assessment of the timber on each, as they should have been. This failure was compounded by other factors: namely, the arbitrary nature of the partition itself, and the decision not to survey the two blocks before purchase began (which meant that the boundary between them was not clearly established on the ground).⁶⁶⁵

Table 13.3 sets out the original and revised valuations provided by Wilson, Jordan, and Pollock of the Lands Department, on the one hand, and the Government valuations (based on those of district valuer Burch) on the other.

From this information, the following points emerge:

- ▶ The Government valuation of all the Te Whaiti timber (£26,560) was higher than that of the land (£20,127).
- ▶ Te Whaiti 2 had a far greater proportion of the valuable timber than did Te Whaiti 1 (75.3 per cent of the total as opposed to 24.7 per cent).
- ▶ The Government valuation of Te Whaiti 2's most valuable milling timber, together with the 7,850 acres of land on which it stood, was £3 1s per acre, totalling £23,925 of Te Whaiti 2's £28,000 valuation (ie, 85.4 per cent).
- ▶ In Te Whaiti 1, the Government valuation of the land was nearly twice the value of the timber.
- ▶ The Government valuation of land and timber (not Wilson, Jordan, and Pollock's valuation), was used as the basis for purchase in Te Whaiti 1 and 2.

664. Native Under-Secretary to Judge Browne, 25 June 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington

665. Murupara Native Land Court, minute book 1, 9 May 1913, p 263. Canning refers to the land court minutes at the time of partition of Te Whaiti block which make it clear that a survey had not yet been completed; an estimate had been made of the amount of land on the west side of Whirinaki River (23,000 acres), and the court ordered that, once a survey established whether the actual acreage was more or less than this, the acreage of that part of Te Whaiti 2 on the west side of the river would have to be adjusted accordingly; and then the area of each division of the block would also have to be adjusted: Canning, 'Te Whaiti Nui-A-Toi Forestry Report' (doc A114(e)), p 13; Canning, comp, supporting papers to 'Te Whaiti-Nui-A-Toi Forestry Report', 1993 (doc A114(a)), app 2, p 13. Canning stated that boundaries were surveyed after the Crown concluded its purchasing in the Te Whaiti 1 and 2 blocks, but only as a result of the survey of adjoining blocks: Canning, 'Te Whaiti Block: Report on Timber and Land Resources' (doc G6), p 6.

- ▶ Thus, interests were purchased in Te Whaiti 2 at the average per-acre price of £1 1s 3d, and in Te Whaiti 1 at 8s 3d.⁶⁶⁶
- ▶ As between Te Whaiti 1 and Te Whaiti 2 blocks, the difference between the Government valuation of the best timber and Wilson, Jordan, and Pollock's valuation of the best timber was significant. In both cases, the Government valuation was higher, as follows:
 - The (revised) Government valuation for Te Whaiti 1 gave a figure for the best timber of £6,560, and for land and timber £18,687; whereas Pollock's figure for Te Whaiti 1 (land and timber) was £13,870. The Government valuation was thus £4,817 higher.
 - For Te Whaiti 2, the revised Government valuation attributed 7,850 acres of the best timber to the block, at £3 1s an acre, totalling £23,925 (land and timber); whereas Pollock attributed it with 6,452 acres of the best timber, valued at £2 10s an acre (a total of £16,130). This was a difference of £7,795. Thus, the Government valuation was much more advantageous to Te Whaiti 2 owners.

How fair were these valuations? The answer depends on a number of factors, including the volume, and types of timber involved, and its accessibility and proximity to markets. On the matter of timber volume, James Canning gave evidence that the area of the Te Whaiti blocks contained 'the densest podocarp stand (excluding Kauri) to be found in the Central North Island, if not the densest in the country.'⁶⁶⁷ Canning's research, as he described it, involved first establishing the area of Te Whaiti 1 and 2 blocks by digitising the boundaries from plans of adjoining surveys, then a 'reconstruction of the original forest by modern computer methods', using volumetric measurements of timber from the New Zealand Forest Service in the early 1950s.⁶⁶⁸ Those measurements, devised to assess the total volume of indigenous forest remaining in the country in the 1950s, were based on the mapping of forests, a system of forest typing based on aerial photographic interpretation,⁶⁶⁹ and ground sampling. That is, sample plots at 1000-yard intervals across afforested areas were measured by field parties, which enabled them to establish the species and the volume of each species within the typed area.⁶⁷⁰ Since the Forest Service reports were compiled some 25 years after

666. Stirling compared the valuation of Wilson and Jordan at 12s 3d per acre with the 13 shillings per acre average value given by Burch in July 1915 and stated that despite the apparently small difference between the two values, the purchase of the whole block at the higher value would have cost £32,000 more: Stirling, 'Te Urewera Valuation Issues' (doc L17), p 129. Perhaps this was a typographical error, as we calculate the difference to be less than £3,000.

667. Canning, 'Te Whaiti Block: Report on Timber and Land Resources' (doc G6), p 5

668. Canning, 'Te Whaiti Block: Report on Timber and Land Resources' (doc G6), pp 6-7; Canning, 'Te Whaiti Nui-a-Toi Forestry Report' (doc A114(e)), p 7

669. Canning explained that forested areas were flown over and photographed with a mapping camera. 'The resultant overlapping photographs were studied stereoscopically by interpreters who according to the grey tone, textural appearance, height, topography and location typed the vegetation depicted thereon.' See Canning, 'Te Whaiti Nui-a-Toi Forestry Report' (doc A114(e)), p 18.

670. Canning, 'Te Whaiti Block: Report on Timber and Land Resources' (doc G6), p 5

milling had begun, data from a number of sources was used to reconstruct logged areas.⁶⁷¹ The volume of merchantable timber was shown to be 532 million board feet.⁶⁷² The data, Canning said, was the ‘best available and infinitely better than the casual estimates made by the Crown at the time of sale.’⁶⁷³ Pollock had estimated only 200 million board feet, which was short by some 332 million board feet.⁶⁷⁴ The under-estimation of timber volume, which Canning said was the main factor affecting the price paid by the Crown, was attributable, in his view, to the ‘negligent approach’ of the Crown’s representatives.⁶⁷⁵ ‘There is no evidence that he [Pollock] traversed the Block and produced his valuation after inserting a system of sample plots.’⁶⁷⁶ In fact there is no indication ‘that he seriously attempted to produce a reliable estimation of the timber.’⁶⁷⁷

Canning seems not to have been aware of the Government valuation based on Burch’s data,⁶⁷⁸ but in our view this does not detract from his criticism that the 200 million board feet estimate of Te Whaiti timber volume substantially under-estimates its true volume. Burch’s and Pollock’s valuations of the Te Whaiti millable timber are based on very similar estimates of timber volumes. To explain:

- ▶ Burch valued the timber on the entire Te Whaiti block at £26,560; subsequently providing figures of 7,850 acres of milling timber worth £20,000 for Te Whaiti 2, and an unspecified acreage of timber worth £6,560 for Te Whaiti 1.⁶⁷⁹
- ▶ If the timber in the two blocks was of comparable quality, the area of milling timber in Te Whaiti 1, on the Government valuation, would be 2616.66 acres (ie one-third of 7,850 acres).
- ▶ The total area of milling timber, according to the Government valuation, would thus be 10,466 acres.
- ▶ Pollock did not give a separate timber valuation for the 12,000 acres of land and ‘heavy podocarps’⁶⁸⁰ that he and Wilson and Jordan valued at £30,000, but Canning assumed that the land was valued at five shillings per acre.⁶⁸¹

671. For instance, H Tai Mitchell’s plans of the subdivisions of Te Whaiti block immediately after the purchase showed the bush edge as it existed at that time, and provided the basis (when digitised into a computer) for reconstructing gaps created by clear felling: Canning, ‘Te Whaiti Nui-A-Toi Forestry Report’ (doc A114(e)), p 20.

672. Canning, ‘Te Whaiti Block: Report on Timber and Land Resources’ (doc G6), p 7

673. Canning, ‘Te Whaiti Block: Report on Timber and Land Resources’ (doc G6), p 5

674. Canning, ‘Te Whaiti Nui-A-Toi Forestry Report’ (doc A114(e)), pp 7, 21

675. Canning, ‘Te Whaiti Nui-A-Toi Forestry Report’ (doc A114(e)), p 23

676. Canning, ‘Te Whaiti Block: Report on Timber and Land Resources’ (doc G6), p 8

677. Canning, ‘Te Whaiti Block: Report on Timber and Land Resources’ (doc G6), p 8

678. Canning referred to the ‘so-called Government valuation’ as being ‘probably the value placed on the land by Pollock.’ His discussion [throughout], however, is based on Pollock’s own valuation: Canning, ‘Te Whaiti Block: Report on Timber and Land Resources’ (doc G6), p 8.

679. Valuer-General to Native Under-Secretary, 23 August 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 1051)

680. Canning, ‘Te Whaiti Nui a Toi Forestry Report’, revised version (doc A114(e)), p 24

681. Canning, ‘Te Whaiti Nui a Toi Forestry Report’, revised version (doc A114(e)), p 16

- ▶ Although Canning presented his figures as being based on a land value of five shillings per acre, he concluded that 12,000 acres at five shillings per acre gives a total of £7,500 when in fact it is £3,000.⁶⁸² A land value of five shillings per acre seems consistent with the values given at the time to the rest of the Te Whaiti lands (totalling 59,340 acres) by Wilson and Jordan (see sidebar ‘Valuations of Te Whaiti land and timber, 1915’ – section on ‘Amended valuation’).
- ▶ Those values ranged from a low of 2s 6d per acre (which Canning identified as the value for ‘rough country in non-merchantable bush’), to five shillings per acre for what Canning described as ‘cleared land (mostly rolling country and river flats)’, to a high of six shillings per acre for ‘steeper country in merchantable bush.’⁶⁸³
- ▶ The six-shilling valuation (of 28,340 acres) included, Canning said, the amount of just one shilling an acre for merchantable timber in this area that his research showed ranged in volume from 6000 to 46,000 board feet per acre.⁶⁸⁴
- ▶ On the basis that the land itself was valued at five shillings per acre, as Canning stated (ie, a total of £3,000), Pollock’s timber valuation would be £27,000.
- ▶ The difference between Burch’s and Pollock’s valuation of the timber would thus be £440 – a difference of less than 2 per cent.

Given that all the officials were carrying out their valuations at about the same time, we consider it likely that Burch knew the basis, or the outcome, of the Wilson, Jordan, and Pollock valuation before the Government valuation of the Te Whaiti land and timber was completed. That might explain why Burch did not specify an estimated volume of millable Te Whaiti timber, yet was able to put a value on it which appears to be very close to Pollock’s valuation. But whatever the reason for the similarity between Pollock’s and Burch’s timber valuations, the very fact of it indicates that Pollock’s estimate of 200 million board feet is equally relevant to Burch’s valuation. We conclude that Canning’s criticisms of the 1915 estimate of timber volume – though they were directed at Pollock and his valuation – could equally apply to Burch’s valuation. Canning estimated that Pollock valued the timber at £22,500 (although, as noted above, it seems the figure should have been £27,000)⁶⁸⁵ – an amount which was ‘extremely poor’ when compared with Canning’s own estimate of £330,557. This amount was derived using the National Forest Survey volumes of merchantable timber, Canning’s own reconstruction of the forest on Te Whaiti 1 and 2 blocks at the time of sale, and contemporary (1918) gazetted values for each timber area type.⁶⁸⁶

The Crown did not present expert evidence that contested Canning’s findings, but Crown counsel took issue with his evidence on several grounds. In particular, Crown counsel criticised Canning for having unreasonable expectations of the 1915 methodology for measuring

682. This seems to be a simple arithmetical error. The value of 30,000 acres at five shillings an acre is £7,500.

683. Canning, ‘Te Whaiti Nui-A-Toi Forestry Report’, revised version (doc A114(e)), p 15

684. Canning, ‘Te Whaiti Nui-A-Toi Forestry Report’, revised version (doc A114(e)), p 24

685. Canning, ‘Te Whaiti Nui-A-Toi Forestry Report’, revised version (doc A114(e)), p 16

686. Canning, ‘Te Whaiti Block: Report on Timber and Land Resources’ (doc G6), p 9

timber volumes, for relying on contemporary gazetted timber values that were specific to the West Coast, for relying on a wrong estimate of tramway costs, and for giving undue weight to the fact that the Te Whaiti block provided access to other blocks rich in timber.⁶⁸⁷ In other words, they took issue with Canning on both timber measurement and timber valuation. We consider these matters in turn.

(1) Timber volume measurement in 1915

The Crown noted that though Canning was critical of Pollock's estimate of the total volume of timber on the blocks, he appeared to accept Pollock's estimate of approximately 12,000 acres of millable timber, and his range of timber volumes (6000 to 50,000 board feet per acre). Canning's estimate of total timber volume was so much higher than Pollock's because, he argued, it could be shown that timber volumes at the high end of the range extended over far more land than Pollock allowed for. The Crown's submission was that Canning's estimate relied on technology not available to officials in 1915 (aerial photographs, computers, and 'even helicopters'). Canning's suggestion that Pollock could have used a sampling method to improve his accuracy was refuted on the grounds that officials were unlikely to have had the luxury of time 'to spend weeks doing sample surveys of timber volumes at precise grid intervals'. Though it is not known what kind of method Pollock used – he says nothing about his methodology, and we infer that he made eye estimates – the Crown submitted that its procedures 'were reasonable at the time'.⁶⁸⁸

We consider the most important point to emerge from Canning's evidence is that Pollock's estimate of timber volume (200 million board feet) was just 37.6 per cent of the volume estimated by Canning (532 million board feet). It is of course incontestable that Canning relied on modern technology in his research. As a scientist, he set out (in accordance with his brief) to establish, in particular, whether the timber resource had been fairly assessed and the owners properly paid for it. His answer, as we have seen, was a resounding 'No'. And, in our view, though it may have taken modern techniques to establish with some precision the extent of the shortfall in timber volumes, Canning's answer is sound. Certainly his timber volumes are at the high end of Pollock's range of volumes (44,333 feet per acre, compared with Pollock's upper figure of 50,000 feet) – but they are within them.

We are mindful of the Crown's caution against assuming that all trees were merchantable: a proportion, it was submitted, 'are likely to have been over-mature, rotting or diseased'.⁶⁸⁹ Counsel also referred us to a 1939 case study in the vicinity of Te Whaiti, which in their view indicated that issues of valuation of timber stands were not straightforward. Stands on the Te Whaiti Residue block and adjacent smaller blocks amounting to 1,678,423 board feet of podocarps (after 10 years of milling timber for fence posts) were estimated as being worth

687. Crown counsel, closing submissions (doc N20), topic 31, pp 26–29

688. Crown counsel, closing submissions (doc N20), topic 31, p 27

689. Crown counsel, memorandum in response to Tribunal directions, 13 October 2011 (paper 2.898), p 4

£3,000. But the forest ranger stated at the time that ‘commercial proposition[s] were limited to the flats along the stream . . . and any interference with the bush would result in severe erosion.’⁶⁹⁰ The Crown contrasted the figure of some 291 board feet per acre (over 5,764 acres) in this study with the much higher figure from the 1915 valuation of 16,700 board feet per acre on 12,000 acres of Te Whaiti block land.⁶⁹¹

We consider the Crown’s example is less telling when set in the context of all the evidence on timber volumes that is before us. In particular, the 1939 assessment was made well before the 1955 Forest Service survey, which was a state-of-the-art operation.⁶⁹² We consider that the methodology adopted in that survey, as set out in the Forest Service report, is reassuring. Merchantability, the report states, ‘was assessed in accordance with the best of current utilisation practices.’⁶⁹³ (Merchantable stands are ‘those which are of sufficient extent, of sufficiently high quality, and of sufficiently high volume per acre, having regard to topography, to permit economic exploitation either immediately or within the next several decades.’⁶⁹⁴) And podocarp species presented few difficulties to assessors:

these species are comparatively free from concealed defect[: and] can, therefore, be appraised to a high standard of accuracy.⁶⁹⁵

Canning’s conclusions about the under-estimation of timber volumes in 1915 should also be understood in the context of knowledge of, and interest in, the timber resource at the time, and of Crown policies. We turn briefly to that context.

By 1915, when Pollock (of the Lands Department) and Burch (the district valuer) made their respective valuations of Te Whaiti timber, foresters had for some time been urging ‘a more responsible use of the country’s forests.’⁶⁹⁶ A handful of foresters bemoaned the general lack of concern about protecting forests and safeguarding a supply of timber for the future; the emphasis was still on the needs of rural settlement – the felling of trees and sowing of pasture. Though some optimistic guesses were made at the start of the century about how long indigenous timber would last, the 1913 Royal Commission on Forestry warned in its landmark report that the supply was ‘very limited’: it would last 30 years at most unless a

690. Crown counsel, memorandum in response to Tribunal directions, 13 October 2011 (paper 2.898), p 5

691. Crown counsel, memorandum in response, 13 October 2011 (paper 2.898), pp 4–5

692. It was noted in the national report that field work extended over a 10-year period, and the air survey over a long time. But regional timber totals had all been corrected to 31 March 1955 by subtracting known timber outputs since dates of survey or photography. The effective date of survey was therefore 1 April 1955: see SE Masters, JT Holloway, and PJ McKelvey, *The Indigenous Forest Resources of New Zealand*, vol 1 of *The National Forest Survey of New Zealand, 1955* (Wellington: Government Print, 1957), p 15.

693. Masters, Holloway, and McKelvey, *The Indigenous Forest Resources of New Zealand*, p 12

694. It was stated that the term ‘merchantable’, as used in the report, referred only to the quality of the forest; availability on legal grounds was not considered in assessing merchantability: see Masters, Holloway, and McKelvey, *The Indigenous Forest Resources of New Zealand*, p 16.

695. Masters, Holloway, and McKelvey, *The Indigenous Forest Resources of New Zealand*, p 12

696. Klaus Neumann, ‘Maori and Forestry in the Twentieth Century: A Preliminary Report’ (commissioned research report, Wellington: Crown Forestry Rental Trust, August 2000 (doc 110), p 13

real attempt was made to conserve it.⁶⁹⁷ The commission saw no long-term future, however, for the indigenous forests – exotic plantation forests should be established instead – but strongly recommended that where land was suitable for conversion to pasture all its timber should be milled rather than burnt. ‘Year by year,’ the commission wrote, ‘timber formerly considered as far too distant from any market is being profitably milled.’⁶⁹⁸ The first Director of Forestry, LM Ellis (appointed in 1919), placed a greater importance on indigenous forests and on controlled forest management of lands ‘better suited for silviculture than for agriculture’ on Maori-owned blocks.⁶⁹⁹ The value of indigenous timber was clearly spelt out to the Government during this period.

While it is not clear what kind of method Pollock used in valuing the Te Whaiti timber, the outcome, in any case, was simply a broad estimate of timber volumes. We may contrast this with evidence on measurement given before the Royal Commission on Forestry in 1913. As a Government timber-measurer, Pollock had appeared before the commission himself. His evidence related to the Auckland land district, and he was speaking to the system for measurement introduced in the northern kauri forests by HP Kavanagh, chief timber expert with the Lands Department. He described the setting of boundary lines (to partition a forest for milling purposes), clearing of vines around trees, taking the height of trees with an Abney level,⁷⁰⁰ branding them with the Government brand with an axe near the base, and use of a ready reckoner for estimating the superficial contents.⁷⁰¹ Kavanagh himself, by then retired, also gave evidence, drawing on his experience in Wairarapa as well as Auckland district. In Auckland, he said, he initiated the system of measurement (rather than estimation) which he ‘now advocate[d] should be enforced in all districts.’ The Government should have trees measured and the contents computed before it disposed of milling areas – and that included ‘undersized’ trees such as kahikatea ‘and other good milling-timbers.’⁷⁰² We note that the commission adopted his suggestion in its recommendations.⁷⁰³ But Pollock did not refer to his use of any such system of measurement at Te Whaiti. We are aware that when the national forest inventory was compiled between 1920 and 1923, there was considerable reliance on eye estimates by experienced loggers; but in that case data was compiled nationally as a basis for forest policy planning. The 1955 Forest Service report stated that at the time of the 1920 to 1923 survey, ‘shortcomings in method were at all times clearly

697. Neumann, ‘Maori and Forestry in the Twentieth Century’ (doc 110), p 19

698. ‘Report of the Royal Commission on Forestry’, AJHR, 1913, C-12, p xx (quoted in Neumann, ‘Maori and Forestry in the Twentieth Century’ (doc 110), p 20)

699. LM Ellis, ‘Report on Forest Conditions in New Zealand, and Proposals for a New Zealand Forest Policy’, AJHR, 1920, C-3A, pp 17–18 (quoted in Neumann, ‘Maori and Forestry in the Twentieth Century’ (doc 110), pp 23–24)

700. An Abney level is an engineering instrument with a fixed sighting tube, a movable spirit level, and a protractor scale. It can be used to measure tree height through trigonometrical calculations. It is described as easy to use and relatively inexpensive.

701. Pollock, minutes of evidence, 24 April 1913, AJHR, 1913, C-12, p 52

702. Kavanagh, minutes of evidence, ‘Report of the Royal Commission on Forestry’, 24 April 1913, AJHR, 1913, C-12, p 50

703. ‘Report of the Royal Commission on Forestry’, AJHR, 1913, C-12, p xxi

Timber	1909 regulations		1917–18 regulations	
	s	d	s	d
Totara				
Class I	2	–	2	6
Class III	1	–	–	–
Matai				
> 25 feet	2	–	2	–
< 25 feet	1	–	–	–
Rimu	–	6	1	–
Kahikatea	–	6	–	9
Other timbers	–	–	–	–

Table 13.4: Minimum timber royalties prescribed by regulations per 100 super feet

recognised' and inevitably, as the forests were explored more thoroughly, errors in the 1923 estimates came to light.⁷⁰⁴ But timber measurers and millers working in well-timbered areas for commercial purposes in the years before the survey of the early 1920s approached their task differently, as we have shown, and measured trees more carefully. The Te Whaiti owners, whose sole valuable resource was their timber, were entitled to have had it properly measured.

(2) Timber prices – a comparison of minimum rates for Crown-owned timber

While the Crown acknowledged that it paid a low price for the Te Whaiti timber, Crown counsel challenged Canning's assessment of a fair price for the timber. He relied on values prescribed in the 1918 *New Zealand Gazette*, setting minimum royalties for cutting State-owned timber, arguing that these represented a 'fair value at the mid-point of the sale.' The 1918 regulations Canning cited were issued under the Mining Act 1908, and the Crown submitted that they were 'for specified areas within the West Coast and up to only 400 acres.'⁷⁰⁵ Crown counsel contended that, at the time, the West Coast had a main railway line and numerous branch lines, so that timber transport there would have been easier and cheaper than from the Te Whaiti blocks. Noting Pollock's contrast between the Te Whaiti timber and 'the better positioned' King Country timber, the Crown queried Canning's reliance on

⁷⁰⁴ Masters, Holloway, and McKelvey, *The Indigenous Forest Resources of New Zealand*, pp 6, 8

⁷⁰⁵ Canning, 'Te Whaiti Block: Report on Timber and Land Resources' (doc G6), p 8; 'Amended Regulations in Respect of Timber-cutting Rights under the Mining Act, 1908', 11 April 1918, *New Zealand Gazette*, 1918, no 52, p 1018; Crown counsel, closing submissions (doc N20), topic 31, p 27; see also Crown counsel, cross-examination of Canning, 14 September 2004 (transcript 4.10(a), p 2)

West Coast, rather than King Country, timber values.⁷⁰⁶ The Crown did not, however, identify any relevant King Country values.

It is true that the 1918 regulations on which Canning relied were made under the Mining Act. We accept that those regulations were not of general application, although we have been unable to verify that their limitations were exactly as stated by the Crown. We have, however, verified that the minimum royalties prescribed by those regulations were identical to the minimum royalties prescribed by other regulations of more general application which were in force at the same time. The minimum rates to be paid by sawmill licensees for Crown-owned timber were gazetted in 1917 under the Land Act 1908 and the State Forests Act 1908: 2s 6d for 100 super feet of totara, two shillings for matai, one shilling for rimu, and ninepence for kahikatea (see sidebar).⁷⁰⁷ The 1917 rates were higher than the rates set less than a decade earlier, reflecting rising prices for timber (other than kauri),⁷⁰⁸ and it seems were copied into the regulations made in 1918 under the Mining Act.

We note, too, an identical provision (regulation 31) in the regulations made under the Land Act 1908 and the State Forests Act 1908 which states that ‘where the timber is easily accessible and can be procured without great difficulty the Minister may increase the amount of the royalty specified.’⁷⁰⁹ This underlines the point that the prescribed royalties were *minimum* amounts that took account of the costs of cutting and extracting timber. These facts, we consider, negate the Crown’s criticisms of Canning’s reliance on the Mining Act regulations and his assessment that the minimum royalty rates prescribed there represented a fair value for the Te Whaiti timber. The Crown, subsequently, appears to have accepted this point, though counsel noted that regulations under the State Forests Act 1908 provided that the Conservator might sell timber by ‘appraisement’ or auction, so that sums less than the specified royalties might have been involved.⁷¹⁰ This is a mere quibble, however. The point really is that identical royalty rates laid down in regulations of the mid-1910s under no fewer than three Acts mean that Canning’s calculations of value of the timber – in broad terms – can be shown to be soundly-based and credible.

706. Crown counsel, closing submissions (doc N20), topic 31, p 27

707. ‘Forest Regulations under the Land Act 1908’ were issued under section 3 and gazetted on 15 April 1909, *New Zealand Gazette*, 1909, no 32, pp 1055–1077; regulations under the State Forests Act, 1908 (applying to State forests or forest reserves) were also gazetted on 15 April 1909, *New Zealand Gazette*, 1909, no 32, pp 1031–1053; and a notice ‘Amending the Timber Regulations under the Land Act, 1908’ was published on 22 February 1917 in the *New Zealand Gazette*, 1917, no 34, pp 724–725.

708. See for instance, Skeet, ‘Extracts from Reports of Commissioners of Crown Lands’, AJHR, 1918, C-3, p 40.

709. ‘Forest Regulations Under the Land Act, 1908’, 15 April 1909, *New Zealand Gazette*, 1909, no 32, p 1059

710. The Tribunal sought comment from the parties on its discovery of regulations of ‘more general application’ under the Land Act 1908 and the State Forests Act 1908, which prescribed royalties similar to those made under the Mining Act 1908, on which Mr Canning relied. By memorandum on 13 October 2011, the Crown agreed that amended regulations of 1917 under each of the two acts were equivalent to those made under the Mining Act 1908; see presiding officer, memorandum and directions, 9 September 2011 (paper 2.894), p 2; Crown counsel, memorandum in response, 13 October 2011 (paper 2.898), p 3.

We observe that, had Pollock's estimated 200 million board feet of Te Whaiti timber all been valued at even the lowest rate set by the regulations for any of those types of timber (ninepence per 100 super feet of kahikatea), it would have been worth £75,000, instead of its Government valuation of £26,560. And had the estimated volume been 532 million board feet, in line with Canning's evidence, the timber's value – even at the lowest rate prescribed in 1917 for Crown-owned timber – would have been £199,500, over seven times its Government valuation of £26,560. We are satisfied that £199,500 represents a bare minimum value for the Te Whaiti timber in 1917, and that if the more valuable totara, matai, and rimu, which we know were well represented in the forest, were taken into account (Pollock stated that rimu and totara predominated), its true value at rates of the time would have been substantially higher.

We note that an under-valuation of some £173,000 in 1917 (ie £199,500 minus £26,560) is, in today's dollars, equivalent to a shortfall of some \$20 million.⁷¹¹

(3) Timber valuations – the impact of projected tramway costs

Pollock's valuation of the Te Whaiti timber factored in the cost of a tramway to carry the timber to Te Teko. Using Pollock's figures – of 200 million board feet of timber and £30,000 total value for 12,000 acres of land and millable timber – Canning estimated that Pollock valued the timber at 2.7 pence ('say 3d') per 100 board feet. Then, relying on the cost of other tramways at the time (in particular, the Taupo Totara Timber Company line, similar in length and terrain covered to the one needed), Canning estimated that the Te Whaiti tramway would have cost £50,000. When that amount was spread over the estimated 200 million board feet of timber, it meant that each 100 board feet cost an extra sixpence. The result, on Canning's calculation, was that the Crown paid 8.7 pence per 100 board feet for the Te Whaiti timber – which is less than the minimum rate (ninepence) set by the 1917 regulations for the cheapest of the podocarps. When calculating an estimate of the amount the Crown underpaid for the Te Whaiti timber, Canning used the figure of 532 million board feet and the rate of 8.7 pence per 100 board feet, and concluded that the Crown underpaid by £208,000.⁷¹²

The Crown challenged Canning's estimate of the tramway cost as being too low, on the grounds that it did not account for the fact – which Pollock pointed out – that three difficult gorges would have to be excavated during its construction. The Crown contended that the

⁷¹¹ The Reserve Bank inflation calculator shows that £1 in 1917 is worth between \$112.08 and \$120.87 today (ie, in the first quarter of 2012).

⁷¹² Canning, 'Te Whaiti Nui-A-Toi Forestry Report', revised version (doc A114(e)), pp 8, 16–17, 24. We noted earlier that Canning miscalculated the land/timber split in Pollock's £30,000 valuation of the 12,000 acres. On the basis that Pollock valued the land at five shillings an acre, the timber was actually valued at £27,000 – rather than the £22,500 Canning used when he calculated that the Crown valued the Te Whaiti timber at 2.7 pence ('say 3d') per 100 board feet. Using the amount of £27,000, the value is nearer 3.3 pence per 100 board feet. The difference, of one third of a penny per 100 board feet is, we consider, not large enough to be material when we are engaged in an exercise, such as the present one, that is heavily dependent on estimates.

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tramway costs may have been 50 per cent higher than Canning estimated, making the price of the timber 11.7 pence per 100 board feet. The Crown also challenged Canning's spreading of the tramway costs across just 200 million board feet when his own calculation of the Crown's underpayment for the timber used the figure of 532 million board feet. The Crown submitted that when Canning's own estimated cost of the tramway (£50,000) was spread over the larger quantity of timber, the tramway would have cost 2.25 pence per 100 board feet, not sixpence as calculated by Canning. This would reduce the amount of the Crown's under payment for the Te Whaiti timber from the £208,000 calculated by Canning to some £110,000.⁷¹³

We make two points about the parties' argument about the extent to which tramway costs affected the price paid by the Crown for the Te Whaiti timber. First, both Canning and the Crown did their calculations (evidently for the sake of convenience) on the basis that the tramway costs would be charged only to the Te Whaiti block. But Canning was well aware that Pollock never thought the cost of the tramway would be borne solely by Te Whaiti timber. In fact, Pollock suggested the purchase of Te Whaiti so as to reduce the cost of development works necessary for the removal of timber from adjacent blocks; a large volume of timber, he argued, would 'spread the initial tramway expenditure'.⁷¹⁴ And he was particularly enthusiastic about 'Te Papa bush', which he stated was on the Whirinaki block: 'Conversant as I am with most of the Crown timber areas in the Auckland province, I did not know the Crown possessed a bush so valuable and so little known of.'⁷¹⁵ Since both Canning and the Crown attributed their estimates of the tramway cost solely to the Te Whaiti timber, when Pollock was clear that the cost would be spread more widely, we conclude that the tramway cost must have had substantially less of an impact on the valuation of Te Whaiti timber than either Canning or the Crown calculated. We cannot, however, give a precise figure for the impact that the estimated tramway cost had on that valuation.

Secondly, we note that, ultimately, the tramway was not built and the Te Whaiti timber – as well as timber on adjacent Crown-owned blocks of Heruiwi and Whirinaki – was taken out by the Te Whaiti road.⁷¹⁶ That road, completed in 1923, was not purpose built for timber

713. Crown counsel, closing submissions (doc N20), topic 31, pp 27–28

714. Pollock to Commissioner of Crown Lands, Auckland, 2 August 1915, BAAZ 1109, file 20/201, Archives New Zealand, Auckland (quoted in Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 202)

715. Pollock to Commissioner of Crown Lands, Auckland, 2 August 1915, BAAZ 1109, file 20/201, Archives New Zealand, Auckland (James Canning, comp, supporting papers to 'Te Whaiti-Nui-A-Toi Forestry Report', various dates (doc A114(d), vol 1), app 16). Our reading of Pollock's report suggests that his reference to the very 'valuable' bush is to Te Papa bush. Unfortunately we have been unable to locate the report of December 1914 about the 'bush' by ranger Jordan, which Pollock refers to as his source.

716. Canning stated that the Pohokura timber was extracted by the 'Ballan route' (ie, the road through the Waipunga valley), while the remaining timber went north to the Te Whaiti or Minginui mills: see Canning, under cross-examination by Crown counsel, 14 September 2004 (transcript 4.10(a), p 8).

Runanga 1A block: An Example of Crown Payment of a Premium for Access

In 1910, Christchurch farmer Thomas Ballan owned Runanga 1A block in the headwaters of the Waipunga River, which adjoined the Pohokura block (Crown land). (Runanga and Pohokura are to the south of, and close to, the Napier to Taupo Road.) The Crown began negotiations with Ballan to buy a 1400-acre strip of the block, but in March 1911, G W Russell, a member of Parliament, entered into an agreement to buy the block from Ballan, and it was Russell who sold the Crown the 1,400 acres.

The Crown paid Russell £3,510 10s – that is, £2 10s per acre – though the Government valuation of Runanga 1 (34,000 acres), made several years earlier, was much lower.¹ The transaction aroused political interest, and was the subject of a parliamentary inquiry. Officials stated that the Crown wanted the 1,400 acres because it was flat land, necessary for homesteads once Pohokura block was cut up into runs, and for tenant access to the main road planned for the Waipunga valley. Within the 1,400 acres, the land for the road could have been taken under the Public Works Act, but not the land between the road and the proposed grazing runs on Pohokura block.² For this reason, officials stated – and the parliamentary committee agreed – it was desirable for the Government to acquire the property, and the price paid was not excessive ‘under the circumstances.’³ Access to the runs was stressed (‘a piece of land [for each grazing-run holder] fronting on the main road’), rather than the importance of a road to get timber out – though the committee was told that the ‘greater part of the Pohokura Block is all forest.’⁴ One official stated that had the land not been purchased, prospective Crown tenants ‘could not get out or in.’⁵ But it was clear that Crown officials recommended the payment of a high price per acre sought by the owner because they judged acquisition of the land to be crucial to opening up the Pohokura block.⁶ The Crown paid a substantial premium for part of Runanga 1A for this purpose.

1. Ballan had offered to sell his 1400-odd acres for £4 an acre, but was turned down because the price was considered too high; £2 10s seemed more reasonable.

2. Evidence of WC Kensington, 18 September 1912, AJHR, 1912, I-5A, p 20 (Canning, comp, supporting papers to ‘Te Whaiti-Nui-A-Toi Forestry Report’, various dates (doc A114(b)), app 9)

3. Chairman, ‘Details in Connection with the Purchase and Fencing of Part of Runanga No 1A Block’, 31 October 1912, AJHR, 1912, I-5A, pp i–ii (Canning, supporting papers to ‘Te Whaiti-Nui-A-Toi Forestry Report’ (doc A114(b)), app 9)

4. Evidence of WC Kensington, 18 September 1912, AJHR, 1912, I-5A, pp 19–20 (Canning, supporting papers to ‘Te Whaiti-Nui-A-Toi Forestry Report’ (doc A114(b)), app 9)

5. Evidence of John Strauchon, 12 September 1912, AJHR, 1912, I-5A, p 6 (Canning, supporting papers to ‘Te Whaiti-Nui-A-Toi Forestry Report’ (doc A114(b)), app 9)

6. Evidence of HE Walshe, 11 September 1912, AJHR, 1912, I-5A, p 2 (Canning, supporting papers to ‘Te Whaiti-Nui-A-Toi Forestry Report’ (doc A114(b)), app 9)

transport, but serviced the district generally. Canning's evidence was that the road's construction was funded out of 'general roading construction funds', so that the deduction of tramway costs from the timber value could not be justified.⁷¹⁷

On this point, we conclude that, to the extent that the tramway costs reduced the price the Crown paid to Maori owners for their interests in the Te Whaiti blocks, the reduction was unjustified because the tramway was never built. The Government still funded the road for timber transport, and this would be of benefit to the remaining Te Whaiti owners once they could finally make agreements for timber extraction a number of years later. But those owners who sold received no benefit for the amount by which the price set for the blocks was reduced. Again, there is no way we can quantify the extent to which this factor contributed to the Crown's under-payment of the Maori owners for their Te Whaiti timber.

(4) A premium for access to other Crown-owned timber?

Finally, the Crown disputed Canning's argument that Maori owners should have been paid a premium for the Te Whaiti land because Te Whaiti valley gave access to 'huge timber reserves on the Whirinaki, Heruiwi and Pohokura blocks'. The Crown submitted that the case Canning cited to support his argument was not a 'solid point of comparison'.⁷¹⁸ This is not strictly an issue about the valuation of Te Whaiti timber, but the parties dealt with it in this context, and so we include it here. The facts of the case cited by Canning,⁷¹⁹ and involving the Runanga 1A block, are summarised in the sidebar opposite.

We accept that the Runanga 1A purchase involved a relatively small acreage of land, while at Te Whaiti the purchase of two large blocks was proposed. We accept, too, that whereas the Runanga land provided the only access for the proposed Pohokura homesteads, the Te Whaiti land was not the sole accessway to the adjacent Crown-owned timber lands. This is plain from the fact that some of the timber on those blocks was taken out through the Ballan route. But that does not negate the broader point – that the value of the blocks to the Crown was greater because the land provided certain access to the important timber resource of other blocks, as both Pollock and Burch emphasised. We consider that this should have been taken into account when Te Whaiti was valued.

There is no evidence that a premium was considered. Pollock, for instance, simply stated that he considered £30,000 to be the 'full value' for 12,000 acres of 'milling bush', and he 'would not recommend the Crown to pay more';⁷²⁰ while Burch commented that the 'purchase of the Te Whaiti timber at a fair price would undoubtedly cheapen the cost of working the adjoining country and should prove profitable investment', adding that he had, however,

717. Canning, 'Te Whaiti Nui-A-Toi Forestry Report' (doc A114(e)), p 26

718. Crown counsel, closing submissions (doc N20), topic 31, p 28

719. Canning, 'Te Whaiti-Nui-A-Toi Forestry Report' (doc A114(e)), pp 25–26

720. Pollock to commissioner of Crown lands, Auckland, 2 August 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Edwards, supporting papers to 'The Urewera District Native Reserve Act 1896' (doc D7(b)(i)), p 141)

endeavoured to arrive at a fair valuation of the block on its merits.⁷²¹ The principle of paying owners a premium for access had certainly been established in the district, although it seems not to have been applied evenly by the Crown. We note that whereas Russell secured a substantial premium, at £2 10s an acre, for the 1,400 acres of Runanga 1A that were needed to build the Waipunga valley road and give run-holders access to it, the Maori owners of Runanga 1B, part of which was also used for the road, were paid just 3s 10d an acre for their land when the Crown purchased the block.⁷²² That rate did not include any premium, as was noted by the parliamentary committee in its examination of the situation.

In the long run, the bulk of the timber from the Te Whaiti, Heruiwi, and Whirinaki blocks was in fact extracted by road through Te Whaiti.⁷²³ It was not taken out by the tramway, the cost of which had already been deducted from the price paid to the Te Whaiti sellers, for that was never built. Thus, Pollock's and Burch's initial advice that the Te Whaiti blocks provided access to the more valuable Crown-owned timber in adjacent blocks proved to be prophetic, although the exact means of timber extraction changed (from tramway to road) with time and technological advances. But the Te Whaiti owners did not receive any recompense for the additional value their land had to the Crown in this timber-rich area. They should have.

(5) Conclusions

The Crown's purchasing in UDNR blocks was unlawful (and had to be retrospectively validated). It was on a scale that Te Urewera leaders could hardly have imagined in 1896 when the UDNR Act was passed, and was largely conducted through purchases from individuals (a discredited method designed in an earlier age to speed up purchasing and undermine collective resistance to it). In these circumstances, the question of whether prices paid by the Crown were fair seems of secondary importance. But it is necessarily a question at issue between the parties, and we have considered the evidence before us.

We have looked particularly at the process by which the Crown decided on prices to be paid to owners – and we have found that it was defective and unlawful. The Crown's failings in this respect compounded its failure both to conduct its purchases through the General Committee and to demonstrate an interest in the economic and social well-being of the peoples of Te Urewera once the UDNR Act had been passed. And these were the last lands of Te Urewera peoples, who had already been subject to Crown monopoly purchasing in the rim blocks – all the land purchased by the Crown in these blocks in the nineteenth century was acquired under a monopoly (with one small exception), and some was also purchased

721. Burch to Valuer-General, 5 July 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Berghan, supporting papers to 'Block Research Narratives of the Urewera' (doc A86(f)), p1829)

722. Evidence of HE Walshe, 11 September 1912, AJHR, 1912, I-5A, p1 (Canning, supporting papers to 'Te Whaiti-Nui-A-Toi Forestry Report' (doc A114(b)), app 9)

723. Canning, 'Te Whaiti-Nui-A-Toi Forestry Report', revised version (doc A114A), pp 24–25

under monopoly conditions in the early twentieth century. We found that those who sold were not paid a fair price for their land in those blocks.

The question now arises as to how we should approach what we can only describe as a raft of unsatisfactory and highly questionable Crown dealings and decisions. The following factors seem to us to be important:

- ▶ The Crown decided to purchase in Reserve lands at a time of intense public and political pressure, reversing its earlier stated position that the Reserve was quite unsuitable for settlement; this should have alerted it to the need for care with valuations and prices.
- ▶ The Crown was acting contrary to the law (the requirements laid down in the Native Land Act 1909); Maori were entitled to independent valuations, as the Crown itself had recognised, and the Native Land Purchase Board should have instructed the Valuer-General to make special valuations of Reserve blocks.
- ▶ The Crown's valuation process was defective; it sent officials to value the land who had a clear conflict of interest, since their primary concern was to demonstrate the financial viability of proposed Crown settlement schemes which, they found, would be possible if the prices paid to Maori owners were discounted.
- ▶ The process was not transparent and Maori were not consulted, nor did they have the basis of the valuations explained to them.
- ▶ Not only did the Crown fail to consider how Maori economic interests might be advanced when settlement was being planned for, but officials were anxious to buy large tracts of land so that roads would benefit only settler properties and the value of unsold lands would not rise and cost the Crown more; Maori were not considered as farmers or producers, but only as sellers of land.
- ▶ Lands and Survey Department officials, preoccupied with farming settlement, gave a nil value to all Reserve forests except those at Te Whaiti, and Reserve block owners who sold received nothing for them; yet within a few years foresters of the new State Forest Service would consider the same forests a national asset, for production as well as conservation purposes.
- ▶ A Maori Reserve protected by its own statute should have been considered immune from purchasing on any major scale, particularly by the Crown.
- ▶ The Crown vigorously and cynically exercised a monopoly (which it had initially secured in the UDNR Act as a protective measure) to buy the land it wanted at its own prices; monopoly purchasing had long been recognised as unfairly depressing prices.
- ▶ The Crown failed also to adjust its prices when land prices throughout the country rose after the First World War.
- ▶ By 1915, when its real purchasing push began, the Crown had destroyed or bypassed the only collective body (the General Committee) that it could have bargained with on a reasonably equal basis.

- ▶ The Crown had excluded the protective mechanisms available through the mainstream Native land legislation.
- ▶ Communities were denied the opportunity of choosing which portions might be sold to raise funds for the benefit of their community.
- ▶ The people who sold had no basis on which to judge whether the offers made to them were fair or not.
- ▶ The Crown engaged unlawfully with individuals who were living in poverty and who had a limited capacity to withstand any offer.
- ▶ The Crown's purchase of shares from individuals rather than the General Committee meant that payments were dissipated.
- ▶ The Crown was acting in direct contravention of promises made to Te Urewera peoples by the Premier that their Reserve would be protected for them and their social and economic welfare would be promoted.

These factors indicate to us that the duty of active protection upon the Crown was heightened significantly. While the Crown was not technically a fiduciary, the effect of the circumstances summarised above is akin to those in which a fiduciary's unconscionable behaviour gives rise to a constructive trust. Pursuing that analogy, we take guidance from a long line of cases which hold that a wronged beneficiary does not bear the onus to prove loss, but it is for the trustee to prove there is no loss in the sense that the price paid to acquire trust property was adequate. A recent decision of the New Zealand Supreme Court has confirmed that, when a fiduciary has affected the price at which the beneficiary's property is sold, the onus is on the fiduciary to demonstrate that the loss suffered by the beneficiary is less than the difference between the sale price and the property's market value.⁷²⁴

In all the circumstances, we do not accept that the Crown has demonstrated that it paid fair prices for Reserve lands.

Our conclusions about the prices paid to Te Whaiti block owners for their land and valuable timber are similarly adverse to the Crown:

- ▶ As the monopoly purchaser in Te Whaiti, the Crown was careful of its own interests and neglected those of Maori owners.
- ▶ The Te Whaiti timber was neither properly measured nor properly valued.
- ▶ Crown officials agreed that in future the timber – along with that of Heruwiwi, Whirinaki, and Pohokura blocks – would be 'very valuable',⁷²⁵ but in 1915 it was low, and Government valuations of the timber were discounted accordingly.
- ▶ The valuation was crucial for the owners because they were impoverished and it was their major resource.

⁷²⁴. See *Premium Real Estate Ltd v Stevens* [2009] 2 NZLR 384 (SC), 414; see also *Crampton-Smith v Crampton-Smith* [2012] 1 NZLR 5

⁷²⁵. Pollock to commissioner of Crown lands, Auckland, 2 August 1915, MA-MLP 1, file 1910/28/4, Archives New Zealand, Wellington (Hutton and Neumann, supporting papers to 'Ngati Whare and the Crown' (doc A28(b)), p 50)

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- ▶ Te Whaiti owners, like those of other Reserve blocks, suffered the misfortune of having their standing timber valued just before the State Forest Service was established.
- ▶ The Crown's view that the Te Whaiti forests would be best milled in the future should not have denied Maori owners the option of entering into arrangements with private sawmillers, who had been interested in the timber for some years before the Crown.
- ▶ The Crown failed to ensure that Ngati Whare's proposed sale of timber to the Hall company, which the General Committee had consented to in 1914, was progressed through the Executive Council – despite the Minister of Justice's urgings in 1915 that the people be assisted to work their lands, and despite the provisions of the UDNR Amendment Act 1909 to facilitate such a transaction through the District Maori Land Board.
- ▶ The Crown decided instead to acquire the timber by purchasing the land itself, moving to buy up individual interests in Te Whaiti 1 and 2 blocks from August 1915, from owners who were denied the right to sell cutting rights to private buyers, or to contest the Crown's valuation, and who were in a parlous position after the destruction of their crops by frost at the beginning of 1915, and the high price of flour due to the war.⁷²⁶
- ▶ Even if private logging had led to wastage (which we accept would certainly have been the case) and to smaller royalties than anticipated (because of the cost of extraction),⁷²⁷ owners might have staved off sale of the land while receiving much-needed income at a crucial time, and a better share of profits in the future.
- ▶ The Crown did not even consider the desirability of securing the long-term benefit of the resource to the Te Whaiti owners.
- ▶ The Crown compounded its failure to allow the owners the opportunity of securing a market price for their timber by failing to measure the timber by the best possible methods of the time, to obtain reasonably accurate volumes.
- ▶ Canning's evidence, which provided us with a sound basis for estimating the extent of the shortfall in the Crown's measurement of timber volumes, showed that timber volumes were substantially under-estimated in 1915 because they were high over a much greater acreage than Pollock allowed for, though he stated that there was a margin for error even in modern estimates of timber volume (such as his own).⁷²⁸
- ▶ This caution is one reason why we cannot put an exact figure on the undervalue; nor can we put a precise figure on the cost of the tramway which had to be factored in (at the time of purchase) for timber extraction (neither the Crown nor Canning attempted to show what the impact of those costs on the valuation of the Te Whaiti timber would have been had the costs been shared among the various timber blocks the tramway was expected to serve.

726. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p145

727. On timber wastage, see 1913 Royal Commission on Forestry, minutes of evidence, various dates, AJHR, 1913, C-12, pp 1, 15, 28, 32-33, 35, 50, 66.

728. Canning, 'Te Whaiti Block: Report on Timber and Land Resources' (doc G6), p5

Tamati Kruger's Address to the Crown

Tamati Kruger gave the following address to the Crown at the Tribunal's last claimant hearing, held at Maungapohatu:

Kua roa ahau e noho ana i tou marae, to te karauna. Kua kite ahau i tou whare, kua roa au e ako ana, e kite ana, i au tikanga, i au mahi. . . . Ae, he roa tou marae, te marae o te karauna . . . Engari tino popoto to pae-tapu. Ko te roa o to pae-tapu he nui noa iho mou. Ko koe ano, ko koe anahe ka ahei ki te noho i to pae-korero, notemea ko ingoa o to pae-korero ko 'Matapiko'. . . . Engari ko te tara-iti a to whare, he nui ake i te tara-nui notemea kua waiho e koe te wahi nui mou, a, ko te wahi iti mo nga manuhiri, kia kikini ai, kia kopapa ai te noho a o manuhiri. . . .¹

I have been sitting at your marae of the crown for a long time. I have seen your house, I have been learning for a long time, observing your rules, your work. . . . Yes your marae is long, the marae of the government. . . . But your sacred pew is very short. The length of your sacred pew is only long enough for you. Just for you and you alone. One is not allowed to sit on your pew of speeches because the name of your pew is 'selfish'. . . . the host's privilege is wider than the guest's privilege, because you have commandeered the greater place for yourself and the narrower place for your guest, so they may feel the pinch and cramp.²

1. Tamati Kruger, oral evidence (Maori), Mapou Marae, Maungapohatu, 21 February 2005 (doc K34), pp 18–19

2. Tamati Kruger, oral evidence (English), Mapou Marae, Maungapohatu, 21 February 2005 (doc K34(a)), p 12
Counsel for Nga Rauru o nga Potiki, closing submissions, 3 June 2005 (doc N14), pp 47–48. Maori and English versions supplied by counsel for Nga Rauru o nga Potiki.

- ▶ The Crown also failed to pay Te Whaiti owners a premium for the value of the block as an access way to the valuable Crown-owned timber on these blocks, though the principle of paying a premium had already been established in the district; the Crown paid a high price to Pakeha property owners to secure access to a road for runholders whom it wished to establish on Crown land in Runanga 1A block.
- ▶ We conclude that at the very least, the Te Whaiti timber must have been worth £199,500, over seven times its Government valuation of £26,560, and very probably much more than that; we base our figure on the estimated timber volumes and on royalty rates prescribed in Crown regulations (1917) to be paid by sawmill licensees for Crown-owned timber.
- ▶ The undervalue was therefore in the region of £173,000, as a minimum.

- ▶ The Crown (after consolidation of its interests) – not the owners – would mill the greater part of the Te Whaiti timber when it began operations in the Whirinaki Valley (in what was by then State Forest 58) from 1938 to 1984, more particularly from the mid-1940s – given policy changes and technological advances such as tractors⁷²⁹ – and would enjoy the considerable returns from the land it had purchased illegally in the 1910s.

The fate of the timber resource of Te Whaiti underlines the Crown's failure, which it acknowledged before us, to respect the guarantees of the UDNR Act that Maori owners should manage and benefit from their own resources. Maori owners had the right to expect that the Crown would assist their economic development, not foreclose their opportunities.

Again, we do not accept that the Crown has demonstrated that it paid fair prices for timber in the Te Whaiti block.

13.8 TREATY ANALYSIS AND FINDINGS

Our Treaty findings in this chapter are among the most important we will make on Te Urewera claims. The Crown engineered the collapse of the Urewera District Native Reserve, shattering the hopes of the peoples of Te Urewera and breaking its promise that they would achieve control of their own affairs. The result was a body blow to mana motuhake and widespread loss of ancestral lands, already gravely diminished by confiscation and relentless Crown purchasing.

We drew attention, in chapter 9, to the constitutional significance of the UDNR Act. For the first time the State recognised a Maori district which would be set aside entirely as a reserve for its people, and governed by them through a legally empowered local authority. That significance lay also in the mutual recognition and respect of the Crown, on the one hand, and Tuhoe and Ngati Whare on the other, for each other's existence and authority. It not only reflected arrangements made in 1896 but was also the fulfilment and renewal of the earlier compact which Tuhoe and Ngati Whare had entered into with McLean in 1871 – their search for such an arrangement was by then a generation old. Premier Seddon recognised that, and recognised the trust that was placed in the Government when the taiaha Rongokarae was gifted to him. Under the arrangements which culminated in the UDNR Act, Te Urewera leaders entered a full, reciprocal, Treaty-based relationship with the Crown. As we stated in chapter 9, the Crown sought and acquired the people's agreement to recognise the Queen, the Government and the law. It provided for the legal recognition of their self-government. And it promised them the active protection and mutual benefit inherent in the Treaty.

729. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 370–371; see also Crown counsel, cross-examination of Canning, 14 September 2004 (transcript 4.10(a), pp 7–8)

Because of the constitutional significance of the UDNR Act, and because the Crown was very well informed as to the outcomes Tuhoe and Ngati Whare sought from the preceding negotiations, the onus on it to ensure that the UDNR Act was properly carried out was heavy. In fact the Crown failed, as it has conceded, to establish an effective system of local land administration and local governance. Its commitment to the success of the UDNR Act waned quickly and, it seems, irrevocably.

Ultimately, the Crown not only made so little effort to ensure that the key promises of the UDNR Act were upheld but also overrode the provisions that would have protected the Reserve from piecemeal alienation. We have already acknowledged and welcomed the Crown's very properly made concessions on these matters, and its acknowledgement that, in the various actions it identified as being in breach of the Treaty and its principles, 'the Crown did not act reasonably and in good faith toward Urewera Maori'.⁷³⁰ In a very significant concession, the Crown also accepted ultimate responsibility for 'the parlous state of affairs that existed in the Urewera district as a result of Crown actions and omissions in implementing the local governance provisions and purchasing undivided shares'.⁷³¹ We will consider that state of affairs further in chapter 14.

The Treaty principle of autonomy, which we have referred to in chapter 8 of this report, arises from the Crown's guarantee to protect the tino rangatiratanga (mana motuhake) of the peoples of Te Urewera. We have noted the clear explanations of this principle given by the Taranaki and Central North Island Tribunals: autonomy is the inherent right of peoples in their native territories, and describes the right of indigenous peoples to constitutional status as first peoples and their rights to:

- ▶ manage their own policy, resources, and affairs within minimum parameters necessary for the proper operation of the State, and
- ▶ enjoy cooperation and dialogue with the Government.

We agreed with counsel for Nga Rauru (in chapter 9) that if Maori were to control their own destiny there must be substantive equality of treatment for Maori and settlers in the exercise of authority over their own affairs. The Crown had to give legal recognition and protection to institutions of Maori self-government. In the UDNR Act 1896, in a constitutional first, the Crown did exactly that. The General Committee was to have full control of all tribal affairs; Maori custom was to continue and be protected inside the Reserve; Maori dialogue with – and consultation by – the Crown would continue; and the collective leadership of Te Urewera was to manage and control UDNR lands and resources.

In the case of the Urewera District Native Reserve, therefore, the Crown had both a Treaty obligation and an obligation under the law to provide for and protect mana motuhake. We find that it failed to meet that obligation. In fact, it subverted self-government in the Reserve, first by its inaction but later quite deliberately.

730. Crown counsel, closing submissions (doc N20), topics 14–16, p 5

731. Crown counsel, closing submissions (doc N20), topics 14–16, p 9

It failed in the period immediately following the passage of the UDNR Act to engage with Te Urewera leaders as to the best means of giving effect to the legislation, despite the urgent invitations of those leaders to discuss this with them. It failed to take steps to ensure that provisional local committees were set up under the Act in a timely manner once it became evident that the process of title determination would not be a speedy one; and it failed to provide for those committees to elect a General Committee expeditiously, so that the spirit and intent of the UDNR Act could be given effect to. It thus failed to take any active steps to ensure that the General Committee was able within a reasonable time to exercise its powers of self-government, including the management and development of land and resources within the Reserve, and continuing dialogue with the Government. The Crown finally, and quite cynically, intervened to ensure the establishment of the General Committee (after many years' delay) when it seemed to be needed to assist the Crown to acquire land for settlement, and to permit prospecting for gold. It then legislated to amend the basis of the membership of the Committee so that members would be appointed, rather than elected by the local committees, thus manipulating the committee's membership and abolishing a core right of self-government as recognised in 1896: the right of the peoples of Te Urewera to choose their own representatives.

The Crown acknowledged to us that – despite the efforts of Numia Kereru as chairman – the Government took no action during the first two years of the General Committee's operations to provide for regulations 'that might have assisted the Local Committee[s] and the General Committee to begin to work as effective corporate bodies, enjoying the confidence of both the community of owners and the government's representatives'. It accepted also that this was a failure at a 'critical phase of the establishment of the local government structures'.⁷³² More than this, the Crown made no attempt to consult the General Committee as to what regulations might be required, relying instead on an official's assurance that it was no longer intended that the Committee should operate as initially envisaged.

The Crown then presided over the demise of the General Committee. It legislated in 1916 to allow purchase in Reserve blocks to proceed without any role for the Committee – even the limited role it had earlier been allowed. The Crown also failed to respond to requests from Te Urewera leaders, after the General Committee had been sidelined, that it be revived – citing possible interference with the Crown purchasing programme. Finally, the Crown legislated in 1922 to repeal the UDNR Act, formally ending the life of what had been a remarkable piece of legislation.

The Crown was therefore in breach of the Treaty principles of autonomy and active protection. It was in breach also of the principle of partnership. It failed to consult Te Urewera leaders, both before and after the work of the first Urewera commission, to ensure that the UDNR Act was implemented in accordance with Crown guarantees. It failed to consult

732. Crown counsel, closing submissions (doc N20), topics 14–16, p72

subsequently on the law needed to enable local committees and the General Committee to function as intended. It failed to ensure that committees were properly constituted to manage the affairs, lands, and resources of the communities of Te Urewera, though this had been a central understanding of the agreement of 1895 to 1896. The Crown properly acknowledged to us that:

The UDNR Act sought to promote the retention of the links of Nga Hapu with their taonga katoa and te mana motuhake o Tuhoe through a system of local government of identified owners. It is acknowledged that the implementation of the Act over a long period of time (25 years) did not achieve that aim.⁷³³

The speed with which Crown acts and omissions breached its Treaty and legal commitments to the peoples of Te Urewera strikes us as remarkable. But the Crown's lack of respect for its Treaty partner in Te Urewera shook the trust which had finally begun to emerge, after 30 troubled years, in the mid 1890s fundamentally impairing the relationship. The Crown conceded that it failed to act reasonably and in good faith towards the peoples of Te Urewera. We find it acted unreasonably and, at times, in bad faith.

13.8.1 Land title determination

On the matter of land titles in the UDNR, we believe that the Crown, in establishing a commission with a Tuhoe majority, was to be congratulated for agreeing to an alternative to the land court which (in theory) was to provide for Maori control of a title determination process. We considered it a separate issue whether the UDNR Act provided in practice for significant owner control in the process of determining titles. A related issue is the approach of the commission to title determination, and the kind of title orders it recommended.

We find now that the Crown did not act to protect the owners' position in practice: it failed to intervene when the commission agreed at the outset that Tuhoe commissioners should take no part in proceedings regarding blocks in which they had an interest. While the commissioners' decision was a reasonable one, which was doubtless intended to reassure claimants who might fear conflict of interest (or the appearance of it) on the part of the Tuhoe commissioners, its result was that a key principle of the Act was outweighed by a narrow concern with process. Tuhoe commissioners were a majority of members in only one-third of the blocks adjudicated on; and in the crucial Ruatoki and Ruatahuna hearings, only one Tuhoe commissioner sat.⁷³⁴ Five Tuhoe commissioners never sat together. In 1900, the Crown simply endorsed the practice of the commission in respect of recusal of the

733. Crown counsel, closing submissions (doc N20), topics 14–16, p 48

734. Urewera Commission, minute book 6, 15 April 1902, p 329 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(d)), p 1353); 'Commissioners' Orders under the Urewera District Native Reserve Act 1896', AJHR, 1903, G-6, p 168

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Native commissioners (as they were now termed), amending the UDNR Act accordingly and waiving the quorum requirements.

In doing so, the Crown failed to consider how to preserve the principle of expert local involvement in commission decision-making once it became evident that recusal of members who had interests in particular lands greatly diluted that involvement. As a result, the values, expertise, and leading role that owners should have been able to expect from the predominance of their own people on the commission was lost. This was a squandering of the opportunities the UDNR Act had offered – and which had so long been sought by Maori throughout the motu. As we see it, this could very easily have been avoided by creating a pool of alternate commissioners in 1900.

The Crown subsequently failed to provide for participation of the peoples of Te Urewera in the appellate body. It had been left open for the Minister to interpret section 10 of the UDNR Act to provide for ‘expert inquiry and report’ without including Tuhoe people. We note too that Ngati Kahungunu commissioners could have been appointed at this time, to sit when Kahungunu claims were heard, thus preserving the principle of owner participation. Instead, the Minister appointed two Pakeha (one a land court judge) and one Ngati Porou member (a land court assessor) to his appeal commission. The Crown’s earlier failure to appoint provisional local committees, despite the fact they had all been agreed to by the owners, and by the first Urewera commission, meant that no thought was given to their possible involvement in the appeal process. The expertise of such a group might have been particularly helpful to the Minister, who had the power of final decision.

We find the Crown in breach of the principles of autonomy and of active protection for failing to ensure majority owner participation in the title-determination body, as specified by the UDNR Act. It failed in this respect even in the first Urewera commission. It then unilaterally passed amendments to the UDNR Act, without consultation with Te Urewera leaders as to how further appeals should be handled, ultimately allowing them to be dealt with by the mainstream land court appeal process which Tuhoe and Ngati Whare had been so anxious to escape.

We further find the Crown in breach of the Treaty principles of active protection and good governance, in that it failed signally to ensure that appeals against the first commission’s decisions were dealt with expeditiously so that owners gained the security of title which had been promised them. We can see no reason why it took until the end of 1906 for the Crown to kickstart an appeals process, other than lack of commitment to seeing the titles process brought to a conclusion. And once the second Urewera commission had made its awards, Crown ineptitude in handling legislative amendments to the UDNR Act resulted in further unnecessary delay before subsequent appeals were heard. The failure to ensure a timely appeals process contributed to the very belated establishment of the committees that were the vehicles of self-government in Te Urewera under the UDNR Act.

We find also that the Crown failed to monitor the proceedings of the commission carefully (since, as Carroll indicated, this was an experimental process) to ensure that its approach to title determination was in accordance with the requirements of the UDNR Act. In chapter 9 we pointed to a serious flaw in the design of the UDNR Act relating to its provisions about titles: namely the requirement in section 8 that individual shares be identified. We concluded that although there was no compelling reason for the section to provide for the identification of individual owners' relative shares, this defect in the Act's design was not in breach of Treaty principles. Because all owners were protected by the Crown's promise that the Reserve would be preserved to them, and by the exclusive legal power of the General Committee to alienate portions of land, the definition of individual shares – which could not be alienated – did not in itself threaten the future of the Reserve.

But we conclude that though section 8 directed the commissioners to prepare title orders which specified the names of individual and family owners and their relative interests, the commission gave little weight, under the leadership of Smith and Butler, to section 6 – which directed it to investigate titles 'with due regard to Native customs and usages . . . adopting as far as possible hapu boundaries'. Had it followed this provision, it must, in our view, have considered and made decisions on hapu claims before it proceeded to lists of names: that must have been the result of investigating title in accordance with custom and usages ('i runga i nga tikanga me nga ritenga Maori').⁷³⁵

The Crown knew how important hapu titles were to Tuhoe, who had made it clear during negotiations that they did not want land court processes in the Reserve. Whatever the reason for the commission focusing from the beginning on lists of names and relative shares (an importation of the land court approach to titles), the Crown should have intervened. Its failure to do so was in breach of the principle of active protection.

Finally, we note Commissioner Smith's crucial statement in 1900 that the task of the commission was 'not to investigate these lands so that they may be sold or leased but . . . to ascertain the electorate localities in this land'.⁷³⁶ We agree with this interpretation of the Act, but it was not the interpretation which prevailed in the work of the Urewera commission. The Crown amended the Act from time to time but failed to separate the electoral provisions of the Act from the slow title-determination processes of the Urewera commission, when it became apparent that these would significantly delay the implementation of self-government. The Crown's failure here was a crucial one, contributing to our finding above that the Crown breached the Treaty principles of autonomy, partnership, and active protection.

735. *Ture Rahui Maori o te Takiwa o Te Urewera*, 1896, s 6

736. Urewera Commission, minute book 3A, 26 February 1900, p137 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(a)), p247)

13.8.2 Crown purchase of Reserve lands

We find that in 1908 Ngata, for the Crown, wrongly called on Te Urewera leaders to cede land to the Government for survey and Urewera commission hearing costs, and the Crown took no steps to explain that they were not actually liable. Though the Crown did not make any attempts to recoup the costs of title determination during the time the Act was in force,⁷³⁷ the General Committee embarked on land alienation on the basis of this misinformation.

We find also that the Crown had a particular responsibility to preserve inviolate the role of the General Committee to manage and implement any alienations of land. The Crown had promised the people that hapu titles would be at the centre of the commission's work, and it had promised to protect them from loss of their Reserve. The General Committee was the basic protection the UDNR Act had accorded both communities of owners and individual owners. It was a crucial protection for communities of owners given that, as the Crown conceded, the titles that were the result of the Commission's work had not located where communities held rights, and their security of tenure was not guaranteed once purchase began. But the Crown failed also to ensure that the General Committee could meet its obligations under the law, to contract with the Crown to alienate portions of land that owners might wish to lease or sell. Had it done so, leases or sales might still have been limited to selected parts of blocks. Instead, the Crown initially sought the consent of the General Committee to the sale of blocks when this suited it (but not otherwise), then made its payments to owners of individual shares – without clarifying with the Committee which parts of blocks might be intended for sale. This illegal process paved the way for dispensing with the consent of the Committee altogether.

In 1915, the Crown embarked on a vigorous programme of illegal purchase of undivided individual interests within Reserve blocks, then legislated in August 1916 to legalise such purchases retrospectively and to provide that they might continue. Since 1910, it had acquired the equivalent of over 100,000 acres illegally. It reflects poorly on the good faith of the Crown that it suddenly empowered the individuals whose shares had been identified by the Urewera Commission to alienate their shares without reference to the General Committee. And even as it removed the right of owners under the UDNR Act to the protection of the General Committee, the collective decision-making body, it retained the right it had itself secured in the Act to be the exclusive buyer. These acts reflected Crown contempt, by that time, for the principles of the UDNR Act. It breached the Treaty principles of autonomy and active protection.

The Crown also breached the principle of active protection by:

- ▶ predatory purchasing from individuals in virtually every block in the Reserve over a number of years (and in the case of Ruatahuna, ignoring the pleas of leaders to refrain

737. Crown counsel, closing submissions (doc N20), topics 14–16, p 71

from such purchase), based on the premise that its perseverance would break down owners' resistance to selling

- ▶ controlling both valuations and prices, valuing UDNR lands by unlawful and flawed processes, and being quite unable to justify the prices paid
- ▶ amending the UDNR Act to secure control of the land court partitioning process in Reserve blocks in order to prevent owners who did not wish to sell from obtaining court awards of land they wanted to keep. This was an unwarranted interference with Maori owners' property rights, as the Crown acknowledged – with the sole purpose of facilitating Crown purchase; it denied Reserve owners the rights that other Maori owners had to seek to partition their lands and, while purchasing continued, denied them security of tenure in respect of a given location within a block⁷³⁸
- ▶ failing to ensure that Maori who sold interests were not being left 'landless', even though the Crown had established protections (albeit limited) for Maori sellers in its mainstream legislation, and even though officials were aware that Reserve owners, like owners elsewhere, often sold because they had no other way of raising cash for the necessities of life.
- ▶ purchasing with complete lack of concern for the present and future well-being of the resident tribal communities. We are conscious of the irony of this finding, given that the entire Reserve had been set aside for its peoples in 1896
- ▶ failing in all these ways in the duty identified by Crown counsel to act with 'scrupulous' fairness in the exercise of its monopoly powers of purchase.⁷³⁹

We find also that the Crown failed in its Treaty duty to protect the peoples of Te Urewera in their right to develop their properties and taonga guaranteed them by the Treaty; and to ensure that they and settlers alike, received the mutual benefits envisaged by the Treaty. As soon as the Crown embarked on purchase operations in the Reserve, its main concern was to ensure the success of a farming settlement scheme. It was considered axiomatic that the peoples of Te Urewera should not benefit from new roads, in case they might subsequently ask higher prices for their land. Maori economic development was not taken seriously; indeed it was hardly mentioned. Had gold been found, the peoples of Te Urewera might perhaps have benefitted in some ways – but there was no gold.

The Crown thus further breached the principles of the Treaty by:

- ▶ failing (as it accepted) to implement mechanisms to assist owners to manage Reserve lands once title had been determined, and thus denying Reserve owners a range of management options⁷⁴⁰

738. Crown counsel, closing submissions (doc N20), topics 14–16, pp 62, 87

739. Crown counsel, closing submissions (doc N20), topics 8–12, p 65

740. Crown counsel, closing submissions (doc N20), topics 14–16, pp 53, 63

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- ▶ failing to assign any value at all to the timber on Reserve blocks other than Te Whaiti 1 and 2, a failure that would be highlighted only a short time later in the reports of staff of the new State Forest Service which considered the forests a national asset
- ▶ failing to ensure that the very valuable timber on the Te Whaiti blocks was carefully measured and valued, and thus paying the owners unjustifiably low prices, while also denying owners the right to test the value of their timber in the market by selling cutting rights or land to private buyers
- ▶ discounting the value of the Te Whaiti timber because it intended to mill it only in the future, while failing to consider the present and future importance of the timber resource to its owners
- ▶ failing to lay out for Te Whaiti owners the long-term benefits that might flow from their resource – which must have increased in value over time – and to advise them how best to proceed in the circumstances.

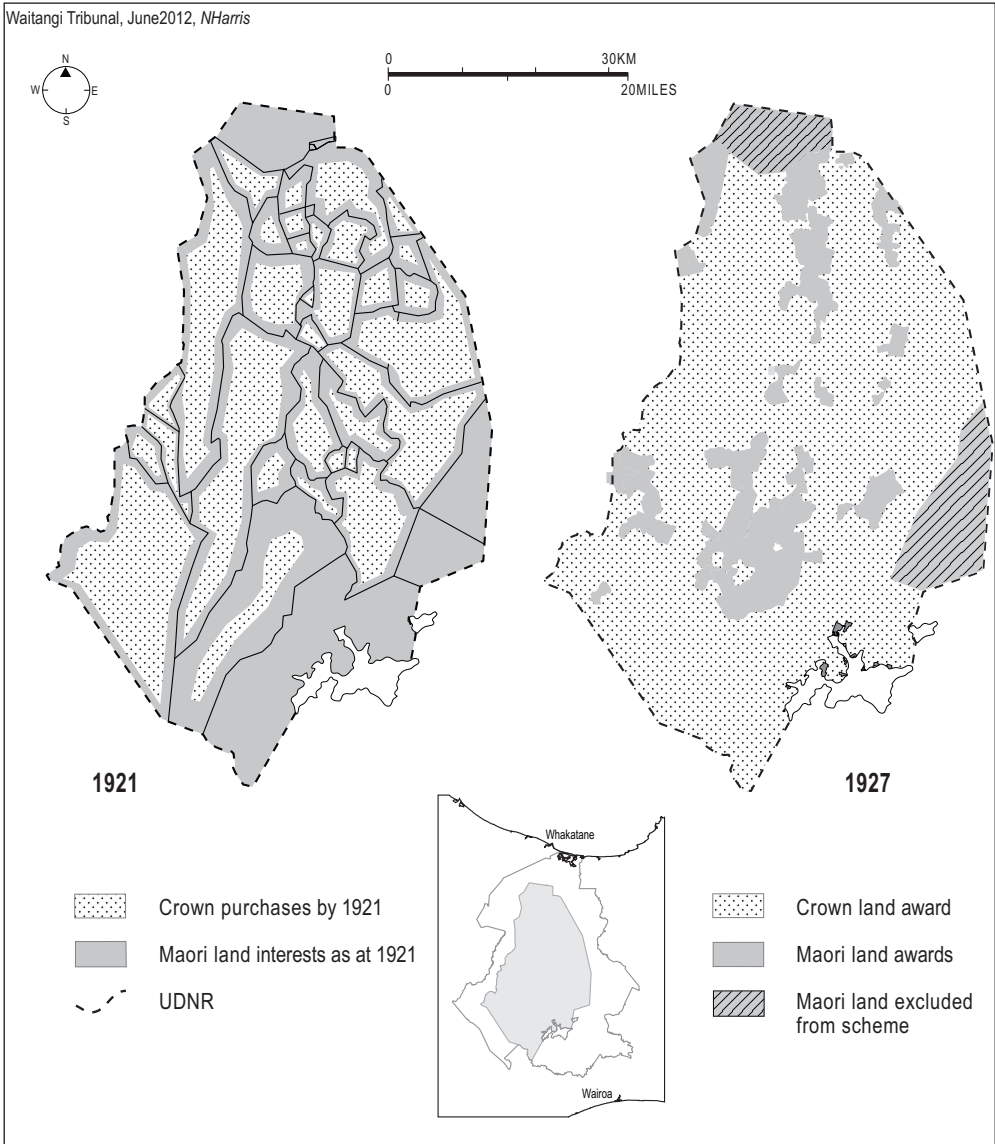
We are ever mindful of the need to consider a balance between Maori and Crown interests. But in this case we struggle to find a single redeeming feature in the Crown's actions. The Crown suggested to us at the outset that it had no intention of subverting the agreed principles embodied in the Urewera District Native Reserve Act. The reasons for failure, it submitted, were complex and included delays, lack of institutional knowledge, lack of appropriate consultation, insufficient attention by Ministers and officials at key times, placing Crown interests in purchasing ahead of the needs of owners, and lack of unity within the Urewera communities.

We think this explanation is woefully inadequate. If the Crown did not set out to subvert the legislation, its acts and omissions ultimately sabotaged the principles of the Act. It was certainly guilty of neglect and of forgetting the basis of its agreement with Tuhoe and Ngati Whare. But in the end, it engineered the collapse of the Reserve, deliberately pursuing its own interests without concern for the self-government and the well-being of the peoples of Te Urewera. It was prepared to change, and even to defy, the law to achieve its aim of destroying the Urewera District Native Reserve. By 1922, the repeal of the UDNR Act 1896 (by the Urewera Lands Act 1921–22, 'an Act to facilitate the Settlement of the Lands in the Urewera District') had become a mere formality for the Crown; and it seemed oblivious to the damage it had done.

There is a sad irony – given the Crown's huge push to buy up Reserve land and open it for mining and settlement – in the fact that no gold was found, and there was almost no land suitable for numbers of extra farmers from outside the rohe. The Crown, having cut a swathe through Te Urewera, emerged with a stock of timber for which it had not paid (except at Te Whaiti) and from which it (rather than the Maori owners) would reap the financial benefits; and with a great number of shares in multiply owned Maori land. It could not, of course, point to any particular piece of land and say 'that is mine', and soon it would

separate its shares from those of its Maori co-owners, consolidating them by 1927 into a vast block of land in the heart of the former Reserve. Within 30 years, it would declare the block it had wrongfully acquired a national park – public land for the benefit of all.

The Crown totally failed to give effect to its promises in the UDNR Act; failed to act fairly, reasonably, and honourably; failed to protect the mana motuhake of Tuhoe, which in the developing colonial economy required a strong economic base, and failed to protect the Treaty rights of all the peoples of Te Urewera.



Map 14.1: Land awarded to Maori owners and the Crown between 1921 and 1927 as a result of the Urewera Consolidation Scheme. The scheme transformed the interests purchased by the Crown and those remaining in Maori ownership into land on the ground.

CHAPTER 14

**TE WHAKAMOANA WHENUA:
THE UREWERA CONSOLIDATION SCHEME**

<i>Taku rakau e</i>	<i>My walking stick</i>
<i>Tau rawa ki te whare e</i>	<i>Reaches the house</i>
<i>Ka ngaro a Takahi e</i>	<i>Takahi has gone</i>
<i>Te whare o Te Kahikatoa</i>	<i>The house of Te Kahikatoa</i>
<i>Hei ngau whakapae e</i>	<i>As the besieging attack</i>
<i>Hei whakapae ururoa e hau mai nei</i>	<i>Like the attack of the shark heard about</i>
<i>Kei waho kei te moana</i>	<i>Out there at the sea</i>
<i>Kahore aku mihi e</i>	<i>My greetings</i>
<i>Aku tangi mo koutou</i>	<i>Are not grieving for you</i>
<i>Mau puku ko te iwi e</i>	<i>But the people are held dearly</i>
<i>Ka mowai tonu te whenua</i>	<i>And the land is deserted</i>
<i>E takoto nei e.</i>	<i>That lies here.</i>

Mihikitekapua's waiata of the 19th century was one of mourning. As she says in the waiata, she was not mourning for the people. She was mourning for the loss of great strength that had once studded the fame of Ruatahuna. She was mourning too for the land, that had been left behind – 'ka mowai tonu te whenua'. Did she know that her waiata tangi, so specific it seemed to her place and time, was also a prophecy?

Tuawhenua Research Team, 'Ruatahuna: Te Manawa o Te Ika', pt 2 (doc D2), p 255

Takahi, father of Te Umuariki, . . . was a casualty and a huge loss for Tuhoe in the Waikaremoana conflict. His eminence is clearly stated in the rest of the line, where he is referred to as 'the house of the kahikatoa'. Here the kahikatoa is used metaphorically. This was the prominent tree growing around the lake. It belongs to the manuka family and the lake people fashioned their weapons from it.

The sentiments hidden in this important line rouses Tuhoe to stand firm and harden their resolve, like the kahikatoa tree. . . . They exhort Tuhoe to greater effort, like the ururoa or shark. Hau is a reference to Haumapuhia who metamorphosed into a taniwha. The ururoa and Haumapuhia are thus related.

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William Rangiuu (Pou) Temara, brief of evidence (doc H19), p 4

As my ancestors and my father fought for Ruatahuna, we now carry the mana motuhake into this time that they passed on to us.

Ko Ruatahuna taku papa kainga,

Ko Ruatahuna taku turangawaewae

Ko te ngahere te pataka kai mo te tangata

Ko te whenua te nohanga o taku iwi

My ancestors have said:

I haere whenua atu, me hoki whenua mai

It was taken as land, it must come back as land

Te Whenuanui Te Kurapa, brief of evidence, 11 May 2004 (D21), p 5

14.1 INTRODUCTION

The Crown's purchasing programme in the Urewera District Native Reserve lands had, by the end of the 1910s, ground to a halt in the face of increasing resistance from Maori owners. Crown purchasing – both illegal (up to 1916) and in breach of the Treaty – had reaped little tangible reward after almost a decade of concerted efforts. The Crown had failed to acquire all the interests in even a single block, and could not identify a single acre on the ground in its possession. Instead, its purchasing had yielded approximately half of the Reserve in the form of undivided interests, which were spread across most of the blocks. Tuhoe, Ngati Whare, Ngati Manawa, Ngati Ruapani, and Ngati Kahungunu retained interests in ancestral lands at Ruatoki, Ruatahuna, Maungapohatu, Te Whaiti, and Waikaremoana, and other areas of the Reserve. But these interests were held by individual owners, not hapu, and Crown purchasing – expanded in 1915 on the premise that half of the Reserve was sustainable for farming on steep forest terrain – meant that most owners only had very few interests left in their possession.

Officials decided to implement a consolidation scheme in order to carve out the Crown's land on the ground. Consolidation schemes were a relatively new development in New Zealand that were designed to solve the problems arising for Maori from the individualisation of their titles to land. Essentially, interests of owners (usually scattered across a number of blocks) would be pooled or consolidated into workable pieces of land. Over the course of half a century, numerous schemes of this nature were implemented across the North Island. But the nature of the Crown's purchasing in the Reserve required a substantially different kind of scheme. Not only would there be consolidation of the scattered interests of Maori owners, but there would also be a process of exchange so that the Crown could consolidate its own interests and obtain the land it had set out to acquire. Two schemes essentially

needed to play out at the same time so that the single owner with by far the biggest number of interests (the Crown) could be accommodated.

The Crown maintained in our hearings that the Urewera Consolidation Scheme was, on the whole, good in both intention and execution. Significant benefits were promised to Maori owners, who accepted the Crown's proposals on the understanding that consolidation would improve the situation they were in by the end of purchasing, including the provision of secure title to lands that would finally be defined on the ground and two arterial roads. These benefits, they hoped, would enable Maori owners to finally take advantage of the economic opportunities offered by their remaining land, in the form of farming enterprises and the milling of selected portions of native timber. The Crown's major concession in our inquiry was that it failed to construct the promised arterial roads: this failure was fatal, the Crown admitted, to the integrity of the scheme and in breach of the Treaty. But Crown counsel also maintained that the Crown entered the scheme on the understanding that it would result in 'mutual benefits' for both Maori owners and the Crown, and that this had largely proved to be the case by the time the scheme was concluded in 1927. Crown counsel made these points in a lengthy submission. The Crown had commissioned no research on this major issue, instead submitting a number of document banks. Counsel suggested that while research conducted for the inquiry on issues such as survey and roading costs had not revealed information 'sufficiently accurate for the purposes of the inquiry', they were issues worthy of the Tribunal's further investigation, so that the the Crown could be confirmed in its view that it had acted fairly in respect of the scheme.¹

The claimants, however, said that the Urewera Consolidation Scheme failed to deliver any of its promised benefits, and merely constituted a fresh assault on Maori owners and their remaining interests in the Reserve. In their view, the Crown insisted on having a consolidation scheme primarily for its own benefit. Maori owners were not provided with enough information to give their informed consent, particularly regarding the potential costs involved. The claimants told us that the Crown's intentions were reflected in the process it designed for the scheme, which placed the decision-making power in the hands of two Crown-appointed Consolidation commissioners. The outcome was that the Crown secured most of the land it wanted for the purposes of settlement, timber milling, and watershed protection at the expense of Maori owners.

Through the scheme, the Crown acquired an extra 137,224 acres of the Reserve, over and above the 345,076 acres it had already purchased by July 1921. A large part of this massive new acquisition was the Waikaremoana block (73,667 acres), which claimants say they were forced to give up under a threat of compulsory acquisition. The Crown acquired the rest of its extra land without ensuring that the promised benefits of the scheme were delivered. Although approximately 30,000 acres was taken for survey costs, the promised certainty

1. Crown counsel, closing submissions (doc N20), topics 18–26, pp 3, 19, 51, 62

of land transfer titles was never honoured. And only a small portion of the arterial roads – paid for by approximately 40,000 acres – was ever built. In short, the claimants see the scheme as representing further Crown Treaty breaches following its failure to honour the UDNR agreement and its predatory purchasing of individual interests.

The title of this chapter – ‘Te Whakamoana Whenua’, or, land put out to sea – is derived from a record of the proceedings at Taurau Marae, Ruatoki, in August 1921, where many of the scheme’s details were settled. In considering what the scheme might do for the titles they had obtained under the UDNR Act, the assembled Te Urewera leaders expressed their dismay that ‘the titles were to be “whakamoana-ed” (literally put out to sea).’² The Tuawhenua claimants adopted this term as descriptive of a broad theme of land loss in the twentieth century.³ The record of the Taurau hui suggests that the leaders used the term to refer not just to the looming process of consolidation, but also to the broken promises of the UDNR. The beginning of the Urewera Consolidation Scheme saw Maori owners of the Reserve facing in two directions: back, in reflection on the disappointment of the previous 20 years, and forward, to the process of consolidation that lay before them. It was six years before the consolidation scheme was completed. By the end, Maori owners were left with 106,287 acres spread across 210 blocks. The Crown, in contrast, was awarded 482,300 acres of the former Reserve in a single title, most of which later became the Urewera National Park.

This chapter tells the story of what happened – in the process of consolidation – to the surviving interests that Maori owners of the Reserve had staunchly refused to sell for up to a decade.

14.2 ISSUES FOR TRIBUNAL DETERMINATION

The Urewera Consolidation Scheme is best examined through the five main elements at issue in the claims before us:

- ▶ the origins of and reasons for a consolidation scheme, and how far Maori owners consented to the design and implementation of the scheme;
- ▶ how the land was actually divided and interests swapped among Maori and between Maori and the Crown;
- ▶ how the Crown acquired the Waikaremoana block, and the effects of that acquisition on the peoples of Waikaremoana;
- ▶ the type of surveys required, the costs of those surveys and how they were met, and the promise of land transfer titles; and, finally,

2. Balneavis to Coates, 27 August 1921 (SKL Campbell, comp, supporting papers to ‘Land Alienation, Consolidation and Development’, various dates (doc A55(b)), p 188)

3. Tuawhenua Research Team, ‘Ruatahuna: Te Manawa o Te Ika’, pt 2, April 2004 (doc D2), pp ii-iii

- ▶ the promise to build arterial roads, and the Maori owners' contribution of land for that purpose

From these key elements in the scheme, we have asked five corresponding questions, which remain the central issues of contention between the claimants and the Crown:

- ▶ Why was a consolidation scheme chosen for the Reserve lands?
- ▶ By what process were interests consolidated and the land divided between Maori owners and the Crown?
- ▶ What effect did the implementation of the scheme have on Waikaremoana peoples?
- ▶ What agreements were reached about titles and how was the cost of surveys met?
- ▶ Should Maori owners have contributed 40,000 acres toward the cost of constructing two arterial roads?

Our Treaty analysis and findings follow our discussion of these five issue questions. In the next chapter, we consider the impacts of the events from the passing of the UDNR Act through to the conclusion of the Urewera Consolidation Scheme.

We turn first, however, to an outline of the key facts underlying our analysis of the claims about the consolidation scheme.

14.3 KEY FACTS

14.3.1 The end of purchasing; towards consolidation

The first plans for a consolidation scheme in the Urewera District Native Reserve lands emerged in 1919, as the Crown's purchase of interests from Maori owners began to slow. By September 1919, the Crown had purchased the equivalent of 47 per cent of the Reserve, in the form of undivided interests. Native Minister William H Herries had rejected calls from Native Land Purchase Officer William H Bowler to acquire the remaining interests by compulsion, because the 'limit of purchasing' had not yet been reached.⁴ Herries and the Native Department also agreed to delay applying to the Native Land Court for a partition of the Crown's interest in various blocks in the hope of purchasing as many interests from Maori owners as possible. At the same time, the Government prevented Maori owners from cutting out their interests by revoking the Native Land Court's jurisdiction to hear partition applications in June 1916. Only one more partition took place after the court's jurisdiction was revoked. In 1918, the Ruatahuna block was partitioned between its Maori owners on the discovery that an earlier attempt at partition had not been completed; Crown purchasing in the newly partitioned blocks then began. The Government also obtained an injunction against Maori owners in the Te Whaiti blocks from milling timber. Meanwhile, Bowler continued purchasing interests from Maori owners throughout the Reserve.

4. Native Under-Secretary to Bowler, 14 December 1916 (Cecilia Edwards, comp, supporting papers to 'The Urewera District Native Reserve Act 1896, pt 3', various dates (doc D7(b)(i)), p1365)

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In November 1919, the Under-Secretary for the Native Department, C B Jordan, proposed a consolidation scheme as a way of separating the interests of the Crown and Maori owners. Consolidation schemes were a new initiative in New Zealand, designed to overcome the excessive fractionation of Maori owners' interests, which had been brought about by individualisation and succession, and the fragmentation of land in the wake of Crown purchasing and partitions. The interests of individual Maori owners, often scattered across a number of blocks, would be consolidated so that each emerged with a discrete block of land that could be farmed. At this time, only one consolidation scheme had been carried out, in the Waipiro block on the East Coast between 1911 and 1917, under the provisions of the Native Land Act 1909. Jordan proposed a scheme for Te Urewera, to be implemented through the Native Land Court (as the Waipiro scheme had been), that would see Maori owners relocated into three or four large blocks. The remainder of the Reserve lands would go to the Crown. Commissioner of Crown Lands (and Chief Surveyor), H M Skeet, commented at this time that a 'comprehensive roading scheme' was required before any act to separate the interests of Maori owners and the Crown was carried out.⁵ And, before this occurred, Crown purchasing needed to be taken to its fullest extent. As we outlined in chapter 13, Bowler was instructed to continue to acquire as many interests as possible in the blocks under purchase, which coincided with the publication of a list of 'non-sellers' in the *Kahiti*, showing how many owners remained in each block, and the monetary value of each interest.

Further plans for a scheme were elaborated during 1920, when Maori owners continued to express their opposition to purchasing. David Guthrie, the Minister of Lands, met Tuhoe owners in February 1920 to discuss possible roading lines. At Ruatoki, on 20 February, 'a large deputation' of Maori asked for a road to be formed up the Whakatane valley as far as Ruatahuna.⁶ At Ruatahuna, the Maori owners expressed a wish to have their land clearly defined; Guthrie told them that partition and land exchange were both 'sensible' ideas that the Government would pursue. At Te Whaiti, the Maori owners expressed their desire for a partition of the Te Whaiti blocks. Guthrie said that the Government aimed to partition the blocks as soon as possible; but this did not go ahead because – as Jordan informed the Under-Secretary for the Department of Lands, T N Brodrick – 'the general scheme for consolidation of interests in the Urewera blocks has been prepared'.⁷

In August 1920, on the completion of the preliminary exploration of roading lines, Skeet instructed R J Knight – a draughtsman of Maori land in the Department of Lands and Survey – to carry out a preliminary study on a possible consolidation scheme. Knight suggested the Crown take all its interests as one block in the north of Te Urewera, with Maori

5. Skeet to Brodrick, 18 November 1919 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 106)

6. Philip Cleaver, 'Urewera Roading' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A25), p 43

7. Jordan to Under-Secretary for Lands, 21 May 1920 (quoted in Richard Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (commissioned research report, Wellington: Waitangi Tribunal, 1999) (doc A27), p 184, fn 514)

owners retaining land around Ruatahuna, Maungapohatu, and Tarapounamu–Matawhero.⁸ Brodrick continued to advocate a partition of interests in the Te Whaiti lands, but in October agreed to delay taking any action when Bowler advised that further interests could be acquired. At the same time, Bowler also reported that he had been visited by a deputation of Ruatahuna and Maungapohatu owners at Taneatua, who registered their strong opposition to ongoing Crown purchase of their interests and signalled their support for consolidation. In January 1921, Bowler reported that he anticipated purchasing very few interests on his next visit to Te Urewera. He recommended that the Native Minister organise a meeting with the remaining Maori owners to make an arrangement for ‘the ultimate settlement of the country’. The owners, Bowler said, preferred to ‘hold off pending a consolidation of interests’.⁹

Three crucial hui took place at Ruatoki during the course of 1921 that established the general outlines of the scheme. The first took place in February 1921, when Apirana Ngata led a parliamentary delegation to Ruatoki, including KS Williams (Bay of Plenty), WS Glenn (Rangitikei), WD Lysnar (Gisborne), and FF Hockley (Rotorua). Ngata was, at this time, the member for Eastern Maori but held no ministerial portfolio in the Government. He was, in fact, a member of the Opposition but had a great deal of influence’ in the Reform Government, first through Maui Pomare and later as a result of his close relationship with Gordon Coates, who became Native Minister in 1921 and Prime Minister in 1925. Ngata and Coates ‘had a very high regard for each other, and Ngata was often able to initiate important measures from his side of the House’.¹⁰

As a member of the Stout–Ngata commission in 1907 and 1908, Ngata had recommended consolidation schemes as a solution to many of the problems of title fractionation and land fragmentation that were the outcome of Government policies for Maori land in the second half of the nineteenth century. Subsequently, he was heavily involved in the implementation of the Waipiro consolidation scheme (in his home lands, on the East Coast). At the Ruatoki hui, Tuhoe leaders spoke in favour of consolidating the interests of Maori owners and the Crown because they would obtain clearly defined title: ‘We wish to know where our land is’.¹¹

In March 1921, a retired Native Land Court judge, RC Sim, wrote a letter to the *New Zealand Times*, criticising the Government for purchasing extensively in the Reserve, but

8. Knight to Under-Secretary for Lands, 21 June 1921 (Stephen Robertson, comp, supporting papers to ‘Te Urewera Surveys: Survey Costs and Land Valuations in the Urewera Consolidation Scheme, 1921–22’, various dates (doc A120(a)), p 70)

9. Bowler to Native Under-Secretary, 6 January 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 53)

10. Maurice PK Sorrenson, ‘Apirana Turupa Ngata, (1874–1950)’ in *Dictionary of New Zealand Biography: Te Ara – The Encyclopaedia of New Zealand*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/3n5/1>, last modified 1 September 2010

11. ‘The Urewera Lands’, 19 February 1921, *Whakatane Press* (Vincent O’Malley, comp, supporting papers to ‘The Crown’s Acquisition of the Waikaremoana Block, 1921–25’, various dates (doc A50(b)), pp 559–560)

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acquiring no actual land. Jordan, however, dismissed Sim's criticisms, and in April restated his support for consolidation in a briefing to the incoming Native Minister, Gordon Coates (Herries having resigned due to ill-health). The alternative – compulsory acquisition of the remaining Maori interests – would, Jordan said, be met with 'tremendous opposition.'¹² Based on this advice, Coates and the new Minister of Lands, David Guthrie, decided to proceed with consolidation.

The second major hui took place on 22 May 1921, and once again it was well attended by politicians and Maori owners, but this time including the two Ministers, Coates and Guthrie, as well as Ngata and Williams. Knight represented the Department of Lands and Survey. Tuhoe leader Fred Biddle opened the proceedings by requesting a consolidation of Crown and Maori interests. Among other things, Biddle also asked for a road to be constructed across their lands. In his speech, Coates said that as Native Minister it was his duty to see Maori 'get full justice by the Government of the day'. Ngata said that the purpose of the hui was to agree to 'the basis upon which the consolidation should proceed'. The success of a scheme would depend on 'the binding together of the non-sellers' interests': 'The Crown has such a large area purchased that it is for the Government to concede settlement blocks to the non-sellers round their existing kaingas.' It was appropriate, he added, that Maori contribute toward the cost of roading. A 'tribunal representing the two Departments, Lands and Native, should come and carry out a scheme with them.' Finally, Ngata suggested that the owners of the Waikaremoana block should 'surrender' their land adjacent to the lake and transfer to land further north. In his speech, Guthrie said it would be difficult to consolidate interests around existing kainga as Ngata had suggested; instead Maori would be given 'a block close to their settlement', in each of the northern, southern, eastern, and western reaches of the Reserve. He added that the Government planned to 'develop the whole Urewera block, and we can only do that on business lines'. Maori would only benefit from 'progress and development' if they agreed to the type of scheme he had proposed. Once they had decided upon consolidation, Guthrie said, 'we will set up a tribunal to consult with the Natives and bring forward a recommendation to the Government, which . . . the Government will carry out.'¹³

After the hui, Coates wrote that the people of Ruatoki had 'affirmed the principle of consolidation', and that another meeting would take place at Ruatoki on 18 July. An officer each from the Native Department and Lands Department would be appointed 'for the purpose of proceeding and prosecuting the scheme of consolidation to its completion.'¹⁴ Coates then travelled to Waikaremoana to discuss the possible acquisition of the Waikaremoana

12. Jordan to Native Minister, 18 April 1921 (quoted in Vincent O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (commissioned research report, Panekiri Tribal Trust Board, 1996) (doc A50), p 82)

13. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 127–136)

14. Coates, telegram to Guthrie, 23 May 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 139–141)

block, in which the Crown had refrained from purchasing interests in the previous decade. On 4 May 1921, the Scenery Preservation Board had recommended acquiring part of the Waikaremoana block for ‘scenic purposes’.¹⁵ This was the latest in a series of similar recommendations. In 1915, the Native Land Court had begun investigating the ownership of the lakebed of Waikaremoana. The Court’s 1918 decision was appealed by Tuhoē, Ngati Ruapani, and the Crown, but ultimately not heard until 1944. By June 1921, the Attorney-General, Sir Francis Dillon Bell, had noted that the Crown’s acquisition of the foreshore of the Waikaremoana block could ‘bring to an end the litigation’ over the lakebed.¹⁶ Later, in July, Bowler again recommended opening the block for purchasing.

Upon returning to Wellington, Coates and Guthrie began plans to execute the consolidation scheme. A notice appeared in the *Gazette* and *Kahiti* notifying the Maori owners of the next hui at Ruatoki. Coates told Guthrie that, at this next meeting, Crown representatives and Maori owners would negotiate the division of the land between the respective parties. Coates said that if a spirit of ‘reasonableness and give-and-take’ was carried into the negotiations, then the process of consolidation would be swiftly concluded.¹⁷ The Ministers instructed Knight and Harold Carr – a commissioner (and later Judge) of the Native Land Court, and a nephew of James Carroll – to represent the Crown at the hui. Coates also asked Ngata to attend as representative of the Maori owners in the negotiations.

At the end of June 1921, Knight wrote another brief plan outlining how the scheme could be executed. He proposed that Maori owners evacuate their settlements as far south as Tawhana, which would leave the Crown with enough land for settlement and conservation purposes. The Crown would also acquire the Te Whaiti 1 and 2 blocks, except for existing settlements. He made no proposal for the Waikaremoana block, which could be excluded from the scheme so that a portion of it could be acquired under the Scenery Preservation Act. Maori owners would make a contribution in land for the cost of constructing the arterial roads and surveying the new blocks, but he left open how much land this would amount to. The total cost of building these roads, Knight calculated, would be around £150,000.

14.3.2 Designing the scheme: the hui at Tauarau Marae, Ruatoki, 1–25 August 1921

The hui (delayed by two weeks) began on 1 August 1921, at Tauarau Marae in Ruatoki. Every family of ‘non-sellers’ was said to be in attendance. As the Crown’s representative, Knight opened the proceedings by presenting the Crown’s five key proposals. These proposals differed from his earlier plan in several respects. The Crown would not require a complete evacuation of Te Urewera communities as far south as Tawhana; instead, the bulk of its

15. O’Malley, ‘Waikaremoana’ (doc A50), p 83

16. Sir Francis Bell, quoted in Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 147)

17. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 145)

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land would be located in the area between the Whakatane and Waimana Rivers, south of the Ruatoki settlement. The Waikaremoana block would be excluded from the scheme, as would other blocks in which the Crown had not purchased any interests. (This meant the exclusion of the Ruatoki blocks, where the Crown had commenced purchase negotiations but had not yet paid any money; Knight was aware in any case that the inclusion of these blocks would have damaged the scheme because their high land values compared with the rest of the Reserve would have disproportionately favoured the Ruatoki owners in the process of consolidation. This land later became subject to a separate consolidation scheme.) Maori owners were asked to contribute £32,000 worth of land toward the cost of arterial roads, which would be constructed by the Crown. The way in which Maori owners would make this contribution (as well as the costs for surveying the new blocks) was not specified. Finally, the Crown proposed that the new titles should be registered in the land transfer system.

Maori owners formed a committee to receive these proposals and discuss their consequences, consisting of 37 to 40 tribal representatives (the reports vary as to the exact number). Ngata was 'unanimously asked to act on behalf of the non-sellers'.¹⁸ On the third day of the hui, the proposed consolidation scheme was agreed to but with two key changes: Maori owners would retain more land between the Whakatane and Waimana Rivers, and would only contribute £20,000 for the cost of constructing arterial roads.

For the next three weeks of the hui, the 2000 individual Maori owners were organised into groups of owners, known as 'consolidation groups'. Each of their individual interests was translated into 'penny shares' for the purposes of the scheme. The value of these shares was based on the valuation of each Reserve block and the number of interests each individual held in the Reserve blocks. Maori owners then pooled their shares (often from a number of blocks) to form the consolidation groups. Ninety-nine groups were formed during this period, each with a nominal 'leader'. Most groups included more than 10 owners. Once formed, these groups selected their preferred locations within the broad parameters set by the Crown representatives and the committee.

Throughout the following three weeks, the Crown's representatives (Knight and Carr) continued to negotiate with Maori owners about the possible location of their new blocks. A number of groups chose to locate their interests in more than one part of the Reserve, which meant that by the end of the hui there were 150 proposed blocks. Individuals could locate their interests in more than one block but in no more than three. Carr completed 1061 succession orders during this period in an unofficial capacity, in an attempt to bring lists of owners up to date. Bowler updated lists of owners before the hui and recorded the results of the proceedings, as well as purchasing further interests from Maori owners (equivalent to 344 acres) until Coates instructed him to stop. Coates' private secretary, HRH (Raumoa)

18. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

Balneavis, acted as a key intermediary between the parties and kept in regular communication with Coates in Wellington.

During these proceedings, a decision was made to include the interests of Tuhoe owners of the Waikaremoana block in the scheme. The entire block would then be awarded to the Crown, subject to separate arrangements with Ngati Ruapani and Ngati Kahungunu owners. Balneavis reported that the original proposal to exclude the block from the scheme was met with 'great disappointment' by those Maori owners who were assembled at Ruatoki. When Coates later sent a telegram saying that the foreshore of the lake within the boundaries of the Waikaremoana block would be taken under the Scenery Preservation Act, representatives of Maori owners announced that 'they would proceed no further' with the consolidation scheme.¹⁹

Guthrie, however, told Coates that an 'exchange between Crown interests in Urewera and native interests on shores [of] Waikaremoana would receive my immediate and sympathetic consideration.' Guthrie then informed Knight that he could include the block in the scheme, and to proceed with the exchange of interests accordingly if he agreed with the proposal.²⁰ By the conclusion of the hui, almost nine-tenths of the interests of Tuhoe owners had been incorporated into certain consolidation groups at the value of six shillings per acre, to be located elsewhere in the Reserve.

In early September 1921, Ngata travelled to Waikaremoana and Wairoa to make arrangements with the Ngati Ruapani and Ngati Kahungunu owners of the Waikaremoana block. Balneavis recorded that 'after considerable difficulty' Ngati Ruapani agreed to alienate their interests in exchange for Reserve land that was sufficient for their needs. In addition, 'part of [the] consideration' for purchasing the block would be used to acquire alternative land around Ngati Ruapani's settlement on the southern shore of the lake; the balance would be paid in the form of debentures. The Ngati Kahungunu owners were also said to have been willing to sell their portion of the block and Ngata made separate arrangements with them.²¹

Te Whaiti 1 and 2 blocks, together with Maraetahia, Otairi, and Tawhiuau, were dealt with separately from the main part of the negotiations at the hui, because (as Balneavis recorded) Ngati Manawa and Ngati Whare 'may be regarded as tribes apart from the Urewera.'²² Most of these tribes' interests in the Reserve were confined to those five blocks. Towards the end of August 1921, Knight travelled to Te Whaiti and reached an agreement that would see the remaining Maori owners awarded a series of blocks in Te Whaiti 1 and 2, and two sections

19. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 189)

20. Guthrie, telegram to Coates, 10 August 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 509)

21. Balneavis, telegram to Coates, 13 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 526)

22. Balneavis to Coates, 21 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 185)

Debentures: An Innovation in Crown Purchasing

Debentures were, in this context, an instrument acknowledging a debt whereby the debtor (the Crown) paid interest on the amount owed until a set expiry date, when the total debt is paid back in full. In paying Maori by means of debentures instead of immediate cash payments, the Crown offered a new kind of payment that effectively saw the agreed purchase money invested for a set period. Rather than a one-off payment, Maori sellers would get regular interest payments followed eventually by their share of the full sum. Certainty was guaranteed, in theory, by a set interest rate for a set period, at the expiry of which the full sum would be handed over. The Maori recipients could plan accordingly. As with other purchases, Maori were offered no collective control for the application of either the interest or the principal. Payments would still be made to individuals, in this case by the Native Trustee, who was to administer the Waikaremoana debentures free of charge. We consider the Waikaremoana debentures in section 14.5.3.

of Crown land outside the Reserve (in the Whirinaki block). This differed from the Crown's initial proposal at Taurarau, which had asked for the 'complete awards of Te Whaiti 1 and 2'.²³ Bowler also purchased further interests in the blocks, which were equivalent to 1,014 acres. On 3 October, Knight wrote a further report indicating exactly where the Maori owners would be awarded land in the Te Whaiti blocks.

After the completion of the business in Wairoa and Waikaremoana, Knight, Carr, and Balneavis set about making all of these various arrangements formal by compiling an official account of the proceedings at the Taurarau hui. The purpose of their report was to make a request for special legislation empowering 'special officers' to implement the arrangements.

14.3.3 The consolidation scheme report and the Urewera Lands Act 1921–22

On 31 October 1921, Knight, Carr, and Balneavis submitted their 39-page report to Coates and Guthrie. It summarised what they understood to be the outcomes of the Taurarau hui, adding their recommendations for how they thought the scheme should be implemented. Because of its importance, we refer to this document throughout this chapter as the 'Consolidation Scheme Report'. The report consisted of an overview of the events that led to consolidation, an account of the proceedings at the Taurarau hui, the outcomes of the hui presented in the form of a draft 'scheme', and 'Proposed Legislation' to implement the scheme using specially empowered officers.

23. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

Two schedules contained the detailed provisions of the proposed scheme. Schedule 1 presented the process by which 'The Urewera Consolidation Scheme' would be implemented. It stated which blocks were included and which were excluded. Awards for some blocks were 'complete and definite enough for immediate execution of surveys, [while] in others further inquiries are necessary involving preliminary topographical surveys and adjudication of disputes between the Crown and Natives, or among Natives only'. This schedule listed a number of blocks which could be directly awarded to either the Crown or Maori, leaving the majority of the remaining blocks for further adjustment. 'But in most cases,' the report stated, 'the data is sufficient to determine the proportions which the Crown or Natives, or the Natives *inter se*, are entitled to receive.' Schedule 1 also summarised the details of the Waikaremoana block transaction: the block would be vested in the Crown; the interests of Tuhoe owners would be included in the consolidation scheme; and Ngati Ruapani and Ngati Kahungunu would receive payment in cash and debentures and land. (The Waikaremoana debentures were set for a period of 10 years, at an interest rate of 5 per cent per annum, to be administered by the Native Trustee.)

All surveys would be 'carried out by the Crown, at the cost of those sections, to be paid for in land'. The cost of the surveys would be estimated first, and an equivalent area of land (based on existing valuations) would be 'deducted from the area of the Native section to be surveyed' and would be awarded to the Crown. Maori owners would also contribute £20,000 worth of land toward the cost of roading, the deductions to be made from each of their sections. Compensation would be awarded for any improvements the Crown obtained in its award.²⁴

Finally, schedule 1 noted that a 'tribunal' would have the authority to authorise changes to consolidation groups and to make succession orders. Schedule 2 contained full lists of consolidation groups, including each owner and their total interests, and the proposed locations of these groups.

The report noted the inclusion of several blocks from outside the scheme and the exclusion of seven Reserve blocks. No figure was given, however, for the size of the scheme, which was less than the 656,000 acres of the Reserve but more than the 518,329 acres of the 44 blocks that had been opened for purchase. In addition, though the report included information about the relative interests of the Crown and Maori owners in the Reserve purchase blocks, there was no equivalent information showing the final relative interests after the inclusion of the Waikaremoana block and other blocks from outside the Reserve.

To signal his approval of the arrangements, Ngata wrote a memorandum that was included in the report. He observed that the summary provided by Knight, Carr, and Balneavis was 'a correct statement of the scheme and proceedings in relation thereto'. He recommended that Knight and Carr be empowered to carry out the scheme, and that the

24. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 8-9

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‘exploration and definition of the Native areas should proceed *pari passu* [equally] with that of the Crown awards.’²⁵

Based on the report, Coates and Guthrie recommended empowering legislation to Cabinet at the beginning of November 1921. Cabinet gave its approval, and Chief Judge Browne of the Maori Land Court was instructed to draft the legislation. Coates tabled the Consolidation Scheme Report in Parliament on 14 December 1921, and gave a brief history of the events leading to the report. The consolidation scheme, he said, would allow for the opening of Te Urewera lands for settlement, as well as sufficient areas to be ‘reserved for forestry purposes’. He added that a scheme of this nature would have been ‘impossible to carry out under existing legislation.’²⁶ KS Williams (the member for the Bay of Plenty) noted the importance of the Government’s acquisition of ‘the area of bush around Lake Waikaremoana’, particularly for the ‘hydro-electric scheme which is in progress.’²⁷ Ngata referred to the £20,000 contribution of Maori owners for roads, saying that ‘there was never any obligation upon the Urewera Natives to make a contribution of a single penny towards the cost of roading.’ Yet, he said, they ‘recognized that they would get these arterial roads much sooner if they assisted the Government’, which threw the ‘onus on the Government of opening up that country much more rapidly than otherwise would have been the case.’²⁸ At the conclusion of the debate, the House passed Coates’ motion to have the report tabled and printed. Maori owners received the report in February 1922; a version in te reo was published later in the year.

The Urewera Lands Bill was introduced to Parliament on 30 January 1922, and (after having its first and second readings) was referred to the Native Affairs Select Committee. The Committee made no amendments to the Bill. It came before the House again on 2 February and was the subject of a brief debate, before its third reading. Coates noted that it was likely Knight and Carr would be appointed as the two Consolidation commissioners. When the Bill came before the Legislative Council for its second and third readings on 4 February, Attorney General Francis Bell said that the ‘details as set forth here had better not be touched’, because they were ‘immaterial’ and rather ‘provide a method by which the great arrangement is to be given effect.’²⁹ The Bill was passed on 11 February.

The full title of the Urewera Lands Act 1921–22 is: ‘An Act to facilitate the Settlement of the Lands in the Urewera District’. The Preamble stated that the ‘district referred to’ had ‘for a number of years been under special administration, and it is now desirable to apply the ordinary law thereto’. The purpose of the Act was to carry into effect arrangements that had been ‘entered into between representatives of the Crown and of the Natives interested in

25. Ngata, memorandum to the Minister of Lands and Native Minister, not dated, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 7

26. Coates, 14 December 1921, NZPD, 1921, vol 192, p 1111

27. Williams, 14 December 1921, NZPD, 1921, vol 192, p 1113

28. Ngata, 14 December 1921, NZPD, 1921, vol 192, pp 1115–1116

29. Bell, 4 February 1921, NZPD, 1921, vol 194, p 158

such lands for the consolidation and location of interests in such lands and in certain lands outside such district'. The 'district' referred to throughout the Act was defined in schedule 1 as 656,000 acres within certain Native Land Court blocks in the region. This referred to the Reserve lands, but without naming them as such.

The Act consisted of 20 sections. We reproduce the Act in appendix v.

14.3.4 Implementing the scheme: the consolidation commission, 1922–26

Knight and Carr were not formally appointed as commissioners until after the passing of the Act in February 1922. A notice appeared in the *Gazette* of 20 April 1922, announcing their appointment 'on and from the 11th day of February, 1922'.³⁰ However, they had been informally appointed by their respective departments some months earlier, in November 1921, when they were instructed to proceed to Ruatoki and begin their hearings immediately. Coates instructed that surveyor Tai Mitchell accompany Knight and Carr for the purposes of beginning the topographical surveys of the region. The commissioners held their first hearing (on successions) at Ruatoki on 7 December 1921.

The consolidation commission held its hearings in four periods from December 1921 to 15 July 1925. Generally, hearings in Te Urewera ended with the onset of winter. In 1922 and 1923, the commission finished its main business in May and resumed in October; in 1924, it finished in April. The location of sittings varied. Most were in Te Urewera, in the general vicinity of the land being considered by the commission. Some, however, were held as far away as Rotorua, Auckland, and Wellington.

The process of the Consolidation Commission generally began with surveyors preparing a topographical plan of an area under consideration. With that plan to hand, the commissioners would hear a request from a representative of one of the consolidation groups indicating in which part (or parts) of the former Reserve blocks they wished their interests to be located. This approach was based on the broad parameters set out in the Consolidation Scheme Report, which listed consolidation groups under a former Reserve block but not the specific location within that block. The commissioners would then accept or decline the request. If objections were raised, either the commissioners left it to Maori owners to arrive at a compromise or they would hear evidence and award the land to one or more groups. Requests could also be made for the transfer of all or part of an individual's shares to other groups, and also for compensation (in the form of additional shares) for improvements such as fencing and grassed land which were passing to the Crown or other groups. Changes could only be made up to the point when the location of the award had been settled, and the block surveyed.

30. 'Commissioners appointed under the Urewera Lands Act, 1921–22', 20 April 1922, *New Zealand Gazette*, 1922, no 30, p 1074

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Number	Location	Date of first sitting
1	Ruatoki North	7 December 1921
2	Tauarau	19 January 1922
3	Tawhana	21 January 1922
4	Tauwharemanuka	21 January 1922
5	Matahii	22 January 1922
6	Tauarau	23 January 1922
7	Rotorua	nd January 1922
8	Waimako (Waikaremoana)	17 February 1922
9	Lake Waikaremoana	18 February 1922
10	Ruatahuna	22 February 1922
11	Te Whaiti	24 February 1922
12	Rotorua	9 March 1922
13	Te Whaiti	15 March 1922
14	Rotorua (re Te Whaiti)	23 March 1922
15	Matahii	5 April 1922
16	Te Whaiti	3 May 1922
17	Murupara	5 May 1922
18	Waikirikiri Pa, Ruatoki	11 May 1922
19	Raroa Pa	18 May 1922
20	Tauarau	19 May 1922
21	Taneatua	19 May 1922
22	Rotorua	6 June 1922
23	No location (re sales)	1 July 1922
24	No location (re sales)	5 July 1922
25	Ruatoki	25 October 1922
26	Waikirikiri	26 October 1922
27	Tauarau	6 November 1922
28	Waikirikiri	7 November 1922
29	Tauarau	7 November 1922
30	Ruatoki	10 November 1922
31	Rewarewa	15 November 1922
32	Ruatoki	16 November 1922
33	Rewarewa	16 November 1922
34	Ruatoki	16 November 1922
35	Rotorua (re Ruatahuna)	30 November 1922
36	Ruatoki	8 February 1923 (Chief Judge Jones, NLC)
37	Rotorua (re Te Whaiti)	13 February 1923
38	Te Whaiti	16 February 1923
39	Ruatahuna	17 February 1923
40	Heipipi	17 February 1923
41	Umukahawai	18 February 1923
42	Te Whaiti	22 February 1923
43	Murupara (re Te Whaiti)	24 February 1923
44	Waiohau	26 February 1923

Number	Location	Date of first sitting
45	Rotorua (re Te Whaiti)	1 March 1923
46	Windy Point, Waikaremoana	9 March 1923
47	Wairoa (re Hereheretau B2)	19 March 1923
48	Rotorua (re Te Whaiti)	7 April 1923
49	Maungapohatu	10 April 1923
50	Ruatahuna	16 April 1923
51	Oputao, Ruatahuna	17 April 1923
52	Ohau-te-rangi	19 April 1923
53	Ruatahuna	24 April 1923
54	Tatahoata	25 April 1923
55	Oputao, Ruatahuna	26 April 1923
56	Ruatahuna	2 May 1923
57	Oputao, Ruatahuna	3 May 1923
58	No location [Murupara] (re sale)	5 May 1923
59	Oputao	8 May 1923
60	Ruangerara	16 May 1923
61	Ruatahuna	17 May 1923
62	Rotorua	4 July 1923
63	No location (re sales)	13 July 1923
64	Wellington (re sales)	3 August 1923
65	No location (re sales)	25 September 1923
66	Te Teko (re Waiohau)	10 October 1923
67	Ruatoki	11 October 1923
68	Te Teko	20 October 1923
69	Papueru	23 October 1923
70	Te Teko (re sales)	27 October 1923
71	Rotorua (survey plans)	29 October 1923
72	Auckland (sales)	7 November 1923
73	Rotorua	26 February 1924
74	Oputao	3 March 1924
75	Te Whaiti	26 March 1924
76	Ruatoki	1 April 1924
77	Rotorua	9 April 1924
78	Auckland (re sales)	10 October 1924
79	Auckland (re Urewera reserves)	11 February 1925
80	Kuha Pa	21 February 1925
81	Lake House, Waikaremoana	22 February 1925
82	Kuha Pa	22 February 1925
83	Ruatahuna	25 February 1925
84	Rotorua	15 July 1925

Table 14.5: Sittings of the Urewera Consolidation Commission

Source: Urewera minute book 1 (doc M29); Urewera minute book 2A (doc M30)

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On occasion, protests were successful in securing adjustments to shareholdings (where these had been incorrectly recorded) or to boundaries which might impede the use of the land. Before fixing the boundaries of each block, the commission visited the areas concerned, accompanied by representatives from the relevant consolidation group (in some cases, with a topographic survey plan). When the boundaries were agreed upon, surveyors would cut the boundaries of the new block, usually along ‘good fencing lines’, so that the area roughly matched the acreage calculated by the commission.³¹ The area calculated by the commission for each new Maori-owned block took into account the cost of the surveys themselves and the contribution toward constructing arterial roads. This was taken in the form of land, and deducted from each block.

The first set of hearings occurred over a six-month period in the first half of 1922, finishing in July. The commission mainly dealt with the northern lands but proceeded round all the main communities. In mid-February, at Waimako on the southern shore of Lake Waikaremoana, Ngati Ruapani signalled their opposition to the terms of the Waikaremoana block transaction, particularly the valuation of their interests and the location of the land south of the lake that was promised to them as part of the transaction (known as ‘Tapper’s farm’). As a consequence, they threatened to withdraw from the scheme. At this time, the commissioners located the 14 reserves to be set aside for Ngati Ruapani in the block.

Meanwhile, in May 1922, the Department of Lands and Survey authorised Knight to purchase the interests of ‘probable sellers’. Provision for continued Crown purchasing during the scheme’s implementation phase had been prefigured in the Consolidation Scheme Report by means of ‘suspense blocks’: groups of interests that had been set aside under the assumption that they would be purchased by the Crown. Shortly after this authorisation, Knight began purchasing interests in the Te Whaiti blocks. Maori owners, however, complained, and the commissioners were instructed to seek ministerial approval before purchasing any interests, and then only to ‘adjust a difficulty’ that might arise in the process of consolidation (as originally intended in the Act).³² Knight also informed the people at Te Whaiti (in May) that the location of Maori-owned blocks had already been agreed and ‘must be adhered to.’³³ He continued to purchase interests throughout the remainder of the scheme, primarily in the Te Whaiti blocks, the Ruatahuna blocks, the Hikurangi–Horomanga blocks, and in the Waikaremoana block.

The second set of hearings began in October 1922 and came to an end the following July. The commissioners later reported (in their August 1923 report) that ‘the work of the commission has been intermittent to meet the convenience of the Natives, the actual working time being less than six months.’³⁴ At the end of 1922, the commission was told that some

31. See, for example, Urewera minute book 1, 16 November 1922, pp 223–225 (doc M29), pp 253–255.

32. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 6

33. Urewera minute book 1, 3 May 1922, p 94 (doc M29), p 126

34. Knight and Carr to Guthrie and Coates, 6 August 1923, ‘Urewera Lands: Report by the Commissioners under the Urewera Lands Act, 1921–22’, AJHR, 1923, G-7, p 2

Ruatahuna owners would withdraw from the scheme if their concerns were not addressed. This group came to be known as ‘te taha apitihana’ – ‘the opposition side’. When the commission returned to Ruatahuna in April 1923, these objections were repeated. Leaders of the opposition movement objected to supplying the commission with lists of owners, and asked instead for the commission to supply them with lists of sellers. The commission refused, but undertook a calculation of the interests of the opposition group, finding that those in favour of consolidation made up the majority of owners. These interests were provisionally placed together in ‘a block to be called Apitihana.’³⁵ Te Pakitu Wharekiri later (in June 1929) reported that the block’s name was derived ‘from those persons who were in opposition to Consolidation.’³⁶

In the meantime, opposition over Waikaremoana still remained to be settled. In March 1923, Ngata and Balneavis returned to Te Urewera in an attempt to negotiate an agreement with Ngati Ruapani. They met at Windy Point, Lake Waikaremoana. After the meeting, Ngata and Balneavis advised the commission that Ngati Ruapani would no longer withdraw from the scheme, but refused to accept the proposed alternative land (Tapper’s farm), and instead sought their payment entirely in the form of debentures.

In April 1923, the chief surveyor and commissioner of Crown lands, HM Skeet, visited Te Urewera for the purpose of assessing the quality of the land that was earmarked for award to the Crown. This followed reports from surveyors that the land to be awarded to the Crown was not suitable for settlement. Skeet agreed that much of the land would be unsuitable for settlement but it was still useful for the Crown and should be reserved ‘for climatic and forestry purposes’, especially to prevent the flooding of coastal (settler) lands.³⁷ In March 1924, 18 sections (totalling 28,564 acres) were put on to the market, 12 of which were in the Waimana Valley and a further six of which were in Te Whaiti. A further three sections were offered in Waimana in May 1924, totalling 3,322 acres. Only three leases were taken up; the remaining land was withdrawn in July 1924.

The next round of the commission’s hearings began in October 1923. The commission began signing off the first awards for the Raroa and Waimana series between October 1923 and February 1924. The proceedings at Ruatahuna, which had been in abeyance since the previous May, were resumed in March 1924. Wharepouri Te Amo raised further objections when the commission returned. The commissioners warned that if they did not submit their group lists and preferred location, the commission would decide matters for them. In response, Te Amo asked for Ruatahuna 1 and 2 to be set aside for te taha apitihana. Ultimately, the block known as ‘Apitihana’ was in three parts: two in the Tarapounamu series, and one in Ruatahuna (which itself consisted of three areas).

35. Urewera minute book 2A, 17 April 1923, p178 (doc M29), p 215

36. Urewera minute book 1, 13 June 1929, p 237 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(a)), p 139)

37. Skeet to Under-Secretary for Lands, 24 May 1923 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 140)

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The commission also returned to Te Whaiti at the end of March 1924. Ngati Whare owners asked the commission to consider requests for various locations. In reply, the commissioners stated that their land had already been selected ('by the owners themselves'), and that no change could be effected.³⁸ Tari Manihera complained that this breached the Taurarau arrangements.

Knight and Carr submitted their second progress report in June 1924. The report stated that, due to the protests from te taha apitihana, the groups in the Ruatahuna district 'as originally set up were almost entirely abandoned, and a reconsolidation of their interest [was] made to suit their wishes and requirements.' Titles to the Waimana and Raroa series blocks had been completed. The 'necessary surveys' were awaited for the remaining blocks, some of which would be completed the following summer. 'The Crown's title, the commissioners reported, 'cannot be drawn up until the surveys of the Native Blocks are completed.'³⁹

In March 1925, Ngati Ruapani leaders wrote a letter to Coates indicating again that they would withdraw from the scheme, this time because the agreement they had reached with Ngata and Balneavis in 1923 had not been followed. Another petition, from Tuhoe owners, dated May 1925, protested the 'decisions and determinations of the commissioners in regard to our lands,' particularly the amount of land taken for survey costs, and the valuation of the lands.⁴⁰ Carr wrote a response dismissing the claims.

Knight and Carr's final progress report of May 1925 (unpublished) indicated that the surveys for three of the remaining series blocks had been completed. Three more – Te Whaiti, Tarapounamu, and Ruatahuna – were still progressing. They also reported that they had arranged the boundaries for the Ruatahuna blocks, and had forwarded to the Native Department orders for issuing debentures for the Waikaremoana sellers.

Throughout this process, the commission recorded its proceedings in minute books. In the Urewera minute book 2A, the commission compiled a final list comprising all the Maori-owned blocks, the 'estimated' amount of land deducted for roading and survey costs from each block, and the final 'net area' of each block. The estimated area deducted for roading costs totalled 39,355 acres (at a value of £19,975); and for survey costs, 32,368 acres (at a value of £14,246).

14.3.5 The award of blocks to Maori owners and the Crown

In total, 210 blocks were awarded to Maori owners. One-hundred-and-eighty-three of these blocks were subject to road and survey deductions. Combined, these blocks totalled 106,287 acres 3 roods. A further 27 papakainga or urupa reserves, totalling 90 acres, were set aside

38. Urewera minute book 2A, 26 March 1924, p164 (doc M30), p201

39. Knight and Carr to Guthrie and Coates, 5 June 1924, 'Report of the Commissioners as to position of Urewera Consolidation Scheme', AJHR, 1924, G-7, pp1-2

40. W Whatanui and others, petition to Native Minister, 1 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p 279)

at the request of Maori owners. Some requested reserves, however, became part of the Crown's award, including the Maungapohatu burial reserve, the Waikokopu springs, and the Huiarau watershed reserve.

By the end of the process, the commissioners had organised the Maori-owned blocks into groups, known as 'series'. Each series was based on the general area in which the blocks were located. In total, there were nine series: Te Whaiti, Tarapounamu, Ohaua, Maungapohatu, Ruatahuna, Hikurangi–Horomanga, Ruatoki, Raroa, and Waimana. Each series included on average 23 blocks (including reserves). The series with the biggest number of blocks was Ruatoki (54); the smallest was Raroa (eight). The biggest in terms of overall acreage was the Ruatahuna series.

The orders were counter-signed by the chief judge of the Native Land Court, some of which were not completed until January 1927. In the interim period, surveyors had completed the cutting of boundary lines according to the specifications set by the commissioners. In June 1927, the Crown's award of 482,300 acres was notified in the *Gazette*. This land was taken in the form of one continuous block, known as 'Urewera A'.

14.3.6 The fate of the Waikaremoana debentures and the promised arterial roads

In 1932, the debentures issued to Ngati Ruapani and Ngati Kahungunu owners matured and should have been paid. The term was unilaterally extended for 10 years, and then, in 1933, in common with all Government debt, was extended indefinitely. The debentures were eventually repaid in 1957.

Construction of the arterial roads promised under the Urewera Consolidation Scheme began in 1922. They were never completed. By 1927, one mile of road had been formed south of the Ruatoki settlement. The Waimana valley road had commenced construction shortly after the Tauarau hui, and four miles was eventually formed between Waimana and Matahi. From Matahi south, an 12-foot-wide track was formed for 17 miles. In 1927, the Government committed to building the promised road between Ruatahuna and Waikaremoana. This road (completed between 1929 and 1930 as part of an unemployment relief scheme) was the only completed section of the promised roads.

In 1937, R G Dick of the Department of Lands and Survey reported that, in order to meet the obligations made to Maori owners under the scheme, the Crown was still required to construct approximately 115 miles of roads, at the cost of £230,000. Dick proposed that Maori land should be 'reconsolidated (or purchased)', and that the remaining amount of estimated expenditure diverted instead to 'the development of these areas'.⁴¹ Following this report, the Crown formally decided to abandon its plans to construct the roads. In 1949, Maori owners sent a petition to the Government protesting the non-completion of

41. Dick to Under-Secretary for Lands, 20 August 1937 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p163)

the roads. Then, in 1957, the Crown entered into negotiations with Maori owners to provide redress. A settlement was reached in 1957, and in 1958 the Crown paid £100,000 to the newly formed Tuhoe Maori Trust Board. This settlement represented a refund of the original £19,975 plus compounding interest of 5 per cent per annum.

14.4 ESSENCE OF THE DIFFERENCE BETWEEN THE PARTIES

The issues covered in this chapter are complex and were the subject of detailed submissions from the parties. The Crown's closing submissions alone ran to some 110 pages on these matters. This section of our chapter provides a brief summary of the parties' arguments, focusing on the key points in contention between them. We revisit those arguments in more detail during our analysis of the claims in the section that follows this one.

14.4.1 Why was a consolidation scheme chosen for the Reserve lands?

The claimants' central contention is that the Crown proceeded with a consolidation scheme primarily to advance its own interests, and that this influenced how the scheme was designed and later implemented.⁴² The scheme was designed to 'save the Government money on survey costs (passing much of the cost to Maori land owners in the process).'⁴³ The Crown's second goal was to acquire land of sufficient quality, in specific locations, to meet its objectives for the region. 'The Crown was mainly interested in land for the settlement of Pakeha.'⁴⁴ A consolidation scheme meant that the Crown, not the Native Land Court, would control the process of land division, allowing it to acquire the best lands and timber resources.⁴⁵ These intentions, counsel suggested, were reflected in the scheme's actual outcomes, particularly the quality of the land that the Crown received.

Given the circumstances they found themselves in, claimant counsel submitted, Maori owners were not wholly opposed to the idea of consolidation, but nor were they fully in support. Indeed, there were a range of views. Tuawhenua counsel suggested that there was some support for consolidation, particularly if arterial roads were to be built as part of the scheme.⁴⁶ Others, particularly te taha apitihana, opposed the scheme for good cause. More to the point, counsel submitted, the Crown did not fully investigate the range of views of Te Urewera peoples, and nor did it seek to forge a proper consensus among the people. Instead, it imposed consolidation upon them in 1921. Counsel for Wai 36 Tuhoe suggested that instead of proceeding with consolidation the Crown 'should have been obliged to stay

42. Counsel for Wai 36 Tuhoe, closing submissions, pt B, 30 May 2005 (doc N8(a)), p104

43. Counsel for Ngati Whare, closing submissions, not dated (doc N16), p79

44. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p104

45. Counsel for Ngati Whare, closing submissions (doc N16), p79

46. Counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), p181

as just another shareholder with all attendant liabilities and subject to Tuhoē's customs and imperatives in respect of its land.⁴⁷ Counsel for Ngati Whare argued that Ngati Whare would have been better off 'if regular procedures such as the Native Land Court had been used' because then they would have kept the valuable forests of Te Whaiti. As such, the Crown 'failed to properly consider alternatives' to the scheme.⁴⁸

Given the Crown's decision to proceed with consolidation, counsel for Wai 36 Tuhoē pointed to Mr Tamaroa Nikora's 'principles of a sound consolidation scheme', which showed how consolidation in Te Urewera should have been carried out. A sound scheme was one that was transparent and placed the interests of Maori owners to the fore.⁴⁹

The Crown objected to most of these points, and instead maintained that consolidation was advanced because it would provide 'mutual benefits' for both Maori owners and the Crown. The Crown had had these 'mutual benefits' in mind when it proposed a consolidation scheme instead of partition and other less desirable scenarios (such as the compulsory acquisition of the remaining interests). Partition would create a patch-work of blocks, which would have been unsuitable for both Maori owners and the Crown. And, as opposed to going through the Native Land Court, a consolidation scheme allowed the Maori owners more influence over which land they would receive. Also, Maori owners would benefit from obtaining land transfer title, which would allow them to raise finance, and also from arterial roads. The Crown would benefit by acquiring the land it sought for settlement and conservation purposes.

Crown Counsel rejected the idea that the Crown alone would save on costs, and suggested that consolidation was a 'cost-effective and practical solution to the problem of undivided interests'. As evidence of this, counsel pointed to Minister of Lands David Guthrie's statement that if the peoples of Te Urewera consented to the principle of consolidation, then a 'tribunal to consult' over the scheme should be established. In other words, a good consolidation scheme was one that benefitted both the Crown and Te Urewera peoples equally. The Crown approached all aspects of the scheme according to the principles of 'reasonableness and give-and-take' (quoting Native Minister Coates). Counsel submitted that Maori owners were largely supportive of the idea of consolidation, thus there was significant agreement from both sides.⁵⁰

14.4.2 How were interests consolidated and land divided between Maori and the Crown?

The claimants said that the process set up to decide who would be awarded which land from the scheme was loaded in favour of the Crown. This imbalance began at Taurarau, where

47. Counsel for Wai 36 Tuhoē, closing submissions (doc N8(a)), p 104

48. Counsel for Ngati Whare, closing submissions (doc N16), pp 79, 80

49. Counsel for Wai 36 Tuhoē, closing submissions, pt A, 31 May 2005 (doc N8), p 54

50. Crown counsel, closing submissions, June 2005 (doc N20), topics 18–26, pp 3, 8, 9, 13, 19, 20

the key elements of the scheme were decided. The claimants said that there was inadequate representation of Maori owners at the Tauarau hui.⁵¹ It was also inappropriate, in their view, for the Crown to deal with Maori owners through Apirana Ngata, who was not impartial. It should only have negotiated through ‘properly appointed counsel.’⁵² On top of this, Maori owners were not supplied with sufficient information about the proposed scheme and its consequences, and could not – as a result – give their informed consent to the scheme; hence the extent of subsequent protests.⁵³

Crown counsel disputed these points, suggesting that there was in fact a ‘relative lack of protest’ from Maori owners in 1921 and later, because most had ‘preferred to explore a scheme of consolidation’ over other options.⁵⁴ Every family of Maori owners was represented at the Tauarau hui and the committee appointed to receive the Crown’s proposals was ‘reasonably representative of the non-sellers.’⁵⁵ Crown counsel dismissed the suggestion that the Crown enjoyed a position of dominance in its negotiations with Maori. Counsel argued that any potential bias on the part of Crown officials at the hui was ‘checked’ by Coates: as Native Minister, Coates represented Maori interests (rather than those of the Crown), and provided a necessary balance to other Crown interests in finalising the details of the scheme.⁵⁶ In addition, Ngata did not act as an agent for the Crown in the negotiations.⁵⁷ Counsel rejected Webster’s suggestion that there was something underhand in the Crown’s ‘apparently casual approach’ to the negotiations, pointing to ‘the extent to which the Crown moved from its original proposals’ as proof of equal bargaining power. Maori owners at the hui bargained hard and won significant concessions from the Crown.⁵⁸

The parties also disputed the adequacy of some of the mechanics of the scheme, particularly in terms of the exchange of interests between Maori owners and the Crown. Claimant counsel argued that it was inappropriate to use the valuations for the Reserve blocks as the basis of exchanging interests between parties in the scheme: those valuations were unlawful in the first instance and outdated by the time of the scheme. Because these valuations were made at different times, there was no consistent point for which the exchange of interests could be calculated. In an ideal scheme, a ‘single common denominator’ would establish ‘current market valuations at a common date for all land and interests and by which consolidation can then proceed on an equitable basis.’⁵⁹ Claimants also argued that the principles of

51. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p105; counsel for Tuawhenua, closing submissions (doc N9), pp183, 185

52. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp105–106; counsel for Tuawhenua, closing submissions (doc N9), p183

53. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp108–109

54. Crown counsel, closing submissions (doc N20), topics 18–26, pp21–22

55. Crown counsel, closing submissions (doc N20), topics 18–26, pp74, 31

56. Crown counsel, closing submissions (doc N20), topics 18–26, pp22–23

57. Crown counsel, closing submissions (doc N20), topics 18–26, p31

58. Crown counsel, closing submissions (doc N20), topics 18–26, pp23–24

59. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp112–113

a sound consolidation scheme were undermined throughout the scheme's implementation by ongoing Crown purchasing. This was despite the Crown's promises to cease purchasing, and despite continued complaints.⁶⁰

Crown counsel dismissed these points: the valuations were conducted in accordance with the standards of the time, and did in fact provide a sound basis on which to conduct the exchange of interests in the scheme. The Crown conceded that aspects of its continued purchasing were flawed, but only in one particular instance (Waikaremoana) where the purchase of shares from one set of owners was at a price considerably less than that paid to another. This, the Crown admitted, was 'unconscionable and inappropriate.'⁶¹

The manner in which the scheme was implemented by the Consolidation commissioners was also a point of difference between the parties. The claimants said that it was inappropriate for two Crown officials to be given the sole authority to decide upon the boundaries between Crown and Maori-owned blocks: 'no Tuhoe were appointed as Consolidation Commissioners' and there was 'no impartial commissioner to fairly consider the interests of Tuhoe.'⁶² The outcome, they said, was that there were a number of decisions that went against Maori owners; the Crown secured for itself much of the land that it had desired.⁶³ In contrast, Crown counsel submitted that the scheme was implemented in a fair and transparent way. Although the commissioners were Crown officials carrying out administrative functions under the Urewera Lands Act 1921–22, and as such were not 'independent', they were required to ascertain the needs of Maori owners. And, with 'several possible exceptions, the commissioners implemented the scheme in accordance with its principal elements as recorded in the report dated 31 October 1921 and with the enabling legislation, and . . . by and large in a manner fair to both Maori and the Crown.'⁶⁴ The possible exception was te taha apitihana, who may have been prejudiced as a consequence of their unwillingness to submit lists of owners to the commissioners. But on this issue, Crown counsel did not make a concession of Treaty breach.⁶⁵

14.4.3 What effect did the implementation of the scheme have on Waikaremoana peoples?

Claimant counsel submitted that, at the very least, the Crown acquired the Waikaremoana lands without the sufficient understanding and agreement of the various owners of the

60. Counsel for Ngati Whare, closing submissions (doc N16), p 80

61. Crown counsel, closing submissions (doc N20), topics 18–26, pp 52–53, 71

62. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 106–107, 108

63. Counsel for Ngati Whare, closing submissions (doc N16), p 81; counsel for Tuawhenua, closing submissions (doc N9), p 185

64. Crown counsel, closing submissions (doc N20), topics 18–26, pp 35–36, 38

65. Crown counsel, closing submissions (doc N20), topics 18–26, p 4

block.⁶⁶ Most argued that the threat of compulsory acquisition of the Waikaremoana block under scenery preservation legislation forced Waikaremoana peoples to exchange their interests for other land or debentures.⁶⁷ For one claimant group, the Crown's acquisition of their interests amounted to a confiscation.⁶⁸ Counsel for Wai 36 Tuhoe said that it was unclear whether such a threat was in fact made, and stated that non-resident Tuhoe owners appeared to support an exchange; but that the claimants' issue is how little these owners were paid for their interests in comparison to what others received.⁶⁹

In response to these positions, Crown counsel submitted that there was a 'significant amount of consultation in respect of the Waikaremoana block'. Subsequent protests from Maori owners represented their attempts to alter existing agreements. In the Crown's view, there is 'no evidence of forced sale or confiscation'.⁷⁰

In addition to claims about the transaction itself, Ngati Ruapani and Ngati Kahungunu argued that the debentures issued as compensation for their interests in the block were insufficient for their needs.⁷¹ The Crown agreed with the claimants that the terms of the debentures were changed without consultation (including extending their term and reducing the interest rate payable); and that payments were irregular under the administration of the Maori Trustee.⁷² Crown counsel submitted, however, that although the hardship caused by events was lamentable, the terms of the debentures had to be changed because of the Depression, which was outside of its control, and that actions of the Maori Trustee were not those of the Crown.⁷³

Ngati Ruapani claimants also argued that the Crown failed to provide them with useable land around their existing settlements, which it had promised them as part payment for their interests in the Waikaremoana block. They also said that the 14 reserves set aside for them in the Waikaremoana block were less than what they had asked for and were inadequate for their needs.⁷⁴ The Crown submitted that Ngati Ruapani and the Consolidation

66. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 122; counsel for Ngai Tamaterangi, closing submissions, not dated (doc N2), p 49; counsel for Wai 621 Ngati Kahungunu, closing submissions, 30 May 2005 (doc N1), pp 104–105

67. Counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (doc N14), p 157; counsel for Ngati Ruapani, closing submissions, 3 June 2005 (doc N19), app A, para 147; counsel for Ngai Tamaterangi, closing submissions (doc N2), p 49; counsel for Wai 621 Ngati Kahungunu closing submissions (doc N1), p 102

68. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 175

69. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 121–124

70. Crown counsel, closing submissions (doc N20), topics 18–26, p 75

71. Counsel for Wai 144 Ngati Ruapani, closing submission (doc N19), para 215; counsel for Wai 945 Ngati Ruapani, closing submissions, 30 May 2005 (doc N13), p 36

72. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 216, 220, 222, 223. The Crown submitted that there was 'a large measure of agreement as to the facts pleaded'. See Crown counsel, closing submissions (doc N20), topics 18–26, p 78.

73. Crown counsel, closing submissions (doc N20), topics 18–26, p 80

74. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 208, 352; counsel for Wai 945 Ngati Ruapani, closing submissions (doc N13), p 53; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 239–240; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 208, 352

commissioners reached an agreement in 1925 about the amount of land that would be set aside as reserves, but that there was little evidence to demonstrate whether the location, quality, and quantity of those reserves was in fact sufficient or not.⁷⁵

Claimants also said that the Crown acquired two of the four southern block reserves (we discussed the four southern blocks in chapter 7) without paying for them and without providing alternative land.⁷⁶ Counsel for Wai 36 Tuhoe noted that rates arrears were a ‘factor’ in the Crown’s acquisition of the reserves, but did not explain how they were a factor.⁷⁷ Claimant Tamaroa Nikora – who investigated the history of the reserves – concluded that the Crown simply ‘confiscated’ the reserves.⁷⁸ Crown counsel submitted there was ‘no evidence’ to suggest the owners of the reserves were motivated by ‘the prospect of the unpaid rates being forgiven’; and there was no evidence that the Crown used rates as a ‘lever’ to acquire the reserves. Instead, Maori owners made a decision to include these reserves in the transaction and then ‘negotiated hard and made a bargain so that the consideration passing to them would not be diminished or abated by outstanding rates.’⁷⁹

14.4.4 What agreements were reached about titles and how was the cost of surveys met?

Maori owners were promised land transfer titles as part of the Urewera Consolidation Scheme; such titles, however, required the most accurate and the most expensive kind of surveys. Although this kind of title was actually unnecessary, in the claimants’ view, the owners paid the full costs for these surveys and therefore should have received the promised titles. However, not one single title was issued.⁸⁰ The Crown denied these points in closing submissions, stating that a lesser kind of survey was unacceptable, that the surveys had been sufficient to generate land transfer titles. According to Crown counsel, there was no evidence to show why the Maori-owned blocks had not been registered in the land transfer system (as they could and should have been), or to show that the Crown was at fault.⁸¹

Claimant counsel also submitted that the Maori owners had not understood that surveys would cost them such a significant portion of their remaining land; they would never have agreed to such an outcome.⁸² Nor did they understand that flawed valuations would be used to calculate the amount of land taken for these costs: valuations that had already taken future survey costs into account and were in any case out of date. As a consequence,

75. Crown counsel, closing submissions (doc N20), topic 28, p 22

76. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 81–87; counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 43

77. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 124

78. Tamaroa Nikora, ‘The Urewera Consolidation Scheme (1921–1926): An Analysis’, June 2004 (doc E7), p 40

79. Crown counsel, closing submissions (doc N20), topics 18–26, p 75

80. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 117

81. Crown counsel, closing submissions (doc N20), topics 18–26, p 66

82. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 104, 108, 114

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the peoples of Te Urewera had survey costs ‘loaded’ onto their lands twice.⁸³ Counsel for Ngati Whare suggested that the terms of the UDNR Act meant that the Crown should have met all the survey costs, but that it even failed to meet its share of the costs for surveying common boundaries.⁸⁴ Further, counsel submitted that much cheaper methods of surveying could have been used (magnetic surveys),⁸⁵ and that there were ways of exacting the costs other than by land or through block-by-block deductions.⁸⁶ For these reasons, the claimants argued, it was grossly unfair to expect non-sellers to meet almost the entire cost for surveying in the scheme.

Crown counsel submitted that it was unclear whether Maori owners of the Reserve were fully aware of how much the surveys would cost. However, counsel speculated, it ‘may be reasonable to conclude’ that those who read or discussed the October 1921 Consolidation Scheme Report had a ‘general idea’ that the cost for surveying the new blocks would be taken in land. And by the implementation phase there is ‘some evidence that Maori may have been aware of the rate at which survey costs were to be paid.’⁸⁷ Crown counsel also argued that the method by which land would be taken for survey costs was made known to the owners at the August 1921 hui, and no opposition was recorded.⁸⁸ Nonetheless, the Crown accepted that there was a ‘prima facie’ case that Maori had been overcharged for the surveys – ‘significantly higher’ than the going rate – and that ‘strong suspicions’ had been roused as to whether Maori had borne more than their share of the survey costs.⁸⁹ Ultimately, however, the Crown’s view was that it is simply impossible to get to the bottom of how the survey costs were calculated, and therefore any conclusion that Maori paid excessive costs is nothing more than ‘speculation.’⁹⁰

14.4.5 Should Maori owners have contributed 40,000 acres toward the cost of constructing two arterial roads?

Claimants argued that it was unfair and unreasonable to impose roading costs on Maori owners of the Reserve through the scheme. This was not only because the existing policy at the time meant that the Crown was obliged to pay for the roads, but also because roading

83. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 113; counsel for Ngati Whare, closing submissions (doc N16), pp 82, 157; counsel for Tuawhenua, closing submissions (doc N9), pp 195–196

84. Counsel for Ngati Whare, closing submissions (doc N16), pp 82, 157–158

85. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 115–116

86. Counsel for Ngati Whare, closing submissions (doc N16), pp 84–85, 157

87. Crown counsel, closing submissions (doc N20), topics 18–26, pp 26–27

88. Crown counsel, closing submissions (doc N20), topics 18–26, p 29

89. Crown counsel, closing submissions (doc N20), topics 18–26, pp 27, 60–61

90. Crown counsel, closing submissions (doc N20), topics 18–26, pp 61–62

costs were already ‘loaded’ into the original 1910s valuations of the Reserve lands.⁹¹ In effect, the peoples of Te Urewera had to pay twice for roads, when they should not have paid anything in the first place. These valuations were also out of date (1910 and 1915), whereas the prospective roading costs were valued at contemporary, postwar rates (1921).⁹² In addition, Tuawhenua counsel submitted, costs were charged against owners irrespective of whether the roads would serve their communities.⁹³ Also, Te Urewera peoples were not fully aware of the extent of the costs asked of them in 1921. It was unsurprising that many protests later arose. To add insult to injury, only a quarter of the roading was ever completed; and those roads that were built merely served the Crown’s plans for the land.⁹⁴ Finally, claimants argued that the 1958 settlement, designed to compensate for the Crown’s failure to build the roads, was neither fair nor adequate.⁹⁵

The Crown conceded that its failure to construct the arterial roads was ‘fatal to the integrity of the scheme and significantly prejudiced Urewera Maori’, and was also in breach of the Treaty. However, in the Crown’s view it was also ‘understandable that the Crown should seek a contribution from Urewera Maori towards the cost of the two arterial roads’. No policy existed at the time that required the Crown to pay these costs. Although it was unclear whether Maori owners were fully informed about how high these costs might be, there was ‘little objection to the quantum that each group passed to the Crown either prior to 31 October 1921 or subsequently’. The Crown acknowledged that the Tribunal would investigate the adequacy of the 1958 settlement.⁹⁶ In its view, the settlement was ‘reasonable in all the circumstances’, having repaid Maori the original sum plus 5 per cent interest. Crown counsel accepted that the settlement did not cover the ‘flow-on effects’ for Maori in not having roads. They suggested, however, that while the Tribunal is ‘entitled to consider these matters, a damages approach is not appropriate for historical grievances.’⁹⁷

14.5 WHY WAS A CONSOLIDATION SCHEME CHOSEN FOR THE RESERVE LANDS?

Summary answer: *Consolidation schemes were carried out in a number of regions in the early to mid twentieth century as a solution to the excessive fractionation of titles and fragmentation of Maori land. This situation was widespread by the turn of the century. Individualisation of ownership (in accordance with the provisions of Native land legislation) and the land court’s*

91. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 56; counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 113

92. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 55

93. Counsel for Tuawhenua, closing submissions (doc N9), pp 194–195

94. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 135; counsel for Wai 36 Tuhoe, closing submissions in reply, 9 July 2005 (doc N31), p 24

95. Counsel for Wai 36 Tuhoe, closing submission (doc N8(a)), pp 139–141

96. Crown counsel, closing submissions (doc N20), topics 18–26, pp 5–6, 24–30, 86–105

97. Crown counsel, closing submissions (doc N20), topics 18–26, p 103

longstanding practice of ordering equal succession by all children of a deceased owner fractionated shares. The result was that people often held small and scattered interests across a number of blocks in a district. These circumstances were highlighted by the Stout–Ngata commission in its reports on the state of Maori land in regions throughout the North Island, including Te Urewera, the result of which was the first recommendations for consolidation schemes. By the early 1920s, Maori owners of Reserve blocks faced similar circumstances, because the Urewera commissioners had not awarded land to hapu but had conferred shares in blocks on individual owners, who often had interests in a number of blocks in the Reserve. The Crown's determined purchasing programme subsequently meant that Maori owners generally now held only a few of their original interests, perhaps widely scattered.

Throughout the 1910s, Maori owners attempted to re-establish some of the original purposes of the UDNR Act by applying to the Native Land Court for the partition of blocks along hapu lines. Native Minister William Herries, however, opposed partition on the grounds that it was contrary to the purposes of the Crown's purchasing programme. The early partition of blocks would only result in a 'chequer-board' effect, in which the Reserve lands would be a mosaic of Crown and Maori-owned blocks. The Government revoked the court's jurisdiction to grant partition applications across much of the Reserve. Maori owners, however, were determined to retain control over their land, and submitted petitions in 1917 and 1918 calling for a halt to purchasing and sought to clarify which land was theirs (as opposed to the Crown's) so that they could advance their plans for economic development. In November 1919, with the Crown's purchases beginning to slow, Native Department Under-Secretary CB Jordan proposed a consolidation scheme for the Reserve lands. Such a scheme would allow the Crown to be awarded land in one large block and would also facilitate subsequent purchasing of the remaining Maori land. Herries delayed the implementation of a scheme in the hope that the Crown might acquire yet more interests from Maori owners.

When the Minister of Lands, Guthrie, travelled through Te Urewera in February 1920, Maori owners spoke in favour of a consolidation scheme. Possibly prompted by news of the scheme recently completed in neighbouring East Coast, the owners recognised that in the difficult circumstances they now faced, consolidation was the best option: it would allow them to pool their remaining interests in the land that they wished to retain for economic development. In May 1921, at Ruatoki, Ministers Coates and Guthrie formally proposed consolidation to Maori owners, and made promises of further benefits if they agreed to proceed with the scheme: namely, secure title and the construction of two arterial roads through their lands, which they had been requesting for over a decade. Maori owners went into the scheme with some hope that they would emerge from the collapse of the UDNR Act, and 10 years of Crown purchasing, with some tangible benefits. These hopes were based in part on the specific promises made by Ministers, as well as their general understanding that consolidation schemes were designed to improve their land holdings. But Maori owners did not have enough facts before them to give

their informed consent to anything more than proceeding with a scheme per se. They could not have predicted that the Crown would soon default on its two major promises made to induce them to consent to the scheme. On the basis of a bare consent in principle, Ministers and officials continued to develop plans for a consolidation scheme, the purpose and shape of which was quite different from the East Coast scheme, and from subsequent consolidation schemes. In the Urewera Consolidation Scheme, the Crown was inevitably to have the superior bargaining position because of the number of interests it had acquired and its organisational advantage. The scheme was primarily intended as the culmination of the Crown's purchasing programme.

We considered the principles of a sound consolidation scheme, as outlined by Mr Tamaroa Nikora, who was employed on a number of schemes during his career as a professional surveyor: the process of consolidating interests and selecting new land must be led by the owners, with the assistance of trained professionals; there must be a draft scheme of new sub-divisions superimposed over a topographical plan, approved by owners; current market valuations of properties at a common date; and transparent accounting of interests and exchanges. Consolidation schemes must demonstrate that the owners would emerge in a better position than at their inception; otherwise there was no point in proceeding. These basic principles can be used to assess the outcomes of the Urewera Consolidation Scheme.

We accept these principles as minimum standards for a scheme, on the basis that the Crown and Maori were co-owners in the Reserve. We also accept the Crown's standards for the scheme as expressed by Ministers at the time and as highlighted by Crown counsel: 'mutual benefit' for Maori and the Crown; ministerial protection of Maori interests; justice for Maori and equality of justice for Maori and future settler interests; decision-making by 'round-table conferences' and in a spirit of reasonableness and 'give-and-take'.

These are minimum standards for the Crown to have met. We also note there was not a level playing field such that equal treatment of the Crown and Maori co-owners was appropriate. The Crown had not come by its interests honestly but rather as a result of massive Treaty breaches. Rather than seeking to profit from those breaches, the Crown was required to put Maori interests first. This is the higher, more appropriate standard by which we judge the Crown's actions in the Urewera Consolidation Scheme.

14.5.1 Introduction

The two-and-a-half decades after the passing of the UDNR Act witnessed a complete defeat of the unique model of self-government and title determination that the Act and associated agreements had envisaged. The Reserve was not governed by local committees and a central committee (which meant that there was no collective management of lands), the Reserve was no longer a 'reserve' (since the Crown had purchased about half of it), and Maori were

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desperate to stop the Crown's purchasing and the bleeding of individual interests. As a result, a consolidation scheme of the kind adopted for the Reserve lands was increasingly sought by many of the remaining Maori owners between November 1919 – when Native Department Under-Secretary C B Jordan first seriously raised the possibility – and May 1921 – when Ministers sought approval from Maori owners to implement an actual scheme. A consolidation scheme, in theory, provided the many Maori owners who retained their interests in the Reserve blocks with the best opportunity to make strategic decisions about which land they would retain in order to pursue the type of economic development they had been seeking since at least the start of the twentieth century. It offered them the only sensible solution to rescue their remaining interests and to retain some measure of communal ownership and control.

The extent and nature of the Crown's purchases – which by September 1919 amounted to the equivalent of 308,434 acres in the form of undivided interests, or approximately 47 per cent of the Reserve⁹⁸ – also meant that the Crown was more likely to pursue consolidation over other options as a means of extracting its land. Government Ministers and interested officials in the Native Department and Department of Lands and Survey came to consider consolidation as the best method to fulfil the objectives of the Crown's purchasing programme in the Reserve. As we discussed in chapter 13, the purpose of this programme as it developed was to open a large expanse of the former Reserve lands to Pakeha settlers, alongside obtaining sufficient areas in the watershed for conservation purposes. The Crown also wanted to profit from the timber in the Te Whaiti region. This preoccupation with 'opening' Te Urewera lands culminated in the 1915 proposals of Andrew Wilson and A B Jordan: the Crown would acquire the vast majority of the 470,000 acres that was considered suitable for settlement; Maori owners would retain only small portions of the land they had previously inhabited – a mere fraction of what they originally owned.⁹⁹ This was the same region that Premier Richard Seddon had described in 1895 as largely unsuitable for settlement purposes, except for areas Maori already had under cultivation. Mr Tamaroa Nikora told us that Seddon's advice 'echoes down the years' in the light of what followed.¹⁰⁰ Within a generation, the Crown's objectives had changed radically. As the 1910s drew to a close, Ministers and officials increasingly viewed a consolidation scheme as the best mechanism to meet their settlement objectives.

In this section, we trace the origins of the Urewera Consolidation Scheme up to May 1921, when the Ministers made their proposal to Maori owners. One of the claimants' central grievances on this topic was that the Crown imposed a consolidation scheme on Maori owners of the Reserve against their wishes, and only to suit the Crown's objectives; a claim

98. Cecilia Edwards, 'The Urewera District Native Reserve Act 1896: pt 3, Local Government and Land Alienation under the Act' (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(b)), p 210

99. Wilson and Jordan to Chief Surveyor, 1 August 1915 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 145–149)

100. Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 42

the Crown firmly rejected. As we explain here, the particular circumstances of the events that unfolded in Te Urewera after the passing of the UDNR Act meant that by November 1919, when Jordan first raised the possibility of a scheme for the Reserve, Maori owners had been placed in a position where they had little choice but to support some kind of consolidation scheme. Ministers and officials were equally likely to agree with Jordan's proposal, though for quite different reasons.

14.5.2 How did the Crown's defeat of the UDNR Act and subsequent extensive purchasing influence the emergence of a consolidation scheme as an option for the Reserve lands in 1919?

The Urewera Consolidation Scheme had a number of origins, the most important of which was the Crown's undermining of the UDNR Act in the two decades after its passing. But in many ways the scheme originated in the recommendations of the Stout–Ngata commission, which held its hearings and reported in 1907 and 1908. The commission was not only the first to propose the implementation of a consolidation scheme in the Reserve lands but also the first body to identify the need for consolidation schemes for lands throughout New Zealand. The commission's general recommendations gave rise to legislation under which most consolidation schemes were carried out. In total, 28 schemes were completed during the twentieth century.¹⁰¹ The Urewera Consolidation Scheme was one of the first: while it was unique because of its size and the nature of the Crown's involvement, it also emerged from many of the same circumstances experienced by Maori owners elsewhere in New Zealand, as identified in the commission's reports.

The Stout–Ngata commission was part of the Crown's broader response to widespread problems caused by nineteenth-century native land legislation and the individualisation of Maori land. But the commission was also born of a contradiction in Government policy in the early part of the twentieth century, which saw increasing moves on the part of the Crown to acquire remaining areas of Maori land. Reflecting these dual purposes, the commission was instructed to inquire into which areas of Maori land could be sold off for Pakeha settlement, as well as identifying which land Maori should retain for development and how it should be managed.¹⁰² These aims were reflected in the commission's recommendations for various regions of the North Island, including portions of Te Urewera lands.

In their first main report in 1907, the commissioners described the effects of the individualisation of Maori land generally. The report cited many of the findings of the 1891 Royal Commission into native land legislation, which heavily criticised the Native Land Act 1873

101. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised edition, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 728

102. SKL Campbell, 'National Overview on Land Consolidation Schemes, 1909–1931' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1998) (Wai 1200 record of inquiry, doc A62), p 36

for introducing the memorial of ownership in which ‘every member of the tribe or hapu interested in a particular piece or block of land’ was listed. Under that Act, the alienation of Maori land ‘took its very worst form and its most disastrous tendency’: people became possessed of ‘a marketable commodity’ (ie, their individual share interest), and because of individualisation the ‘strength which lies in union was taken from them.’¹⁰³ Their interests became even more marketable because they were co-owners of blocks without a means of acting either collectively or (in the sense of owning defined pieces of farmland) individually.

The Stout–Ngata commission updated these findings, noting that Maori owners continued to be caught in ‘the difficulties inherent in individual ownership, which prevented organized effort as well as individual action.’ By the early twentieth century, individuals could own scattered interests across numerous blocks. With each generation, succession orders resulted in the ever-increasing fractionation of these interests. Crown or private purchasing of individual interests made this situation worse, as owners then held fewer interests, often still across a number of blocks. Fragmentation – the partition or subdivision of blocks – often followed as Maori owners attempted to clarify which particular part of a block was theirs. But, as the commissioners observed, the ‘minute sub-division of land’ was ‘impossible to carry out in a practical and effective manner, apart altogether from the enormous cost that would be entailed upon the land and its owners.’¹⁰⁴

Reflecting on how this situation had developed on the East Coast – Ngata’s home territory – the commissioners noted:

individualisation of title in this district, in the sense of allocating to each owner his individual area, is hopeless and absurd, and the only chance of the land being worked is by co-operation amongst the Native owners, or by arrangements that will give to some of the owners the exclusive right to farm and occupy the tribal or hapu lands under a system of leasing.¹⁰⁵

The commissioners reached similar conclusions for other areas on which they reported.

As a solution to these problems, the commissioners made a series of recommendations to fit the range of circumstances faced by Maori owners in different parts of New Zealand. Incorporation offered some Maori owners the possibility of revitalising a form of communal ownership, through the creation of a committee of management which would administer a block’s affairs (not unlike what had been envisaged under the UDNR Act). ‘The Maoris are a communal people,’ the commissioners observed, ‘and this system, which preserves a community of interest, but also allows and rewards individual exertion, may be

103. WL Rees and J Carroll, 23 May 1891, ‘Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws’, AJHR, 1891, G-1, pp viii, x (quoted in Stout and Ngata to Governor, 11 July 1907, AJHR, 1907, G-1c, pp 2–3)

104. Stout and Ngata to Governor, 11 July 1907, AJHR, 1907, G-1c, pp 2–13

105. Stout and Ngata to Governor, 18 January 1908, AJHR, 1908, G-1, p 3

the best means of creating a better industrial life amongst a communal people.¹⁰⁶ But, as Ngata later explained, incorporation was only suitable for ‘owners of any area or contiguous areas [or] areas not necessarily contiguous but having elements of common ownership.’¹⁰⁷ Consolidation schemes, on the other hand, offered a solution to the specific problems created by the widespread scattering of individual interests across a district. Through the process of consolidation, Maori owners would pool their interests into blocks that could then be farmed more effectively. This process would occur by calculating the total value of a person’s interests across a number of blocks, based on the original valuation of each block. These interests would then be grouped, usually along the lines of whanau or small families, and the total interests would be taken up in a new block of land of equivalent value.

The recommendations of the Stout–Ngata commission formed the basis of the first provisions for consolidation schemes in the Native Land Act 1909. The exchange of interests on a small scale had already been provided for in earlier legislation, but the scale of the process recommended by the commissioners required entirely new legislation. The Central North Island Tribunal reviewed the development of laws relating to consolidation schemes. Under the 1909 Act, that Tribunal observed, the Native Minister could apply to the Native Land Court to prepare a scheme, which the court was then responsible for carrying out. These provisions survived in essence through subsequent legislation, which reached its final form in the Native Land Act 1931. The Tribunal found these statutory provisions to be ‘draconian’ because ‘the initiatives in such schemes lay with the Native Minister or the court, not with the Maori owners’; ‘there was no provision for the involvement or consent of landowners’. In practice, however, officers appointed to prepare all the necessary details ‘worked closely with owners in the preparation of a scheme’. This reflected the fundamental purpose of consolidation schemes, which was to improve the land holdings of Maori owners, ‘who had to agree to the redistribution of their interests on a substantial scale.’¹⁰⁸ Under this legislation, and following the specific recommendations of the Stout–Ngata commission, the first consolidation scheme began in 1911 in the Waipiro block in the Waiapu County, covering some 35,000 acres. Ngata was heavily involved in overseeing the scheme, which was completed in 1917.¹⁰⁹ In the recommendations he made as commissioner, and then as the driver of the Waipiro scheme, Ngata was the key figure in getting consolidation schemes off the ground.

The dual purposes of the Stout–Ngata commission were reflected in its specific findings for Te Urewera. As we explained in the previous chapter, the commission’s findings played a critical role in the commencement of Crown purchasing in the Reserve. The first report, in March 1908, noted that no local committees had been elected, and that consequently there was also no General Committee to make decisions about the management of the land,

106. Stout and Ngata to Governor, 18 January 1908, AJHR, 1908, G-i, p 3

107. ‘Native Land Development: Statement by the Hon Sir Apirana Ngata, Native Minister’, AJHR, 1931, G-10, ii

108. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 728–730

109. Campbell, ‘National Overview on Land Consolidation Schemes’ (Wai 1200, doc A62), pp 51–53

Ngata's Description of the Purpose of Consolidation Schemes

Ngata's evidence before the National Expenditure Commission, 1932

The idea of consolidation is to reduce everything to a valuation basis. You take the interest of an individual, 30 or 40 different blocks scattered throughout the country, and upon adjustment you get the net value of that individual. Then you seek to give him an area of equivalent value. The object of consolidation is to give the Natives compact blocks instead of scattered interests. These blocks are settleable worthwhile developing and so on.¹

Ngata's statement on native land development to both Houses of the General Assembly, 1931

Briefly, this is a scheme to gather together into one location if possible, or into as few locations as possible, the interests of individuals or families scattered over counties or provinces by virtue of their genealogical relationships. The basis is the net value of the interests of an individual in the lands included in a consolidation scheme . . . The opportunity is seized to make the new holdings conform to modern requirements, practicable fencing boundaries, access, water-supply, aspect, and so forth; also to adjust the roading of the area; and, with the consent of the Crown and of private owners, to effect exchanges of mutual benefit.²

1. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised edition, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 728

2. 'Native Land Development: Statement by the Hon Sir Apirana T Ngata, Native Minister', AJHR, 1931, G-10, p i

including whether to alienate strategic portions of it or not. The commission recommended the immediate election of these committees, but only so that land could be made available for settlement, not for the purposes of establishing institutions of self-government as promised under the UDNR Act. Twenty-eight-thousand acres had been offered for lease in Ruatoki and Te Whaiti, but 'greater areas' could be obtained for settlement because Tuhoe acknowledged their 'liability' for survey costs under the Act, despite the fact that – as we have noted in earlier chapters – the Crown had promised to pay.¹¹⁰ In August 1908, the commissioners again recommended that Parliament validate the election of the General Committee, as 80,000 acres had now been offered for lease.

Although the main focus of these reports was on opening portions of the Reserve for settlement, the commissioners also recommended that 'provision be made enabling exchanges to be effected as between individuals or families with a view to consolidating their interests as far as possible.'¹¹¹ The reasoning for this recommendation was not spelt

110. Stout and Ngata to Governor, 13 March 1908, AJHR, 1908, G-1A, p 2

111. Stout and Ngata to Governor, 12 August 1908, AJHR, 1908, G-1Q, p 4

out, but there were obvious connections for the commissioners to draw between the situation faced by the Maori owners of the Reserve blocks – as a consequence of the failure to implement the Act properly – and the effects of individualisation elsewhere in the country. The failure to see blocks awarded to specific hapu communities, coupled with the failure to establish the committees, had left Maori owners unable to exercise any collective power over their various blocks, and over the Reserve as a whole.

As a consequence, the Reserve could not develop throughout the 1910s under the firm control of tribal leadership. Without institutions of self-government properly in place, tribal leaders had no mechanism to make decisions about economic development, or to protect the land once the Crown's purchasing programme commenced. As individual owners often had whakapapa affiliations to numerous hapu – which themselves could have rights recognised in several blocks – many had interests spread across the Reserve; not unlike other Maori owners. Ngata later observed that some Maori owners of the Reserve held interests in 'twenty, or thirty, or even forty blocks.'¹¹² As ownership rights existed in the form of undivided interests, the land was held by multiple co-owners and no one individual had exclusive rights to any portion of the block. To make the land economically viable, owners would have to pool their scattered interests into useable blocks of land. Thus, even before the Crown began purchasing in the Reserve, the commission had observed the necessity for providing some means for owners to pool their scattered interests.

The Crown's decision to begin sustained purchasing of individual interests in the Reserve in 1914 hardly reflected an even-handed implementation of the commission's recommendations; Maori retention and management of land was further marginalised as their hopes of the UDNR Act became a more distant memory. Instead, as the Crown purchased interests on an ever-increasing scale, the necessity for a consolidation scheme became greater. As we explained in the last chapter, Maori owners sold their interests for a variety of reasons, but mainly so that they could satisfy everyday needs. As purchasing progressed, many began to sell strategically; selling in some blocks and not in others. As Steven Webster has shown, by the end of the decade, the vast majority of the original owners in the Reserve retained at least some shares. This ranged from those who sold most of their interests to the more staunch pupuri whenua (land holders). The result was that a large number of owners remained who may have held only a few interests, but often across a number of blocks.¹¹³ The high mortality rate in Te Urewera during the first two decades of the twentieth century meant that individual interests would be succeeded to by multiple heirs and so there were more owners in the Reserve at the end of Crown purchasing than at the beginning. As a consequence, by the end of the 1910s there were many owners, some of whom held

112. Ngata, 16 March 1921, NZPD, 1921, vol190, p 155

113. Steven Webster, 'The Urewera Consolidation Scheme: Confrontations between Tuhoe and the Crown, 1915–1925' (commissioned research report, Wellington: Waitangi Tribunal, 2004) (doc D8), p 233

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few interests, but across many blocks. This mix of factors made a consolidation scheme an attractive option for Maori owners.

The origins of what developed as a cautious enthusiasm on the part of some Maori owners for a consolidation scheme can be seen in their attempts to revitalise the original purpose of the UDNR Act – tribal control of land – through the Native Land Court. While it might seem odd that owners turned to the court, it is telling that they came to view it as an institution that could complete the unfinished business of the UDNR Act. As we have seen, they applied to the court, which had been granted special jurisdiction in 16 blocks between 1910 and 1913, for the partition of blocks along hapu lines.¹¹⁴ Although the Crown initially authorised the Native Land Court's jurisdiction with an eye to future purchasing, Maori owners made the first applications in an attempt to reassert the hapu-based title that had been promised them in the UDNR Act. Numia Kereru secured a division of the Ruatoki 1 block between hapu, though objections to earlier decisions over the blocks meant that some owners continued to submit petitions requesting a title re-investigation up to 1916.¹¹⁵ Faced with a situation in which the Ruatoki blocks were owned by individual owners with relative shares, Kereru had hoped to assert firmer tribal control over the Ruatoki blocks and their many individual owners, but ultimately he could not achieve this when the establishment of the local committees and General Committee had been so long delayed. Fractionation of interests and further partition of the Ruatoki blocks continued, and the General Committee, as we have seen, never really got off the ground as a land management body.

Kereru made similar attempts in the Ruatahuna block, which owners had expected the Urewera commission would divide into three blocks, but was instead awarded in its entirety to seven hapu. In a demonstration of owner control during the appeals process, Kereru led a process outside the Native Appellate Court where owners agreed to a division between the different hapu. Disputes between owners emerged, particularly about names on the various owner lists, which often proved to be the main sticking point. Eventually these disputes were resolved, some by the court and others outside the court, and separate orders were made for the five Ruatahuna blocks on 15 February 1913.¹¹⁶ The owners had achieved a partial success in securing hapu title, but – as with the Ruatoki blocks – without formal management structures, this success was a mere illusion. And at Te Whaiti, Ngati Manawa, though seeking to remove their interests from the Reserve, applied for partition of the block in 1912 in an attempt to preserve the same kind of tribal control as envisaged under the Act.¹¹⁷

114. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), pp 194–195

115. Steven Oliver, 'Ruatoki Block Report' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A6), pp 82–113

116. Richard Bassett and Heather Kay, 'Ruatahuna: Land Ownership and Administration, c 1896–1990' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A20), pp 66, 82–90

117. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp 133–139

The immediate origins of the Crown's proposal for a consolidation scheme can be seen in its reaction to these kinds of initiatives by Maori owners, in which the Crown sought to protect its purchasing of undivided interests. The expansive nature of the Crown's purchasing programme – particularly the targeting of individuals and their interests in a range of blocks – meant that partition at the initiative of the owners came to be viewed as undesirable, in a way that had not been contemplated when the Government earlier granted the court's jurisdiction. On the resumption of purchasing in June 1915, William Bowler – the Crown's land purchase officer – warned of the inherent dangers in purchasing undivided interests and foreshadowed the need for some kind of process for the Crown to obtain sizeable portions of land:

What appears to me to be the worst feature of the Urewera area, from a purchase and ultimate settlement view, is the fact that it comprises so many individual blocks. The same families and groups of families appear in block after block. Obviously some of the Natives will never sell, and the most that can ultimately be hoped for is, after the geographical location of the Crown and Native-owned areas has been determined by the Court, a kind of chequer-board district owned alternately by the Crown and by Natives. Many of the Natives will own scattered interests in many blocks, without any reasonable possibility of consolidation, and the Crown will be faced with the necessity of roading, at the expense of its own areas and of the ultimate settler, the whole district.¹¹⁸

There were thus two risks for the Crown's purchase programme: partitioning of blocks at the initiative of the owners could put a stop to the Crown's purchasing of interests before it had wrung every last saleable share out of the owners; and partitioning the Crown's interests in each of the Reserve blocks could result in Bowler's predicted 'chequer-board', in which the Crown's interests might not be concentrated enough for a sensible and affordable scheme of European settlement.

Blocks that had been partitioned before the beginning of purchasing posed a particular obstacle to the Crown because it would make any pieces it secured in court even smaller and more numerous, unless it acquired every single interest in every subdivision. The Ruatoki blocks, Bowler observed, had many owners, and 'doubtless a large number of them will be unwilling to sell'. If the Crown acquired 'interests indiscriminately in all the subdivisions the ultimate result will be that small areas of Crown and Native lands will alternate after the location of the Crown areas'.¹¹⁹ The efforts of some Maori owners of the Tauwharemanuka block to protect a portion of their land from Crown purchasing by partitioning, which

118. Bowler to Native Under-Secretary, 13 June 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 19–21)

119. Bowler to Native Under-Secretary, 13 June 1915 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 19–21)

were ultimately unsuccessful,¹²⁰ prompted the Crown to revoke the court's jurisdiction (which had been granted in 16 blocks across the Reserve) in June 1916.¹²¹ From this point on, Ministers and Crown officials delayed any moves to extract the Crown's interests in land so that as many interests of Maori owners could be acquired as possible. Herries was firm that the Crown should avoid creating a 'chequer-board' of the district; and equally rejected Bowler's calls for the compulsory acquisition of the remaining interests of Maori owners.¹²² Herries' central focus was on the Crown's future use of the land. Apart from the Ruatoki and Ruatahuna blocks (where exceptions were granted to complete a process of partitioning that had already begun), no other partitions followed.

In fact, the story of the Ruatoki blocks only proved to Maori owners that seeking partitions through the Native Land Court was no solution to the failures of the UDNR; instead, partition only resulted in excessively divided blocks. By September 1917, Ruatoki 1 had become 112 subdivisions. Ruatoki 2 and 3 had become 32 subdivisions.¹²³ In his study, *Maori Land Tenure*, Sir Hugh Kawharu commented on how individualisation in the Ruatoki blocks inevitably led to further partitions and the subsequent fractionation of interests. 'As the surveying of subdivisions within the block went on, so both the interests of individuals and the scale of litigation were continually narrowed down. The course, once mapped out, was pursued inexorably.'¹²⁴ What had been a well intentioned attempt to regain communal hapu ownership of land, in line with what owners had expected under the UDNR Act, instead began a process of accelerating fragmentation and fractionation. By 1917, owners also faced the prospect of Crown purchasing in their various subdivisions.

In these circumstances, it was no surprise that the first attempts by Maori owners to look beyond the court for a way to define and secure their remaining land originated in Ruatoki. Steven Webster identified four petitions to the Government between March 1917 and November 1918, all of which outline a common goal of economic development, or ahu-whenua.¹²⁵ These petitions all sought to limit the effects of individualisation, and to prevent any further alienation of interests. Some made reference to reviving the institutions of self-government that had been promised in the UDNR Act. As the Crown became increasingly frustrated at its ability to purchase the remaining interests, Maori owners demanded certainty about which land was theirs. They identified the activities they wished to pursue, some of which they had already begun: namely, farming in the valley lands that ran alongside the Ohinemataroa (Whakatane) and Tauranga (Waimana) Rivers, up to Ruatahuna

120. The Crown had purchased interests in all nine subdivisions by 1919. See Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 249.

121. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 194

122. Anita Miles, *Te Urewera*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1999) (doc A11), p 364

123. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 200–203

124. IH Kawharu, *Maori Land Tenure: Studies of a changing institution* (Oxford: Oxford University Press, 1977), p 101

125. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 136–137

and Maungapohatu. Ngati Whare and Ngati Manawa owners of the Te Whaiti blocks also made repeated calls to be able to utilise the resources on their land, particularly the millable timber. Opportunities to develop these resources had stalled due first to delays in the process of title determination and hearing of appeals and then to the Crown's purchasing programme. As purchasing continued, and as the end of the decade approached, Maori owners were unwilling to wait any longer.

The first petition came in March 1917 from Akuhata Te Kaha and nine others of Te Mahurehure hapu, and expressed 'the wish of this tribe known as Mahurehure that the Ruatoki Nos. 2 and 3 be incorporated and be worked by us in accordance with its provisions.'¹²⁶ Part XVII of the Native Land Act 1909, Cecilia Edwards notes, allowed for the incorporation of owners and the election of a committee of management. And although the provisions for incorporation under the 1909 Act did not apply in the Reserve lands (as Bowler argued when asked to comment on Te Kaha's petition), Edwards observes that it was understandable Maori owners expected their land could be administered under ordinary native land legislation, because the UDNR Act had been undermined to such an extent by this time.¹²⁷

These owners knew of the possible benefits of incorporation, particularly in light of the reports of the Stout–Ngata commission and its recommendations in favour of incorporation in the Tuararangaia block (see chapter 10) and in areas such as the East Coast. Akuhata Te Kaha, for example, was one of the leaders elected to the Tuararangaia 1B incorporation's committee of management in 1911.¹²⁸ Ngata, as we have seen, hoped to use incorporations to revitalise a form of communal ownership and enable Maori owners to develop their land under the direction of a single co-ordinating committee, which had echoes of the self-governing institutions promised under the UDNR Act.

Te Kaha's petition typified the approach of owners who were seeking to expand their economic activities at the turn of the century. Many initiatives had been led from Ruatoki, especially in the wake of the second Urewera commission's awards and the enquiries of the Stout–Ngata commission. Unsurprisingly, owners had differing views on how economic development should proceed. In 1908 and 1909, Kereru and Rua Kenana made separate offers of lease and sale respectively. In April 1908, Erueti Peene (Fred Biddle) and 37 others submitted a petition objecting to the proposed lease of Ruatoki land to non-Tuhoe, and suggested instead that they 'wanted to farm the land in individualised holdings.'¹²⁹ But, as we have explained in chapter 13, the self-governing institutions that were intended to mediate such differing views were never sufficiently established; and the Crown instead seized

126. Akuhata Te Kaha to Native Minister, 10 March 1917 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1126)

127. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 203

128. Peter Clayworth, 'A History of the Tuararangaia Blocks', a report commissioned by the Waitangi Tribunal, 2001 (doc A3), p 97

129. Bassett and Kay, 'Ruatahuna' (doc A20), p 95

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upon Rua's offers of sale and adjusted the constitution of the General Committee to meet these aims.

At that time, however, Numia Kereru was also considering other development opportunities. In July 1908, he led a deputation to Wellington, where he asked for the Government's assistance in constructing two arterial roads through the Reserve lands: one from Ruatoki to Ruatahuna, and one from Waimana to Maungapohatu. Kereru and Te Amo Kokouri followed this with separate petitions in 1909, both requesting a road to be constructed up the Whakatane Valley. Rua had made a similar request on behalf of the Maungapohatu community in 1908, but all such approaches were rejected by the Department of Public Works. As we explain later in the chapter, Kereru made further modified requests, but these were rejected because the Government would not consider making funds available unless the Reserve land was opened for European settlement.¹³⁰ Further efforts were made after Kereru died in 1916 by Te Pouwhare, who revived Kereru's original proposal. He asked the Government to refrain from purchasing in the Ruatoki blocks, and instead to assist the owners in leasing the land.¹³¹ Like Te Kaha, Kereru and Te Pouwhare sought ways to retain and develop the land, though they differed in their methods (incorporation, as opposed to leasing). But after 20 years of fraught title investigations and an inability to engage in any meaningful development, it was also understandable that some owners in the Ruatoki blocks wanted to sell their interests. Based on a number of requests from owners who asked the Government to acquire their interests, Herries was unsympathetic to the Te Mahurehure proposal for incorporation and instructed Jordan that any applications for the incorporation of the blocks should be 'resisted'.¹³²

Although the owners of Te Whaiti 1 and 2 were not among the petitioners identified by Webster, their attempts to engage in economic development and to resist the Crown's purchasing programme mirror the efforts initiated in Te Kaha's petition, which were later pursued by owners in other parts of the Reserve. These attempts occurred in the face of a series of actions taken by the Crown: first, in using its monopoly powers to take advantage of Maori offers to sell timber at Te Whaiti; then, after purchasing commenced, in obtaining an injunction against the Maori owners from using the resources of the block; and, finally, in preventing the owners from partitioning out their remaining land in order to purchase as many interests as possible. In 1915, owners of the Te Whaiti blocks asked the Government to lift restrictions so that they could sell milling rights to private companies, thereby obtaining employment for their people at the mills.¹³³ Instead, Bowler was authorised to commence purchasing in the blocks. With few options available, Te Matahaere Whatanui made an

130. Cleaver, 'Urewera Roding' (doc A25), pp 28–42

131. Te Pouwhare and Tupaea Pika Peeti to Native Minister, 26 June 1916 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1146)

132. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 203

133. SKL Campbell, 'Land Alienation, Consolidation and Development in the Urewera, 1912–1950' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1997) (doc A55), p 38

offer to the Crown to sell some of the totara timber on behalf of the two tribes. Crown purchasing in the blocks, which commenced in September 1915,¹³⁴ thus began on the back of attempts by Ngati Whare and Ngati Manawa owners to utilise their timber resource, which they found they simply could not do. The seeds for their economic demise were sown in their attempts to utilise their resources: once purchasing began, they had no ability to control which individuals would sell their interests, and ultimately what land they would retain.

As purchasing continued, frustrated Ngati Whare and Ngati Manawa owners tried to mill timber for their own use and to on-sell to sawmillers.¹³⁵ The Crown acted to prevent them from doing so by obtaining an injunction on the grounds it was now a co-owner of the blocks. But CB Jordan, the Under-Secretary for the Native Department, also considered it too early for the Crown to partition out its interests, as further interests could still be acquired. Despite strong opposition from the blocks' Maori owners (registered by Bowler at the court hearing in 1917), the injunction was issued. According to Bowler, Judge Wilson made this decision reluctantly, because those Maori owners who had not sold should not be interfered with as they 'could not alienate privately and could not get a partition cutting out their own shares'.¹³⁶

This was an accurate summary of the position faced by most Maori owners across the Reserve following the defeat the UDNR Act and the beginning of Crown purchasing. Boast observes that, in the Te Whaiti blocks, Crown purchasing coupled with the injunction and the inability to partition forced owners 'into an economic limbo until the Crown completed its purchasing programme in its own good time'.¹³⁷ Maori owners wished to make use of their resources, as they had expected under the UDNR Act, but they could only do so as individuals by selling to the Crown; tribal leaders and communities had little power to chart the path of development themselves. The result was that, by 1921, Ngati Whare and Ngati Manawa only retained the equivalent of approximately 12,437 acres, or 17 per cent of the two blocks (see appendix IV).

Calls for the retention of land and economic development emerged most forcefully in Ruatahuna as the Crown contemplated purchasing there for the first time. These calls emerged in the context of another application to partition the Ruatahuna block in 1918, which was made on the back of ongoing tensions between hapu who sought to have their respective rights in the block defined. This new action became necessary when it was discovered that the 1913 partition had never been completed. The application from Te Amo Kokouri restated the original objectives of title-determination under the UDNR Act: 'kia

134. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp166–167

135. Crown Lands Ranger to Commissioner of Crown Lands, 25 September 1915 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p1040; Commissioner of Crown Lands to Under-Secretary for Lands, 1 October 1917 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p1039)

136. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p180

137. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p181

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wawahia a hapu tia a Ruatahuna poraka'¹³⁸ ('let the Ruatahuna block be partitioned between the hapu'). But the hopes of the Maori owners were set to one side as the Crown began purchasing in the block, despite the advice from James Carroll that the 'Government should leave this block for the natives.'¹³⁹ In reaction to planned purchasing, Maori owners voiced their opposition in a series of petitions that reflected their concerns not only about the future of Ruatahuna but about the wider situation in the Reserve at this time.

The first petition came from Te Wao Ihimaera and 16 others on 12 August 1918, asking that 'the Waikaremoana and Ruatahuna Blocks be not allowed to be purchased as these lands are being reserved for other purposes.'¹⁴⁰ Rawaho Winitana and 99 others followed with another petition in September, which stated their opposition to Crown purchasing in the Ruatahuna, Waikaremoana, and Ruatoki blocks because all three blocks were being used for sheep and cattle farming. For the Ruatoki blocks, they said: 'We can assure you that we are able to farm these lands. We have stock on them and are supplying butter and cheese in the Auckland district.'¹⁴¹ The petitioners asked for the blocks to be incorporated under the provisions of the 1909 Act, which repeated the call made by Te Kaha.¹⁴² Tied to these initiatives, the petitioners also asked for the General Committee and the provisional local committee for the Ruatahuna block to be reconstituted.¹⁴³

Further petitions followed from a group led by Te Amo Kokouri, who had submitted the application for partition in February 1918. In October, and with the partition still up in the air from the owners' perspective, Kokouri with 121 others sent a petition to the Government that closely followed the wording of the Winitana petition. They asked the Government to refrain from purchasing in the Waikaremoana, Ruatahuna and Ruatoki blocks and to re-establish the committees as required under the UDNR Act. The petition added: 'We have sheep and cattle and other stock depasturing on this land [the Ruatahuna block] to assist the freezing works at Whakatane.'¹⁴⁴ The following month, Kokouri made a further request to the Government for the court to carry through the partition of the blocks, so as to properly put to bed the disputes that persisted between the owners. In December, Judge Wilson took action and communicated with the Commissioner of Crown Lands to authorise a survey of the five blocks. The survey and valuation were conducted in the early part

138. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 140

139. Bassett and Kay, 'Ruatahuna' (doc A20), pp 109–111

140. Te Wao Ihimaera and 16 others to Native Minister, 12 August 1918 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1171)

141. Rawaho Winitana and 99 others to Native Minister, 23 September 1918 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1159)

142. Webster, 'The Urewera Consolidation Scheme' (doc D8), p 133

143. Rawaho Winitana and 99 others to Native Minister, 23 September 1918 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1159)

144. Te Amo Kokouri and 121 others to Native Minister, 16 October 1918 (Richard Bassett and Heather Kay, comps, supporting papers to 'Ruatahuna: Land Ownership and Administration, c 1896–1990', various dates (doc A20(c)), p 29)

of 1919.¹⁴⁵ With that confirmed, Kokouri submitted a final petition, once again requesting the re-establishment of the General Committee and provisional committees to administer blocks.¹⁴⁶ With this series of petitions in hand, Jordan nevertheless instructed Bowler to begin purchasing in the Ruatahuna blocks in June 1919.¹⁴⁷

The final petition that originated from Ruatahuna was submitted by Te Pouwhare in August 1919, repeating calls to re-establish the General Committee for the purpose of administering the people's affairs. It also repeated the message signalled by many others that the original purpose of the Reserve held great weight. But circumstances had changed considerably since 1896, brought about by the Act's failure and the commencement of purchasing. Te Pouwhare's message retained a belief in that original purpose while insisting on an end to purchasing and seeking a process to divide the interests of the Crown from the remaining Maori owners': 'Some of the non-sellers of Tuhoe are desirous of effecting exchanges of their interests with those of the Crown.'¹⁴⁸

Yet, from the Crown's perspective, all of Te Pouwhare's requests ran counter to the purpose of purchasing in the Reserve. The Crown had set out to acquire land for settlement, and could only do so by undermining the institutions of self-government envisaged in the UDNR Act: it was not about now to assist owners to put those institutions in place. From the Crown's perspective, any exchange of interests would only occur after the Crown had purchased as many interests as it could. This is all summed up in Herries' comments on Te Pouwhare's petition: 'I think the existence of the committee might be at present a hindrance to purchasing interests. When consolidation of interests is wanted, the Committee might be called into existence.'¹⁴⁹ By September 1919, the Crown had acquired the equivalent of 7,308 acres of the Ruatahuna blocks, as part of its 47 per cent of the Reserve as a whole.¹⁵⁰

By the end of the 1910s, the owners with surviving interests had become caught in a bind that was not of their making. Given their need to expand their economic activities, it was understandable that some owners wanted to see restrictions on the Reserve lifted. As an example of this position, Hori Atarea petitioned the Government in September 1919 to allow Maori owners to sell to private buyers.¹⁵¹ Others, however, were wary of the consequences of such an action and signalled their opposition accordingly, including Akuhata Te Kaha, who likely continued to hope that the blocks could be incorporated.¹⁵² Not only

145. Bassett and Kay, 'Ruatahuna' (doc A20), pp 107, 112–113

146. Te Amo Kokouri and 121 others to Native Minister, May 1919 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1110)

147. Bassett and Kay, 'Ruatahuna' (doc A20), p 116

148. Te Pouwhare to Native Minister, 1 August 1919 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 577)

149. Native Minister to Native Under-Secretary, 23 September 1919 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 576)

150. Bassett and Kay, 'Ruatahuna' (doc A20), p 118; Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 210

151. Bassett and Kay, 'Ruatahuna' (doc A20), pp 117–118

152. Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 224

were the Maori communities of Te Urewera confronted with Crown monopoly purchasing, but they had also gone a whole generation without any real focus on economic development. How could it be otherwise, when they had no formal management structures, and no Government interest at all in their development? Tukuaterangi Tutakangahau addressed this point in a letter to the Native Minister in 1919, asking for an exchange of land: ‘The reason is that I find it very difficult to get our produce out (to the markets), and it is equally difficult to get our supplies to this place.’¹⁵³ Tukuaterangi was one of many leaders during this period, including Numia Kereru and Rua Kenana, who was anxious to advance their peoples’ economic circumstances. The Crown’s purchasing programme was not merely a distraction; it actively undermined the attempts of the Reserve’s owners to seek economic advancement.

In every case, the Crown ignored or actively set out to undermine the attempts of Maori owners to revitalise the original purposes of the UDNR Act and to resist its purchasing programme. It took swift action to remove the partition option but bought into partitioned blocks anyway. The Crown’s purchasing of undivided interests, high mortality rates during the influenza epidemic,¹⁵⁴ and succession to fractionated interests meant that owners held fewer and smaller interests by the end of the decade. These interests were often spread across a number of blocks; most owners retained interests in at least one block. The nature and extent of the undivided interests held by the Crown and Maori by this time also meant that owner incorporation was a remote possibility, even if it had been possible under the law. In the end, those who continued to seek an immediate end to Crown purchasing, and who sought ways to develop their remaining land, only had one option left to them: pooling their scattered interests into consolidated blocks. But the Crown had embarked on full-scale purchasing in 1915 to obtain large areas of land for settlement, timber milling, and watershed conservation. From its point of view, any consolidation of interests would have to achieve those objectives or else it would be a backward step. So, it was with these objectives in mind that CB Jordan, Under-Secretary for the Native Department, developed the first proposal for a consolidation scheme in the Reserve.

14.5.3 November 1919 – May 1921: why Crown and Maori views on consolidation diverged

Jordan made his proposal in the context of the first serious deliberations within Government circles, since Herries had decided to pursue purchasing to its limit, about how the Crown would extract its land from the Reserve. In September 1919, Jordan asked Bowler for a summary of all the Crown’s purchases because the Government now aimed to partition out

153. Tutakangahau to Native Department, 1 April 1919 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 121–122)

154. Campbell, ‘Land Alienation, Consolidation and Development’ (doc A55), p 30

its interests. Bowler once again advised to delay any action, as further interests could be acquired over the summer months.¹⁵⁵

Jordan had been mulling over his options for some time. In December the previous year, he told the Under-Secretary for Lands that ‘partition will be necessary before any portion of these blocks can be proclaimed Crown Land’, though such partitions would be some time off.¹⁵⁶ This was a position he had maintained since Crown purchasing had resumed in 1915. But during 1919, the possibility of a consolidation scheme was placed on the table, which might have been prompted by the recent completion of the Waipiro scheme on the East Coast. Herries had clearly been contemplating this option, since he had noted that the General Committee might be required to assist in implementing consolidation when he commented on Te Pouwhare’s petition in August 1919. Ngata also later maintained that Herries ‘always favoured consolidation.’¹⁵⁷ But what prompted Jordan’s response was the information provided by Bowler. There were, Bowler said, ‘a large number of blocks in which a comparatively small proportion of the interests is still outstanding.’¹⁵⁸ The much-unfavoured ‘chequer-board’ district was still a likely prospect if a partition of interests was pursued through the court: the Crown had not acquired all of the interests in even a single block, as Bowler had accurately predicted in 1915. Jordan understood that the only way to turn the interests acquired by the Crown into a large block or blocks was by consolidating its interests; an approach that up to this time had only been considered as a solution to the problems that individualisation posed for Maori owners.

Jordan set out his thinking in a four-page memorandum to Bowler. The primary objective of pursuing consolidation, Jordan revealed, was for the Crown to obtain its land: ‘it is proposed to proceed with a consolidation of the Crown’s interests in the Urewera before the partitions take place.’ As further evidence of this intention, Jordan described the purpose of a consolidation scheme as both a culmination of the Crown’s purchasing programme and a possibility of extending it further. Jordan set out these dual purposes in stark terms: ‘It is hoped that a consolidation of the Crown and Native interests in the Urewera will not only permit a large area to be proclaimed Crown land, but will greatly reduce the volume of further purchases by the Crown in that District.’ The consolidation of the interests of Maori owners was primarily considered in terms of the second objective: individuals with interests across a number of blocks would be encouraged to consolidate these interests into one block so as to ‘greatly simplify future purchases or future partitions.’¹⁵⁹ This was a fun-

155. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 224

156. Native Under-Secretary to Under-Secretary for Lands, 6 December 1918 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), pp 964–965)

157. Ngata, 16 March 1921, NZPD, 1921, vol 190, p 155

158. Jordan to Bowler, 6 November 1919 (Campbell, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc A55(b)), p 102)

159. Jordan to Bowler, 6 November 1919 (Campbell, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc A55(b)), pp 102–105)

damental reconsideration of the original purpose of consolidation schemes as envisaged by the Stout–Ngata commission, brought about by the introduction of the Crown into the equation. Jordan repeatedly returned to the dual objectives of pursuing consolidation: first, for the Crown to extract its interests in large blocks in the land it wanted and, second, to combine Maori owners into new consolidated blocks in order to facilitate future purchases in the district.

Jordan expanded on these purposes by explaining how the scheme would be designed and implemented. In accordance with existing statutory provisions, the Native Minister would make an application to the Native Land Court to carry out a scheme. But whereas the Stout–Ngata commission had envisaged that schemes would be carried out by the owners with the assistance of special officers,¹⁶⁰ Jordan proposed that most of the work would be carried out by the Native Land Purchase Office in consultation with the Commissioner of Crown Lands, Auckland. This was so that the land chosen for Maori owners would not prejudice the Crown's plans for its award. Jordan envisaged that Maori owners would be placed in one of either three or four blocks that would be selected from a range of different types of land: low-value land in the watershed, middle-value land, and high-value land (where owners would receive less but they 'would be much nearer to roads and existing settlement, and would have a chance of settling on the land [themselves]'). After the 'trial' scheme had been submitted to the court, 'the Purchase Officer should have a conference with the remaining non-sellers and endeavour to have a friendly arrangement with them as to which blocks their interests shall be put into'. Individual owners would be given the choice of going into one of the three or four blocks.¹⁶¹

It was unclear, however, whether the law allowed for this kind of consolidation scheme, in which interests would be arranged as between the Crown and Maori owners rather than just among Maori owners. The Government had just passed the Native Land Amendment and Native Land Claims Adjustment Act 1919, which made provision (in section 3) for the inclusion of 'any land owned by a European' in a consolidation scheme.¹⁶² Nothing was said of Crown land, or of undivided, unpartitioned Crown interests in Maori land; but Crown counsel suggested that the Government 'contemplated that such powers might be required by this time', especially given the Act was passed the day before Jordan wrote his memorandum.¹⁶³ It is possible that Jordan believed the 1919 Act allowed the Crown to carry out a scheme along his proposed lines because the Reserve was still Maori land in which the Crown held undivided interests. If this was the case, it was not until much later that he and

160. Stout and Ngata to Governor, 18 January 1908, AJHR, 1908, G-i, p 5

161. Jordan to Bowler, 6 November 1919 (Campbell, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc A55(b)), pp 102–103)

162. 'European' is defined in the Native Land Act 1909 to mean 'any person other than a Native, and includes a body corporate' (section 2). A further amendment in 1923 allowed for the inclusion of 'any land owned by the Crown or by any European' (section 6).

163. Crown counsel, closing submissions (doc N20), topics 18–26, p 9

other officials realised neither this amendment nor any other legislation was sufficient, and that special legislation was required.

Jordan's proposal received broad support from other Crown officials concerned at the situation in the Reserve. Bowler responded with cautious optimism, describing the plan as 'practicable to a limited extent'. In his view, the biggest obstacle would be those owners who had 'hitherto refused to sell on any consideration': 'great care will have to be taken if no injustice is to be inadvertently done to them'. But Bowler recommended delaying the implementation of the scheme until the end of the summer period, by which time he expected to have acquired the remaining interests of those willing to sell. Then, in April or May, he could work with 'a couple of the Urewera chiefs' in Auckland or Whakatane to arrange which land they would take up.¹⁶⁴

But for Bowler, consolidation should only be an option for absolute non-sellers. He had never shrunk from proposing compulsory acquisition of Maori interests in UDNR blocks and he now came up with a new idea for reducing the number of remaining Maori owners. He suggested that those owners who had already sold some of their interests should be given a period of time to make a 'formal objection', after which 'their interests would automatically revert to the Crown'. In particular, this would 'clean up' the interests of owners who could not be located by purchase agents. These involuntary sellers would only get paid for their interests if they came forward and approached 'some Government official' for payment. In Bowler's opinion, this would require some 'highly contentious legislation' but was 'not without precedent'.¹⁶⁵ The point, of course, is that more punitive options than seeking agreement to a consolidation scheme were proposed but not acted upon by the Crown.

Yet Bowler also conceded that Jordan's scheme:

complicated though it is likely to prove, may be the only practical way of consolidating the blocks, and may, to some extent, overcome a position which should never have been created. – I refer to the inclusion of all the owners in blocks scattered through the whole district.¹⁶⁶

This scattering of individual interests, of course, was the product of the work of the Urewera commissions and the Native Appellate Court, although subsequent Crown purchasing had greatly exacerbated the situation. While it reflected the distribution of customary rights in the broadest sense, the customary arrangements (as we said in chapter 2 and again in chapter 10) were never intended to reflect individual interests independent of hapu collectives and traditional forms of authority.

164. Bowler to Jordan, 11 November 1919 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 938–939)

165. Bowler to Jordan, 11 November 1919 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 938–939)

166. Bowler to Jordan, 11 November 1919 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 939)

Jordan also received advice from Skeet, who agreed that the Crown should proceed with a consolidation scheme rather than seeking a partition of its interests through the court. But Skeet recommended that the Crown delay action until a ‘comprehensive roading scheme’ had been prepared, which in turn should wait until Bowler had completed his final push over summer to acquire the last interests. As Commissioner of Crown Lands, Skeet referred to roads that would service the Crown’s award: ‘The divisions of the land should be made on proper settlement lines; and not with the usual Land Court method of drawing an arbitrary line from point to point to enclose a certain area.’ His planned investigation of possible road lines was for the purpose of the Crown’s settlement objectives.¹⁶⁷

Bowler’s final purchasing drive took place following the publication in the *Kahiti* of the last in a series of ‘non-seller’ lists in November 1919. He began at Whakatane during a Land Court hearing in December. In February 1920, he reported that he had attended a large hui, but it had yielded disappointing results. Yet, he still aimed to ‘comb out the district pretty thoroughly with the view to, later on, submitting a consolidation scheme.’¹⁶⁸

Maori owner resistance reflected their increasing insistence on their own objectives being met. They still sought an end to purchasing and the immediate clarification of which land was in their ownership so that economic development could proceed. By early 1920, however, what had changed was their awareness that the Crown was contemplating a consolidation scheme to separate their interests in the Reserve from its own. At this time, Maori owners latched on to the idea of a scheme, because it seemed to fulfil the range of objectives for which they had been agitating since 1917. It is likely they were influenced by the recommendations of the Stout–Ngata commission and news of the scheme that was recently completed on the East Coast. Based on this evidence, consolidation schemes seemed to offer the best means to secure their remaining land, and thus chart a path to development, both of which the Stout–Ngata commission had tied to the revitalisation of Maori communities.

These views were strongly expressed during a tour of Te Urewera communities by the Minister of Lands, David Guthrie, in February 1920. Guthrie’s visit was made in connection with plans to open the Reserve for settlement, rather than as an initial test of the people’s support for a consolidation scheme. Maori owners seized the opportunity to tell the Minister that it was time to have their remaining lands confirmed to them. The summary notes of the first hui at Ruatahuna, on 18 February 1920, contain the same mix of ideas as the earlier petitions from 1918 and 1919. Owners were still concerned that the partition of the Ruatahuna block had not been completed, and said as much to the Minister. They also wanted the cost of the survey of the blocks to be remitted. Reflecting the bind that the defeat of the UDNR Act had left them in, they asked for the restrictions on the alienation of land to be lifted so they could ‘deal with individuals or companies interested’; but they also wanted

167. Skeet to Brodrick, 18 November 1919 (Campbell, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc A55(b)), pp 106–107)

168. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 166

committees to be established to manage the Ruatahuna lands. Finally, they expressed their support for an exchange of land ‘so as to enable them to consolidate their interests.’¹⁶⁹

At Ruatoki, on 20 February 1920, Te Pouwhare discussed consolidation in the context of the needs of soldiers who had returned from the First World War, possibly because of the recent attention given to returned soldier settlement in the press. He said the people wanted to set aside some land for ‘our returned soldiers’. In addition, ‘we would like their interests in the block consolidated so as to give them one piece’. At both hui, Guthrie said that the idea of consolidating the people’s interests was ‘a sensible one.’¹⁷⁰ Guthrie also later reported on a request made by the Maori owners at Ruatahuna to improve a ‘bad track’ between there and Maungapohatu, as it had proved difficult to carry food supplies across the track. At Ruatoki, owners repeated earlier requests for an arterial road to be constructed up the Whakatane valley to Ruatahuna.¹⁷¹ Maori owners clearly had growing expectations about how consolidation might lead to economic development and knew that it would need to be accompanied by roads.

Te Whaiti, however, was once again an exception. Maori owners of the Te Whaiti blocks requested a partition rather than a consolidation scheme, and the Crown also had sought a partition in 1917 (and its application had not been dealt with). Wharepapa Whatanui told Guthrie that his people wanted their land to be partitioned out from the Crown’s. ‘At one time’, he said, they ‘used to earn money by splitting posts and selling them, but since the sale of the native lands had started, the Government had stopped the selling of the timber.’ An immediate partition of interests would allow them to ‘carry on with their industry’. Whatever mechanism was chosen, it is clear that the Te Whaiti owners wanted to escape from being co-owners with the Crown as soon as possible. Guthrie said it was the Government’s aim to have the land partitioned ‘as early as possible with a view to opening up the Urewera lands.’¹⁷²

But partition was no longer on the Crown’s agenda, and this proved to be the case when the Government’s 1917 application came before the court in July 1920 at Whakatane. Both Bowler and Jordan continued to oppose partition although for different reasons: Bowler wished to continue purchasing, whereas Jordan had consolidation in mind. In May 1920, Jordan told the Department of Lands and Survey that a ‘general scheme for consolidation of interests in the Urewera blocks has been prepared.’¹⁷³ As Boast observed, ‘the last thing the Native Department wanted was a partition.’ No Crown representative was present when

169. Notes of Native deputation at Ruatahuna, 23 March 1920 (Bassett and Kay, supporting papers to ‘Ruatahuna’ (doc A20(c)), pp 53–55)

170. Notes on Native deputation to Minister of Lands at Ruatoki, 25 March 1920 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), pp 931–933)

171. Cleaver, ‘Te Urewera Roads’ (doc A25), p 43

172. Notes on Native deputation to Minister of Lands at Te Whaiti, 23 March 1920 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 1019)

173. Jordan to Under-Secretary for Lands, 21 May 1920 (quoted in Boast, ‘Ngati Whare and Te Whaiti-nui-a-Toi’ (doc A27), pp 184–185)

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the application came before the court. Upon discovering this fact, Herries asked why the Crown had made the application in the first place. The Native Department advised him that the court had no jurisdiction to hear a partition application because its jurisdiction had been revoked in 1916 (though in fact the application had not been made until after that, in 1917). TN Brodrick, Under-Secretary for the Department of Lands and Survey, advised that the Government should restore the court's jurisdiction, but Bowler continued to assert that more interests could be purchased and that any Court action should be delayed further. From this point, both departments appear to have abandoned the idea of a partition for the Te Whaiti lands, which were instead included in plans for a general scheme of consolidation.¹⁷⁴

Guthrie's visit to the region focused greater attention on the Reserve from the wider New Zealand public, which began to place added pressure on the Crown to obtain useable land in return for its investment. The *New Zealand Herald* at first criticised the Department of Lands and Survey for commencing plans for a scheme of settlement and roading too quickly (having apparently 'grown tired of waiting for the Native Department to purchase the Maori interests in the Urewera'). Such early action – which in fact remained in the planning stages – would only serve to increase the prices paid to Maori for their remaining interests. But the editorial reflected extravagant understandings of the potential uses for the land, particularly for settlement. Te Urewera was 'primarily pastoral country', and should be:

developed on a bold and comprehensive plan which envisages far more than the native reserve which is the Urewera Country of the politician. . . . If it were economically developed and opened for settlement on fair terms it would offer something more than a competence to thousands of returned soldiers and civilians.¹⁷⁵

Even in their wildest dreams, officials had never expected to settle thousands of farmers in Te Urewera.

By April 1920, the *Herald* was criticising the Government because none of the Reserve had yet been 'made available for European settlement'. Following his visit, Guthrie was asked in Parliament what action was being taken to rectify the situation. He said that the Crown's interests would not be located until the preliminary road-line surveys had been completed, and these would not take place until 1921.¹⁷⁶

Bowler soon reported that this increased focus on the Reserve was affecting his ability to purchase interests from Maori owners: 'The recent visit to the district of the Hon Minister of Lands, and the great amount of publicity which it received, are, I am afraid, responsible to a very large extent for the increased reluctance to sell which the natives are

174. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp184–185

175. 'Opening the Urewera', *New Zealand Herald*, 23 February 1920 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p108)

176. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), pp34

now displaying.’ Bowler’s response was certainly an attempt to justify his growing failure to purchase remaining interests. But while he had given up on the idea that the Crown could acquire these interests through compulsion, he was not yet prepared to advise his superiors to proceed with a consolidation scheme. He remained stubbornly wedded to the idea that he could overcome owner resistance: ‘it only remains to induce them to sell.’¹⁷⁷

But by mid-1920 – with public criticism growing – Department of Lands and Survey officials were increasingly nervous about the position in the Reserve. At the end of August, Skeet instructed RJ Knight – a ‘Native Land Draughtsman’ in the Department of Lands and Survey – to suggest the shape of a plan for consolidating Crown and Maori interests. Skeet told Knight he was ‘afraid the Urewera may be bungled unless we can save the position.’ He added: ‘The consolidation of native interests in one or more blocks would be a good thing if the natives would agree.’¹⁷⁸ Within a few days Knight had developed a series of preliminary proposals, which he presented to Jordan and Brodrick on 1 September in Wellington. Knight’s plan involved the remarkable suggestion that legislation be introduced allowing the Native Land Court to cancel title orders in all blocks except Maungapohatu, Ruatahuna, Tarapounamu–Matawhero, and Te Whaiti, where the original blocks could be awarded in part or whole to the Maori owners. All the other blocks in the north of the Reserve would be combined ‘to enable the Crown to obtain an award of all the interests acquired in one composite area.’ Brodrick agreed that this was the best approach, because ‘the old magnetic surveys of the said blocks are useless for title purposes.’¹⁷⁹ Knight’s plan was a significant development: from this starting point he soon became the central figure in the Urewera Consolidation Scheme.

Although the increased public attention to the Reserve prompted Lands and Survey in their planning for a consolidation scheme, Maori owners simply strengthened their existing calls for a halt to purchasing and for a process that would define their respective lands. In May 1920, Te Pouwhare asked Herries to allow the court to partition interests in the Parekohe and Whaitiripapa blocks, so as to ‘end the present bickerings and disputes.’ The owners of the Parekohe block alone were ‘disputing amongst themselves most seriously.’ He spoke to his repeated efforts over the previous years. ‘For my own part, I feel that I have kept you posted up about the position; and as I have exhausted my strength, I look to you for light.’¹⁸⁰ In October, Bowler was visited at Taneatua by what he described as a ‘very representative deputation’ of leaders from a range of Te Urewera communities, including Ruatahuna and Maungapohatu. ‘It is quite evident,’ he said, ‘that there is a lot of opposition

177. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), p 166

178. Skeet to Knight, 28 August 1920 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 48)

179. Brodrick to Native Under-Secretary, 1 September 1920 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 49)

180. Te Pouwhare to Native Minister, 10 May 1920 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 1173)

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to further sales. Bowler once again blamed opposition on recent reports in the press, which suggested that the prices paid to Maori were too low:

The natives asked that the Government should now abandon further operations in the direction of the purchase of interests, and that the Crown should move to have its own interest, and the interests of the non-sellers, consolidated.¹⁸¹

Bowler spoke of the deputation's approach as a new development, though, as we have seen, Maori owners had been expressing their opposition to Crown purchasing in a clear and consistent manner since 1917. Bowler told the deputation, however, that 'there were a number of scattered interests still outstanding, and that it would be to the advantage of all parties if these could be dealt with by purchase'. Then he introduced the possibility that if there were a consolidation scheme, the owners would have to meet substantial costs: 'all land would probably have to bear its proportion of costs in regard to surveys and road formation.'¹⁸² This was a new proposition that must have given the deputation pause for thought, and its introduction by Bowler at this point is surely significant for what happened later (if he was understood and believed).

Bowler was by now fighting a rearguard action. He indicated he was still only willing to go along with a partial consolidation scheme: the northern blocks should be dealt with in 'a limited consolidation' first, 'leaving the more remote blocks to still be dealt with by purchase as opportunity offers.'¹⁸³ In early 1921, he prepared to return to Te Urewera to conduct his final push to acquire interests. Although he did not anticipate much in the way of results, he thought it was 'very necessary that the whole district should be "combed-out" as thoroughly as possible during the next couple of months'. This would be difficult, however, because 'at the present time the non-sellers seem to be pretty well united in refusing to sell at the prices offered'. He was now very aware that Maori wanted a consolidation scheme and he attributed this to a wish for greater concentrations of interests which they could then sell at higher prices; there is no evidence for this interpretation, which reflects Bowler's hopes rather than Maori intentions. It also reflects, however, Bowler's understanding that consolidation (or, for that matter, Court partitions) should result in greater certainty of title for both seller and buyer, more clarity as to what areas of land were being sold, and a fresh valuation of the new title, all of which was likely to increase the prices he had to pay. In any case, Bowler now saw a stalemate emerging and he finally recommended that the Native

181. Bowler to Jordan, 15 October 1920 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp50-51)

182. Bowler to Jordan, 15 October 1920 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p51)

183. Bowler to Jordan, 15 October 1920 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p51)

Minister organise a meeting with the ‘principal natives’, the purpose of which would be to arrive at an arrangement over ‘the ultimate settlement of this country’.¹⁸⁴

In February 1921, even as Bowler was beginning to give way, Apirana Ngata led a parliamentary delegation on a visit to Ruatoki. The delegation consisted of Ngata, KS Williams (Bay of Plenty), WS Glenn (Rangitikei), WD Lysnar (Gisborne) and FF Hockley (Rotorua). By this time, Ngata was no longer a Minister in the Government, but he remained in Parliament as the member for Eastern Maori. The *Whakatane Press* reported that Ngata ‘had arranged the meeting so that some of the members of Parliament should be familiar with the views of the Maoris of the Tuhoë’.¹⁸⁵ The account of the hui at Ruatoki suggests that Ngata and Maori leaders had previously conducted discussions about a consolidation scheme, and they had arranged this hui to develop the concept.

The hui took place at Ruatoki South, where the whareniui had been ‘beflagged with streamers bearing the names of the sections of the tribes represented’. After an opening address from Rakuraku Rehua, Te Pouwhare spoke to the main purpose of the meeting, summarising his recent efforts to bring about an end to Crown purchasing: ‘We desire that the interests of the Government and those of the Maori be consolidated and defined, that each may know what is theirs.’ Ngata then introduced Fred Biddle (Erueti Peene) to the delegation as a representative of ‘the younger people’. Biddle addressed the delegation on the subjects of economic development and modernisation. His speech also emphasised the same ideas that Tuhoë petitioners had been expressing for several years. Alluding to Crown purchasing and the defeat of the UDNR Act, Biddle noted that it would have been better if the parliamentary delegation had visited earlier, when their lands were still their own. He emphasised the need for the Crown to proceed quickly with a consolidation scheme, because the people had been unable to develop their land. They were ‘not the acknowledged owners of any piece of land’, and had no access to development finance. ‘We wish’, he said, ‘to know where our land is.’¹⁸⁶

The parliamentary delegation’s visit to Ruatoki encouraged further discussions among officials about ending the Crown’s purchasing programme and proceeding with a consolidation scheme. KS Williams – who was among the delegation – discussed the outcomes of the recent hui in his maiden speech to Parliament in March 1921. Williams argued that the stalemate could only be resolved by sending a high-powered delegation of Ministers to negotiate the division of land between Maori owners and the Crown, and by the consolidation of Maori interests. Further consideration, he said, was also required for the Waikaremoana block: the bush around the lake needed to be preserved so that a hydro-power scheme

184. Bowler to Jordan, 6 January 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 52–53)

185. ‘The Urewera Lands’, 19 February 1921, *Whakatane Press* (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 559)

186. ‘The Urewera Lands’, 19 February 1921, *Whakatane Press* (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 559)

Fred Biddle's Speech to the Parliamentary Delegation, February 1921

'Our elders have greeted you, in accordance with the custom of our race, in befitting language. I, on behalf of the younger generation, greet you also and express their gladness that you were able, as a representative body, to come to the Urewera. I am sorry your visit is so belated. Our fathers have passed or are passing away; It were better if you had visited us ten or fifteen years ago, when our tribe was as yet compact and our lands our own. It would have been of more benefit to the Tuhoë. Even now, much as we hope for from your visit, it will have been in vain if a Commission is not quickly set up to enquire into our grievances and to consider the request for consolidation of the respective interests of the Crown and the Natives. We wish to know where our land is. That is important. The young people want to see some document evidencing their titles, to have something tangible to indicate their ownership of a defined piece of land. I am sorry you have come now when you see the nakedness of our land; we regret that it is not cultivated. There is a twofold reason. (1) We are not the acknowledged owners of any piece of land – we have no title in the pakeha sense. (2) Even if we had a title we have no money and the banks and other lending institutions will not lend to Maoris. We are able to do great things for other people in the country, when we have had the opportunity we have done great things for ourselves. Greater progress would be visible in the Urewera if the young men could be entrusted with the work.'

—'The Urewera Lands', 19 February 1921, *Whakatane Press*
(O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 559)

could go ahead, and for scenic purposes.¹⁸⁷ Ngata agreed: such a delegation was required to negotiate both the exchange of land in the blocks in which the Crown had purchased and the acquisition of the Waikaremoana block from its owners, who Ngata said were in favour of exchange. Ngata explained that a scheme of this nature was necessary because Maori owners had their interests 'spread over twenty, or thirty, or even forty blocks', and the owners were themselves 'scattered all over the Dominion – at Auckland, Wellington, Gisborne, or wherever subsequent migrations have led them'. They were in a worse position than the Crown, because they were in no position to use the land: 'It is a feasible proposition to consolidate these scattered interests. It may take time.'¹⁸⁸

Facing increasing public scrutiny, the Crown was compelled to act on Williams' proposal, especially when a scathing criticism by retired Native Land Court Judge RC Sim was published in the *New Zealand Times*. Sim pointed out what should have been evident to any official or politician by now (if it had not been before): the Crown's purchasing programme

187. KS Williams, 14 March 1921, NZPD, 1921, vol 190, pp 44–46

188. Ngata, 16 March 1921, NZPD, 1921, vol 190, pp 152–156

in the Reserve was deeply flawed. The Crown had now incurred interest charges of £55,000 on the funds it borrowed for land purchase, that it had no hope of recouping until this land was placed on the market, which could still be two years away. Moreover, the Crown's method of purchasing and its objectives 'is an outrage on the elementary rules of successful business':

Yet the Government had to its hand a system which, with slightly extended operation and business-like application, would have met all demands. The difference would have been that negotiations and arrangements would precede and not follow expenditure; interest would not be lost on the money, expenses would be greatly reduced, and much time would be saved. There would have been avoided this shameful delay in opening up the land for settlement . . . It seems absurd in these days that in order to acquire this land for State purposes the Government should be obliged to get 10,000 signatures and make 10,000 payments, only to find in the end that much more is required to be done before the Crown areas can even be located and defined.¹⁸⁹

Jordan responded to Sim's criticisms in a briefing to the new Native Minister, Gordon Coates, who had recently taken up the portfolio after Herries had resigned for health reasons. 'The system that he condemns', Jordan said, 'is the system that has been in operation since the purchasing of Native land first began, and all Governments have been equally responsible in the matter.' The Reserve, he said, was the example 'least suited for his purpose'. Purchasing in the Reserve had been 'the most difficult undertaking' because owners were 'keenly averse to selling', and it had been impossible to 'purchase by Assembled Owners Meetings'.¹⁹⁰ This statement was remarkable both for its acknowledgment that Maori did not wish to sell and for its complete failure to acknowledge that the Government had deliberately decided to purchase from individuals, sidestepping the General Committee, the self-governing institution which by law it should have purchased from. The Crown could not of course purchase from 'assembled owners' because the Reserve was subject to its own legislation, and its own Committee to represent owners in any dealings over land or other matters. But Jordan did acknowledge the necessity of ending the stalemate. As the Government did not contemplate the compulsory acquisition of the remaining interests, the only solution was to proceed with a consolidation scheme: Jordan advised Coates to prepare for a scheme by conducting a high-level ministerial visit to the region.¹⁹¹

Coates and Guthrie was prepared to travel to Ruatoki to make a formal proposal to Maori owners. By this time, Maori leaders had maintained a constant refrain for several years, seeking an immediate resolution to the unsatisfactory situation in Te Urewera. By May 1921,

189. 'Native Land Purchase – Strong Condemnation', 16 March 1921, *New Zealand Times* (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 431)

190. Jordan to Coates, 23 March 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), pp 432–433)

191. O'Malley, 'Waikaremoana' (doc A50), p 82

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the Government was finally prepared to respond. Its own priorities had changed: in that period, the number of interests Bowler was able to acquire slowed to a mere trickle, the survey of road lines had commenced, and – perhaps most significantly – public pressure was being applied to the Government to show something for all the money that had been spent purchasing interests.

14.5.4 What understandings were reached between Maori owners and the Crown about the proposed consolidation scheme at the Ruatoki hui, May 1921?

By the time of the May 1921 hui at which Maori owners were finally asked to consent to a consolidation scheme, we have established that the position was as follows:

- ▶ Consolidation of Crown and Maori interests had been proposed by officials as early as 1919, but had been put off (in accordance with Bowler’s recommendation) to enable the purchase of as many more undivided individual interests as possible.
- ▶ Officials’ support of consolidation was based on the belief that it would enable the Crown to concentrate its interests in large blocks suitable for settlement, while also enabling it to obtain the timber lands it wanted for milling and for watershed conservation. In other words, consolidation was seen as the means of finally securing the Crown’s objectives in purchasing; any benefits to Maori owners would be only incidental.
- ▶ Maori owners in the Reserve had literally no other choice but to agree to consolidation, because all other options were closed to them: they could not get the Government’s agreement to revive the UDNR committees but nor did the law allow them to incorporate; they were forbidden to partition out their interests in the Native Land Court, and denied any hope that the court would secure their kainga and most valuable possessions for them; they could not stop the bleeding of individual interests unless the Crown had sufficient incentive to refrain from purchasing; and they could do nothing with their undivided interests other than sell them to the Crown. When the Crown proposed a consolidation scheme, therefore, it was literally the only game in town.
- ▶ Having said that, the Maori communities of Te Urewera had from the outset exhibited some enthusiasm for the idea of a consolidation scheme in the hope that it might stop the endless Crown purchase of individual interests, locate their surviving interests on the ground, restore some community control, and promote their economic development (not least through settlement and roading). The exception was Te Whaiti, where the communities of owners preferred a partition of their interests in the Te Whaiti blocks, hoping to keep the Crown’s designs on the valuable timber at bay, secure their kainga and as much of the timber as possible.
- ▶ Officials, on the other hand, did not expect that consolidation would mark the end of the Crown’s purchase of individual interests. Rather, they expected that consolidation

would facilitate fresh purchasing by concentrating Maori interests in fewer blocks, making them easier to buy and making it more worthwhile for Maori to start selling again.

This quite marked divergence of views and interests was not a promising basis for the seeking of agreement because no consolidation scheme could provide for all these different and conflicting objectives. Much depended on the extent to which Ministers were willing to compromise, the degree of bargaining power available to the Maori owners, the influence and objectives of the honest broker (Ngata), and the possibility that the Ministers would not automatically accept their officials' agenda. The replacement of Herries by Coates was particularly significant in all these respects.

Coates and Guthrie arrived at Ruatoki on 22 May 1921. For this hui, which lasted a day, they were accompanied by parliamentarians Ngata, Williams, and Hockly; Lands Department officials Skeet and Knight; and Raumoa Balneavis (Coates' Private Secretary) who acted as interpreter. With increasing pressure to obtain land to meet its objectives (European settlement, timber, and watershed conservation), the Ministers were required to set out these objectives to Maori owners and to obtain a general agreement from them that a consolidation scheme would in fact take place. But as Native Minister, Coates also presented himself as a protector of the interests of Maori owners and a guarantor of justice for them. During the hui, he told the people of the standards by which he expected a consolidation scheme would proceed:

May I say that it is my aim and object to keep up the high standard set by the Native Ministers of the past? I want you to feel and believe that I am keenly interested in the native people of New Zealand. I want you to have confidence in me, feeling that I am a man who will try to do the right thing to the best of his ability, and hold the balance of justice equally between the native and the pakeha. As Native Minister my first duty must be to see that my people, the native people of New Zealand, get full justice by the Government of the day.¹⁹²

Coates was tasked with convincing people who had resisted the Crown's purchasing programme that they should agree to its proposed consolidation scheme; they were undoubtedly suspicious of the Crown's intentions, so it was necessary to emphasise the benefits that Maori owners might derive from such a scheme. But many of these benefits conflicted with the plans developed by Jordan and Knight, which had prioritised the Crown's objectives over those of Maori owners. Even so, we do not think that Coates' sentiments were merely rhetorical. He rightly characterised the responsibilities of a Native Minister towards the Maori people, and it is important that the Crown's actions (and the scheme) be measured by the standards that he acknowledged at this hui.

Those Maori owners who were present at the hui maintained a consistent line: a consolidation scheme was needed immediately to bring an end to Crown purchasing so they could

192. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 126–127)

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begin developing their remaining land unhindered. Although the records are slight, it does not appear that the hui was publicly notified, and it is likely that it was attended mainly by Tuhoe leaders. The Ngati Whare and Ngati Manawa owners of the Te Whaiti blocks, and Ngati Ruapani and Ngati Kahungunu owners of the Waikaremoana block, may have been there but it is impossible to know.

Tuhoe leader Fred Biddle opened the proceedings, repeating many of the requests Maori owners had made in recent years: the Crown's purchase of interests in the Ruatoki blocks should be finalised; the interests of Maori owners and the Crown should be consolidated; 'a road should be laid out through these lands'; the exchange of Maori and Crown interests in different blocks should be enabled; up to date valuations should be made; and land should be set aside for those Maori who had been made landless. But Hori Hohua also quickly reminded the Ministers that Maori owners found themselves in their current circumstances because of the acts of successive governments. Significantly, Hohua did not begin with the UDNR Act, but rather with the Treaty of Waitangi, which he believed had enabled the peoples of Te Urewera and the Crown to forge a relationship. The promise of both the Treaty and the UDNR Act, however, had been undermined during Herries' term as Native Minister, through Crown purchasing and the targeting of individuals. Hohua admitted his own responsibility for having sold some of his interests. But he also described the protections that were originally in place, when land sales were 'undertaken under the mana of the general committee', which had since been removed. He was now willing to refund the purchase money: 'You give me my ten acres back, and I will give you £1 for it.'¹⁹³

Ngata played a crucial part at the hui by speaking to Maori owners about what they might expect to receive from a consolidation scheme. The outcome of the hui, he said, should be an agreement about 'the basis upon which the consolidation should proceed'. Maori owners, he proposed, should 'concentrate their interests round about the settlements they now occupy': for example, 'the Ruatahuna natives will endeavour to consolidate their interests which are scattered as far as Waikaremoana'. And because of the nature and extent of Crown purchasing, the scheme should prioritise the interests of Maori owners: 'The Crown has such a large area purchased that it is for the Government to concede settlement blocks to the non-sellers around their existing kaingas.' He also said that the surveys and valuations of the existing Reserve blocks could be used as part of the scheme. Yet it would be 'quite fair', he said, if the Maori owners made a contribution toward the cost of constructing the roads, 'because I don't think any community will benefit to the same extent as they will'. Finally, he proposed that 'a tribunal representing the two Departments, Lands and Native, should come and carry out a scheme with them.'¹⁹⁴ These statements were in keeping with

193. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 123–125)

194. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 131–134)

Hori Hohua's Speech to Coates and Guthrie at Ruatoki, May 1921

'Our people have been living for the last eighty years under an arrangement made between Queen Victoria and the chiefs of the old days. I know that word is still alive, and that is the reason I stand before you, the successor to the Hon Sir William Herries, today. In 1895, the Native Reserves [UDNR] Act was passed for the Tuhoe people. That special act was granted to the Tuhoe people by the Right Hon Mr Seddon in 1896. It gave the land absolutely to the Tuhoe people to do what they liked with. The matter was left to Sir James Carroll in the Government of Sir Joseph Ward. He adhered to the principle that the Tuhoe people should look after their lands in the Tuhoe territory. Four hundred acres were set aside as an accommodation reserve. He stated then that no other persons would be able to take land except by permission of the committee under that Act. Sir James Carroll, Mr Ngata and the Right Hon Sir Joseph Ward went out of power. Then came the Massey Government, with the Hon Sir William Herries as Native Minister, and now you hold that office. During the term of Sir William Herries that power was taken from us and hence the taking of the land at Ruatahuna, where our ancestors are buried. During the Ward Government Sir James Carroll was Native Minister. They valued the land here at £1 per acre. That was the first purchase. It was undertaken under the mana of the general committee. At that time it was generally decided what land should be purchased. But today it is the desire of each person that he should sell. I had ten shares in the Taneatua block, and Herries gave me £1 for it. I sent in an objection, and this letter I hold in my hand is the reply. I asked that the land should be revalued, and they replied that it was too late. I still adhere to the statement made in the petition. It was stated that it was too late, but supposing I (Hori) killed a person, and it was not found out for two or three years. Would it be considered too late? Sir William Herries has gone away and left me by myself, and therefore I plead with you. Ten shares were taken away from me, and I got £1 for them. It was partly my own fault because I sold my own land. So far as the application by the other speaker for land for landless natives is concerned, don't you give it to them. They themselves sold their land. You give me my ten acres back, and I will give you £1 for it.'

—'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 124–125)

the general process and objectives of consolidation as earlier proposed by the Stout–Ngata commission.

But if Maori owners thought Ngata had outlined 'the basis upon which the consolidation should proceed', Guthrie's speech that followed would only have left them confused. Guthrie voiced his disagreement with a number of Ngata's proposals. Although the Government was 'quite prepared to do what is fair', it had 'great difficulty' with the idea of consolidating

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the interests of Maori owners around their existing kainga. Instead, it was more 'sensible' for Maori owners to have their interests consolidated in four blocks, one each to the north, east, west and south – essentially the same solution that Jordan had outlined in November 1919. The Crown's main objective remained the opening of land for settlement, and the interests of Maori owners were essentially ancillary to this: 'We are out to develop the whole Urewera block, and we can only do that on business lines.' Guthrie agreed with Ngata that it was 'only fair' that Maori owners make a contribution toward the cost of road construction, but that they would have to wait to 'have some idea where the roads are going'. Guthrie did not reveal that the roads were planned primarily to service European settlers. He also suggested that the scheme would not be implemented by officers working with Maori owners: rather, 'we will set up a tribunal to consult with the Natives and bring forward a recommendation to the Government, which . . . the Government will carry out.'¹⁹⁵

In concluding the proceedings of the hui, Guthrie asked the assembled owners to give their assent to the proposed scheme. Coates cabled Guthrie (who had travelled to Rotorua) the following day, informing him that the people assembled at Ruatoki 'affirmed [the] principle of consolidation'. The 'initial steps' for the scheme would occur at another hui at Ruatoki, which they had asked to be held immediately; it was set down to take place on 18 July.¹⁹⁶

Admittedly, the May hui had been very much been of a preliminary one. Coates was a new Native Minister, and Ngata doubtless thought it important that he should meet Maori owners in an attempt to break the stalemate that had developed between them and the Crown. But the Ministers also set out to obtain the owners' agreement, which Coates claimed to have achieved. It is difficult to conclude, however, that Maori owners were in a position to agree to any more than the 'principle of consolidation' as they already understood it. Ngata and Guthrie gave markedly differing perspectives on a number of crucial issues. Maori owners might have thought that Ngata was representing their position, but at the hui he was not their representative in any official capacity (as he admitted himself); he offered his services to this end in any future negotiations. The speeches contained a range of views; there was no meeting of minds that could have provided what Ngata had described as the 'basis upon which the consolidation should proceed'. This would have been less significant had the Crown not taken the owners' agreement as a licence to develop its own plans for a scheme (which, not unnaturally, prioritised its own objectives), and had the next hui been confined to establishing the 'initial steps' for a consolidation scheme. But it was not, as we explain below.

195. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 134–137)

196. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 138)

Maori owners would have come away from the May hui unenlightened as to how their interests would be pooled, how their land would be chosen or what the potential costs involved were; all they knew was that another hui had been planned. Ngata said that they would retain their current settlements; Guthrie disagreed. Ngata said the Tribunal would be set up to 'carry out a scheme with them'; Guthrie said it would be a tribunal to 'consult with' them, after which it would make recommendations that the Government would carry out. And while the owners were told that roads would be built, and that they would be expected to make some kind of contribution toward the cost of their construction, they were not informed of the likely costs. Nor did they know where the roads would go, and would have had little indication that the road lines being surveyed at that time (conducted by the Department of Lands and Survey) were planned primarily to assist in opening the Crown's award for settlement. They would not have known what kind of titles they would receive at the end of the scheme, other than what they might have heard about consolidation elsewhere. Nor were they informed about the potential costs of surveying these new blocks, which required surveys because those conducted for the UNDR blocks were considered 'useless for title purposes'. Indeed, Ngata had said that the old Reserve surveys would suffice, a point on which he had not been contradicted. Finally, the Maori leaders who were present would have come away from the hui under the impression that their remaining land would be secure to them, given Coates' assurances; despite this, the plans of Jordan and Knight contemplated further purchases. Although Maori owners may have affirmed the principle of a certain kind of consolidation scheme that they already had in mind, they certainly did not have enough facts to give their informed consent to anything more than proceeding with a scheme per se.

On the other hand, the speeches from the Ministers did include weighty commitments to the Maori owners present, whose requests to the Crown for a solution to their dilemmas had gone unanswered during previous years. The interests of the Crown and Maori owners would soon be defined and separated, and those owners would have certainty about which of their lands they would retain. The long sought-after arterial roads would finally be constructed through their lands, mainly by the Crown but with assistance from them. The way events had unfolded up to May 1921 meant that a large number of Maori owners were already committed to the idea of consolidation before the hui even began. Those owners who had gathered to hear the speeches at Ruatoki would have been right to interpret these ministerial commitments as representing a new beginning. Yet, it is equally clear that a wide gulf had developed between the expectations of those owners and the assumptions brought to the table by the Crown. The hui at Ruatoki in May 1921 did little to dispel those expectations: divergent views were presented and no consensus was achieved. Yet, the Crown proceeded on the basis that it had received consent for the type of consolidation scheme its officials were developing.

14.5.5 How did the Crown's plans for a consolidation scheme by May 1921 differ from an ordinary consolidation scheme?

Crown counsel submitted that the Crown proposed a consolidation scheme to Maori owners as a 'cost-effective and practical solution for both Crown and Maori to the pepper-potting of interests within blocks'. At the time, the Crown recognised the 'mutual benefits' that would arise from such a scheme for both the Crown and Maori owners, as seen in Coates's speech at the May 1921 hui, where he told the people that the Crown was 'out for the good of both the Natives and the pakeha'.¹⁹⁷ Counsel considered that it was appropriate for the Crown to derive 'mutual benefits' from the consolidation scheme equally with Maori owners, who understood the benefits they would receive and gave their consent accordingly.

But the idea that a consolidation scheme could result in 'mutual benefits' needs to be assessed on a wider canvas encompassing the defeat of the UDNR Act and massive and illegal Crown purchasing. Ministers and officials only decided to proceed with a consolidation scheme when it suited the Crown's objectives; they had not responded earlier to Maori owners' calls for a halt to purchasing and a guarantee of their remaining land. Guthrie's speech at the hui also made it clear that the Government regarded the consolidation scheme primarily as the culmination of the Crown's purchasing programme. This was the basis of the planning that had already been conducted by the Native Department and the Department of Lands and Survey. At this stage, the main purpose of consolidation – from the Crown's perspective – was to ensure that it got full return on the money it had expended towards what turned out to be an illusory settlement programme. Thus, its plan differed substantially from the Waipiro scheme, and others that followed it, which were carried out solely with the needs of Maori co-owners in mind.

Mr Tamaroa Nikora brought the principles of ordinary consolidation schemes to our attention in his evidence. As a professional surveyor in his younger years, Mr Nikora worked on a number of consolidation schemes, and therefore spoke with authority, providing us with both a general overview of his experience and a simplified account of the basic characteristics of most schemes. The consolidation schemes he described were essentially those developed in accordance with Ngata's principles, designed solely with the re-organisation of title to Maori land in mind. The circumstances in the Reserve by 1921 were different, in that a non-Maori was now co-owner in most of the Reserve blocks, and the interests of Maori owners had to be both consolidated into new blocks and separated from those of the Crown. But Mr Nikora's points are nevertheless highly relevant to our analysis, because he was outlining general principles. In Mr Nikora's opinion, a sound consolidation scheme must include seven basic elements, or principles, which he summarised under the following headings: objective, consultation, topographical plan, draft scheme, valuations, accounting, and implementation (see sidebar). The Crown did not contest any of these points.

197. Crown counsel, closing submissions (doc N20), topics 18–26, pp 8, 19–20

Mr Nikora's analysis starts from the general assumption that consolidation schemes were designed to improve the land-holdings of Maori owners who had been adversely affected by the consequences of individualisation. A sound consolidation scheme would proceed only on the basis that a general consensus having been reached among the affected landowners as to the fundamental objectives of re-organising land-holdings, based on detailed and verified information – not only about the land involved but also about the full range of impacts of the possible consolidation options. In order to set the objectives and to achieve the necessary re-organisation of holdings, the process of consolidation had to be led by the owners themselves; the role of officials – in practice – would be to assist in this process, and to map out any details required to implement the owners' decisions.

In essence, Mr Nikora told us that successful consolidation schemes not only depended on the close involvement of Maori owners in their design and implementation but also must be for their benefit. This indeed was their sole purpose. In other words, all co-owners would be treated fairly and equally, and all ought to emerge with an enhanced land base capable of economic development. These principles are in keeping with the way that consolidation schemes were originally conceived in the recommendations of the Stout–Ngata commission and in the early legislation providing for schemes, which represented the Crown's attempt to rectify the problems created by nineteenth century native land legislation. The statutory provisions for consolidation may have left the initiative in getting a scheme off the ground with the Native Minister or the land court, and may not have required Maori owner involvement or consent to a scheme, as the Central North Island Tribunal pointed out; but the Tribunal also noted that in practice, consolidation officials worked closely with Maori owners in the preparation of a scheme.¹⁹⁸

The principles described by Mr Nikora reflect what Maori owners might have expected from a consolidation scheme, which were in keeping with Ngata's understandings as outlined in his speech at the May hui. Maori owners in Reserve blocks were no less the victims of the individualisation of title and of Crown purchasing than Maori owners elsewhere – though the UDNR Act had been designed to protect them from both. The Crown should never have embarked on purchasing on such a scale in a protected Reserve. Crown counsel said that the scheme was necessary because of the 'problem of undivided interests'; but it was a problem entirely of the Crown's creation. Maori resistance to Crown purchasing meant that the vast majority of the original owners remained owners somewhere in the Reserve. Not only had the Crown failed to buy all the interests in a single block, but it had barely bought out any individual owner. All these circumstances meant that the interests of Maori owners should have been placed first. The Crown owed these owners no less than it owed Maori owners in other consolidation schemes: they should secure the lands which they considered necessary for their economic development. Any benefits the Crown would

198. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 729–730

Tamaroa Nikora's 'Principles of a Sound Consolidation Scheme'

Objective The objective of a Consolidation Scheme is to assist the owners to realise the economic potential of their properties by regrouping and resubdivision, respecting as far as possible their existing occupations and improvements. A scheme must demonstrate that it will better the owners' circumstances or else it should not proceed.

Consultation Consolidation Schemes Consultation consolidation schemes deal with private property and proper consultation is essential. Once a representative group of the owners expresses the desire for their properties to be consolidated, a study is carried out to assess the economics involved. This is then referred for the owners' discussion and general approval to proceed.

Topographical Plan A topographical plan is produced in order to describe the land and all existing occupations and improvements. This is checked by further meetings. Owners express their wishes as to relocation for consideration in the formulation of plans.

Draft Scheme A draft scheme of new subdivisions superimposed over the topographical plan is produced and referred for discussion and approval by the owners.

Valuations Current market valuations at a common date are produced for all existing properties [and] then referred for discussion and approval of the owners. This is an absolute[ly] fundamental requirement of consolidation in order to enable the fluid and equitable transfer and exchange of interests. Major inequities arise if this is not done. If there are any liabilities of existing properties, valuations need to be adjusted to determine their entry value into the Scheme. Valuations are then produced for the new lots created by the Scheme. This enables the circumstances of any owner to be reconciled at the conclusion of the scheme.

Accounting A proper accounting of interests and exchanges is needed. Adjustments should be made where required (such as where the final survey of the land differs from the estimate). Where a scheme intends particular improvements to be implemented (such as roading), the cost (if it is not to be met by the Crown) needs to be carefully distributed so as to reflect the interests of the owners equally, and whether they would benefit from such improvements. In principle, the value of the overall property should be higher at the end of the scheme as compared to the beginning because of the improved title situation.

Implementation The consolidation is then implemented and finally audited to ensure that the value of the interests of all owners at the start of the Scheme has been accounted for by relocation or other transaction at the end of the Scheme. Every effort should be made to respect existing occupation and ownership in respect of the location of interests. Where economics demonstrate that some existing owners should cede their properties, they need to be properly compensated from benefits accruing to other properties.

—Tamaroa Nikora, 'The Urewera Consolidation Scheme' (doc E7), pp 4–6;
Tamaroa Nikora, brief of evidence, 18 June 2004 (doc E8), pp 3–4

derive by way of its award in this consolidation scheme should reasonably have been secondary and incidental to those of Maori owners.

Yet, as we have seen, as formal discussions began to take place in 1921, officials primarily developed proposals that put the Crown's interests first. This was a major reassessment of the original purpose of consolidation schemes, which was the product of the Crown's relentless purchase of individual, undivided interests to the point where the well ran dry, its refusal to allow Maori owners to partition out their interests, and its emergence as a co-owner in so many Reserve blocks.

The test for whether it was possible for the Crown to achieve mutual benefits with Maori owners fairly lay in the scheme's implementation: the division of the land between the Crown and Maori owners; the pooling of Maori owners' interests into consolidation groups and blocks; how the Waikaremoana block might be treated in the scheme; the survey and issuing of titles for the new Maori-owned blocks; and the construction of the arterial roads. The principles outlined by Mr Nikora can be applied to these various aspects of the scheme: a clear and transparent process to ascertain owners' objectives for the land they wished to retain, the owners' close involvement in the design and implementation of the scheme (including which land they wished to retain), a full disclosure of the costs involved and likely outcomes, clear and transparent accounting to ensure an equality of exchange and outcomes.

14.5.6 Conclusions: how the origins of the Urewera Consolidation Scheme affect the standards by which we judge it

As will be clear from the foregoing discussion, the parties proposed two sets of standards by which we should judge the Urewera Consolidation Scheme, both of them derived from standards of the time. Crown counsel proposed that 'mutual benefits' were the key, while Mr Nikora maintained that the route to such benefits was a careful, transparent process to which the co-owners consented – on the basis of sufficient information – at every step of the way. In the next sections of this chapter, we will analyse the design and implementation of the scheme, followed by three key flow-on issues: the means by which the Crown acquired the Waikaremoana block; the question of surveys, survey costs, and certainty of title; and the extremely important matter of the arterial roads. Before doing so, however, we summarise here how the material discussed in the present section has shaped the standards by which we judge the Treaty claims on these matters.

The Crown's set of standards were derived from statements made by Ministers at the time, whether to the Maori owners of the Reserve or in the form of instructions to officials. First, the Crown cited Guthrie's statements at Ruatoki in May 1921: 'We are out for the good of both the Natives and the pakeha, and if we are to administer the Urewera country to the

benefit of both, then we ought to have consolidation.¹⁹⁹ From this statement, Crown counsel argued that the mutual benefit of Crown and Maori was an appropriate standard, and one which the Crown believes that it has met.²⁰⁰

Secondly, the Crown cited Coates' statements to Maori owners at the same hui, to the effect that his 'first duty' as Native Minister was to them, to ensure that they 'get full justice by the Government of the day'. He assured them that the Crown's intention was 'not to rob or to steal but to help you move along the paths of progress'. If both sides approached consolidation with 'an open mind', then the outcome would 'help not only the native race but this country of ours, which knows no difference between native and pakeha.'²⁰¹

Thirdly, the Crown cited Coates' 'directive' to the consolidation commissioners, which will be discussed in the next section, emphasising that a 'round-the-table conference' would result in a 'practical and amicable settlement'. Any such conference and settlement would be guided by the principles of 'reasonableness and give-and-take', resulting in 'good results accruing to both sides.'²⁰²

Fourthly, the Crown cited Ngata as also embracing the concept of 'a mutuality of benefits.'²⁰³ Fifthly, Crown counsel argued that 'a large section of Urewera Maori perceived a mutuality of benefits.'²⁰⁴

For the claimants, as we discussed in the preceding sub-section, Mr Nikora proposed a set of standards derived from Ngata's consolidation schemes as they worked (or were intended to work) in the early to mid-twentieth century. These, too, were standards of the time. As we have seen, Mr Nikora's 'principles of a sound consolidation scheme' related to fair and transparent processes designed to result in a fair and equal outcome for the various co-owners whose interests were being exchanged and consolidated, leaving everyone better off than when they had started and with a sufficient base for development.

As we see it, the Crown's standards are indeed an appropriate measurement in the sense that they were derived from the Crown's own view of appropriate standards at the time. These standards expressed Treaty principles in the language of the day. We shall return to this point at the end of the chapter, when we make our Treaty findings, but here we note that the statements made by Guthrie and Coates have obvious significance in terms of the Treaty principles of mutual benefit, the active protection of Maori interests, equity (fair treatment of interests as between settlers and Maori), partnership, consultation, and Maori autonomy, with the Treaty partners dealing with each other reasonably and in good faith. In our view, Coates and to a lesser extent Guthrie were expressing these Treaty principles in the quotations highlighted by Crown counsel. Similarly, Mr Nikora's standards speak of

199. Crown counsel, closing submissions (doc N20), topics 18–26, p 20

200. Crown counsel, closing submissions (doc N20), topics 18–26, pp 19–24

201. Crown counsel, closing submissions (doc N20), topics 18–26, p 20

202. Crown counsel, closing submissions (doc N20), topics 18–26, p 20

203. Crown counsel, closing submissions (doc N20), topics 18–26, p 21

204. Crown counsel, closing submissions (doc N20), topics 18–26, pp 21–22

informed consent, the Maori right of development, and the need for scrupulously fair and honest dealings as between the Treaty partners – in this case the co-owners – in deciding the future of the Reserve. As we discussed in the preceding sub-section, these standards are clearly relevant to assessing the various features of the Urewera Consolidation Scheme.

One problem with both sets of standards, however, is the underlying assumption that co-owners in a consolidation scheme should be treated equally and derive mutual benefits from the scheme. This was central to the concept of schemes as developed during this period by Ngata (and Mr Nikora's principles) and also to the Ministers' public statements and instructions to officials. If our analysis began in 1921, and if the Crown had come honestly by its shares in the Reserve, then we would accept this proposition. From our discussion of events in chapter 13 and the present section, however, it must be clear that the Crown had not come by its interests honestly and should not – had the UDNR Act and the Treaty been honoured – have been owners of half of the Reserve. Thus, while there is a superficial appeal in the idea that the Crown and Maori owned half of the Reserve each by 1921 and should thus have entered into a scheme designed to produce mutual benefits and equality of outcomes, we cannot accept it because the underlying reasoning is seriously flawed.

As a result, we consider that the Crown's standards of mutual benefit, reasonable give-and-take, decisions by 'round-table conference', protection of Maori interests, and justice for both Maori and (future) settlers, as derived from the statements of Guthrie and Coates, are *minimum* standards for the Crown to have met. The Urewera Consolidation Scheme should, at the very least, have met those standards. We also consider that Mr Nikora's principles for the fair treatment, meaningful participation, informed consent, and mutual benefit of the co-owners in a consolidation scheme are in their turn a minimum standard. Again, at least that much should have happened. These were the standards of the time. But in our view, the Crown should not have profited from the extremely serious Treaty breaches by which it had become a co-owner of half the Reserve. This was not a situation that had created an even playing field, requiring fairness for both sides. At a higher and more appropriate standard, therefore, we conclude that the Crown should have put Maori interests first and left its own to one side until the Maori interests had been satisfied and Maori development – on the basis of what land was left to them – was ensured. Only then should the Crown have looked to its own interests and sought to secure its own benefits. This is what the Treaty required, and this is the standard by which we judge the consolidation scheme in the following sections. Sadly, as we shall see, the Crown did not meet even the minimum standards proposed by its own Ministers, nor did it meet the standards proposed by Mr Nikora for co-owners in a scheme.

This will become clear in our discussion of the design and implementation phases of the Urewera Consolidation Scheme, to which we turn next.

14.6 BY WHAT PROCESS WERE INTERESTS CONSOLIDATED AND THE LAND DIVIDED BETWEEN MAORI OWNERS AND THE CROWN ?

Summary answer: *The Crown's original objectives for purchasing in the Reserve determined the initial stages of the scheme, when many crucial decisions were reached about the division of the land between Maori owners and the Crown. Ministers and officials continued to act on the assumption that the Crown stood on an equal footing with Maori owners, by virtue of being a co-owner in the Reserve and was entitled to negotiate over the division of the land on that basis. That assumption underlay the Crown's position at the crucial hui at Tauarau marae, Ruatoki, in August 1921. This was the 'design' phase of the scheme. The Crown's representative, RJ Knight, presented a series of proposals to Maori owners which represented the Crown's objectives of acquiring sufficient land for settlement, timber and water conservation purposes, the last of which took on increasing importance. Maori owners obtained some concessions during the three week hui, when approximately 80 per cent of the key decisions regarding the future ownership of the former Reserve lands were made. These concessions demonstrate that there was some spirit of reasonableness to the proceedings.*

But Maori owners were never given a sufficient opportunity to develop their own objectives for the land they would retain, and were instead forced to respond to a series of Crown proposals that had been developed by officials responsible for promoting the acquisition of land for the Crown's specific purposes. That was the format that evolved at the hui. The Crown would make proposals it had planned well ahead and Maori were called upon to respond. Maori owners were never given the time, the access to adequate advice, or organisational networks such that they could explore their own initiatives. By the end of the hui, Maori owners had successfully organised themselves into consolidation groups that represented their last attempt to retain some form of communal ownership and ancestral connections to certain lands of their choosing. Yet they had little say in how these decisions would be implemented. They did have the assistance of Apirana Ngata (then member of parliament for Eastern Maori), who was very knowledgeable about consolidation, but he was one man. For 2,000 Maori owners organised in 100 consolidation groups and planning the future of their homeland, a team of representatives and advisors was needed. After the hui had finished, and without the input of Maori owners, officials designed a special process which became enshrined in the Urewera Lands Act 1921–22. The Act also spelled the official end of the Urewera District Native Reserve, as all legislation relating to the Reserve was repealed.

The consolidation scheme was flawed at the outset and throughout its life due to opaque processes and poor record-keeping. At no stage was there ever a clear statement of how much land was included in the scheme or the total relative interests of Maori owners and the Crown. There was similarly no final report showing how the exchange of interests occurred during the course of the scheme. Although this did not result in serious discrepancies, the scheme lacked the transparency expected of an undertaking of this nature. The stable basis of exchange that should be at the very heart of sound consolidation practices was undermined by the flawed

valuations on which exchange was based, and was further undermined by the continuation of Crown purchasing during the scheme's implementation.

Two Consolidation commissioners were empowered to carry out the scheme that was negotiated at the Tauarau hui, as legislated for in the Urewera Lands Act 1921–22. The implementation of this scheme lasted for four years. The owners' committee and Ngata did secure some real concessions from the Crown. For instance, the value of the land the Crown would acquire for the Maori contribution to the cost of roads was reduced from £32,000 to £20,000; and more land was awarded to Maori owners between the Whakatane and Waimana rivers, though the Crown had sought this land itself. In some areas, the commissioners accommodated the wishes of Maori owners, giving them more land in certain areas than had been negotiated at the hui. In Te Whaiti, however, the commissioners purchased further interests in the face of protests and refused to meet the requests of Maori owners about where their land would be located so that the Crown would secure much of the valuable timber land. Nor were the commissioners always responsive to requests from Maori owners to set aside certain areas as reserves. Although 27 reserves were set aside for Maori, there was no special protection for some of their most tapu sites: the Maungapohatu and Huiarau reserves were included in the Crown award after Ministers failed to make recommendations to the Governor-General; evidently because the Crown wanted to retain control of the area for its watershed reserve.

The process of the division of the land, and the consolidation of Maori interests, is appropriately viewed as the final stage in the defeat of the UDNR Act; the outcomes are best considered as the consequence of unremitting Crown purchasing. Those outcomes are starkly evident at Ruatahuna, where many Maori groups who had pooled their interests from a number of blocks competed for the best land. The amount of land available was reduced because of the commissioners' insistence on awarding small areas to the Crown in the most sought after lands; as well as a 10,000 acre area in the south, adjacent to the Waikaremoana block, which became part of the protected watershed. Some Maori owners took their interests to other parts of the former Reserve to avoid further competition. One group of owners – known as *te taha apitihana* (the opposition side) – remained defiant, refusing to participate in the process until the commissioners gave them an ultimatum: their land would be chosen for them if they did not choose it themselves. *Te taha apitihana* maintained a range of objections against the scheme, many of which were associated with the costs involved and their lack of understanding of the scheme's potential outcomes when it began. Ultimately they opposed the process of consolidation itself. But their actions were equally a protest against the Crown's failings since the passing of the UDNR Act; many of the tensions in Ruatahuna that surfaced during the consolidation process were evident earlier in the hearings of the Urewera commissions. By the end of the scheme, the Crown was the biggest single owner in the Ruatahuna region.

The process led by the Consolidation commissioners, though fair to the owners in some cases, was far from the owner-led process originally envisaged by Ngata for consolidation schemes. More to the point, it was the complete antithesis of the policies set by Te Whitu Tekau for

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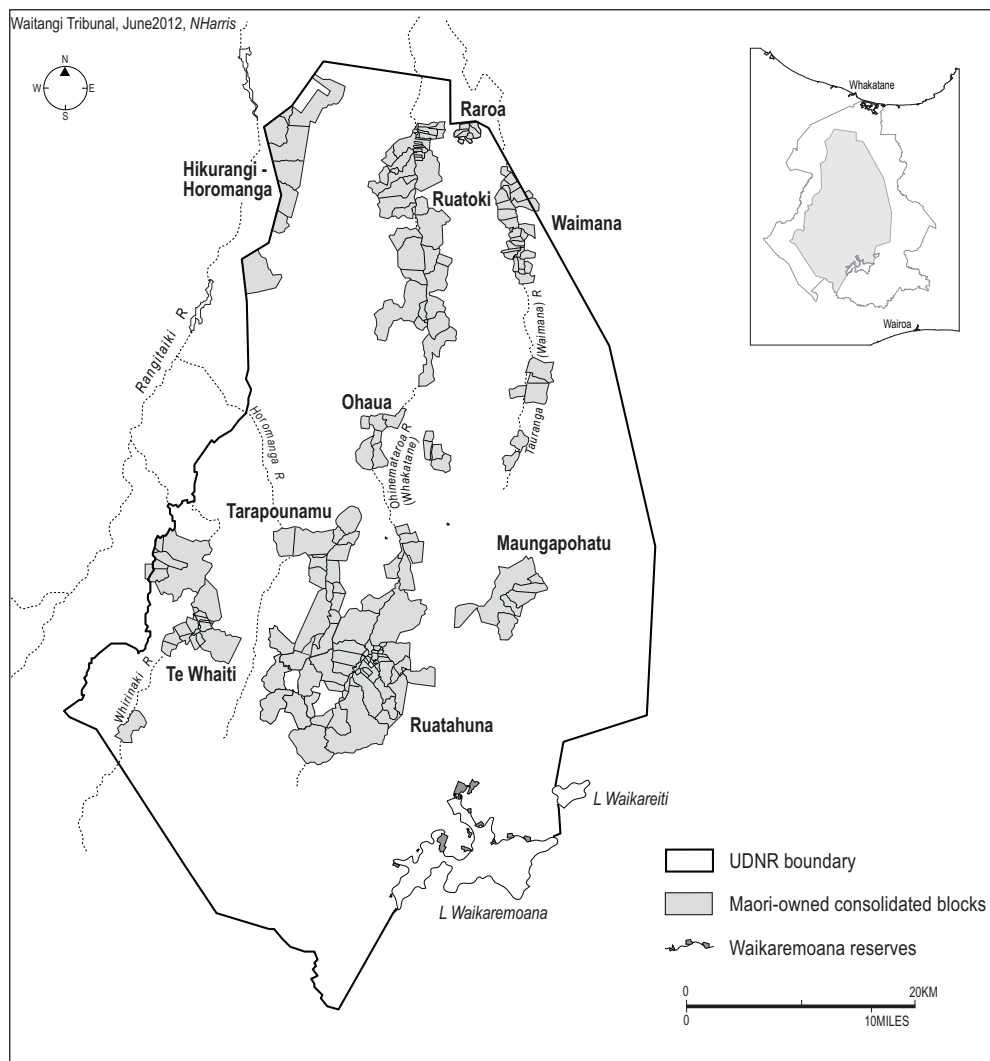
tribal self-determination, as well as the peoples' expectations for self-governing institutions and economic development promised by the UDNR Act. Although the process of consolidation in Te Urewera was quick in comparison to other areas, it was also the last in a long line of title-related processes which, rather than protecting owners, moved inexorably towards Maori dispossession.

14.6.1 How was the process for the design phase of the scheme established?

One of the key points established by the Stout–Ngata commission, and echoed by Mr Nikora in our hearings, was that consolidation schemes had to be led by Maori owners with their own objectives for the land in mind. Most schemes carried out during the twentieth century followed this general principle. For the outcomes of any scheme in which titles would be re-organised to have durability, Maori owners had to decide first on the objectives for pooling their interests and second to select appropriate land that matched these objectives. While trained professionals were required to assist in the nuts and bolts of any scheme, the process of pooling interests and negotiating the land that would be taken up by the new groups could only be achieved by the owners themselves; Maori owners decided how their holdings would be re-organised in line with what they hoped to achieve with their land. These points are important to bear in mind when we consider the ‘design phase’ of the Urewera Consolidation Scheme: the period from August 1921 to February 1922 when most of the details of the scheme were solidified, ahead of the ‘implementation phase’. The parties differed on their assessment of the process established for this stage of the scheme: the claimants said the process was flawed, and weighted too heavily in favour of the Crown; a claim which the Crown denied.

By May 1921, Ministers and officials had already determined that the Crown would have a greater role in directing proceedings in the Reserve than was the case in other consolidation schemes. As a co-owner in Reserve blocks, the Crown considered itself to have equal bidding rights to the land. At that time, however, the plans developed by Jordan and Knight had articulated few concrete details about how the scheme would proceed. Another hui had been scheduled for the end of July at which it was assumed further ‘negotiations’ would take place; but the exact purpose of the hui had not been established. Both Jordan and Knight had assumed the Native Land Court would be involved in some capacity, presumably with oversight and as an umpire if needed, and that such a scheme would be implemented under existing legislation. Beyond that, and perhaps for that reason, the process envisaged for implementing the proposed scheme was vague.

In the wake of the May hui, Coates and Guthrie did not seek to instil more rigour and detail into the planning. Instead, they and officials continued to focus primarily on the outcomes the Crown hoped to achieve from a scheme, and how these outcomes might be achieved through ‘high-level’ negotiations. Upon returning to Wellington the two Ministers



Map 14.2: Land remaining in Maori ownership at the end of the Urewera Consolidation Scheme.

One hundred and eighty-three Maori owned blocks were created from the Urewera Consolidation Scheme, plus a further 27 urupa and papakainga reserves and 14 reserves in the former Waikaremoana block. Note the nine 'series' of locations in which the blocks were placed. Most of the urupa and papakainga reserves are too small to represent on this map. By the end of the scheme, Maori owners retained approximately 106,000 acres.

Source: 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)', undated, vol 1 (doc M12(c)); 'Urewera Consolidation Block Order files (Paemahoe to Wharepakaru)', undated, vol 2 (doc M12(d))

held a meeting to discuss what should happen next. Coates wrote to Ngata about their decisions. Consolidation, he said, would be 'gone on with' at the hui already set down for 18 July. In an early indication of how they expected the events to proceed, Coates explained that Knight would 'represent' the Lands Department. Harold Carr of Ngati Kahungunu,

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the nephew of James Carroll and a commissioner of the Native Land Court,²⁰⁵ would similarly represent the Native Department. Coates then asked Ngata if he would ‘represent the Natives so that their side of the question may be properly submitted’. Ngata was asked to render this service as a Member of Parliament – he would not be paid.²⁰⁶ While Coates and Guthrie had established that the Crown would be represented at the hui by lead negotiators, and had selected those negotiators, it was still unclear what exactly Knight and Carr were expected to achieve.

Coates and Guthrie then met with Knight in Wellington. They asked him to conduct a further, more detailed study on which land the Crown might expect to obtain from a scheme and the process that could be used to achieve this. They informed him that another hui had been scheduled at Ruatoki, at which the scheme was expected to commence. Following this meeting, at the end of June, Knight submitted the most detailed plan to date about how the scheme might proceed, which was only three pages long and described by its author as ‘suggestions and proposals.’²⁰⁷ The report contains a series of ideas about which land the Crown could acquire, which were in keeping with the Crown’s objectives for the land as reflected in the policies of the Department of Lands and Survey. Knight advanced three central ideas as to how the land might be divided. First, the Crown’s core objective remained the same as before: to obtain a large area of land that could be opened for settlement. Significantly, Knight noted that less than half the land under consideration was actually suitable for settlement. This was a radical revision of the amount of land that officials had previously assumed was available. Six years earlier, Wilson and Jordan said that just over 470,000 acres could be either cultivated or used for sheep farms by both Maori and European settlers. Knight, in contrast, assessed it as more in the range of 250,000 acres (less than half of the 518,000 acres in which the Crown had purchased interests).

Secondly, Knight signalled that more land would be protected for watershed conservation and scenic purposes; a shift in thinking that was to assume increasing prominence in coming years. Wilson and Jordan had merely said that small patches of land (totalling less than 100,000 acres) should be reserved for ‘scenic and climatic purposes.’²⁰⁸ In contrast, Knight outlined a more specific case: a much larger area had to be preserved to prevent flooding in surrounding districts and to allow the planned hydro-scheme in Lake Waikaremoana to

205. Section 7 of the Native Land Act 1909 provided for the Governor to appoint any registrar or permanent official as a commissioner of the Native Land Court, possessing and exercising the functions and powers of a judge of the Native Land Court, either generally or as specified in an order in council. Carr was appointed a commissioner of the Native Land Court in 1910.

206. Coates to Ngata, 13 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 143)

207. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 147–149)

208. Wilson and Jordan to Skeet, 1 August 1915 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), p 147)

proceed. Conservation, therefore, was a ‘matter that warrants serious consideration’. Finally, the Crown aimed to obtain the important timber resource in the Te Whaiti blocks.

These ideas informed Knight’s recommendation for the division of the land between the Crown and Maori owners. He proposed that the Crown acquire its interests in two main areas. The first area would consist of ‘a composite block in the north of the district to embrace the land on either side of the Waimana and Whakatane Valleys’. This would give the Crown possession of all the land most suitable for settlement barring the Ruatahuna valley, which Knight conceded there was ‘no hope of securing’. The second area consisted of ‘Te Whaiti and adjacent lands less any Native settlements and areas adjoining which the Natives wish to retain for their own use.’²⁰⁹ The Crown could acquire a further area to account for the cost of surveying the new Maori-owned blocks and for constructing two arterial roads, which should come from lands considered ‘useless’ for settlement, such as the Hikurangi–Horomanga and Tarapounamu–Matawhero blocks.²¹⁰ He also recommended that the Crown acquire land in the Waikaremoana block, either by omitting the block from the scheme and taking a portion of it under the Scenery Preservation Act or by commencing ‘purchasing operations’.

Knight’s proposals for the Crown’s award envisaged a considerable overhaul of Maori settlement patterns as they existed in the former Reserve. Steven Webster argued that if Knight’s plan had been implemented, Maori owners would have been confined to an area from Tawhana and Ohaua southwards and from Ngaputahi eastwards, apart from a large area in the north of the Hikurangi–Horomanga block.²¹¹ Knight himself described this pattern of settlement redistribution in terms of two types of land: land suitable for settlement that would be surveyed and broken up into blocks; and land that was considered unsuitable for settlement, which would be left unsurveyed as one large block. Survey and roading costs would be accounted for in the form of Maori land in the area considered unsuitable for settlement. Knight said that if there was not enough non-settlement land to meet these costs, ‘the Crown will have to be awarded supplementary areas in the Native [settlement] sections’. He concluded that this last scenario was ‘very unlikely’; but we note here that it was in fact exactly how the costs of surveying in the scheme were eventually met.

Knight’s ‘suggestions and proposals’ were in short order either adopted or adjusted to become the Crown’s core proposals to Maori owners at the Tuarau hui. But as an indication of how uncertain he must have felt about it, Knight pitched his report as a request for written instructions. He particularly requested clarification about what authority he would have as the Crown’s representative: ‘I take it that the consolidation proposals will have to be made by the Crown, and that I am authorised to act as the Crown Agent, and conduct the

209. Knight to Under-Secretary for Lands, 21 June 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p70)

210. Campbell, ‘Land Alienation, Consolidation and Development’ (doc A55), pp 47–48

211. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 257, 260–262

negotiations with the Natives.’ Carr, he assumed, would ‘sit as Judge and record any agreements entered into and decide any disputed point that may arise.’ In making this assumption, Knight was presuming that the Native Land Court would play its usual role as umpire and arbiter of consolidation schemes, and that that was the point of sending a commissioner with the powers of a Native Land Court judge. Balneavis would be the interpreter, with Bowler also on hand to provide any details required. The decisions reached would be final, Knight assumed; there would be no subsequent process. But at other points in the report he also suggested that the Native Land Court would be involved, in keeping with existing statutory provisions. Knight thus revealed his uncertainty about both the role he was being asked to fulfil and the status of the decisions that would be reached at the hui. He finished by recommending that ‘the several officers engaged [should have] their functions clearly defined by written instructions.’²¹²

On receiving Knight’s report, Coates wrote to Guthrie outlining how he understood the scheme would proceed. The ‘various Departmental officers’ would not be sent ‘as a Commission or Court’, but as Departmental representatives ‘for the sole purpose of joining in a round-the-table conference with the Native non-sellers with a view to arriving at some practical and amicable settlement.’ Coates evidently hoped that the forthcoming hui would achieve final decisions about how the land would be divided between Maori owners and the Crown. He provided no indication as to how he anticipated these outcomes would be given legal effect. Any points of dispute, he noted, would be referred to the Minister of Lands and Native Minister, who would act as mediators. ‘If a spirit of reasonableness and give-and-take is introduced into these proceedings,’ he wrote, ‘I have every reason to believe that the task that these officers are about to undertake, will not be found to be an insuperable one and good results will accrue to both sides from their efforts.’²¹³

As we noted earlier, Crown counsel emphasised this passage from Coates’ letter and considered it further evidence of the ‘mutual benefits’ the Crown believed would accrue to both parties entering into the scheme.²¹⁴ But the approach taken by the Crown up to this point rather demonstrates that it wished to place itself in a superior negotiating position. On the one hand, the planning lacked the thoroughness and forethought we would expect of an undertaking of this nature. Knight – possibly the most important official involved in the planning for the scheme – signalled as much in his request for written instructions, which either were never given or have not survived. But negotiations on an ‘informal’ basis ran the risk of putting the Crown in a much stronger position than everyone else, by virtue of the fact that it was by far the biggest single owner in the Reserve, if there was no independent authority or watchdog to protect the interests of the other owners. Crown counsel suggested

212. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p149)

213. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p145)

214. Crown counsel, closing submissions (doc N20), topics 18–26, pp 13, 20

that Maori could rely on Ngata's influence and his 'personal relationship with Coates' to perform this function.²¹⁵ One thing was certain: by conducting the hui along these proposed lines, the Crown negotiators would set the agenda and the Maori owners would have to respond; much would then depend on the quality of information placed before them and the amount of time which they were accorded to work out their own objectives and to consider how the various options might affect their interests.

Yet it should have been obvious to Coates that no matter how 'informal' the proceedings, the existing legislation did not allow for a scheme of this nature. It was not until much later that officials engaged in the negotiations at the hui began speaking of the need for special legislation and for a 'special tribunal' to implement the arrangements. Up until that point, including Knight's 'suggestions and proposals' in June 1921, the Native Land Court was considered the appropriate institution through which the scheme would be implemented in accordance with existing legislation. But at some time during the hui, officials discovered that the Native Land Court had no jurisdiction, because legislation did not allow for the inclusion of Crown-purchased undivided interests in a scheme.²¹⁶

There is little evidence to suggest that, at any point in the lead up to the Tauarau hui, Maori owners were informed of the possible significance of the forthcoming discussions. On 16 June, a notice appeared in the *Gazette* and the *Kahiti* informing the people that a hui would be held at Ruatoki on 18 July.²¹⁷ The *Gazette* notice stated that the purpose of the meeting was to consider 'the details of a scheme of the consolidation of the interests of Native owners who are non-sellers in the Urewera Blocks and of the Crown purchases.'²¹⁸ This was enough to place Maori owners on notice that these would be significant proceedings, which explains why they turned out in force. But it was hardly a full disclosure of the fact that consolidation was to be 'gone on with' at the hui, and that Crown negotiators would be despatched to conduct very important negotiations. As a consequence, Maori owners would have had little indication prior to the hui of what was in store for them. Perhaps most importantly of all, it was at this stage of a scheme that – under Mr Nikora's principles – a 'study is carried out to assess the economics involved', which 'is then referred for the owners' discussion and general approval to proceed.'²¹⁹ As noted above, Knight had concentrated on how the Crown was to derive its intended benefits from the scheme. No such study of the type described by Mr Nikora was referred to the owners in advance of the Tauarau hui and nor, as will soon be apparent, was one made available to the Maori owners before they were asked to agree to the Crown's proposals for the division of the land.

215. Crown counsel, closing submissions (doc N20), topics 18–26, p 23

216. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp181–191). See also Carr to Coates, 20 September 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 195).

217. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 47

218. *New Zealand Gazette*, 16 June 1921, no 56, p 1551; *Kahiti*, 16 June 1921, no 24, p 341

219. Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 5

14.6.2 What was the significance of the Taurarau negotiations for the division of the land and the consolidation of Maori interests?

The preparations and planning for the Taurarau hui might not have been so crucial had the outcomes of the hui not determined the overall outcomes of the scheme. But in many respects, the events that took place at Taurarau marae over the course of three weeks in August 1921 were the Urewera Consolidation Scheme. We have referred to this period as the ‘design’ phase of the scheme. While this is an appropriate shorthand in many respects, the term ‘design’ does not just apply to the process of the scheme. In fact, many of the decisions about the division of the land between the Crown and Maori owners were made at this hui. These decisions were recorded in the official report tabled to Parliament – authored by Knight, Carr, and Balneavis – as ‘the Urewera Consolidation Scheme’. This was not just the authors’ sketch for a scheme, or a series of proposals, but rather a fully fleshed-out series of workings based on the negotiated outcomes of the hui. The authors recommended special legislation to give effect to this draft scheme, which would include authorising special commissioners to make minor adjustments where necessary, but whose primary role was to implement the draft scheme and make awards accordingly. The report itself, and the scheme referred to therein, was later referred to in the Urewera Lands Act 1921–22, and thus given official status beyond that of a mere ‘proposal’. In recognition of this official status, we refer to it as the ‘Consolidation Scheme Report’.

(1) *The outcomes of the Taurarau hui: four-fifths of the division of land confirmed*

Before examining the proceedings of the hui in detail, it is important to summarise its outcomes so as to provide an appropriate sense of the hui’s significance in the overall context of the scheme. In short, we are able to demonstrate that in the implementation phase of the scheme, the Consolidation commissioners followed the general pattern of land division as outlined in the Consolidation Scheme Report. Out of the approximately 550,000 acres subject to exchange in the scheme, only one-fifth of the broad division of the land between Crown and Maori owners changed subsequent to the report during the scheme’s implementation. We have compared the provisional division of the land negotiated at the Taurarau hui with the final awards, and have concluded that of the 183,390 acres that were earmarked for award to Maori owners at the hui, the Consolidation commissioners authorised significant changes to 33,134 acres, or 18 per cent. (We explain our workings in appendix IV.)

The most significant changes during the implementation phase occurred in two areas:

- ▶ In the northern part of the former Reserve, the commissioners authorised the award of more land to Maori owners in the line of blocks down to the Waikarewhenua block. The biggest addition in acre terms occurred in the mid-section of what became the ‘Ruatoki series’ of blocks, where an extra 6,168 acres was awarded to Maori owners – a 50 per cent increase on what was negotiated at the hui. To offset this, less land was awarded in some of the northern blocks, particularly Parekohe and Waipotiki.

- The Ruatahuna region, however, was subject to the biggest changes, where 14,709 fewer acres were awarded to Maori owners than was originally planned in the Taurarau negotiations.

These changes had consequences for the overall amount of land Maori owners were awarded in the scheme, which was reduced by 7,166 acres from what was negotiated in 1921. This was largely as a consequence of owners moving their interests from land with a low value (including Waikaremoana) into land with a high value (in the north of the Reserve). We explore the reasons behind these changes later in this section.

Although this type of comparison does not account for changes that occurred on a small scale – such as how boundaries were set between Maori-owned blocks, or between Maori-owned blocks and the Crown’s award – it does give a good indication of the significance of what occurred at the Taurarau hui. Crown counsel rightly pointed out, therefore, that by ‘mid-September 1921 . . . the bulk of the Crown and Maori interests on the ground [were] largely settled as to location.’²²⁰ While this was not the case for the Ruatahuna lands and some significant areas in the north, it is true for the vast majority of the Reserve, the division of which remained as it was mapped out in late 1921.

(2) *The process of dividing the land and forming consolidation groups at the Taurarau hui*

In light of the fact that the outcomes of the Taurarau hui were of such importance for Maori owners, we turn our attention to how these outcomes were reached. The hui was initially set to take place on 18 July but was postponed by two weeks and began on 1 August (as notified in the *Kahiti* on 30 June).²²¹ Knight, Carr, Bowler, Ngata, and Balneavis appeared in their respective capacities, as requested by Coates. They were joined by Matahe, HM Awarau, and HT Fox, who were said to have had experience working on the Waipiropi consolidation scheme.

The proceedings that followed took place in two stages. Herries, it will be recalled, had contemplated reviving the General Committee when it came time to negotiate and arrange for consolidation in the Reserve. This did not happen. Instead, the Maori owners who had assembled at Taurarau elected a ‘committee of thirty-seven representatives’ (which – according to the list supplied in the Consolidation Scheme Report – was actually 38, but was also given as 40 by Balneavis²²²). In the first stage of the proceedings, this committee received a list of five Crown proposals for the scheme, which they discussed over the course of two days and then accepted, subject to variations. For the remaining three weeks, the owners organised themselves into ‘consolidation groups’ (groups of owners who had combined their interests), and indicated where they would like their combined interests located, which

220. Crown counsel, closing submissions (doc N20), topics 18–26, p 15

221. Campbell, ‘Land Alienation, Consolidation and Development’ (doc A55), p 47

222. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 4; Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55 (b)), pp 182–183)

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was not allowed to be in more than three areas. To assist in this process, Carr determined 1061 succession orders so as to bring the lists of owners and their interests up to date.²²³

Knight opened proceedings on the first day by outlining the Crown's five key proposals. With or without written instructions, he had prepared for the hui on the understanding that he would act as the lead Crown agent and developed his earlier ideas into a series of 'proposals' to put to the Maori owners. These proposals differed from his June 1921 report in several key respects. First, he had earlier suggested that the Crown should be awarded all the land in the north of the Reserve as far south as Tawhana. Instead, as Crown agent, he asked the assembled owners for the 'bulk' of the Crown's purchases to be 'located in the area between the Whakatane River and the Waimana basin south of the Ruatoki Settlement': Maori owners would receive awards to the west of the Whakatane River and to the east of the Waimana River. Secondly, he had earlier suggested that the Crown should acquire 'Te Whaiti and adjacent land less any Native settlements and areas adjoining which the Natives wish to retain for their own use'. At the hui, the Crown asked for the award of both Te Whaiti blocks 'subject to small reservations at Te Whaiti Settlement for non-sellers, who would take the bulk of their interests elsewhere in the territory'. Thirdly, although he had earlier presented several options about how the Crown might acquire the Waikaremoana block for the purposes of water conservation, the proposal made to the Maori owners at the hui was to exclude the block from the scheme. The Ruatoki blocks would also be excluded on the understanding that their relatively high valuation would have thrown out exchanges of interests in other blocks.²²⁴ (This land later became subject to its own scheme – the Ruatoki–Waiohau Consolidation Scheme – which we consider in chapter 19.) Other significant changes were made regarding the cost of surveying the Maori-owned blocks and constructing the arterial roads, which we discuss later in the chapter. We cannot say whether these changes were the result of ministerial direction or adjustments made by Knight himself. Overall, the proposals were significant, but more in the nature of a further refinement of which land the Crown wished to obtain and therefore which land it intended would be awarded to Maori owners.

We know very little about how the committee of Maori owners deliberated on these proposals. No minutes or notes were taken during the two days of discussion.²²⁵ On 27 August, two days after the hui finished, Balneavis wrote a report summarising the proceedings up to that time, noting what he perceived to be the reaction of the Maori owners at the opening of the hui: 'these proposals to the Maori mind were of a most-far-reaching and revolutionary

223. Carr to Coates, 20 September 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 196)

224. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 5

225. Bassett and Kay, 'Ruatahuna' (doc A20), pp 137–138; Webster, 'The Urewera Consolidation Scheme' (doc D8), p 248

The Crown's Proposals at the Taurarau Hui, as Presented by RJ Knight

Quoting the Consolidation Scheme Report of 31 October 1921, the Crown's five proposals at the Tamarau hui were summarised as follows:

1. The consolidation scheme to cover only those blocks in which the Crown had purchased interests. Summarized, the position was that in forty-four blocks, totalling 518,329 acres, the Crown had bought 345,076 acres 1 rood 8 perches, valued at £193,076 4s 11d, and the non-sellers retained 173,252 acres 2 roods 32 perches, valued at £78,479 15s, the total estate involved being valued at £271,555 19s 11d. The Crown would not exchange Urewera interests for any Crown lands outside the Urewera country, and for Native interests in blocks other than these under purchase.

2. The Crown asked for complete awards of Te Whaiti 1 and 2, Maraetahia, Tawhiuau, and Otairi Blocks, subject to small reservations at Te Whaiti Settlement for non-sellers, who would take the bulk of their interests elsewhere in the territory.

3. The Crown asked that the bulk of its purchases should be located in the area between the Whakatane River and the Waimana basin south of the Ruatoki Settlement.

4. The Crown asked that the non-sellers should contribute £32,000 worth of land towards the cost of the arterial roads, connecting Ruatoki with Ruatahuna, and Waimana via Maungapohatu with Ruatahuna.

5. The Crown proposed that the existing titles and surveys and tribal boundaries be cancelled and abolished, and new titles issued to the non-sellers for properly surveyed and roaded sections under the Land Transfer Act.'

—Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme',
31 October 1921, AJHR, 1921, G-7, p 4

character'.²²⁶ Beyond this, however, there is little to gauge the extent of the discussion that took place on the receipt of the proposals.

The claimants have raised a number of concerns about both the constitution of the committee of Maori owners and its role in the proceedings. Their first concern is whether it was fully representative of those owners who were affected by the scheme. This was of particular concern for the Tuawhenua claimants. Their counsel noted that only 11 members of the committee were from Ruatahuna, despite the fact that a much larger proportion of the remaining interests in the former Reserve came from there.²²⁷ While this is an under-

226. Balneavis to Coates, 21 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 152)

227. Counsel for Tuawhenua, closing submissions (doc N9), p 183

standable concern, we would not necessarily expect to see an exact correlation between the distribution of remaining interests and the leaders' primary affiliations, especially because many leaders would have held interests throughout the Reserve. The committee was big enough to have included a broad range of leaders from communities who were affected, though we note that it did not include a large number of leaders who were also leaders of 'consolidation groups'. Of the committee members, 28 later were consolidation group leaders; the other 10 were owners but not group leaders. This means that about 70 group leaders were not part of the committee. But given these other leaders were at the hui, we are not in a position to conclude that they were excluded from the committee for any particular reason.

We would add that Maori owners did turn out in large numbers and were present for the act of organising themselves into consolidation groups. The Consolidation Scheme Report noted similarly: 'The Ureweras attended in large numbers, every family of non-sellers being represented.'²²⁸ This was not merely a gloss placed on proceedings by the report's authors. Further, many key Ruatahuna leaders were part of the committee, including Wharepourī Te Amo, who later headed the group of owners who organised in opposition to the scheme. As we explain shortly, his protests against the scheme in the following months were not about his people's lack of participation in these initial stages; rather, they emerged from a lack of sufficient information at the hui.

Nor, it seems, was the committee limited to Tuhoe leaders. Ngāti Whare and Ngāti Manawa leaders were elected as members. A comment made by Balneavis suggests that Ngāti Ruapani leaders may also have been represented, though possibly not Ngāti Kahungunu.²²⁹ We consider the extent of their participation in this stage of the process later in the chapter.

The second concern raised by the claimants was the role played by Apirana Ngata, who was recorded in the Consolidation Scheme Report as having been 'unanimously asked to act on behalf of the non-sellers' in the negotiations.²³⁰ (Knight said that Ngata was 'unanimously appointed by a representative meeting of the non-sellers to represent them during the negotiations and afterwards to act on their behalf'.²³¹) Claimants' concerns centred on Ngata's recent history in Te Urewera, particularly his role in the commencement of Crown purchasing in the Reserve (see chapter 13).²³² Ngata, in the submission of counsel for Wai 36 Tuhoe, acted in the capacity as a Crown representative at the hui: 'Ngata was a Crown agent and could not be relied upon.' It was therefore inappropriate for him to represent

228. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

229. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 190)

230. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

231. Knight to Coates, 3 October 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 160)

232. Counsel for Tuawhenua claimants, closing submissions (doc N9), p 183

the interests of Maori owners in negotiations with Crown representatives, even if he was ‘unanimously elected.’²³³

Ngata was not, in fact, a ‘Crown agent’ at the time of the Tauarau hui. Not only did he hold no position within Government, but he was a member of the Opposition and was asked to attend the hui in his capacity as the local member of Parliament (Eastern Maori).²³⁴ The first suggestion that Ngata might represent the Maori owners was made by Coates, who considered it necessary for the proper protection of their interests. Coates had written to Ngata: ‘I suppose and hope that you will represent the Natives so that their side of the question may be properly submitted.’²³⁵ While Ngata, therefore, must have already expected to carry out this role at the informal request of the Native Minister, we have no reason to doubt that he was freely elected by the committee to act as their representative. This comes as no surprise, even though some of the committee members may have had reservations about him for the very reason put to us by claimant counsel. After all, Ngata was the founding father of consolidation schemes, both in his role as part of the Stout–Ngata commission and because he had helped implement the first scheme in New Zealand. He had also taken a prominent role in the two hui earlier in the year. Maori owners would have rightly looked to him for his expertise. In our view, he would have been faced with great difficulties in negotiating the ‘battle ground’, reconciling the views of Maori owners with his knowledge of Crown processes and intentions.

While Ngata’s credentials are not in doubt, our concern is with the form of the ‘negotiations’ in which he was asked to represent the interests of Maori owners. How could the owners plan for the future of their entire homeland, with the assistance of just one representative? A team of representatives and advisors was needed, not a single representative. Yet, the Crown expected that 2000 Maori owners, who ultimately organised themselves into 100 consolidation groups, and who selected 40 leaders to negotiate their general interests, would be represented by one individual with the assistance of two officers; the Native Department and the Lands Department would represent the Crown’s interests, as presented by Knight and Carr. Coates had deliberately established this format for the proceedings when he asked Ngata to attend and ‘represent the Natives so that their side of the question may be properly submitted.’²³⁶ In his July letter to Guthrie, Coates had also recorded that Ngata would represent the ‘Native non-sellers.’²³⁷

233. Counsel for Wai 36 Tuhoe claimants, closing submissions (doc N8(a)), pp 105–106

234. At the 1922 election, the polling station at Ruatoki recorded 140 votes for Ngata and only 80 for his opponent. See ‘The General Election, 1922’, AJHR, 1923, H-33a, p 31.

235. Coates to Ngata, 13 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 143)

236. Coates to Ngata, 13 June 1921 (Campbell, supporting papers for ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 143)

237. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 145)

As we have seen, Coates expected that the Crown's representatives would negotiate the details of the scheme as equal players with equivalent interests, and he hoped that this would take the form of a 'round-the-table conference' governed by a spirit of reasonableness and 'give and take'. In practice, however, the negotiations may have been confined mostly to the representatives: Maori owners may have had no direct involvement, beyond whatever information Ngata needed from them to formulate their 'side of the question'. Balneavis stated in his report: 'Mr Knight representing the Crown and the Hon Mr Ngata representing the Native owners have come to an understanding as to the respective spheres of Crown and Consolidated non-sellers.'²³⁸ Webster suggests that the owners' committee was possibly placed in the position of 'negotiating with Ngata as their representative', rather than with the Crown.²³⁹ As we discuss below, Webster's proposition is supported by the role Ngata later adopted in making arrangements for the Te Whaiti and Waikaremoana lands.

Were the proceedings of the hui conducted in a way that can be described as satisfactory, as Crown counsel submitted? Counsel's line of reasoning ran as follows. Although Knight was 'biased' in his role as Crown representative, to the extent that he was employed in an official capacity representing the policies of the Department of Lands and Survey, his official status was clearly notified to Maori owners. In order to counter the Crown's proposals, Maori owners were able to draw on 'the benefit of Ngata's experience'. Any points of dispute between the parties that emerged during the course of the negotiations could be referred to Coates as Native Minister for resolution (and, we add, to Guthrie). Most importantly, Crown counsel submitted, Maori owners were more than capable of countering any potential 'ongoing bias' through the course of the negotiations, as shown in the concessions they managed to secure from Knight. The Crown did not enjoy a 'dominant position' in the negotiations; both sides were able to agree upon 'a set of proposals for consolidation', and the result was 'successful'.²⁴⁰

Counsel for Wai 36 Tuhoe, however, submitted that the Maori owners should have been dealt with at the very least through 'properly appointed counsel'.²⁴¹ We agree. We would add, however, that even had legal counsel been appointed to advise them and protect their interests, this would not have substituted for a process in which Maori owners were given sufficient information and a sufficient opportunity to develop their own objectives, rather than responding to a series of proposals. Although we do not have a detailed record of the discussions that took place, it is unlikely that the committee members were given enough information to evaluate their options or to consider the wider consequences of the scheme, or even to develop a fully articulated set of proposals about what they themselves hoped to achieve from the scheme. The Crown's proposals had only offered very basic outlines of

238. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 187-188)

239. Webster, 'The Urewera Consolidation Scheme' (doc D8), p 238

240. Crown counsel, closing submissions (doc N20), topics 18-26, pp 22-24

241. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 105

what might occur. While Maori owners would have gained a reasonable idea of the total value of their interests relative to the Crown (based on the statement of relative interests included in the Crown's first proposal), there would have been no way for them to fully comprehend the consequences of this when blocks were reconstituted on the ground.

Despite this, the committee agreed to the Crown's proposals 'subject to modifications and variations in detail', as Balneavis wrote. A decision was then made to 'proceed forthwith with the consolidation and exchange of non-sellers interests', in which 'the translation of the Crown proposals into terms of definite areas and figures' would occur.²⁴² This suggests that the committee did not discuss 'definite areas and figures' as between the Crown and Maori owners, but that this was left to this later stage as each group of Maori owners formed and chose provisional locations for their land.

Although it is understandable that such detailed work did not take place until the latter stages of the hui, the evidence suggests the committee was not given the opportunity or the resources to develop the broad parameters in which groups might chose land, as those parameters were largely set in the Crown's proposal. It was a constant refrain in the claimants' case that there was no topographic plan of the Reserve at the hui for the Maori owners to study. Such a plan had been prepared by the Department of Lands and Survey ahead of the hui (showing 'the roads and topography, the positions of the Native clearings, the streams, the flats and the open land'²⁴³), and a number of other plans were in existence at the time (such as that appended to Knight's interim report and the plan Guthrie spoke to at the May 1921 hui). But whether or not all Maori saw a plan, we doubt that it was adequate to give them a clear idea of how their new blocks would be demarcated.

The shortfall in the owners' understanding of the hui's outcomes extended to other areas as well. Later in this chapter we explain how Maori owners came to request changes to boundary locations during the implementation of the scheme, which – in its particular way – suggests they had been only aware in very general terms where their interests would be located. We will also explain how little information they were given regarding survey costs, the type of title that would be issued and their contribution toward the cost of constructing the arterial roads. And the valuations that would be adopted as the basis of exchange – based on the 1910 and 1915 Lands Department assessments – were flawed and unlawful; they were hardly a solid basis from which to make an assessment of which land would be worthwhile retaining. Given these factors, it was unlikely that the committee could have been in any position to consider the overall economics of the land division as it was raised at the hui; though doubtless there was enough to suggest that more land should be awarded to Maori owners along the river valleys, where the Crown had asked for the 'bulk' of its award, hoping for the benefits of the arterial roads. A more serious discussion, however,

242. Balneavis to Coates, 21 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 183)

243. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 47

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would have revealed that the objectives of Maori owners and the Crown remained in conflict with each other. Thus, after Tauarau, there was still no real agreement on the objectives of the scheme, which Mr Nikora identified as the scheme's first major failing.²⁴⁴

Despite these flaws at the heart of the process, we agree with Crown counsel that the owners' committee and Ngata were able to secure some real concessions from the Crown. These concessions had a significant impact on the final outcomes of the scheme. Balneavis did not record what 'modifications and variations in detail' were requested by Ngata and the committee, but they most likely referred to four matters.

First, the value of land that the Crown would acquire for the Maori contribution to the cost of roads was reduced from £32,000 to £20,000. Secondly, a decision was made to treat the Te Whaiti lands and the interests of Ngati Whare and Ngati Manawa owners as separate from the main bulk of the proceedings, and to conduct a mini consolidation scheme within a scheme. Accordingly, Knight travelled to Te Whaiti after the Tauarau hui to discuss arrangements there (which we review below). Thirdly, the Waikaremoana block was included in the scheme, as Tuhoe owners had requested, and awarded in whole to the Crown. In the next section, we discuss the circumstances surrounding the inclusion of this block and the subsequent negotiations with Ngati Ruapani and Ngati Kahungunu owners; but we note here that this decision had important consequences for Tuhoe owners, because their interests in Waikaremoana were redistributed into consolidation groups in other areas of the Reserve. For example, the number of interests transferred from Waikaremoana to Ruatahuna essentially cancelled out all of the Crown's purchase of interests in the Ruatahuna blocks up to that time. The transfer of Tuhoe interests out of Waikaremoana also significantly increased the interests of consolidation groups in Ruatoki, Te Whaiti, Maungapohatu, Waimana, Tarapounamu, and Hikurangi–Horomanga. Finally, it is very likely that the committee successfully requested more land to be awarded to Maori owners between the Whakatane and Waimana Rivers, where the Crown had initially asked for the bulk of its award to be located.

The second stage of the hui was a crucial one, as modified proposals were turned into 'definite areas and figures,' and the assembled Maori owners organised themselves into what became known as 'consolidation groups.' As with the process as a whole, we only know how this took place in general terms, though it appears that it was a process led by the owners. In late August, Balneavis reported that 99 groups had been formed.²⁴⁵ Each group had its own 'group leader,' who was one of the owners and invariably a community leader as well. Many of these groups, however, had their interests divided between more than one of the old Reserve blocks. Schedule 2 of the Consolidation Scheme Report recorded each of these

244. Nikora, 'The Urewera Consolidation Scheme' (doc E7), pp 13–14

245. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 184)

groups and their proposed locations separately, so that 150 groups are shown.²⁴⁶ No group located their interests in more than two blocks. Carr wrote that individuals were ‘reduced to a maximum of three’ blocks in which they could locate their interests (individuals could be in more than one group).²⁴⁷ This suggests that a limit was placed on the Maori owners by Ngata or by the Crown’s representatives, which was in keeping with one of the core objectives of consolidation schemes generally, but also with Jordan’s earlier plan to limit the number of blocks and individuals in blocks so as to allow for further Crown purchasing. Bowler also completed 20 purchases from individuals during this period, totalling the equivalent of 331 acres.²⁴⁸ Observing Bowler’s activities, Knight recommended that all purchase activities cease beyond those groups earmarked as ‘probable sellers so as not to disturb the details of the consolidation scheme more than is necessary’. Coates approved this recommendation on 8 August, and asked Jordan to instruct Bowler accordingly.²⁴⁹

Maori owners had their own objectives when they came to organising themselves into consolidation groups, and in many ways their objectives differed from those of the Crown. Not only did they attempt to use the process of consolidation to retain some form of communal land-holding, but they also used it to retain connections to a range of ancestral lands. Shortly before the hui, Coates had told Guthrie that he expected consolidation to create a new form of title that ‘knows no more of ancestral rights to particular portions of the land.’²⁵⁰ This was not an objective shared by Maori. Balneavis reported that groups consisted ‘for the most part of one family or part of a family.’²⁵¹ Steven Webster’s research on the Tamaikoha whanau revealed the difficult decisions people had to make in organising their holdings, but on the whole consolidation groups were often organised around one or more sets of siblings.²⁵² We would expect this to be the case in any process where Maori owners sought to balance the requirements of re-organising their remaining interests in blocks while yet retaining a core element of communal and ancestral connections to that land. However, the process did pose dilemmas, which were reflected in Balneavis’ comment that ‘there was continual shuffling and re-shuffling of individuals composing a group, the relatives claiming inclusion in one group or the other according to the sources from which rights were derived.’²⁵³ What emerged from this stage of the proceedings had lasting

246. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, pp 9–39

247. Carr to Coates, 20 September 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 199)

248. Bowler to Carr, 15 August 1921 (Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 704)

249. Campbell, ‘Land Alienation, Consolidation and Development’ (doc A55), pp 54–55

250. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 146)

251. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 184)

252. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 286–290

253. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 184)

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consequences: while owners were able to shift between consolidation groups during the implementation phase, they mostly did not. The groups essentially remained stable through to the conclusion of the scheme.

In many ways, the process of owners organising into consolidation groups and choosing which land they would retain might be seen as the final defeat of the UDNR Act, but it was also the owners' last attempt to retain some of the original purposes of the Act as they understood them. Mr Nikora considered that Maori owners were likely 'attracted [to the process of consolidation] by the grouping of their families'.²⁵⁴ These groups were not organised along hapu-lines, and in this sense what emerged from the scheme was as far from what had been envisioned under the UDNR Act as possible. But it is likely that the owners themselves recognised the necessity, in the circumstances they were in, of concentrating their interests. This, after all, was the purpose of consolidation: an attempt to recover and redistribute their last surviving interests in the form of a few useable blocks.

Balneavis observed how these discussions played out among the Maori owners as they formed into groups, capturing the dilemma in which they now found themselves:

During the first week the more conservative elements in the tribe were in the foreground, showing naturally a hesitation to accept consolidation of interests in the fullest sense, and a disposition to magnify sentimental attachment to old time kaingas (now practically abandoned) in preference to laying out new farming areas in accord with modern ideas of land settlement. Later the progressive elements emerged and their acquiescence in the multitudinous details of this vast scheme and the assistance they gladly rendered facilitated our work very considerably.²⁵⁵

Elsewhere in his report, Balneavis revealed that the differing views among the people were the result not only of huge difficulties in coming to terms with giving up land with which they had ancestral connections but also of accepting that all the title processes since 1899 had been wasted:

The abolition of existing Native land titles and tribal boundaries, and the substitution of Land Transfer titles for defined sections, sounded revolutionary enough to the Ureweras. It meant to them that the land-marks settled after generations of quarrel and bloodshed and later of protracted litigation were to be wiped out. Their expressive way of stating the position was that the titles were to be "whakamoana-ed" (literally, put out to sea). But it was explained that in practice the non-sellers would be allocated to existing blocks at the approximate areas and values obtaining for these blocks, but that on actual definition by survey the lines of the magnetic surveys would be disregarded in favour of fencing lines,

254. Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 11

255. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 183-184)

and boundaries more in accord with settlement conditions. This interpretation they readily acquiesced in.²⁵⁶

Maori owners were once again faced with the bind that had confronted them since it had become apparent that, given Crown actions, the UDNR Act would not live up to expectations. While they lamented what was essentially the loss of many years' hard work to achieve those titles, and the hoped-for block management by owners that had not been delivered for them, they were also aware that this system had been undermined and they were now faced with the necessity of re-organising their remaining land as best they could. The consolidation groups they formed were their attempt at a compromise. From the Crown's perspective, the Reserve titles were now obsolete. The titles that emerged from the consolidation process were seen as modern, as Coates explained shortly before the Taurarau hui: 'the underlying principle of consolidation of interests is the extinction of existing titles and the substitution of another form of title which knows no more of ancestral rights to particular portions of the land.'²⁵⁷ Mr Nikora also rightly observed, however, that 'it is wrong to presume, as other researchers do, that hapu were dispossessed by the UCS – the hapu had already been dispossessed by the [failure of the] UDNR.'²⁵⁸

There were some positive aspects to the 'informal' manner of the proceedings adopted at the hui. Tribal leaders had organised their people into consolidation groups without any outside interference. Carr also pointed to what he saw as the 'advantages gained by the mode of procedure adopted'. Much time was saved compared to the Native Land Court: 1061 succession orders were made quickly and efficiently. In total, Carr estimated that the court would have taken anywhere between three to four months to complete this process, rather than three weeks, and at much greater expense. Carr also considered it a positive that Maori owners were given the opportunity to organise themselves into consolidation groups, whereas the court might have taken up to four months to achieve the same. 'The informal Commission made its proceedings quite informal so as to get into direct touch with the representatives and leading men, dispensed with intermediaries, conductors and lawyers, and ran as it were with the mood of the people. It was wonderful to see how they responded.'²⁵⁹ If there was ever an example in favour of Maori owners being allowed to organise their own holdings, this was it.

But Carr also presented the informal nature of the proceedings in terms of the outcomes that favoured the Crown. He listed a series of outcomes that the Crown achieved through the form of the negotiations: 100,000 acres of land that could be made available to the

256. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p188)

257. Coates to Guthrie, 12 July 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p146)

258. Nikora, 'The Urewera Consolidation Scheme' (doc E7), p13

259. Carr to Coates, 20 September 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp195, 198)

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Crown immediately; ‘practically all of the millable timber area’ in the Te Whaiti blocks; the acquisition of the Waikaremoana block; and a contribution from Maori owners towards the construction of the roads and the survey of their new blocks.²⁶⁰ In concluding his report, Carr summarised the overall success of the hui for the Crown:

I am sure that the method adopted in carrying out the Urewera Consolidation Scheme has saved a great deal of money and certainly a great deal of time, which from the stand-point of the present Government investment in Urewera lands should also spell a large sum of money.²⁶¹

It was understandable that Carr would present the hui in these terms in his report to the Government, but this was also the outcome that Ministers hoped to achieve when they decided to adopt informal proceedings. We are certain, however, that the Maori owners also appreciated a swift and relatively inexpensive process, significant parts of which were under their own control.

Crown counsel suggested that the concessions made to Maori owners in the northern blocks are ‘evidence of the robustness of the negotiations’. Counsel cited the following comment from Balneavis as evidence of its intentions: ‘Mr Knight has met the Maoris in a very fair spirit, being prepared to make ample reservations around their main settlements.’²⁶² But while it is true that Maori owners achieved some concessions from the Crown during the negotiations, we think that the Maori owners were on the back foot at Taurarau, responding to the proposals of the largest shareholder (the Crown) without adequate information or professional advice at their disposal. This was not, according to Mr Nikora’s principles for a sound consolidation scheme, how it was supposed to happen.

Balneavis recorded that, during the hui, ‘it was found necessary to recognise certain Maori occupations’ in these northern areas, notably additions of 3,000 acres in the Tauwharemanuka block and 6,000 acres in the Paraeroa block. These changes were probably signalled by the owners’ committee, with the details worked out later in the hui. Other areas ‘required detailed investigation’, and were ‘therefore left to the special tribunal or special officers which are the subject of a recommendation later in this report.’²⁶³

It is significant that it was in these northern lands that some of the most substantial adjustments occurred during the next (implementation) phase. While we would not expect the hui to have achieved complete finality as to the details of the locations of the new blocks, it is likely that more accurate outcomes would have been reached earlier had Maori owners

260. Carr to Coates, 20 September 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 198)

261. Carr to Coates, 20 September 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 199)

262. Crown counsel, closing submissions (doc N20), topics 18–26, pp 15, 23

263. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 186–187)

been given a sufficient opportunity to develop their own objectives at the beginning of the process, rather than being forced to respond to a series of Crown proposals with relatively limited information to hand. Nonetheless, there was some genuine give and take at Tauarau, as Coates had envisaged, and – at the end of the day – the Crown could not move forward without the committee of owners’ consent to the scheme. This gave at least some bargaining power; power that was to be sorely missed in the next phase of the scheme, when the Crown, as we shall see, assumed the full and absolute authority to make all further decisions.

Before we begin our discussion of this implementation phase, however, we must first consider the separate arrangements negotiated with the owners of Te Whaiti.

(3) *The arrangements for a separate scheme in Te Whaiti*

In early August 1921, after the committee had completed its deliberations, Ngata joined Ngati Whare and Ngati Manawa leaders to make preliminary arrangements for the consolidation of interests and the division of land in the Te Whaiti blocks. The Crown had asked for the ‘complete award’ of Te Whaiti 1 and 2, except for a few ‘small reservations.’²⁶⁴ By July 1921, the original owners of the blocks – Ngati Whare and Ngati Manawa – still held interests to the equivalent of 12,437 acres, or 17.4 per cent. This was lower than the average remaining interests in rest of the Reserve, and Ngati Whare and Ngati Manawa would have been deeply dissatisfied had the process of consolidation reduced their remaining land further. Ngati Whare leaders, in particular, had been campaigning for a partition of their interests for some time. It is likely that the Tauarau committee pressed this view on Knight, given that Ngati Whare and Ngati Manawa leaders were members of the committee. Balneavis also reported that a review of Bowler’s lists of ‘non-sellers’ showed that Ngati Whare and Ngati Manawa owners of Te Whaiti 1 and 2, Maraetahia, Otairi, and Tawhiuau blocks were not owners in other Reserve blocks. ‘The Ngati-Manawa and Ngati-Whare, who own the blocks in question, may be regarded as tribes apart from the Urewera [Tuhoe].’ It was decided, he said, ‘to deal with them specially.’²⁶⁵

Ngata assisted the Ngati Whare and Ngati Manawa owners to organise themselves into consolidation groups within a couple of days. Ten groups were formed for the Te Whaiti 1 block, and another group for Te Whaiti 2. Two groups of Ngati Manawa owners had already negotiated with Knight to exchange their interests in Te Whaiti 2 for Crown-owned land in the Whirinaki block, and Ngata confirmed these arrangements. On 6 August, Ngata updated Knight on the outcome of his discussions with the owners, including suggestions about where the other groups might locate their interests. Although possible locations had yet to be determined, Ngata said that apart from a few exceptions most groups would

264. Knight, Carr, and Balneavis, 31 October 1921, AJHR 1921, G-7, p 4

265. Balneavis to Coates, 21 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 185)

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probably 'ask for sections at Te Whaiti and one section each in the larger area'.²⁶⁶ Although he did not specify where this 'larger area' was, he likely referred to what became the large 'Te Whaiti Residue' area in the north-west of Te Whaiti 1, where over a third of the interests were eventually located.

Knight travelled to Te Whaiti later in August to arrange where the Maori-owned blocks would be located. According to Balneavis, 'an arrangement was arrived at satisfactory to the Crown and the Natives'; beyond that, little is known about how any decisions were reached. But Balneavis did indicate the rough areas where owners would take their interests: to the south, a section of 1,500 acres in Te Whaiti 2, and two sections of Crown land in the Whirinaki block; to the north, 1,800 acres around the main kainga in Te Whaiti 1, and another block to the north-west of Te Whaiti 1.²⁶⁷ This last block again most likely referred to the residue area.

Knight seems to have believed that he had achieved final decisions regarding the location of this land. When he later returned to Te Whaiti in the position of Consolidation commissioner (as we will explain later in this section), he refused to authorise requests from owners which he believed deviated from the original arrangement. But the Ngati Whare owners, in particular, had emerged from the discussions with the understanding that Balneavis recorded in his August 1921 report to his Minister: 'details as to location, actual area of non-sellers award, proportion of roading contribution and assessment of cost of survey, require to be worked out after a topographical survey and an enquiry to be conducted at Te Whaiti by a Special tribunal or specially empowered officials'.²⁶⁸ They later made requests to the Consolidation commissioners accordingly, mainly relating to land around their main settlement; many of those requests were refused.

Knight set out to achieve specific results in the Te Whaiti lands in accordance with his brief. The Crown had commenced its purchasing operations in the Te Whaiti blocks with the definite intention of acquiring the timber-rich lands in Te Whaiti 2. Ngata revealed as much when he told Knight about the results of his preliminary investigation on 6 August: the amount of land that had been earmarked for award in Te Whaiti 2 – 1,500 acres – was 'slightly above the area agreed upon in our conversation yesterday'.²⁶⁹ And although Ngata had been successful in overseeing the transfer of some interests out of Te Whaiti 2 or marking their owners as 'probable sellers', many of these interests went into Te Whaiti 1, in effect replacing those who had taken their interests to other blocks. The aim, Ngata revealed, was to reduce the interests of Ngati Whare and Ngati Manawa owners in the Te Whaiti blocks

266. Ngata to Knight, 6 August 1921 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930', various dates (doc A86(g)), pp 2281–2282)

267. Balneavis to Coates, 21 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 185)

268. Balneavis to Coates, 21 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 185)

269. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 209

as much as possible. It seems clear that in this instance, Ngata saw himself at least in part as working to achieve the Crown's objectives – he was no longer acting simply for the owners as he had at Tauarau. In order to assist this process, Bowler continued purchasing in the blocks. This was in direct contravention of Coates' instruction, but presumably accorded with the standards of acceptable purchasing set down by Knight. By mid-September, he reported the purchase of the equivalent of a further 1,014 acres, thus further undermining one of the key promises made to Maori owners on entering the scheme.²⁷⁰

It is possible that in an attempt to minimise the impact of remaining Ngati Whare and Ngati Manawa interests on the Crown's plans for the Te Whaiti blocks, Knight insisted on locating as many of those interests as possible in what became the 'Te Whaiti Residue' block, located in the northern end of Te Whaiti 1. In consolidation schemes, the term 'residue' was usually used to indicate a set of interests that were placed together on an interim basis until owners selected land where those interests could be taken. But given many owners did make later requests for changes, and specifically expressed their discontent at the location of the residue block, its location appears to have been at the Crown's insistence. Yet, many owners had pooled their interests from the Otairi, Maraetahia, and Tawhiuau blocks in an attempt to concentrate their holdings around their main settlement, many of which were then placed in the Residue block. One of the consequences of this was the loss of the ancestral maunga, Tawhiuau, which was located in the Tawhiuau block. Counsel for Ngati Manawa pointed to this loss as one of the clear effects of the scheme: 'this was and is Ngati Manawa's sacred maunga.'²⁷¹ This is a prime example of the choices Maori owners had to make in the course of the scheme: in most cases, they chose to concentrate their interests at their existing settlements, sacrificing places of ancestral importance, unless they could secure those places later from the commissioners as a reserve. As a result, the Crown emerged as sole owner of the Otairi, Maraetahia, and Tawhiuau blocks.

Counsel for Ngati Whare submitted that 'the Crown failed to adequately consult with Ngati Whare about the Urewera Consolidation Scheme.'²⁷² A lack of consultation does not adequately capture what occurred at Te Whaiti in this early stage of the process, the consequences of which were played out during the implementation of scheme. From the Crown's perspective, the outcome of proceedings at Te Whaiti lands showed the advantage of embarking on an 'informal' process. Carr trumpeted the Crown's acquisition of 'practically all the millable timber area' in the Te Whaiti blocks as one of the best results achieved through the informal style of negotiations.²⁷³ From our perspective, it shows the risks involved for Maori owners when even their honest broker – in this case Ngata – seems to have been working not entirely in their interests.

270. Bowler to Carr, 12 September 1921 (Webster, 'The Urewera Consolidation Scheme' (doc D8), p 705)

271. Counsel for Ngati Manawa, closing submissions, 2 June 2005 (doc N12), p 57

272. Counsel for Ngati Whare, closing submissions (doc N16), p 79

273. Carr to Coates, 20 September 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 198)

(4) *Legislating the outcomes of the Taurarau hui*

It was not until after the Taurarau hui had finished that officials identified the need for special legislation to implement the Taurarau arrangements. This was for two reasons: the outcomes of the hui were not as ‘final’ as initially hoped and, in fact, existing statutory provisions did not allow for a consolidation scheme that resulted in an award of land to the Crown. As both Balneavis and Carr explained in their reports, the complexity of the consolidation and land division process meant that a further process of deliberation would be required; this much should have been obvious before the Taurarau hui. But it was not until Balneavis wrote his report shortly after the hui that this requirement was identified for the first time. He recommended that ‘a special tribunal or special officers be appointed to carry out the details of the arrangements made between the Crown and the Natives, and I think Mr Knight and Mr Carr should be selected for the work.’²⁷⁴ This ‘special tribunal’ was necessary, he explained, because a large number of the ‘details’ of the land division in the northern lands and in Te Whaiti had been arranged on a preliminary basis, but had yet to be confirmed.

On top of this, officials discovered that the scheme could not be carried out under existing legislation. Until that time, it had been assumed that the decisions emerging from the hui, though conducted informally, could then be authorised by the Native Land Court. But Carr explained in his September 1921 report that the nature of the Crown’s purchasing in the former Reserve meant that the Urewera Consolidation Scheme would require its own Act:

In the first place the Court would not have had jurisdiction, as there is no power to include the undivided interests acquired by the Crown in any Consolidation Scheme. It would have been necessary to wait a few months for legislation to confer jurisdiction. Such a delay would have involved the piling up of interest charges on the £193,000 odd spent by the Government in the purchase of Urewera Lands.²⁷⁵

In other words, officials suddenly discovered that legislation only allowed for consolidation schemes involving the interests of Maori owners, not the Crown; a fact which they should have been aware of before embarking on the negotiations.

Faced with the prospect of amending the existing legislation, Knight, Carr, and Balneavis set about preparing a report which summarised the Taurarau negotiation and its outcomes, including the recommendation for a ‘special tribunal’ to implement the scheme under new legislation. The Consolidation Scheme Report – submitted to Coates and Guthrie on 31 October – speaks plainly of the Crown’s key objectives in approaching the negotiations at the Taurarau hui, and the outcomes that were thought to have been achieved. The report

²⁷⁴. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 190)

²⁷⁵. Carr to Coates, 20 September 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 195)

begins with a summary of the Crown's involvement in Te Urewera since the passing of the UDNR Act, the failure of which was put down to the large volume of appeals lodged against the awards, and the 'large section of the Ureweras, led by Rua Kenana, [who] . . . demanded that some of the lands should be sold to the Crown.' The need for a consolidation scheme arose in this context. 'It became necessary to concentrate attention on the problem of how best to dis sever the Crown from the Native interests without the intrusion of the latter into the Crown's sphere of settlement prejudicing a comprehensive scheme of roading and cutting-up[,] and the reservation of forest and watershed areas.' The Government had rejected other options, such as acquiring the remaining interests by compulsion or seeking a partition through the Native Land Court.

The report then set out the process by which the hui was conducted and a summary of the outcomes, followed by a recommendation for the 'proposed legislation.' This involved first repealing 'all existing legislation relating to the Urewera Native District Reserve.' The officials specifically noted that this would result in the 'abolition of the Local Committees and of the General Committee' but suggested that 'the majority of the Ureweras are opposed to their continuance.' They also recommended the appointment of 'special officers' to carry out the draft scheme outlined in the Report. These officers would have the power to amend any details of the proposed scheme, including 'proposals for the location of the area that any group may be found entitled to.' Any matter of dispute, whether between the 'special officers' or between the officers and the Maori owners, would be referred to the Chief Judge of the Native Land Court for resolution. In other words, the Maori owners would have a right of appeal to an external arbiter, if not the arbiter of their choice. The Chief Judge's decision was to be final. Importantly, the officials recommended appeals to the Chief Judge alone and not to the Native Appellate Court, which could have sat with Maori assessors to consider any appeals.

In concluding the report, the authors noted the advantages that the Crown had derived in 'the carrying-out of negotiations in an informal way, unhampered by legislative and other restrictions':

The ordinary machinery of the Courts would have been at a serious disadvantage. A Court, acting judicially under statute, could not have conducted negotiations such as resulted in the acquisition of the Waikaremoana forest area, or the settlement of the Te Whaiti Blocks, where the Crown's objective was the large area of valuable milling-timber. Its own rules would have caused delays and adjournments at a time when the fullest advantage had to be taken of the complete representation of all non-sellers' interests at one place.

While Maori owners would derive benefits from the scheme – in the form of 'sections, ready surveyed and accessible by or handy to arterial roads', and land titles that would be 'as far advanced as the best Native titles in any part of the Dominion' – the officials emphasised

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the benefits won by the Crown when ‘unhampered’ by legislation or due process. There is a definite implication in the report that the Crown would not have done quite so well in the Native Land Court, had that Court supervised the division of lands between the co-owners in the Reserve.²⁷⁶

Although the recommendations outlined in the report had yet to be tabled in Parliament, or the required legislation passed, the Government proceeded on the basis that they would be approved. Coates informed the incoming Under-Secretary for the Native Department, R N Jones, in early November 1921 that the report’s recommendations had been approved by Cabinet and that Chief Judge Browne of the Native Land Court had been instructed to draft the necessary legislation. He said that Knight and Carr would be appointed as the ‘special officers’ and that they should be ‘empowered to employ such experts and other assistance they may require, including the making of topographical surveys necessary for the settlement and location of disputed sections.’²⁷⁷ And when Coates tabled the report in Parliament on 14 December, he repeated that ‘although the work that has been done has not been legalized – legislation being necessary and essential to legalize it’, work was going on to formalise the arrangements regardless.²⁷⁸

The terms of the Urewera Lands Act 1921–22 – as it became when it passed its third reading in February 1922 – reflected the Crown’s long-term objectives for purchasing in the Reserve. The long title of the Act was given as: ‘An Act to facilitate the Settlement of the Lands in the Urewera District’. Although such ‘settlement’ included Maori owners, the process by which the land division would be implemented meant that the Crown would obtain its land first. Section 2 confirmed that all purchases made by the Crown were valid. Section 4 allowed for the appointment of the commissioners. Because there were two (co-equal) commissioners, section 4 provided for them to refer any disagreement between themselves to the Chief Judge of the Native Land Court for resolution. This was an important departure from the draft scheme in the Consolidation Scheme Report, which had also provided for disagreements between the commissioners and the Maori owners to be referred to the Chief Judge. Under the Act, however, the commission represented one co-owner in the Reserve (the Crown) but provided no representation for the Maori owners, yet gave the latter no right of appeal from its decisions. This was further than even Knight had been prepared to go.

Section 5 of the Act said that the commissioners should proceed ‘with all convenient speed’ to identify the Crown’s award, and make orders accordingly. The commissioners would be the ‘sole judges of the location and boundaries of the portions so awarded to the Crown, but shall, in fixing any boundary, consult so far as practicable the wishes and

276. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, pp2–7

277. Coates to Native Under-Secretary, 11 November 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 205)

278. Coates, 14 December 1921, NZPD, 1921, vol192, pp1110–1111

convenience of the Natives'. Land would be allotted to Maori owners only after 'providing for the portion of land to be allotted to the Crown'.

In short, the Act expected that the commissioners would follow the draft scheme set out in the report, as negotiated at the hui, but that in practice the Crown would receive its land first. Ngata commented on the potential dangers of this approach in his memorandum attached to the Consolidation Scheme Report, recommending the process of land division to occur 'pari passu' – a Latin phrase meaning that one action should take place on an 'equal footing' with another.

It would be a breach of the spirit of the negotiations so successfully conducted if the Crown, on whom the responsibility for surveying and roading has been thrown, were to complete its own titles first and place settlers on the areas awarded to it, leaving Native claims in the air.²⁷⁹

Later in this section we explain how the commissioners had already begun their hearings by the time the Act was passed in February 1922, and had established a process for laying out the blocks which increasingly departed from that outlined in the Act. Nevertheless, the Act itself clearly signalled that the commissioners were to prioritise the Crown's award ahead of the Maori owners', a process that Ngata had advised against before the passing of the Act.

While we might consider that it was understandable for the Crown to proceed straight from the negotiations to legislation, especially given the need to deliver the scheme's promises as quickly as possible, Maori owners were never given the opportunity to understand the full significance of the report and its recommendations or to provide any input on how their titles would be determined. According to Mr Nikora's principles for a sound consolidation scheme, the draft scheme would normally be referred to the owners at this point for their detailed scrutiny and approval, along with up-to-date valuations (including those of any improvements on the land). Yet no aspect of a process for implementing the outcomes of the Tauarau hui had come up for discussion during that hui. As a consequence, Maori owners came away from it with no understanding of how they were actually to receive title to their land; nor were they given the opportunity to influence the shape of this process.

To make matters worse, they did not receive the printed report until early January 1922, and then only in English. The consequences of this could be seen immediately. Some Maori owners in the northern lands voiced their concerns about the outcomes of the hui to surveyor HD Armit, who had arrived in Te Urewera in late 1921 to begin preparing topographic plans of the area. Armit brought with him the lithographic plan that was prepared after the Tauarau hui showing the proposed location of the Crown and Maori awards. He noted that 'several Natives have approached me and I promised to enquire if the plan produced shews

279. Apirana Ngata, memorandum, AJHR, 1921, G-7, p 7

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the correct position'. Two owners in particular, he said, had told him that the plan showed their paddocks, homes and cultivations as part of the area to be awarded to the Crown.²⁸⁰

In keeping with such concerns, Te Pouwhare Te Roau told the commissioners (when they sat at Ruatoki in January 1922) that surveys should not go ahead until they were satisfied that 'fears as to locations, groupings etc. were groundless: they had only just seen the printed reports and that there were matters therein that required enlightenment'.²⁸¹ But the report did little to enlighten owners. At the commission's first sitting at Waikaremoana in February 1922, Ngati Ruapani strongly voiced their inability to understand the report that had suddenly appeared in front of them: 'all present complained of the report being printed in English only'.²⁸² The report was not printed in te reo Maori for another year, and only after complaints such as this had been made. Even then, its complex terms and the way it was intended to operate alongside the Urewera Lands Act may have remained opaque to Maori owners.

The Crown argued that a relative lack of protest from Maori owners in the wake of the Tauarau hui and during the scheme's implementation 'suggests support by a large section of Urewera Maori because of the prospective benefits of such a scheme'.²⁸³ For the most part, however, Maori owners were not in a position to offer any significant protest because they did not know what to protest against. The complaints that did emerge reveal the owners' inability to understand the terms of the scheme, based on the information they had received at the hui and their slow access to the relevant documents setting out the terms of the scheme, which when they arrived were largely impenetrable.

The first petition against the scheme, submitted by Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori on 5 October 1921, showed some confusion following the Tauarau hui, even before the Consolidation Scheme Report was published.²⁸⁴ The petitioners objected to paying for half of the cost of constructing the arterial roads, whereas in fact this had been reduced to £20,000 on discussion with Apirana Ngata. Wharepouri repeated his protest and raised others when the commission arrived at Ruatahuna at the end of February 1922, after they had received the report. 'Tuhoe objected to £32,000 being contributed towards roading'. Although the report stated that £20,000 would be the total contribution, it also included Knight's original proposal, which was possibly a source of continued confusion. Wharepouri also noted their objections to the payment of rates and survey costs, which he was recorded as saying was 'not discussed at Ruatoki'.²⁸⁵

280. Armit to Chief Surveyor, 8 December 1921 (quoted in Robertson, 'Te Urewera Surveys' (doc A120), pp 123–124). The two owners were Taupae Karaka (in the Parekohe block) and Moutu Hakaipara (in the Omahuru block).

281. Urewera minute book 1, 19 January 1921 (doc M29), p 9

282. O'Malley, 'Waikaremoana' (doc A50), p 107

283. Crown counsel, closing submissions (doc N20), topics 18–26, p 21

284. Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori to Parliament, 5 October 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 201–202)

285. Urewera minute book 1 (doc M29), p 31

As we explain later in the chapter, although some Maori owners appear to have been persuaded of the need to pay for the new surveys in land, the exact form and extent of survey costs were not raised – let alone settled – at the hui. The report would have clarified for them the form of the takings from each block, but not the extent of land that would be taken, which did not become clear until the commission began determining the location of each block. The application of rates upon the completion of the roading scheme was another matter introduced into the report and the Act, but featured in none of the Crown's proposals or negotiations at Tauarau. On this basis, Maori owners were hardly in a position to signal any opposition. The determined efforts of some Ruatahuna peoples to oppose the scheme originated from their earlier opposition to Crown purchasing; an opposition which only strengthened when the Consolidation commissioners arrived at Ruatahuna in 1922 and they had little idea of what the commissioners were authorised to achieve. Others continued to offer their support for the scheme on the understanding that the Crown would deliver the promises that had been made to them: security in their remaining land and arterial roads to assist their economic development.

14.6.3 How much land was included in the Urewera Consolidation Scheme and was the process of exchange transparent?

Although the Consolidation Scheme Report and the Urewera Lands Act 1921–22 set out to define the scope of the scheme, many crucial facts were never spelled out. No figure was ever given for the total size of the scheme in acre terms, which was less than the 656,000 acres of the Reserve, but more than the 518,329 acres of the 44 blocks in which the Crown had purchased interests, with the further addition of some small pieces of Crown land from outside the former Reserve. In all of the documents relating to the scheme – from its inception in 1921 to its conclusion in 1927 – the total figure was never disclosed.

There was also no figure in any of the records that disclosed the full relative interests of the Crown and Maori owners before the scheme began or even after the final awards were made. Although the report gave the relative interests for the 44 Reserve blocks in which the Crown had purchased interests as at 31 July 1921, this did not accurately reflect the total interests after the addition of the Waikaremoana block and small areas of land outside the Reserve. Given these facts, it was unlikely that Maori owners would ever have been able to understand the basic machinery of the scheme. We agree with Mr Nikora that the scheme 'was not transparent and even today defies comprehension.'²⁸⁶ Nevertheless, it is important for the purposes of our investigation to attempt a reconstruction of the scheme's parameters. This is because the Crown's case rested on the assertion that the process of exchange in the scheme was sound, based on open and accountable record keeping.²⁸⁷

²⁸⁶ Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 13

²⁸⁷ Crown counsel, closing submissions (doc N20), topics 18–26, p 52

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By our calculations, the scheme consisted of approximately 600,000 acres. This was made up of 45 Reserve blocks, including the Waikaremoana block, in which the Crown had not purchased any interests. It also included the four Tuhoe and Ngati Ruapani reserves in the Taramarama and Tukurangi blocks to the south of Lake Waikaremoana; and Hereheretau B2 and Oamaru 1C blocks. The Consolidation Scheme Report made no attempt to add the total amount of land together, and nor was there a final statement comparing the original figures with the final awards. Our assessment of the scheme's total size is based on comparing how much land entered the scheme with how much land was awarded. Both figures rely on quite different sets of information: one uses the old Reserve blocks, the other uses the new UCS blocks; both of which were surveyed according to different methods. It is unsurprising that they do not match exactly. Even so, such a comparison provides a good basis for establishing how much land was in the scheme.

- ▶ The total size of the Reserve blocks and other land included in the scheme is 599,564 acres.
- ▶ The total size of the same land at the end of the scheme – which consisted of the Crown's award, the new Maori-owned blocks, and the small amounts of land included in the scheme from outside the Reserve and awarded variously to the Crown and Maori owners – is 598,692 acres.

The discrepancy of 872 acres might have been brought about by the increased accuracy of the new surveys, thus shrinking the size of the land in the order of 1.5 per cent from its pre-scheme equivalent. It is equally possible, however, that some land was never properly accounted for, particularly in the Crown's award of 482,300 acres.

While it is important to know how much land was included in the scheme, the basis of the consolidation process was not the land itself but rather the relative interests of the Crown and Maori owners respectively. The total value of these interests was based on the valuation of each of the blocks included in the scheme. As part of the first proposal to Maori owners at the Tauarau hui, Knight presented the relative interests of the Crown and Maori owners (in total) in the 44 Reserve blocks that had been subject to purchase. The Crown had purchased interests to the value of £193,076 4s 11d, which – given the value of those particular blocks – was the equivalent of 345,076 acres. Maori owners retained interests to the value of £78,479 15s, which was the equivalent of 173,252 acres.²⁸⁸ During the Tauarau hui, the number of remaining interests belonging to each individual was calculated; these interests were then combined as part of larger consolidation groups.

With these interests as the basis of the consolidation process, Maori owners and the Crown could be awarded more or less land than the equivalent amount each had taken into the scheme, depending on the valuation of the block they were moving from as compared to the block into which they were moving. If the Crown or a group of Maori owners

288. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 3

Scenario 1 – Based on the Reserve block figures

Land	Acres
45 Reserve blocks included in the scheme	591,996
Four southern block reserves	2,498
Hereheretau B2	256
Oamaru 1C	4,814
Total	599,564

Scenario 2 – Based on the final awards

Land	Acres
Crown award	482,300
Maori owner awards	106,287
Waikaremoana block reserves	607
Road reserves	1,930
Four southern block reserves	2,498
Hereheretau B2	256
Oamaru 1C	4,814
Total	598,692

Table 14.6: Area of the Urewera Consolidation Scheme

Source: Knight, Carr, and Balneavis, 'Report on Proposed Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 4–5; 'Proclaiming Native Land to be Vested in His Majesty under Section 368 of the Native Land Act, 1909', 14 February 1924, *New Zealand Gazette*, 1924, no 9, pp 488–489; 'Proclaiming Native Land to Have Become Crown Land', 23 June 1927, *New Zealand Gazette*, 1927, no 43, p 2121; 'Proclaiming Road-lines Laid Out through the Urewera Reserve, Auckland and Gisborne Land Districts', 17 July 1930, *New Zealand Gazette*, 1930, no 52, p 2194; Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476); Urewera minute book 1, 9 March 1923 (doc M29), p 320

took their interests in land with a higher value than the land in which those interests were held on entering the scheme, the amount of land they were to be awarded would be less in acre terms. The opposite also applied: transferring interests into land with a lower valuation meant more land. The number of owner interests at the beginning and the end of the scheme, however, had to stay the same.

It was the complexities of this process of exchange that accounts for the 'windfall' of land that Steven Webster argued was acquired by the Crown during the course of the scheme. Webster claimed that in increasing its interests from the equivalent of 345,076 acres before the scheme to its final award of 482,300 acres, the Crown unfairly acquired an extra 46,101 acres. He came to this theory initially because he was unable to account for the additional land the Crown acquired during the scheme; and nothing was contained in the records of the scheme to explain the extra acquisition. The difference between the pre- and post-scheme figures was 137,224 acres: of this, Webster claimed he could only account for 91,123 acres, which was made up of a combination of survey and roading deductions, further

Crown purchases, and other Crown acquisitions. The Crown's 'windfall', Webster reasoned, was likely explained by earlier surveying errors: when the land was re-surveyed during the scheme, more acres were discovered than had been previously been unaccounted for, which were then included in the Crown's award.²⁸⁹ Counsel for Wai 36 Tuhoe supported Webster's finding, saying that the 'shambolic' record keeping in the scheme resulted in a 46,000 acre windfall to the Crown.²⁹⁰ The Crown cautiously advised that 'this matter is so significant it should be pursued by the Tribunal', noting that it had not examined the claim in depth.²⁹¹

In our view, the Crown's acquisition of this land can be explained by a combination of the impact of the Waikaremoana block transaction and the normal process of exchange of interests in consolidation schemes. Later in this chapter, we will discuss the circumstances surrounding the Crown's acquisition of the Waikaremoana block, which began during the process of the Tauarau negotiations. For now, it is sufficient to note that the result of these negotiations was that the block in its entirety (73,667 acres, minus 607 acres for reserves) was earmarked for award to the Crown. This was not factored into Webster's calculations. As noted above, the interests of Tuhoe owners (valued at £8,696, the equivalent of 29,060 acres) were transferred into consolidation groups who located their interests in other areas of the former Reserve. The remaining interests of Ngati Ruapani and Ngati Kahungunu owners (valued at £13,400, the equivalent of 44,607 acres) were transferred out of the scheme to be taken as a combination of cash, debentures, and land.²⁹² The Crown therefore put this part of the Waikaremoana block directly into its award, and did not have to compensate for it in other areas of the scheme.

What appeared to be a 'windfall' can be explained by the division of land at the Tauarau hui after these Tuhoe interests were transferred out of Waikaremoana to various consolidation groups. The obstacle in demonstrating this point is that the additional Tuhoe interests were never recorded on a total proportional basis between Maori owners and the Crown in the main part of the Consolidation Scheme Report. But they were included in the list of consolidation groups and their locations contained in Schedule 2 of the report; that, and other evidence,²⁹³ shows how the Tuhoe interests were spread around a variety of areas, many of which had a higher valuation than the Waikaremoana block and thus resulted in a smaller acreage. Further movements during the implementation phase followed this trend, particularly when groups took their interests from Ruatahuna to the northern blocks. Over the course of the scheme, these movements meant that while the total value of Maori interests remained steady at around £87,000, the amount of equivalent land tracked downwards from 202,313 acres (after the inclusion of the Waikaremoana block) to 183,398 acres

289. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 596–606

290. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 107

291. Crown counsel, closing submissions (doc N20), topics 18–26, p 51

292. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

293. These were, namely, the books that recorded the movements of individual interests into groups during the Tauarau hui.

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	Acres
Additional land taken by Crown during consolidation scheme	137,224
Less:	
1. Survey costs	32,368
2. Roothing costs	39,355
3. Crown reserves (Webster's estimate)	3,000
4. Land purchased (Webster's estimate)	10,000
5. Land 'falsely purchased' in Waikaremoana block (Webster's estimate)	4,000
6. Excess deductions from Apitihana block	2,400
	91,123
Total identified deductions from Tuhoe allocations	91,123
Balance of Crown award still unidentified origin	46,101

Table 14.7: Steven Webster's calculations in support of a Crown 'windfall'

Source: Webster, 'The Urewera Consolidation Scheme' (doc 08), p 600

(after the Tuhoe interests from that block had been distributed around other areas), and finally to 176,488 acres (after further changes during the implementation phase, and taking into account ongoing purchases by the Crown). (These figures are set out in more detail in appendix IV.)

While these changes are too complex for us to track across the whole of the scheme, we believe that they account for the area of land Webster was unable to identify. The Crown acquired approximately 20,000 acres from this process, which was nearly equivalent to the amount of additional interests Tuhoe owners took from the Waikaremoana block. Ordinarily, the added interests would need to have been offset by land elsewhere in the scheme. But, as Tuhoe owners gradually moved into more valuable land, the Crown acquired proportionately more land.

The extra land the Crown acquired during the course of the scheme, therefore, can be accounted for through five distinct elements:

- ▶ Approximately 20,000 acres through the transfer of interests between high and low value land.
- ▶ The additional purchase of interests from Maori owners during the implementation of the scheme, the equivalent of 5,976 acres (see below).
- ▶ The Crown's direct acquisition as part of the Waikaremoana block transaction; 44,000 acres from Ngati Ruapani and Ngati Kahungunu owners.
- ▶ Approximately 31,500 acres for the cost of surveying the Maori-owned blocks.
- ▶ Approximately 40,000 acres for the Maori contribution toward the cost of constructing the arterial roads.

The 137,224-acre difference between the Crown's interests at the end of purchasing and the Crown's final award can roughly be accounted for, but only just and in a way that casts further doubt over the scheme's implementation.

Given the lack of intelligible information about how the scheme worked, it is unsurprising that counsel or commissioned researchers failed to understand how this process occurred. Yet, the Crown maintained that a sound basis of exchange was put in place, which, in its view, was another element of the scheme that contributed to its overall success. Crown counsel submitted:

to ensure an equitable outcome to both Maori and the Crown in the consolidation of their respective interests, the consolidation had to proceed on a common valuation, that is, on a valuation using a common method at a fixed or uniform date or period so that there was a common denominator to ensure equality of exchange across blocks.²⁹⁴

The case of the so-called 'windfall' demonstrates that very little was done to 'ensure equality of exchange' in the scheme. Without transparent record keeping, the outcomes would always be open to question, whether or not the valuations used as the basis of exchange were reliable. The scheme's record keeping was not so much 'shambolic' as inadequate, and insufficient for an undertaking of this magnitude in which owners' property rights were at stake.

While the interests of the Maori owners were translated into penny shares, and recorded in some detail in Schedule 2 of the Consolidation Scheme Report, the Crown's interests were never disclosed. From that point on the scheme proceeded as a one-sided equation: the Crown, by inference, was to receive all the land that was not awarded to Maori owners. As we explain below, this became entrenched as the commissioners departed from the process of awarding blocks to the Crown first, which resulted in a final award to the Crown *after* the Maori-owned blocks had been laid out.

Nonetheless, despite its inadequacies, poor record keeping does not appear to have resulted in significant discrepancies. But given the thousands of acres involved, Mr Nikora observed, the scheme 'should have been the subject of an independent reconciliation and audit in order to assure the owners that their value in the Scheme had been properly accounted for'.²⁹⁵ Instead, the scheme failed on this most basic of elements of a sound consolidation scheme: clear and transparent accounting.

The flaws at the heart of the scheme did not stop with poor record keeping; we also have serious reservations about the Crown's submission that it ensured a reliable 'common denominator' in the valuations it adopted for the scheme. Crown counsel submitted that the 'values were constant as to method and time in the sense that there was no shift

294. Crown counsel, closing submissions (doc N20), topics 18–26, p 52

295. Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 46

(that is to say, no increase or decrease) in values between the respective valuations.²⁹⁶ In the last chapter we explained the various flaws associated with valuations conducted for the Reserve blocks, the great majority of which were made by Wilson and Jordan in their 1915 report. While these so-called valuations were unlawful and unfair, and had not valued any timber except at Te Whaiti – a very material point for the scheme – they were also unreliable. They were, in fact, not ‘valuations’ conducted by trained professionals, but rather assessments of value conducted by Department of Lands and Survey officials for the purposes of establishing a scheme of settlement (with the exception of Burch’s valuations of the Ruatahuna blocks in 1919).

As a basis of exchange in a consolidation scheme, these assessments of value were wholly inadequate. Although Crown counsel is correct to observe that, once adopted, the valuations were stable, in the sense that all owners in the Reserve exchanged in and out of land valued according to the same method, the valuations hardly provided a reasonable guarantee to Maori owners that the proportion of land they would receive for their interests was sound: they had been made by officials who assessed the land for the Crown’s settlement purposes and were by no means reliable.

We also note here that as a basis for fresh acquisitions after 1921, whether by way of new Crown purchases or by deductions for surveys and roading, the common denominator ‘valuations’ were seriously out of date. We will consider this issue in more detail below.

The final flaw in the Crown’s case that it ensured an ‘equality of exchange’ in the scheme was the fact that the Crown continued to purchase interests from Maori owners during the scheme’s implementation. Coates’ 8 August instruction to halt purchasing during the scheme was followed by a confirmation of the policy at the end of September: ‘all further purchases by the Crown are to cease.’²⁹⁷ These instructions were reflected in the terms of the Consolidation Scheme Report, which recommended that alienation should not be allowed during the implementation phase, either to private parties or to the Crown. The logic was obvious: in order for the process of consolidation and exchange of interests to occur successfully, those interests had to remain stable throughout the course of the scheme. But the report also noted that the Crown might have to purchase some interests ‘to adjust a difficulty’, in which case the ‘special officers’ would be authorised to make a recommendation.²⁹⁸ This became normal practice in most consolidation schemes: the Crown would buy land to assist Maori owners in re-organising their interests. As we explain in chapter 20, the main issue surrounding the Ruatoki–Waiohau Consolidation Scheme is why the Crown failed to give back land it had supposedly purchased for that purpose. In the Urewera Consolidation Scheme, the powers for the commissioners to purchase interests were granted in section 10(1) of the Urewera Lands Act 1921–22. The commissioners could certify ‘any sum of money

296. Crown counsel, closing submissions (doc N20), topics 18–26, p 52

297. Coates to Jordan, 30 September 1921 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 469)

298. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 6

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. . . to be paid to any person in connection with the consolidation or exchanges required to carry out the said scheme.' The purchase money would be authorised by the Minister of Finance. In accordance with these provisions, a proclamation was issued under the Native Land Act 1909 preventing alienations to private purchasers. On 30 September 1921, Coates instructed Bowler that 'all further [Urewera] purchases are to cease.'²⁹⁹

Coates said in July 1922 that 'a promise was distinctly made to the Urewera Natives that further purchasing would stop', which was 'the intention when the Act was framed.'³⁰⁰ But it appears that his understanding of the instruction differed from that of his officers on the ground. Although Knight objected to Bowler's relatively small number of purchases at the Tauarau hui, amounting to the equivalent of 331 acres, he offered no objection when it came to the purchase of a further 1,014 acres worth of interests in the Te Whaiti lands. And this was not the end. The way Knight and Carr assisted Maori owners into consolidation groups at the Tauarau hui suggests that, as far as the officials were concerned, purchasing in the scheme would not be limited to adjusting a 'difficulty'. During the hui, some owners were earmarked as 'probable sellers' and placed into special groups of owners that were said to be held in 'suspense'. Maori owners of the Te Whaiti blocks were placed in such groups, although we do not know whether they were aware that their interests had been set aside for purchase in the future. Jordan's November 1919 plan had anticipated an arrangement of this nature: one of the purposes of a consolidation scheme, in his plan, was to expedite further Crown acquisitions through the process of concentrating the interests of Maori owners.

In chapter 16, we discuss the legacy of Jordan's plan in the 1950s, when the Crown attempted to acquire some of the blocks remaining in Maori ownership – which by then were known as 'enclaves' – for addition to the national park. It first took shape during the design phase of the Urewera Consolidation Scheme (through Bowler's purchasing and in the form of 'suspense' groups), which was then followed through by the commissioners during the implementation of the scheme. Although Knight himself had recommended in June 1921 that no further purchasing take place until after the scheme's completion, purchasing continued; even after Coates had cautioned Knight that such purchasing flew in the face of promises made to Maori owners.³⁰¹ Between May 1922 and October 1924, the commissioners purchased the equivalent of 4,604 acres in land that had been earmarked for award to Maori owners in the scheme, in approximately 120 separate purchases. The main concentration of purchases was in Te Whaiti 1 and 2, Hikurangi–Horomanga and Ruatahuna.³⁰² (The

299. Coates to Native Under-Secretary, 30 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 469)

300. Coates to Guthrie, 1 July 1922 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 457)

301. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (A55(b)), p148)

302. These figures are taken from an analysis of purchasing information recorded in the minute books of the Consolidation Commission (Urewera minute book 1 (doc M29); Urewera minute book 2A (doc M30)). Webster concluded that 8,000 acres was purchased during the scheme's implementation but appears to have counted a number of purchases more than once in his analysis. See Webster, 'The Urewera Consolidation Scheme' (doc D8), p374.

equivalent of 1,863 acres was purchased from Ngati Ruapani owners of the Waikaremoana block who were due to receive their payment in the form of debentures at 15 shillings per acre, but instead were paid six shillings per acre. We discuss this separately below.) In addition to the interests Bowler acquired in August and September 1921, the Crown acquired a total of 5,976 acres during the scheme's design and implementation. Below, we discuss how the commissioners approached purchasing in a wide range of blocks.

The Crown has not acknowledged any problems associated with its purchasing activities during the scheme, except that it knowingly paid a price to some owners of the Waikaremoana block lower than that paid to others, and that this was 'unconscionable'.³⁰³ But the number of individual purchases that took place during the scheme suggests they went beyond what was needed to 'adjust a difficulty'. Maori owners entering the scheme did so on the understanding that their remaining land would be secured to them. They could not have confidence in a process that saw the Crown continue to target individuals who were owners in consolidation groups. At heart, ongoing purchasing during the scheme represented a continuation of the Crown's practices begun a decade earlier; despite Coates' statements to the contrary. This was particularly the case in Te Whaiti, where (as we will see below) the commissioners continued to purchase interests with the express intention of increasing the Crown's holdings. In Ruatahuna, purchasing took place to 'weaken the opposition'. Both of these examples cast doubt on the validity of the Crown's purchasing during the scheme. On top of the poor record keeping and the flawed basis of exchange, the very fact that the Crown continued to acquire interests in order to maximise its own award further undermines the idea that a 'common denominator' existed in the scheme, or that the Crown ensured an 'equality of exchange'.

What is certain is that the Urewera Consolidation Scheme proceeded into its implementation phase on shaky foundations.

14.6.4 How did the Consolidation commissioners implement the division of the land?

The Urewera Lands Act 1921–22 gave two Consolidation commissioners specific powers to implement the scheme negotiated at the Tauarau hui. They were, first, authorised to 'allot to the Crown portions of the lands in accordance with the said scheme'. While being the 'sole judges of the location and boundaries' of the Crown's land, they would 'consult so far as practicable the wishes and convenience of the Natives' over the location of their land. All orders made by the commissioners would be final: 'there shall be no appeal therefrom'. As we noted earlier, the draft scheme had provided for Maori owners to appeal to the Chief Judge but this was omitted from the legislation. In this section of the chapter, we look at

303. Crown counsel, closing submissions (doc N20), topics 18–26, p 71

how the commissioners went about their business from 1922 through to the conclusion of their hearings in 1925, and their final award of land in 1927.

Claimants' concerns about this stage of the process centred around the composition of the commission and the broad powers granted to it. These broad powers influenced the way the commissioners implemented the scheme, which the claimants said was harsh and often to the detriment of the Maori owners.³⁰⁴ The Crown, however, denied this was the case: 'With several possible exceptions, the commissioners implemented the scheme in accordance with its principal elements as recorded in the [Consolidation Scheme] report . . . and with enabling legislation.' In the Crown's view, the implementation of the scheme merely followed the main lines set down at the Tauarau hui. The way the commissioners went about their business was 'by and large . . . fair to both Maori and the Crown', the evidence for which was the small number of complaints that the Government received about their decisions.³⁰⁵

In terms of the composition of the commission, counsel for Wai 36 Tuhoe submitted: 'Tuhoe's primary criticism is that no Tuhoe were appointed as Consolidation Commissioners. The commissioners were imposed on Tuhoe without consultation.'³⁰⁶ In addition, counsel suggested that the commissioners who were appointed were neither independent nor impartial; rather, they were architects of the scheme and they favoured the Crown's interests, answering directly to Ministers.³⁰⁷ The Crown's view was that the composition of the commission could have been worse, as Coates had to scotch Bowler's appointment. Knight and Carr, however, were appropriate choices who had been endorsed by Ngata – although the Crown conceded that Ngata may have been reassured by the proposed right of appeal for Maori owners to the Chief Judge, which never made it into the legislation. Crown counsel accepted that the commissioners were not independent of the Crown, nor was their work that of a commission of inquiry. Rather, theirs was an 'administrative' task from which there would not normally be a right of appeal. Overall, the Crown considered that the commissioners acted competently and fairly, although Knight should not have been purchasing interests while he was performing his tasks as a commissioner; this may, counsel conceded, have made him appear less than impartial.³⁰⁸

In many respects, the Crown is justified in its interpretation of the commissioners' activities. The most important decisions, as far as the division of the land and the grouping of Maori owners were concerned, occurred at the Tauarau hui. But the commissioners did also oversee a number of important changes, particularly in the northern blocks and in the Ruatahuna region. As we have noted, the changes they authorised significantly affected approximately 20 per cent of the overall division of land. Yet, the way they dealt with the

304. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 108

305. Crown counsel, closing submissions (doc N20), topics 18–26, p 4

306. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 106

307. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 106–108

308. Crown counsel, closing submissions (doc N20), topics 18–26, pp 35–36

claims of consolidation groups and set boundaries of blocks was also crucial to the division of the land on a small scale, particularly for Maori owners. For only one co-owner – the Crown – to be represented on the commission and to have the final say on all these matters was, of course, a profoundly unfair arrangement. In that respect, we agree with Tuhoe claimants that they should have had equal representation on the commission. Now that the ‘give-and-take’ of a ‘round-the-table conference’ had been replaced by an adjudicative body with the power to make awards, it was important that that body be fairly constituted. Knight, Carr, and Balneavis had originally proposed that the Maori co-owners would at least have a right of appeal from the Crown co-owner’s decisions, but Parliament rejected this safeguard. We return to this point in our Treaty analysis and findings below.

The process followed by the commissioners was not set out in the Urewera Lands Act, but was rather developed over the four years of hearings, and followed roughly the same pattern in each of the nine series of new blocks. On the first day of the hearings, which usually occurred at the main settlements nearest the blocks being laid out, the proceedings would open with a request from a representative of a consolidation group (usually the group leader) for land in a particular area. This request was in line with the general area that had been identified by that group at the Taurarau hui, but with a more specific location. The commissioners would then receive any objections to this request from other groups who were present. If any objections were lodged, the commissioners might revisit that particular case at another time, in order to leave the owners an opportunity to resolve any disputes. In most cases, the owners resolved differences among themselves, or they might have arranged with each other before the hearing where they would make requests for land.³⁰⁹

We have identified at least seven instances in which the commissioners resolved disputes over competing claims, as well as a similar number of boundary disputes.³¹⁰ The commissioners waited for a period before stepping in, except in one case in Ruatahuna where an immediate decision was given.³¹¹ Decisions were not revisited. The commissioners approved compensation for Maori owners who were not awarded land on which they had made improvements, to be paid either by the Crown or by the Maori owners who had been awarded the land. Improvements were valued by surveyors.

Once the commissioners felt satisfied of a group’s proposed location, they would then visit the land with group representatives,³¹² often with a pre-prepared topographic plan, to

309. Webster cited one example, in which group leaders Tari Manihera, Tane Hauraki, and Wiremu Wirihana appeared before the commissioners with an arrangement about their respective groups’ interests would be located, at the Pukareao end of the Tarapounamu series. See Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 571.

310. The seven areas where the Commission made decisions settling disputed requests for locations were Waikirikiri, Paraeroa B, Rangatēpihi flat Oputea, Omakoi, Umuroa, and around Uwhiarae.

311. Urewera minute book 2A (doc M30), pp 140, 156–157

312. See Urewera minute book 1 (doc M29), pp 60, 110, 116, 156, 201, 258, 268, 273, 276, 301, 321–322, 329; Urewera minute book 2A (doc M30), pp 62, 142.

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point out the proposed boundaries.³¹³ This was possibly the first time Maori owners had the opportunity to consider where they would take their land with the benefit of such a plan. The boundaries of these new blocks would then be cut by surveyors, with further assistance from group representatives, taking into account the deductions for the cost of surveying the blocks and for constructing the arterial roads, which we discuss in subsequent sections.³¹⁴ Although alterations could be made to proposed block boundaries and to the constitution of groups of owners up to this time, once a block had been surveyed no further changes were considered.³¹⁵ Once a series had been confirmed, block order awards were drawn up and sent to the Native Land Court in Rotorua for confirmation. (The Chief Judge had to countersign the orders.)

This process played out in different ways in the nine series of Maori-owned blocks that were created during the scheme. Each series had on average a total of 20 to 30 blocks, with a total of 183 blocks (not including reserves) across the whole scheme. The number of owners in each block varied, ranging from one to 283. Over half of the blocks (115) had 10 or fewer owners; the remaining number (95) had more than 10. The commissioners tended to focus on two or three series at a time. A number of areas were revisited several times in order to resolve some of the disputed issues around the location of block boundaries, or simply to process the claims of all the consolidation groups. The commission sat regularly throughout its four-year lifespan, but went into recess over several months in winter, which the commissioners complained had delayed their progress considerably.³¹⁶ But the time taken to process all the blocks was partly because of the requirement to revisit some areas numerous times, and not just because of intermittent hearings. From its first hearing in December 1921 through to its last in July 1925, the commission sat a total of 81 times, each for a period of between a day and a week, and at different locations throughout Te Urewera, but sometimes as far away as Rotorua or Auckland.

(1) The implementation phase in the northern lands

The first set of hearings began in late 1921. The commissioners' initial focus was on the northern lands: the Waimana, Raroa, and Ruatoki series of blocks. The Department of Lands and Survey aimed to prepare the Crown's award in this area for sale as early as possible, and

313. Knight and Carr to Guthrie and Coates, 'Urewera Lands: Report by the Commissioners under the Urewera Lands Act, 1921–22', 6 August 1923, AJHR, 1923, G-7, p2. In one case, in Ruatahuna, proposed boundaries were sketched onto a plan, which was circulated to the group heads for their assent. See Urewera minute book 1 (doc M29), p 321.

314. The following description from the Taumaha block gives an indication of how the process generally occurred: 'Ere Ruru will point out boundaries from the Mimiha Stm . . . Te Waioho te Parekura & others to Whakatau on the Tarapounamu bdy, but these will probably have to be varied to give correct area.' See Urewera minute book 2A (doc M30), p194.

315. For examples of where the commissioners refused requests for changes, on the grounds that they had made too late, see Urewera minute book 2A (doc M30), pp 33–34, 74, 124 & 164–165.

316. Knight and Carr to Guthrie and Coates, 'Urewera Lands: Report by the Commissioners under the Urewera Lands Act, 1921–22', 6 August 1923, AJHR, 1923, G-7, p2

impetus had been provided by the work that had begun on the arterial road in the Waimana Valley.

At the very beginning of its hearings, in the Waimana series, the commissioners accepted requests from owners to change the location of their awards. This began with a request from Tukuaterangi Tutakangahau, who asked for his interests in Tawhana to be moved to the western side of the Tauwharemanuka block. Other changes followed, as Maori owners submitted requests to take up land on the western side of the Waimana valley.³¹⁷ At a very early stage, therefore, the commissioners showed that they were willing to move away from what had been arranged at the Tauarau hui if requested. The small Raroa series was confirmed quickly, because the owners comprised one consolidation group.³¹⁸

The Ruatoki series blocks were subject to some of the most significant changes in the whole implementation phase. The commission's hearings began in December 1921, when a number of succession orders were made. When the commissioners returned in January 1922, they immediately set about addressing the concerns raised by Te Pouwhare and other leaders about where their land would be located. By the end of the first day, he and others 'stated that they were much clearer in mind concerning locations and groupings'.³¹⁹ These assurances were no doubt prompted by the number of changes the commissioners were willing to authorise, which began immediately as owners made requests for land in the river valley, particularly in Ruatoki South.

The biggest changes came at the end of the process and were brought about mainly by a number of errors that appear to have been made at the Tauarau hui: there were more groups wanting to take up land in the river valley than originally anticipated, and there was not enough land to go around. As a consequence, when the commission returned in late 1922, the group led by Tawera Moko asked for land in the former Te Poroporo block, because other groups already had claims approved to the available land to the north. Te Poroporo had been earmarked as Crown land but the commissioners consented to this, and to a similar request made by another group.³²⁰ Some changes were authorised after groups asked to move from the former Waipotiki block closer to the Whakatane River; others as groups merged or changed their locations to better reflect their desired land holdings. The commissioners signed off on the majority of the blocks in November 1922, but further alterations were required a year later, when owners' interests were transferred from Ruatahuna and the Oamaru 1c block (one of the 'rim' blocks, located in the Waioeka valley, which the Crown had purchased). In these cases, boundaries of existing Maori-owned blocks were expanded to reflect the number of interests that had been added.

317. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 492–494

318. Urewera minute book 1 (doc M29), pp 136–138

319. Urewera minute book 1 (doc M29), p 12

320. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 495, 548–549

The necessity for some changes was anticipated in Balneavis' report at the end of August 1921, and further reflected in the requirement for a 'special tribunal' in the Consolidation Scheme Report. Although it had only taken a year from the Tauarau hui to make these changes, which is remarkably quick compared with other consolidation schemes that dealt with similar amounts of land, it is possible that these outcomes could have been better anticipated had the committee of Maori owners been given the opportunity to develop their own objectives for the land; and we cannot say what outcome might have been achieved had they been given this opportunity. Nonetheless, the commissioners responded to Maori owners' requests in these series of blocks with a commendable degree of flexibility.

The Hikurangi–Horomanga series was another area with which the commission dealt relatively quickly. The first hearing began at Rewarewa in November 1922 and the proceedings were concluded at Waiohau in February 1923. This was largely because the owners had discussed where they would take their land in between the two hearings, so that only one disagreement remained by the time the commission returned.³²¹ All of the blocks in the series had been signed off by February 1923. In the intervening period, however, the Crown had continued its purchasing activities in this land, acquiring interests to the equivalent of approximately 851 acres (or £280) in 23 separate purchases.³²² It is not surprising that the Ngati Haka Patuheuheu community who remained in the region were still prepared to sell their interests during this period, as they still faced legal costs from fighting the Waiohau Fraud (see chapter 11). By the time the commissioners signed off on the awards (before deductions for the cost of surveys and roads had been taken into account), 17,903 acres of the former Hikurangi–Horomanga block remained in Maori ownership, compared with 21,096 acres in July 1921 (see appendix IV). This was despite the fact that Maori owners had transferred interests from other parts of the former Reserve in order to bolster their interests there.

(2) *The implementation phase at Te Whaiti*

While the commissioners' activities in the northern lands demonstrated the flexibility that was required to secure an outcome in accordance with the decisions reached at the Tauarau hui, their approach to the Te Whaiti lands was quite different. In marked contrast to some other areas, the commissioners flatly refused to accept requests from Maori owners who wished to take land otherwise than as laid out in the rough sketch made in August 1921, when Ngata and Knight had made separate visits. The commissioners promoted the Crown's main aim for the Te Whaiti lands, which was to acquire as much of the prized forests as possible. As discussed above, before the commissioners even began to hear such requests, the Crown's interests were advanced – and the position of the remaining owners undermined – by purchasing further interests equivalent to 1,014 acres.

321. Urewera minute book 1 (doc M29), pp 202, 204–205, 274

322. Urewera minute book 1 (doc M29), pp 106 and 293; Urewera minute book 2A (doc M30), pp 24, 59, 64 and 68

The commission had sat briefly in Te Whaiti in February and March 1922, and received several requests from consolidation groups about where their land might be located. It returned again in May to hear the final set of requests. This was enough time for Ngati Whare leader Wharepapa Whatanui to lodge a protest against the continued purchase of land for the Crown by the commissioners, particularly Knight. Shortly after the commission began its May 1922 hearing, Whatanui wrote to Ngata:

I write to inform you regarding the injustice done by the Commission when sitting at Te Whaiti last week in reopening the purchase of the interests of persons who were consolidated into the various groups. Several have sold. I urged Mr Knight not to re-open the purchase of interests in my group and the commissioner replied that my request could not be granted as it was a matter left to the wish of each individual.³²³

Ngata in turn wrote to Coates:

The position revealed here is serious and may endanger the Urewera scheme. It was never intended that the Crown should resume indiscriminate purchases in the Urewera Country. Mr Knight should cease purchasing until the position is looked into.³²⁴

Coates told Guthrie that Knight was in fact contravening the 'promise' made to Maori owners at the Tauarau hui that purchasing would cease. He insisted that the commissioners jointly seek the consent of both Ministers before any further purchases took place, and that such purchasing would only be to assist the consolidation process 'as was the intention when the Act was framed'.³²⁵ Knight, however, claimed that he had not purchased a single interest; rather, certain owners had 'willingly asked to be transferred to the sellers group'.³²⁶ Whether actual money had changed hands by this point is unclear. The main point is that these owners were not just being transferred into groups of 'probable sellers' to 'adjust a difficulty'; Knight's intention was for the Crown to maximise its award in the Te Whaiti lands.

The other way that the commissioners advanced the Crown's interests was by refusing to budge from the rough division of land that had been arranged in August 1921. Although Balneavis had said that 'details as to the location, actual area of the non-sellers award . . . require to be worked out after a topographical survey and an enquiry to be conducted by a special Tribunal', the details had in fact been set in stone.³²⁷ This much was signalled in the first hearings in February and March 1922, when the commissioners told Wharepapa Whatanui that he could not take his land at Ngaputahi.³²⁸ Similarly, the commissioners told

323. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 217

324. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 217

325. Coates to Guthrie, 1 July 1922 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 457)

326. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), pp 217–218

327. Balneavis to Coates, 27 August 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 80)

328. Urewera minute book 1 (doc M29), p 45

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Turanga Manuka and others that they could not exchange their interests in the Te Whaiti Residue block for Crown lands near Murupara, because the areas involved were too small to cover the costs of surveying.³²⁹

About one-quarter of the interests in Te Whaiti 1 had been placed in the Te Whaiti Residue block, which was located north of the valley containing the main area of settlement. As noted above, most of the Te Whaiti 1 consolidation groups had been earmarked to take their land in two areas: the main settlement area in the Te Whaiti valley and a 'larger area', the location of which Ngata did not identify in his report.³³⁰ But the commissioners acted as if the 'larger area' was the Te Whaiti Residue block and that Maori owners had agreed to this arrangement. The requests made by group leaders clearly demonstrate that this was not a decision of their choosing, but was instead enforced upon them by the commissioners in order to keep the Maori-owned blocks as far north as possible, leaving much of the Te Whaiti valley and the timber-rich land to the south for the Crown.

The commissioners acted as if this was a widely accepted outcome of the August 1921 discussions when, in May 1922, William Bird asked that all of the interests of Group D, headed by Emere McCauley, amounting to around 650 acres, be located to the west of the Whirinaki River around her house and cultivations. She signalled her dissatisfaction at the proposed split of her group's interests between a smaller block of 200 acres beside the river and the Residue block. But Knight told them 'that the area already laid off for subdivision among these groups was not sufficient to permit of this, and that the agreement to take around 200 acres must be adhered to'.³³¹ In fact, the commissioners did not sign off on the Huirangi and Residue blocks until February 1923. It was certainly not too late to make changes when McCauley raised her complaint in May 1922. This point aside, it was a breach of faith that the Crown claimed to take from the provisional agreements made at Te Whaiti in 1921 that the location of Maori land was fully settled; a fact made worse when the commissioners' motivation appears to have been that the Crown had set its sights on specific Te Whaiti lands and forests.

The placement of Maori owners' interests in the Residue block continued to cause anger two years later. In March 1924, Tari Manihera wrote to Coates about an agreement he believed had been reached and the subsequent location of their land by the commission: 'The Commission has committed a breach of this arrangement by refusing to locate the consolidated interest of the owners in one piece.'³³² Coates asked Knight to respond. Knight said that when he went to Te Whaiti in August 1921, it was agreed that the owners 'would take their interests in three places':

329. Urewera minute book 1 (doc M29), p 56

330. Ngata to Knight, 6 August 1921 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(g)), p 2282)

331. Urewera minute book 1 (doc M29), p 94

332. Boast, 'Ngati Whare and Te Whaiti Nui-a-Toi' (doc A27), p 225

(1st), in the Papakaingas, (2nd), each group to take a cultivation area on the flat and undulating lands up the Whirinaki Valley and that the residue after these claims were satisfied should be located in one block in the bush north of Rotorua–Ruatahuna Road.

Knight added that the final awards were made as a consequence:

upon these lines with certain amendments the Commission made their awards in February and May 1922, dividing lines as between rival claimants were fixed on the ground, areas of bush adjacent to the cultivation areas ‘sufficient for building and fencing’ added to each section.³³³

The owners, he added, were ‘perfectly satisfied with these arrangements.’³³⁴

But this had clearly not been the case: separate requests for changes were made in March and May 1922, which should have been enough to signal to Knight that his understanding of the August 1921 agreement was not shared by Maori owners.³³⁵ The only concession that the Maori owners received from the commission was the inclusion of 50 acres of bush to meet housing and fencing needs at Te Whaiti (although 150 acres had been asked for).³³⁶ Because the commissioners had taken such a strict line, the only way Maori owners could change the location of their land was to shift between groups. And, as we have already noted, there was no right of appeal from the commissioners’ decisions. The Crown took comfort from the fact that whenever Maori complained to Coates, he invariably ‘called for a report,’³³⁷ and that Coates’ protective responsibilities towards Maori balanced Knight’s bias in favour of the Crown.³³⁸ We see little practical protection being offered here in the case of Te Whaiti.

The Ngati Whare claimants have long believed that the Crown retained the largest portion of good, flat, clear land in the Te Whaiti valley as well as a substantial area of high quality podocarp timber. The western boundary of four of the Te Whaiti consolidation blocks near the settlement of Te Whaiti, Ngati Whare counsel told us, was intentionally cut along the forest line so as to place the valuable heavy forest in the hands of the Crown.³³⁹ Certainly, this contention is supported by the Crown’s approach to the Te Whaiti lands from its commencement of purchasing through to the end of the consolidation scheme. But the proposition is also supported by the subsequent history. Maori owners by and large retained the blocks in the valley, as they contained the most useful areas of land for cultivation and milling. The Te Whaiti Residue Block, by contrast, was one of the first pieces of their remaining

333. Knight to Native Under-Secretary, 6 May 1924 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(g)), p 2344)

334. Knight to Native Under-Secretary, 6 May 1924 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(g)), p 2344)

335. Boast, ‘Ngati Whare and Te Whaiti Nui-a-Toi’ (doc A27), pp 225, 227

336. Urewera minute book 1 (doc M29), pp 45, 101–102.

337. Crown counsel, closing submissions (doc N20), topics 18–26, p 43

338. Crown counsel, closing submissions (doc N20), topics 18–26, pp 22–25, 40–43

339. Counsel for Ngati Whare, closing submissions (doc N16), p 81

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land the owners sought to alienate after the scheme. In 1938, they proposed an exchange of the block for agricultural land. The Forest Ranger who valued the land noted that it was very steep and broken, the soil being of a loose sandy formation. He noted that there was timber, but mostly in steep gullies, scattered throughout the block. The millable stands were limited to flats along the stream.³⁴⁰

Maori owners of the Te Whaiti lands would have preferred to take land in the main valley; instead the Residue block was forced on them. This much was made known to the Crown during the scheme's implementation, and repeated up to Ngati Whare's claim to the Waitangi Tribunal. In May 1925, Whatanui submitted a petition setting out his people's grievances:

1. THAT we are the owners of the [Te Whaiti] blocks of land situated in the Urewera Country.
2. THAT we are very dissatisfied with the decisions and determinations of the Commissioners in regard to our lands.
3. THAT in the Scheme of Consolidation our wishes and convenience in regard to our lands were to be duly considered and the Commissioners have not done so, but have in particular deprived us of many and large valuable areas in favour of the Crown.³⁴¹

The Crown chose to ignore such concerns, which was not entirely surprising given this was the outcome it had set out to achieve when purchasing in the Te Whaiti blocks commenced in 1915. Coates' failure to intervene, however, and to live up to the promises he made at Ruatoki of protection and justice, was disappointing. Since 1915, leaders such as Whatanui had sought ways to end purchasing and to be given certainty about which land was theirs. Whatanui's petition spoke of his disappointment at the outcomes of the consolidation process, which the people of Te Whaiti had hoped would locate and secure their remaining land. While they got some of the land of their choosing, they were also confined to an area they had never asked for and had protested strongly against. The Crown, however, had other designs for the land and its forests, which it had set out to acquire six years before.

(3) *The implementation phase at Ruatahuna, Maungapohatu, and surrounding lands*

The biggest changes during the implementation phase, and by far the biggest protests against the scheme as a whole, occurred in the central lands, particularly in Ruatahuna. The reasons for the emergence of a group of owners who opposed the scheme – known as te taha apitihana ('the opposition side')³⁴² – are complex, as are the various changes that the commissioners either made or authorised. By the end of the scheme, before taking into

340. John Hutton and Klaus Neumann, 'Ngati Whare and the Crown, 1880–1999' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A28), pp 319–324

341. Boast, 'Ngati Whare and Te Whaiti Nui-a-Toi' (doc A27), pp 227–228

342. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p164

account deductions for road and survey costs, Maori-owned land amounted to 39,968 acres – 14,709 fewer acres than had been earmarked for award to them at the Tauarau hui, (see appendix IV). This was equivalent to the amount of land the Crown had purchased in the blocks up to the beginning of the scheme. But during the Tauarau hui, Tuhoe owners in the Waikaremoana block transferred many of their interests to the Ruatahuna series; others transferred interests there from elsewhere as well. This had the effect of nearly cancelling out the Crown's purchases. Tuhoe's goal was to protect Te Manawa o te Ika: their ancestral lands at Ruatahuna, which remained the home for many and the focus of their developmental aspirations.

In comparison to the other lands in this central region, Maungapohatu was dealt with relatively quickly. The Tuhoe owners of the Maungapohatu blocks had retained the equivalent of 10,202 acres at the beginning of the scheme, or 36 per cent of the blocks (see appendix IV). The commissioners effectively dealt with this land in one sitting in April 1923. In large part this was because Rua Kenana requested that several groups be amalgamated into one.³⁴³ The creation of this new group meant that many of the people's interests could be located in one, large Maungapohatu block. At that time, there were only two other groups with interests in Maungapohatu, both of which were represented by Taihakoia Poniwahio. Most of the blocks were signed off in April 1923; with a few minor adjustments in March 1924, the eight new Maungapohatu blocks were confirmed.

The commissioners tackled the blocks in the Ruatahuna, Ohaua, and Tarapounamu series last, because it was from these areas that the strongest opposition to its work arose. On the commission's first hearing at Ruatahuna in February 1922, Wharepouri Te Amo voiced a number of complaints about the scheme, including the taking of land for surveys, the amount of land to be taken for the roading contribution, the impending liability for rates, the transfer of interests on a monetary (rather than acre-for-acre) basis, and the transfer of Tuhoe interests from the Waikaremoana block into other consolidation groups in the scheme. The commissioners, however, largely dismissed these complaints: in their view, it was too late to change the basis of the scheme.³⁴⁴ The remainder of the first sitting consisted mainly of share transfers between groups and the preparation of succession orders. It was not until a year later, in February 1923, that the commissioners held their second hearing at Ruatahuna, and even then their visit was only fleeting.³⁴⁵ During some of the other sittings in the interim, a number of group leaders made requests about where they wanted their group's land to be located, following the broad parameters that had been negotiated at the Tauarau hui. Most of these requests were for the Ruatahuna 3 and 5 blocks.

Having completed their work in other areas, the commissioners turned their full attention to the Ruatahuna, Tarapounamu, and Ohaua series in April 1923. With the exception of

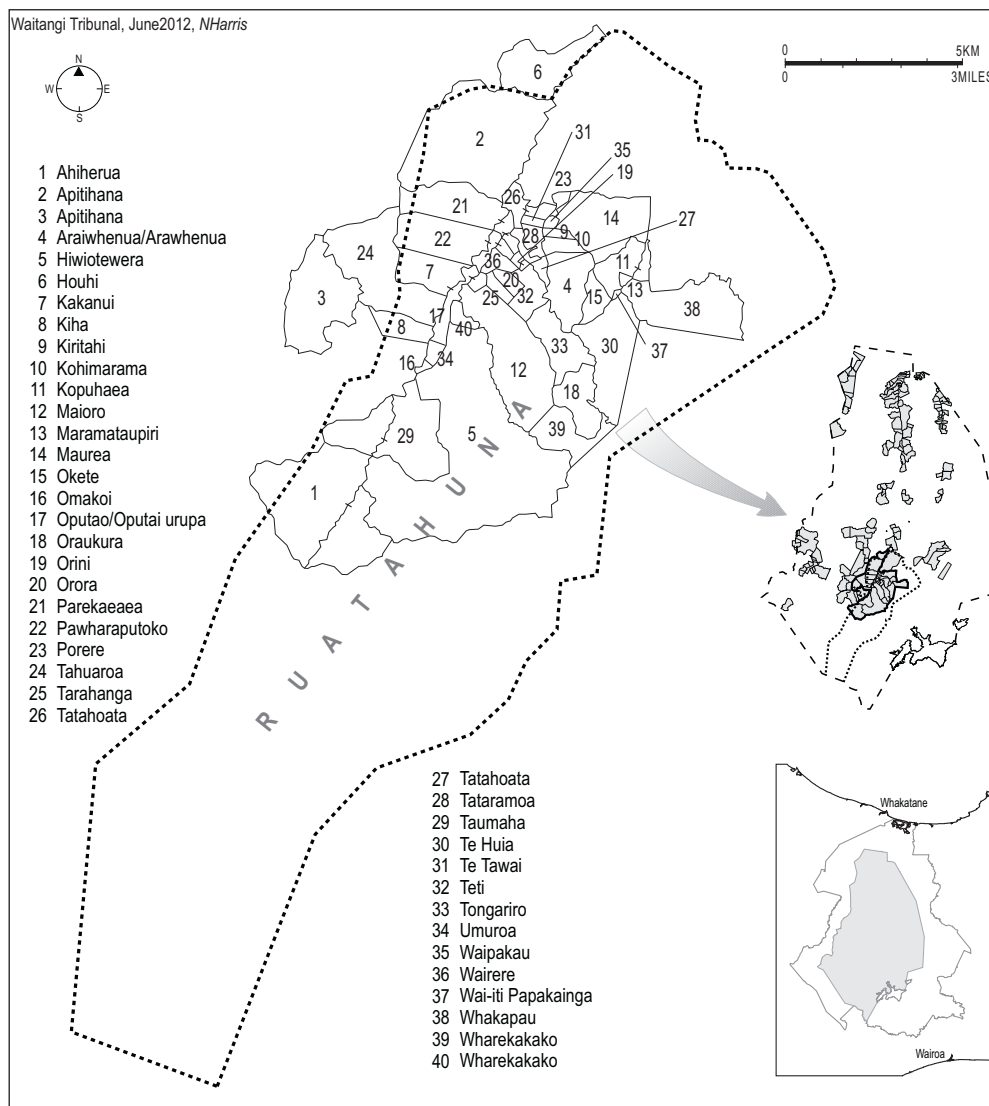
343. Urewera minute book 1 (doc M29), pp 294, 298–299

344. Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 557–559, 561

345. Bassett and Kay, 'Ruatahuna' (doc A20), pp 143–144

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Map 14.3: Land awarded to Maori owners in the former Ruatahuna block during the Urewera Consolidation Scheme. The original Ruatahuna block was 57,523 acres. By the end of the consolidation scheme (before counting the deductions for road and survey costs), approximately 40,000 acres remained in Maori ownership.

a brief visit to Murupara, the commission spent five weeks in and around Ruatahuna. This was followed by a short hearing at Papueru in October 1923, and then another month in and around Ruatahuna in April 1924.³⁴⁶

The April 1923 hearing began with another challenge from the opponents of the scheme. Pomare, also known as Pineeri Hori, announced: ‘I lead Tuhoe who did not desire to consolidate.’ The commission, he said, should refrain from authorising any awards for land in

346. Bassett and Kay, ‘Ruatahuna’ (doc A20), pp143–144, 149–150

the Ruatahuna, Tarapounamu–Matawhero, and Kohuru–Tukuroa blocks. He went on to say that ‘we oppose the road contribution, we do not desire to pay rates . . . we will not evacuate from Waikaremoana.’³⁴⁷ In essence, he asked the commissioners to stop their hearings entirely because the previous concerns raised by the leaders had gone unaddressed, which had started with the petition from Te Wharepouri Te Amo, Wharekiri Pararatu, and Pomare on 5 October 1921 (about the lack of remaining Maori land at Te Whaiti and the high level of the roading contribution under the consolidation scheme proposals).³⁴⁸

In September 1922, the opposition gained momentum with another petition from a group of 176 Ruatahuna owners, this time led by Tikareti Te Iriwhiro. His petition voiced the people’s objections to ongoing Crown purchasing, which they said contravened the agreements reached at the Taurarau hui.³⁴⁹ This group of owners came to adopt the word ‘apitihana’ as their name – a transliteration of ‘opposition’. The commission eventually used this name for the huge block in which the unallocated interests of Ruatahuna and Tarapounamu groups were placed at the end of the Ruatahuna sittings in 1924. While Te Apitihana emerged in the immediate context of the scheme’s implementation, it had its origins in the numerous petitions Maori owners had submitted from 1917 through to 1919. Two of the key leaders at that time were Te Amo Koukouri and his son Te Wharepouri Te Amo, both of whom submitted petitions asking for an end to Crown purchasing. At a hearing held at Ruatoki in November 1922, the commissioners were told that a hui had recently taken place at Ruatahuna, at which a number of leaders had spoken of their determination to withdraw from the scheme altogether if the Crown did not address their concerns.³⁵⁰

Pomare’s very public statement of opposition in April 1923, however, prompted immediate voices of support for the scheme. Leaders such as Takarua Tamarau and Matamua Whakamoe announced their support for the commissioners to continue awarding the land, and for the benefits they had been promised would result from the scheme.³⁵¹ The commissioners conducted a count of interests to see which group had the greatest number. The groups in favour of consolidation outnumbered the interests of te taha apitihana by around 3.2 million shares to 2.5 million shares.³⁵² Although there were some groups of owners (such as those led by Wi Mei and Wairama Na) who never declared a position, it is unlikely their

347. Bassett and Kay, ‘Ruatahuna’ (doc A20), p144

348. Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori to Parliament, 5 October 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 201–202)

349. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 396–397, 562–563

350. Bassett and Kay, ‘Ruatahuna’ (doc A20), p143

351. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 564–565; Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), app D, pp 52–54

352. The exact figures were 3,172,446 shares to 2,499,690 shares. The generally reported figure for the pro-consolidation shares is 3,279,622, but the list of shares shows that Group 41 (with 107,176 shares) was counted twice. See Bassett and Kay, ‘Ruatahuna’ (doc A20), pp 144–145; Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), app D, pp 53–54; Urewera minute book 1 (doc M29), pp 308–310.

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addition to either side would have changed the outcome of the tallying exercise.³⁵³ Support for the two sides differed in the various parts of the former Ruatahuna blocks. Those who claimed interests to the north and west – in Ruatahuna 1 and 2, Kohuru–Tukuroa, and the Hanamahihi part of Tarapounamu–Matawhero – tended to be part of te taha apitihana, or neutral. Those with interests to the south and east – in Ruatahuna 4, Ierenui–Ohaua, and Te Ranga-a-Ruanuku – tended to support the scheme.³⁵⁴ Pomare claimed that te taha apitihana owners represented the equivalent of a total area of 40,000 acres.³⁵⁵

The key te taha apitihana leaders were all consolidation group heads. Wharepouri Te Amo, of the Te Urewera and Ngati Tawhaki hapu, headed a number of groups and was generally regarded as the main leader of te taha apitihana, along with Pomare, who was its main spokesman. Another group from the Te Urewera hapu, led by Noho Taratoa, was also allied to the opposition group.³⁵⁶ The commission's 1923 share tallying exercise revealed that these groups were joined by a number of Ngati Tawhaki groups (led by Rawiri Te Kokau and Taiwera Rawiri).³⁵⁷ Ere Ruru, also of Ngati Tawhaki, added his group's interests to te taha apitihana at a later point.³⁵⁸ Te Wharepouri's father Te Amo Kokouri – then chairman of Ruatahuna's Komiti Kaumatua – was its elder statesman, but Te Wharepouri, Rawiri Kokau, and Taiwera Rawiri were all respected elders, each having been selected for the Ruatahuna or Tarapounamu–Matawhero hapu committees in 1907.³⁵⁹ There was not as much support for the opposition in Ruatahuna 3, 4, and 5,³⁶⁰ except for the group led by Pineere Hori, of Ngati Manunui.³⁶¹

In comparison, the group of owners who came out in support of the scheme – even though it contained more groups and therefore more shares – was never a combined 'movement' on the same scale as te taha apitihana. Group leaders Wahia Paraki (Ngati Manunui), Kohunui Tupaea (Ngati Kakahutapiki), and Tane Hauraki (whose group interests were in Tarapounamu–Matawhero) all stated their support for the scheme, but also had some

353. Groups 43B and 43C accounted for 81,517 and 138,369 shares, and Group 45 for 92,455 shares, based on the group lists in the Consolidation Scheme Report. Two other groups which had Ruatahuna locations but were not declared were Hata Waewae's 5E (160,491 shares) and Tupara Kaaho's 21B (119,622 shares); both ended up in the Apitihana block.

354. Webster, 'The Urewera Consolidation Scheme' (doc D8), p 573

355. Bassett and Kay, 'Ruatahuna' (doc A20), p 144

356. See Webster, 'The Urewera Consolidation Scheme' (doc D8), p 484; Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 165–166; and Nikora, 'The Urewera Consolidation Scheme' (doc E7), app D, p 53.

357. See Nikora, 'The Urewera Consolidation Scheme' (doc E7), app D, p 53; Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 205.

358. See Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 137; Urewera minute book 2A (doc M30), p 128.

359. Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 116, 140

360. By Te Amo Kokouri's account, these were Ngati Rongo, Ngati Kuri, Ngai te Riu, Ngati Kakahutapiki, and Ngati Manunui. See Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 137.

361. According to a whakapapa inserted in the Commission's minute books, Pineere Hori was the son of Hori Wharerangi of Ngati Manunui, and grandson of Te Mata. See Urewera minute book 2A (doc M30), pp 21–22; Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 55.

members of their respective groups in the opposition camp as well.³⁶² The supporters of the scheme also contained more leaders who had interests in consolidation groups which took land in areas other than Ruatahuna, such as Takarua Tamarau (Ngati Koura and Ngai Te Riu) and Hata Te Waewae (Ngati Rongo and Te Urewera).³⁶³ The basis for their support possibly lay in the fact that much of their land that had already been confirmed by the commissioners in the Ruatoki series; it would have made little sense to oppose the commission when it came to Ruatahuna. Reflecting on the statements made on this occasion by Rua Kenana, Matamua Whakamoe, and Takarua Tamarau, the Tuawhenua Research Team have observed that ‘the speakers in favour of the consolidation were more often associated with Maungapohatu, Waikaremoana and Ruatoki respectively rather than Ruatahuna.’³⁶⁴ From the perspective of these owners, however, this was precisely the point of the consolidation process: people wished to bring their remaining interests into Ruatahuna, which was of ancestral importance to a wide range of hapu in Te Urewera.

Finally, while some leaders noted their support for the scheme, this did not always mean uncritical support. Matamua Whakamoe, for example, had defended consolidation when the commission did its share-counting exercise in 1923, but expressed common concern with Wharepouri Te Amo over the commission’s cutting out of scenic reserves in 1924 (discussed below).³⁶⁵

In the face of ongoing protests from te taha apitihana leaders, the commissioners set about their work and had placed groups in a number of new blocks by the end of April 1923.³⁶⁶ The easiest area to complete from the commissioners’ perspective was the Ohau series blocks. The groups who became part of Te Apitihana had transferred their interests from the Ierenui–Ohau, Waikarewhenua, and Te Ranga-a-Ruanuku blocks to Ruatahuna during the Taurau hui.³⁶⁷ All of the new blocks were chosen during a single visit by the commission in April 1923, with those being chosen more or less in keeping with those proposed at Taurau. In March 1924, the commissioners returned to confirm the exact locations and boundaries of these blocks.³⁶⁸

The Tarapounamu series was less easy to deal with but here too the commissioners made rapid progress. The Maori owners had organised their preferred location of their land before the commissioners arrived, although this had largely been achieved at the

362. See Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 639–644; Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), app D, p 53.

363. Tawera Moko (Ngati Rongo) and Rua Kenana (Ngati Tamakaimoana) were two other influential pro-consolidation voices, but had few share interests in Ruatahuna. See Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), pp 205, 211; Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 566, 641–642. Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), app D, p 54.

364. Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 165

365. Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), app D, p 53; Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p 568

366. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 571

367. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 573

368. Bassett and Kay, ‘Ruatahuna’ (doc A20), p 151

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Tauarau hui. In comparison with other areas, consolidation groups with interests in the Tarapounamu region had been able to agree on more detailed locations during that hui (such as Hanamahihi, the Pukareao Valley, Umukahawai, Tieke, Heipipi, and Papueru). Other groups, however, had not been given a proposed location for their award and so retained the flexibility to arrange matters when the commissioners arrived. As it turned out, the extent of co-operation among the groups in the Tarapounamu series extended across the divide between supporters and opponents of the scheme. At the head of the Pukareao Valley, Taane Hauraki, Paratene Manihera, and Wiremu Wirihana agreed on the various locations so that, notwithstanding their opposition to the scheme, Paratene Manihera's group and the Aare whanau from Tane Hauraki's group could take up land in the same area.³⁶⁹

The main bone of contention for the Tarapounamu groups was the Crown's cutting out of scenic reserves close to the road between Te Whaiti and Ruatahuna. The surveying of scenic reserves near Papueru was suspended in October 1923, after concerns had been raised about tomo (burial caves) being included in the Crown's award. When Te Pou Te Kokau and Tari Manihera raised further objections about the manner in which the Crown reserves were being laid off, which they said prevented groups from taking their preferred land, the commission agreed that scenic reserves at Pukiore, Papueru, and Waituhi should be cancelled, and the remaining scenic reserve land between Papueru and Heipipi should be amended. The proposed Crown award at Ngaputahi also included houses and cultivations belonging to one Maori owner, Paora Paora. But in that case, the commissioners determined that the land would indeed be awarded to the Crown, and Paora would be paid compensation.³⁷⁰

The commissioners' task at Ruatahuna was more complex than in any other area in the scheme, simply by virtue of the fact that there were around 30 groups of owners seeking land in the Ruatahuna blocks. Some 54,677 acres had been earmarked for award to Maori owners at the Tauarau hui, which was 95 per cent of the original Ruatahuna block (see appendix IV). Many of these groups sought land in the Huiarau (Ruatahuna 3) and Parahaki (Ruatahuna 5) subdivisions, close to the Whakatane River, which provoked inevitable tensions. At the same time, te taha apitihana groups remained defiant in their opposition to the scheme. During the April 1923 hearing, another confrontation occurred between the commissioners and te taha apitihana leaders, this time represented by Te Amo Kokouri and Rawiri Te Kokau, who asked the commissioners to supply a list of those who had sold their interests in the Ruatahuna blocks. As they told the commissioners, this would provide the basis for their preferred method of deciding where interests should be located; not a consolidation of interests – as Bassett and Kay and the Tuawhenua researchers have noted

³⁶⁹ Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 571–572; Urewera minute book 1 (doc M29), pp 309, 314–315; 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)', not dated, vol 1 (doc M12(c)); 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)', not dated, vol 2 (doc M12(d)). The blocks they took up were Hauwai and Kopua blocks respectively.

³⁷⁰ Bassett and Kay, 'Ruatahuna' (doc A20), pp 158–159

– but rather a partition in which the non-sellers would retain their existing links with their ancestral lands, and the Crown would get the unconsolidated interests of the proven sellers. This was, in effect, a rejection of the principle of consolidation and of the ‘modernisation’ of titles which the Government saw as its fundamental basis.³⁷¹ The commissioners refused this request.³⁷²

The consequence was that *te taha apitihana* continued to refuse to have any part in the commission’s proceedings, except to notify where their interests were being encroached upon by other groups. At the close of the April 1923 hearing, Te Amo Kokouri said: ‘On Friday I asked for an adjournment . . . to prepare lists. I have reconsidered the matter. I am afraid to commit anything to paper, and consequently I will not supply a list of owners for my group but will confine myself to watching the case and seeing that there is no encroachment on our lands.’³⁷³

Despite the non-participation of *te taha apitihana*, the commission operated on a first-come, first-served basis as it began allocating land to groups in the Ruatahuna region. At the April 1923 hearing, the commissioners received requests for land from groups led by Rehua Te Wao, Tawera Moko, Rua Kenana, Tekoteko Hatata, and Atamea Te Whiu.³⁷⁴ The commissioners hoped that overlapping claims would be settled by the owners themselves, as in other areas. A number of such cases involved Wharepouri Te Amo, who continued to participate in the commission’s process to protect the interests of his groups’ land. For example, Wharepouri Te Amo and Matamua Whakamoe decided on the placement of some of the interests of one of his groups in what became the Paripari block.³⁷⁵ But in one of the most important cases, Wharepouri Te Amo, Wahia Paraki, and Matamua Whakamoe were unable to reach an agreement over the ownership of the Umuroa flats. The commissioners decided to divide up the area between the groups represented by Paraki and Whakamoe, dismissing Te Amo’s case on the grounds that they had not made any of the improvements on the land.³⁷⁶

The question of who was responsible for improvements was also the telling factor in at least two other cases at Pawharaputoko-Kakanui and around Te Waiiti papakainga. In the latter case, the commission ultimately split the area into four blocks, even though it recognised that the various owners had been using the area communally. Stokes, Milroy, and Melbourne said that such a decision was not in the interests of the owners though, because it created a semi-permanent division for the sake of resolving a short-term impasse between

371. Bassett and Kay, ‘Ruatahuna’ (doc A20), p147; Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p170

372. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), p578

373. Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), appD, p55

374. Urewera minute book 1 (doc M29), p 319

375. Urewera minute book 2A (doc M30), p142

376. Bassett and Kay, ‘Ruatahuna’ (doc A20), p148

them.³⁷⁷ Although there were not many cases of this nature, they were enough to increase tensions between owners who were already divided over whether the scheme should proceed or not.

But as a reflection of their understanding of how sensitive these issues were, those groups who supported the consolidation process largely refrained from making requests to locate themselves in the large Ruatahuna 1 and 2 blocks in the north-west of the valley because they were the lands that rightfully belonged to *te taha apitihana*.³⁷⁸ As the amount of land approved by the commission at Ruatahuna increased and the area of unallocated land correspondingly decreased, however, it was inevitable that opposition groups would have felt their position was being threatened. Knight had also engaged in some strategic purchasing in October 1923 of 23,730 shares from Pomare's Group 42, which Knight and Carr noted would help 'as a means of weakening the opposition'.³⁷⁹

Part way through the March 1924 hearing, Wharepouri Te Amo decided that consolidation could not be defeated. He submitted location requests for two of the groups he led (one for Tataramoa at Ruatahuna, and one for a location in the Paraeroa block).³⁸⁰ As we explain later in the chapter, Te Amo may have been partially persuaded by the promise that the Apitihana blocks would be subject to a much smaller taking of land to account for survey costs. Sensing that this was the beginning of the end in their struggle with *te taha apitihana*, the commissioners immediately issued an ultimatum: unless all the Te Apitihana groups set out requests for land, they would 'be forced to conclude that the locations proposed at Tauarau were sufficient', and as a result they would merely issue them with a 'composite title', meaning a single list of all the owners in these groups for a single block of land.³⁸¹

The commissioners' ultimatum had the desired effect. Te Amo promptly made a number of requests for the location of his groups' interests.³⁸² Another leader of *te taha apitihana*, Ere Ruru, also submitted his group's requests.³⁸³ At the end of the hearing, Tari Manihera submitted a number of requests on behalf of both opposition and neutral groups for land in the Ruatahuna 1 and 2 blocks. Te Amo opposed this move, as 'he desired all Ruatahuna No 1 & 2 be set apart for the opposition groups', with any overflow to go to Kohuru-Tukuroa.³⁸⁴ Two weeks later, while sitting at Rotorua, the commission abruptly decided that it would

377. Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), pp 180–182

378. Webster, 'The Urewera Consolidation Scheme' (doc D8), p 588

379. Pineere Hori's group, as of October 1921, had consisted of just under 157,000 shares. Carr and Knight to Native Under-Secretary, 22 October 1923 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 440); Webster, 'The Urewera Consolidation Scheme' (doc D8), pp 282, 430, 446

380. Urewera minute book 2A, 6 March 1924, 11 March 1924 (doc M30), pp 124, 138

381. Urewera minute book 2A, 21 March 1924 (quoted in Nikora, 'The Urewera Consolidation Scheme' (doc E7), appD, p 61)

382. Urewera minute book 2A, 18 March 1924, 21 March 1924, 24 March 1924 (doc M30), pp 124, 141, 143

383. Urewera minute book 2A, 25 March 1924 (doc M30), p 155

384. Urewera minute book 2A, 25 March 1924 (doc M30), pp 156–157

end any debate by simply issuing a ‘composite title’ for all the shares in the Ruatahuna 1 and 2 blocks, ‘whether opposition or otherwise.’³⁸⁵

The Apitihana block had a single list of owners but actually consisted of three separate pieces of land, encompassing the old Ruatahuna 1 and 2, large areas in the Tarapounamu–Matawhero area, and a small portion of Ruatahuna 3. This contrasted sharply with the highly fragmented pattern of single-group blocks in the low lying areas of Ruatahuna 3 and 5. The number of groups who sought land in these latter areas meant that many groups in the Ruatahuna series also had to take other land further away from the valley in the form of ‘overflow’ blocks. Ideally these were close together, such as the Kohimarama and Tongariro blocks, which were separated by about two kilometres. Others, however, were considerably further apart. For example, the owners of the Kakanui block, in the Ruatahuna valley, had little choice but to add their residue interests to their other land in the Tarapounamu series (the Hauwai block), which was a 30-kilometre journey away, because all the land in the Ruatahuna valley had been set aside for other groups. Unlike what happened at Te Whaiti, however, groups had some say about where they took their overflow interests. Paratene Te Manihera, for example, requested that the excess shares of his group, whose main piece of land was at Kakanui, be located at Hauwai. Similarly, Tahuri Te Hira asked for the overflow interests of his group to be located in the Tarapounamu region.³⁸⁶ Both requests were authorised by the commissioners.

But in other cases, the commissioners refused requests, seemingly because they had the Crown’s award in mind. Wahia Paraki asked that any overflow from two of his groups, whose main piece of land was at Umuroa, be located around the old kainga at Otangimoana, in the south of the Ruatahuna lands.³⁸⁷ Instead, the commissioners placed their interests to the northeast of Ahiherua, leaving Otangimoana in the Crown’s award.³⁸⁸ Wahia Paraki protested against this decision in a petition to Ngata in 1925: ‘you gave your word to Tuhoe at Ruatahuna that the best part of the land would be given to us and the inferior part to the Crown . . . When the survey was made the bulk of our acres were located on steep and birch lands, and bad lands generally.’³⁸⁹ The way that many of these overflow blocks were located away from the core Ruatahuna region – particularly when some individuals transferred their interests to consolidation groups whose land was elsewhere in the former Reserve – goes some way to explaining why much less land was awarded to Maori owners there than

385. Urewera minute book 2A, 9 April 1924 (doc M30), p 178

386. Urewera minute book 1, 17 May 1923 (doc M29), p 364

387. Urewera minute book 1, 17 May 1923 (doc M29), p 366. Otangimoana and the Hukitawa Stream, which are both referred to by Wahia Paraki in his request, are shown in the map which accompanied Elsdon Best’s *Tuhoe: The Children of the Mist*, the Ruatahuna part of which is reproduced in Bassett and Kay, ‘Ruatahuna’ (doc A20), p 10.

388. See Urewera minute book 2A (doc M30), pp 183–184.

389. Wahia Paraki and 11 others to Ngata, 23 July 1925 (SKL Campbell, comp, supporting papers to ‘Land Alienation, Consolidation and Development’, various dates (doc A55(c)), p 287)

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was initially anticipated at the Taurarau hui. The difference amounted to some 14,709 acres, which came to form part of the Crown's award (see appendix IV).

As was the case in the Tarapounamu series, the way Crown reserves were cut out became a key source of dispute between the Maori owners and the commissioners. The commissioners initially set aside a steep face of a valley at Kiha during their brief hearing at Ruatahuna in February 1923.³⁹⁰ Wharepouri Te Amo challenged this decision at the beginning of the March 1924 hearing, stating that the reserve had been located in an area that was still being determined. The commission dismissed his concerns, however, stating that it would adjust the scenic reserve boundaries if they turned out to be a problem.³⁹¹ The commissioners arrived at a similar decision with respect to the Umuroa flats, in the former Ruatahuna 5 subdivision, where the groups represented by Whakamoe, Paraki, and Te Amo had all made claims. The commissioners decided that the Crown was to be awarded an area of steep land adjacent to the flats, based on the fact that it had purchased one-quarter of the Ruatahuna 5 (Parahaki) subdivision. None of the parties, they said, had been able to establish a claim to the area; as well as being unoccupied, it was also useless for settlement or cultivation.³⁹²

The commissioners' decisions not to award Otangimoana and the portion of the Umuroa flats to these groups provide clues to the overall shape of the division of the land in Ruatahuna. Of the approximately 18,000 acres awarded to the Crown in the former Ruatahuna blocks, the vast majority was in the very south, in what was formerly the Ruatahuna 5 subdivision. While this area did contain kainga such as Otangimoana, it also formed part of the watershed area with the adjacent Waikaremoana block, which was one of the Crown's key objectives in the scheme. These objectives were known to Knight and Carr as they went about confirming the arrangements with Maori owners in the Ruatahuna region. In short, there was a combination of push and pull factors in play. There was not enough land in the main part of the Ruatahuna valley for all those groups who had pooled their interests during the process of the Taurarau hui. Consequently, they were forced to take 'overflow' lands elsewhere. While many chose to take these interests in other areas willingly, the commissioners also revealed their hand: the Otangimoana decision showed that they were not willing to allow Maori owners to take up land in the very south of the former Ruatahuna blocks, and the Umuroa decision set a precedent that required the te taha apitihana groups to take much of their land to the north in the Tarapounamu region. These decisions enabled the Crown to take the southern portion of the block, which encompassed part of the Huiarau range.

The commissioners' determination to set aside land for the Crown in key areas can also be seen in the award of a 60-acre township reserve to the Crown. There is no evidence

390. Bassett and Kay, 'Ruatahuna' (doc A20), p 158

391. Nikora, 'The Urewera Consolidation Scheme' (doc E7), app D, pp 59–60

392. Bassett and Kay, 'Ruatahuna' (doc A20), p 159

that the commissioners discussed this award with any of the Maori owners. An entry was made on the final page of the first minute book, setting out the details of the award, but close inspection seems to show different handwriting from the previous entry. It is therefore not possible to establish when or where, between the dates of 5 July 1923 and 9 April 1924, the commissioners made the decision to set aside land as a township reserve.³⁹³ In 1949, Rewi Petera recounted that the commission had vested a township in trust for five owners.³⁹⁴ However, there is no mention of such an arrangement in the minute book references to the reserve.³⁹⁵ When Huriwaka Te Wharekotua complained to Coates in 1927 that the township reserve was located on his block, Carr responded by stating that the commission ‘considered that this area should be reserved, and it followed that it should become part of the Crown area. It wasn’t equitable that the Crown in every case should be located in the hinterland.’³⁹⁶ This would tend to contradict the recollection of Rewi Petera.

The outcome of the division of the land in the Ruatahuna region was of course the last in a series of events that dates back to Te Whitu Tekau’s opposition to the Native Land Court; the disappointments that followed the passing of the UDNR Act confirmed the worst fears that Te Urewera leaders had harboured at that time. The Crown was now the single biggest land owner in the heartland – an outcome Ruatahuna leaders would have wished to avoid at all costs. Te taha apitihana continued the tradition of protest while others continued to hope the scheme would deliver on the Crown’s promises. The way this process played out is reflected in the explanation Hinerangi Biddle gave us for the origin of the claim made to the Waitangi Tribunal by her father, Wharekiri Biddle:

Many in Tuhoe refer to the claims of Tuhoe as ‘raupatu’. Thus, they think of the claims as being essentially about the confiscation of land. But my father’s claims began with his thinking about the Crown’s actions through its social and economic policies actions. He sees these as being used by the Crown to work in more subtle ways, but they act in the same way to strip us of our self respect and our mana.³⁹⁷

393. The first entry follows minutes from the Rotorua sitting of 5 July 1923 (Urewera minute book 1 (doc M29), p372), while the Township Reserve is referred to in the Onini boundary description, which can be dated to 9 April 1924 (Urewera minute book 2A (doc M30), pp174, 188). The Township Reserve features in the same list of block boundaries (Urewera minute book 2A (doc M30), pp197–198).

394. Bassett and Kay, ‘Ruatahuna’ (doc A20), pp159–160. The owner list cited by Rewi Petera does not seem to be in keeping with other reserve areas, in that at least three of the five reported owners were from the same whanau (as opposed to their being representatives from multiple groups).

395. Urewera minute book 1, 5 July 1923 (doc M29), p372; Urewera minute book 2A, 9 April 1924 (doc M30), pp197–198

396. Carr to Native Under-Secretary, 11 March 1927 (quoted in Campbell, ‘Land Alienation, Consolidation and Development’ (doc A55), p104)

397. Hinerangi Biddle, brief of evidence, not dated (doc D31), p2

(4) *The creation of reserves*

In the claims before us, there were three key allegations about the creation of reserves: first, Tuhoe had requested that the Crown set aside some land as a reserve for landless sellers but the Crown refused; secondly, the Maori owners had sought the permanent reservation of some of their most valued sites, not all of which requests were honoured by the Crown; and, thirdly, the Crown had reserved land for public purposes but without using the public works legislation, so that it is not subject to present offer-back requirements.

In respect of the first issue, the Crown accepted in its closing submissions that a ‘repeated request’ had been made for it to create a landless sellers’ reserve. Crown counsel cited Fred Biddle’s request during the May 1921 hui and Ngata’s endorsement of the request. Knight expected a further request for a 20,000-acre reserve to come up at the Tuarau hui and sought instructions as to how to deal with it.³⁹⁸ As claimant counsel observed, Knight couched the matter in terms of whether he should give a definite refusal or an ‘evasive, non-committal reply.’³⁹⁹ The Lands Department, in other words, had already made up its mind to turn down the request from Tuhoe and Ngata, but had not yet decided to tell them so. The Under-Secretary instructed Knight to make a non-committal response. Then, the issue was raised again in 1924 during a hearing of the commission, only this time it was specifically put in terms of soldiers who had sold their interests before they left to fight in the First World War and returned landless. Claimant counsel notes that many other Maori owners supported the proposal at the hearing. The commissioners referred the matter to the Government but this time, as far as anyone knows, there was no answer at all.⁴⁰⁰

In the Crown’s view, the answer to the commissioners’ query must have been ‘no’ since there is no suggestion that such a reserve was created.⁴⁰¹ Means and opportunity existed, since section 11 of the Native Land Amendment and Native Land Claims Adjustment Act 1923 empowered the Government to set aside any part of its award as a reserve for the ‘exclusive use of any of the former owners or their successors.’⁴⁰² Ultimately, however, Crown counsel’s view is that there was no proof that such a reserve was actually needed: ‘There is no evidence as to the degree of the problem of landlessness.’⁴⁰³ The Crown further submitted that the Tribunal should consider this matter in terms of the prejudicial effect of Crown purchasing, rather than as one arising from the consolidation scheme.⁴⁰⁴ This is perhaps to downplay the fact that a further 21 per cent of Maori land in the former Reserve had been acquired by the Crown by the end of the consolidation scheme in 1927. We did consider the effect of Crown purchasing in chapter 13, however, and concluded that the evidence

398. Crown counsel, closing submissions (doc N20), topics 18–26, p 34

399. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 106

400. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 106

401. Crown counsel, closing submissions (doc N20), topics 18–26, p 34

402. Crown counsel, closing submissions (doc N20), topics 18–26, p 34

403. Crown counsel, closing submissions (doc N20), topics 18–26, p 34

404. Crown counsel, closing submissions (doc N20), topics 18–26, p 34

points to a figure of some ten percent made landless by the end of 1921. The matter of a reserve for landless sellers, raised in 1921, and again in 1924, was conveniently put aside. The Government seems to have made no effort to follow it up – though Bowler’s detailed lists of those who retained shares must surely have provided a helpful starting point. And there is a wider issue here, it seems to us: the amount of land left to communities of owners generally. In chapter 15, we consider the outcomes of Crown purchasing in terms of the amount of land left in Maori ownership, and the effect of the Crown’s acquisitions on iwi economic capability.

The second issue raised by the claimants relates to their requests that the Crown reserve special sites for them, some of which were within its award. During the scheme’s implementation, the commissioners set aside 27 papakainga and urupa reserves in Maori ownership (totalling 90 acres). These reserves were made at the request of Maori owners. Given that most of these reserves were less than five acres in size (only two were slightly over), the commissioners decided not to deduct an equivalent amount of land from the Maori owners’ awards; nor were they subject to survey costs (which we discuss later in the chapter). There were, however, six reserves (totalling approximately 204 acres) set aside for Maori owners, for which an equivalent amount of land was deducted from their total interests. A further eight were requested by owners but not set aside, as the area identified for reservation was simply incorporated into the parent block. In each of these cases, Maori owners were given the land that they had requested.

In the case of requests for another six reserves, however, the land ended up in Crown ownership. These were the Waikokopu hot springs, the Maungapohatu burial reserve, the Huiarau wahi tapu reserve, and three pua manu (described as ‘forest reserves’) at Kohuru–Tukuroa, Te Weraiti, and Pukeaho. In total, these requested areas amounted to 1,911 acres.⁴⁰⁵ Counsel for Wai 36 Tuhoe submitted that what appears to have been a ‘general failing’ to reserve certain sites to Maori owners appears to be the consequence of a ‘lackadaisical or cavalier approach on the part of the Commissioners.’⁴⁰⁶ The Crown acknowledged that these reserves were not awarded to Maori owners, but said that due to ‘insufficient knowledge’ it could not comment on whether it had been ‘reasonable or practicable’ to reserve these lands, or whether there was any failure on the part of the Crown.⁴⁰⁷

The only reserves contemplated in the scheme initially, as set out in the Consolidation Scheme Report, were Crown reserves. According to the Report, land taken for the cost of surveys and roads ‘need not be cut off contiguous to the Native section, or it may take the form of scenic or water-conservation or forest-conservation areas within the boundaries of the Native section.’⁴⁰⁸ The commissioners nevertheless received requests from Maori owners

405. No area was specified for Te Weraiti.

406. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 109

407. Crown counsel, closing submissions (doc N20), topics 18–26, p 46

408. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 8

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for reserves for their use, for purposes similar to those set out in section 232(1) of the Native Land Act 1909 (such as a burial ground, place of historical or scenic interest, well or spring), though they had no authority to create them.

The lack of provision in the scheme for creating special reserves for Maori owners was brought to light at the commission's hearing at Waiohau, in February 1923. At that hearing, Ngati Manawa leader William Bird 'stated that the elders had asked him to get reserved the Hot springs within the Pukehou Bl[oc]k' because the waters had 'great medicinal value and [were] highly prized'.⁴⁰⁹ The minute book notes that 'general approval was expressed by all those present'. Perhaps because the commissioners had no authority to create a Native reserve, they simply recorded in the minute book: 'award to be made in favor of the Crown for an area of 10 to 15 acres as may be required, to be called Waikokopu Hot Spring with such necessary right of way over adjoining Bl[oc]k as Surveyor deems requisite'.⁴¹⁰ But, if this was the commissioners' reason for awarding the land to the Crown, why did they not revisit their decision when a provision (section 11(1)) in the Native Land Amendment and Native Land Claims Adjustment Act 1923 (passed some months later, see below) would have allowed the Crown to make the springs a reserve for Maori? Since they failed to do so, and advise Ministers of the people's wish, Waikokopu was referred to in the final schedule of the blocks emerging from the scheme as 'CL' – Crown land.⁴¹¹ The springs were ultimately subsumed within the overall Crown award, and became part of the Crown's Urewera A block when it was gazetted in 1927.⁴¹²

The request for the Waikokopu reserve was followed by another, at the end of the April 1923, during the hearing of the commission at Maungapohatu. Rua Kenana submitted a request 'on behalf of Maungapohatu Natives' for the Crown to 'permanently set aside as a Reserve the Maungapohatu mountain area about 500 acres'. The commissioners indicated that this, and a wahi tapu sought in the Huiarau ranges, would be recommended to the Government.⁴¹³ Maori owners in other parts of the former Reserve also made three requests for pua manu around this time.

In their interim report to the Ministers in August 1923, the commissioners noted these requests and asked for direction on how to proceed. But they commented that the objectives of the owners could just as easily be met if the areas were retained in Crown ownership:

they ask that about 500 acres of Maungapohatu Mountain and about 200 acres of the peaks of the Huiarau Range be permanently reserved – both localities being regarded by them as sacred places, recorded in their legends and associated with their ancestors, many of whom are buried there. Both places are within the Crown's award, and appear to be quite useless

409. Urewera minute book 1, 27 February 1923 (doc M29), p 283

410. Urewera minute book 1, 27 February 1923 (doc M29), p 283

411. Urewera minute book 2A, 9 April 1924 (doc M30), p 207

412. See 1986 map in Nikora, 'The Urewera Consolidation Scheme' (doc E7), app C2, app E (to C2)).

413. Urewera minute book 1, 12 April 1923 (doc M29), p 305

for any practical purpose, and the Crown in the ordinary course of events will probably reserve, for climatic or other reasons, the entire area of both the mountain and the range. The question arises whether such reservation would not be sufficient to satisfy the Natives' request without putting the Crown to the heavy unrecoverable expense of surveying off the special portions asked for.⁴¹⁴

The commissioners clearly preferred that this land go into the Crown's award, despite being aware of the significance of these sites to the people.

The departmental minute on this letter confirmed that the lands, 'now Crown Lands' which were unsuitable for settlement, would become 'Forest or Climatic Reservations', and added that because of this, Maori were 'assured of protection of sacred spots for all time'.⁴¹⁵ From the beginning, there was no inclination on the part of either the commissioners or officials to reserve the two areas for Maori. Legislative provision was in fact made for the creation of reserves for Maori, as we noted above. Clauses amending the Urewera Lands Act 1921–22 were included in the Native Land Amendment and Native Land Claims Adjustment bill, a wide-ranging Bill introduced into the House on August 23, that is, shortly after the commissioners' report was received. The clause which became section 11(1), relating to the creation of reserves, provided:

The Governor-General may, on the recommendation of the Native Minister and the Minister of Lands . . . declare that any part of the land awarded to the Crown under the Urewera Lands Act 1921–22 . . . be a reserve for the exclusive use of any of the former owners of the said land or their successors, or such other Natives or class of Natives as may be referred to in such Warrant.

The clause was of general application, though we note that the Attorney-General, Francis Bell, speaking in the Legislative Council, described the provision as relating to the establishment of Native reserves 'especially the burial-grounds'.⁴¹⁶ Despite this, the Maungapohatu and Huiarau reserves (as well as the pua manu reserves) were not created. It seems clear that it was decided it would cost too much to survey all of them; they were comparatively large reserves, and the Crown would have to bear the cost. The commissioners' letter to Ministers Guthrie and Coates was annotated by the official quoted above with figures, evidently for survey costs, for each of the reserves. The cost for the pua manu would amount to £760, for Maungapohatu it would be £300, and for Huiarau, £72 (that is, a total of over £1,100).⁴¹⁷ (Only Maungapohatu was in fact surveyed.) It is probable that, given that it now

414. Knight and Carr to Guthrie and Coates, 6 August 1923, AJHR, 1923, G-7, p 2

415. Handwritten annotations, evidently by JB Thompson, Under-Secretary for Lands, on Knight and Carr to Guthrie and Coates, 6 August 1923, p 3 ((doc M31(a)), vol 2, p 1457)

416. Francis Bell, 27 August 1923, NZPD, 1923, vol 202, p 579

417. Handwritten annotations, evidently by JB Thompson, Under-Secretary for Lands, on Knight and Carr to Guthrie and Coates, 6 August 1923, p 3 ((doc M31(a)), vol 2, p 1457)

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intended to use the area for watershed protection, the Government wanted to retain control of it; it may also have been influenced by the requirement in section 11(1) that the reserves would be ‘for the exclusive use of any of the former owners’. In any case, reserves could not be declared until the land had first been awarded to the Crown, and the Crown award was not made until 1927.

In the case of the Maungapohatu burial reserve, the commissioners received a further request from Maori owners during their hearing at Maungapohatu on 6 March 1924. A list of 24 trustees for the reserve had been drawn up at the Tauarau hui, and was re-submitted at the hearing, indicating that this was not a new proposal. The minutes note that ‘action’ would be required under the 1923 amendment to give effect to their request.⁴¹⁸ In the meantime, a survey was completed setting out the reserve’s boundaries; a separate survey plan was made in 1924. The land, Mr Nikora told us, was defined ‘by triangulation and by some estimate of boundaries to contain the Mountain. The boundaries [were] not . . . pegged.’⁴¹⁹ But despite the survey of Maungapohatu (which was done as economically as possible), the surveyed area was not marked out on the Crown survey plan when it was later confirmed. A Maori reserve was not declared.⁴²⁰ This meant that the sacred ancestral maunga – the peak of Maungapohatu – was awarded entirely to the Crown.

It is possible that the award of these reserves to Maori was overlooked, but we do not think so. The cost of surveying the pua manu had been estimated to be the most expensive, and the official response had been that Maori could be granted a right to hunt ‘in areas’ – but would not be granted title.⁴²¹ In the case of Maungapohatu, the next most expensive and Huiarau, the commissioners had made it clear they thought separate reserves were not needed, and that view was shared by officials. Yet even though a list of names had been forwarded by the commissioners, and a survey (if hasty) was done, Ministers did not take the next step of making a recommendation to the Governor-General. The survey may have been no more than a precaution in case Ministers ultimately decided – perhaps in the face of continuing Maori owner persistence – that the reserve must after all be made.

It cannot be said that there was a general failure on the part of the commissioners to set aside reserves for Maori owners: 27 reserves were set aside for them in addition to their other land, as well as another six reserves deducted from the land to which their interests entitled them. It appears that the process set out in the 1923 amendment act was generally not carried out when reserves were created in the scheme. They did not pass through Crown ownership first and were instead awarded directly to Maori owners. And in the case

418. Urewera minute book 2A, 6 March 1924 (doc M30), p 86. See also p 94.

419. Tamaroa Raymond Nikora, statement of evidence, 16 February 2005 (doc K14), pp 6–7

420. Jonathan Easthope, ‘A History of the Maungapohatu and Tauranga Blocks as Defined by the First Urewera Commission’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A23), pp 256–257

421. Handwritten annotations, evidently by JB Thompson, Under-Secretary for Lands, on Knight and Carr to Guthrie and Coates, 6 August 1923, p 3 ((doc M31(a)), vol 2, p 1457)

of eight requests for reserves (five urupa and three papakainga) the commissioners simply included the land in the Maori owners' award, without granting it any special status or protection.

But the process adopted by the commissioners had crucial implications for some of the claimants' most tapu ancestral sites. It seems that the commissioners either took advantage of the new process laid down under the 1923 amendment to tell Maori that responsibility for decision-making no longer rested with them but lay in the more distant hands of Ministers (as in the case of Maungapohatu and Huiarau) or quietly ignored it (in the case of Waikokopu), while taking steps to ensure that the Crown acquired sites which they considered were crucial for watershed or scenic purposes. The process set out in the 1923 amendment was a determining factor in the fate of the three pua manu reserves, the Maungapohatu burial reserve and the Huiarau wahi tapu, all of which were washed up in the Crown's award. This outcome, clearly favouring the Crown's interests, stands as a failure in the division of the land in the Urewera Consolidation Scheme. It was not until the 1970s that the Maungapohatu Burial Reserve was placed in Maori ownership, and only after a significant period of protest (see chapter 15 for our discussion of these events). Other significant sites remain in Crown ownership today.

The final issue raised by the claimants in respect of the reserves created during the scheme was whether the Crown reserved to itself public places above and beyond its entitlement. If the Crown no longer required the sites for these purposes, the claimants submitted, they should be returned to the original owners.⁴²² As noted, the commissioners cancelled a number of planned scenic reserves in the Tarapounamu and Ruatahuna regions after protests from Maori owners. But 10 reserves (totalling approximately 416 acres) were set aside for the Crown throughout the scheme, most of which were marked out on the Crown's survey plan as separate sites. These included the Ruatahuna township (see above), two school reserves (at Maungapohatu and Ohora), two scenic reserves, and riverbank reserves (totalling 175 acres).

The Crown submitted that, in the case of the Ohora school reserve, 'it is very likely that this was simply land within the Crown award that the Crown intended to use as a school.'⁴²³ We agree, and add that this same reasoning applies to the other nine reserves. No interests of Maori owners were put toward their creation; therefore they formed part of the Crown's entitlement in the scheme. Apart from the Ruatahuna township, we have seen no evidence to suggest that these sites were particularly targeted by the commissioners in a way that deprived Maori owners of land that they had requested. The one possible exception applies to the riverbank reserves. In chapter 18, we examine the claim that the commissioners set aside these reserves for the particular purpose of separating Maori land from the Tauranga

422. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 119–120

423. Crown counsel, closing submissions (doc N20), topics 18–26, p 70

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River and other smaller waterways in the within scheme, thus cementing the Crown's right to those waterways.⁴²⁴

Although we received very little evidence on this issue, we presume these Crown reserves for public purposes have not been included in Te Urewera National Park. Crown counsel thus left open the option that these areas could be returned to Maori owners as part of their Treaty settlement:

The Crown notes the submissions that these lands should be returned. If the properties concerned have been declared surplus to requirements by government departments they will be considered through the protection mechanism process. Claimants may request these lands be placed in landbanks.⁴²⁵

In other words, the Crown argued that the peoples of Te Urewera were not disadvantaged because it had not used the public works legislation to set aside these reserves; the land could still potentially be returned through this other mechanism.

14.6.5 Conclusions – the division of the land and consolidation of Maori owners' interests

Maori owners entered the scheme in the hope they could rescue their fragmented interests in the former Reserve in the form useable land, and in doing so sought a compromise between the hapu-title promised to them in the UDNR Act and individualisation. They were confronted by a Crown determined to control a process to which it was also a party. The Crown occupied a superior bargaining position, and constructed the setting for a hui in which an 'informal' process of negotiation was then transformed into a formal process of implementation, which had the effect of considerably strengthening the Crown's control of the process and its ability to secure its pre-consolidation goals for Te Urewera lands. Maori owners, by virtue of this process and its subsequent records, were given little opportunity to understand the scheme's collective consequences.

All the way through the process, the Crown had a clear view of the field; Maori owners, once their committee had disbanded, were simply disparate groups of owners each with a view of only one or two parts of the field. Although this did not mean that most groups were deprived of the land they asked for when the commission came to their area, all groups were deprived of a sufficient opportunity to establish informed and comprehensive objectives as to which land they wanted or needed to retain, which Mr Nikora identified as a fundamental principle of a sound consolidation scheme.

Overall, we think that the Tauarau hui exhibited some of the 'give and take' which Ministers expected to characterise the scheme. The committee of owners, even though it

424. Suzanne Doig, 'Te Urewera Waterways and Freshwater Fisheries' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A75), pp 78–89

425. Crown counsel, closing submissions (doc N20), topics 18–26, p 70

did not have full information or sufficient time to consider and develop informed objectives, was able to bargain successfully with the Crown on some key points. It was facilitated in doing so by its chosen representative, Apirana Ngata. Also, the committee did all the work of organising its own communities of owners into consolidation groups, many of which were small and reflected a preference to re-collectivise as whanau. Then, decisions about four-fifths of the land were finalised through this process of 'give and take', although some adjustment of exact locations and boundaries was still required on the ground.

But for the remaining one-fifth of the land, the decisions were made in a process over which Maori owners had none of the autonomy that had been accorded them at the Taurau hui. Instead, the Crown co-owner appointed two of its officials as commissioners with absolute power to make all the remaining decisions. Maori owners were originally to have a right of appeal to an independent arbiter but this suggestion – made by the officials themselves – was not included in the Urewera Lands Act. While the commissioners exhibited commendable flexibility and willingness to meet the wishes of Maori owners in the division of the northern lands, the flaws in a one-sided commission were clearly revealed in the cases of Te Whaiti and Ruatahuna, where the Crown simply imposed its will in the face of significant resistance from Ngati Whare and Ngati Manawa (at Te Whaiti) and a large body of Tuhoe groups at Ruatahuna.

As a result, some Maori groups in Te Urewera lost out to a Crown that was seeking to advance its own interests: by securing the lands and forests of its choosing and by using the scheme to maximise the size of its award. This story is no better illustrated than in the story of the Waikaremoana block, which the Crown acquired in whole through the scheme. We turn to that story next.

14.7 WHAT EFFECT DID THE SCHEME HAVE ON WAIKAREMOANA PEOPLES?

Summary answer: *The Urewera Consolidation Scheme had particular impacts on Tuhoe, Ngati Ruapani, and Ngati Kahungunu, who by 1921 had retained all of the interests in the Waikaremoana block originally awarded to them. By the beginning of the twentieth century, earlier extensive alienation in surrounding lands meant that the lands that remained in their possession were of even more importance to them, namely the reserves to the south-east of the lake and the large expanse of land to the north that was the Waikaremoana block. Tuhoe and Ngati Ruapani owners had petitioned the Government to refrain from purchasing in the block during the 1910s because they were already short of useable land. They had earlier signalled this to Premier Seddon when he visited the lake communities in 1894. Although William Herries decided against purchasing in the block, some officials suggested a portion of it should be taken under Scenery Preservation legislation, so that the Crown would have the crucial watershed area for scenic purposes and to protect the lake levels for the planned hydro-power scheme.*

During the negotiations at the Tauarau hui, the Crown used the threat of compulsory acquisition to get the Waikaremoana block. The Crown initially proposed that the block would be excluded from the scheme; when Coates subsequently indicated that a portion of the block would be taken under the Scenery Preservation Act, many Tuhoe owners threatened to withdraw from the scheme. Tuhoe owners, faced with having to choose some ancestral lands over others, preferred to use their interests from the Waikaremoana block to increase the amount of land they would get around their main settlements; rather than receiving monetary compensation, which was the alternative. Faced with the possibility of Tuhoe's withdrawal, the Crown decided to include the block in the scheme. Coates used the possibility of a compulsory taking at the crucial time; the result was the award of the whole Waikaremoana block (minus some 600 acres of reserves for Ngati Ruapani) to the Crown.

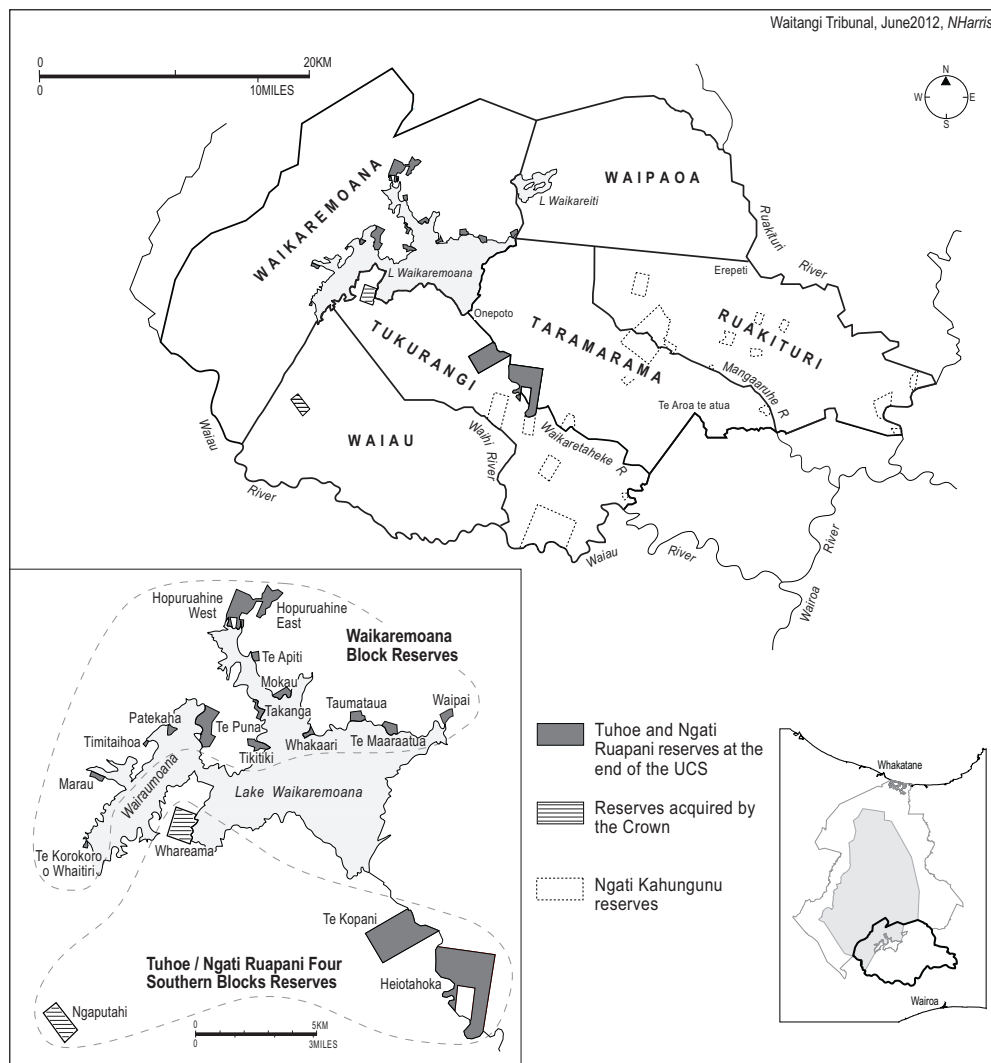
The outcome of the Tauarau negotiations was that the whole block – not just a portion of it – passed into the Crown's possession. But this decision did not result in equal outcomes, as separate arrangements were made with different groups of owners that reflected their respective bargaining positions and not the value of the land.

Officials at the Tauarau hui recognised that Ngati Ruapani in particular required more useable land; Ngati Ruapani saw the scheme as an opportunity to obtain such land, as well as a sustainable income in the form of debentures, a Government debt that was to pay interest on an annual basis until the principal was paid. But the Crown only succeeded in hastily purchasing private settler land for Ngati Ruapani at a price more than twice than that agreed with them. Understandably, they rejected this land. The Crown then acquired two of their southern reserves without paying for them, failed to find alternative land on the southern side of the lake at a reasonable price, then refused to increase the size of reserves in the Waikaremoana block, which owners hoped would make up for the lack of land on the southern side. At the same time, the Commissioners continued to purchase interests from Ngati Ruapani owners at less than the negotiated rate. On top of this, interest payments on the debentures were withheld from Ngati Ruapani and Ngati Kahungunu at a crucial time during the depression. The Government then reduced the interest rate and extended the period for repayment of the principal by 25 years.

In total, between 1875 and 1930, the land holdings of Waikaremoana peoples reduced from 291,195 acres to 12,580 acres, or 4.3 per cent of what they had held in 1875. When we consider these facts in the context of the earlier history outlined in previous parts of our report, and the abject poverty of these peoples at this time, we cannot but view the actions of the Crown as manipulative and heartless. It is a cruel irony that the only viable Maori community at Lake Waikaremoana survives on one of the reserves created in the wake of the Crown's questionable acquisition of the four southern blocks, on a site which Tuhoe, Ngati Ruapani, and Ngati Kahungunu defended against Crown forces in January 1866.

TE WHAKAMOANA WHENUA

14.7.1



Map 14.4: Land remaining in Maori ownership in the Waikaremoana region by 1930.

Between 1875 and 1930, land in Maori ownership surrounding Lake Waikaremoana was reduced from 291,195 acres to 12,580 acres (a drop of 4.3 per cent). The Crown's last major acquisition was the Waikaremoana block (73,667 acres), to the north-west of the lake. At the end of the Urewera Consolidation Scheme, 2,488 acres remained in Tuhoë and Ngati Ruapani ownership.

14.7.1 Introduction

The Urewera Consolidation Scheme had different effects on each part of the former Reserve and its communities. But it left a particular and far-reaching mark on the lands and peoples of the Waikaremoana region. Tuhoë, Ngati Ruapani and Ngati Kahungunu had emerged from the strain of warfare in the 1860s and 1870s, and the tensions arising from successive title-determining bodies that had demarcated a 'tribal boundary', with only one large block of land intact: the Waikaremoana block, which consisted of 73,667 acres of mainly forested

land on the north-west shore of Lake Waikaremoana. Although the block was one of the few in the former Reserve that the Crown had not attempted to purchase in the 1910s, it was the only block that the Crown ultimately managed to acquire as a whole, apart from 600 acres of reserves that were set aside for Ngati Ruapani; and it did so through the Urewera Consolidation Scheme.

The Crown initially proposed at the Tauarau hui to exclude the block from the scheme, but by the end of the committee's deliberations it had been included at their request. The plan was for the block to be awarded in its entirety to the Crown; Tuhoe owners would transfer all of their interests in the block (the equivalent of 29,060 acres) to other areas within the scheme. This was unlike any other arrangement in the scheme. The terms of this transaction also meant that the majority of the interests in the block – those of Ngati Ruapani and Ngati Kahungunu owners – were purchased by the Crown in exchange for debentures, a Government debt which would pay interest on an annual basis, and thus provide the owners with an ongoing form of income until the capital was paid off. Ngati Ruapani owners were also willing to give up two of the reserves that had been earlier set aside for Tuhoe and Ngati Ruapani south-east of the lake (in the four southern blocks), so long as they received sufficient reserves to the north of the lake and to the south, where the Crown promised to acquire additional land for their cultivation.

In this section, we look at how the Crown's approach to the Urewera Consolidation Scheme could have extreme consequences for a particular community and their lands. The claimants argued that the Crown acquired the Waikaremoana block through coercion, and did not fulfil the promises it had made in connection with it; the Crown denied all of these points, maintaining that its acquisition of the block and subsequent arrangements were conducted fairly, even if some of the outcomes did not live up to the owners' expectations.

The issues discussed in this section are best understood in the context of the land alienation that the peoples of Waikaremoana had already experienced in the decades before the scheme. We begin with a reminder of the history of that alienation from earlier parts of our report in order to explain the situation faced by the Waikaremoana peoples in 1921.

14.7.2 How did land alienation influence the views of Maori owners of the Waikaremoana block towards their remaining land?

By the time the Urewera Consolidation Scheme came about, Waikaremoana peoples had experienced half a century of land alienation; the circumstances in which this alienation occurred determined their views of what should happen to their remaining land. Land alienation began as a direct consequence of the Crown's first attempt at asserting authority in the region during the 1860s and 1870s, as we explained in chapters 6 and 7. Following an intense phase of warfare in the early nineteenth century, Tuhoe, Ngati Ruapani, and Ngati

Kahungunu had all maintained settlements on the shores of the lake and surrounding lands. Due to its altitude and terrain, this land was generally of a low quality for cultivation, and was consequently never an area of heavy settlement; but it was by no means uninhabited, and two generations of relatively peaceful co-existence was only brought to an end by the first arrival of Crown forces in late 1865. The events of the 1860s had notable effects on Ngati Ruapani, Tuhoe and Ngati Kahungunu, as witnessed in the loss of life and the destruction of property. This was the worst possible beginning for the relationship between the Crown and Waikaremoana peoples; as it was for Te Urewera peoples generally.

The fighting that occurred in the 1860s and 1870s had lasting consequences for the land to the south of the lake, which came before the Native Land Court as four blocks – Waiau, Taramarama, Tukurangi, and Ruakituri. In 1875, in what was the last stage in a protracted saga, Tuhoe and Ngati Ruapani leaders withdrew from the court proceedings. As we explained in chapter 7, they did so following a threat of confiscation that had emerged during those proceedings. The four blocks were awarded entirely to Ngati Kahungunu owners, who – faced with their own pressures – sold to the Crown. Ngati Kahungunu secured 24 reserves in the blocks, totalling 8,420 acres.⁴²⁶ (The reserves awarded to Ngati Kahungunu are outside the Te Urewera Inquiry District and do not feature as part of our report, except by way of context.) Tuhoe and Ngati Ruapani received 1,250 and 2,500 acres of reserves for their interests. Although there were significant delays in the creation of these reserves, these delays did not cause any prejudice. Nevertheless, the circumstances in which the reserves were created provides important context for the way in which the Crown subsequently acquired two of them; we consider these circumstances below (see sidebar over).

The Crown's acquisition of the four southern blocks meant that, apart from a few small pockets, the southern land had gone; only the land to the north remained intact. Tuhoe and Ngati Ruapani's land holdings in the area immediately to the south of the lake became a mere 2,500 acres. In total, the land surrounding Lake Waikaremoana in Maori ownership – the four southern blocks, and what became the Waipaoa and Waikaremoana blocks – was reduced from 291,195 acres to 123,471 acres (42 per cent) by 1875. This was reduced even further in the years after the Native Land Court's award of the Waipaoa block – to the east of the lake – to Tuhoe and Ngati Kahungunu in the 1880s. As we explained in chapter 10, Crown purchasing in the Waipaoa block took place through questionable means. Of the 39,302 acres in this block, 19,490 acres remained in Maori ownership in 1904. By 1930, this had been reduced to 2,092 acres, or 5.3 per cent.

Such extensive land loss made it very difficult for Waikaremoana communities to maintain their livelihood. They were already in some trouble by the time of Premier Seddon's visit to the Te Kopani reserve in 1894. In his speech, Hori Wharerangi told Seddon about the well-being of his community: 'We are not living at ease in this place'. The cause for his

426. Michael Belgrave and Grant Young, 'War, Confiscation and the Four Southern Blocks' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A131), pp 111–112, 137–140

The Creation of the Four Tuhoe and Ngati Ruapani Reserves in the Four Southern Blocks

The four Tuhoe and Ngati Ruapani reserves were intended to provide a small but permanent foothold in the land to the south of the lake. Shortly after the withdrawal of Crown forces from Waikaremoana in December 1871, Tuhoe and Ngati Ruapani communities settled back at their kainga on the southern shore. Four years later, following the Crown's acquisition of the four southern blocks, they had to start restricting their activities to a much smaller area of land. The 'deed of sale', in which the Crown purchased the interests of Tuhoe and Ngati Ruapani, stated that 2,500 acres would be set aside as 'a permanent reserve' ('kia whakataturutia kia matou tetahi wahi o aua whenua'). The intended beneficiaries of this reserve were described as 'the Chiefs and people of the tribes of Tuhoe, Urewera, Ngati Ruapani' ('nga iwi me nga rangatira me nga tangata katoa o Tuhoe ara o te Urewera o Ngati Ruapani'). The land, in other words, would be set aside permanently for a tribal community.¹

In 1877, surveyors cut the boundaries of four reserves totalling 2,500 acres: Ngaputahi (in the Waiau block), 300 acres; Whareama (Tukurangi block), 300 acres; Heiotahoka (Taramarama block), 1,100 acres; Te Kopani (Tukurangi block), 800 acres. It is unclear how the location and number of these reserves was chosen, though it is likely that any decisions were informed by the places Tuhoe and Ngati Ruapani had returned to after the end of hostilities; the boundaries were probably chosen with the assistance of leaders. Two of the reserves had lake frontage; the others were near the lake.

Although surveyors did all the necessary work, the reserves were not legally created at this time. The 24 Native Kahungunu reserves were created in January 1882.² In June 1882, noticing the absence of an equivalent process for their reserves, Tuhoe and Ngati Ruapani leaders wrote to the Government asking for grants to be made. But at a hearing in July 1884, the Native Land Court found that it was unable to deal with the 'Urewera' reserves because, as George Preece wrote, they 'were not excluded in the deeds of sale to the Crown of the Waiau, in Tukurangi, and Taramarama'.³ The Government resolved the situation by using sections 144 and 145 of the Land Act 1877, which enabled Crown lands to be reserved from sale first on a temporary basis and then permanently. In February 1885, the four reserves were temporarily 'reserved from sale' under section 144 of the Land Act 1877 'for the use and support of the Uriwera and Ngatiruapani Tribes of aboriginal natives'. Then, in April 1885, they were gazetted as permanent reserves under section 145.⁴

These reserves were vested in the Public Trustee under the Native Reserves Act 1882. In June 1885, the Public Trustee applied for a Native Land Court hearing (under section 16) to determine the beneficial ownership of the reserves. For reasons unknown to us, this hearing did not take place until 1889. But the outcome was that the court found the beneficial owners of the four reserves, in equal shares, to be the 60 individuals named in the Tuhoe and Ngati Ruapani deed.⁵

It took 14 years for Tuhoe and Ngati Ruapani owners to be guaranteed their remaining land in the four southern blocks. But while this was symptomatic of the poor process that characterised the Crown's acquisition of the four southern blocks, the owners appear to have suffered no lasting prejudice from the delay. Tuhoe and Ngati Ruapani returned to the land shortly after the end of the conflict, and resided at the biggest reserve from this time. And, as the reserves were intended to be inalienable, they were also treated as such by people who, at the time, had no intention of alienating their remaining land. Although the delay in defining the beneficial owners increased the community's uncertainty about their place on the land (particularly when Ngati Hika, a hapu of Ngati Kahungunu, disputed ownership of one of the reserves), they were not denied access; nor, ultimately, ownership.

As the deed had suggested that the reserves would belong to the tribes, title to the reserves should not have been vested in the Public Trustee. Nonetheless, any possible drawbacks from listing all 60 individuals as beneficial owners of this land should have been negated by its status as a permanent reserve. In fact, it is unclear whether the reserves were afforded any legislative protections at the time of their creation. Under section 153 of the Land Act 1877, any land reserved from sale could be withdrawn from any reservation or exclusion, and then sold after three months' notice. But under section 22 of the Native Reserves Act 1882, restrictions on reserves could only be lifted if the Native Land Court was satisfied that enough land remained in the possession of the owners that was 'amply sufficient for the future wants and maintenance of the tribe, hapu, or persons to whom the reserve wholly or in part belongs'. It is unclear which provision applied to the four Tuhoe and Ngati Ruapani reserves, because they had been 'set aside' under the Land Act 1877 and title had been issued under the Native Reserves Act 1882. In any case, all restrictions on reserves were lifted by the Native Land Act 1909. This paved the way for the inclusion of the reserves in the Urewera Consolidation Scheme in 1921. By this time (as we explain further below) the owners were beginning to look for alternatives to the four reserves, which had proved insufficient for their needs.

1. Tuhoe and Ngati Ruapani deed of sale, 12 November 1875 (Cathy Marr, comp, supporting papers for 'Crown Impacts on Customary Interests in the Waikaremoana Region in the Nineteenth and Early Twentieth Century', various dates (doc A52(a)), pp 36–37)

2. Belgrave and Young, 'War, Confiscation and the Four Southern Blocks' (doc A131), p 118

3. Ibid, pp 116, 120

4. 'Lands Temporarily Reserved in the Land District of Auckland', 19 February 1885, *New Zealand Gazette*, 1885, no 11, p 246; 'Lands Permanently Reserved', 30 April 1885, *New Zealand Gazette*, 1885, no 26, p 508

5. Belgrave and Young, 'War, Confiscation and the Four Southern Blocks', p 124; Wairoa minute book 3A, 8 March 1889, pp 384–386; Wairoa minute book 3B, 9 March 1889, pp 3–8

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14.7.2

people's 'unease' was their material circumstances. 'You will have seen, on your journey', Wharerangi said, 'that we occupy most of our land that will admit of occupation.' Although Seddon responded to this admission in positive terms, as he believed Maori should seek to be rid of any surplus land, Wharerangi saw the situation differently: he wanted land they could use. Another speaker, Hapi, told Seddon that:

all the available land, so far as the Tuhoe are concerned, is occupied. The land that you saw lying unutilised when going through this territory you have properly described. It is rough and uninhabitable . . . Where we are living now is only a reserve the Government gave us. We are occupying the whole of it, ourselves and our horses.⁴²⁷

Tuhoe and Ngati Ruapani then raised the possibility of exchanging some of their land for better land. Hapi identified Crown land adjacent to their main settlement (acquired as part of the four southern blocks) as a possible site for a school. Wharerangi also raised the possibility of exchanging land in the Waipaoa block for land near the reserve. 'What we propose is this: that we should surrender one portion to the Government, making the whole [Waipaoa] block Government land, in exchange for land which belongs to the Government, and which we want.'⁴²⁸ As we explained in chapter 7, Seddon's 1894 visit to Lake Waikaremoana demonstrated how inadequate the reserves set aside for Tuhoe and Ngati Ruapani from the four southern blocks were. In response to this situation, the local leaders clearly identified the central issue that confronted them: a long-established community on the remaining land south of the lake needed more and better land to keep it viable.

By the time the Waikaremoana block came before the first Urewera commission in the late 1890s, significant alienations in adjacent lands had already taken place. The people's experience of title-determination before the two Urewera commissions – as with their experience in the Native Land Court – placed an added burden. The events leading to the alienation of the four southern blocks saw the emergence of a 'boundary' dispute between Tuhoe and Ngati Kahungunu, which meant that the two tribes increasingly sought to define a hard-line boundary in these and other fora, especially in describing their respective rights to the Waikaremoana block. Although both were large iwi, with main settlements elsewhere in the region, the Waikaremoana lands were of traditional importance and neither tribe was willing to concede to the other in fora that required clear delineation of rights.

Ngati Ruapani, however, had few alternatives: Waikaremoana was their only home. They emerged from the Urewera commissions aligned to Tuhoe, but with an increasingly distinct identity that would become stronger over time. Ngati Ruapani identity and relationships were a matter of considerable debate before us. We are aware that there was a sizeable

427. 'Pakeha and Maori: A Narrative of the Premier's trip through the Native Districts of the North Island', 1895, AJHR, 1895, G-1, pp 79–84

428. 'Pakeha and Maori: A Narrative of the Premier's trip through the Native Districts of the North Island', 1895, AJHR, 1895, G-1, p 84

group of people who described themselves as a distinct Ngati Ruapani group at the time of the consolidation scheme, and continue to do so today. These distinctions are important in unravelling the complex history of the Waikaremoana block transaction. But as the record also indicates, most Waikaremoana people identified as Tuhoe, Ngati Kahungunu, or Ngati Ruapani (and are affiliated with more than one group). When the awards were finalised in 1907, 906 individuals were listed as owners of the Waikaremoana block, and 729 owners were either of Tuhoe or of Ngati Ruapani descent (or of both). After the second commission, 117 Ngati Kahungunu names were added to the list.⁴²⁹

By the mid-1920s, therefore, Maori owners of the Waikaremoana block – Tuhoe, Ngati Ruapani, and Ngati Kahungunu – had experienced half a century of land loss which had only made them more inclined to keep their remaining land. The local communities actually needed more and better land to improve their material circumstances, not less. But tensions had also been raised between these groups on account of successive title-determination processes. It was in this context that the Crown began developing plans which ultimately led to the block's inclusion in the Urewera Consolidation Scheme.

14.7.3 How was the Waikaremoana block included in the scheme?

The Crown's plans to acquire the remaining lands adjacent to Lake Waikaremoana emerged from the very earliest identification of the lake and its surrounds as a site of scenic beauty, one that was worthy of preservation. But protecting the forests that traversed the foreshore of the lake up to the skyline was also increasingly discussed in association with concerns about the need to protect all Te Urewera forests. Such protection was seen as essential to prevent floods in surrounding regions, especially the settler farmlands of the Bay of Plenty. The land to the north-west of the lake took on further importance when plans to construct a hydro-power station took shape at the beginning of the twentieth century: in order to ensure the success of the power scheme, the lake's water levels had to remain the same.

By the 1910s, these factors combined to the extent that officials and other interested parties made a series of recommendations in favour of the Crown taking a portion of the block under the scenery preservation laws. The 1913 Royal Commission on Forestry recommended reserving the land from the edge of the lake to the skyline in order to preserve 'the great beauty of the scenery'. In November 1913, the Lands Department submitted proposals to the Minister of Lands to acquire 14,280 acres of the Waikaremoana block, but excluding Maori cultivations and settlements.⁴³⁰ This area was 19.3 per cent of the block. The following year, both the Auckland and the Hawke's Bay branches of the Scenery Preservation Board recommended acquiring the same area. According to Vincent O'Malley, although these proposals received considerable support from organisations in surrounding regions,

429. O'Malley, 'Waikaremoana' (doc A50), pp 45–46

430. O'Malley, 'Waikaremoana' (doc A50), p 65

the Crown refused to take any action because by this stage plans had been made to resume purchasing in the Reserve; the Crown did not want to inflame relations with Maori owners by acquiring some of their land by compulsion.⁴³¹

There was good cause for the Crown to remain cautious. In 1914 and 1915, Waikaremoana owners submitted two separate petitions, both of which opposed any form of Crown acquisition in the block.⁴³² In 1916, ignoring these petitions, the Under-Secretary for Lands made another proposal for compulsory acquisition of 14,280 acres of the block. O'Malley says this recommendation was again rejected for the same reasons as in 1914.⁴³³ By this time, William Bowler had begun calling for the Crown to extend its purchasing into the remaining Reserve blocks, including the Waikaremoana block. But Herries confirmed in July 1917 that the Crown would not begin purchasing there, because of its unsuitability for settlement and the costs that would be involved in 'opening' the land. Herries rejected yet another recommendation from Bowler in 1918, observing that it was not worth tying up the Crown's money 'indefinitely' in such low-value land, and that the 'question of the ownership of the lake comes in too'. On the latter point, Herries was referring to the Native Land Court decision in June 1918, awarding the lakebed to lists of Tuhoe, Ngati Ruapani, and Ngati Kahungunu individuals, against which the Crown had just lodged an appeal.⁴³⁴ Tuhoe and Ngati Ruapani owners also appealed the decision, objecting to the inclusion of Ngati Kahungunu owners in the title.⁴³⁵

Further petitions followed as the Crown's purchasing programme extended into Ruatahuna: first from Te Wao Ihimaera and 16 others in August 1918; then, in May 1919, from Te Amo Kokouri and 121 others.⁴³⁶ The Waikaremoana block, they thought, should be withheld from sale, and kept as an area 'upon which we could live'.⁴³⁷ Commenting on this petition, Herries noted that 'it was not proposed to touch the Waikaremoana blocks at present'.⁴³⁸ The Crown had not acquired all of the interests in any other block in the Reserve, and it had yet to rule out the option of acquiring the part that was needed through the Scenery Preservation Act.

By the time the Waikaremoana block came into focus again in 1921, the Crown was in the early stages of planning for a consolidation scheme. The lake had just been confirmed in its potential as the source of a hydro-power scheme. On 4 May 1921, shortly before Coates and

431. O'Malley, 'Waikaremoana' (doc A50), p 66

432. O'Malley, 'Waikaremoana' (doc A50), p 67

433. O'Malley, 'Waikaremoana' (doc A50), p 71

434. O'Malley, 'Waikaremoana' (doc A50), pp 71–73; Emma Stevens, 'Report on the History of the Title to the Lake-bed of Lake Waikaremoana and Lake Waikareiti' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1996) (doc A85), p 22

435. Stevens, 'Lake Waikaremoana and Lake Waikareiti' (doc A85), p 22

436. O'Malley, 'Waikaremoana' (doc A50), pp 74–76

437. Te Amo Kokouri and 121 others to Native Minister, May 1919 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1110)

438. O'Malley, 'Waikaremoana' (doc A50), pp 74–77

The Minister of Lands on the Importance of the Waikaremoana Block to the Crown

In his speech at the Ruatoki hui on 22 May 1921, the Minister of Lands, David Guthrie, stated:

In regard to Waikaremoana: it is absolutely necessary in the interests of all concerned that we should preserve the bush and keep it as it is today. If we allow the whole of the bush around the Lake to be felled, the result will be that the level of the Lake will fall. It would cease to be the great source of power that it is going to be when the hydro-electric scheme is carried out. We want to conserve the rainfall, so that the level of the Lake will not drop. What we want from the Natives is either to exchange land round the Lake for other land, or treat with them in other ways. I understand from the information that has come to me that it is considered by the Natives that the establishment of the works would be in their interests as well as in the interests of the Europeans.

—'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 137)

Guthrie went to Ruatoki, the Scenery Preservation Board made another recommendation for the compulsory acquisition of the land on the north-west shore of the lake 'extending to the skyline' for 'scenic purposes'.⁴³⁹

A few weeks later, at the May 1921 hui at Ruatoki, Maori owners and Ministers began discussing what would happen to the Waikaremoana block. Ngata introduced the issue by arguing that the object of a consolidation scheme was to pull the 'scattered' interests of Maori owners from around the Reserve: 'the Ruatahuna natives will endeavour to consolidate their interests which are scattered as far as Waikaremoana.' Takurua Tamarau agreed that it was better to include the block in the scheme so that they could increase their land holdings in places such as Ruatahuna and Ruatoki: there was 'no reason why we who are interested in the land [in the Waikaremoana block] and are living here [at Ruatoki] should oppose that matter'.⁴⁴⁰ Guthrie signalled that it was the Government's definite intention to acquire the Waikaremoana block for a combination of preservation purposes: in particular, conserving the rainfall (as he put it) and maintaining the level of the lake for a hydro-power scheme (see sidebar over). For Guthrie, the only question that remained was how the Crown would obtain the block. He mentioned two possibilities: by means of exchange (in the consolidation scheme); or to 'treat' with its owners 'in other ways'.⁴⁴¹ Although he took

439. O'Malley, 'Waikaremoana' (doc A50), p 83

440. 'Disposition of Urewera Lands', 18 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 131, 134)

441. *Ibid* (p 137)

the matter no further on the day, Guthrie was raising the spectre of renewed Crown purchase of individual interests, even though those who had assembled at the hui were those who had staunchly opposed Crown purchasing.

The Crown's next step towards acquiring the Waikaremoana block became tangled up with the ownership of the lakebed. Coates traveled to Waikaremoana after the May hui to advance the Crown's agenda for acquiring the land with the people there, who evidently had not been at the Ruatoki hui. The *New Zealand Times* reported that the Crown remained anxious 'to retain the country surrounding the lake in order to conserve the scenery and the water for power'.⁴⁴² Maori owners said that they wanted to resolve what would happen with the Waikaremoana block before the Crown could proceed with its appeal against the lakebed decision. According to Emma Stevens, they were concerned that further land loss would affect their recently awarded rights in the lake.⁴⁴³

From the Crown's perspective, this was in fact a reason to delay its appeal. By acquiring the block, or a portion of it immediately adjacent to the lake, the Crown might gain an advantage in arguing its case to the title of the lakebed; and Maori owners had clearly become aware of this. In his June 1921 plan for consolidation, Knight cited public statements to this effect by the Attorney-General, Sir Francis Bell. In Bell's opinion, the recent arrangement for the Crown to acquire 'practically all of the fore-shore of Lake Waikare Moana' (which he believed had been achieved at the May hui at Ruatoki and Waikaremoana), would 'bring to an end the litigation in respect of that Lake': 'It is possible for that reason that the proposed argument of the Waikare Moana case will be postponed.'⁴⁴⁴

Knight proposed two courses of action:

First, to omit the block from the areas to be consolidated, and to leave it to the Crown to take as much as may be necessary for lake protection purposes under the Scenery Preservation Act, or else instruct the Native Land Purchase Officer, either by a meeting of owners or by acquiring individual interests to commence purchasing operations. And, secondly, if the whole or part of the block is acquired by the Crown during the consolidation process to admit that such action will not prejudice the Natives' claim to the bed of the lake.⁴⁴⁵

The Maori owners' appeal was still set down for mid-August 1921, and Knight argued that some owners wanted to make an arrangement for both the block and the lakebed at the same time. Stevens says that, after the hui at Waikaremoana and consulting with Bell,

442. 'Urewera Country: Big Settlement Scheme', 31 May 1921, *New Zealand Times* (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 552)

443. Stevens, 'Lake Waikaremoana and Lake Waikareiti' (doc A85), p 23

444. Sir Francis Bell, quoted in Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 147)

445. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 147)

Coates gave an instruction to delay the Crown's appeal from June until August. The hearing was then delayed again until March 1922. As we shall discuss in chapter 18, further delays to all the appeals followed; they were not heard until 1944.⁴⁴⁶

Once the consolidation scheme got under way, Knight either was given instructions to exclude Waikaremoana from the consolidation scheme or chose this course himself. As we have seen, the officials at the Tauarau hui in August 1921 proposed to limit the scheme to the 44 blocks in which the Crown had purchased interests, which automatically excluded Waikaremoana. Whoever made this decision, the Crown's agenda was such that it would invariably acquire some or all of the block, either through compulsory acquisition or through the commencement of purchasing. Knight had thought this was the path of least resistance but the reaction of Maori owners at Tauarau was the opposite. In his report on the hui, Balneavis recorded: 'There was great disappointment expressed when Mr Knight announced that the Waikaremoana Block would not be included in the Consolidation Scheme.'⁴⁴⁷ But what may have appeared as disappointment to Balneavis was rather a growing realisation that the consequences of the block's exclusion from the scheme were two-fold: they would not be able to use the interests to increase the size of their main settlements; and the Crown would instead acquire parts of Waikaremoana through other means. The largely unsettled area of the Waikaremoana block was one of the biggest bargaining chips for many Maori owners in the Reserve lands.

The key action taken by the Crown during this period occurred during the Tauarau hui, as a result of which the Crown was able in a series of transactions to acquire the whole block. On 6 August, Balneavis sent a telegram to Coates advising him that the Crown should reverse its decision to exclude the Waikaremoana block from the scheme. There were, Balneavis reported, a large number of owners who were willing to exchange their interests in the block. Including it in the scheme would not significantly decrease the amount of land awarded to the Crown in other parts of the Reserve, because the block had a lower valuation than most others. Balneavis suggested that taking this action would also advantage the Crown's lakebed case – 'giv[ing] the Crown without any friction a footing in the forest area north of the lake' – and asked the Ministers for their authorisation.⁴⁴⁸

Two days later, Guthrie sent a telegram to Coates giving his support to Balneavis' recommendation. It remained 'very desirable' for the Crown to acquire 'native interests in forest covered northern shores of Waikaremoana':

Any provisional scheme of exchange between Crown interests in Urewera and native interests on shores Waikaremoana would receive my immediate and sympathetic consideration.

446. Stevens, 'Lake Waikaremoana and Lake Waikareiti' (doc A85), pp 23–30

447. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 189)

448. Balneavis to Coates, 6 August 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 506)

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Any such provisional scheme must be met with Mr Knight's concurrence. Am advising Mr Knight accordingly.⁴⁴⁹

It is possible that Knight intervened in support of his original recommendation to exclude the block, because Coates then sent a telegram to the Crown's representatives at the hui, confirming the Government's intention to acquire a portion of the block under the Scenery Preservation Act. Although we were not supplied with a copy of the telegram, Balneavis reported the reaction of the assembled Maori owners:

when your message arrived conveying the intimation that the requirements of the Crown so far as the forest area on the Waikaremoana foreshore was concerned would be satisfied by the application of the Scenery Preservation Act, the whole Consolidation Scheme was endangered. The Native representatives intimated that they would proceed no further with it.⁴⁵⁰

Crown counsel quoted from a telegram Coates sent to Guthrie on 13 August, which included a message from Ngata advising against the approach he had adopted: 'if the Crown insists on compulsion in that respect all other Urewera matters will have to be dropped.'⁴⁵¹ Based on this advice, the Ministers agreed to include the block in the scheme.

Balneavis described what happened next:

The subsequent decision . . . to proceed by exchange of Waikaremoana interests for Crown interests in the Urewera Blocks cleared the air at once, and in one evening proposals affecting 25,030 acres of the blocks were submitted and tentatively included in the Consolidation Scheme.

Balneavis noted that the deal was conditional on Maori getting a higher value for their Waikaremoana interests, entitling them to more land elsewhere in the Reserve than they would otherwise have received. They asked for 7s 6d per acre and ultimately received six shillings, which was twice the valuation given to the block by Wilson and Jordan back in 1915; we discuss issues surrounding this valuation below.⁴⁵²

By the end of the Taurarau hui, nine-tenths of the interests of Tuhoe owners had been distributed around consolidation groups in eight different areas throughout the Reserve. A further group transferred their interests to Crown land outside the Reserve and two more

449. Guthrie to Coates, 10 August 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 509)

450. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 189-190)

451. Coates to Guthrie, 13 August 1921 (quoted in Crown counsel, closing submissions (doc N20), topics 18-26, p73)

452. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 189)

were listed as ‘probable sellers’.⁴⁵³ In total, these interests amounted to the equivalent of 26,167 acres, or 35.5 per cent of the block. The interests of the remaining group of Tuhoe owners – totalling the equivalent of 2,893 acres – were set aside and eventually dealt with alongside the interests of Ngati Ruapani owners. It is likely that this group of owners had close affiliations with Ngati Ruapani, and signaled a preference to receive alternative land at the lake, which was the outcome that Ngati Ruapani owners achieved during the negotiations at the Tauarau hui (see below). Bar the formalisation of the arrangements (which occurred in the Consolidation Scheme Report and the Urewera Lands Act), the Crown’s acquisition of the Waikaremoana block – so far as Tuhoe were concerned – was complete.

In our inquiry, the Crown said that it did not threaten compulsory acquisition in order to acquire the block or include it in the scheme. Rather, Tuhoe owners had asked for the block to be included and have it subject to exchange.⁴⁵⁴ Counsel for Wai 36 Tuhoe agreed: many Tuhoe owners had asked for an exchange of land.⁴⁵⁵ For this reason, O’Malley says, Coates’ stated intention to use compulsory acquisition was ‘dangerous in threatening to undermine the general support for the proposed consolidation scheme.’⁴⁵⁶ But counsel for Wai 144 Ngati Ruapani recognised that the owners had only signalled their ‘great disappointment’ when the block was initially excluded; when the Crown said it would take the land by compulsion, the owners threatened to withdraw from the scheme:

As the land could be taken anyway under the legislation, at least if it was included in the consolidation awards, it could be included in the proportion of the lands that were to go to the Crown. Effectively the chiefs of Urewera were forced into a choice – lose Waikaremoana and fewer other lands or lose Waikaremoana and more other lands.⁴⁵⁷

We agree with counsel for Ngati Ruapani. Guthrie and Coates had made the Crown’s determination to acquire Waikaremoana very clear. The choice seemed indeed, as counsel put it, to ‘lose Waikaremoana and fewer other lands’ if they took land elsewhere in the Reserve in exchange for their interests, or to ‘lose Waikaremoana and more other lands’ if individual interests were acquired in the usual manner (whether compulsorily or by Crown purchase).

This was both a threat and an opportunity. The block remained the Maori owners’ biggest bargaining chip: the Crown only decided to include the block in the scheme when they threatened to withdraw. The serious nature of their threat demonstrates their strong

453. In descending order (from the most number of interests to the least) these were: Ruatahuna (406,334 shares), Ruatoki (238,374 shares), Te Whaiti (218,671 shares), Maungapohatu (162,146 shares), Waimana (142,120 shares), Tarapounamu (76,874 shares), Hikurangi–Horomanga (45,651 shares), Ohaua (7752 shares). A further group transferred their interests out of the scheme to the Hereheretau B2 block (31,977 shares), and two more were listed as ‘probable sellers’ (1292 shares).

454. Crown counsel, closing submissions (doc N20), topics 18–26, pp 72–73

455. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 121

456. O’Malley, ‘Waikaremoana’ (doc A50), p 89

457. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, para 147

belief that if they had to lose more land, they should at least gain some back around their main settlements. It would not be going too far to say that they sacrificed their interests at Waikaremoana to save as much land as possible near their main settlements. Compulsory acquisition would have resulted in monetary compensation, but this was not good enough for Maori owners who had repeatedly opposed Crown purchasing. Tuhoe owners would not have wanted to lose any further land, but in the circumstances they had to make the difficult choice to surrender their interests in the Waikaremoana block. This was a sacrifice made necessary by the extent of Crown purchasing throughout the Reserve as a whole, which had threatened to reduce the size of their main settlement and development areas, such as in the river valleys, and at Ruatahuna and Maungapohatu. The inclusion of their interests from the Waikaremoana block meant that the severity of this loss would be diminished, even if they acknowledged that their rights in the lakebed might be placed in jeopardy. Had the UDNR Act been properly implemented, this entire set of circumstances would never have come about.

14.7.4 How did the Crown acquire the interests of Ngati Ruapani and Ngati Kahungunu and was the price paid to them fair?

The arrangements for the Crown to acquire the interests of Tuhoe owners had important consequences for Ngati Ruapani and Ngati Kahungunu, as the Crown had now decided to acquire the whole block immediately as part of these arrangements. Within a few weeks of the Tauarau hui, the Crown had concluded separate negotiations at Wairoa and Waikaremoana. One issue for the Tribunal is whether these negotiations and their outcomes were fair to Ngati Ruapani and Ngati Kahungunu.

Balneavis had noted that the inclusion of Waikaremoana in the consolidation scheme was 'conditional' on further arrangements with Ngati Ruapani. 'Special consideration' was needed 'for the claims of the Ngati-Ruapani Tribe, who occupy small clearings on the northern lake frontage and at Kokako [Te Kopani] settlement near the outlet to the lake'. He said that 'provision of other lands [was needed] for them near to the said Kokako settlement'.⁴⁵⁸ The interests of Ngati Ruapani owners amounted to the equivalent of 31,607 acres, or 43 per cent of the Waikaremoana block.⁴⁵⁹ Once Tuhoe owners had secured the inclusion of their interests in the scheme, the Crown was determined to acquire the remaining interests in the block and discussed the issue with the Ngati Ruapani representatives who were at the hui. Those representatives could have resisted the Crown's plans, and retained their last substantial area of land, which would have also helped to protect their recently awarded title to the lakebed. But Ngati Ruapani still faced the same dilemma which they had raised with

458. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 189–190)

459. O'Malley, 'Waikaremoana' (doc A50), p 93

Seddon in 1894: they needed more useable land. The Crown however needed the forests, not the small clearings on the lake front: so long as those clearings could be preserved, and Ngati Ruapani could be given other useable land in their rohe, alienating their interests in the Waikaremoana block appeared to be a reasonable compromise.

Once it was apparent that the Crown was eager to acquire the whole block, Ngati Ruapani representatives pushed the Crown to acquire alternative land for them near their settlement at Te Kopani on the southern shore, similar to the type of exchange Hori Wharurangi had proposed without success in 1894. By the 1920s, Ngati Ruapani were even more determined to acquire good land within their rohe. Like their fellow Tuhoe owners, they wanted land, not small cash payments to individuals. They were only prepared to give up their remaining interests on the northern side of the lake if they obtained more land near their main settlement to the south. They achieved a provisional agreement to this effect at the Tauarau hui; Balneavis indicated that a subsequent meeting with the owners at Waikaremoana would finalise the deal.

Balneavis also noted that the Crown's acquisition of the whole block depended on further arrangements with Ngati Kahungunu owners, who were 'prepared to sell' their interests outright. He acknowledged that this was only his 'understand[ing]', which suggested that Ngati Kahungunu owners – who owned the equivalent of 13,000 acres, or 18 per cent – were not represented at the hui. He proposed holding a brief 'enquiry' at Wairoa, which would 'ascertain as far as possible who are willing to sell and the procedure of assent by assembled owners may clinch the matter so far as they are concerned'.⁴⁶⁰

Under cross-examination by counsel for the Wai 621 Ngati Kahungunu claimants, Leah Campbell noted that a Ngati Kahungunu owner was a member of the committee selected to represent all Maori owners at the Tauarau hui.⁴⁶¹ It is possible, therefore, that some Ngati Kahungunu owners were present and indicated that they were prepared to sell their interests, as Balneavis had suggested. Yet Belgrave, Deason, and Young noted a lack of evidence about how Ngati Kahungunu owners viewed the sale of their interests in the block.⁴⁶² The Crown submitted that there is no evidence to suggest Ngati Kahungunu owners did not understand the proposed transaction, but that they were offered no land exchanges or alternative land, which had featured as part of Tuhoe's and Ngati Ruapani's deal.⁴⁶³ In fact, one group of Ngati Kahungunu owners did take up a block of Crown land at Wairoa in

460. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 190). Balneavis said that the interests of Ngati Kahungunu owners amounted to some 17,000 acres, but Knight gave the more accurate breakdown of the relative interests in September 1921. See Knight to Guthrie, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 524).

461. Campbell, under cross-examination by counsel for Wai 621 Ngati Kahungunu, 29 June 2004 (transcript 4.7, pp 52–53)

462. Michael Belgrave, Anna Deason, and Grant Young, 'The Urewera Inquiry District and Ngati Kahungunu: An Overview Report on Issues Relating to Ngati Kahungunu' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A122), p 51

463. Crown counsel, closing submissions (doc N20), topics 18–26, pp 73–75

exchange for their interests.⁴⁶⁴ We have no information as to how or why this exchange was negotiated. Counsel for Wai 621 Ngati Kahungunu submitted that the Crown ‘forced the sale of Kahungunu interests in Waikaremoana Block lands.’⁴⁶⁵

In the absence of robust evidence, it is difficult for us to arrive at any firm conclusions about the particular circumstances in which Ngati Kahungunu owners at Wairoa sold their interests in the block. Given the context, however, we are satisfied that an element of compulsion was employed. Ministers had made it clear at the May 1921 Ruatoki hui that the Crown intended to acquire the Waikaremoana block; the only question for them was *how*. At the Tauarau hui in August of that year, at which perhaps only one Ngati Kahungunu representative was present and appointed to the committee of owners, Coates made it clear that his preference was to take what the Crown needed compulsorily using the scenery preservation legislation. Guthrie and Knight, however, were prepared to include Waikaremoana in the consolidation scheme, which was Tuhoe’s strong demand in preference to compulsory takings or renewed purchase of individual interests. Once the Crown had made known its determination to acquire Waikaremoana, and once the block had been included in the consolidation scheme, Ngati Kahungunu owners were on the back foot and their only real option was to sell their interests. They could not exchange interests for other land in the Reserve because their only other lands in the former Reserve (Paharakeke and Manuoha) were outside of the scheme. But nor could they reasonably hope to retain their interests, since the Crown had raised the spectre of compulsory acquisition, Tuhoe had negotiated an exchange, and Ngati Ruapani had already agreed to sell. Thus, although we do not know all the particulars of Ngata’s negotiations with the Kahungunu owners at Wairoa, we are satisfied that they had little option but to sell their interests, and set about obtaining the highest price possible in their negotiations with Ngata.

The responsibility for arriving at terms with Ngati Ruapani and Ngati Kahungunu fell to Knight and Ngata. At this point, Ngata appears to have gone beyond his Tauarau mandate to represent the owners; he seems to have represented the Crown to Maori as well as Maori to the Crown, especially when he met with the owners alone and then negotiated later with Knight. Ngata thus travelled to Waikaremoana and Wairoa in early September 1921 to carry out the negotiations, fairly soon after the conclusion of the Tauarau hui.

As noted, we do not have a detailed account of Ngata’s negotiations with Ngati Kahungunu, other than his report that they had requested £1 an acre but agreed – on Ngata’s urging – to accept a minimum of 16 shillings an acre in the form of debentures. We have a little more detail about Ngata’s discussions with Ngati Ruapani. At first, the lakeside community asked for more than had been agreed at Tauarau, seeking an exchange of land on an acre-for-acre basis: 31,000 acres of land. Then, when Ngata could not agree to that, they asked for £1 per acre, but – as with Ngati Kahungunu – Ngata negotiated them down to a minimum of 16

464. Knight and Carr to Guthrie and Coates, 6 August 1923, AJHR, 1923, G-7, p 2

465. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 8

shillings. In his report to Coates, Ngata made it very clear that Ngati Ruapani were making what he considered a sacrifice for the public good. Europeans, he told Coates, would have asked ‘for more than the Waikaremoana owners are now asking, *not because they wish to part with their ancestral land, but because they are persuaded they must give way to the public interest* (emphasis added).’⁴⁶⁶ As we shall see, Ngati Ruapani were not so much persuaded that they must give way to the public interest as sacrificed in that interest, given the eventual outcome of these negotiations. Again, as with Ngati Kahungunu, only one or two owners wanted cash and the community agreed to be paid in debentures.

These negotiations revealed that a key part of the deal so far as both Ngati Ruapani and Ngati Kahungunu were concerned was the price they would receive for their interests and the form of the payment. Knight reported that of the 44,000 acres worth of interests remaining in the block, he and Ngata had agreed that half had a significantly greater value than either that given by Wilson and Jordan in 1915 (three shillings per acre) or the enhanced value assigned to the interests of Tuhoe owners at Tauarau (six shillings per acre). Knight and Ngata took into account the ‘special value’ of the area ‘as the feeding ground of Lake Waikaremoana . . . which it is necessary to preserve to ensure a constant and regular supply of water for the Waikare Taheke River which flows from Waikaremoana Lake, and upon which the hydro-electric station will depend for its power’. A price of £1 per acre, Knight believed, would represent a ‘fair and reasonable’ value for the interests in this half. Coates queried why the Crown would want to acquire any interests that would not form part of the watershed. Knight responded that cutting an area out and leaving it in Maori ownership would require ‘a particularly expensive survey’, which would add to the costs and would complicate the process of consolidation, as well as interfering with ‘the conservation of the land for climatic purposes.’⁴⁶⁷ As far as Knight was concerned, once Tuhoe owners had agreed to exchange their interests in the block, the Crown’s only option was to acquire all of it.

Ngata had been instrumental in securing Ngati Ruapani and Ngati Kahungunu owners a higher price than either the current valuation (three shillings) or the valuation assigned to Tuhoe owners at Tauarau (six shillings). Tuhoe owners had in fact asked for a higher exchange value of 7s 6d per acre, but Balneavis said that they accepted six shillings per acre on ‘Mr Ngata’s advice.’⁴⁶⁸ This sum was twice the existing valuation but more in line with the value of similar land into which Tuhoe owners were transferring their interests; ‘most of which’, Ngata said, ‘was of practically the same nature as Waikaremoana.’⁴⁶⁹

466. Ngata to Coates, 19 September 1921 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 475)

467. Knight to Guthrie, 19 September 1921 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), pp 524–525)

468. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 190)

469. Ngata to Coates, 19 September 1921 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), pp 471–478)

By contrast, Ngata told Coates that Ngati Kahungunu 'were accustomed to the high values of the Coast lands', and Ngati Ruapani owners knew that one of their reserves on the southern shore of the lake was valued at £1 per acre in 1910, and would be reluctant to accept less now. Because the Crown had determined that 'such a magnificent asset should be under public control', Ngata said he was 'anxious that any compromise arrived at should be in the public interest, and that not only no injustice be done to the Native owners but that that interest should in this case be specially conserved'. The question was the 'method and terms' by which an agreement could be reached. Ngata thought that the Crown had purchased interests in the Reserve at a 'less than fair value' and that they were the 'only lands in the Dominion or for that matter in the British Empire which took no notice whatever of the war and of the appreciation of land values during the war'. The UDNR Act meant that the owners could not alienate to private interests: 'The value is placed on the land by the Crown for its own purposes.' The owners had also been prevented from properly utilising the foreshore because of the Crown's interest in preserving it for 'scenic or water-conservation purposes', which may have led to an appreciation of value. The standing forests on the block, though of a low importance in the eyes of the farmer, were 'a very great asset just now'; and because those forests remained, the owners deserved a higher price for their interests.⁴⁷⁰

Ngata reported that he and Knight disagreed over what would be the fairest overall value for the interests of the Ngati Ruapani and Ngati Kahungunu owners. Knight supported 13 shillings per acre but Ngata thought that 15 shillings was more reasonable. As we have seen, Ngata's negotiations at Wairoa and Waikaremoana had revealed that both groups of owners were reluctant to accept less than £1 per acre but had agreed to 'accept a minimum of 16/- an acre.'⁴⁷¹ Despite what appears to have been a fairly definite agreement between the owners and Ngata, Knight lowered the price to 15 shillings, which Ngata did consider reasonable. As we shall see below, this drop below their minimum price was not referred back to the owners for their consent, which calls into question Ngata's role in these negotiations. He told Coates:

I found it most difficult to persuade the Ngati-Ruapani and Ngati-Kahungunu to come down to a value basis at all [instead of an exchange of land, acre per acre] and they eventually agreed to submit £1 an acre as the price for 44,607 acres which is their proportion of the block. After further argument they authorised me to accept a minimum of 16/- an acre.⁴⁷²

Having bargained hard on behalf of the Crown in this initial negotiation, and while acknowledging the 'limit set by the Natives I represent', Ngata advised Coates: 'I take the responsibility of reducing their claim . . . to 15/- an acre.'⁴⁷³ He was not authorised to depart

470. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), pp 471-478)

471. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

472. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

473. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

from the agreements made at Wairoa and Waikaremoana, and the owners later objected to this fait accompli when they finally discovered it in 1922.

The terms of all these different arrangements were set out in Schedule 1 of the Consolidation Scheme Report. The Tuhoe owners, who held the equivalent of 29,060 acres, were recorded as having exchanged their interests with other land inside the scheme on the basis of six shillings per acre, and these interests had been included in various consolidation groups. The report noted that the remaining interests of the Ngati Ruapani and Ngati Kahungunu owners would be purchased 'on the basis of approximately 15s. an acre.' These owners were divided into four groups. One group, consisting of 317 owners, was described solely as 'Ngati Ruapani'. We acknowledge that many owners in this group would have affiliated to Tuhoe and Ngati Kahungunu as well; but this description certainly reflects the increasingly independent stance Ngati Ruapani had adopted at this time, and in these circumstances. Reserves in the Waikaremoana block would be set aside for this Ngati Ruapani group, as well as other land that the Crown would purchase and deduct from the total value of their interests. The remaining amounts would be paid in cash (as determined by the Consolidation commissioners) or debentures – a form of Government debt that paid out interest at 5 per cent per annum.⁴⁷⁴ Three Ngati Kahungunu groups of owners, representing the interests of 234 owners, would also receive cash or debentures.⁴⁷⁵

As we have seen, Ngati Ruapani and Ngati Kahungunu owners came away from their negotiations with Ngata under the impression they would be paid a minimum of 16 shillings per acre, but this was not the eventual arrangement reached between Ngata and Knight. The Consolidation Scheme Report recorded Knight's revised valuation of 15 shillings per acre. At Knight's rate, the value of interests in the Ngati Ruapani list should have amounted to £23,435 10s 5½d. This was made up of £22,567 5s 7½d of debentures (calculated at the agreed rate of 15 shillings per acre) for Ngati Ruapani owners, and the interests of the remaining Tuhoe owners at the lower rate of six shillings per acre, which totalled £868 4s 10d, and were included in the Ngati Ruapani list.⁴⁷⁶ But the true value of Ngati Ruapani debentures was not revealed in the Consolidation Scheme Report. Instead, their interests were given in schedule 2 as £9,895 3s 1d – which was just over six shillings per acre, not the 15-shilling rate which they had negotiated.⁴⁷⁷ Ngati Ruapani owners registered their obvious displeasure when they received their copy of the report. At the Consolidation Commission's first

474. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 9–12)

475. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 12)

476. The Crown's offer of 15 shillings per acre was for the 44,607 acres deemed to be held by Ngati Ruapani and Ngati Kahungunu. Consequently, this capped the value of Ngati Ruapani and Ngati Kahungunu debentures at £33,455 5s. The difference between this figure, and the total value of Waikaremoana interests (specified in the Consolidation Scheme report as £34,323 9s 10d) comes to £868 4s 10d: see Knight, Carr, and Balneavis, 'Urewera Land Consolidation Scheme', 31 October 1921, AJHR 1921, G-7, pp 9, 12, 14; Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b), p 476

477. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 36

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hearing at Waikaremoana, in February 1922, they threatened to withdraw from the scheme, giving the revised price as one of two reasons.⁴⁷⁸ This remained an ongoing concern.

In March 1923, Ngata and Ngati Ruapani negotiated a second time, this time at a Consolidation Commission hearing and with Balneavis involved as well. Again, Ngata seems to have been representing the Crown to Maori rather than the other way around. Matamua Whakamoe later explained that the Ruapani owners accepted 15 shillings per acre at Ngata's insistence – 1 shilling below their minimum negotiating price of 16 shillings – so as 'to assist the Electric Light Scheme'.⁴⁷⁹ According to Ngati Ruapani's account of this agreement, they won some concessions from the commissioners in return: first, the 607 acres of reserves would now be paid for by the Crown along with the rest of the Waikaremoana lands and then returned to Ngati Ruapani free of charge, including no charge for the survey of the reserves; and, secondly, 'no rates to be charged'.⁴⁸⁰ The scope of the rating agreement is unclear but the commissioners certainly confirmed the new arrangement that 607 acres of reserves would now be purchased and then returned.⁴⁸¹

This compromise arrangement – a payment for the 607 acres at 15 shillings an acre – amounted to less than one-third of what Ngati Ruapani would have received if their original agreement with Ngata had been kept. We find it difficult to see this 1923 'agreement' as a free and fair agreement on the part of the Ruapani owners, who had to either accept the Government's price or withdraw from the transaction altogether. As we have seen, their plight at Te Kopani was such that they could not afford to withdraw. Nor is it clear that they *could* lawfully withdraw: the Urewera Lands Act included the Waikaremoana block in the consolidation scheme and gave legal force to the 'agreements' recorded in the Consolidation Scheme Report. The Consolidation commissioners had absolute power to enforce those 'agreements' as they saw fit.⁴⁸²

The confusion around the specifics of the transaction continued until 1928, when RN Jones, Under-Secretary for the Native Department, made enquiries about who was paid what and how. Carr reported that different values had been adopted for different groups of owners, 'but it would be unwise to adopt this illustration any further lest it be mis-used by parties who are still irreconcilibles'.⁴⁸³ Although it is unclear who Carr considered were still 'irreconcilibles' by 1928, he seems to have been intent upon disguising the different valuations if possible. A similar approach might have been taken in the Consolidation Scheme Report back in 1921 but it is more likely that there was simply an error in the schedule. As

478. O'Malley, 'Waikaremoana' (doc A50), p106

479. Matamua Whakamoe to Native Minister, circa July 1926 (Vincent O'Malley, comp, supporting papers to 'Waikaremoana', various dates (doc A50(c)), p 585)

480. Matamua Whakamoe to Native Minister, 30 March 1925 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 514)

481. O'Malley, 'Waikaremoana' (doc A50), p116

482. Urewera Lands Act 1921–22, sch 1

483. Carr to Jones, 12 April 1928 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 567)

we will see, the commissioners clarified the concerns of Maori owners to the point that they no longer threatened to withdraw from the scheme, but not so that all parties were clear about the wider arrangements.

The Crown's position in our inquiry was that the arrangements made between the various owners of the Waikaremoana block were transparent and fair. Relying on Ngata's arguments about why Ngati Kahungunu and Ngati Ruapani might expect a higher price, Crown counsel commented: 'One of the factors that influenced the agreed price was that land to the south-east [of the lake] was more expensive to purchase, and had a higher value than the lands in the northern portion of the reserve.'⁴⁸⁴ These factors were considered in the context of a commercial arrangement, negotiated between the parties:

It would appear that the differences in the value attached to those who were to relocate to the north (6 shillings per acre) with the value attached to those who were to purchase lands and/or receive cash or a debenture (15 shillings per acre) reflected a pragmatic solution on complex matters to ensure an equitable outcome for these two groups. There is no evidence that the Crown forced Maori into one category or the other. It is reasonable to assume that individual Maori made their own choice as to which category they wished to go into.⁴⁸⁵

But the evidence shows that Maori owners were never given an opportunity to conduct negotiations in a fair and transparent manner. The Crown should have ensured a proper valuation of the Waikaremoana block in 1921 when it contemplated the block's acquisition, just as all of the blocks in the Reserve should have been properly valued. As we have discussed in chapter 13 and earlier in this chapter, the valuations of the majority of the Reserve blocks – including the Waikaremoana block – were in fact not valuations but rather assessments of value by officials who had been designing a scheme for settlement. Ngata presented some compelling reasons why the value of the Waikaremoana block should have been higher compared with similar lands; as did the surveyor Tai Mitchell, who concluded in 1922 that the Waikaremoana block was worth at least a pound an acre. Stirling concluded that the Crown should have paid at least that much, given its interest in hydro-electric developments.⁴⁸⁶ But Ngata and Mitchell were not trained valuers. Their opinions are not conclusive evidence that the land should have been valued higher; only a proper process of valuation would have demonstrated this conclusively. But they saw the value of the land and the lake to the Crown.

Had a proper valuation been made and disclosed to all parties, the Crown could have then proceeded with separate negotiations. But instead of seeking a new valuation, the Crown made its own assessment of the value of each group's interests, which was based

484. Crown counsel, closing submissions (doc N20), topics 18–26, p 79

485. Crown counsel, closing submission (doc N20), topics 18–26, p 73

486. Bruce Stirling, 'Te Urewera Valuation Issues' (commissioned research report, Tāneatua: Tuhoe-Waikaremoana Maori Trust Board, 2005) (doc L17), p 147

The Dubious Valuation of the Waikaremoana Block

How did Ngata and Knight arrive at a price of 15 shillings per acre for the interests of Ngati Kahungunu and Ngati Ruapani in the Waikaremoana block? First, Knight and Ngata arrived at an entirely artificial conclusion that exactly half of the land (22,000 of the 44,000 acres) owned by these groups was close to the lake and therefore worth a lot more (in terms of its value for watershed conservation and hydro-electricity) than the other half. Secondly, they arbitrarily decided that the value of the 22,000 acres further away from the lake was six shillings an acre. This was the value that had been settled upon for Tuhoe interests at the Tauarau hui. Thirdly, they disagreed about the value of the lake frontage half, which Knight 'assesse[d]' at £1 an acre, giving an average price for the 44,000 acres of 13 shillings per acre. Ngata, on the basis that the Maori owners had set a minimum price of 16 shillings an acre, decided that the more valuable land would have to be worth 26 shillings an acre to secure that price. Then, he took 'the responsibility', as he put it, for 'reducing their claim from 26/- to 24/- for the 22,000 acres frontage,' thereby 'reducing the average price for the 44,000 acres to 15/- an acre'.¹ And that is how the price of 15 shillings per acre was calculated.

Some of the underlying reasoning was sound: south frontage land had been valued at £1 an acre back in 1910, and Knight and Ngata rightly dismissed the 1915 valuation of the Waikaremoana block (three shillings an acre) as out of date and out of step with postwar values in general. But the process by which the price of 15 shillings per acre was calculated was opportunistic and clearly deeply flawed, since it was a post-facto justification for a commercial transaction rather than an independent analysis of the land's value. Similarly, the process by which Tuhoe interests were limited to six shillings an acre was also flawed. First, the value of six shillings was entirely arbitrary, and secondly it could only stand up relative to the 15 shillings an acre if all Tuhoe interests had been located well away from the lake, which cannot have been the case. Ngata, having specifically warned Coates against the trap of the Crown using its monopoly powers to value land that it wanted to purchase, allowed himself and Knight to fall into the same trap and in the very same report in which he warned Coates about it.

1. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

more on their circumstances in relation to the transaction than the inherent qualities of the land. Given that Tuhoe, Ngati Ruapani, and Ngati Kahungunu were all tenants in common who held undivided interests in the block, they were entitled to the same increase of value; if any was in fact considered appropriate. Instead, the Crown essentially exercised its monopoly powers to determine that Tuhoe owners were only deserving of a slightly higher value (for exchange purposes) because the rest of their land was of a similar value.

Similarly, once Knight and Ngata had agreed that Ngati Ruapani's and Ngati Kahungunu's interests were not worth more than 15 shillings per acre, this price was simply recorded in the Consolidation Scheme Report and then imposed on those communities of owners. As with other aspects of the scheme, these were not equal negotiations.

Nor is it correct for the Crown to say that individual owners had a choice of either taking land elsewhere in the Reserve at the lower value or opting to have land south of the lake (with debentures or cash) at more than double that value. Arrangements were made with Tuhoe first and then separate, quite different arrangements were made later with Ruapani and Kahungunu. As evidence for this, the small group of Tuhoe owners who were included in the Ngati Ruapani list only received six shillings per acre; not the higher rate negotiated later.

Although the Crown believed it was appropriate to acquire interests at different valuations in this context, Crown counsel did concede that its subsequent purchase of interests from some Ngati Ruapani owners at six shillings per acre – considerably below the 'agreed' 15 shillings per acre – was 'unconscionable and inappropriate'.⁴⁸⁷ Throughout 1922 and 1923, Knight purchased interests from owners who wished to receive cash instead of debentures, mainly from among the Ngati Ruapani owners. As we have seen, a complaint from Ngati Whare chief Wharepapa Whatanui in May 1922 saw Knight's purchasing activities come under scrutiny from Coates, who said that 'a promise was distinctly made to the Urewera Natives that further purchasing would be stopped'.⁴⁸⁸ Knight defended his actions by noting that the Waikaremoana block was 'in a totally different position from any acquisitions or purchases for adjustment in the balance of the Urewera Lands'.⁴⁸⁹ In other words, the purchase of Ngati Ruapani and Ngati Kahungunu interests in the Waikaremoana block was a pre-approved part of the scheme (see Schedule 1 of the Consolidation Scheme Report), and the commissioners had discretion to agree to payments in cash rather than debentures.

As we have seen, the Crown adopted two different prices for those who were exchanging their interests for land in the northern part of the Reserve, and those who were selling their interests in return for cash or debentures (plus additional land south of the lake for Ngati Ruapani). Knight explained that these various arrangements worked: 'either by transferring the owners to Groups in other localities on a 6/- per acre basis or by purchasing at 15/- per acre'. Knight, however, took a very controversial view of the latter arrangement, explaining that purchasing some Ngati Ruapani interests immediately with cash would save the Crown money: 'The interests set out in the report have been computed on a 6/- per acre basis and

487. Crown counsel, closing submission (doc N20), topics 18–26, p 71

488. Coates to Guthrie, 1 July 1922 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 457)

489. Knight to Under-Secretary for Lands, 7 July 1922 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 455)

it is, therefore, obvious that by transferring them to the sellers Group and purchasing now, the Crown will be saving the difference between 6/- and 15/-.⁴⁹⁰

In reaction to criticism that the Crown was destabilising the scheme by purchasing interests in the middle of consolidation, Coates established a new regime (explained above), which required the commissioners to seek prior approval from the Ministers before acquiring any new interests. Initially, Knight did seek approval for each transaction. But by late 1923, he had abandoned this approach and was organising the purchase of interests for cash without approval.⁴⁹¹ In October 1923, he and Carr reported to the Native Department on their achievements: ‘interests in the Waikaremoana Block are being offered by the owners for sale to the Crown at 6/- per acre – the price at which the shares given in the report were computed, and that anticipating your consent to their purchase at this price now instead of issuing debentures at 15/- per acre later on we have purchased the interests offered.’⁴⁹² It is not clear why Knight thought that the 15 shillings per acre agreement with Ngati Ruapani only applied to debentures and not to payments in cash. We can see no reason for it in the evidence before us.

These purchases were approved in early November 1923. As O’Malley noted, it is surprising that the Government did not comment on this clear violation of the rule it had only just established.⁴⁹³ In total, the Crown purchased the equivalent of 1,863 acres at six shillings per acre. Admittedly, this was cash the owners received immediately, but it was also a saving to the Crown.⁴⁹⁴ The Crown made further savings when a number of owners in the Ngati Ruapani group chose to transfer their interests into the scheme after the promise of alternative land south of the lake fell through (we discuss this further below). The interests transferred were the equivalent of 4,099 acres. The majority of this group is likely to have been made up of the remaining Tuhoe owners, whose interests amounted to the equivalent of 2,893 acres, at the rate of six shillings per acre. But the remaining interests would have come from the Ngati Ruapani group, and on these interests the Crown would have made a saving, since it required Ruapani to transfer at a rate lower than the 15 shillings per acre they had earlier negotiated.⁴⁹⁵ It appears that while Ngati Ruapani did have some choice about what they could do with their interests (as Crown counsel suggested), the Crown’s decision to acquire the whole Waikaremoana block meant they were still forced into alienating their interests by some means.

490. Knight to Under-Secretary for Lands, 7 July 1922 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 455)

491. O’Malley, ‘Waikaremoana’ (doc A50), p 114

492. Knight and Carr to Native Under-Secretary, 22 October 1923 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(b)), p 440)

493. O’Malley, ‘Waikaremoana’ (doc A50), p 115

494. minute book 1 (doc M29), pp 139, 141; minute book 2A (doc M30), pp 44, 60- 64, 68, 163, 167, 180

495. Together, the sale and transfer of shares had reduced the value of the Ngati Ruapani debentures by 1924 to £19,293 13s 1 1/2d.

But we do not accept the Crown's distinction between the purchasing of Ngati Ruapani's interests at a low rate – which it called 'unconscionable and inappropriate' – and the valuing of Tuhoe interests in Waikaremoana at six shillings per acre instead of the 15 shillings per acre for those receiving debentures. Both were determined on the basis of the owners' relative bargaining positions, and had very little to do with the value of the land. This was one of the Crown's few concessions in respect of the Urewera Consolidation Scheme, yet it is evident that many more could have been made in the Waikaremoana block transaction alone.

For both Ngati Kahungunu and Ngati Ruapani, much depended on the successful administration of the debentures, on which they placed great hopes for a sustainable income. For Ngati Ruapani, the success of the transaction also depended on how quickly they would be able to take up the land promised to them: more land around their settlement on the southern shore of the lake, and reserves in the Waikaremoana block.

14.7.5 Did the Crown fulfil its promise to set aside sufficient land for Ngati Ruapani as part of the Waikaremoana block transaction?

The promise of acquiring more land in the south for their immediate use is, we think, what decided Ngati Ruapani owners to alienate their interests in the Waikaremoana block. Sadly, Ngati Ruapani never received this promised land. Fourteen small reserves from land that they had owned anyway, on the northern shore of the lake, hardly compensated. On top of this, they actually *lost* land in the south because two of their reserves from the 'four southern blocks' went into Crown ownership. All of this happened through the Urewera Consolidation Scheme, which Ngati Ruapani had hoped would improve their material circumstances.

The terms of Ngati Ruapani's land exchange were established by Ngata during his visit to Waikaremoana in September 1921. In the first instance, Ngati Ruapani asked for an exchange of land on an acre per acre basis – that is, they wanted 31,000 acres elsewhere in their rohe. This went far beyond the initial agreement at Tauarau and Ngata refused to accept it. Nonetheless, he investigated their circumstances quite thoroughly and told Coates that 'the chief need of the Ngati-Ruapani was for land suitable for cultivation'. To meet this need, Ngata proposed that the Crown purchase 800 acres of private land adjacent to the Te Kopani settlement (which was also known as Kokako). This land had been acquired by the Crown when it obtained the four southern blocks, but it had been sold to private interests and developed as a farm. It was owned by Mr Tapper, and we refer to it as 'Tapper's farm'. Once the Crown had purchased the land from its owner, Ngata said, the cost would be

deducted from the value of the interests of Ngati Ruapani owners, who would in turn be given ownership of the land.⁴⁹⁶

In order to assist in paying for this land, Ngata said that Ngati Ruapani were willing to sell the Crown two of the four southern block reserves, Whareama and Ngaputahi. Although these reserves were meant to be inalienable, the people who lived on the lake shore presumably accepted the alienation of their two less accessible reserves in favour of acquiring better land next to their main kainga. Under the legislative regime in place before 1909, the alienation restrictions might not have been lifted because the owners did not have sufficient land to allow any form of alienation. But all alienation restrictions on reserves were lifted under section 207 of the Native Land Act 1909. This meant that the owners could suggest selling two of their reserves to the Crown, with the money contributing to the purchase of Tapper's farm. Ngata noted in his report that the price they would have received for the reserves would be used for that purpose. A 1910 valuation of Whareama put its worth at 20 shillings per acre, which Ngata and Knight accepted. Ngata added that the Crown was asked to pay 'outstanding' rates on these reserves to the Wairoa County Council. The payment of the rates was not to be deducted from the purchase money.⁴⁹⁷ Ngata also noted that 607 acres of the Waikaremoana block would be reserved for Ngati Ruapani out of 'their clearings on the lake foreshore'.⁴⁹⁸ Thus, Ngati Ruapani would retain less than 2 per cent of their land in the Waikaremoana block, while Tuhoë and Ngati Kahungunu would retain nothing at all.

The terms of these arrangements were then set out in the Consolidation Scheme Report, which recorded lists of owners for 11 reserves in the Waikaremoana block. The report stated that suitable land would be found adjacent to Te Kopani and purchased for owners in Residue 1 (Ngati Ruapani), 'the cost thereof [to be] paid by the Crown and deducted from the proportion of purchase-money to which such Natives are entitled'. The report also noted the Crown's acquisition of the two reserves in the four southern blocks, Whareama and Ngaputahi; but nothing was said about payment for the reserves: 'The Crown shall receive two of the Urewera Reserves – namely Whareama and Ngaputahi – and shall pay the local rates due by the Native owners on these blocks.'⁴⁹⁹

In late 1921 or early 1922, the Lands Department purchased Tapper's farm (883 acres). But for reasons unknown, the land was acquired at twice the valuation; instead of £4 per acre, the Crown purchased the land for approximately £9 per acre, a total of £7,514.⁵⁰⁰ If Ngati Ruapani accepted this land, it would cost them 32 per cent of the amount owed to them for their interests in the Waikaremoana block. In February 1922, at a hearing of the

496. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), pp 471–478)

497. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), pp 471–478)

498. Ngata to Coates, 19 September 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 476)

499. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 8

500. O'Malley, 'Waikaremoana' (doc A50), p 119

Consolidation Commission at Waimako, Ngati Ruapani indicated their opposition to acquiring Tapper's farm at such a high price, and threatened to withdraw from the Waikaremoana block transaction entirely: 'Matamua Whakamoe stated he had been deputed to state that on reconsidering [the] matter they had decided to have nothing to do with the scheme & did not wish to proceed further.'⁵⁰¹ But the Urewera Lands Act 1921–22, only just passed into law, gave the commissioners the authority to proceed with the arrangements described in the Consolidation Scheme Report. This was the same report that Maori owners had been given little chance to understand. The minutes of the hearing at Waimako note: 'all present complained of the report being printed in English only.'⁵⁰² It was not until the end of 1922 that it was printed in Maori, in the wake of complaints such as those from Ngati Ruapani.⁵⁰³

Between 1923 and 1926, Ngati Ruapani leaders disputed the terms of the transaction in an attempt to clarify exactly what they expected to receive from the scheme. In March 1923, they met with the commissioners and Ngata at 'Windy Point', on the shores of the lake. The commissioners reported that Ngati Ruapani were 'firm in their refusal to accept Tappers land at the price paid by the Crown.'⁵⁰⁴ The parties arrived at a new agreement, the terms of which were outlined in petitions from Matamua Whakamoe and others sent to the Government in 1925 and 1926.⁵⁰⁵ Ngati Ruapani agreed that they would receive the entire amount owing to them from the sale of their interests in the Waikaremoana block in the form of debentures at 15 shillings per acre (Tapper's farm was thus abandoned). For its part, the Crown agreed that the value of the reserves to be set aside in the Waikaremoana block would not be deducted from the total price paid to Ngati Ruapani. No rates would be charged on the reserves and they would be surveyed free of charge.

But these terms were also later disputed: in March 1925, Matamua wrote that Ngati Ruapani would 'repudiate the agreement to sell the Waikaremoana block.'⁵⁰⁶ Their protest at this time was not about Tapper's farm, which they still rejected; instead, they threatened to withdraw because they feared their debentures would be issued at less than the agreed rate of 15 shillings per acre. As discussed above, Ngati Ruapani continued to think that they would be paid at six shillings per acre, no doubt influenced by the inaccurate information supplied in the Consolidation Scheme Report and the prices being paid by the commissioners for the direct purchase of individual interests. In July 1926, Matamua and others

501. Urewera minute book 1, 17 February 1922, pp 25–26 (doc M29), pp 60–61

502. Urewera minute book 1, 17 February 1922, p 26 (doc M29), p 61

503. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 72

504. Urewera minute book 1, 9 March 1923 (doc M29), p 288

505. Matamua Whakamoe to Native Minister, circa July 1926 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 585); Matamua Whakamoe to Native Minister, 30 March 1925 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 514)

506. Matamua Whakamoe to Native Minister, 30 March 1925 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 514)

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submitted another petition outlining their objections to the price paid for their interests in the block.⁵⁰⁷

By 1925, disagreements between the commissioners and Ngati Ruapani had also emerged over the amount of land that would be reserved for them. At the February 1922 hearing, the commissioners noted that they ‘would proceed & define [the] boundaries of Reserves themselves on Saturday.’⁵⁰⁸ Eleven reserves had been nominally set aside by March 1923, and requests for three more had been made and approved. In August 1923, Knight and Carr said that 14 reserves had been located and defined on the ground, but still awaited survey.⁵⁰⁹ In 1925, however, Ngati Ruapani objected to the amount of land that was being set aside for them. In pointing out the boundaries of the reserves to surveyors, they sought reserves that totalled 3,220 acres. But the commissioners noted at their February 1925 hearing that an agreement had already been reached, which they could not depart from. In March 1923, they said, Ngati Ruapani had agreed that only 600 acres would be set aside as reserves:

With respect to the areas of the Reserves. It was originally arranged [in 1921] that the N Ruapani should reserve for themselves from the sale to the Crown 607 acres, disposing of 31000. Subsequently [in 1923] it was arranged that the N Ruapani having reduced the price at which they would sell to 15s per acre, that the Crown would pay for the total area 31607 and return to the N Ruapanis 600 acres to include their reserves & cultivations.⁵¹⁰

Noting the request for 3,220 acres, the commissioners said: ‘This the Comm[issione]rs consider unreasonable and see no reason why the original agreement to return 600 acres should not be adhered to.’⁵¹¹

Crown counsel suggests that Knight and Carr had resolved all outstanding issues by May of that year.⁵¹² Knight and Carr wrote:

A misunderstanding by the natives in regard to the areas of the reserves on the shores of Lake Waikaremoana returned by the Crown to the natives as part of the consideration for the block made it necessary for the Commission to meet the natives on the ground, as the boundaries pointed by them to the surveyor included far bigger areas than previously arranged, the matter was amicably disposed of and the surveys have now been completed.⁵¹³

As we see it, Ngati Ruapani likely thought that, since the key part of the agreement for them had been the acquisition of more land south of the lake (now abandoned), that they

507. Matamua Whakamoe to Native Minister, circa July 1926 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(c)), p 585)

508. O’Malley, ‘Waikaremoana’ (doc A50), p 107

509. O’Malley, ‘Waikaremoana’ (doc A50), p 117

510. Urewera minute book 2A, 22 February 1925 (doc M30), p 228

511. Urewera minute book 2A, 22 February 1925 (doc M30), p 228

512. Crown counsel, closing submissions (doc N20), topics 18–26, p 22

513. Knight and Carr to Native Under-Secretary, 20 May 1925 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(c)), p 593)

could not survive with just the small amount of land to be reserved for them north of the lake. Hence, they sought a relatively modest increase of their reserves in the Waikaremoana block. But the commissioners stood firm, as the law empowered them to do.

In any case, Ngati Ruapani remained concerned about the terms of the agreement; these were only enhanced by the Crown's quiet acquisition of Whareama and Ngaputahi in 1924. Matamu's 1925 petition – in which a number of Ngati Ruapani concerns were set out – made no mention of the Whareama and Ngaputahi reserves. With the Tapper's farm deal off the table, they presumably believed that the two reserves would remain in their ownership. This is understandable, since the sole reason for relinquishing them was to top up the amount of money available to pay for the proposed replacement land south of the lake (ie, Tapper's farm). But in fact the terms set out in the Consolidation Scheme Report stood: the Crown would 'receive' the two reserves and pay the rates due on them.⁵¹⁴ This meant that the two reserves would still go into Crown ownership, even though no other land had been made available for Ngati Ruapani.

That Ngati Ruapani emerged from this transaction with *less* land south of the lake rather than *more* was unconscionable. Nor could the Crown have argued that the loss of the two reserves was offset by its payment for 600 acres north of the lake, which it then returned to the Maori vendors. This was supposed to have compensated Ngati Ruapani for their belated agreement to accept 1 shilling an acre less than their minimum price, not for the uncompensated loss of Whareama and Ngaputahi.

Tuhoe owners – who were also owners in the four southern block reserves – got wind of the transaction and made their own protests. In mid-1922, Tikareti Te Iriwhiro and 175 others from Ruatahuna submitted a petition on a broad range of matters relating to the scheme. The petitioners objected to the transfer of interests in the reserves to other parts of the scheme: 'We maintain that those reserves should be left to us and also Waikaremoana Block.'⁵¹⁵ This followed shortly after similar protests made by Wharepouri Te Amo at the first hearing at Ruatahuna in February 1922, who said 'Waikaremoana interests were to remain there and were not to be brought northwards'. The commissioners responded that 'the time for raising the objections stated by Wharepouri had passed. Wharepouri was a member of the Ruatoki Committee & should have voiced his grievances then.'⁵¹⁶ Pomare commented similarly at Ruatahuna in April 1923: 'We will not evacuate from Waikaremoana.'⁵¹⁷

In September 1924 – two years after Te Iriwhiro's petition had been submitted – Knight and Carr commented on it in blunt terms:

514. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 8

515. Tikareti Te Iriwhiro and 175 others, circa September 1922 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 219)

516. Urewera minute book 1, 22 February 1922 (doc M29), pp 31–32

517. Urewera minute book 1, 17 April 1923 (doc M29), p 306

Whareama and Ngaputahi are small reserves out of earlier Crown purchases. They are completely surrounded by Crown lands and are without access, neither are they occupied by the owners. It was to the owners benefit that they should evacuate and build up their other interests elsewhere. It is assumed that the petitioners were owners in these blocks. As to the Waikaremoana Block, the Tuhoe owners agreed at the Ruatoki meeting to take their interests on a 6/- per acre basis, where their main holdings were and the Commissioners have carried out and completed this agreement.⁵¹⁸

The commissioners' response revealed their general lack of understanding about the details of the transaction. We have seen no evidence to suggest that the interests of Tuhoe owners in the Whareama and Ngaputahi reserves were included in consolidation groups elsewhere in the scheme, as occurred with their interests in the Waikaremoana block. Knight's response also did disservice to Ngati Ruapani, who had rejected the Tapper's farm exchange because it was too expensive. No other land had been found for them, so it could not be said at all that it had been to the 'owners benefit' and had built 'up their interests elsewhere'. But based on this advice, Coates decided to take no action on the petition.⁵¹⁹

By the time Knight wrote his response to the petition, Whareama and Ngaputahi had effectively been transferred to the Crown's ownership. The Urewera Lands Act 1921–22 allowed the Consolidation commissioners to proceed with the implementation of the scheme outlined in the Report. Arrangements for transferring title to Whareama and Ngaputahi began in April 1924. The commissioners recorded that the reserves were vested in the Crown 'by way of exchange', even though nothing had been exchanged for them.⁵²⁰ Two people occupying Ngaputahi were awarded £30 for improvements.⁵²¹ The reserves were gazetted as Crown land on 8 January 1925.⁵²² The notice stated that the 'purchase of [the Whareama and Ngaputahi blocks] has been duly completed by or on behalf of the Crown under the authority of the Native Land Act, 1909, and its amendments'.

The Crown says that once the owners of the Reserve 'made the decision to include the blocks, they negotiated hard and made a bargain so that the consideration passing to them would not be diminished or abated by outstanding rates'.⁵²³ We do not know what rates existed on the reserves and whether the Crown paid them. But this point aside, the evidence indicates that the Crown did not pay or exchange anything in order to acquire the reserves. The entire amount that the Maori owners received in the form of debentures totalled their interests in the Waikaremoana block at 15 shillings per acre minus approximately £4,000 for

518. Knight and Carr to Native Under-Secretary, 10 September 1924 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 220–221)

519. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 81

520. Craig Innes, 'Report on the Tenure Changes Affecting Waikaremoana "Purchase Reserves" in the Urewera Inquiry' (commissioned research report, Wellington: Waitangi Tribunal, 2003) (doc A117), pp 54, 56

521. Innes, 'Waikaremoana "Purchase Reserves"' (doc A117), pp 53–54

522. 'Proclaiming Native Land to Have Become Crown Land', 8 January 1925, *New Zealand Gazette*, 1925, no 1, p 5

523. Crown counsel, closing submissions (doc N20), topics 18–26, p 75

the Crown's additional purchases during the implementation of the scheme. If the Crown had paid for the reserves, we would expect to see an increase of the total amount paid to Ngati Ruapani proportional to what they would have received for those reserves. We have not seen any evidence that this happened. While it is possible the Crown paid the rates, it seems that it acquired the two reserves without paying for them. There is certainly no evidence to suggest Ngati Ruapani made some kind of bargain after the Tapper's farm arrangement was abandoned. Given this evidence, we can only agree with Mr Nikora's conclusion that the Crown effectively confiscated the two reserves, though – as with much of the Urewera Consolidation Scheme – this acquisition was by virtue of a side-wind.⁵²⁴ In other words, the Crown did pay for Tapper's farm but then it kept that as well.

While the Crown should never have acquired the reserves without paying for them, it should equally never have acquired them without providing Ngati Ruapani with alternative useable land. Their pressing need had been identified as early as 1894, when they had requested a land exchange of Seddon. Ngata had also clearly identified the need for more useable land 'suitable for cultivation'. The Urewera Consolidation Scheme thus failed Ngati Ruapani in a most basic way. By 1930, land in Maori ownership in the Waikaremoana region had been reduced to a few small pockets. Of the 291,195 acres that was in Maori ownership in 1875, only 12,580 acres or 4.3 per cent remained some 55 years later. The remaining land consisted of the two Tuhoe and Ngati Ruapani reserves and the Ngati Kahungunu reserves in the four southern blocks, as well as the 14 small reserves in the Waikaremoana block and any remaining land in the Waipaoa block. Thus, all that Ngati Ruapani and Ngati Kahungunu owners had to hope for from their part of the Waikaremoana block transaction was the regular income promised through the debentures, by which the Crown acknowledged its debt for acquiring their land. We turn to that matter next.

14.7.6 Were the terms of the Ngati Ruapani and Ngati Kahungunu debentures met?

Ngati Ruapani and Ngati Kahungunu expected that the debentures would provide them with a sustainable income. But during the depression, when the people most needed the income, the terms of the debentures, including the amount of interest paid, were changed. Ultimately, no capital was paid until 1957, 25 years later than originally agreed. Both Ngati Ruapani and Ngati Kahungunu claimants contend that the Crown 'failed to honour its commitment to make regular debenture payments owing to the hapu of Waikaremoana for their alienated interests in the Waikaremoana block.'⁵²⁵ The Crown acknowledged that the failure to pay the debentures 'caused hardship', but said that this was 'an action of the Maori Trustee

524. Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 40

525. Waikaremoana claimants, statement of claim, March 2003 (claim 1.2.1, SOC 1), p 103

rather than the Crown. Further, the reduction in interest rates was an action taken across government at the time as a necessary response to the circumstances of the depression.⁵²⁶

Shortly after his meeting with the people at Wairoa and Waikaremoana in September 1921, Ngata reported that the owners could take the majority of the interests in the form of debentures. Apart from one or two individuals, the communities wanted land (which was part of the Ngati Ruapani deal) and debentures. This meant that the Crown would not have to front up with a large amount of cash in order to acquire the Waikaremoana block. Under section 10 of the Urewera Lands Act 1921–22, the commissioners could determine that some or all of the Crown's payment for land would be in debentures rather than cash. The debentures would be issued to the Native Trustee, who would hold them on behalf of the beneficiaries. The debentures eventually issued were valued at £29,323, which represented the combined value of Ngati Ruapani and Ngati Kahungunu interests in the Waikaremoana block at 15 shillings an acre. They had a 10-year term from 1 October 1922, with interest set at 5 per cent per annum tax-free.⁵²⁷ Initially, there were between 400 and 500 beneficiaries; numbers increased over time as some died and others inherited their interests. By 1931, the Native Trustee put the number of beneficiaries at 'over 600'.⁵²⁸

The Government paid the debenture interest, totalling £1,466 per annum, in twice-yearly instalments to the Native Trustee, who held it on behalf of the beneficiaries. The trustee would then distribute this income once a year.⁵²⁹ Since the UDNR Act had been repealed, the vendors had no opportunity to use a Waikaremoana 'local committee' to administer these payments, nor could they establish an incorporation committee for land that they no longer owned. Thus, the law made no provision for them to exercise any collective authority in deciding how this money should be distributed or spent, and no special arrangements were made or authorised; interest payments were thus scattered by the one corporate entity that did exist, the Government's Native Trustee, in small amounts across hundreds of individuals. We have no way of knowing whether this was an arrangement to which the Waikaremoana and Wairoa communities had deliberately agreed.

By the time the depression was biting hard in the early 1930s, the trustee had begun defaulting on his payments to the beneficiaries. By March 1932, Ngati Ruapani and Ngati Kahungunu were owed £4,175.⁵³⁰ The difficulties faced by the trustee were not due to a fault on the part of the Treasury, which continued to pay funds to the Native Trustee as required.⁵³¹ Rather, the problem arose because of the way trustee operated. The trustee had been set up in 1920 to administer Maori interests formerly administered by the Public

526. Crown counsel, closing submissions (doc N20), topics 18–26, p 80

527. O'Malley, 'Waikaremoana' (doc A50), pp 128–129

528. Native Trustee to Native Minister, 25 August 1931 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), p 714)

529. 'Report of the Native Affairs Commission', AJHR, 1934–35, G-11, p 144

530. O'Malley, 'Waikaremoana' (doc A50), p 135

531. Public accounts for the years 1928–29, 1929–30, 1930–31, and 1931–32 in AJHR 1929–33, B-1.

Trustee. His main functions were to administer Native Reserves on behalf of owners, act as a banker for the Maori Land Boards, and administer the estates of those deemed incapable by virtue of youth or disability.⁵³² All income was paid into the Native Trustee's Account. The trustee was empowered to lend this money, mainly to Maori, for property purchase and improvement, or to invest it in a variety of securities.⁵³³ There was thus a potential conflict between the duty to engage in long-term investment such as mortgage lending on the one hand, and the need to have ready cash available for obligations such as payments on the Waikaremoana debentures on the other.

This conflict became apparent when the trustee did not pay out interest to the debenture beneficiaries in the 1930s. In 1925, the trustee had been required to take over the administration of the Maori Soldiers' Trust. This included interests in three large stations that were having financial difficulties, which the trustee then also took over.⁵³⁴ Two other stations were vested in the trustee in the 1920s. The trustee was empowered to manage and develop these farms at the height of the depression, rather than just administer their finances, thus exposing his operations to a major commodity price risk.⁵³⁵ As a consequence, the stations acquired large debts in the early 1930s.⁵³⁶ The depression also resulted in a number of defaults within the trustee's mortgage lending portfolio.⁵³⁷ The short point is that the Native Trustee intermingled the debenture funds with other funds, and when the financial blizzard struck, it defaulted. Had the debenture funds been kept separate and paid out regularly, the problem would not have arisen. The Native Trustee should have been simply a conduit for the monies from the Crown to the owners.

The Native Trustee had a deteriorating financial position to which the Waikaremoana debenture-holders fell victim. Other victims included the beneficiaries of the West Coast Settlement Reserves,⁵³⁸ who only received a portion of the rents they were due in 1932. The trustee was also struggling to meet his obligations to the Maori Land Boards. Advances from Treasury helped resolve the situation to some extent, but not before hardship had already been caused to beneficiaries who relied on annual distributions.⁵³⁹ As an attempt to rescue the situation, the Native Purposes Act was passed in November 1931, vesting the debentures in the Tairāwhiti Maori Land Board. But the Board had difficulty getting the interest arrears from the Native Trustee, who paid just £1,000 with the help of an advance

532. Graham V Butterworth and Susan M Butterworth, *The Maori Trustee* (Wellington: Maori Trustee, 1991), p 31

533. Butterworth and Butterworth, *The Maori Trustee*, pp 30–31; Native Trustee Act, 1920, s 21 (and amendments)

534. Butterworth and Butterworth, pp 32–34

535. Butterworth and Butterworth, pp 33–35

536. Kieran Schmidt and Fiona Small, 'The Maori Trustee, 1913–1953' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1998), pp 181–186

537. Schmidt and Small, 'The Maori Trustee', p 181

538. These were the reserves set aside for Maori during the Taranaki confiscation, which had ended up vested in the Native Trustee.

539. 'Report of the Native Affairs Commission', AJHR, 1934–35, G-11, pp 144–145

from the Treasury.⁵⁴⁰ The Board eventually came to an arrangement that amounted to an interest free loan to the Trustee, so that the Board could meet its obligations to the beneficiaries. On 1 October 1933, the Board paid the remaining interest owing up until that year.⁵⁴¹ The beneficiaries were never compensated for the delay in interest payments.

Meanwhile, the Ngati Ruapani and Ngati Kahungunu beneficiaries were hit by another consequence of the depression. To help out farmers and homeowners facing unemployment and falling incomes, the Government brought down interest rates in 1931 and 1932 and made foreclosure more difficult. Other action included legislation which forced down public sector salaries, interest rates, and rents, and imposed a 10 per cent stamp duty on all future interest payments on Government securities, including debentures. Finally, in the Native Purposes Act 1931, the Ministers of Native Affairs and Finance were authorised to jointly alter the terms and conditions under which the debentures were issued.⁵⁴² The Waikaremoana debentures were to have matured in October 1932, which coincided with the height of the depression, when the Government was most strapped for cash. In late September of that year, Ministers unilaterally extended the term of the debentures for 10 years, again at 5 per cent. Acting Finance Minister Forbes had wanted an extension for 17 years, but Ngata held out for 10.⁵⁴³ Once the owners found out that this had happened, without their knowledge or consent, their solicitors wrote to the Government in protest: ‘We appreciate the difficulties of the times, but a further term of ten years appears to us to be an extraordinarily long extension.’⁵⁴⁴ They, too, needed money.

In 1933, the New Zealand Debt Conversion Act reduced the interest rates payable on all money owed internally by the Government. All debentures held by the Tairāwhiti Māori Land Board were subject to this reduction, including the Waikaremoana debentures.⁵⁴⁵ These were converted into Government stock paying 4 per cent interest, maturing on a variety of dates. The 10-year term for the debentures therefore no longer applied.⁵⁴⁶ In the end, the capital was not actually returned to the debenture-holders until January 1957. In the meantime the stock was reinvested at maturity at the prevailing interest rate of the day, usually less than 4 per cent per annum. After 1937, some of the interest became subject to income tax under the provisions of the Debt Conversion Act.⁵⁴⁷ In 1954, the Māori Affairs Department noted that the owners had continued to request the principal ‘from time to

540. Native Under-Secretary to registrar, Tairāwhiti district Māori Land Board, 20 July 1932 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(c)), p 683)

541. ‘Report of the Native Affairs Commission’, AJHR, 1934–5, G-11, p 144

542. O’Malley, ‘Waikaremoana’ (doc A50), p 135

543. O’Malley, ‘Waikaremoana’ (doc A50), pp 135, 139–140

544. O’Malley, ‘Waikaremoana’ (doc A50), p 140

545. O’Malley, ‘Waikaremoana’ (doc A50), p 143

546. Debenture holders could opt out of this conversion, but they would then be subject to a 33 per cent tax under the Finance Act 1932–33.

547. Draft report to Māori Affairs Select Committee, 1959 (O’Malley, supporting papers to ‘Waikaremoana’ (doc A50(c)), pp 810–811)

time', but that 'the past policy has been to retain the capital intact'.⁵⁴⁸ In other words, despite the wishes of the debenture-holders and without their consent, the temporary crisis of the 1930s had turned into a long-term policy of not paying out the principal, still in place by the mid-1950s.

In the next chapter, we look at how the delayed interest payments and lack of capital return had a significant effect on the peoples of Waikaremoana, particularly during the Depression. In 1958, Tui Tawera and others petitioned the House of Representatives for compensation for unpaid interest on the debentures. The petition asked that the full 5 per cent interest rate specified in the original consolidation agreement be applied to the period 1932 to 1957.⁵⁴⁹ A Treasury report dismissed the petition on the basis that the consolidation agreement stated that the 5 per cent interest rate would only apply for 10 years.⁵⁵⁰ Parliament's Maori Affairs committee declined to make a recommendation on the petition, which made no reference to the delays in interest payments by the Native Trustee.⁵⁵¹ The following year, Ngati Ruapani representatives approached Prime Minister Walter Nash, complaining about the lack of consultation over changes to the terms and interests rates payable on the debentures. During a hui at Ruatahuna in December 1959, Nash dismissed the claims, saying that all interest rates had been reduced as a result of the depression, not just those relating to the debentures.⁵⁵² Nash did not address the beneficiaries' concerns about the extension of the term of the debentures without consultation. (Private debtors, of course, cannot unilaterally extend the time in which they have to repay their debt – let alone for 25 years – and cannot unilaterally set the rates of interest that they will pay in the meantime.)

Crown counsel's submissions on these issues echo Nash's comments, though Nash himself did not go so far as conclude that the actions of the Native Trustee were not those of the Crown. When considering whether the Native Trustee was an agent of the Crown, the Te Whanganui a Tara Tribunal found that 'the trustees have not, as a matter of law, been acting by or on behalf of the Crown in the performance of their statutory responsibilities as trustees'.⁵⁵³ That Tribunal's finding applied to situations where a statutory body (the Native Trustee) was holding estates in trust for Maori and collecting rents on those estates from third parties. In the case of the Waikaremoana debentures, the Trustee similarly held the debentures and any interest monies as a trustee for the beneficial owners, as was specified in section 10 of the Urewera Lands Act 1921–22. As we see it, however, the Crown was in

548. O'Malley, 'Waikaremoana' (doc A50), p141

549. Petition of Tui Tawera and others, 1958 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), pp 817–818)

550. Secretary for Treasury to Secretary for Maori Affairs, 1 October 1958 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), pp 815–816)

551. 'Reports of the Maori Affairs Committee, 1959', AJHR, 1959, I-3, p 4

552. Extracts from Representations to the Minister at Ruatahuna, 11 December 1959 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(c)), vol 3, pp 808–809)

553. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 377

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effect using the Native Trustee as its intermediary to effect payment to Maori, making payments to the Trustee as scheduled. This was similar to the Trustee's role in distributing public works compensation monies, simply because it was an existing administrative agency with the means to make payments to scattered Maori beneficiaries. But the Crown could not escape responsibility if its intermediary did not pay; the Crown was still liable. In the case of the Waikaremoana block debentures, the Crown was the debtor. In such situations, it was the debtor's responsibility to pay the owners, or to ensure that the owners were paid. If the owners were not paid, the debtor could not avoid the responsibility of this failure. This was particularly egregious given that the owners were without any significant assets, and were known to be living in poverty. Although the interest was eventually paid, they were deprived of a significant portion of income when they could ill afford it.

But both Nash in 1959 and Crown counsel today dismissed the concerns raised by the beneficiaries and their descendants (the claimants in this inquiry) that the unilateral extension of the term and reduction in interest rate was a necessary and widespread action taken by the Government during the depression. We note, however, that the Depression was only the beginning of lower interest rates. After the economy had recovered, interest rates for the debentures continued at less than 4 per cent in violation of the original agreement. The Crown could not (as the Maori Affairs Department did) defend its record on the basis that 5 per cent interest had only been promised for 10 years, when it was the Crown itself which had unilaterally extended the term as well as permanently lowering the interest rates. Nash accurately noted that the debenture-holders were subject to legislation that applied to all lenders to Government. But both the extension of the term and the reduction of interest were decisions taken in a situation where the Crown was a debtor, and should at least have ensured adequate compensation for the changed terms at a later point.

The beneficiaries were disadvantaged by not having access to the capital at a time – the depression – when it may well have had a significant effect on their living standards. When the capital was finally paid out in 1957, the country was in much more prosperous times, its value was diminished by inflation, and the number of beneficiaries had considerably increased. The payment was years too late, and with no acknowledgement from the Crown that it had failed to deliver yet another promise made to Maori in the Urewera Consolidation Scheme.

14.7.7 Conclusions – Waikaremoana lands

It is significant that one of the last remaining pieces of land in Maori ownership in the Waikaremoana region is at Te Kopani, on the southern shore of the lake near Onepoto, where the Crown commenced its relationship with the people of the lake by engaging them in battle in 1866. In many ways, this land symbolises the cumulative impact of Crown

actions in Te Urewera: first through rapid alienation of the land encircling what became the Reserve; a process that was then repeated in the Reserve itself. Nowhere in Te Urewera was the extent of land alienation felt more keenly than at Waikaremoana, where only 4.3 per cent of the original land encircling the lake remained in Maori ownership by 1930. What had once been one of the most remote places in New Zealand when Crown forces arrived there in 1866 was by this time almost fully within the Crown's ownership (the lakebed aside – issues concerning which we examine in chapter 18). But Te Kopani also represents the last act of defiance against the Crown's encroachment into the region and against its unequal and dishonoured agreements with the Waikaremoana peoples.

The owners of the Waikaremoana block had hoped the Urewera Consolidation Scheme would improve the circumstances in which land alienation had left them. But the Crown saw the Waikaremoana block as an important area of forested land (adjacent to that significant natural resource, the lake) that needed to be protected, and the scheme provided the opportunity to acquire all of it. It is a particular indictment on the Crown that not only did it come away from the scheme with the entire block, partly because it had purchased so many interests elsewhere in the Reserve (forcing Tuhoe owners to relocate their interests from Waikaremoana to save their main settlements), but it also then failed to deliver on most of the promises it had made to the former Maori owners: promises of alternative land and sustainable income in the form of debentures. In sum, the Crown virtually compelled Ngati Ruapani and Ngati Kahungunu to sell at its price (15 shillings per acre). It then underpaid a significant number of Maori vendors by nine shillings an acre, an action which the Crown concedes today was unconscionable. Ultimately, cash and debentures were the only payment made or offered because the Ngati Ruapani owners could not afford to accept Tapper's farm at the price the Crown had paid for it. Thus, the main benefit they sought from the scheme – extra farmland south of the lake – came to nothing. To add insult to injury, the Crown still took two of their four reserves from the four southern blocks in part payment for Tapper's farm, without ever paying for them. Finally, the terms of the debentures were altered unilaterally and Maori were ultimately underpaid in terms of both interest and capital. This is a litany of broken and dishonoured agreements which left Ngati Ruapani virtually landless.

One of the few promises the Crown kept was the redistribution of Tuhoe interests to other lands of ancestral importance in the former Reserve, which had been subject to Crown purchasing. Even then, Tuhoe only marginally increased their holdings; and their minimal gains were then offset by the Crown's takings in land for significant survey and roading costs that the Crown took in the form of land. We turn to the issue of surveys and survey costs in the next section of this chapter.

14.8 WHAT AGREEMENTS WERE REACHED ABOUT TITLES AND HOW WAS THE COST OF SURVEYS MET?

Summary answer: *The Crown promised that all new titles emerging from the Urewera Consolidation Scheme would be registered in the land transfer system. This was intended to provide protection to land owners, and required accurate but expensive survey methods to meet its requirements. Having emerged from two decades of uncertainty about their titles to the Reserve blocks, which was compounded by Crown purchasing of individual interests in nearly all of those blocks, Maori owners wanted to know which land was theirs (which did not require high definition theodolite surveys), and to be able to borrow against the security of their land, most of which was multiply owned and would not have attracted finance under any conditions. Ngata recommended that the Crown should provide the financial assistance itself. In order to finalise its plans for opening the Reserve for settlement, the Crown required title for 'settlement' conditions, which meant title that would be registrable in the land transfer system. However, officials never resolved existing obstacles to registering Maori land in the system.*

Maori owners were led to believe that registration of titles in the land transfer system was the only means of achieving certainty about which land they owned. Acting on the assurances made to them by the Crown's representatives at the Taurarau hui, Maori owners accepted that new surveys would be required (because the surveys of the Reserve blocks could not be used for the purposes of redefining the boundaries of the new blocks) and that these would be paid for in land (a good investment, because of the benefits they would derive). The Crown's representatives did not explain how much the surveys would cost or that land would be deducted from each block; these matters were only decided after the hui had finished. Maori owners thus accepted the Crown's proposal without understanding either how much the surveys would cost or the limitations of the titles they were poised to acquire. The dubious and uninformed nature of Maori consent to the consolidation scheme is aptly demonstrated if the question is asked: 'what would have been the response had Maori been told that these surveys would consume almost one acre in five of the land to be awarded to them?'

The methods and process adopted for surveying in the scheme between 1922 and 1926 favoured the Crown's original plans for the land, and this is reflected in the outcomes. Surveying regulations meant that certificates of title registered in the land transfer system could only be issued for blocks that had been surveyed by theodolite, which was slow and expensive. Chief Surveyor HM Skeet initially proposed the use of cheaper magnetic surveys, but the proposal was overruled on the grounds that magnetic surveys would be too inaccurate for the purposes of defining the Crown's settlement blocks. In 1923, in an attempt to settle the standoff with te taha apitihana (whose opposition to the scheme extended to survey costs), the Government passed legislation that allowed the use of existing magnetic surveys to make orders for the Maori-owned blocks. Accordingly, early magnetic surveys were used to produce a compiled plan for some of the blocks in the Ruatahuna series, so that orders could be made.

The Crown deducted less land from the owners of these blocks, partly because its survey costs were considerably cheaper, but also to placate te taha apitihana. In fact, the external boundaries of all the Maori-owned blocks were surveyed by theodolite, but this was done only so that the Crown's award could be registered in the land transfer system. The approach to surveying adopted by the Crown meant that Maori owners of all the blocks that were subject to full deductions paid for the cost of surveying the Crown's land.

Despite the efforts to ensure the proper survey of the Crown's award, Skeet's original proposal was effectively implemented for the Maori-owned blocks, because all the plans accompanying the orders for them were topographical ones. Such plans were in clear contravention of the Urewera Lands Act 1921–22 as they did not meet the requirements of the land transfer system. The real problem, however, was with the Act itself, which did not chart a clear path for full registration of Maori awards in the system. Because the topographical plans that accompanied the block orders meant that the titles could not be registered in the system, they remained at the Native Land Court in Rotorua where they were sent. The Crown's award, by contrast, was accompanied by a full survey plan and was subsequently registered. These facts were noted in 1957, but nothing was done even then to ensure Maori titles were registered in the system. The Crown thus failed to deliver on one of its cornerstone promises to Maori owners in the scheme. To our knowledge, these titles remained unregistered until many of them were overtaken by amalgamations in the 1970s.

Although Maori owners did not see a single title registered in the land transfer system, they still bore the full costs. The actual costs of surveying the land cannot be known, but the Consolidation Commissioners adopted a rate of 2s 6d per acre to establish how much land should be taken from each of the 183 new Maori-owned blocks. (This did not apply to the 27 papakainga and urupa reserves on account of their small size). This rate was well above the average rate for surveys of all rural and Maori land at this time, possibly because of the terrain and the number of blocks to be surveyed. The Crown's next major error was to apply an inaccurate method to calculate the area to be taken from each block. The result was that Maori owners of about half the blocks paid not only for the survey of the land they would retain but also for the survey of the land that was taken from them to pay for that survey. The Crown thus acquired an extra 4,000 acres. Although this error was noticed at the time, it stood uncorrected.

In total, the Crown acquired approximately 31,500 acres for the cost of surveying the Maori-owned blocks. We are unable to establish the exact figure because surveyors were instructed to cut boundaries along 'good fencing lines', and not pay strict attention to the estimated area that the commissioners had calculated to account for survey costs for each block. This meant that the size of each block after the survey was usually different from the estimate. The total amount of land taken for survey costs then formed part of the Crown's award (the 482,300-acre Urewera A block). On average, 18 per cent of the land to which Maori owners had been

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entitled on entering the scheme was taken. After the blocks were surveyed and orders confirmed, 106,287 acres remained in Maori ownership.

Given the incompatibility of the land transfer system with multiply owned Maori land, and given the outcomes of the surveys, cheaper magnetic methods could have been used to survey the Maori-owned blocks, even though the existing regulations required otherwise. The Crown disregarded a legitimate alternative solely to advance its plans for settlement – which were discarded as early as 1924 – and was the primary beneficiary of the surveys that resulted, given that its award alone was registered in the system. On the back of the Crown’s failures in the Reserve and its subsequent purchasing, 31,500 acres was far too much for Maori owners to pay for the survey of what were the remnants of their lands, when the resulting plans were inadequate to deliver the registrable titles they had been promised.

14.8.1 Introduction

The Crown acquired a substantial amount of land to account for the cost of surveying the blocks awarded to Maori owners in the Urewera Consolidation Scheme. Between 1922 and 1926, 183 new blocks were surveyed under the process set out in the Urewera Lands Act 1921–22. In total, the Crown acquired approximately 31,500 acres, which comprised a series of deductions from each of the 183 blocks. The area for these deductions was calculated before the surveys began and then excluded from each final surveyed block. These excluded areas ultimately formed part of the Crown’s award, which was surveyed and gazetted as the vast 482,300-acre Urewera A block. The 31,500 acres amounted to 18 per cent of the land retained by Maori owners at the end of Crown purchasing, after they had decided on the location of their blocks in the implementation of the scheme.⁵⁵⁴

In the claimants’ view, such an extensive amount of land should never have been taken for the surveys because cheaper surveying methods could have been used. The expensive methods used in the scheme, claimant counsel submitted, were unnecessary for the purpose of defining the boundaries of the new Maori-owned blocks, and were only employed to meet the Crown’s objectives for the land. Maori owners sought security for their remaining land but had not understood the arrangements for titles and surveys that had emerged from the negotiations in 1921; nor would they have given their consent had they known how much land they would lose. Maori owners bore the full cost of surveying in the scheme, claimant counsel submitted: including the cost of surveying common boundaries between Crown and Maori land. Finally, the claimants were no better off anyway as a result of the

⁵⁵⁴ The total size of the Maori-owned blocks calculated by the commissioners at the end of the implementation of the scheme was 176,488 acres, which includes the amount of land that was ultimately taken for the cost of building the arterial roads.

most expensive type of surveying: the surveys never achieved their purpose because certificates of title under the land transfer system were never issued.⁵⁵⁵

The Crown rejected most of these points. Expensive surveys were necessary, Crown counsel submitted, because of the requirements of registering titles in the land transfer system, which the Crown had promised would be the outcome of the scheme. Although Maori owners likely had little knowledge of the potential costs involved, they nevertheless gave their consent to both the type of title proposed for the scheme and the resultant costs. The Crown also questioned many of the conclusions the claimants had reached from the research. In its view, the evidence does not reveal how much the surveys cost or even how much land was actually taken.⁵⁵⁶

Many basic facts, therefore, remain in dispute between the parties: who conducted the surveys and for which land, how much the surveys actually cost, how the amount that would be taken from each block was calculated, and how much land was actually taken.

In this section, we ask how it was that Maori owners of the Reserve paid such a high price in land for the survey of the very lands they had fought to retain in the face of aggressive Crown purchasing. In our view, the key issue is not so much the surveys themselves, but rather the type of title the Crown promised Maori owners. The Consolidation commissioners and Lands and Survey officials proceeded on the basis that surveys of a certain quality were required for titles to be fully registered in the land transfer system. As we have explained earlier in the chapter, Maori owners went into the scheme on the assumption that they would finally achieve title that would guarantee their remaining land. The Crown's motive, however, was primarily to establish the conditions for setting up settler sheep farms, and then to purchase more Maori land, although both Coates and Guthrie stressed their intention to do justice to Maori and protect their interests. As with other aspects of the scheme, Maori owners and the Crown had developed different and diverging understandings about the purpose of titles by the time the scheme commenced.

14.8.2 What expectations had Maori owners of the Reserve developed regarding titles and surveying by 1921 and how did this differ from the Crown's approach?

Surveying is a cornerstone practice of colonisation. British colonies, including New Zealand, enthusiastically divided land into discrete blocks for settlement. Titles to land required plans which recorded block boundaries, and which were produced by qualified surveyors whose time and equipment were costly. Technological developments in the nineteenth century resulted in the more precise location of boundaries and more accurate surveys, which provided greater certainty. These developments played out in the colonisation of New Zealand, affecting Maori owners as their lands were surveyed to define blocks that passed

555. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 114–117

556. Crown counsel, closing submissions (doc N20), topics 18–26, pp 56–66

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through the Native Land Court. As we have outlined in chapters 8 and 10, this process had reached the outskirts of Te Urewera by the 1870s. It is a continuing theme in nineteenth century New Zealand that the cost of surveys was paid for not by those who benefitted from the surveys, but by those who were dispossessed of the land.

Te Whitu Tekau maintained an opposition to surveying as one of its foundation policies, as part of a general opposition to all practices associated with the Native Land Court (see chapter 8). Surveyors were seen as the active agents of colonisation, and were among the first Crown officials to enter any area new to settlers. Charges for the survey of blocks passing through the court were expensive, resulting in high debts and liens which Maori usually had to pay in land; news of these consequences had filtered through to Te Urewera by the early 1870s. When the court came to the rim blocks – in the face of Te Whitu Tekau’s opposition – these concerns were found to be justified. Up to 1930, Maori were forced to alienate a total of 30,968 acres of the 11 rim blocks to cover the cost of surveys. In chapter 10, we found that Maori owners should not have been expected to pay more than 5 per cent of these costs, as surveys were primarily for the benefit of the purchaser and the colony itself. Instead, in many cases, owners of the blocks essentially paid for their own colonisation.

Te Whitu Tekau leaders protested against the presence and activities of surveyors in Te Urewera through this period, until the Government recognised the need to negotiate with them. This resulted in the creation of the Reserve (see chapter 9). Surveys continued to provoke opposition, most notably at Ruatoki in 1893 when Ngati Rongo, a Tuhoe hapu at Ruatoki, supported a survey; others continued to adhere to Te Whitu Tekau policies and opposed it. Te Whitu Tekau sought legal recognition so as to manage the land and control the speed of any land alienation and their integration into the colonial economy, and were not opposed to economic development. From their perspective, the Native Land Court represented the loss of Maori control, and the presence of surveyors on the land without their consent supported their belief. During his tour of Te Urewera in 1894, Seddon gave assurances to Te Urewera leaders that they would be given control, but that they had to make tradeoffs in order to integrate into the colonial economy. These included adopting a form of land title that would in fact provide them with added security. At Ruatoki, Ruatahuna, Te Whaiti, and Waikaremoana, he said that the people needed to have their land defined by survey and awarded a Crown-created title. Though optimistic about the proposed arrangement, Te Urewera leaders reminded Seddon that they were still concerned about the ruinous costs associated with surveying land. Te Wharekotua said: ‘We want our boundary confirmed, and our titles to the land indorsed, without a survey if possible.’⁵⁵⁷

As we discussed in chapter 9, surveys were a crucial part of the compromise negotiated with the Crown in 1895, which later became enshrined in the UDNR Act. Progress towards a formal agreement between the Crown and the peoples of Te Urewera threatened to unravel

557. ‘Pakeha and Maori: A narrative of the Premier’s trip through the Native Districts of the North Island’, 1895, AJHR, 1895, G-1, p 76

during the ‘small war’ of April 1895, which occurred when Seddon decided to push through a road line survey from Te Whaiti after surveyors (who were conducting a triangulation survey of the wider Te Urewera region) had been turned away from Ruatahuna. James Carroll successfully negotiated a compromise which allowed surveyors to complete the triangulation survey, including the erection of trig stations throughout the region. This was part of a nationwide triangular survey, carried out for the purpose of gaining a more precise understanding of previously unmapped parts of New Zealand.⁵⁵⁸ By September 1895, Te Urewera leaders had negotiated an agreement with the Crown that saw the complete exclusion of the Native Land Court from 650,000 acres of their land, and the creation of the Reserve as a self-governing native reserve.

The specific nature of this agreement – insofar as it concerned the kind of titles to be issued and the kind of block surveys required before title determination could proceed – had considerable bearing on later events in the Urewera Consolidation Scheme. The UDNR agreement, unlike the scheme, required the Crown to pay the cost of surveying the blocks that were created under the Act. Section 7 of the UDNR Act allowed for blocks to be ‘determined on a sketch plan prepared and approved by the Surveyor-General as approximately correct’. The cost of these sketch plans would be ‘borne by the Government’. Carroll explained in Parliament that it was ‘necessary for scientific purposes in relation to the colony that a triangulation of the district should be made,’ and that such a survey ‘would have to be done in any case at the cost of the colony.’⁵⁵⁹ Surveyors would produce sketch plans through the use of compasses, taking magnetic bearings from the trig stations that had been erected in 1895. This was instead of using theodolites, which were generally considered to be much more accurate surveying instruments but which made surveys more expensive.

By the early twentieth century, however, the use of compasses was increasingly frowned upon. Surveying regulations published in 1907 stated: ‘No magnetic bearings are admissible unless for filling in topographic detail work, and then very sparingly, and with permission only.’⁵⁶⁰ These regulations applied to the survey of all land, including Maori land. But, in 1896, the Crown and Te Urewera leaders agreed that sketch plans were sufficient for the purposes of defining the boundaries of the Reserve blocks. As Maori owners would retain the land, higher quality surveys would only be necessary if and when the owners considered that any specific pieces of land should be alienated to the Crown. Robertson observes that ‘the survey of Maori land was inextricably connected to land purchase as, in general terms, no other motivation existed to survey Maori land.’⁵⁶¹ When the Crown and Te Urewera peoples agreed that the Reserve would remain in Maori ownership, magnetic compass surveys

558. Stephen Robertson, ‘Te Urewera Surveys: Survey Costs and Land Valuations in the Urewera Consolidation Scheme, 1921–22’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A120), p 18

559. Carroll, 24 September 1896, NZPD, 1896, vol 96, p 172

560. ‘Regulations for conducting the Survey of Land in New Zealand’, 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2736

561. Robertson, ‘Te Urewera Surveys’ (doc A120), p 22

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were considered sufficient. But as the Crown increasingly saw it as desirable to ‘open’ Te Urewera to large-scale Pakeha settlement, its perspective began to change. Only surveys suitable for ‘settlement conditions’ were considered adequate for defining new blocks in the Urewera Consolidation Scheme.

While the process for surveying blocks in the Reserve and the resultant titles differed from what happened in the scheme, the UDNR surveys and titles were important to the scheme’s origins. The Crown kept its initial part of the arrangement and paid for the surveys, which were completed in 1902.⁵⁶² But, as we saw in chapter 13, Ngata told the Maori owners in 1908 that they would have to repay the cost of surveying. He reported to the Governor (along with his fellow commissioner, Robert Stout) that the ‘Tuhoe Tribe recognises its liability for survey and other charges, amounting to over £7000’. The cost for surveying the land was in fact recorded in 1903 as £4,243 13s 2d, out of a total expenditure of £6,138 19s 8d.⁵⁶³ This averaged at just over 1.5 pence per acre for the survey of the 656,000 acre Reserve.

As we showed in the last chapter, the way Ngata brought these costs to the attention of Maori owners was one of the factors that prompted Numia Kereru to offer portions of the Reserve for lease to the Crown. Kereru’s offer was then met by a rival offer of sale from Rua Kenana, and it was in this context that the Crown developed plans to begin purchasing in the Reserve. At the same time, Maori owners emerging from the process of two Urewera commissions were beginning to realise that they still had no real security of title; a state of affairs that was confirmed when purchasing of shares began from individual owners. Noone knew what land still belonged to Maori owners or what land the Crown had acquired, and no owner or group of owners could point to a specific piece of ground and assert an incontrovertible title to it.

Although titles under the UDNR Act promised to meet the needs of the Reserve’s owners had the Act been implemented properly, the Crown came to consider Reserve titles deficient; like all titles to Maori land, they should now be registered in the land transfer system, which it was hoped would cover all land in New Zealand. The land transfer system was developed in the mid-nineteenth century by Sir Robert Torrens, South Australia’s chief land administration officer and, later, its premier. He attributed the defects in the British land title deeds system – uncertainty, complexity, expense, and delay – to its dependence on the common law rule that no person could confer on another a better title than that which he or she possessed. This rule meant that a person who wanted to acquire an interest in land was responsible for verifying their vendor’s title, which could only be done by searching out all previous transactions relating to the land. Those transactions would be recorded in

562. Judith Binney, ‘Encircled Lands, Part Two: A History of the Urewera, 1878–1912’ (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2002) (doc A15), p 236

563. ‘Urewera Commission (expenses in connection with)’, 21 August 1903, AJHR, 1903, G-6A; Stout and Ngata, ‘Native Lands and Native-Land Tenure: Interim Report of Native Land in the Urewera District’, 13 March 1908, AJHR, 1908, G-1A, p 2

deeds but, in the absence of a reliable repository for title deeds, a purchaser might discover too late that a prior deed existed that overrode or reduced his or her own supposed rights. The land transfer system aimed to render immune from attack the registered title of a purchaser or mortgagee who transacted in good faith and for valuable consideration ('bona fide and for value'). That quality of immunity, which is guaranteed by the state, is called 'indefeasibility' of title. It comes into being upon registration of a person's (the registered proprietor's) interest in land on the land transfer register. The act of registration is thus no mere formality but is the culmination of a process designed to ensure the certainty of the facts that registration ordinarily guarantees – namely, the size and location of the land and the ownership of interests in it.⁵⁶⁴

The Torrens system was introduced to New Zealand in the Land Transfer Act 1870, which made it compulsory for all 'European' land to be registered under it. There was an inevitable transition period, since titles usually came into the system for the first time when they were altered or transferred. Maori land titles continued to be administered in the Native Land Court through its own system but by the early twentieth century the Crown had begun to bring Maori titles into the land transfer system. This was partly in response to events like the Waiohau fraud, which (as we showed in Chapter 11) revealed the potential results for Maori owners who were not protected by indefeasible title in the late nineteenth century, and how the system could be used to validate fraudulent transactions, even where it was known that title had been acquired from Maori owners improperly. The 1909 Native Land Act allowed for orders of the Native Land Court (and Appellate Court) to be registered under the Land Transfer Act 1908, but registration was not compulsory until 1924, when the Land Transfer (Compulsory Registration of Titles) Act 1924 was passed.⁵⁶⁵ Crown counsel told us that at this time the Crown had also developed a general policy to bring all Maori land into the system.⁵⁶⁶

But having established this policy, the Crown did not eliminate the obstacles that prevented Maori land from being registered, and then conducted slow and poor monitoring of its progress throughout the twentieth century. The Central North Island Tribunal explained that these obstacles came in two forms.⁵⁶⁷ The system could only allow blocks to be fully registered if there was a certain type of survey, which defined a block's boundary with great accuracy and involved heavy costs. The district land registrar could choose not to transfer a block order from a provisional register to a main register, and issue a certificate of title, until satisfied that surveys had been conducted according to requirements set out in regulations. Throughout the twentieth century, the high costs of such surveys were an added

564. G W Hinde, NR Campbell, and Peter Twist, *Principles of Real Property Law* (Wellington: LexisNexis, 2007), pp 205–207

565. Crown counsel, closing submissions (doc N20), topic 27, p 7; Frederic Brookfield, brief of evidence, 20 February 2004 (doc C2), p 5

566. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

567. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 770

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disincentive to Maori owners. The central North Island Tribunal concluded: ‘Maori may have reacted to a title system they disliked by resisting registration.’⁵⁶⁸

The system’s second failing was that it could not accommodate multiple ownership, in which the majority of Maori land was held. Every single owner had to apply for registration before a block could be placed on the main register and issued with a certificate of title, which was simply not practicable in most cases. Under the 1907 survey regulations, titles registered in the land transfer system required all accompanying plans ‘to be signed by the proprietor of the land in each case, or by his lawfully authorised attorney or agent.’⁵⁶⁹ This meant that all the owners of a block (or an individually authorised representative of each owner) had to sign the survey plan before it was eligible for registration. This proved difficult in cases where survey plans were sent directly to the Native Land Court particularly where there were many owners in a block. In any case, registration of titles in the land transfer system gave no added protections against title fractionation and fragmentation, which simply continued as before through successions and partitions.

The resumption of Crown purchasing in Te Urewera in 1915 meant that even though provision had been made to bring the UDNR titles into the land transfer system (in line with Government policy), no attempt was made to carry it out. The UNDR Amendment Act 1909 made all Reserve block titles ‘Native freehold land . . . subject to the Land Transfer Act, 1908.’ But officials realised that to register the titles in the system another survey of Reserve blocks would be needed. In 1914, Chief Surveyor HM Skeet commented that the plans for the Reserve blocks were ‘only sketch plans and not sufficient for the issue of titles.’⁵⁷⁰ The Consolidation Scheme Report noted that a ‘comprehensive and very expensive survey of the whole territory’ would have been needed at the Crown’s expense, which it was unwilling to consider.⁵⁷¹ At no point did officials raise the possibility of asking Maori owners to pay for another survey of their land, undoubtedly because the upgrading of their titles for registration was not something they had sought or to which they had agreed. Officials also took the view that it would be impractical to register the titles before the appeals to the awards of the second commission had been resolved. But the decisive point came with the resumption of Crown purchasing in 1915. Any remaining thought of re-surveying the blocks was shelved because the Crown would eventually have to cut out its award at some future point, at which time a fresh survey would be needed.

Coinciding with this development, officials also increasingly took the view that the UDNR titles were inferior to other titles, even other titles to Maori land. In part, the Crown had created what was now seen as an ‘inferior’ form of title for the Reserve, in the belief that it would eventually need to be replaced when the peoples of Te Urewera were ready to make

568. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 770

569. Regulations for conducting the Survey of Land in New Zealand, 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2745

570. Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), p 28

571. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 3

commercial use of their lands. James Carroll, it will be recalled from chapter 9, had told Parliament during the debate on the UDNR Bill that certificates issued under the Act would be an ‘interim’ title, not a full title under the Land Transfer Act.⁵⁷² He meant by this that it would be interim in the sense that all Native Land Court titles had been interim before the Native Land Court Act 1894, which, he maintained, now granted full ‘Land Transfer titles’. As we noted in chapter 9, Carroll saw the UDNR titles as a halfway point in that direction – full land transfer titles were not needed because the land was to become a Reserve and was not to be alienated.⁵⁷³ He anticipated a time when these ‘provisional’ titles would be turned into ordinary land titles.⁵⁷⁴ But such a transformation could not take place on the basis of the kind of surveys paid for by the Crown in the Reserve. There were ‘imperfections’ in the Reserve block titles, as Crown counsel submitted, which were due in large part to the inexactness of the survey.⁵⁷⁵ Nonetheless, the Crown did not even hesitate to purchase just over half of the Reserve on the basis of these imperfect titles. It did, however, need something better for the settlers to whom it envisaged transferring title.

These same circumstances increased Maori owners’ expectations of the titles they might receive from a consolidation scheme, as they sought a way to end two decades of uncertainty about their land holdings. For the Maori owners, that uncertainty had not arisen from any defects in their surveys but rather from the long period during which their titles were incomplete (from the time of the first Urewera commission orders to the final resolution of appeals in the Native Appellate Court), and years of Crown purchasing during which they were denied the right to partition out their interests. Te Whaiti owners, it will be recalled, were not even allowed to chop down any trees since nobody could say which trees belonged to them and which to the Crown. As we have noted earlier in this chapter, Maori owners reacted increasingly to the Crown’s purchasing programme in the late 1910s by first seeking a partition of their remaining interests through the Native Land Court, and then (when the Crown closed off that avenue) by petitioning the Government for another process to define their interests. Above all, they demanded a guarantee from the Crown that their remaining land would be left in their ownership, and that they would be able to develop that land.

By 1921, these efforts had transformed into an increasingly strong and coherent call for a consolidation scheme, which they had come to believe would provide the necessary solution. Fred Biddle spoke for many when he said: ‘We wish to know where our land is’. A new and different kind of title was needed to assure them of certainty: ‘The young people want

572. Carroll, 24 September 1896, NZPD, 1896, vol 96, p 159

573. Carroll, 24 September 1896, 25 September 1896, NZPD, 1896, vol 96, pp 159, 195

574. Carroll, 24 September 1896, NZPD, 1896, vol 96, p 159

575. Crown counsel, closing submissions (doc N20), topics 14–16, p 62

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to see some document evidencing their titles, to have something tangible to indicate their ownership of a defined piece of land.⁵⁷⁶

By the time the Crown began making plans for a consolidation scheme, Maori owners of the Reserve were thus receptive to suggestions that they would be guaranteed security of title for their remaining land. But the land transfer system was no solution. It was still incompatible with Maori land in the 1920s: the underlying problems that prevented Maori land from being registered had not been rectified in the lead up to the scheme, most notably multiple ownership and the cost. Nonetheless, the Crown's own assumptions about the kinds of titles and surveys needed were shaped by its determination to deliver a large part of the Reserve to settlers, complete with surveyed land transfer titles. From the Crown's perspective, this was compatible with some of what Maori were requesting – certainty of title – but not with their hope that they would retain all that they possessed going into the consolidation scheme.

14.8.3 What promises did the Crown make to Maori about titles and surveys in 1921 and how far did Maori understand the implications of the Crown's proposals?

The Crown's planning in preparation for the consolidation scheme was based on its underlying assumption that the land could be cut up for hundreds of settlers' sheep farms. This proved to be a total misconception, as was revealed in 1922, but its insistence on creating land transfer titles was strongly influenced by this assumption. Nor did the Government do anything to dispel Maori owners' belief that the scheme would see an end to Crown purchasing (and therefore a truly final definition of their land). In any case – motivated also by its desire to bring all New Zealand titles into the system – land transfer titles were one of the Crown's main objectives in the scheme. The expense of surveys for this kind of title, and whether the Maori owners really needed it or not to achieve their desired economic development, never came under discussion during the Tauarau hui.

The Crown's promise of land transfer titles initially raised suspicions at the Tauarau hui, because it referred to 'land transfer' and seemed to be associated with remarks that they should give up their ancestral connections to particular sites and lands. But the Maori owners were persuaded of its benefits by the Crown's representative. From the evidence available to us, however, they were not given enough information to make an informed choice or to understand the consequences of the proposal they were about to accept. Most of the details for how the process would play out were in fact finalised after the Tauarau hui, when Knight, Carr, and Balneavis transformed the provisional agreements at the hui into the Consolidation Scheme Report, and the Urewera Lands Bill was drafted.

576. 'The Urewera Lands', *Whakatane Press*, 19 February 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p 559)

The question of whether Maori owners really needed land transfer titles, and therefore the kind of expensive survey that such titles entailed, could have been dealt with in principle at the Ruatoki hui in May 1921. At that hui, the owners gave their general consent to a consolidation scheme. In his speech to the people, Ngata stated:

What should be arrived at immediately, is the basis upon which the consolidation should proceed. We began with a magnetic survey in the nineties, which show the approximate areas of these blocks. Your officers, Mr Guthrie, will advise you of the nature of those surveys, which were adequate for the purposes of the commissioners who investigated the titles. They were assumed to be sufficient when the Government undertook the purchase of these lands in 1910, and those areas have been adopted by the Native Land Purchase Department as the basis up to the present. I see no difficulty in accepting those areas as sufficient. When one considers the [low] price which the Crown paid for the Urewera lands, I think there is plenty of room for give and take.⁵⁷⁷

The fundamental point, therefore, on which Tuhoe agreed to consolidation in principle was that the present surveys were adequate for the job. But did Ngata mean that the existing surveys were also adequate for new titles? That is not clear, and the Ministers neither agreed nor disagreed with him, nor carried this matter any further. In fact, the question of whether new surveys might be required – and who would pay for them – never came up. The most that could be said is that Ngata reminded everyone that the Crown had paid for the Reserve surveys, because Seddon and Carroll had recognised the necessity of this in the unique circumstances of Te Urewera. ‘Other natives,’ he said, ‘have not been so fortunate.’⁵⁷⁸ While this might have appeared ominous, Ngata did not suggest that Crown payment for surveys would not be repeated; rather, he went on to suggest that the people should make a contribution towards roads. Guthrie agreed with that suggestion. Coates and Guthrie then acted on the understanding that Maori owners had accepted the general principle of having a scheme, and planned for another hui at which Maori were notified that the ‘details’ of the scheme would be considered.

Knight was the first to state clearly that a substantial number of new blocks would emerge from the scheme, and new surveys of the land would therefore be necessary; and he was the first to propose that Maori should pay for them. His June 1921 proposal stated that the titles issued under the UDNR Act (which he called ‘useless titles’) should be cancelled and replaced with fresh title orders. Two types of Maori-owned land would emerge from the scheme: lands ‘suitable for subdivision on settlement lines’ and the remaining land that

577. ‘Meeting of Representatives of the Urewera Natives with the Hon DH Guthrie, Minister of Lands, and the Hon JG Coates, Native Minister, at Ruatoki, on the 22nd May, 1921, 18 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 131–132)

578. ‘Meeting of Representatives of the Urewera Natives with the Hon DH Guthrie, Minister of Lands, and the Hon JG Coates, Native Minister, at Ruatoki, on the 22nd May, 1921, 18 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 133)

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was unsuitable for settlement, which would all be left in one large collectively-owned block. Maori owners would 'reimburse the Crown for the cost of these subdivisional surveys'.⁵⁷⁹

This suggestion became the Crown's policy: at no point was it ever considered that the Crown might pay for the surveys, even though it was the Crown that had brought about the necessity for another survey by virtue of its purchasing in the Reserve. Instead, the plan was that Maori owners would bear a proportionate cost of surveying the new blocks (as co-owners of the land), probably in the form of one large area of land taken from 'useless lands' that were mountainous and unfit for settlement. Knight thought it was a 'very unlikely' scenario that there might not be enough 'useless lands' to cover the cost of surveying, but if that were to happen 'then the Crown will have to be awarded supplementary areas in the Native sections'.⁵⁸⁰

Even though he thought it would not happen, Knight foreshadowed the way costs were in fact accounted for in the scheme; but only because he had underestimated the extent of Crown purchasing in the Reserve, which ultimately meant that the Crown had to take land from each of the new blocks. Despite his mistaken assumption, Knight still thought that the scheme allowed the Crown an opportunity to acquire more land. In his early view (which changed later) he thought that further purchasing should wait until after the consolidation scheme was completed. 'Purchasing operations in the useless lands', he said, 'should not be undertaken until the surveys are finished, and the Crown's award for the cost incurred defined'.⁵⁸¹

Meanwhile, Maori owners had their own (quite different) hopes for the scheme. Back in February 1921, Fred Biddle had explained to the Parliamentary delegation that their land was not cultivated because the owners had 'no title in the pakeha sense'; and even if they did have title, 'we have no money and the banks and other lending institutions will not lend to Maoris'.⁵⁸² In July 1921, Coates remarked to Guthrie: 'the underlying principle of consolidation of interests is the extinction of existing titles and the substitution of another form of title which knows no more of ancestral rights to particular portions of the land'.⁵⁸³ Land transfer titles, in his view, were superior because the remnant ancestral connections would be removed and owners would consolidate their interests into small farm holdings, which would finally allow them to utilise their land. To that extent, there was some alignment between how Biddle and Coates each saw the effects of a consolidation scheme. Coates

579. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p148)

580. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p148)

581. Knight to Under-Secretary for Lands, 21 June 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p148)

582. 'The Urewera Lands', *Whakatane Press*, 19 February 1921 (O'Malley, supporting papers to 'Waikaremoana' (doc A50(b)), p559)

583. Coates to Guthrie, 28 July 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p146)

made no reference, however, to any obstacles in the way of bringing Maori land into the land transfer system; he may not have been aware of them. Ngata, however, knew that more than a land transfer title was required before Maori could get development finance, and he made special recommendations about it to the Government in the Consolidation Scheme Report (which we discuss below).

At the Taurarau hui, the Crown's proposal met with initial opposition, possibly because the Maori owners were confronted with the words 'land transfer' (whakawhiti whenua) as the form of the title. Knight told them that through the scheme 'the existing titles and surveys and tribal boundaries [would] be cancelled and abolished, and new titles issued to the non-sellers for properly surveyed and roaded sections under the Land Transfer Act.'⁵⁸⁴ Balneavis reported at the end of the hui that the 'abolition of existing Native land titles and tribal boundaries, and the substitution of Land Transfer titles for defined sections, sounded revolutionary enough to the Ureweras.'⁵⁸⁵ But, he said, they were won over when it was explained that 'land transfer' meant an improvement on their inferior UDNR titles, greater security, and potential use for development:

But it was explained that in practice the non-sellers would be allocated to existing blocks at the approximate areas and values obtaining for these blocks, but that on actual definition by survey the lines of the magnetic surveys would be disregarded in favour of fencing lines, and boundaries more in accord with settlement conditions. This interpretation they readily acquiesced in.⁵⁸⁶

But did the Maori owners really need land transfer titles to solve their problems?

Counsel for Wai 36 Tuhoe drew on the evidence of Mr Nikora, who advanced the case that magnetic surveys would have been sufficient for the purposes of Maori owners in the scheme.⁵⁸⁷ As noted earlier in the chapter, Mr Nikora was a professional surveyor: as the only qualified practitioner to give evidence to the Tribunal on this issue, his arguments in support of the adequacy of magnetic surveys must be taken seriously. In essence, he argued that magnetic compass surveys were less accurate than surveys by theodolite, but cheaper; and suitable for owners who did not wish to trade in their lands. Theodolite surveys were only necessary for 'highly valuable land' (see sidebar over). The magnetic surveys of the Reserve blocks, he explained, 'were only intended for internal hapu divisions, and not for

⁵⁸⁴ Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4. Balneavis recorded the same proposal as: 'The abolition of existing Native Land titles and tribal boundaries, and the substitution therefore of Land Transfer titles for areas consolidating the interests of families or hapus to be ascertained later as part of the Urewera Consolidation scheme.' See Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 182-183).

⁵⁸⁵ Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 188)

⁵⁸⁶ Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 188)

⁵⁸⁷ Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 116-117

Maybe better as two
separate sidebars rather
than one

Forward into the Future

Knight, Carr, and Balneavis on the Significance of Land Transfer Titles for Maori Owners in the Scheme

IN CONCLUSION, we venture the opinion that among the younger Natives of the Urewera country there is a strong and a genuine desire to be put in a position to farm some of their lands. They have been hampered in the past by the unsatisfactory nature of the titles, which, as will have been noted from a perusal of this report, have been in a state of turmoil since 1896, formerly during successive investigations and litigation, and later in the confusion occasioned by the Government purchases. The Urewera Natives were moved to agree to the consolidation proposals chiefly by the consideration that out of the scheme would emerge for the non-sellers defined sections, ready surveyed and accessible by or handy to arterial roads; that these sections would be free of the old-time restrictions, and owned not tribally or by hapus, but by compact families, with eyes looking forward, and whose only link with the past would be that the sections comprise the homes and cultivations of their ancestors.¹

Ngata: More is Needed than Land Transfer Titles

THE CONCLUDING REMARKS of the report [quoted immediately above] dealing with the utilization by the Ureweras of the lands remaining to them cannot be too strongly emphasized. I go further than the officers in urging that the State should inaugurate in this district a special scheme for rendering financial and other assistance to the young Urewera farmers. The human material is good. The men are good bush-men, efficient in all that relates to work in bush country. They require not only financial assistance but above all business assistance. It would not be sufficient – in fact, it would be risky – merely to lend them money on the security of their lands. There must be business guidance as well to see the money is applied to the best use to secure the best return . . . We have the dearly bought experience of Bay of Plenty farmers in handling bush farms in that district. We have on the East Coast the example of what Maoris can do with their lands if intelligently assisted, financed, and organized. We should be able to benefit by a combination of such talent and experiences in the handling of the last important land problem of the North Island.²

1. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 7
2. Ngata, memorandum to Minister of Lands and Native Minister, not dated [October 1921], AJHR, 1921, G-7, p 7

the purpose of land sales'. By the time of the Urewera Consolidation Scheme, Maori owners were seeking some measure of security so as to retain their remaining land. They did not need their titles to be registered in the land transfer system because their land was not 'highly valuable' and was not intended to be a commodity and thus for sale.⁵⁸⁸ Mr Nikora

588. Tamaroa Nikora, 'The Urewera Consolidation Scheme' (doc E7), pp 11, 27–28

Tamaroa Nikora's Evidence on Magnetic Surveys

I WISH TO COMMENT on magnetic and theodolite surveys. Magnetic (or compass) surveys were adopted under the UDNRA to produce the sketch plans. A magnetic survey simply entails the surveyor taking his bearings by compass and then measuring between points. This pattern is continued until the area is surveyed. Magnetic surveys are a lot cheaper to undertake and are more flexible than theodolite surveys. They are less accurate but were sufficient for the purpose of defining hapu blocks as part of the UDNRA. Most people will understand the manner in which a theodolite survey is undertaken. A theodolite is used to accurately measure survey points to a level of accuracy of plus or minus .02 metres. It is a costly method of survey which is necessary where there is highly valuable land, but not so in respect of land such as in Te Urewera. Both magnetic surveys and theodolite surveys can be checked against triangulation points.'

—Tamaroa Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 27

said: 'If the Rohe Potae was still owned by Tuhoe today then magnetic surveys would still be sufficient for internal subdivisions.'⁵⁸⁹ We consider this evidence further below. Here we note that Maori owners were never given the opportunity to consider whether their new blocks could be surveyed using magnetic compass methods. They were encouraged to think that only one kind of title was sufficient for their needs, and were never presented with the consequences of what that form of title would entail in terms of survey costs.

As we see it, it was not beyond the ability of officials or Ministers to have contemplated a cheaper survey in Te Urewera, and one paid for by the Crown. As noted above, Ngata had just reminded everyone of how the Crown had paid for the old magnetic surveys, and why those had been sufficient for the unique circumstances of Te Urewera. Nonetheless, officials seem to have taken it for granted that land transfer titles were needed in Te Urewera, as they were everywhere else in the country. As will be apparent from our earlier discussion, they were blinded by the determination that Te Urewera must be cut up and opened for settlement on a large scale. It was not until the following year (1922) that such thinking underwent a revolutionary shift, and officials started conceptualising Te Urewera as an enormous forest for production and watershed conservation purposes. That proved too late to shift the scheme out of the groove of land transfer titles.

In terms of the surveys themselves, the Maori owners were never given the opportunity to assess the promised outcome of the scheme against the likely cost. Balneavis said that,

589. Tamaroa Nikora, brief of evidence (doc E8), p 11

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unlike the roading contribution, the ‘contribution for surveys cannot be so easily ascertained, although the Natives are prepared to pay for that in land also’. As the Maori owners were not presented with any other choice but to pay for the surveys themselves, it is likely that they indicated a preference to pay in land because of their previous experience with survey debt in the rim blocks. Balneavis also revealed that the extent of the costs and the exact form of the land taking had yet to be determined: ‘whether the cost of survey should be fixed at a definite lump sum, to be compensated by a block of land to be defined now, or whether the assessment for the purpose should be made as the surveys proceed is a question that was left for determination later.’⁵⁹⁰ Maori owners would have had little idea of the costs involved, or the significance of having their titles registered in the land transfer system, beyond the assurances they were given.

Had the Maori owners known of the likely costs at this stage, they would have had an opportunity to organise the consolidation of their interests in different ways. They were encouraged to organise their holdings into small family units with fewer owners. Most of the blocks were consequently small. By the end of the hui, they had organised themselves into 99 different consolidation groups with a total of 183 blocks. While this was their choice, had the owners been aware that the consequence of a larger number of block boundary lines was an increased survey cost, they might have organised their holdings otherwise. The number of groups and blocks had other implications as well. Because Maori owners chose to locate their interests primarily in their settlement lands down the river valleys, there was not enough ‘useless lands’ to provide for a combined area to pay for the total cost of surveying the blocks. That, it will be recalled, had been Knight’s theory of how it would work. This meant that all the Maori land would be surveyed because the blocks would be ‘settlement’ blocks and not in the ‘useless’ area. It also meant that each of these blocks would diminish in size; the land that Maori owners did choose to retain would be eaten away at the edges to pay for the surveys. The consequences of these decisions were never spelt out to Maori owners at the hui, and officials likely did not grasp them until afterwards when they worked out the details in the Consolidation Scheme Report.

All of these details – how the land in the scheme would be surveyed and the process by which title would be awarded – were decided after the Taurarau hui, in the absence of Maori owners. Knight, Carr, and Balneavis recorded their proposals in the Consolidation Scheme Report, and other provisions were added in what became the Urewera Lands Act 1921–22. The draft scheme was not referred back to the owners for discussion and approval, as Mr Nikora suggested should have been the case in his principles for a sound consolidation scheme.

The consolidation scheme report stated that the Crown would survey all land in the scheme. The amount of land to be taken from each Maori-owned block for the survey costs

590. Balneavis to Coates, 27 August 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p188)

would be estimated beforehand, though it was not specified who would do the estimating or how the estimates would be made. The equivalent amount of land would then be taken from each block or taken in the form of ‘scenic or water conservation or forest conservation areas.’⁵⁹¹ Under Section 17 of the Urewera Lands Act, the Chief Surveyor was to ‘procure a survey of that land in accordance with the tenor of the requisition, and to prepare a sufficient plan of the land so surveyed’. Surveys were to be ‘carried out in accordance with the directions of the Chief Surveyor, either by officers of the Lands and Survey Department or by any other duly authorised surveyor.’⁵⁹² Section 8(2) of the Act also said that all orders made by the commissioners should be accompanied by ‘a plan sufficient for the purposes of the Land Transfer Act, 1915’, under which the Surveyor-General made regulations ‘for insuring the accuracy of plans and surveys required under this Act’.

All of these provisions came to bear on how the surveys would eventually be conducted in the scheme. The most recent regulations remained those published in 1907: all surveys would be conducted by theodolite; no magnetic bearings could be used unless for filling in details on topographical maps. The consequence of these regulations in terms of their cost will be discussed below but at this point Maori owners were in no position to assess the potential costs; for those costs had yet to be established.

Despite the fact that the new blocks would be surveyed so that they could be registered in the system, the Urewera Lands Act provided no definite mechanism by which this could occur. Section 8 set out the process by which the orders of the commissioners became Maori freehold land under the Native Land Act 1909. Orders would have the effect of vesting land ‘in the persons named therein for an estate of fee-simple in possession, and, if there are more than one, as tenants in common’. The chief judge could then (‘may’) forward a duplicate of the order to the district land registrar, who would place the order on the provisional register. The district land registrar could ‘retain the title on the provisional register so long as the number of owners named in such title exceeds ten’ (section 8(5)). Ninety-five of the blocks had more than 10 owners.⁵⁹³ Already, the district land registrar could keep just over half of all the Maori-owned blocks on the provisional register, which meant that they would not get a proper land transfer title. (Successions, of course, would mean that numbers of owners in all blocks would increase.) Yet, the Maori owners had left the hui under a quite different impression. ‘Instead of being the most backward’, Knight, Carr, and Balneavis noted in the report, their titles ‘will be as far advanced as the best Native titles in any part of the Dominion.’⁵⁹⁴

591. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 8

592. The Urewera Lands Act 1921–22 said that the provisions of part XX1 of the Native Land Act 1909 applied to the survey of land in the scheme. This quote is taken from section 396(2)–(3) of the Native Land Act 1909.

593. For number of owners listed on block order awards see ‘Urewera Consolidation Block Order Files (Ahiherua to Owaka)’, not dated, vol1 (doc M12(c)); ‘Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)’, not dated, vol2 (doc M12(d)).

594. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p 6

The Consolidation Scheme Report contains many of the Crown's broader assumptions about surveys and title, which really developed out of its plans for settlement; many of these assumptions unraveled as the scheme proceeded. Knight, Carr, and Balneavis presented savings on costs as one of the key benefits of the scheme. But these were savings primarily to the Crown. According to the officials, the 'chief stumbling-block' for obtaining land by partition through the Native Land Court 'was the fact that in order to make such partition orders effective and registrable it was necessary to undertake a comprehensive and very expensive survey of the whole territory'. Proceeding with a consolidation scheme, it was argued, would make such a survey unnecessary. Elsewhere in the report, they explained that the chief saving would be through surveying the land using modern techniques: 'Useless and expensive surveys will be obviated, because there is now no need to re-establish and redefine the old magnetic surveys. The surveys necessary to complete our scheme will be Land Transfer surveys done once to enable the issue of certificates of title.'⁵⁹⁵ Following this reasoning, the surveys 'done once' in the scheme would be cheaper than redefining older magnetic surveys, as well as more accurate. There was very little evidence to support this point, as later developments proved.

Crown counsel says that there is 'some evidence that Urewera Maori agreed to surveys as they would thereby obtain a secure title.'⁵⁹⁶ Counsel added: 'One of the many complaints in respect of Maori land is the inability to raise finance on it. If the land had title sufficient for coming under the Land Transfer system – that problem would be obviated.'⁵⁹⁷ But, as we shall see in chapter 17, the land transfer system did not solve these problems for North Island Maori: so long as their blocks were vested in multiple owners, Maori owners would still find it difficult to raise finance on their land. It took state lending through Ngata's development schemes for any form of finance to be raised on much of this land. In 1921, Ngata himself foreshadowed this necessity when he said that the provisions of the proposed consolidation scheme would not be enough to produce successful farming enterprises in Te Urewera.⁵⁹⁸ In his view, Crown finance and business management assistance ought to be an integral part of the consolidation scheme. Without it, the peoples of Te Urewera could not succeed, even with new titles. Ngata's advice on this point was disregarded. The Crown proceeded on the false assumption that land transfer title was needed for its own purposes, and that this would also solve many of the existing problems facing Maori owners in the Reserve. Maori owners accepted these assurances at face value, including the guarantee that they would be able to raise finance on their newly re-titled land. In these circumstances, Maori owners were more likely to accept the idea that they should meet the cost of paying for new surveys to get these new titles.

595. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 3, 7

596. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

597. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

598. Ngata, memorandum, not dated, AJHR, 1921, G-7, p 7

14.8.4 How were the surveys conducted and were cheaper methods available?

Preliminary work for the surveys in the scheme began in late 1921 on the premise that all blocks would be surveyed according to the standards of the land transfer system. But a number of developments took place early on in the scheme which meant that the survey of the Maori-owned blocks did not in fact meet these standards. The process adopted by the Consolidation commissioners immediately departed from the terms of the Act: Maori-owned blocks would be surveyed before each of the Crown's blocks instead of after, which was not the order specified in the Act. Then, as the surveyors revealed that the Crown's plans for settlement were based on grossly exaggerated assessments of how much land was suitable for sheep farming, the commissioners decided to wait until the very end of the scheme and make a single award to the Crown in a single block. Meanwhile, the extent of survey takings in the Maori-owned blocks prompted a number of protests, led by leaders of te taha apitihana. These protests gave rise to a special amendment to the Urewera Lands Act, which allowed for the use of cheaper magnetic surveys in the issuing of awards in the scheme. These developments meant that by the time the final survey was completed in 1926, all of the Maori-owned blocks had topographical plans insufficient for registration in the land transfer system; the Crown's award, by contrast, had a full survey plan. At the heart of these developments are two of the main issues raised by the claimants: whether cheaper survey methods could have been used in the scheme; and that they never received their promised land transfer titles.

The commissioners worked out their process for surveying the blocks in consultation with departmental surveyors, in anticipation of what would be set out in the Urewera Lands Act 1921–22. This Act, it will be recalled, was passed in February 1922 after the commissioners had begun their hearings. The Act established that costs had to be estimated before surveys began and that those costs could then be taken in the form of land from each block or in the form of a scenic reserve. Within these broad parameters, the commissioners decided to adopt a standard rate of 2s 6d per acre as the basis of their estimates for all blocks. Later in this section, we explain how the commissioners arrived at this rate and how it was applied throughout the scheme. By adopting a standard rate, the commissioners were able to instruct surveyors in advance about how much land would actually require surveying (after the deduction had been made) and also how much land could be taken by the Crown to account for the cost.

The realities of settling the claims of Maori owners in each part of the scheme meant that the commissioners were quickly forced to abandon the order in which awards were to have been made, as set out in the Urewera Lands Act 1921–22. Under sections 5 and 7 of the Act, the Crown award was to be made first, followed by the Maori-owned blocks. In December 1921, Under-Secretary for Lands TN Brodrick instructed HM Skeet – who, at this point, was both Chief Surveyor and Commissioner of Crown Lands – to assist the

commissioners immediately in ‘the most urgent parts of the scheme’ by sending a team of surveyors.⁵⁹⁹ As we have explained above, Ngata had raised understandable concerns about the award of land to the Crown first, which could see the Crown ‘complete its own titles first and place settlers on the areas awarded to it, leaving Native claims in the air’. Instead, he advised, ‘exploration and definition of the Native areas should proceed *pari passu* with that of the Crown awards.’⁶⁰⁰

But surveyors were confronted with a different reality when they went out into the field. Reporting to Skeet in December 1921, surveyor HD Armit stated a fact that altered the entire course of the scheme’s implementation: ‘I consider it will first be necessary to locate the native blocks in order to see where the Crown land is situated.’⁶⁰¹ The commissioners adopted this as the core of the process for setting out each of the areas in the scheme: Maori-owned blocks would be set out first; the rest of the land would be the Crown’s by default. This was an immediate departure from the terms of the Act, one that would have crucial implications for the titles that emerged from the scheme.

The consequences of these changes played out as surveyors began preparing preliminary topographical plans in the north of the former Reserve in late 1921 and 1922, in preparation for the commission’s first hearings. Although the Consolidation Scheme Report had noted that some of the Tauarau arrangements were ‘complete and definite enough for immediate execution of surveys’, no immediate surveys took place. The commissioners decided that all the land in the scheme essentially required ‘further inquiries’ (in particular to fix boundaries), which meant ‘preliminary topographical surveys’ would be carried out throughout the scheme.⁶⁰²

This decision set a precedent that saw all of the surveys conducted according to a two-step process. First, surveyors would go out to the general area under consideration by the commissioners and Maori owners, and produce topographical plans by compass. These plans would then be used by the commissioners and the Maori owners to establish provisional boundaries for the blocks. After the provisional boundaries had been established, the commissioners informed the surveyors of the final size of the blocks, after the deduction, and where the consequent boundary lines ought to run.⁶⁰³ The surveyors would then return to the land and cut the boundaries of the blocks using theodolites. The surveyors were instructed to cut boundaries along ‘good fencing lines’, which meant that they were required to follow the final calculated area in approximate terms only. As we will see below,

599. Brodrick to Skeet, 18 November 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p116)

600. Ngata, memorandum, not dated, AJHR, 1921, G-7, p7

601. Armit to Skeet, 8 December 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p117)

602. Knight, Carr, and Balneavis, ‘Urewera Lands Consolidation Scheme’, 31 October 1921, AJHR, 1921, G-7, p8

603. See, for example, Knight to Barlow, 28 January 1922 (Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, various dates (doc A86(h)), pp 2588a–2588b).

this two-step approach had other consequences for the way that the surveyors went about their business.

The focus of the surveyors' activities initially remained on opening the Crown's award as soon as possible, even if the Maori-owned blocks were set out first. By establishing which land would be awarded to Maori owners, the Department of Public Works hoped to advance the early work on the arterial roads. Also, the Department of Lands and Survey wanted to place at least a portion of the Crown's award on the market. Despite their common goals, the process set for surveying different areas of the former Reserve meant that the departments occasionally came into conflict over whose survey would occur first: the Department of Lands and Survey worked mainly on provisional topographical plans to assist the commissioners in hearing the Maori owners' claims and later cutting the boundaries of their blocks, which needed to be set out before the location of the Crown's land could be determined. Road lines, in the same way, were located and surveyed (by Public Works surveyors) with a view to defining the Crown's award.⁶⁰⁴

As part of their deliberations about how to make the survey of blocks in the scheme work in practice, Lands and Survey officials discussed whether cheaper magnetic compass methods could be used instead of more expensive theodolite surveys. Skeet established in October 1921 that the earlier magnetic surveys of Reserve blocks could not be used as the basis of defining new block boundaries in the scheme. But this was not – as the authors of the Consolidation Scheme Report would have it – because 'present-day Natives [were] unacquainted with the location of the named places on the boundary-lines', thus rendering the boundaries 'in many cases impossible to redefine on the ground.'⁶⁰⁵ As Mr Nikora noted, Maori 'did know of the location of the named places on the boundary lines – even the Natives of today still know of these places'. The Reserve surveys could have been used in the scheme so long as the 'surveyors had kept adequate field books', because most boundaries 'actually followed ridge lines.'⁶⁰⁶ But the records of the original survey turned out to be inadequate for this purpose. Skeet confirmed that these records were inadequate: the survey plans did not show 'bearings and distances, also traverse lines'; and because the work was 'done by compass and as the field books numbers given on the plans do not correspond with those in this office, it is impossible to trace information.'⁶⁰⁷ Robertson noted that 'surveyors such as Armit had to start from scratch.'⁶⁰⁸

But Skeet only took issue with the type of information recorded on the survey plans for the Reserve blocks and the department's failure to keep adequate records, not with the method of surveying by compass itself. In fact, Skeet instructed surveyors to prepare

604. Robertson, 'Te Urewera Surveys' (doc A120), pp 128–129

605. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 2

606. Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 28

607. Chief Surveyor to Under-Secretary for Lands, 19 October 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 120)

608. Robertson, 'Te Urewera Surveys' (doc A120), p 124

survey plans with the use of compasses, not theodolites. This instruction went against the existing regulations, which said that ‘no magnetic bearings are admissible unless for filling in topographic detail work, and then very sparingly, and with permission only.’⁶⁰⁹ As Chief Surveyor, Skeet had the authority to grant such permission. In February 1922, he told Brodrick, Under-Secretary for Lands, that compass surveys would be sufficient for both Crown and Maori-owned blocks: ‘I think the whole country should be dealt with on a topographical compass survey. This would locate the boundaries and the areas would be well within a settlement degree of accuracy.’ Such a survey would be cheaper and quicker, and would enable the Crown to sell sections on the market as soon as possible, which was signalled in both the Act and policy statements as the scheme’s main priority. ‘To make complete theodolite surveys at the start would, I consider be unduly costly and slow.’ Full surveys by theodolite could be done later if needed. ‘Where it is essential to give complete titles to Native interests a fuller survey would be made. Much land has been settled in New Zealand on these lines and I think in this rough Urewera country it would prove sufficient for the time being.’⁶¹⁰ In the meantime, Skeet had given verbal instructions to surveyors, who began provisional work ‘by compass and chain.’⁶¹¹

Brodrick, however, rejected Skeet’s recommendation immediately, instructing him to carry out all of the surveys by theodolite. The Department of Lands and Survey, he said, ‘has an extensive experience of the preliminary compass survey method, and it has in all cases proved disastrous and a great addition to cost of survey. We cannot repeat the experience.’ Brodrick explained that his main concern was not with Maori land, but rather in creating the proper conditions for settlers to take up lots sold by the Crown:

In nearly all cases a settler put on his selection must finance at once; this cannot be done on compass surveys, as the titles cannot issue till theodolite surveys are finished. The Urewera surveys must be made in accordance with the regulations, by theodolite, not by compass, from the first. Please instruct the field staff accordingly.⁶¹²

Brodrick said nothing of what was required to fulfil the promise made to Maori owners in the scheme; his focus was on opening the land according to the Crown’s plans. Skeet cautioned Brodrick that carrying out surveys by theodolite would ‘necessitate doubling the staff and cause delay in getting the land ready for settlement.’⁶¹³ These concerns were ech-

609. ‘Regulations for conducting the Survey of Land in New Zealand’, 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2736

610. Commissioner of Crown Lands to Under-Secretary for Lands, 7 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 121–122)

611. Barlow to Chief Surveyor, 27 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 126)

612. Under-Secretary for Lands to Commissioner of Crown Lands, 14 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 123)

613. Chief Surveyor to Under-Secretary for Lands, 22 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 124)

oed by field surveyor PW Barlow, who wrote that he had been told to ‘make a provisional scheme of as large an area of suitable land for settlement as possible’ in the Tauranga and Waimana valleys. Changing to theodolite surveys meant that there was ‘very little chance of us having any area ready for settlement before the winter sets in.’⁶¹⁴ Skeet told Brodrick that he acknowledged the ‘difficulty of giving a permanent title on a compass survey’, but ‘when such title may not be wanted for much of the country it is a question whether the benefit of a costly survey is warranted.’⁶¹⁵ Skeet had come to this conclusion because surveyors going out on the land had begun to reveal that much of the land that would be awarded to the Crown was in fact unsuitable for settlement, which raised doubts about whether a full survey by theodolite was necessary.

Did Skeet’s recommendation to survey all of the blocks with cheaper magnetic compass surveys represent a missed opportunity on the part of the Crown to reassess its undertakings to Maori owners? Crown counsel argued that Skeet only considered how magnetic compass surveys could be used in the Crown’s plans to open the land for settlement: ‘It is not appropriate to extrapolate Skeet’s preference for a cheaper survey method for certain categories of Crown land onto how Maori land should have been surveyed.’⁶¹⁶ But Skeet said such surveys could be used for ‘the whole country’ (the former Reserve), which included both Maori land and Crown land. As Chief Surveyor and Commissioner of Crown Lands, Skeet had conflicting responsibilities, and juggled the requirements of opening the Crown’s land as quickly as possible with the need to set standards for surveying all blocks in the scheme. Brodrick, in contrast, only considered the effect compass surveys would have on the Crown’s award.

Crown counsel similarly submitted that ‘[m]agnetic surveys were not appropriate when land was to be farmed or used for settlement purposes’. It was not until 1924, counsel said, that more inexact survey plans could be used to issue certificates of title registered in the system (recorded as ‘limited as to parcels’); even then, a full survey plan was necessary for full registration.⁶¹⁷ In particular, the Crown’s argument was that Maori needed land transfer titles for farming, because without such titles they would never be able to raise development finance.⁶¹⁸ As we noted above, Ngata had already refuted that theory in 1921: nothing short of Crown financial assistance and business expertise would enable the Maori owners to set up successful farming in Te Urewera, no matter what their titles. As we shall see in chapter 17, land transfer titles were not necessary for *the Crown* to lend money for farming. Indeed, state development schemes deliberately ‘stepped over’ title problems. Skeet, there-

614. Barlow to Chief Surveyor, 27 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 126, 128)

615. Chief Surveyor to Under-Secretary for Lands, 22 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p 124)

616. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

617. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

618. Crown counsel, closing submissions (doc N20), topics 18–26, p 65

fore, had identified a reasonable alternative; one that was only rejected because it did not suit the Crown's objectives. Having said that, the Crown was required to fulfil the promise it had made to the Maori owners unless it sought to renegotiate as a result of altered circumstances, so Brodrick's intervention should have meant that Maori owners still got their titles registered in the land transfer system, for which they were paying in the form of substantial amounts of land.

Some of the Crown's assumptions about the necessity for land transfer titles were exposed with the revelation in 1922 that much of the land it would acquire from the scheme was not of a settlement quality; this was one of the most crucial developments during the scheme's implementation. The Crown's plans had been based on Wilson and Jordan's 1915 report, which suggested that 370,000 acres could be opened for pastoral farming. When the surveyors began laying out blocks in the Waimana Valley in 1922, in some of the highest quality land for farming in the whole area, some false assumptions were quickly revealed. In July 1922, Barlow noted the inaccuracies of the Wilson and Jordan report for the former Tauranga block: 'I beg to state that I disagree entirely with Mr Wilson's opinion of this country and find the country to be generally very broken with precipitous faces falling on either side to the river.' Barlow recommended 'the postponing of any scheme' to sell the Crown land on the market.⁶¹⁹ In August, Armit reached a similar conclusion about the rest of the land in the valley, which was 'not very great on account of the steep loose nature of the surface.'⁶²⁰

Based on these assessments from his surveyors, Skeet was soon moved to report to Brodrick that the land Maori owners were to take up along the river fronts faced a serious risk of erosion if they were de-forested, which would increase the likelihood of flooding of the 'low-lying' areas of the Rangitaiki plain. Given this, he recommended that the Crown 'purchase their interests, as I am convinced that neither the Natives or Europeans can make any profitable use of this land'. Also, in his view, the few blocks of Crown land that had been prepared should not be placed on the market. The inevitable – but remarkable – recommendation followed: 'the question now arises as to whether, in view of the established facts, it would not be advisable to abandon the settlement scheme.'⁶²¹

The detailed work of the surveyors signalled the first major shift away from the Crown's plans for settlement and towards a new focus for the land: water and soil conservation. Although retaining some of the land for conservation purposes had been factored into the Crown's planning from the beginning of purchasing, and flagged in Wilson and Jordan's 1915 report, this was the first time that Crown officials seriously contemplated the wholesale

619. Barlow to Chief Surveyor, 18 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 28–29)

620. Armit to Chief Surveyor, 1 August 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 134)

621. Commissioner of Crown Lands to Under-Secretary for Lands, 16 August 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 135–136)

abandonment of the settlement scheme in favour of retaining the entirety of the Crown's award in its present condition. In April 1923, Skeet (and other authors) further confirmed their assessment, which he reported to Brodrick: 'I think the inspection of the Urewera only shews that much settlement cannot be expected.'⁶²²

In March 1924, 28,564 acres in the Waimana and Whirinaki valleys was subdivided into 18 sections and placed on the market. Robertson says that only four applications were received and all were rejected by the Auckland Land Board.⁶²³ Three further sections were prepared for the Waimana Valley (totalling 3,322 acres), in the former Parekohe block, but no applications were received and they were withdrawn.⁶²⁴ Despite extensive advertising, only three leases were taken up, and in July 1924 the decision was made that it was best to withdraw all of the Crown's remaining bush-covered sections from the market.⁶²⁵ Alexander McLeod (Guthrie's successor as Minister of Lands) announced the following year that it was unlikely any further land would be made available to the public. It would instead be retained for conservation. The *New Zealand Herald* commented, 'far from any progress having been made toward the utilisation of the Urewera land, the last 12 months has seen a retrogression in policy.'⁶²⁶ This did not mean, however, that its Te Urewera lands appeared any less valuable to the Crown. As we noted in chapter 13, the Director of Forestry was very enthusiastic in 1923, urging that the national interest would be well served by 'a permanent forest, to be used for timber-crop production, water conservation, stream-flow regulation, subordinate sylvo-pastoral settlement by Europeans and Maoris and for national recreational and sporting purposes.'⁶²⁷ Although the Crown's priorities were changing, the land was no less valuable to it.

Before the flaws in the Crown's pastoral settlement plans were revealed, even as the surveyors completed the first plans that accompanied orders for Maori-owned blocks (in the

622. Commissioner of Crown Lands to Under-Secretary for Lands, 24 May 1923 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 140); Skeet, Murray, and Roberts to Under-Secretary for Lands, 10 April 1923 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 137–139)

623. Robertson, 'Te Urewera Surveys' (doc A120), p 135

624. Commissioner of Crown Lands to Under-Secretary for Lands, 18 February 1924 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 145); Carr to Native Under-Secretary, 30 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p 283)

625. Cleaver, 'Urewera Roding' (doc A25), p 77; Klaus Neumann, 'That no Timber Whatsoever be Removed: The Crown and the Reservation of Maori-owned Indigenous Forests in Te Urewera, 1889–2000' (commissioned research report, Wellington: Waitangi Tribunal, 2001) (doc A10), p 57. One lease at Te Whaiti was taken up by the local policeman and postmaster HM McPherson, while two settlers acquired some of the Crown land in the Waimana Valley. In 1935, an unforested part of another Te Whaiti section was bought by the Presbyterian Church. See Peter Clayworth, 'The Te Pahou Blocks: A Report on the Wai 725 Claim' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A19), p 35; Jeffrey Sissons, *Te Waimana: The Spring of Mana: Tuhoe History and the Colonial Encounter* (Dunedin: University of Otago Press, 1991) (doc B23), p 274; Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 473.

626. 'Urewera Settlement', *New Zealand Herald*, 6 April 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p 278)

627. L MacIntosh Ellis, Director of Forestry, to Minister for Forestry, 3 May 1923 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera, 1870–1930', various dates (doc A86(j)), p 3422)

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Waimana series), officials departed from the process for surveying that was laid down in the Act. Following Brodrick's intervention, Skeet had instructed field surveyors in February 1922 'to make all surveys by theodolite in the Urewera Country'.⁶²⁸ But later in March, Skeet decided that to survey the Maori-owned blocks with the least possible risk (for fear that some boundaries might need to be revisited), it would be safest to begin with preliminary topographical surveys by compass, before cutting boundaries by theodolite. 'Much of the preliminary [work] was necessary to know where permanent boundaries should be, in fact I think you will find it best to have topographical [work] well ahead to avoid heavy work being run in the wrong places.' By avoiding 'unnecessary theodolite work', the Crown would save on costs.⁶²⁹ This instruction confirmed that surveying in the scheme would follow the two-step process that the commissioners had adopted in hearing Maori claims to land. All of the Waimana series blocks were signed off by the commissioners on 10 April 1922. Having conducted preliminary topographical plans for the purposes of the commission's hearings, the surveyors then went back out to the land to survey the boundaries of the blocks by theodolite. On completing these surveys, orders were then made that were sent to the Chief Judge of the Native Land Court, and signed between March and June 1924.⁶³⁰ This much was in keeping with what was set out in the Urewera Lands Act 1921–22.

Although surveyors did return to the land to cut the boundaries using theodolites, in accordance with Brodrick's instructions, the resultant plans that accompanied the block orders did not meet the requirements of the land transfer system (as set out in both the 1907 and the 1923 regulations). The survey plans produced for the Waimana series blocks – in fact, for all the Maori-owned blocks in the scheme – were topographical plans, based on the preliminary topographical plans prepared for the blocks by compass. Some of the plans had additional survey information added to them, namely the 'chainages' that indicated the distance between each measurement as marked out on the ground. But they failed to show some of the information required under the regulations, including traverse lines, which indicate how the position of boundaries was located. These plans were signed off by Skeet (as Chief Surveyor), the surveyor who had produced the plan, and at least one of the Consolidation commissioners.⁶³¹ Having refined his instructions to surveyors about how they were to carry out preliminary topographical plans, Skeet then clearly accepted these plans as sufficient for signing off awards. It is possible that Skeet and the commissioners believed they had the authority under the Urewera Lands Act to sign off on blocks using

628. Chief Surveyor to Armit and Barlow, 20 February 1922 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p124)

629. Robertson, 'Te Urewera Surveys' (doc A120), p128

630. 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)', not dated, vol1 (doc M12(c)); 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)', not dated, vol2 (doc M12(d))

631. For plans attached to block orders, see 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)', not dated, vol1 (doc M12(c)); 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)', not dated, vol2 (doc M12(d)).

topographical plans only, because the commissioners could make orders for awards based on such plans. But proper survey plans (following the regulations) would still be needed for certificates of title under the land transfer system. Unless the surveyors returned to the land and produced new survey plans, the orders for the Maori-owned blocks would merely remain with the Native Land Court when they were sent there.

As the awards for these first blocks were made, the reality of how much land was being taken for the cost of surveying became apparent to Maori owners. Protest first emerged from Wharepouri Te Amo, who along with two others had submitted the first petition against the operation of the scheme in October 1921. In that petition, he had focused on the Crown's acquisition of land for the cost of constructing the arterial roads.⁶³² Survey costs soon came into his focus. At the first sitting of the Consolidation Commission at Ruatahuna in February 1922, Te Amo listed five main points of objection, one of which was the fact that the 'payment of survey costs [was] not discussed at Ruatoki'. The commissioners recorded their blunt response: 'Natives were advised that the time for raising the objections stated by Wharepouri had passed. Wharepouri was a member of the Ruatoki Committee and should have raised his grievances then.' On the issue of survey costs, the commissioners recorded: 'Costs were payable either in money or land. The scheme contemplated the latter method of payment.'⁶³³

Another petition originating in Ruatahuna, from Tikareti Te Iriwhiro and 175 others, included survey costs as one of their main points of objection: 'The Crown further proposes to take over areas of land to defray costs of partitioning the Maori sections, we are averse to such land being taken over for partitioning areas for the different groups and subdividing areas for the different families.'⁶³⁴ The commissioners' response, written two years after the petition, again indicated that in their opinion the only issue was whether the costs were met in money or land:

It is considered that it was to the Native interests that Survey costs should be liquidated by a payment in cash. Opportunity was given to all to pay costs for their surveys. Two were known settlers and groupheads did express their desire to pay cash and gross areas were accordingly set apart for them. They subsequently reconsidered their decisions and were only too pleased to be able to keep their money to assist in the development of their holdings.⁶³⁵

632. Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori to Parliament, 5 October 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 201–202)

633. Urewera minute book 1, 22 February 1922 (doc M29), pp 31–32

634. Tikareti Te Iriwhiro and 175 others to Parliament, circa September 1922 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 219)

635. Carr and Knight to Native Under-Secretary, 10 September 1924 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), p 220)

The 1923 Amendments to the Urewera Lands Act

The 1923 amendments are shown by the italicised text:

8(2). The order as so drawn up shall have endorsed thereon or annexed thereto a plan sufficient for the purposes of the Land Transfer Act, 1915, or *a compiled plan certified by the Chief Surveyor as sufficiently accurate for the purpose*, and shall be authenticated by the signature of at least one Commissioner, and countersigned by the Chief Judge of the Native Land Court, and sealed with the seal of that Court.'

17. The Crown shall, on the requisition of any Commissioner or of a Judge of the Native Land Court, undertake all surveys required for the completion of any order under this Act. Any requisition heretofore made in anticipation of this Act coming into force shall be deemed to have been made under this Act. Any plan prepared may be approved by a Commissioner or Judge, and the provisions of Part XX1 of the Native Land Act 1909, shall apply in all other respects as if the requisition for survey had been made under that Act. *Where the Commissioners think it expedient they may authorize any surveyor to undertake a survey required for the purposes of this Act.*

What these petitions underline is that the Maori owners had never had an opportunity to consider or consent to the extent of the survey costs, and now they were confronted with the reality of their new blocks as they were laid out on the ground. Not unnaturally, much alarm was felt about the extent of land going to the Crown to pay for the surveys. As we discussed earlier, opposition to losing land for surveys had a long history in Te Urewera. It had only been 15 years since two-thirds of Matahina c and c1 went to the Crown to pay for survey costs (see chapter 10).

The commissioners faced their biggest resistance from Ruatahuna. Te taha apitihana leaders threatened a total withdrawal from the scheme because of the number of things they had not been made aware of at Taurarau, including survey costs. In November 1922, Pihī Te Pika – one of the Ruatahuna leaders who supported the scheme – told the commissioners that te taha apitihana had (at a large hui at Ruatahuna) ‘determined not to receive the Comm[ission] until their petitions are definitely dealt with.’⁶³⁶ As we have seen earlier, te taha apitihana leaders then refused to submit their claims to the commissioners for consideration, beginning a stand-off which lasted for the duration of 1923.

636. Bassett and Kay, ‘Ruatahuna’ (doc A20), p143

The solution arrived at by the commissioners sought to remove this point of contention. In the course of writing our report, we discovered a previously unnoticed amendment to the Urewera Lands Act, passed in August 1923, which we recently put to the parties for comment. The Native Land Amendment and Native Land Claims Adjustment Act 1923 allowed the commissioners to make orders for Maori-owned blocks based on ‘a compiled plan certified by the Chief Surveyor as sufficiently accurate for the purpose.’⁶³⁷ Section 17 of the Urewera Lands Act was amended so that the commissioners could direct surveyors to undertake surveys ‘for the purposes of this Act’. In its response to our call for submissions, the Crown included evidence from Land Information New Zealand, explaining that compiled plans are ‘prepared from data currently held within the cadastral record, using direct adoption and/or calculation between *existing* positions’ (emphasis in original).⁶³⁸ In other words, existing survey information was used to produce a compiled plan.

Apirana Ngata explained in Parliament in August 1923 that the purpose of the amendment was to allow cheaper surveying methods so as to end the standoff with te taha apitihana:

it is recognized that the position with regard to the Ruatahuna Natives is a difficult one; but I am sure we have in the clauses before us all that can be done at the present time to meet their requirements. One of their chief troubles was the claim made by the [Consolidation] Commission to take a further area of land on account of the surveys. That was due to the requirements of the Urewera Lands Act with regard to the issue of Land Transfer certificates to the family groups, whose interests were aggregated and allocated. The Commission suggested that to meet that difficulty a compiled plan might be used for the purposes of issuing the title; and the provisions in clause 10, so far as the Ruatahuna Natives are concerned, will mean the saving for them of about five-eighths of their area. The surveys will cost them very little, if anything, and they will be enabled to get their titles as soon as the other groups of Natives, who are getting proper plans prepared for endorsement on their titles.⁶³⁹

Ngata thus concluded that the compiled plan would be cheaper than a full survey and that this would overcome one of te taha apitihana’s main points of opposition.

Crown counsel submitted that this amendment was made specifically for the purposes of settling the stand-off with te taha apitihana, and not to provide cheaper surveying methods throughout the scheme. Counsel also disputed Ngata’s interpretation of the amendment, implying that the cheaper process of compiling a plan for the Apitihana block was just an interim step for the purpose of making a ‘composite title’ order.⁶⁴⁰ Thus, there would be no

637. Native Lands Amendment and Native Land Claims Adjustment Act 1923, s10(1)

638. Land Information New Zealand, ‘Cadastral Survey Guidelines: A National Manual for all Registered Surveyors’, 2nd ed, May 1999, p 14 (Crown counsel, memorandum, 13 February 2012 (paper 2.905), app c)

639. Ngata, 25 August 1923, NZPD, 1923, vol 202, p 551

640. We suspect that the Crown confused a ‘composite title’, which was the list of all owners of the three Te Apitihana blocks in a single title, with a ‘compiled’ plan. The order would have remained a composite title, regardless of whether it was supported by a topographical plan or a full survey plan.

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real savings for the Maori owners because it still had to be followed by a full survey: the 1923 amendment only allowed for the commissioners to make block orders, and did not allow for registration of such orders in the land transfer system without a full survey of the blocks by theodolite. According to the Crown's reasoning, the amendment was simply passed to allow the commissioners to make orders for the Apitihana blocks as quickly as possible, once the commissioners had resolved the issues raised by Te Apitihana leaders. The commissioners directed surveyors to produce a compiled plan based on the preliminary topographical plans used in hearing the claims of Maori owners for land. These plans were not based on earlier surveys but rather on fresh topographical survey work, which had started shortly after the commission began its hearings in the Ruatahuna district.

Crown counsel's reading of the survey plans produced for the Te Apitihana blocks suggested that having made these orders – and having seen off the opposition of Te Apitihana leaders – surveyors then returned to the blocks and cut the boundaries by theodolite, which was completed in 1926. The survey plan for the Apitihana blocks was altered to show additional survey information:

The diagram on the Apitihana order shows the land divided into 3 different portions, all separate from each other, and without the survey data included on the boundaries of each portion of the block as is found on the other Urewera consolidation orders, but it does include survey data down one side of the order. Each part of the block on the Apitihana order contains an annotation showing a reference to the relevant survey plan for each portion.⁶⁴¹

Counsel maintained the Crown's overriding position from the original submissions: 'The intention of the 1921–22 Act was to provide Maori awardees with Land Transfer Act certificates of title.'⁶⁴² In other words, land transfer title was a promise that the Crown had made to Maori owners and from which it could not resile.

Although the 1923 amendment was made to resolve the standoff with te taha apitihana, the process did not play out as described by Crown counsel. Under the amendment, Skeet was given the authority to sign off on compiled plans. In their search for a solution, the commissioners must have sought advice from Skeet, as Chief Surveyor, or possibly from some of the surveyors who were working on the ground. At any rate, they formed the view that a compiled plan could be used to make orders for blocks, and that this would satisfy at least some of the objections being made by te taha apitihana leaders. Many of the owners would have been aware of the subdivisional survey of the Ruatahuna blocks that had taken place in 1919, which was a compass survey and very cheap by comparison to what took place in the scheme. When Guthrie visited Ruatahuna in 1920, owners raised the matter of the cost of the 1919 survey, and stated their objection to paying for it until the boundaries

641. Crown counsel, memorandum (paper 2.905), p 6

642. Crown counsel, memorandum (paper 2.905), pp1–9

had been ‘properly’ fixed (after Crown purchasing).⁶⁴³ Te Iriwhiro’s 1922 petition objected to the Crown’s plans to abolish ‘the old titles and all surveys.’⁶⁴⁴ The 1919 survey had been carried out by Barlow, who was one of the surveyors involved in the scheme and would have been on hand to provide the necessary advice. However it was brought to their attention, the commissioners knew about the 1919 survey by 1923, and found ways to use it to end the stand-off. Skeet would presumably have told the commissioners that a compiled plan could be made using the existing survey information, and that this would result in a saving for the Maori owners. Given that he had recommended the survey of the entire scheme by compass and not theodolite, it was unsurprising that Skeet would advise this course of action; and it was equally unsurprising that both he and the commissioners would recommend an amendment to the Urewera Lands Act 1921–22, since they had already decided to depart from its process.

The 1919 survey was then used to produce a compiled plan for the Apitihana blocks, thus allowing the commissioners to make orders and end their stand-off with te taha apitihana. Unlike the surveys conducted for the Reserve blocks, the records from the 1919 subdivisional survey must have survived, which made it possible for surveyors working on the scheme to produce compiled plans. Traces of the boundaries from the 1919 subdivided blocks feature on survey plans and in sketch maps in the Consolidation commissioners’ minute books, as shown in a map reproduced in the Tuawhenua report.⁶⁴⁵

According to Crown counsel, the 1923 ‘amendment did not necessarily have the effect suggested by Apirana Ngata.’⁶⁴⁶ The amendment did not allow for cheaper surveys – indeed, the Crown disputed the suggestion that magnetic surveys were significantly cheaper in any case. Nor did the amendment ‘mean the saving for them of about five-eighths of their area’, as Ngata had suggested.⁶⁴⁷ The Crown produced some correspondence from April 1932 in support of its interpretation. In the first letter, three consolidation officers set out a case in favour of allowing compass surveys in ‘very inferior 5/- per acre land’. The reason was that ‘the value affected by possible error in area as the result of such compass survey work would be small and more than offset by the saving in costs’. The margin of error would only be ‘up to 4 per cent.’⁶⁴⁸ In response to this letter, the Surveyor General wrote that ‘the saving due to the substitution of compass for theodolite is so small as to be negligible’. Of the five main types of costs in surveying land, only one was affected by the change (‘traversing with theodolite and chain’). As a consequence, ‘the lowering of the costs would be practically

643. Bassett and Kay, ‘Ruatahuna’ (doc A20), pp 118–119

644. Tikareti Te Iriwhiro and 175 others to Parliament, circa September 1922 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 219)

645. Urewera minute book 2A, 24 March 1924 (doc M30), p 147; Urewera minute book 2A, 9 April 1924, p 184 (doc M30), p 221; Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), map facing page 195

646. Crown counsel, memorandum (doc 2.905), p 1

647. Apirana Ngata, 25 August 1923, NZPD, 1923, vol 202, p 551

648. W Cooper, P H Jones, and M V Bell to Native Under-Secretary, 1 April 1932 (Crown counsel, memorandum (paper 2.905), app A)

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negligible' and would be 'more than offset by future trouble and expense caused by defective surveys.'⁶⁴⁹ Crown counsel took from this that, regulations aside, there was little to be gained from surveying blocks by compass.⁶⁵⁰

But the commissioners' minute books in fact show that the Apitihana blocks were charged far less for the cost of surveying than any other block in the scheme. In total, only £232 was charged for surveying the 5,690 acres of the Apitihana block, or close to 10 pence per acre.⁶⁵¹ This was a third of the rate charged to Maori owners for the survey of their land elsewhere in the scheme (which, as we explain below, was 2s 6d per acre); a saving to Maori owners of roughly five-eighths, as Ngata predicted.

While it is likely that the commissioners arrived at this figure based on the cost of the 1919 survey (which had not been paid, but which was remitted at the beginning of the scheme), the amount charged to the owners was much more than the original costs. Barlow had carried out the 1919 survey following the instructions of William Bowler, who had asked for a compass survey of the blocks in order to obtain a Government valuation and to begin purchasing. The resultant cost was £597 6s 7d (with 5 per cent interest applying from 1919), or 2.5 pence per acre. This was less than a tenth of the rate applied for surveying most of the Maori-owned blocks in the scheme. One of the three portions of the Apitihana block comprised the entire Te Arohana subdivision of the former Ruatahuna block, which had cost £44 18s 9d to survey in 1919, approximately 2.5d per acre.⁶⁵² But the amount charged for producing a compiled plan in 1924 was £192. The 'cost of survey' was recorded in the minute book as 1 shilling per acre.⁶⁵³ Just why four times as much was charged for producing a compiled plan is unknown, but it is likely that the commissioners took into account the original survey cost, plus the cost to the surveyors for producing the compiled plan, which included more boundary lines than was previously the case.

In any case it was much cheaper than the rate that Maori owners were charged elsewhere in the scheme, and further evidence that compass surveys were in fact much cheaper than theodolite surveys. Similar calculations were made for other blocks in the Ruatahuna series for which compiled plans were made, but the Apitihana block received by far the biggest discount, which was probably due to the extent of protest by te taha apitihana leaders. Ngata told Parliament in August 1923 that the saving to the owners would be about five-eighths of the land that was due to be deducted from the blocks, and the same amount was entered in the commissioners' minute books just a few months later, in January 1924.

Surveying in the Ruatahuna region did not end, even after the order for the Apitihana block was made in April 1924 (accompanied by a survey plan with the block shown in

649. Surveyor-General to Native Under-Secretary, 14 April 1932, (Crown counsel, memorandum (paper 2.905), app B)

650. Crown counsel, memorandum (doc 2.905), p 9

651. Robertson, 'Te Urewera Surveys' (doc A120), p 153

652. Bassett and Kay, 'Ruatahuna' (doc A20), pp 113–116

653. Urewera minute book 2A, 9 April 1924 (doc M30), p 178

three parts). As we explained earlier in the chapter, Wharepouri Te Amo reversed his earlier opposition in March 1924 and submitted his people's claims to the commission, partly under the threat that their land would be decided for them if they did not participate in the process. Within the month, the compiled plan was produced, which allowed the commissioners to sign off on the block. By May 1925, Knight and Carr reported that 'very satisfactory progress' had been made in surveying the Maori-owned blocks across the scheme: 'The Te Whaiti, Tarapounamu and Ruatahuna surveys are well advanced and the surveyors expect to finish their work this season'. But Knight and Carr revealed that the purpose of these surveys was for the Crown to 'compile' a survey plan of its own award. The commissioners wrote: 'The plans shewing the Crown awards are being compiled as the native surveys are approved and orders in favour of the Crown will be ready for signature shortly after the Native awards are completed.'⁶⁵⁴

A further letter by Knight written in December 1925 confirms that, in practice, surveying the boundaries of the Maori-owned blocks allowed the Crown to define the boundaries of its own award. Knight wrote that 'Mitchell's plans of the Ruatahuna work have not yet been received but are expected early in the New Year'. He confirmed that that one of the purposes of the survey was to define the boundaries of the Crown's award:

A series of maps covering all the Urewera but excluding the native awards are being made here to ascertain the Crown award and prepare the necessary diagrams to the order. These . . . cannot be completed until Mitchell's Ruatahuna work is approved. I suggest for your consideration that one order in favour of the Crown will be sufficient.

Knight also reflected on the work done to date and suggested that the Crown's award should have been drawn up in a completely different way:

My opinion is that it would have been better to have drawn up an order for the entire Urewera Country in favour of the Crown and registered the native awards against it, this would have made the preparation of the plans of the Crown area unnecessary and saved a heap of work. Have we authority to make such an order? And if so is it too late?⁶⁵⁵

Steven Robertson argued that Knight's letter is evidence that cheaper surveying methods could have been used in the scheme. While the Maori-owned blocks required 'demarcation', he said, 'existing boundary markers and lines may have been sufficient, the limits of the survey operation would have been greatly reduced, and the expensive block-by-block deduction for survey costs obviated.'⁶⁵⁶ The Crown rejected this, saying that Knight only referred to the way in which the Crown's award could be made and said nothing of the Maori-owned

654. Carr and Knight to Native Under-Secretary, 20 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development (doc A55(c)), pp 284–285)

655. Knight to Carr, 30 December 1925 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp 150–151)

656. Robertson, 'Te Urewera Surveys' (doc A120), p 136

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blocks, which still required surveying even if they had been ‘registered’ against the Crown’s award. In any case, as the Crown observed, Carr wrote in the margin of the letter that they had ‘no authority’ to do what Knight had suggested.

The order for the Crown’s award was made at the commission’s hearing at Rotorua on 16 July 1925. The entry in the minute book on the same day stated that the Crown’s award was ‘[a]ll that area in the Urewera Reserve’ after allowing for the ‘award to the Natives’, estimated at about 484,000 acres.⁶⁵⁷ In its recent submission of February 2012, the Crown said that it ‘has not seen a copy of the Commissioners’ award to the Crown.’⁶⁵⁸ But one of the pieces of evidence the Crown included in its submission was the survey plan that accompanied the Crown’s award, which states that the order was made on 16 July 1925.⁶⁵⁹ The plan was in 25 sheets and encompassed the single award to the Crown. In contrast to the plans that accompanied the orders for the Maori-owned blocks, this was a full survey plan that met all the requirements of the regulations. The award was gazetted on 23 June 1927. As will become clear, this was the only one of the commissioners’ awards which met the standards of the Land Transfer Act and was registered accordingly.

The course adopted by the commissioners in surveying the Maori-owned blocks meant that the plans that were produced failed to meet the requirements of the regulations. The Crown asserts that ‘the surveyors’ notations on all of the Urewera consolidation survey plans of the awards to Maori show they were undertaken pursuant to the then current survey regulations.’⁶⁶⁰ This is incorrect. The Apitihana plan included ‘survey data down one side of the order’, as the Crown suggests: chainages had been copied onto the plan from the main survey plan. But this was not enough to meet the regulations. When surveyors went back out into the field in 1925 and 1926, they may have been cutting the external boundaries of the Maori-owned blocks but they only did so with an eye to creating the survey plan for the Crown’s award. And by this stage, the process of producing topographical plans for Maori blocks had become established practice across the scheme. On 25 August 1924, the master plan for all Maori-owned blocks – entitled ‘Topographical Plan of Proposed Partitions’ – was completed.⁶⁶¹ The plan was ‘approved for the purposes of the Urewera Commissioners’ by one of the surveyors, who signed on behalf of the Chief Surveyor. The 1923 amendment, therefore, appears to have had the opposite effect from that suggested by the Crown suggested in its recent submission: topographical plans were considered sufficient for the purposes of making orders for all the Maori-owned blocks. The commissioners approved the plan on 18 December 1926 – the last day of its recorded activity in the minute books.

Despite the process adopted by the commissioners (or perhaps reflecting Knight’s poor understanding of this process), they continued to tell Maori owners that the survey costs set

657. Urewera minute book 2A, 16 July 1925 (doc M30), p 239

658. Crown counsel, memorandum (doc 2.905), pp 4–5

659. Plan of Urewera A block, ML14218 (Crown counsel, supporting evidence for memorandum (doc 2.905(a)))

660. Crown counsel, memorandum (doc 2.905), pp 6–7

661. Topographical Plan B85 (Crown counsel, supporting evidence for memorandum (doc 2.905(a)))

by the commission were necessary so that they could receive land transfer title. In May 1925, Ngati Whare leader, Wharepapa Whatanui, noted his objections to a number of aspects of the scheme's implementation, including the fact that Maori owners had to pay for the survey costs in land. Whatanui said that owners had been 'unfairly deprived of our lands inasmuch as large areas are being taken by the Crown for alleged Survey Costs and we are not being afforded the opportunity of paying for such surveys.'⁶⁶² Carr responded to the Under-Secretary for the Native Department about Whatanui's complaint: 'It was one of the planks of the general scheme of Consolidation that Surveys were to be paid for in land as it was well understood that the Natives of the Urewera district had not the means to pay cash, and that it was desirable that they should get clear and unencumbered titles.'⁶⁶³ Although it was true that Maori owners did not have the means to pay for the surveys with money, and that a general consensus was reached with the owners at the Tauarau hui that the costs should be met in land for this reason, Carr failed to acknowledge that the course adopted by the commissioners meant that Maori owners would never receive 'clear and unencumbered titles'.

Claimants confirmed to us that the titles were never registered in the land transfer system, and remain as block orders registered in the Maori Land Court today.⁶⁶⁴ Counsel for Wai 36 Tuhoe pointed to the evidence of Mr Nikora, who said:

The UCS did not give rise to land transfer titles. The titles that were created were deemed to be by way of order of the Native Land Court, but no Certificates of Title were issued. Thus, one of the great promises of the UCS, that Tuhoe would receive titles 'as far advanced as the best Native titles in any part of the Dominion', was not realized.

In my years of experience of dealing with land within Te Urewera I am not aware of the UCS having created one Land Transfer Act Certificate of Title. It would be a useful exercise for the Crown to survey the land title situation of Tuhoe lands to determine what percentage actually have a Certificate of Title today.⁶⁶⁵

But the Crown refuted this suggestion in its closing submissions, stating that no evidence had been presented to the Tribunal to demonstrate any failing on the Crown's part:

The Crown understands that it completed all of the necessary surveys to support the orders conferring title. Further, it understands that such orders for title were capable of generating a certificate of title under the Land Transfer Act, and is not aware of any reason why

662. Whatanui to Native Minister, 1 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p 279)

663. Carr to Native Under-Secretary, 20 May 1925 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), p 283)

664. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 117

665. Tamarao Nikora, 'The Urewera Consolidation Scheme' (doc E7), p 36

**Stone and Mitchell's 1957 Stocktake of Maori and Crown Titles Emerging
from the Urewera Consolidation Scheme**

THE MAORI LAND COURT has available the Orders in respect of the various Maori awards. The plan referred to in the Orders is the Topographical Plan deposited in the Auckland Survey Office (Roll B.85). Attached to each Order is a group schedule which gives the total number of shares in the particular group and the individual interests of the various Maoris who make up that Group.

'Also available at the Court is the Order for the Crown Award 482,300 acres (Urewera A Block). There was only the one Order for the whole of the Crown Award. The various plans showing the respective Crown areas that make up the total Award are attached to this Order. The Order was registered in the Land Transfer Office, Auckland.'

—RE Stone and DJ Mitchell, 'Urewera Roding – Urewera Lands Act 1921–22', 2 July 1957,
p 4, LS22/697/4 (Crown Law Office, 'Document Bank: Urewera Consolidation and Roding'
(doc M31(a)), p 1698)

that did not happen or of any reason why it could not happen today. The Crown is aware that no evidence has been presented to the Tribunal on this point.⁶⁶⁶

In response to a question from the Tribunal, Crown counsel elaborated: '[T]he work was done to the point where it could be transferred into the land transfer system. I don't know why that didn't happen, and there's no evidence that I'm aware of, as to why that is.'⁶⁶⁷ In its recent submission on the new evidence, the Crown reiterated that all the necessary work had been done to register the Maori owners' titles in the land transfer system.⁶⁶⁸

Knight himself noted that this core promise to Maori owners remained unfulfilled only a few years after the scheme's completion. In September 1929, in the context of discussing the Crown's remaining obligations to Maori owners in respect of the arterial roads, Knight commented: 'The Crown are under an obligation to complete the Undertaking with the Native owners . . . to give them Land Transfer titles to their holdings.'⁶⁶⁹ The reason why this had not occurred was that the survey plans attached to the Maori awards did not meet the requisite standards. But even if the plans had satisfied the regulations, each owner still had to sign the plan, which provided a nearly impossible hurdle for the owners; and none

666. Crown counsel, closing submissions (doc N20), topics 18–26, p 66

667. Crown counsel, response to Tribunal question, 17 June 2005

668. Crown counsel, memorandum in response, 13 February 2012 (paper 2.905), p 3

669. Knight to Commissioner of Crown Lands, 21 September 1929 (Crown Law Office, 'Document Bank: Urewera Consolidation and Roding' (doc M31(a)), p 1690)

appear to have done so. Further, the Urewera Lands Act did not provide an easy path to registration. The chief judge could refrain from sending title orders to the district land registrar, and then the registrar could keep blocks with more than 10 owners on the provisional register, which was over half the blocks in the scheme. All of these factors stood in the way of the Maori-owned blocks being registered in the land transfer system. This was a major failing of the Crown's promises in the Urewera Consolidation Scheme.

But, even when Knight drew attention to the fact that the Crown was still under an obligation to see the Maori awards registered, nothing was done. It was not until Stone and Mitchell's 1957 investigation into the Crown's failure to construct the arterial roads that this matter to light once again, but by this time the promise about registration of the Maori-owned blocks was no longer remembered. Yet, Stone and Mitchell confirmed why the Crown failed to meet its obligation: only topographical plans had been produced for the Maori-owned blocks, orders for which were at the Maori Land Court; the title to the Crown's award by contrast was at the Land Transfer Office in Auckland. Stone and Mitchell did not comment further upon the matter: by this time, even those who were tasked to investigate the mechanics of the scheme did not discover that the Crown was under an obligation to complete title registration. Instead, the awards remained in the Maori Land Court.

Thus, the evidence before us enables an answer to the question that the Crown said could not be answered: why were land transfer titles not issued? According to the Crown: 'There is no reason to suggest that surveys were not completed, and that title orders were not sufficient to raise land transfer title.'⁶⁷⁰ On the contrary, the evidence suggests that while full survey plans were completed for the Crown's award, only topographical plans were attached to the orders for the Maori-owned sections, and so the titles were not capable of registration. Given that key fact, the other inherent defects of the Act – which would have made registration of even fully surveyed blocks difficult – are ultimately beside the point. Yet, the commissioners had proceeded on the basis that Maori owners would be charged for surveys that met the regulations. We now turn to look at how those costs were established, and how much land was taken from Maori owners on this misguided and ultimately incorrect premise.

14.8.5 How much did the surveys cost and how much land was taken?

Crown counsel submitted that there was insufficient evidence to demonstrate how much land was taken for the costs of surveying and how these costs were established. In the Crown's view, the surviving records do not reveal how much the surveys actually cost or how much Maori owners were charged for the surveys. Two investigations into the mechanics of the scheme, conducted in 1937 and 1957, both concluded that the commissioners

670. Crown counsel, closing submissions (doc N20), topics 18–26, p 4

adopted a rate of 2s 6d per acre to calculate the amount of land that would be deducted from each block before the surveys took place. But the Crown accurately noted that the actual average across the whole scheme was 2s 8d per acre, with differences across many blocks. The figure usually used for how much land was taken (32,368 acres) was in fact an estimate, and there was, in the Crown's submission, no way to tell how much land was actually taken. The Crown's overriding assessment was that there is 'simply insufficient information available' to determine how Maori owners were charged for the cost of the surveys, let alone whether these costs were fair.⁶⁷¹ Counsel for Wai 36 Tuhoe agreed that 'it is not easy to determine' how the survey costs were met, and put this down to 'the poor record keeping' in the scheme.⁶⁷²

Although the records of the scheme do not make it easy to establish the facts, it is possible to answer most of the Crown's questions, beginning with the actual expense accrued by the surveyors when they were out in the field, about which the least is known. Skeet, as Chief Surveyor, would have advised the commissioners on how to go about estimating the cost of surveys, relying on the surveying rates set by regulations at the time and on recent experience of surveying in the Ruatoki blocks. Although the rate set for surveying in the scheme was well above the cost for surveying the Ruatahuna subdivisions in 1919, it was in line with the survey of the partitioned Ruatoki blocks. Bowler reported in March 1920 that the subdivisions of these blocks 'have been surveyed at a cost of about 2/6 per acre and the cost has been met by the Crown.'⁶⁷³

Based on the surveying regulations, Skeet would have been able to establish an approximate cost of surveying land in the former Reserve. At the time, the average cost for surveying 'Native land' was just under 2 shillings per acre, 3½ pence more than the average rate for surveying ordinary 'rural land'.⁶⁷⁴ The likely reason for this difference is that Maori land often consisted of much rougher terrain than other rural land, and with more forest-cover, both of which would have increased surveyors' expenses. Regulations determined how much surveyors could expect to charge for surveying different kinds of land. Steven Robertson quoted from a letter written by Skeet in 1923, which referred to surveying rates gazetted in 1913 as the rates 'for surveying in the Urewera'.⁶⁷⁵ These rates covered surveys of town sections (up to one acre in size), suburban and small areas (up to 100 acres in

671. Crown counsel, closing submissions (doc N20), topics 18–26, p 60

672. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 115

673. Bowler to Native Under-Secretary, 15 March 1920 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), p 1111)

674. 'Department of Lands and Survey: Surveys (Annual Report On)', 30 August 1921, AJHR, 1922, C-1A, p 2; 'Department of Lands and Survey: Surveys (Annual Report On)', 1 July 1923, AJHR, 1923, C-1A, p 2; 'Department of Lands and Survey: Surveys (Annual Report On)', 4 July 1924, AJHR, 1924, C-1A, p 2; 'Department of Lands and Survey: Surveys (Annual Report On)', 2 July 1925, AJHR, 1925, C-1A, p 2; 'Department of Lands and Survey: Surveys (Annual Report On)', 2 July 1926, AJHR, 1926, C-1A, p 2

675. Chief Surveyor to Frank J Hosking, Licensed Surveyor, Dargaville, 4 September 1923 (quoted in Robertson, 'Te Urewera Surveys' (doc A120), p 147)

size), and mileage rates for country lands (which were not subject to a specific area).⁶⁷⁶ Robertson said that Skeet likely referred to the mileage rates for country lands, which specified categories ranging from ‘rough and precipitous country under forest’ (£21 per mile for boundary lines) to ‘easy and flat open country’ (£7 10s for boundary lines).⁶⁷⁷ But Skeet also said that these rates were ‘subject to an increase up to 30%’.⁶⁷⁸ This was probably based on a clause in the regulations that was specific to ‘small areas’: ‘when the proper location of boundaries is hindered or delayed exceptionally by loss of ground marks or by occupation of the lands, or by defective prior surveys, the rates . . . may, at the discretion of the Chief Surveyor, be increased by not more than 30 per cent.’⁶⁷⁹ It is possible that the poor records kept from the Reserve surveys, coupled with the general understanding that those surveys had been ‘defective’, led Skeet to increase the rates for surveying in the scheme.

With the rates set out in regulations to hand, and knowing the number and size of Maori-owned blocks to be surveyed, Skeet would have been able to advise the commissioners on how to calculate the amount to be deducted from each block. The average sized Maori-owned block in the scheme was around 500 acres. Although the 1913 rates set out estimates for costs based on ‘mileage’ rather than the ‘per acre’ rate set for the scheme, the earlier 1907 regulations had set area-based rates.⁶⁸⁰ Under those regulations, the per-acre rates gradually increased as blocks became smaller. For example, the rate for surveying forested blocks of 1,000 to 2,000 acres was one shilling per acre; for forested blocks of 100 to 200 acres, the rate stepped up to 2s 6d per acre.⁶⁸¹ These area rates were updated after 1917, but the new rate for bush-covered areas was made up of a base rate for flat, open country (for example, sixpence per acre for 1,000 to 2,000 acres, and 1s 7d per acre for 100 to 200 acres), with an additional 3s 3d to be added for every chain of boundary through the forest. The flat, open country rates could also be increased by 20 per cent in areas where the terrain was steeper.⁶⁸² From the regulations described above, by way of example, the survey of a flat, one-square-mile block containing 640 acres, with three of the four edges (3 × 80 chains) completely under forest, would be charged at approximately two shillings per acre. Both the 1907 and the 1917 regulations also allowed surveyors to add travel allowances to these rates.⁶⁸³ Although there is no evidence to say how long each of the surveys actually took in Te Urewera, this may have been factored into the commissioners’ estimate of survey costs.

676. ‘Survey Regulations under the Land Act, 1908’, 13 April 1913, *New Zealand Gazette*, 1913, no 28, pp 1015–1016

677. Robertson, ‘Te Urewera Surveys’ (doc A120), p 148

678. Chief Surveyor to Frank J Hosking, Licensed Surveyor, Dargaville, 4 September 1923 (quoted in Robertson, ‘Te Urewera Surveys’ (doc A120), p 147)

679. ‘Survey Regulations under the Land Act, 1908’, 13 April 1913, *New Zealand Gazette*, 1913, no 28, p 1016

680. Robertson, ‘Te Urewera Surveys’ (doc A120), p 148

681. ‘Survey Regulations under “The Land Act, 1892”’, 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2723

682. ‘Council of the New Zealand Institute of Surveyors’, 29 May 1919, *New Zealand Gazette*, 1919, no 63, p 1620

683. ‘Survey Regulations under “The Land Act, 1892”’, 29 August 1907, *New Zealand Gazette*, 1907, no 77, p 2723; ‘Council of the New Zealand Institute of Surveyors’, 29 May 1919, *New Zealand Gazette*, 1919, no 63, p 1620

The outcome of these deliberations was that the commissioners adopted a rate of 2s 6d per acre to estimate how much land should be taken from each block. The claimants suggested that the 2s 6d per acre rate was a 'substantial average overcharge' because rates for surveying land elsewhere in New Zealand were considerably lower.⁶⁸⁴ Crown counsel accepted a 'prima facie case' that the Maori owners had been significantly overcharged, but concluded that there was simply insufficient evidence to establish a comparison between the cost of surveys in the scheme and elsewhere.⁶⁸⁵ But Skeet's observation that the general rates were 'subject to an increase of up to 30%' might also explain the difference between the average cost for surveying Maori land and the rate adopted for the scheme.

Although Robertson was unable to locate records documenting the amount of money expended by the surveyors over this period, the commissioners expected the cost of the surveys would match the 2s 6d per acre rate, if not in each block then across all of the blocks in the scheme.⁶⁸⁶ In February 1922, Knight instructed Mitchell that he was to keep an accurate record of how much money was expended in surveying blocks, which would match the estimate: 'the areas of the various groups are all to be reduced by areas equivalent to the cost of the survey, the same to be ascertained by you as the work proceeds'. Referring to a specific block, Knight said:

the area equivalent in cost must be deducted from the boundary of the land awarded to this Group. 8/3½d, the price at which the Crown acquired the land, is to be taken as the basis upon which to estimate the area.⁶⁸⁷

Tai Mitchell later wrote to Knight in February 1925 about one instance where the estimate did not match the cost. He noted that the £75 estimate for a five-mile traverse line in the Pawharaputoko block (in the Ruatahuna series) appeared to be 'somewhat high', now that the actual chainages were known.⁶⁸⁸ In most cases, the surveyors expected that their activities would produce a cost that matched the estimate. Mitchell's sole letter suggests that this was not a common occurrence, though in the case of the Pawharaputoko block the difference favoured the Crown, the survey for which only served to define the Crown's award.

The only other evidence that shows how much the surveys actually cost, also sheds light on the claimants' contention that the costs of surveying shared Crown–Maori boundaries were paid by the Maori owners alone. In June 1925, Knight reported to the Under-Secretary for the Native Department that £1,800 had been paid to Armit and Mitchell for survey of

684. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 115

685. Crown counsel, closing submissions (doc N20), topics 18–26, pp 58–62; Crown counsel, memorandum (paper 2.905), p 7

686. Robertson, 'Te Urewera Surveys' (doc A120), p 146

687. Knight to Mitchell, 7 February 1922 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(h)), p 2596)

688. Tai Mitchell to Knight, 17 February 1925, p 2 (Urewera minute book 2A, interleaved between pp 189–190 and 191–192 (doc M30), pp 227, 230)

Surveying the 27 Urupa and Papakainga Reserves and the Waikaremoana Reserves

Crown counsel pointed to the fact that the Crown had not imposed a charge for the surveys of the 27 urupa and papakainga reserves, which were normally 10 acres in size. But the surveying of these reserves without charge would not have made much difference to the overall survey costs. According to the 1917 survey regulations, the maximum charge for areas of hilly open country would have been around £9 8s for blocks under three acres, and £13 6s for blocks under 10 acres in size. Many urupa reserves encompassed an acre or less and the cost for surveying them would have been less than £400. As the combined worth of deductions for surveys amounted to £14,246, it will be seen that this favour towards the UCS owners would have equated to less than 3 per cent of the estimated survey costs. Nonetheless, we acknowledge that the Crown did not charge the Maori owners for these surveys.

In terms of the surveying of Ngati Ruapani's 14 small reserves in the Waikaremoana block (the cost of which the Crown had agreed to pay in 1923), we note the following statement in the commission minute book: 'The Comm[issione]rs agreed that Land Transfer surveys were unwarranted re these reserves & considered compass surveys adequate for all purposes. Mr Mitchell to accordingly fix these early next summer.'¹

1. Urewera minute book 1, 17 February 1922 (doc M29), p 29

the Te Whaiti blocks, which was well above the estimate of £1,599. Based on the valuation of 20 shillings per acre, 1,280 acres had been deducted from the 12 Maori-owned blocks. Knight noted that the 'utmost care' had been taken in arriving at 'a fairly accurate estimate of the cost of these surveys', and that when all the surveys across the scheme were completed the estimated and actual costs would 'agree pretty closely'. Even if the 'estimated and actual costs' did not 'about balance', as Knight hoped, he argued that the overspend in the Te Whaiti case could be justified by the benefit the Crown received from shared boundaries: 'some small portion of this amount [£1,800] will have to be borne by the Crown for the half cost of common boundary lines possibly £200 or £250'.⁶⁸⁹

The Crown pointed to this letter as evidence that it had undoubtedly 'incurred survey costs': 'it had surveyors in the field preparing topographical maps, surveying road lines, and surveying Crown blocks for settlement purposes'.⁶⁹⁰ In his letter, Knight said that the Crown could afford to wear the £200 to £250 difference because it had not (yet) paid for common boundaries; any other reading of the letter would have him recommending the

689. Knight to Native Under-Secretary, 11 June 1925 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(g)), pp 2564–2565)

690. Crown counsel, closing submissions (doc N20), topics 18–26, p 61; Crown counsel, memorandum (paper 2.905), p 7

Crown to pay these costs twice. The deduction at 2s 6d per acre for the Maori-owned block, however, took no account of whether the Crown might later pay part of the costs of surveying the shared boundary. In other words, the same amount of land would be deducted from the Maori-owned block at the set rate, regardless of any shared boundaries with the Crown, and regardless of whether the Crown might pay something later. Also, Knight's letter indicates that the Crown would only have to pay towards the surveying of common boundaries if the actual cost exceeded the estimated cost (which was borne by Maori alone).

At the very least, we can say that there is no evidence confirming a Crown contribution to shared boundary costs. At the most, we can say that Maori appear to have paid a set rate that was not adjusted downwards when there were common boundaries with the Crown. It is not possible to say how often the actual surveys cost more or less than the estimated rate, and therefore whether Maori owners or the Crown benefitted from any difference. We reiterate, however, our earlier conclusion that when the surveyors went back to cut boundaries using theodolites, the Crown alone seems to have benefitted since its award was fully surveyed and the Maori awards were left with a topographical plan. In those circumstances, it is difficult to see how any of those survey costs could have been fairly deducted from Maori-owned blocks; an outcome the commissioners could hardly have contemplated when they made their original deductions that were for surveys necessary to support land transfer titles. It was not too late, however, to have returned some of that land to each Maori-owned block when, in 1929, Knight pointed out to the Government that the peoples of Te Urewera had not been given land transfer titles (despite having paid for them). Instead, nothing was done, either to enable the issuing of land transfer titles or to return some of the land taken to pay for the requisite surveys.

The rate used by the commissioners to estimate survey costs was used to determine how much land would be taken from each block, which varied depending on the size of that block and its valuation. One of the claimants' central issues was whether the costs of surveying the land were 'loaded' onto the land at two points: first in the valuations of the blocks conducted in the 1910s and, secondly, in the costs borne by Maori owners on their land (including survey costs). In their view, the Maori owners were 'paying twice' for the survey of their land.⁶⁹¹ In brief, the claimants argued that the original valuations were set with future development costs in mind, including specific amounts for surveys and arterial road construction. This meant that when Te Urewera peoples came to have land deducted for roads and surveys during the course of the consolidation scheme, they were essentially paying for a second time. The Crown denied that this was the case: because the land was undeveloped, Crown counsel argued, it had been appropriate to exclude these development costs from the valuation.⁶⁹²

691. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 113

692. Crown counsel, closing submissions (doc N20), topics 18–26, p 55

How Much Land Would the Crown Acquire for a Survey Charge of 2s 6d per Acre?

Three areas of a block of Maori-owned land need to be distinguished when calculating the amount of land that the Crown would acquire for the cost of surveying the area that would remain in Maori ownership:

- ▶ Area A – the total area of the block before the survey charge was applied.
- ▶ Area B – the area of the block that the Maori owners would retain and which would actually be surveyed.
- ▶ Area C – the area of land that the Crown would acquire, being equal in value to the cost of the survey of area B.

The relative sizes of areas B and C would depend on the value of the land.

For example, if area A is 100 acres and the land is valued at £1 per acre (240 pence per acre), then, with a survey charge of 2s 6d per acre (30 pence), area B will be just under 89 acres and area C will be just over 11 acres. The calculation of area C can be performed as follows:

$$(100 \text{ acres} \times 30 \text{ pence} = 3000) \div (240 \text{ pence} + 30 \text{ pence} = 270) = 11.11 \text{ acres}$$

Area A = 100 acres, valued at £100

Area B (to be retained by Maori) = ~89 acres

Area C (equal to cost of survey of area B) = ~11 acres

If the land was valued at only six shillings per acre (72 pence per acre), and the survey charge was 2s 6d per acre, then the size of areas B and C would change as follows:

$$(100 \text{ acres} \times 30\text{d} = 3000) \div (72\text{d} + 30\text{d} = 102) = \sim 29.4 \text{ acres}$$

Area A = 100 acres, valued at £30 (600 shillings)

Area B (to be retained by Maori) = ~71 acres

Area C (equal to cost of survey of area B) = ~29 acres

As we discussed in chapter 13, the capital value of land consisted of the unimproved value plus any improvements that had already been made before sale. Hence, unimproved land values would have been higher for fully surveyed land with land transfer titles, located in districts already served by roads. The absence of these features would have been taken into account in Te Urewera, even if a fair and proper Government valuation had been made. Thus, an estimate of value that took their absence into account does not mean that Maori who retained land at that value were ‘paying twice’ when they later paid for surveys or made

a contribution for roads. On the other hand, as we also found in chapter 13, the unlawful and unfair ‘valuations’ that did take place in Te Urewera in the 1910s deliberately adjusted the values (and prices) downwards so as to ensure a profit for the Crown and to make any eventual settlement scheme more affordable. To that extent, Maori who retained land and had to pay later with that land for surveys and roads – still at those unlawful and discounted values – were likely surrendering more land than was fair, even if all other aspects of the contributions for roading and surveys had been fair.

But all other aspects were *not* fair; a matter on which we concentrate in this section. We also note that the differences between the valuations of the various blocks had significance in determining how much land would be awarded to the Crown. The lower the valuation, the greater the area the Crown would acquire. This had the greatest impact in places with a low valuation, such as in the Tarapounamu series, where the takings were as high as 36 per cent. This process can be explained by comparing two hypothetical scenarios (see sidebar opposite).

Based on the research of Steven Robertson, the Crown disputed whether the commissioners did in fact use any kind of flat rate to estimate survey costs. In examining the amount of land taken from blocks across the scheme, Robertson concluded that ‘the rates of deduction varied from series to series and block to block’. The estimated total deduction area of 32,368 acres was valued at £14,246 for the survey of 105,342 acres, which averaged out at ‘just over 2s 8d per acre . . . slightly more than the 2s 6d calculated by Dick.’⁶⁹³ Surveyor R G Dick had been the first to suggest (in 1937) that the commissioners set a rate of 2s 6d per acre. Dick had been asked to conduct an inquiry into the Crown’s failure to construct the arterial roads. He concluded that a flat rate of 2s 6d per acre ‘was charged on all areas independent of the value of the land’, but that this could only be proved through a comprehensive study. Twenty years later, in 1957, RE Stone and DJ Mitchell conducted a similar inquiry in preparation for compensation negotiations between the Crown and Tuhoe owners over the same issue. Stone and Mitchell could not uncover any records that set out ‘the basis of the deductions’, but after going through the working papers of the commission they concluded that the rate was ‘up to 2/6s per acre or based on actual cost.’⁶⁹⁴

Robertson was unable to offer any firm conclusions about why the rate varied from block to block, but suggested that an answer could be found in the possibility that Maori ‘effectively paid for the survey of these deducted lands in additional land.’⁶⁹⁵ In other words, this would mean that Maori owners paid for the surveying of the deducted land that was to be awarded to the Crown for the cost of both surveying and roading, on top of the cost of surveying their own land. He observed that if the ‘notional rate’ of 2s 6d per acre was applied to the ‘gross’ area of land to be awarded to Maori owners (ie, the size of the Maori-owned

693. Robertson, ‘Te Urewera Surveys’ (doc A120), pp 146, 149

694. Robertson, ‘Te Urewera Surveys’ (doc A120), pp 139, 141

695. Robertson, ‘Te Urewera Surveys’ (doc A120), p 149

Two Methods of Calculating Survey Costs: The Papueru and Te Honoī Blocks

The inaccurate calculation of survey costs can be seen with the example of the Papueru and Te Honoī blocks in the Tarapounamu series.

The Papueru block was dealt with by the commissioners in April 1924. The 'gross' area of the block was 2,409 acres. A quarter (602 acres) was deducted for the cost of constructing the arterial roads, leaving an 'intermediate' area of 1,807 acres. Based on the value of the land (eight shillings per acre), the commissioners were then able to calculate that the appropriate amount of land for the survey deduction was 430 acres, which left a 'net' area of 1,377 acres. This calculation took into account the fact that the Crown would survey only the final 'net' area.

The Te Honoī block, however, was dealt with differently. After the roading deduction (744 acres), the gross area of the block (2,975 acres) was reduced to 2,231 acres. But whoever was responsible for doing the calculations at this point mistakenly multiplied the 2s 6d per acre rate by the 2,231 acres of the 'intermediate' area, leaving an estimated survey deduction that was significantly inflated: 698 acres. Had the proper method been applied, only 531 acres would have been deducted: a difference of 166 acres.

As a proportion of the original block sizes, the difference is noticeable: the owners of the Papueru block had the equivalent of 17.8 per cent of the 'gross' area deducted for surveying costs, whereas the owners of the Te Honoī block had 23.4 per cent deducted.

blocks before the road and survey deductions), the total was much closer to the actual amount calculated for these costs (£14,246) than if it was applied to the 'net' area (105,342 acres). Crown counsel suggested similarly that the rate may have been applied to more than just the land kept by Maori owners, and admitted that 'strong suspicions are roused about the amounts charged for surveys', but was unable to draw firm conclusions.⁶⁹⁶

Our examination of the commission's minute books and other evidence confirms Robertson's hunch. A number of entries in the commissioners' minute books show that they intended to set 2s 6d per acre as a standard rate for all the blocks in the scheme (with the exclusion of the Apitihana blocks). Matamua Whakamoe complained in March 1924, objecting to a taking of one-eighth of his group's block, which amounted to 2s 6d per acre (based on the block's valuation of £1 per acre).⁶⁹⁷ Two references to the 2s 6d per acre rate also appear in the minute books for Ruatahuna, in April 1924, where the survey rate for the Apitihana blocks was given as 1s per acre; whereas the cost for the Tarapounamu block

696. Crown counsel, closing submissions (doc N20), topics 18–26, pp 61–62

697. Urewera minute book 2A, 4 March 1924 (doc M30), p 72

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would be 2s 6d per acre. Finally, the minute book also includes a series of calculations about the Kiha block, including a specific mention of the ‘cost of survey at 2/6 per acre.’⁶⁹⁸

Although the commissioners intended to apply this rate throughout the scheme, a crucial error was made in calculating the block sizes at the very beginning of the process, which resulted in the Crown taking extra land from about half the blocks; and this is why the average rate was higher than had been intended. Based on an assessment of the minute books (which lists the original size of the blocks, their total value, the value estimated for the cost of survey, and how much land would be taken subsequently), it is clear that two calculations were used to establish the estimated costs. From the beginning of the scheme’s implementation until about October 1923, the commissioners (or whoever was responsible for calculating the amount of land to be deducted from each block) mistakenly calculated the estimated cost based on the amount of land Maori owners were entitled to after the roading deduction had been factored in, but not after the survey deduction. From October 1923 on, the amount of land Maori would lose was calculated with only the ‘net’ area in mind, which meant that Maori owners would be charged for the survey of the actual area that they would be awarded. Up until then, however, they also paid for a notional survey of what they would lose.

The critical turning point appears to have been around October 1923, and certainly by the time the main schedule of blocks was compiled in the commission’s minute book, between April and August 1924. The blocks that were surveyed early in the process all had larger areas deducted because the 2s 6d per acre rate was applied to the ‘intermediate’ area (after the roading deduction). This was approximately 90 blocks, or half of the 183 Maori-owned blocks in the scheme. It is likely that the error was discovered around this time (possibly by the commissioners themselves or perhaps by the Department of Lands and Survey), and that a decision was made not to revisit those surveys already completed. Those blocks that were surveyed later in the process had proportionately smaller areas deducted (calculated from the ‘net’ area). This accounts for a further quarter of the blocks. For the final quarter of the blocks, we are unable to determine the method of calculation. In some cases, the blocks are too small to determine the difference. In a few other cases, such as the Apitihana blocks and others in the Ruatahuna series, the survey charge was less on account of the use of the compiled plan. The difference can be seen in the examples of the Papueru and Te Hono blocks in the Tarapounamu series; the Crown acquired an extra 166 acres in the Te Hono block simply through this mistake in the commissioners’ calculations (see sidebar).

The mistaken calculations explain why the overall average across the blocks in the scheme is 2s 8d per acre, and confirms that the commissioners did in fact intend to use a flat rate for all blocks in the scheme. In total, the Crown acquired an extra 4,000 acres than it should have from the approximately 90 blocks in which the error occurred. This was hardly

698. Urewera minute book 2A, 9 April 1924 (doc M30), pp 178–179, 185–186

a fulfilment of the scheme's promise to guarantee Maori owners security in their remaining land, and is yet another instance where an error in the scheme's administration favoured the Crown. Maori owners had been the victim of similar errors in the rim blocks, as we explained in chapter 10.

Crown counsel, however, raised doubts about how much land was actually taken to account for survey costs, noting that the usual figure – 32,368 acres – was, in fact, an estimate. Estimates were recorded for each of the 183 blocks in one of the Consolidation Commission's minute books between April and August 1924, before all the surveys had been completed. The Crown noted that these estimates differed from the final block orders, and pointed to the specific example of the Raroa series, in which the final size of the Maori-owned blocks increased by 1.5 per cent on the estimate. By implication, the Crown suggested that it acquired much less land than the existing research had suggested, and asked the Tribunal to investigate the matter further.⁶⁹⁹

Our examination of the final block awards confirms that there was a difference between the estimates recorded by the commission in 1924 and the final block awards.⁷⁰⁰ The difference amounted to a total of approximately 900 acres across the Maori-owned blocks. This was an enlargement of the Maori-owned blocks of just less than one per cent compared with the estimates, though we are unable to say for certain whether this difference was solely because of the survey takings: unlike the commission's minute book, which recorded the estimated survey deductions for each block, the final block awards only note the acreage of each block. This is also because the land awarded to the Crown was not defined as separate survey blocks, but became washed up instead in one large Crown block, known as Urewera A.

It is likely that the variations in the total block size were the result of surveying practice. Surveyors were often directed by the commissioners to cut boundaries on 'good fencing lines', rather than the precise areas set out by the commission.⁷⁰¹ This is confirmed by the 1957 investigation into why the roads were never built, which observed that the 'boundaries of each block were described in the minute books in general terms . . . The areas were approximate only.'⁷⁰² The result was the potential for variation between the commission's estimates and the final awards.

This conclusion is supported by the Crown's appendix to its closing submissions, which contained the estimated areas and final awards for the blocks in the Waimana and Raroa

699. Crown counsel, closing submissions (doc N20), topics 18–26, p 59

700. Robertson, 'Te Urewera Surveys' (doc A120), app, pp 151–156; 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)', not dated, vol 1 (doc M12(c)); 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)', not dated, vol 2 (doc M12(d))

701. See, for example, the Commission boundaries for blocks in the Ruatoki series, Urewera minute book 1, 16 November 1922 (doc M29), pp 223–225.

702. Robertson, 'Te Urewera Surveys' (doc A120), p 140

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series.⁷⁰³ Each block in the Raroa series varied between the estimate and the final award, but in different ways: some were increases on the estimate, others were decreases. It was only on average that the Maori-owned blocks increased in size by 1.5 per cent. The other series included in the Crown's appendix, the Waimana series, lends added weight to this proposition. In total, the Waimana series blocks decreased in size, which shows that the tendency of the surveyors was not automatically to make the Maori-owned blocks bigger. There were more significant variations in the Apitihana block and the Maungapohatu series, and these account for a majority of the differences, but these were few and do not distort the overall pattern. We can conclude, therefore, that while these fluctuations worked in favour of the Maori owners across all the 183 blocks, it was not in a way that can be described as significant.

Although it is impossible to say exactly how much land the Crown acquired for the cost of surveying the Maori-owned blocks, surveyors followed the commissions' estimates within a few acres, except for a few major exceptions. 32,368 acres was the estimate across all of the blocks. If we were to assume that the increase of approximately 900 acres across the Maori-owned blocks was taken entirely from the survey areas acquired by the Crown, then the total amount of land it acquired for this purpose could have been no less than 31,468 acres. It is clear that the commission's estimates, though not exact, were followed by the surveyors in most cases within a few acres, except for a few major variations. The estimate is certainly accurate enough for our purposes, and we dismiss the suggestion made by the Crown that significantly less land was taken for the cost of surveying than has previously been understood.

There can be little wonder that the theodolite is to this day known in Te Urewera as 'Te Whatu Kai Whenua' (the eye that eats the land).

14.8.6 Conclusions – surveys and titles

The experience of Maori owners in the scheme was merely a confirmation of their worst fears about surveying and its consequences, as Te Whitu Tekau had maintained from 1872. Almost every aspect of the Crown's acquisition of 31,500 acres for survey costs can be harshly condemned; the loss of this land should be seen as part of a bigger figure – 62,436 acres – which represents the total loss of land from survey costs, including the rim blocks. Maori owners accepted the Crown's proposal at Tauarau in the belief that land transfer title would provide them with the security that had not been afforded to them under the UDNR Act, which had been primarily due to the Crown's failure to establish the mechanisms for corporate land management and self-government, and its purchase instead of undivided individual interests (see chapter 13). But the Crown did not disclose the costs involved, which

⁷⁰³ Crown counsel, closing submissions (doc N20), topics 18–26, app 1

gave rise to subsequent and considerable protest from a broad base of Maori owners within the scheme. Worse than this, the process designed for achieving the Crown's promised outcome was significantly flawed. The Crown derived the primary benefits from surveying in the scheme: it was the only owner in the scheme to have its title registered in the land transfer system, which Maori owners paid for out of their land.

Given these circumstances, Maori owners would have been no worse off had the Crown surveyed their blocks using the cheaper compass methods. Although the boundaries of the blocks would have resulted in a greater margin of error, they would still have received the same titles but with significantly more land. All Maori-owned blocks could have been surveyed by compass like the Ruatahuna survey in 1919, and as Skeet had recommended at the beginning of the scheme. They would have only paid a third of the costs (the charge on the Apitihana blocks) or perhaps even less (the cost of the 1919 survey). The Crown could then have surveyed its award by theodolite and paid for that survey itself. But it also should not have been beyond the Crown's abilities to come up with a system that guaranteed Maori owners their land, and made allowances for titles with multiple owners. These were the very problems that were identified by Stout and Ngata in 1907 and 1908 and that had given rise to consolidation schemes and associated innovations such as incorporation. In fact, such a mechanism of corporate ownership would have been in place had the Crown not undermined the UDNR Act in the preceding generation.

Crown counsel said that 'a fair survey charge should have been made for the surveying of the Maori awards.'⁷⁰⁴ This would be true in normal circumstances, but the circumstances which gave rise to the scheme meant the Crown should have ensured any costs were kept to a bare minimum. It is extraordinary that Maori-owners were expected to pay one-fifth, and sometimes as much as a third, for the survey of their remaining land. The fact that the Crown acquired extra land simply (and wrongly) for the survey of land that it would acquire anyway is a further indictment on the scheme. And the fact that Maori owners were also required to pay for the cost of surveying common boundaries is another failure. Above all, the Crown at no stage acknowledged the consequences of its purchasing programme and offered to pay the lion's share of the costs, as it should have done. Instead, Maori owners were deprived of 31,500 acres of their last remaining land, and for no benefit. Yet, the Consolidation Scheme Report had trumpeted the fact that 'useless and expensive surveys' would be unnecessary: 'The surveys necessary to complete our scheme will be Land Transfer surveys done once to enable the issue of certificates of title.'⁷⁰⁵ Crown counsel before us (in response to our questions) only went so far as to concede that the scheme's outcomes in respect of surveys and titles would have been different had it been 'carried out as it was intended'.⁷⁰⁶

704. Crown counsel, closing submissions (doc N20), topics 18–26, p 60

705. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 3

706. Crown counsel, response to Tribunal question, 17 June 2005

A Summary of the Tribunal's Findings on Titles and Surveys

- ▶ The Crown promised land transfer titles to the Maori owners but failed to deliver on its promise.
- ▶ Only the Crown got a land transfer title.
- ▶ Land was deducted from the Maori-owned blocks to pay for a full survey but the Maori owners' titles were supported only by a topographical plan and could not be registered in the land transfer system.
- ▶ Cheaper survey methods could have been used for the same result, as with te taha apitihana, with no actual loss of benefit for the Maori owners. Cheaper survey methods had been proposed by the chief surveyor at the beginning of the scheme but were rejected by the Government on the basis that land transfer titles were necessary.
- ▶ The set rate for the surveys (2s 6d) was higher than usual but not outside what was allowable in the survey regulations.
- ▶ Due to an error by the commissioners or officials, Maori wrongly paid at an average rate of 2s 8d per acre, resulting in the wrongful award of 4,000 extra acres to the Crown. Although the error was identified in October 1923, it was not corrected in the blocks for which survey deductions had already been made.
- ▶ The Maori owners never had an opportunity to consider or consent to the extent of land that would be deducted for survey costs, and many objected to it.
- ▶ The set rate was not lowered to account for common boundaries, whether with the Crown or other Maori-owned blocks. The evidence supports the contention that common Crown-Maori boundaries were surveyed at Maori expense, and that the Crown's award (by default) was surveyed at Maori expense. But a definitive answer is not possible because the final cost of the surveys (as compared to the estimates on which the deductions were made) is not known. From the evidence available to us, it is likely that the estimated and final costs were close, and Maori may well have paid for the Crown's land transfer title, but it is not possible to say for sure.
- ▶ As a result of survey costs, Maori lost 31,500 acres (almost one-fifth) of the land that they had retained at the beginning of the scheme. This was far in excess of what was reasonable, even if land transfer titles had resulted (which they did not). The degree of land loss was greater for the lower value blocks. Land was deducted at the old 1910s "valuations", which had been unfair even at that time and were, in any case, out of date.
- ▶ Given that the surveys were only necessary because the Crown had undermined the collective authority of Te Urewera tribes, broken its UDNR promises, and purchased one half of the inalienable Reserve by obtaining individual interests, the Crown should have borne the full costs of the surveys. No Maori land should have been taken to pay for them.

But the non-sellers lost not only substantial areas of land to pay for surveys but also a quarter of their gross remaining land to pay for arterial roads. It is to the claims about that matter which we turn next.

14.9 14.10 SHOULD MAORI OWNERS HAVE CONTRIBUTED 40,000 ACRES TOWARD THE COST OF CONSTRUCTING TWO MAIN (ARTERIAL) ROADS ?

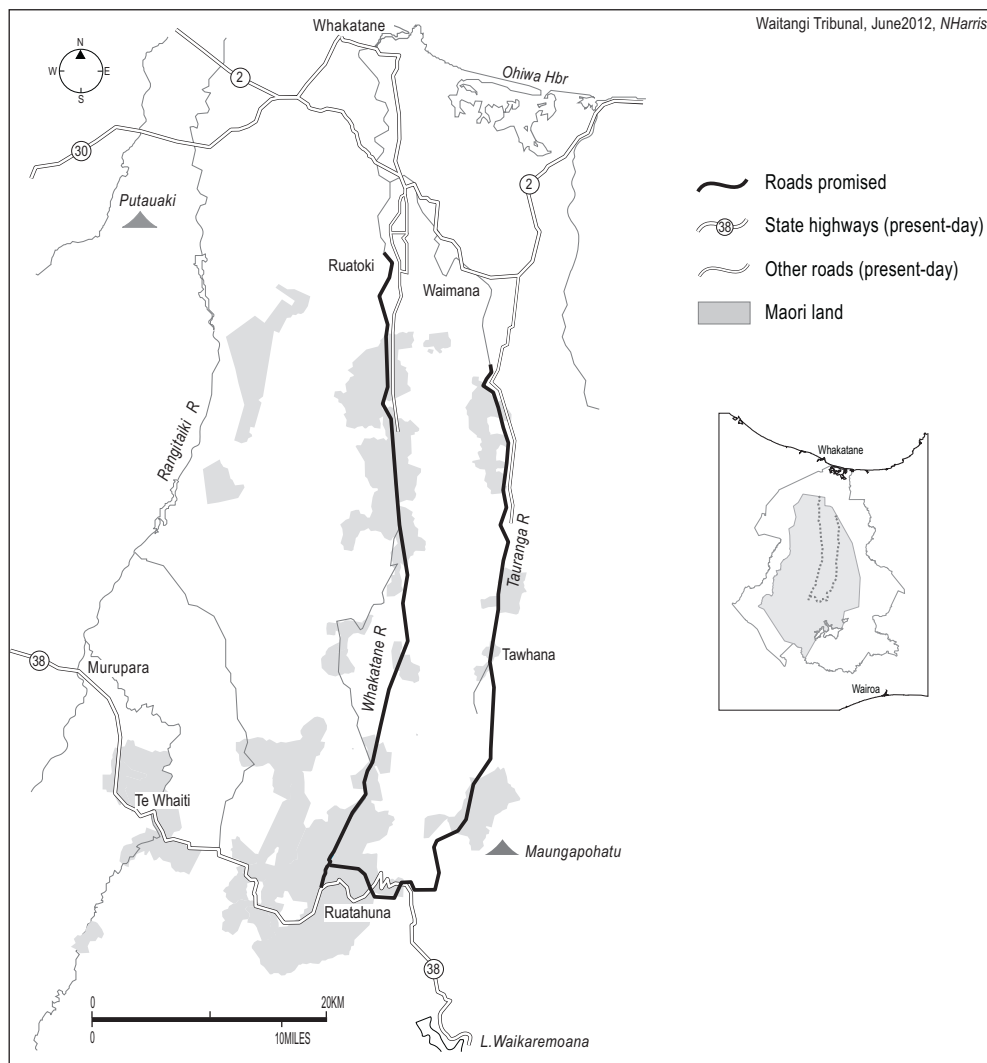
Summary answer: Maori owners of Reserve blocks should never have been required to make a contribution of land toward the cost of constructing two main (arterial) roads, because funding for those roads depended on the Crown's flawed plans to open the Reserve lands for farming settlement. Funds for main road construction in the late nineteenth and early twentieth century were generally raised through Government borrowing – not local government rates, which were used to fund road maintenance – and allocated through Government departments on the premise that more roads in certain areas would stimulate economic activity, thereby paying off borrowing through increased taxation revenue. Maori land was considered the lowest priority, unless it was being opened for settlement. These funding policies meant that the Crown only seriously considered constructing main roads through the Reserve lands once a decision had been made to proceed with a consolidation scheme, which was only made possible when the Crown had set aside its commitments under the UDNR Act and begun purchasing in the Reserve.

In the lead up to the consolidation scheme, however, Maori owners continued to believe that the Crown would fund road construction following the terms of the UDNR Act and associated agreements, which had established a precedent for full Crown funding that was quite unlike general policies in existence at the time. The agreement emerged from the stand-off between Te Urewera leaders and the Crown in 1895 about the planned route of a road between Galatea, Ruatahuna, and Waikaremoana. Although these leaders (through Te Whitu Tekau) had resisted the introduction of roads into Te Urewera, they had begun to see the potential economic benefits. The Crown, for its part, wanted a road for strategic reasons and possible gold prospecting and tourism opportunities. The Urewera District Native Reserve agreement allowed the road to go ahead at the Crown's expense: local people would be given employment on the road's construction and the road itself would be vested in the Crown. The road was paid for (over a period of six years) from a limited Government fund available for roads in 'back-block' areas of New Zealand on the back of this agreement.

Although the agreement made no commitments to future road construction, it established the principles by which future agreements could be reached, which Maori owners soon called upon as they became increasingly firm advocates of roads to assist the economic development of their lands. But the Crown rejected these requests, because it had begun developing plans to 'open' the Reserve lands for large-scale Pakeha settlement. These plans included the

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Map 14.5: Arterial roads promised in the Urewera Consolidation Scheme and roads built subsequently

Source: Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme' 31 October 1921, AJHR, 1921, G-7

establishment of a network of roads that would primarily service settlers, funded through 'loading' construction costs onto the price paid by settlers for land they purchased from the Crown. Instead of bringing its purchasing to an end, and constructing the network of roads for settlers, the Crown decided to wait until further purchasing in Reserve blocks was no longer possible. Maori owners – particularly Tuhoe at Ruatoki – continued to seek an extension of the UDNR arrangements through assistance with road construction. In the absence of any assistance, they began this work on their own initiative in 1918.

The funding system for road construction in place at the time meant that the financial viability of arterial roads as part of the consolidation scheme would be heavily dependent on

opening for farming the land awarded to the Crown. However, politicians involved in negotiations continued to assert that, because Maori owners would derive half the benefit, they should meet half the cost in the form of a contribution of land. This cost was initially estimated as £64,000. Following early negotiations at the Tauarau hui, and to reflect the relative interests of the Crown and Maori owners in the Reserve, the contribution of Maori owners was reduced from £32,000 to £20,000; the equivalent of approximately 40,000 acres, or one quarter of the land Maori-owners were entitled to at the beginning of the scheme. This arrangement was not akin to a funding agreement with a territorial authority under existing roading policies, as Crown counsel argued: the relevant authority – the General Committee – had such a brief life that within a few years the Crown would deny it had ever existed. It was unable to negotiate whether, in light of the UDNR Act, it should make a contribution and, if so, its amount and how it would be made. Having rejected requests made by Maori owners over the past 13 years for more roads in the Reserve, and having purchased into the Reserve on a massive scale for the purposes of settlement, the Crown should have done more to fund the entire cost of the arterial roads.

The Crown's promise to construct roads was not contingent on the success of a settlement scheme. When it became clear that the roads were not to be built, the Crown must surely have immediately returned the contribution made by Maori owners. The Crown's failure to fulfil its promise is made worse by the predictability of the outcome. The flaws in the Crown's plans were revealed as construction began in 1922, which showed the actual cost would be several times greater than the original estimate of £64,000, and instead between £173,000 and £240,000. The revised cost, combined with the revelation that the Crown's award would not serve its original plans, saw the Department of Public Works withhold further funding; officials once again adopted the position that funding would be discontinued because the roads would only serve Maori lands. By 1930, the last of the road work was abandoned, without reference to the Crown's promises in the scheme. Between a quarter and a third of the promised roads were built; Maori owners had lost a quarter of their remaining land to pay for them.

The owners of the newly consolidated blocks did not quickly forget the Crown's promises. By the late 1930s, their leaders began pressing the Government for answers about the non-completion of the arterial roads. But it was two decades before the Government responded to their protests – a quite unreasonable length of time. A settlement was finally agreed in 1957.

In 1958, the Crown, with the consent of Tuhoe, created the Tuhoe Maori Trust Board, and paid to it the sum of £100,000, plus interest from the time of the agreement until the payments were actually made. That sum was calculated basically as the value of land taken at the 1922 valuation (itself dubious), plus 5 per cent interest compounded annually. This produced a figure of £113,400 which the Crown rounded down for reasons not disclosed to £100,000. The problems we have with this settlement are that it did not attempt to revalue the land, the Crown refused to countenance the possibility of the return of land, and it took no account of

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the long-term economic and social consequences for the Maori-owned blocks and their owners of the failure to build the arterial roads. It was an unfair settlement.

14.9.1 14.10.1 Introduction

A cornerstone promise of the Urewera Consolidation Scheme was the construction of two main, or ‘arterial’, roads along the Ruatoki and Waimana Valleys. As a ‘contribution’ toward the cost of constructing these two roads, the Crown acquired approximately 40,000 acres – or £20,000 worth – of Maori-owned land. Aspects of these roading arrangements were discussed in the lead up to the Tuarau hui in August 1921, and were included in the Consolidation Scheme Report and Urewera Lands Act 1921–22 for implementation by the Consolidation commissioners and the Department of Public Works. Forty thousand acres amounted to nearly a quarter of the land that remained in Maori ownership at the beginning of the scheme; and £20,000 equalled nearly a quarter of the value of the remaining land. This land – as with the land taken for survey costs – was ‘deducted’ from each of the 183 Maori-owned blocks (excluding the papakainga and urupa reserves), and was washed up in the Crown’s award of 482,300 acres in 1927. The promised roads, however, were never completed. Although survey and construction work began in earnest alongside the hearings of the Consolidation Commission, this work quickly tapered off. In 1930, when the last work ceased, only part of the roads had been finished.

The Crown conceded in our inquiry that its ‘failure to provide the promised roads was fatal to the integrity of the scheme and significantly prejudiced Urewera Maori.’⁷⁰⁷ Also, it acknowledged that this failure was a Treaty breach.⁷⁰⁸ We welcome this significant concession. The claimants, however, maintained that the Crown should never have sought a contribution towards roading in the first place. As with survey costs, roading costs were already ‘loaded’ onto the land valuations, which in effect meant they were paying for the roads for a second time in the scheme.⁷⁰⁹ We have already noted that we do not accept this argument except in the broadest possible sense: a proper Government valuation would have taken into account the lack of roads in Te Urewera in the 1910s. The system of valuation in force at the time meant that the land was worth less because it lacked roads, and even a proper Government valuation would have taken that into account. It will be recalled from chapter 13 that this was a plank of the Crown’s purchasing policy. It refused to build roads while the last possible individual interests were being ‘combed out’, because roads would have raised the value of the land and the prices paid to Maori owners. Nonetheless, the so-called ‘valuations’ made in 1910 and 1915 were calculated – and, we have found, discounted – more with

707. Crown counsel, closing submissions (doc N20), topics 18–26, p 3

708. Crown counsel, closing submissions (doc N20), topics 18–26, pp 6, 98

709. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 113; Tuawhenua claimants, amended statement of claim, 3 March 2003 (claim 1.2.12, SOC 12), p 89; counsel for Ngati Whare, closing submissions (doc N16), pp 157–158

a view to an affordable settlement scheme than the value of the land (or, for that matter, the Crown's Treaty obligations to the peoples of Te Urewera). Thus, while the values were set and discounted by the purchaser in a process that was flawed, we cannot find that the claimants paid twice for roads that were then never built.

But the claimants also said that the Government's national system of funding main road construction in the early part of the twentieth century meant that the Crown should have met all of the costs itself: 'The policy was that arterial roads for the benefit of the public were constructed at the cost of the public.'⁷¹⁰ The Crown firmly denied this point. Crown counsel submitted that it was reasonable for the Crown to seek a contribution because funding was only available where the Government was able to 'recoup its costs', either through rates (collected by local government) or through the Crown on-selling land to settlers at a higher price. Without a contribution, the Crown told us, it was unlikely that roads would have ever been built in the former Reserve lands.⁷¹¹

So, the first question for the Tribunal is whether the Maori owners should have made any contribution toward roading at all. Because there was no common ground at all between the parties on this issue, we begin by looking in some detail at how the Crown funded main road construction throughout New Zealand before 1921. Its policies changed according to shifting priorities; their application in Te Urewera also shifted as the relationship between the Crown and the peoples of Te Urewera evolved. At the same time, as will be clear from earlier chapters, Te Urewera peoples looked increasingly upon roads as a development opportunity rather than a threat to their autonomy. By 1921, they had been in favour of introducing roads through their lands for a generation.

14.9.2 14.10.2 What were the Crown's national roading policies and how were they applied in Te Urewera up to 1921?

The first roads to extend into the border regions of Te Urewera in the 1870s, and the early attempts of politicians and officials to test the policies of Te Whitu Tekau, occurred in the context of wider Crown attempts to create a network of roads across the North Island. At the conclusion of the New Zealand Wars, Julius Vogel launched his Public Works programme, which was inaugurated in 1870 and set much of the Crown's early policies on how roads would be funded and in which areas of New Zealand they would be built. Although railways were at the centre of Vogel's programme, roads served two needs relatively easily: opening land for settlement and breaking the isolation of Maori communities located in remote areas. Te Urewera was seen as perhaps the most remote area of New Zealand.

Te Whitu Tekau, however, maintained an opposition to roads as one of their foundation policies (see chapter 8). Tamaroa Nikora related to us the saying remembered by Tuhoe

710. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 132

711. Crown counsel, closing submissions (doc N20), topics 18–26, pp 89–94

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on marae today: ‘Kaua te ruri, kaua te rori, kaua te rihi, kaua te hoko’ – no surveys, no roads, no leasing, no land sales.⁷¹² As we discussed in chapters 8 and 9, this opposition to roads in the Rohe Potae held firm until the mid-1890s, when the UDNR agreement was negotiated and Te Urewera leaders began to appreciate the key role that roads could play in the economic development of their peoples. By the time that the UDNR Act was passed in 1896, Tuhoe leaders had agreed to roads and soon began to actively request them when the Crown failed to build them.

As part of the UDNR agreement, Te Urewera leaders were to have a significant say about the routes taken by roads, and their peoples were to be employed in building and maintaining the roads; in return, they agreed that land could be taken by the Crown for those roads. This gave them more power over roads than was usual for other Maori communities at the time, which comes as little surprise since the UDNR arrangements were exceptional in a number of ways.

Also, according to the evidence of Tom Bennion, there were two key features of the UDNR agreement in terms of the funding of future roading. First, Seddon had stated in his 25 September 1895 memorandum:

You refer to roadworks in your district, and ask that certain sections be given for the Maoris to do, and that when the roads are finished that certain portions be given to the Maoris to maintain. These requests are reasonable, and will be given effect to.⁷¹³

In Bennion’s view, Seddon’s undertaking was not to ‘give’ the roads to Maori to maintain in the sense of either legal ownership of the roads or the responsibility of paying for maintenance. Rather, it must be understood in context as an undertaking that they would be given paid work in maintaining as well as building the roads.⁷¹⁴ So who would pay for roads under the agreement? Bennion suggested that the Crown’s stated intent was to build roads in Te Urewera for strategic and tourism purposes, and that it clearly planned to pay for them. Indeed, section 25 of the UDNR Act, which provided for the Crown to pay the expenses associated with the Act, may have been intended to cover paying for roads from the Consolidated Fund, since Tuhoe agreement had been obtained to stop interfering with the construction of new roads.⁷¹⁵

We think it unlikely that section 25 had such a scope but we do not need to determine this point because, as we discuss below, Crown policy was for central government to pay for main roads in any case. If there *was* a legal requirement for the Crown to pay for roads

712. Tamaroa Nikora, ‘Ko Wai a Tuhoe’, brief of evidence, 17 November 2003 (doc B11), p 16

713. R J Seddon to ‘the persons who came hither to represent Tuhoe’, 25 September 1895, Urewera District Native Reserve Act 1896, second schedule (quoted in Tom Bennion, ‘The History of Rating in Te Urewera’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A130), p 25)

714. Bennion, ‘The History of Rating in Te Urewera’ (doc A130), p 25

715. Bennion, ‘The History of Rating in Te Urewera’ (doc A130), pp 30–31

under the UDNR Act, that requirement ended when the Act was repealed in 1922 at the beginning of implementing the scheme.

In the meantime, the Government had developed a system for funding main road construction throughout New Zealand that remained relatively stable through to the early twentieth century. This system meant that most of the money spent on roadworks came either directly or indirectly from the Crown's 'Public Works Fund'. The money for this fund, which was created in 1870, was raised largely by overseas borrowing. The fund received regular top-ups by transfers from the Crown's 'Consolidated Fund', which was made up of various taxes, duties and fees.⁷¹⁶ 'Government' roads were built by the Crown but were declared 'county' or 'district' roads upon completion, and were left to Councils or Roads Board to maintain.⁷¹⁷ Exceptions were made for long stretches of 'main roads' that ran through sparsely settled land, because local bodies could not raise much in the way of rates in these areas.⁷¹⁸ The money for maintaining roads was initially drawn from the Public Works Fund, but came from the Consolidated Fund from 1906. To pay for both construction and maintenance, Government departments and local bodies made requests each year to Parliament for money from the Public Works Fund. The rationale behind the Public Works Fund was that increased economic activity produced by works, and roads in particular, would stimulate development and produce increased tax-revenue that would off-set borrowing over time. Maori land was considered the lowest priority, unless that land was being opened for settlement.⁷¹⁹

In December 1896, work resumed on the Galatea–Ruatahuna–Waikaremoana road in the wake of the UDNR agreement and the passage of the Act.⁷²⁰ The agreement provided a mechanism (in the form of the General Committee) to avoid a repeat of the kind of disputes that had resulted in the 'short war' of 1895 (see chapter 9). Nonetheless, the agreement contained no firm commitments on either side about any future road construction in the Reserve beyond the Galatea–Ruatahuna–Waikaremoana road, as counsel for Wai 36 Tuhoe noted.⁷²¹ It may be that Tuhoe leaders were continuing to discuss their recent transition to a position in favour of roads, and insisted on limiting the agreement to the road under construction. But the agreement also represented a significant compromise on the part of the Crown, which departed from its own established policies of funding main road construction: the Crown did not contemplate the 'opening' of the district for large-scale settlement, which Seddon had publicly renounced, yet it had agreed to build the road as

716. WS Short to W McGregor Ross, 20 November 1917, p 3, and RW Holmes to Minister of Public Works, 12 February 1920, p 8 (Kirsten Price, comp, supporting papers to 'Timeline – Roading Policy (1916–1922)', various dates (doc M10(a)), pp 28, 181)

717. Cleaver, 'Urewera Roading' (doc A25), p 26; Public Works Act 1894, ss 103–104

718. WS Short to W McGregor Ross, 20 November 1917, pp 1–2 (Price, supporting papers to 'Timeline – Roading Policy (1916–1922)' (doc M10(a)), pp 26–27)

719. Cleaver, 'Urewera Roading' (doc A25), p 25

720. Binney, 'Encircled Lands, Part Two' (doc A15), p 204

721. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 131–132

part of a self-governing Reserve. We note, of course, that for Seddon the road had a strategic purpose; it was to open Te Urewera for the easy passage of Government forces and the swift suppression of any further difficulties. The prospect of future roading agreements was itself left open to negotiations between the Crown and the General Committee, once it was established.

The Crown maintains that no promises were made to Maori owners to construct the Rotorua–Galatea–Waikaremoana road, because the system of funding main road construction would have prevented such a promise from being made. ‘Such projects’, Crown counsel submitted, ‘were always dependent upon funding by Parliamentary appropriations year by year. In this environment, there was considerable competition for the available funds.’⁷²² But this point ignores the origin of the funds and their overriding purpose. Although Government departments and local councils did indeed obtain funds for roading projects through parliamentary appropriations, the priorities for expenditure were determined by the Crown.

Up to 1889, the Departments of Public Works and Lands and Survey set these priorities; funding was approved by Parliament. Between 1889 and 1901, funding came solely through the Department of Lands and Survey, which was responsible for all central government road expenditure.⁷²³ This reflected the Crown’s increased focus on opening lands for settlement, which became the main focus of central government road construction in the twentieth century. But during 1897–1898, the categories used to differentiate between types of road expenditure were disbanded, which left one single vote and no discernable roading policy behind the budget estimates that were presented to Parliament. This meant that the Galatea–Ruatahuna–Waikaremoana road had to be funded with a specific purpose in mind. Yet, it was funded consistently from 1896 to 1901: the total expenditure during this period was £55,766,⁷²⁴ averaging just under £8,000 per year, compared with total roading expenditure estimates of between £350,000–£500,000 per year from 1897 and 1901.⁷²⁵

722. Crown counsel, closing submissions (doc N20), topics 18–26, p 89

723. Rosslyn J Noonan, *By Design: A brief history of the Public Works Department Ministry of Works 1870–1970* (Wellington: Government Printer, 1975), pp 263–264

724. W Hall-Jones, ‘Public Works Statement’, 2 October 1896, AJHR, 1896, D-1, p 23; W Hall-Jones, ‘Public Works Statement’, 14 December 1897, AJHR, 1897, D-1, p 10; W Hall-Jones, ‘Public Works Statement’, 27 September 1898, AJHR, 1898, D-1, p 17; W Hall-Jones, ‘Public Works Statement’, 12 September 1899, AJHR, 1899, D-1, p 22; W Hall-Jones, ‘Public Works Statement’, 28 September 1900, AJHR, 1900, D-1, p 25; ‘Department of Lands and Survey (Annual Report On)’, not dated, AJHR, 1901, C-1, pp 243–244; W Hall-Jones, ‘Public Works Statement’, 16 September 1902, AJHR, 1902, D-1, p 10

725. ‘Appropriations Chargeable on the Public Works Fund, and the Government Loans to Local Bodies Account, for the Year Ending 31st March, 1898’, not dated, AJHR, 1897, B-7A, p 8; ‘Appropriations Chargeable on the Public Works Fund, and the Government Loans to Local Bodies Account, for the Year Ending 31st March 1899’, not dated, AJHR, 1898, B-7A, p 8; ‘Appropriations Chargeable on the Public Works Fund, and the Government Loans to Local Bodies Account, for the Year Ending 31st March, 1900’, not dated, AJHR, 1899, B-7A, p 8; ‘Appropriations Chargeable on the Public Works Fund, and the Government Loans to Local Bodies Account, for the Year Ending 31st March, 1901’, not dated, AJHR, 1900, B-7A, p 8; ‘Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1902’, not dated, AJHR, 1901, B-7A, p 17

Given the Crown's increased focus on making funds available to settlement areas, the continued funding of the Rotorua–Galatea–Waikaremoana road only makes sense in the context of the promise made to Maori owners under the UDNR Act; one of the few the Crown actually kept. After all, the Crown had persisted with the road survey in 1895 despite criticism in some quarters based on greater need elsewhere in New Zealand. Funding was made available over a number of years based on the UDNR agreement; and all parties to the agreement left the table on the understanding that road work would immediately resume, which is what occurred a few weeks later and continued through to 1901. Road surveyor Robert Reaney, reporting in 1896, gave an indication of the thoughts of Te Urewera peoples, who were 'showing a friendliness of disposition, and an anxiety to obtain work on the roads.'⁷²⁶ The Crown did not consider opening the land for settlement as a priority in approving the funds for this project.

But in the period up to the negotiations around the Urewera Consolidation Scheme, a number of circumstances converged which meant that no other main roads were put through the Reserve lands. The Crown's decision to begin purchasing with a view to on-selling portions of the Reserve to sheep farmers, coupled with the increasing focus in the priorities set by central government for funding main road construction to open new areas for settlement, meant that there would never be a revival of the UDNR arrangement in which Maori owners obtained roads but kept their land. Although it contained no firm commitments about future road construction, the UDNR agreement was open-ended so that it could be revived in special circumstances, once the General Committee was up and running and amenable to the introduction of further roads within the Reserve. Maori owners in the Reserve continued to believe that these terms could be revived in following years, even as the Crown began purchasing. The Crown's policies, however, went in the opposite direction. In particular, as we observed in chapter 13, the Crown was determined not to build any roads that might increase the value of – and prices paid for – unsold Maori land. As a consequence of this, and of the Crown's failure to keep its promises in the Urewera Consolidation Scheme (as we shall see), the Galatea–Ruatahuna–Waikaremoana road remains the only main road through Te Urewera today.

The first two decades of the twentieth century saw an increased focus placed on funding main road construction in areas of new or recent settlement. The Public Works Statement to Parliament in 1903 reported that '[n]early the whole of the new roads or tracks are for the purpose of giving or improving access to land recently taken up and held by Crown tenants under the various land-tenures now in force.'⁷²⁷ The Crown stood to gain from the increase in land values on land it leased to farmers, following the provision of road access. A new system was also established in which the Crown covered some of the costs of road

726. Cecilia Edwards, 'The Urewera District Native Reserve Act 1896, Part 1: Prior Agreements and the Legislation' (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(a)), p 124

727. W Hall-Jones, 'Public Works Statement', 16 November 1903, AJHR, 1903, D-1, p ix

construction by ‘loading’ these costs on the sale price (to settlers), but funds raised through ‘loading’ were only equivalent to one-tenth of the total amount voted for roading expenditure in this period.⁷²⁸ Other expenditure was appropriated from the Public Works Fund for main road construction across new or recently opened lands. In areas which already had county or district roads, new construction was seen as a lower priority.⁷²⁹

The focus on dedicating large portions of the Public Works Fund to constructing main roads across lands recently opened for settlement was given greater priority in 1908. Pressure from dairy farmers to convert existing bridle-tracks and unmetalled dray roads into roads which could stand the test of carting cream to the factory (for which a metalled dray-road was a minimum requirement) resulted in a commitment to spend £1 million over four years on ‘back-block’ roads, announced by Prime Minister Sir Joseph Ward in 1908. Although the term was never formally defined, ‘backblocks roads’ seems to have been used only to describe lands being opened for settlement.⁷³⁰ The Minister of Public Works noted in 1909 that ‘the construction of new roads to open backblocks is a duty that may be properly regarded as devolving upon the general Government.’⁷³¹ From 1909 to 1918, back-blocks roads remained a separate component of Public Works roading funding.

In all of its consideration to invest in the economic development of rural areas, the Crown gave little attention to meeting the roading needs of Maori communities, as Philip Cleaver has noted.⁷³² By and large, Maori communities did not feature in the Government’s overarching plans for economic development. Few options remained open for Maori communities who wished to develop their lands. While there were provisions allowing Maori Land Councils and Boards to borrow money to assist in road construction in the Maori Lands Administration Act 1900 (section 29(3)) and the Maori Land Settlement Act 1905 (section 11), these were for lands that would be leased by settlers. Part XIV of the Native Land Act 1909 allowed Maori Land Boards to borrow money for the same purpose, although with the incentive that the Board could apply to the Minister of Public Works for a subsidy of up to 50 per cent of the construction cost.⁷³³ Although the Native Land Act did not generally apply within the Reserve, leases under Part XIV of the Act were allowed, subject to the consent of the General Committee (under section 7 of the Urewera District Native Reserve Amendment Act 1909). Unless Maori owners considered leasing their land at the very least,

728. See funds made available from the Public Works fund (through the ‘Roads etc.’ vote and the ‘Backblocks Roads’ vote, from 1908) and funds from the Loans to Local Bodies’ Account (through the ‘Roads to open up Crown Lands’ vote) in the annual Appropriation Acts from 1903.

729. See, for example, W Hall-Jones, ‘Public Works Statement’, 28 October 1904, AJHR, 1904, D-1, p ix.

730. The term ‘back-block’ roads does not seem to have been defined in legislation. A close approximation is probably the class of roads given second highest priority in the Local Grants and Subsidies Bill 1914, after urgently needed improvements for reasons such as public safety. Under section 8 of this Bill, class II was defined as: ‘Local Works in districts or parts of districts where settlement of Crown lands has been effected for a period exceeding three years, and where the settlers are not provided with sufficient roads.’

731. Roderick McKenzie, ‘Public Works Statement’, 20 December 1909, AJHR, 1909, D-1, p xiii

732. Cleaver, ‘Urewera Roading’ (doc A25), p 25

733. Native Land Act 1909, ss 274–276

the Government was not interested in making funds available; they could submit petitions, but the Government's priorities lay elsewhere.

Maori owners, however, became increasingly committed to the idea of bringing more roads within the Reserve in ways that foreshadowed their expectations of the Urewera Consolidation Scheme. The broad economic aims of Maori owners underwent a further shift during this period, and came into increasing focus with the rise of Rua Kenana and his community at Maungapohatu, as well as increased attention on possible gold prospecting. By 1908, they were seeking to find the best way to utilise their lands in the colonial economy. Alongside the first proposals to alienate Reserve lands, Tuhoe leaders made requests for more main roads. Numia Kereru had supported leasing land, and made offers to the Government, both in March 1908, when the General Committee was first elected, and then in July, when a Tuhoe deputation visited Wellington. The leasing proposal appears to have emerged as an attempt to raise money to pay for survey costs, but also to raise funds for general development, which included roads. Kereru asked that 'main arterial roads from Waimana to Maungapohatu and from Ruatoki to Ruatahuna . . . be constructed by the State, the cost of construction to be eventually made a charge against the land to be served by the roads.'⁷³⁴ This was followed by two petitions in April 1909: one from Numia Kereru and 32 others from Ruatoki; the other from Te Amo Kokouri and 41 others of Ruatahuna.⁷³⁵

But at this point, Maori owners ran into the realities of the Crown's new priorities for the Reserve lands, which now reflected general policies for funding main road construction. In May 1909, Judge Browne of the Waiariki District Maori Land Board advised Kereru that there was no use asking the Government to consider funding these arterial roads until a scheme of settlement had been formulated.⁷³⁶ Given his knowledge of the legislation and the current policies, Judge Browne was conscious that only course for securing funding on the scale required for these roads was to use section 11 of the Maori Land Settlement Act (which was soon replicated in the Native Land Act 1909). Within a few days, the General Committee had proposed the leasing of 43,242 acres (an increase on an earlier proposal to lease 28,000 acres).⁷³⁷ A report on the proposed road between Ruatoki and Ruatahuna was then provided on 14 August 1909 by the District Engineer, F A Wilson. This estimated that the road would cost between £6,000 and £9,000 if made as a bridle track, or between £15,000 and £20,000 as an unmetalled dray road. Wilson concluded that '[a]s the Natives will reap the most benefit, I do not consider the Government would be justified in opening the Road without the Natives contributing very substantially toward its construction.'⁷³⁸ He

734. 'Urewera's Awakening', *Poverty Bay Herald*, 28 July 1908, p 5 (quoted in Cleaver, 'Urewera Roothing' (doc A25), p 30)

735. Cleaver, 'Urewera Roothing' (doc A25), p 31

736. Cleaver, 'Urewera Roothing' (doc A25), p 31; Binney, 'Encircled Lands, Part Two' (doc A15), p 405; Edwards, 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)), p 88

737. Cleaver, 'Urewera Roothing' (doc A25), pp 32–33; 'Encircled Lands, Part Two' (doc A15), p 406

738. Cleaver, 'Urewera Roothing' (doc A25), p 34

recommended instead that £500 be made available from the Crown to survey a road line.⁷³⁹ Wilson's comments were unsurprising, given the wider funding system in existence at the time: public money was being devoted to opening new districts for settlement.

Kereru's proposed lease of Reserve land to Pakeha settlers never took effect because the Crown began purchasing interests instead. Rua and a number of his supporters were appointed to the General Committee (in circumstances described in the last chapter), and consequently Crown purchasing in four blocks was approved when it came up for consideration in May 1910.⁷⁴⁰ But Rua was also an advocate of the potential benefits of road access, having offered labour to the Cook County Council in 1908 to assist it to complete the missing sections of the Rotorua–Gisborne stock track (this ran through Maungapohatu and Ruatahuna).⁷⁴¹ Rua hoped that the sale of 34,000 acres in the Waimana Valley would induce the Crown to build a road between Waimana and Maungapohatu.⁷⁴² Kereru, according to Binney, was also persuaded to accept the sale of interests by the prospect of roads.⁷⁴³ However, the Auckland District Surveyor, Andrew Wilson, who had the task of valuing the lands offered for sale, concluded in his June 1910 report that the Crown should try to purchase all 90,000 acres within the valley before starting work on such a road. To do otherwise, he considered, 'would be a big mistake, as they would have to construct roads through large areas of Native land enhancing its value, and would later have to pay an increased price for the same land, made more valuable by our own roads.'⁷⁴⁴

In 1915, Wilson and his colleague A B Jordan argued that the roads were needed for future settler sheep farmers and that the Crown should withhold building roads (and starting settlement) until all possibilities for purchasing had been exhausted:

no settlement should be undertaken or road making attempted until the purchasing of the land has been completed, and an effort should be made to define the area each Native should be allowed to retain. Neither Natives nor Europeans should be allowed to hold the land for speculative purposes and reap the benefit of a settlement and road-making policy undertaken by the Crown.⁷⁴⁵

The vast majority of landholders in the Reserve remained the original Maori owners at this stage, but their development needs – including roads – were not considered. Cleaver

739. Cleaver, 'Urewera Roothing' (doc A25), p 34

740. Cleaver, 'Urewera Roothing' (doc A25), pp 34, 37–38

741. Cleaver, 'Urewera Roothing' (doc A25), pp 28–29. Rua's offer was not taken up, and the stock track remained unfinished.

742. Cleaver, 'Urewera Roothing' (doc A25), pp 38–39

743. Binney, 'Encircled Lands, Part Two' (doc A15), p 431

744. Cleaver, 'Urewera Roothing' (doc A25), p 38

745. Wilson and Jordan to Chief Surveyor, 1 August 1915 (Edwards, supporting papers to 'Urewera District Native Reserve Act 1896, pt 3' (doc D7(b)(i)), pp 145–149)

observes that this position had become official policy without the apparent knowledge of the Native Reserve's owners.⁷⁴⁶

Apart from the tortuous, decade-long struggle to get a two-and-a-half mile road built at Ruatoki, to link Waikirikiri with a cheese factory,⁷⁴⁷ the Crown held firm in its determination not to build roads while its officials were still purchasing undivided interests in the Reserve; a situation that lasted until the consolidation proposals were taken to Ruatoki for approval in 1921.

14.9.3 14.10.3 What commitments did the Crown make to Maori owners in respect of the roads and how did it secure a contribution in land for their cost?

The Crown's commitment to Maori owners in 1921 to construct two arterial roads as part of the Urewera Consolidation Scheme was primarily motivated by its plans to sell selected blocks to settlers on a large-scale. Maori owners were led to believe that the consolidation scheme would enhance the potential for their economic development. After years of requests for roads, and given they had been refused so many times, they were more likely to agree when asked to make a contribution, especially when they had been told that it was not the Crown's policy to make funds available to meet the needs of Maori owners. Also, they had shown themselves willing to donate land and labour for the road to the cheese factory at Ruatoki (mentioned above).⁷⁴⁸ There was an increasing air of desperation to get roads, as that 10-year battle demonstrated, and they were ready to make sacrifices to attain their goal. One key question for the Tribunal is: should they have had to sacrifice ancestral land to get main roads built in Te Urewera?

From late 1919, when Jordan made the first proposal for a consolidation scheme, officials continued to maintain that any work on roads within the Reserve must wait until the completion of purchasing. After receiving Jordan's plan in November 1919, Skeet advised that 'a comprehensive roading scheme' would be required before any partition or consolidation of the Crown's interests took place, 'to ensure all the partitions of the Block' had 'proper road access'. Skeet thought this process should begin after Maori settlements had been located 'within proper fenceable boundaries' and the division of the land had been made 'on proper settlement lines'; but, as with Wilson and Jordan four years earlier, he noted that the actual

746. Cleaver, 'Urewera Roading' (doc A25), p 40

747. The Crown eventually subsidised the building of this road in 1920, in cooperation with the Whakatane County Council, but not until after the Ruatoki Maori community donated the land, formed a road themselves (for free), and then donated further free labour. Even then, the Crown's purchase agenda had effectively blocked Government support of the project for a decade, until Native Minister William Herries unexpectedly supported it after his own car got stuck on this road in late 1919. See Cleaver, 'Urewera Roading' (doc A25), pp 34–36, 43; Paula Berghan, 'Block Research Narratives of the Urewera, 1870–1930' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A86), pp 540–544.

748. Cleaver, 'Urewera Roading' (doc A25), pp 34–36, 43; Berghan, 'Block Research Narratives' (doc A86), pp 540–544

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surveying of roadlines should be delayed as long as possible as owners were likely to ask for higher prices once the road works had begun.⁷⁴⁹

Guthrie spoke to the Government's settlement plans when pressed by the 'large deputation' of Te Urewera leaders at Ruatoki in February 1920, explaining that he was visiting the district to ascertain 'the possibility of opening up the Urewera lands', which 'could not be done without roads'.⁷⁵⁰ But Maori owners also set out their own expectations for the opening up of their rohe. The 'large deputation' of Te Urewera leaders told Guthrie that they still needed a main road up the Whakatane Valley to Ruatahuna. Two days earlier, Guthrie had received a similar appeal from another deputation for improvements to the track between Ruatahuna and Maungapohatu.⁷⁵¹ Both of these requests echoed the calls made 12 years earlier by Kereru and Kenana; with the rise of motor transport, such roads were needed more than ever.

By early 1921, the Crown began making preparations to construct a main road between Ruatoki and Ruatahuna as part of broader preparations for the consolidation scheme. In January, J McKinlay of the Lands and Survey Department began surveying a roadline between the existing terminus at Waikirikiri and Ruatahuna. McKinlay's work prompted an immediate complaint from the leader Te Pouwhare Te Roau, who said he had not been consulted about the route of the roadline, and asked for it to be shifted so that it would run along the base of the hills, so that it would not interfere with their cultivations. Both Skeet and McKinlay dismissed this objection and argued that the route selected was the best from an engineering perspective.⁷⁵² Ngata reassured Maori owners that the roads constructed as a result of the consolidation scheme would be to their benefit when he met with them at Ruatoki in February 1921. He observed that 'they were within thirty miles of Ruatahuna, the centre of the Urewera, and sixty-five miles from Waikaremoana. If the Crown consolidated its land purchases it could open up a fine road to Waikaremoana and it would be the finest tourist route in New Zealand, apart from opening up the country'.⁷⁵³ This was not the last time that the forthcoming scheme and roads were presented to Maori owners together in the same positive light.

The May 1921 hui at Ruatoki, featuring Ministers Coates and Guthrie, continued to develop Maori owners' expectations for the scheme, but also established the principle that they would make a contribution toward the cost of road construction. One of the opening requests made by Tuhoe leader Fred Biddle was that, as part of the consolidation scheme, 'a road should be laid out through these lands so that we may be enabled to do a lot of

749. Commissioner of Crown Lands to Under-Secretary for Lands, 18 November 1919 (Robertson, supporting papers to 'Te Urewera Surveys' (A120(a)), pp 40–41)

750. Cleaver, 'Urewera Roothing' (doc A25), p 43

751. Cleaver, 'Urewera Roothing' (doc A25), p 43

752. Cleaver, 'Urewera Roothing' (doc A25), pp 50–51

753. 'The Urewera Lands', *Whakatane Press*, 19 February 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(c)), pp 419–420)

things we cannot do now.⁷⁵⁴ Maori owners indicated they were eager to see the immediate construction of the roads, as Apirana Ngata remarked (on the second day of the hui) that he ‘found the Maoris exercised here yesterday with the question [of] whether the laying off of the roads should or should not precede the consolidation scheme’. But both Ngata and Guthrie told Maori owners that in order to ensure the roads’ construction as part of the scheme, they would have to make some sort of contribution; Maori were co-owners of the Reserve, alongside the Crown, and had to meet a proportionate amount of the costs.

Ngata raised the subject first:

I put it to the friends here that they would have to face a contribution to the cost of the roading. I don’t think it would be fair to put the non-sellers on a proportionate basis with the Crown. It is the duty of the Crown to lay off general main roads through the lands of the Dominion, but it would appear quite fair that the Maoris [*sic*] should contribute something, because I don’t think any community will benefit to the same extent as they will.⁷⁵⁵

Guthrie endorsed Ngata’s speech, describing the idea of a contribution as ‘a very fair one indeed’:

The Government lands have got to bear their share of the roading, and it is only fair that the Maori lands should do the same. But I recognise as Minister of Lands, that when the money is required for the roading the Government should find it in the meantime, but it will have to be paid back later on by those who take up the land [that is, by loading some of the costs onto settler purchasers of land in Te Urewera]. I am also aware that the payment of a contribution in money for the carrying out of the roading scheme would probably be detrimental to the interests of the natives in the first stages, and therefore the proposal that you make the contribution in land is, I think, an excellent idea and one which the Government will no doubt readily accept from the Natives.

Guthrie thought it would ‘be necessary in the interests of both parties to have some idea where the roads are going, so that we can arrange an equal exchange of land for land’, though preliminary consolidation work could start immediately.⁷⁵⁶

In June 1921, Knight observed (somewhat casually) that ‘arterial roading of the whole block will cost on a conservative estimate £150,000’. Little work appears to have gone into establishing this estimate, as later revised estimates proved. He concluded that because ‘[m]

754. ‘Meeting of the representatives of the Urewera Natives with the Honourable D. H. Guthrie, Minister of Lands, and the Honorable J. G. Coates, Native Minister, at Ruatoki on the 22 May, 1921, 18 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), p 123)

755. ‘Meeting of the representatives of the Urewera Natives with the Honourable D. H. Guthrie, Minister of Lands, and the Honorable J. G. Coates, Native Minister, at Ruatoki on the 22 May, 1921, 18 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 132–133)

756. ‘Meeting of the representatives of the Urewera Natives with the Honourable D. H. Guthrie, Minister of Lands, and the Honorable J. G. Coates, Native Minister, at Ruatoki on the 22 May, 1921, 18 June 1921 (Campbell, supporting papers to ‘Land Alienation, Consolidation and Development’ (doc A55(b)), pp 136–137)

uch of this roading will not be required for years, and when done will be of little use, or unnecessary, to the Natives, it was necessary 'now to deal only with the main arterial roads in the Whakatane and Waimana Valleys to their junction with the coach road at Ruatahuna.' Knight estimated that these two roads would cost £64,000, of which he thought at least half should be contributed by the Maori owners; this amount could, he thought, 'be taken at once in an area out of the useless lands'.⁷⁵⁷ As with survey costs, Knight over-estimated the amount of land remaining to Maori and predicted that these deductions (for surveys and roads) could come out of some large, 'useless' block outside of their core settlement areas. But although the plan was based on this misconception, it was not significantly adjusted when it became clear that the land would have to be deducted from each of the 183 small blocks remaining to Maori after they had, as suggested, consolidated their interests in relatively small, whanau groups.

Guthrie had not suggested at the May 1921 hui that the Maori 'share' would necessarily be fully half of the cost of arterial roads. Nonetheless, this was the proposal put to the committee of owners at Tauarau in August of that year: 'The Crown asked that the non-sellers should contribute £32,000 worth of land towards the cost of the arterial roads, connecting Ruatoki with Ruatahuna, and Waimana via Maungapohatu with Ruatahuna.'⁷⁵⁸ The wording of Knight's proposal made it clear that Maori owners were only contributing to the cost of these two main (arterial) roads to their junction at Ruatahuna, and not any side roads. But the officials recorded in the Consolidation Scheme Report that the Maori-owned blocks would be 'accessible by or handy to arterial roads', and thus provision had to be made at least to provide for legal access to all blocks.⁷⁵⁹ We consider the details of what this commitment entailed below.

In the two days following the receipt of the Crown's proposals, Ngata agreed with the committee that the value of the contribution ought to be lowered to £20,000, which was then accepted by the Crown's representatives. Balneavis later reported that that 'the Natives, on Mr Ngata's advice, agreed that the roading contribution should be £20,000 worth of land'.⁷⁶⁰ Ngata probably recognised that the amount requested by the Crown did not match the proportional interests of Maori. While the Crown and Maori owned roughly half of the former Reserve each in 1921, the Crown proposal excluded the blocks in which it had not purchased any interests. Thus, the cost of the main roads in Te Urewera was to be borne solely by the co-owners of the blocks in the scheme, of which the Crown was the majority owner (of about two-thirds of the interests). Even if we accept that the owners were obliged to pay their fair share, as Guthrie had suggested, clearly an even split could not be justified.

757. Knight to Under-Secretary for Lands, 21 June 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), pp70-71)

758. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 4

759. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 7

760. Balneavis to Coates, 27 August 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 84)

Only Ngata's intervention brought about a fairer split of the costs as they were estimated at the time. Nevertheless, the building of these roads (on the basis of a set Maori contribution of £20,000 worth of land) was recorded as part of the Crown's promise to Maori owners in the scheme, in the Consolidation Scheme Report and section 5(1) of the Urewera Lands Act 1921–22.⁷⁶¹

Crown counsel maintained that it was fair to ask Maori owners for a contribution toward the cost of the roads '[g]iven the limited funding that government contributed to road-building'. According to this line of reasoning, the agreement arrived at in the Urewera Consolidation Scheme 'can be likened to the type of arrangements the Crown would make with a territorial authority in making a contribution to the construction of main roads'. Given that funding was limited, Crown counsel interpreted the contribution as 'an astute arrangement on the part of Urewera Maori as it obligated the government to engage in the provision of roading when it might otherwise not have done so'. The changing circumstances of Crown road funding policies also made the move a sensible one, counsel argued. Local authorities had increasingly asked central government to take over the maintenance of main roads, given increased amounts of motorised traffic. The result was the Main Highways Act 1922, which meant that the Crown and the local authority (or authorities) would each pay half of the cost of constructing roads. Crown counsel acknowledged that there was provision, under section 22 of this Act, for the Main Highways Board to construct and maintain 'Government roads' without requiring any contribution from a local authority, particularly if a project had special circumstances or if the land was sparsely populated or remote. But as no evidence was presented to the Tribunal about 'how the Minister of Works exercised his discretion', Crown counsel said it was not known whether the terms of section 22 could have applied in the scheme. The Crown's overriding position was that the Main Highways Act reflected changes in funding practices in the period immediately before it was passed, and was directly relevant to why the Crown sought a contribution from Maori owners.⁷⁶²

Although the system of funding road construction and maintenance was undergoing significant change when the details of the scheme were negotiated in 1921, Government policies – which allowed the Crown to construct 'Government roads' without a local authority contribution – remained essentially the same, and particularly in their application in Te Urewera. In support of this contention, a number of claimant counsel have highlighted Ngata's comment about the roading contribution during the Parliamentary debate on the Urewera Lands Bill:

I do not think that honourable members will find in the history of this country any record of any contribution as handsome as the contribution made by the Ureweras, upon

761. Cleaver, 'Urewera Roading' (doc A25), pp 53–54; Robertson, 'Te Urewera Surveys' (doc A120), pp 101–102

762. Crown counsel, closing submissions (doc N20), topics 18–26, pp 92–94

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the request of the Crown representatives, of £20,000 worth of land towards the cost of the arterial roads through the Urewera country. That contribution is part of the settlement now, *but there was never any obligation upon the Urewera Natives to make a contribution of a single penny towards the cost of roading. It has always been recognised that the opening-up of the country with arterial roads is the job of the State.* However, the Natives recognised that they would get these arterial roads much sooner if they assisted the Government by making a contribution in land . . . This threw the onus on the Government of opening up that country much more rapidly than otherwise would have been the case . . . [emphasis added]⁷⁶³

At the time, Ngata's comments were supported by an editorial in the *Auckland Star* which described the contribution as 'contrary to the established practice'.⁷⁶⁴ Based on this evidence, claimant counsel concluded that the Crown acted in bad faith towards Maori owners by expecting them to make a contribution which they were not really required to make.⁷⁶⁵

Crown counsel attempted to dismiss Ngata's statement in Parliament as 'rhetoric': Ngata was merely 'enhancing the facts to underscore the appropriateness of the Government undertaking an obligation to provide these arterial roads'.⁷⁶⁶ But this very public declaration was consistent with what Ngata had observed privately in a letter to Coates, written on 19 September 1921:

The Urewera have agreed at the request of the Crown representative to contribute £20,000 of land towards the cost of arterial roads. This is the first time in the history of the Dominion that any such contribution has been proposed, where it is the manifest duty of the State to construct arterial roads for the use of the public. There was no need whatever for the Urewera's to make any such contribution. The Crown in the ordinary course would have had to put roads in to serve the lands it acquired . . . I advised the Ureweras to agree to make the contribution to facilitate a settlement with the Crown, and to expedite, if possible, the roading of their territory.⁷⁶⁷

More importantly, Ngata's contention is also borne out by remarks of senior staff in the Public Works Department. An internal report by RW Holmes, engineer-in-chief, to the Minister of Public Works, in February 1920, made the comments that 'the general practice is for the Government to undertake the construction of roads from the initial stage of track formation to that of a formed road suitable for vehicle traffic. The whole of the

763. Ngata, 14 December 1921, NZPD, 1921, vol 192, pp 1115–1116 (quoted in counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 134 n)

764. 'The Urewera Country', *Auckland Star*, 17 December 1921, p 6 (quoted in counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 134 n)

765. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 135

766. Crown counsel, closing submissions (doc N20), topics 18–26, p 93

767. Ngata to Coates, 19 September 1921 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(g)), p 2435)

funds required in this connection are usually found by the General Government.⁷⁶⁸ Three years earlier, the Under-Secretary for Public Works had commented that '[i]n the case of the Government roads, the money is provided for either out of general revenue or out of the Public Works Fund, which latter is loan money.'⁷⁶⁹ The roads that the Crown proposed to build as part of the scheme could only be 'Government roads', as the Reserve was not under the control of a county council, and nor had the General Committee been established to the extent that it could negotiate such an arrangement.

The issue, therefore, is not whether the Crown usually funded main road construction; it is rather the circumstances in which funding would be made available. As Ngata observed in his speech to Parliament, the contribution by the owners was a means of inducing the Crown to give greater priority to the work, because its priorities did not rest with funding roads for Maori land. But even that was misleading: most of the funding for the various central North Island roads districts in 1920, for example, was not matched by a local subsidy, which meant that in most cases spending was authorised for projects for which there was no additional form of funding.⁷⁷⁰ Also, as we noted above, the Crown did not recover much of its expenditure from the on-sale of land to settlers; ultimately, the Crown expected to be refunded by economic growth and an increase to the tax base.

In fact, the Main Highways Act was accompanied with a change in the Government's funding priorities that could have favoured applications for main roads as promised to Maori owners in the scheme. The 1921–22 Public Works Statement set out the revised priorities:

It is proposed that in future the appropriations for roads and bridges be based on an automatic system whereby those districts that are backward in roading and in development shall receive a greater proportion of the amounts available than will other districts that are already well roaded and well developed. The basis for adjustment will include such factors as mileage of roads unopened, areas of Crown and Native land undeveloped, areas of districts, populations, productivity, loans, and mileage of roads still requiring improvement.⁷⁷¹

Te Urewera was most definitely a district which was 'backward in roading and development' in the modern economic sense. Following these guidelines, which now included undeveloped Maori land, the two proposed arterial roads would in future have been more likely to attract funding under the Public Works Act. Although we have no evidence about

768. RW Holmes to Minister of Public Works, 12 February 1920 (Price, supporting papers to 'Timeline – Roading Policy (1916–1922)', vol 1 (doc M10(a)), p 175)

769. WS Short to W McGregor Ross, 20 November 1917 (Price, supporting papers to 'Timeline – Roading Policy (1916–1922)', vol 1 (doc M10(a)), p 28)

770. The roads districts examined were Tauranga, Gisborne, Taumarunui, Stratford, Wanganui, and Napier. 'Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1922', not dated, AJHR, 1921–22, B-7A, pp 43–58.

771. JG Coates, 'Public Works Statement', not dated, AJHR, 1921–22, D-1, p xvii

how the Minister of Works used his discretionary powers under section 22 of the Act, the Crown's revised priorities indicated that Maori land could now be considered for its development potential. By the time the scheme came about, Maori owners had been requesting these roads for 13 years; it was not as if they had just joined the queue for roading funds.

But the Main Highways Act had not come into force when the Crown set about its negotiations with Maori owners in 1921, and nor did the planning for the scheme take into account this new direction. Instead, Government departments – following instructions from Ministers – prepared for the roading work on the assumption that its primary purpose was to accompany the opening of lands for settlement, and that funding was being made available on that basis. The Crown's promise to Maori owners was tied to the national system for road funding that had been in existence since the end of the nineteenth century. Under that system, a contribution from the Maori owners was clearly welcome but it was not a necessary precondition for the Government to fund the building of arterial roads in the 'back-blocks.'

Even if Maori owners had been required to make a contribution, it was unfair for the Crown to obtain the entire £20,000 contribution 'at once' in the form of land, especially when it paid no consideration to borrowing the required sum and repaying it over many years. This amount was far larger than the typical roading appropriation from the Public Works Fund votes at the time. In the 1920/21 appropriations, funding in the 'Roads &c' vote averaged £478 per item; 'Roads to Open Up Land for Settlement' averaged £919 per item.⁷⁷² Ordinarily, such a large roading project as the arterial roads through Te Urewera would have been either built incrementally or paid off incrementally. The Rotorua–Galatea–Waikaremoana road was an example of the former, in which £55,766 was spent across six years (see above). Incremental construction and repayment ought not to have been a consideration in the Crown's plans for Te Urewera, since action on roading had been delayed throughout the 1910s to protect the Crown's purchasing programme and avoid an increase in land values. Roads required immediate construction once the scheme got under way.

Considering the gravity of the agreement – one that resulted in the alienation of 40,000 acres of their surviving land – the Crown should have at least ensured that all owners were well aware of its terms. But as with many other aspects of the scheme, this does not appear to have been the case. Just days after the Taurau hui finished, Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori of Ruatahuna petitioned Parliament with the complaint that the Crown was asking the owners to pay half the roading cost; that is, £32,000, not £20,000.⁷⁷³ Wharepouri Te Amo repeated this claim when the Consolidation com-

772. 'Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1921', not dated, AJHR, 1920, B-7A, pp 116–122

773. The petitioners also noted that 4,000 acres was being taken from the Te Whaiti block, which they assumed was part of the roading contribution. Translation of petition by Wharepouri Te Amo, Te Wharekiri Pararatu, and Pomare Hori to Parliament, 5 October 1921 (Campbell, supporting papers to 'Land Alienation, Consolidation and Development' (doc A55(b)), pp 201–202).

missioners visited Ruatahuna on 22 February 1922.⁷⁷⁴ On 29 March 1922, Hori Hohua and three others, representing around 150 owners, similarly complained in a letter to Coates about being required to meet half the cost of the Ruatoki–Ruatahuna road.⁷⁷⁵ Even as late as 1924, some owners were still mistaken about the size of the contribution, with Tikareti Teirawhiro and 175 others seeking a parliamentary investigation into a number of alleged injustices, including a road contribution of £32,000.⁷⁷⁶

In response to these complaints, the commissioners simply noted that the roading contribution was actually £20,000, and in any case it was too late to alter it.⁷⁷⁷ Although it is clear that Ngata reached an agreement with the committee in the first two days of the Taurau hui, it is less clear how widely the outcomes of the negotiations were understood by Maori owners. As with the survey costs, the decision to deduct the land from each of the Maori-owned blocks was made after the hui was completed. It was unlikely the Consolidation Scheme Report, which was difficult to understand on this issue, would have provided the owners with a clearer understanding of how the Crown would acquire the contribution.

Finally, we note that the suggestion for a contribution towards the cost of building roads did not originate with the owners themselves. As discussed above, the idea was first raised by Ngata in the May 1921 hui at Ruatoki. We take it from what he told Parliament that his hope was to accelerate the building of roads, because – as he told the House publicly and Coates privately – he knew very well that there was not the slightest obligation for Maori to have donated a single acre. Yet this was not how he put it to the assembled leaders at Ruatoki. Basically, he told them that they would *have to pay their share*, and Guthrie was quick to agree with him. It then became a central part of the proposals put by the Crown to the owners' committee at Taurau in August 1921. By that point, the idea had matured from paying a share to paying half. As noted, Ngata negotiated this down to a third of the estimated costs, but it seems to have been taken for granted by all concerned that Maori had to pay *something*. We cannot escape the conclusion that the Maori owners were misled by Ngata, Guthrie, and Knight on this point, and were not aware that they did not have to pay anything for the building of arterial roads. The arrangement made at Taurau does not meet the standard of willing and informed consent. As a result, a quarter of the area of every Maori-owned block was given up to meet an obligation that did not actually exist – more, even, than was taken for survey costs.

In light of all these factors – the lack of a legal or policy requirement for a contribution at the time, the contemporary acknowledgement that undeveloped areas needed prioritisation in road funding, the past delays in road construction which had occurred for the Crown's benefit, the lack of informed consent, and the limited means the owners had at

774. Cleaver, 'Urewera Roading' (doc A25), p 61

775. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 96

776. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), pp 79–80

777. Cleaver, 'Urewera Roading' (doc A25), pp 61–63

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their disposal to make a contribution – the Crown should not have sought any kind of contribution, rather than immediately assuming that the owners should pay one-half of the construction costs (and then reducing this to one-third). Given that a contribution was made, however, the Crown should have ensured that Maori owners understood what they had agreed to, that the means of payment caused the least loss to the owners, and that the Crown followed through with its part of the bargain by building the roads. The Crown failed the owners on the first two counts: it was eventually found wanting on the last count as well.

14.9.4 14.10.4 How were the Crown's promises to construct the roads abandoned and what proportion of the roads were completed?

The Crown abandoned its promise once it became clear that plans to open the lands for European settlement would fail. This was despite the fact that the Crown had promised the Maori owners that two roads would be built of certain specifications: 'these being a road south of Waimana to Maungapohatu, and a continuation of the Whakatane–Ruatoki road to Ruatahuna, both roads junctioning with the Galatea–Ruatahuna Coach road at Ruatahuna.'⁷⁷⁸ Some kind of allowance would also have to be made so that legal access to the different Maori-owned blocks could be formed as they were surveyed, but the construction of these access roads was not part of the promise that was made to Maori owners. (We note that the drafters of the Urewera Lands Act 1921–22 did not in fact make provision for the commissioners to form road lines or create legal access to blocks, but this oversight was corrected with an amendment in 1923.⁷⁷⁹)

Knight's June 1921 proposal described these two roads as 'main arterial roads', a term which he never defined.⁷⁸⁰ Notes in the Public Works Department's 'Maintenance of Main Roads' file, dating from 1919, record that the minimum formed width of 'main roads' varied between 24 feet in flat easy country to 16 feet in mountainous country; the metalled surface width would be two feet less than the formed width, up to a maximum of 18 feet.⁷⁸¹ In addition to the width, Knight also estimated that the length of the roads would total 80 miles (though this was later discovered to be 100 miles).⁷⁸² In short, the Crown promised Maori

⁷⁷⁸ Balneavis to Coates, 27 August 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p78)

⁷⁷⁹ Native Land Amendment and Native Land Claims Adjustment Act 1923, s10(4)

⁷⁸⁰ Knight to Under-Secretary for Lands, 21 June 1921 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p70). Knight did not define 'main arterial roads', but a contemporary definition can be found in section 11(1) of the Local Grants and Subsidies Bill 1914; that stated that main arterial roads passed 'in a continuous line either through at least two counties, or in a continuous line from a railway to a seaport', and were 'generally used by persons residing in districts other than the districts of the local authorities within which its course or part of its course is situate'.

⁷⁸¹ 'Maintenance of Main Roads', not dated (Price, supporting papers to 'Timeline – Roading Policy (1916–1922)', vol1 (doc M10(a)), p133)

⁷⁸² Knight to Under-Secretary for Lands, 21 June 1921 (Nikora, 'The Urewera Consolidation Scheme' (doc E7), app D, p31)

owners that it would construct formed and metalled roads of at least 14 feet in width for the entire distance between Ruatoki and Ruatahuna, and between Waimana and the junction with the Galatea to Ruatahuna road (which later became the Rotorua to Waikaremoana highway); a total of 100 miles.

Once the agreement had been reached, two key departments – Lands and Survey and Public Works – had to carry out the work, although they had different priorities for what they were about to do. By 23 September 1921 (just after the Tauarau hui), they had agreed that the ‘main access roads to the Urewera country’ would be laid off and constructed by the Public Works Department, with the priority being given to the road south of Waimana, where the Consolidation commissioners had established that the Crown’s land would be opened to the market first, following the terms of the Urewera Lands Act.⁷⁸³ Authorisation was given for the department to spend £20,000, voted by Parliament under the ‘Roads to open up lands for settlement’ section of the Lands for Settlement Account, on the understanding that the land would soon be made available for public buyers.⁷⁸⁴ This amount matched the roading contribution made by Maori owners. Ngata appeared to have been proven correct when he said that the Maori owners’ contribution was necessary to ensure that the construction of these roads took priority, with the swift provision of £20,000 of public money for that purpose.

The competing departments understood that each had different purposes for constructing roads in Te Urewera, but neither considered the obligations made to Maori owners in the scheme. It took appeals from the Ruatoki leaders before Coates was willing to recommend that £1,000 be issued to allow work to start on the Ruatoki–Ruatahuna road in July 1922, nearly a year after the Tauarau hui.⁷⁸⁵ Meanwhile, in the Waimana Valley – where 12 miles of the roadline had been surveyed by December 1921, and nearly four miles of the road itself constructed by May 1922 – officials debated the specific purpose of their mission.⁷⁸⁶ The Department of Lands and Survey wanted a road which would open up the future Crown award for settlement as quickly as possible. But after Skeet visited Waimana in February 1922, with Conservator of Forests HA Goudie, and had concluded that the land was ‘very ridgy with flats of very limited area on some of the bends of the streams’, he could only recommend the immediate construction of a bridle track from Waimana south. Although a bridle track was normally six feet wide, and did not meet even the minimum standards of a main road, Skeet said it should proceed ‘or else no inducement could be given to intending settlers.’⁷⁸⁷ Public Works policy was that a main road through mountainous terrain should

783. Cleaver, ‘Urewera Roading’ (doc A25), p 69

784. ‘Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1922’, not dated, AJHR, 1921–22, B-7A, p 93

785. Cleaver, ‘Urewera Roading’ (doc A25), pp 69–70

786. Cleaver, ‘Urewera Roading’ (doc A25), p 69

787. Robertson, ‘Te Urewera Surveys’ (doc A120), p 125

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be at least fourteen feet wide,⁷⁸⁸ but, as a August 1922 letter by resident engineer FS Dyson recorded, a compromise was reached, whereby a six-foot track was pushed ahead, to be made later into a twelve foot wide dray road. However, Dyson – conscious of the Crown’s commitment – cautioned that only if it were widened to 18 feet would it constitute a ‘main road.’⁷⁸⁹ He must have been aware that the Crown could not depart from its promise simply because its plans for the roads – to assist in on-selling the land to settlers – had begun to look precarious.

Preliminary survey and construction work caused officials to re-examine Knight’s estimates for the costs of the roads, and to begin considering whether the work would continue at all. In July 1922, JB Thompson, Under-Secretary for Lands, wrote to Skeet to ask how much could and should be met by ‘loading’ the costs onto future Crown sections, and how much would have to be met from the Public Works Fund. Skeet – who was already advocating limits on road construction because much of the land was not suitable for settlement – concluded that the cost of building roads to service all of the blocks emerging from the scheme would be £225,000, rather than the £150,000 that Knight had estimated. Skeet concluded that ‘loading’ costs on Crown sections would only bring in £85,000 at most, which would leave the Public Works Fund to provide the £140,000 difference if the entire network was eventually built.⁷⁹⁰ This posed less of a problem for the Waimana and Whakatane Valley roads, since Skeet observed that these were main roads, so that at least part of their costs should be met by the Public Works Fund anyway.⁷⁹¹

The Crown made its first contribution, over and above the £20,000 that was going to be recouped from the Maori owners, from the Lands for Settlement Account rather than the Public Works Fund. This was because it was still believed that the roads would service at least some settlement blocks. The authorised expenditure for the ‘Urewera Blocks’ in the 1922 roading votes amounted to £49,064.⁷⁹² But with Skeet’s re-evaluation of the total cost, the idea that this cost was too great to bear took root.

A further report in 1923 – this time by officials from both departments – confirmed that Knight had significantly under-estimated the costs, and recommended that the Crown abandon the proposed roading on the grounds that it did not meet either department’s funding policies. In March 1923, Skeet and GT Murray (Public Works Department Inspecting Engineer) produced a report on what was required to fulfil the terms of the consolidation scheme, based on a week-long assessment of the district. They concluded that,

788. Under-Secretary for Lands to Commissioner of Crown Lands, Auckland, 14 February 1922 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p123)

789. District Engineer to Chief Surveyor, 12 August 1922 (Paula Berghan, comp, supporting papers to ‘Block Research Narratives of the Urewera, 1870–1930’, various dates (doc A86(i)), pp3144)

790. Cleaver, ‘Urewera Roothing’ (doc A25), pp74–75

791. Cleaver, ‘Urewera Roothing’ (doc A25), pp74

792. ‘Appropriations Chargeable on the Public Works Fund and Other Accounts for the Year Ending 31st March, 1922’, not dated, AJHR, 1921–22, B-7A, p95

in exchange for a contribution of land from Maori owners, the Crown had promised that it would construct two 50-mile arterial roads (combined, 20 miles more than Knight had anticipated), and two 30-mile side roads. In their view, these roads would cost £240,000 if they were all built as 12-foot-wide dray roads. If the side roads were omitted, and if the 50-mile Whakatane Valley road was left as a six-foot bridle track, the cost would amount to £173,000.⁷⁹³

Skeet and Murray recommended that the Waimana Valley road should be diverted south of Tawhana into the upper Ruakituri watershed, so that it would become part of a shorter route between Opotiki and Gisborne.⁷⁹⁴ By altering the direction of the road, continued funding from public works grants could be guaranteed, as 'it would be quite reasonable to charge a large proportion against the Dominion as a whole.'⁷⁹⁵ At the same time, they recommended that the proposed road south from Tawhana through Maungapohatu and ultimately to Ruatahuna should be a side road only.⁷⁹⁶ These recommendations signalled a significant departure from a cornerstone promise of the Urewera Consolidation Scheme; no thought was even given to notifying the Maori owners of this proposed change.

Skeet and Murray's recommendation to abandon the Crown's roading obligations was confirmed in May 1924, when the Department of Lands and Survey decided to withhold any more money from the 'Lands for Settlement Account'. By this stage it had been established that the Crown was unlikely sell much land (if any). Although some £44,000 had been authorised, the department had now calculated that it could only recoup £40,000 from the Crown blocks that would be on-sold to settlers.⁷⁹⁷ This calculation was based on the assumption that the Crown would be able to open up 100,000 acres. In fact, as discussed above, only 31,886 acres of land in Waimana and Te Whaiti were ever offered, and only three of these sections were taken up.⁷⁹⁸ HA Goudie – Conservator of Forests – had earlier anticipated the inevitable result when he visited the Waimana Valley with Skeet in February 1922. The land was unsuitable for settlement except in limited areas, in which 'Maoris usually locate their Kaingas'. The question of 'paramount importance' was whether the forests would be protected from 'wholesale denudation' to prevent flooding in surrounding regions; a question soon asked by Dr Leonard Cockayne, reporting for the Forest Service.⁷⁹⁹

793. Commissioner and Chief Surveyor and Inspecting Engineer to Under-Secretary for Lands, 15 March 1923 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), pp 3391–3392)

794. Cleaver, 'Urewera Roding' (doc A25), pp 75–76

795. Commissioner and Chief Surveyor and Inspecting Engineer to Under-Secretary for Lands, 15 March 1923 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), pp 3391–3392)

796. Cleaver, 'Urewera Roding' (doc A25), pp 75–76

797. Cleaver, 'Urewera Roding' (doc A25), p 77

798. Cleaver, 'Urewera Roding' (doc A25), p 77; 'Department of Lands and Survey, Settlement of Crown Lands (Annual Report On)', 25 June 1925, AJHR, 1925, C-1, p 10

799. Bassett and Kay, 'Ruatahuna' (doc A20), pp 176–177

Although around 80 miles of the roads remained unfinished, and with the Department of Lands and Survey having ended its funding, the Public Works Department also abandoned the Crown's promise. In order to keep any road work going at all, the Public Works Department's engineer-in-chief, FW Furkert, approached the Minister in June 1924 and secured an immediate injection of funds (£3,500) plus the promise of £10,000 for ongoing work. By this time, the dray road had been completed to around 20 miles up the Waimana Valley to Tawhana, and a bridle track six or seven miles beyond that; engineering surveys had been completed for 70 miles of the proposed roadlines.⁸⁰⁰ In 1924–25, funds that were authorised only amounted to £12,519. By 1925–26 and 1926–27, this amount had dropped to only £8,000.⁸⁰¹ Little progress was made on the road between Waimana and Ruakituri between 1925 and 1926, with the bridle track being extended 14 miles south of Tawhana, so that the completed length was 35 miles.⁸⁰²

By 1925, as work on the downgraded side road to Maungapohatu was nearing an end, only some departmental officials had knowledge of the Crown's promise to Maori owners; others either did not know or appear not to have taken it seriously. Because the side road was only four miles from Maungapohatu by May 1925, the resident engineer in Tauranga, FS Dyson, proposed an additional branch track that would cover this distance. In doing so, he observed that this was 'really the continuation of the Waimana Valley Road on to Lake Waikaremoana, and was part of the scheme of roading of the Urewera Block, more or less approved.'⁸⁰³ But Furkert's response demonstrated that for some the Crown's promise now held little weight.⁸⁰⁴ The branch track was 'a desirable work', Furkert said, but as 'it would mainly benefit the Native Settlement, it is considered the Natives should pay for it'. Because heavy demands had been placed on the Public Works Fund, the work would warrant funding. Furkert (astonishingly) concluded that the Maungapohatu owners might fund the track by making a payment in land for it.⁸⁰⁵ Not all officials had forgotten the Crown's obligations, however: Dyson alerted Furkert to the fact that 'the natives have already supplied certain lands free of charge on condition that certain roads were constructed.'⁸⁰⁶ Eventually work commenced, with contract workers from Maungapohatu having pushed the track through to the settlement by the end of September 1926.⁸⁰⁷

At the same time, the Public Works Department came to the decision that work on the Waimana–Ruakituri road should stop because funds had been diverted elsewhere. In light of

800. Cleaver, 'Urewera Roding' (doc A25), pp 77–78

801. AJHR, 1924, B-7A, pp 51, 102; AJHR, 1925, B-7A, p 51; AJHR, 1926, B-7A, p 49

802. Cleaver, 'Urewera Roding' (doc A25), pp 79–80

803. District Engineer to Permanent Head Public Works Department, 4 May 1925 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), p 3355)

804. Cleaver, 'Urewera Roding' (doc A25), p 78

805. Engineer-in-chief to district engineer, 26 June 1925 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), p 3352)

806. Cleaver, 'Urewera Roding' (doc A25), p 79

807. Cleaver, 'Urewera Roding' (doc A25), p 79

the fact that the Department was now opening up an alternative route to Gisborne through the Waioweka Gorge, the inspecting engineer, A J Baker, had been asked to report back on the unbuilt sections of the Waimana–Ruakituri route. He estimated that it would cost £132,000 to finish as a metalled road, and £27,300 just to join up the two ends with a bridle track.⁸⁰⁸ He concluded that the region ‘can do without this road at the present time, even for stock purposes.’⁸⁰⁹ Baker’s recommendation to stop building the Waimana–Ruakituri road was approved by the Minister of Public Works on 1 October 1926.⁸¹⁰ According to the funding priorities of both departments, there was no longer any justification to continue funding. This decision – and its significance for the Urewera Consolidation Scheme as a whole – was not conveyed to the Maori owners. Yet, Sissons has observed that Rua Kenana seemed convinced that the Crown was going to build a road to Maungapohatu when he encouraged his followers to move back there in 1927 (as we will discuss in chapter 17).⁸¹¹ Neither department had Maori communities in their funding priorities.

As the commitments under the scheme were abandoned, the Public Works Department threw its energies into finishing the upgraded main road between Murupara and Waikaremoana, work on which was intended to aid the Crown’s tourism operations at Lake Waikaremoana.⁸¹² Apart from a 12-mile section between the old Ruatahuna road terminus and Papatotara, which happened to coincide with the southern end of the Waimana Valley road-line proposed by Knight, this work did not coincide with the promises made in the scheme. The only road work that could be construed as part of the Crown’s obligations occurred in the form of unemployment relief on the Whakatane Valley road, and, as FS Dyson observed in May 1927, this was merely a stop-gap measure.⁸¹³ In July 1927, Apirana Ngata inquired as to how much of the promised roading had been completed. The Public Works Department noted ‘evasively’, as Philip Cleaver put it, that £69,716 had been spent so far on roads in the Urewera district, as if to imply completion.⁸¹⁴ According to a report the following year by KM Graham, the Chief Surveyor in Auckland, by April 1928 only 2¾ miles of road at the northern (Waikirikiri) end of the Whakatane Valley road had been completed, and ¼ mile at the Ruatahuna end. This was in addition to the 21 miles of 12-foot dray road between Waimana and Tawhana, 13 miles of six foot (bridle) track between Tawhana and the Maungapohatu turnoff, and the 4½ miles of branch track to Maungapohatu.⁸¹⁵ This was

808. Cleaver, ‘Urewera Roothing’ (doc A25), pp 79–80

809. Cleaver, ‘Urewera Roothing’ (doc A25), p 80

810. Cleaver, ‘Urewera Roothing’ (doc A25), p 80

811. Sissons, *Te Waimana* (doc B23), p 272

812. Cleaver, ‘Urewera Roothing’ (doc A25), pp 101–102

813. District Engineer to Permanent Head Public Works Department, 23 May 1927 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), pp 3327–3328). See also authorisations for relief work made by Dyson on 22 March, 12 August, and 22 August 1927 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(i)), pp 3121–3123).

814. Cleaver, ‘Urewera Roothing’ (doc A25), pp 80–81

815. Graham observed that three miles had been also built in the Whirinaki Valley to provide access for a Pakeha settler. See Cleaver, ‘Urewera Roothing’ (doc A25), pp 72–73.

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the full extent of the promised roads in the Urewera Consolidation Scheme; no further work was undertaken.

The extent to which the Crown met its roading promises – the type of roads and their distance – was a matter of some debate between the parties in our inquiry. According to Crown counsel, one-third of the promised roads were built; but the claimants maintained it was only one-quarter.⁸¹⁶

Claimants pointed to the 44 miles of road and track that were confirmed to have been built by Graham (and a 1937 investigation into the scheme), which consisted of four miles in the Whakatane Valley and 40 miles in the Waimana Valley; and compared this with the 160 miles of road and track that Skeet and Murray had estimated in 1923 were needed to be built to meet the Crown's promise, which consisted of 100 miles of arterial roads and 60 miles of side roads. Although the 60 miles of side roads were not part of the Crown's promise, 19 miles out of the 40 miles in the Waimana valley could not be considered as an arterial road, because it was only a six-foot track and the construction of the southern most part of the road in the Whakatane Valley came as part of the Ruatahuna Development Scheme in the early 1930s.⁸¹⁷ But having taken these factors into account, the completed amount was only 23 miles out of 100; less than one-quarter.

Crown counsel took these estimates into account, but included the 12-mile section of the Rotorua–Waikaremoana highway that was built between the old Ruatahuna terminus (at Umuroa) and Papatotara. This section – counsel submitted – coincided with a portion of the arterial roadline promised by the Crown, which would increase the total to 35 miles; a third of the promised amount. The 1937 investigation by Department of Lands and Survey official, R G Dick, on this very issue reached the conclusion that the Crown's work on the Rotorua–Waikaremoana highway during this period cannot be considered as part of the Crown's obligation under the scheme. Out of some £118,000 spent on the highway, Dick concluded that only £9,000 could be said to have improved access to Maori lands (made up of £6,000 on construction and maintenance costs for the Ruatahuna–Papatotara section, and £3,000 for improvements to the Whirinaki River bridge at Te Whaiti).⁸¹⁸ The highway would have been built irrespective of the Crown's roading obligations under the scheme, especially since the Crown had to provide road access to its Ruatahuna township reserve adjacent to Tatahoata, which was two miles from the previous Umuroa terminus.⁸¹⁹ Against this, however, the highway did provide access to a number of Maori-owned blocks east of the Township Reserve which might otherwise have been left stranded. In our view, therefore, the true figure is likely to be between a quarter and a third.

816. Crown counsel, closing submissions (doc N20), topics 18–26, p 67; counsel for Wai 36 Tuhoe, closing submissions in reply (doc N31), p 24

817. Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 273, 290; counsel for Wai 36 Tuhoe, closing submissions in reply (doc N31), p 24

818. Cleaver, 'Urewera Roading' (doc A25), pp 101–102

819. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 244

Knight Reminds the Crown of its Obligations, 1929

THE CROWN are under an obligation to complete the undertaking with the Native owners under which a contribution of £20,000 worth of land was given towards the cost of surveying and forming the arterial roads . . . land of the above value having been included in the Crown's award. And also to give the Land Transfer titles to their holdings.'

—Knight to commissioner of Crown lands, Auckland, 21 September 1929

(Crown Law Office, 'Document Bank: Urewera Consolidation and Roothing' (doc M31(a), p 1690))

Although the Crown managed to complete this small part of its promise, any benefit that the Maori owners might have derived was lost when funding for maintenance was stopped; not because of the rates exemption, which the Urewera Lands Act had set in place until the completion of the roading scheme, but because the roads would serve Maori communities and were not worth funding. The Urewera Lands Act 1921–22 had placed a rates exemption on all of the Maori-owned blocks, which was only meant to be lifted once the roads had been built.⁸²⁰ In December 1926, the Consolidation Commission completed its orders for the roadlines, despite the fact that the road work itself was all but abandoned by then.⁸²¹

Initially, the Public Works Department had accepted an obligation to fund the maintenance of the Waimana Valley road, but by 1929 it appears to have become a target for Government cost-cutting. On 21 September 1929, one of the former Consolidation commissioners, RJ Knight, wrote to the Auckland commissioner of Crown lands reminding him of the Crown's roading obligations to the owners of the Maori-owned blocks. But only three days later the engineer-in-chief, FW Furkert, wrote to the district engineer in Tauranga to say that he thought ongoing maintenance funding ought to be reconsidered.⁸²² Furkert's view won out: CE Bennett, the department's Assistant Under-Secretary, concluded that the existing maintenance expenditure of £1,200 per year was not warranted because it served 'only Native land and unoccupied Crown land'. Furthermore, the Maori owners, who were not paying rates, were 'farming their properties in a very small way indeed.'⁸²³

820. The Consolidation Scheme Report stated: 'No Native section shall be liable for rates until, say, a period of one year after the completion of the title thereto, and then only by notification under the hand of the Native Minister. It would not be fair to make these lands rateable until the roading scheme, to the cost of which they are contributing, is carried out'. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 6

821. Cleaver, 'Urewera Roothing' (doc A25), p 71

822. Cleaver, 'Urewera Roothing' (doc A25), pp 81, 83

823. Cleaver, 'Urewera Roothing' (doc A25), p 84

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The Minister of Public Works, EA Ransom, adopted Bennett's recommendation and stopped all funding for maintenance in January 1930. Once again, there is no evidence that the Maori owners of the affected blocks were consulted about this retrenchment from the Crown's obligations, and when concerns were raised on their behalf by KS Williams, the member for the Bay of Plenty, and Sir Apirana Ngata, the Native Minister – both of whom clearly recalled the promises made to Maori owners in 1921 – the Public Works Minister did not move from his decision.⁸²⁴ Ngata asked for a memorandum to be prepared, detailing all of the Crown's undertakings in the consolidation scheme, but Mr Easthope could not find such a memorandum on file and it may not have been written.⁸²⁵ Ngata himself, now Native Minister, was the best hope that the Crown's promises would be remembered and honoured; after his replacement as Native Minister in 1934, all the key Ministers – Coates, Guthrie, and Ngata – who had been involved in the scheme were gone.

When the responsibility for the roads was transferred to the relevant local authorities, which followed shortly after the completed portions of the arterial roads and connecting roadlines were gazetted as county roads in July 1930, the rates exemption did become a factor. The transfer had been proposed as early as February 1927, but the Whakatane County Council had opposed the move on the grounds that the terms of the Urewera Lands Act 1921–22 prevented it from raising any rates. The district engineer, KM Graham, advised the Council in April 1928 that the Public Works Department would retain authority for maintaining the roads for the time being. But as of October 1929 the Council was informed that the department might renege on this position, which it did nine months later.⁸²⁶ As claimant counsel have observed, it was to be expected that local councils would not want to spend money on road maintenance when they were getting no rates income from the area, while the owners were not in a position to pay rates on land that had marginal or no road access.⁸²⁷

The Crown's obligations to the Maori owners under the Urewera Consolidation Scheme were remembered by few officials by 1930, despite Knight's reminder in 1929 and Ngata's request that same year for a memorandum to record them. Maori owners, however, had not forgotten about the promises made to them. Rua Kenana's supporters had moved back to Maungapohatu in anticipation of the promised roads, but found themselves in serious economic difficulties. They complained to Ngata and to the Rotorua member of Parliament, Cecil Clinkard, in 1930. At this time, the Maungapohatu community was 'really in need' and had great difficulties getting stock in or out. Ngata treated this as a Depression-era unemployment issue. He asked in 1931 and 1933 that unemployed relief workers be assigned to keeping open the old stock route which had existed between Maungapohatu and Ruatahuna. Work was only funded for repairs to the main road between Te Whaiti and Ruatahuna; a

824. Cleaver, 'Urewera Roothing' (doc A25), p 84

825. Easthope, 'Maungapohatu' (doc A23), p 194

826. Cleaver, 'Urewera Roothing' (doc A25), pp 85–86

827. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 138

sum of £100 was authorised on the track in 1933, but it is unclear whether this money was actually spent.⁸²⁸

More substantial works on the roading and tracks in the Waimana Valley were then proposed in the reports on Te Urewera lands and forests by MJ Galvin and DD Dun in 1935, and Galvin and GP Shepherd in 1936, whose main focus was on protecting the forests.⁸²⁹ Although Pera Meihana and William Bird raised the issue of the roading contribution when Galvin and Shepherd visited Te Whaiti in 1936, their subsequent report made no reference to the Crown's roading obligations under the scheme.⁸³⁰ Galvin and Dun had recommended that £2,000 should be provided 'for the improvement of North and South access' to Maungapohatu.⁸³¹ Galvin and Shepherd added that priority should be given to repairs on the road between Waimana and Tawhana, followed by construction work and repairs to the Maungapohatu–Papatotara track, and finally repairs to the track between Maungapohatu and Tawhana.⁸³² Nothing was done, however, until the Maungapohatu community complained again about the track to Ruatahuna – this time to the Minister of Public Works, Robert Semple, which finally brought about the authorisation of £3,400. This money was made up from unemployment relief funds and money from the roads vote, but much of it was subsequently spent on repairs to the Waimana–Tawhana road.⁸³³

In 1936, Takarua Tamarau and others questioned the Minister of Internal Affairs and the Acting Native Minister about the fate of the promised road in the Whakatane Valley.⁸³⁴ An ensuing report by ON Campbell, Under-Secretary for the Native Department, acknowledged that as Maori owners had made a contribution of land in the Urewera Consolidation Scheme, 'there is therefore probably a contractual obligation upon the Crown to make these tracks reasonably available for the use of the Urewera people'.⁸³⁵

The Lands and Survey chief draughtsman, RG Dick, was then asked to report on the extent to which the Crown had met its obligations. He estimated that the Crown had spent £73,500 to meet its obligations (made up of £60,000 on the Waimana road, £4,500 on the Whakatane Valley road, and £9,000 on the Murupara–Waikaremoana road). In order to fulfil its promises, so that the Maori-owned blocks would be made more 'accessible or handy' to arterial roads, as had been promised, Dick concluded that the Crown would have

828. Easthope, 'Maungapohatu' (doc A23), pp 194–198; Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 288–289

829. Dun was a State Forest Service Ranger, Galvin a Field Inspector for Lands and Survey, while Shepherd was Chief Clerk of the Native Department.

830. Cleaver, 'Urewera Roading' (doc A25), pp 99–100; Easthope, 'Maungapohatu' (doc A23), pp 200–203

831. Galvin and Dun, 'Report by Officers of the Lands & Survey Department and the State Forest Service, on the Urewera Forest', 29 April 1935 (John Hutton and Klaus Neumann, comps, supporting papers to 'Ngati Whare and the Crown, 1880–1999', various dates (doc A28(a)), p 24)

832. Easthope, 'Maungapohatu' (doc A23), p 202

833. Easthope, 'Maungapohatu' (doc A23), pp 210–214, 224

834. Cleaver, 'Urewera Roadiing' (doc A25), p 122

835. Native Under-Secretary to Acting Native Minister, 20 May 1937 (quoted in Easthope, 'Maungapohatu' (doc A23), p 208)

to expend a further £230,000. But, in his view, the development potential of Maungapohatu was so low that this expenditure was ‘unwarranted’. Similarly, the proposed road up the Whakatane Valley was ‘quite uneconomic’ because of its steep mountainous topography; it was far better, Dick thought, to divert money that might have been spent on these roads to assist development in more physically amenable areas, such as the Whirinaki Valley. Upon receipt of Dick’s report, the Under-Secretary for Lands acknowledged that ‘the arrangements entered into at the time of consolidation cannot be said to have been fulfilled’, but endorsed Dick’s conclusion that the roads should not be built. The Acting Native Minister, Frank Langstone, informed the Under-Secretary for Native Affairs on 18 October 1937 that ‘only access tracks for the Natives should be attended to.’⁸³⁶

Langstone’s decision represents the point at which the Crown’s commitment to constructing the arterial roads officially ceased, although it had effectively ended as early as 1929; the only difference was that the Crown still acknowledged but deliberately set aside its contractual obligation.⁸³⁷ Afterwards, the only new construction consisted of a one-mile branch road between Waimana and the neighbouring Raroa series blocks in 1939. Funding for maintenance was largely limited to the sum which had been authorised in 1937.⁸³⁸ It was not until 1957 that the Crown provided redress for its abandonment of its arterial roading commitments, which we discuss shortly.

14.9.5 14.10.5 How much land did the Crown acquire for the road contribution?

When the Crown made its proposal to Maori owners at the Tauarau hui, officials were yet to decide on how exactly the £20,000 contribution would be taken, except that it would be in land. Knight’s June 1921 plan suggested that the roading contribution could come from an area of ‘useless lands’, which had been identified on a map as a large area encompassing parts of the Hikurangi–Horomanga, Tarapounamu–Matawhero, Ruatahuna, Waikaremoana, Manuoha, and Paharakeke blocks.⁸³⁹ Balneavis’ report at the end of the Tauarau hui suggests that Crown representatives continued to act on the assumption that the lands ‘out of which such contribution will be made’ were ‘for the most part situated’ in these same areas.⁸⁴⁰ It is not clear why, however, since Manuoha and Paharakeke had already been excluded from the scheme at the request of the Crown, and by the end of the hui the Government expected to obtain the whole of the Waikaremoana block (leaving no Maori land there that could be taken for the roading contribution).

836. Cleaver, ‘Urewera Roding’ (doc A25), pp101–106

837. Cleaver, ‘Urewera Roding’ (doc A25), p106

838. After the Second World War, an annual grant of £100 was given for maintenance on the Maungapohatu–Papatotara track. See Easthope, ‘Maungapohatu’ (doc A23), pp 217, 225–226.

839. Webster, ‘The Urewera Consolidation Scheme’ (doc D8), pp 257, 260–261

840. Balneavis to Coates, 27 August 1921 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), p84)

At some point after the Taurarau hui, the officials decided to distribute the contribution equally among all of the Maori-owned blocks, with the exception of those in the Te Whaiti series, which would not benefit from the promised roads. Knight reported on 3 October that it had 'been agreed that the proportion of the contribution towards roading and also the cost of the survey of the sections shall be taken in area from each section as the survey proceeds'⁸⁴¹ Balneavis' report, which was written at the end of the hui, made it clear that no such agreement had been reached at Taurarau. The about-face may have been precipitated by the realisation that the Crown had purchased too many interests in the Reserve; after the provisional division of the land was negotiated at the Taurarau hui, there was not enough 'useless land' remaining in Maori ownership, and Maori owners were clearly unwilling to give up their main areas of settlement. The deduction would have to come from each of the remaining areas, and from each block.

The Consolidation Scheme Report established that a portion of land amounting to the value of £20,000 would be taken from each of the Maori-owned blocks and awarded to the Crown: 'the areas of the Native sections are subject to an assessment as a contribution towards the cost of surveying and forming the proposed arterial roads.' The Report also established that the commissioners could account for this land in areas that were not contiguous to the 'Native section' in question.⁸⁴² The commissioners used this provision in some cases where more than one block was awarded to the same group of owners, so that the roading deduction came from the block that was the least developed in terms of settlement or cultivations.⁸⁴³ But they could also withhold from grouping the takings; as in the Te Whaiti series, where the commissioners refused to take all of the deduction from the Te Whaiti Residue block, and instead took smaller pieces of land from the blocks along the Whirinaki river valley. This may have been to keep the blocks back from the forest edge, which was in keeping with the approach taken by the commissioners in the division of the land.

Unlike the takings for survey costs, the Consolidation commissioners decided to account for roading costs by deducting a quarter of the owners' 'gross' interests in a block, which was a quarter of the block's valuation. For example, a group of owners who had interests that amounted to £400 would lose £100 for roading costs, leaving them with a block with the value of £300 (which was then subject to a survey deduction). This meant that in most cases – except for the few blocks where the commissioners decided to group the deduction, and other exceptions discussed below, such as the Te Whaiti series – the blocks decreased both in size and in value of interests by a quarter. Given that this was a proportional deduction rather than a flat rate per acre charge, the takings for roading costs were applied more

841. Webster, 'The Urewera Consolidation Scheme' (doc D8), p 264

842. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 8

843. This occurred with several blocks in the Ruatoki series, as noted in the Commission's minute book. See Urewera minute book 2A, 9 April 1924 (doc M30), pp 204, 206.

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evenly across the scheme than were the survey deductions. Blocks with a lower valuation, therefore, did not bear a heavier burden than those with a higher valuation; each lost a quarter of its original size. For this reason, the valuations are of little relevance to our analysis here, except to reiterate the general point made in this chapter that the valuations were unfair and out of date. It is likely the commissioners adopted a one-quarter deduction because £20,000 equalled roughly a quarter the total value of the remaining interests of Maori owners at the beginning of the scheme, which was (mistakenly) given as £78,035 in the Consolidation Scheme Report.⁸⁴⁴

As noted above, the commissioners also made some exceptional roading arrangements during the course of their work, which we now assess. The necessity for these arrangements arose mainly because some of the new Maori-owned blocks seemed closer to roads outside the consolidation scheme than they would likely be to new roads constructed inside it.

Maori owners of the newly formed Hikurangi–Horomanga blocks had a quarter of their land deducted for the construction of the Whakatane and Waimana Valley roads, even though those roads would be some kilometers and a mountain pass away. But, having decided to take a quarter of the land, the commissioners were then obliged to create formed legal access to the blocks and road access. As a compromise, they decided to give legal access to four of the blocks (Papapounamu, Tukutomiro, Mokorua, and Onapu), and to create a roadline across privately owned land (the Waiohau 2 block) to the main road that was about to be built, running west of the Rangitaiki River from Te Teko to Galatea. The commissioners did not have authority to lay out the legal access for road lines until the Native Land Amendment and Native Land Claims Adjustment Act 1923, which gave them the authority to provide access inside the scheme. But no provision was made to form access in areas outside the scheme, which Knight and Carr pointed out in 1924, reporting that their only authority lay in somehow convincing landowners outside the scheme to cede accessways. There the matter remained, until the ongoing lack of access to the blocks was raised in the proceedings to amalgamate their titles, which we discuss later in the report. Thus, the Urewera Consolidation Scheme failed to provide either legal access to these blocks or actual access in the form of a main road. Nevertheless, the Crown acquired a total of 4,413 acres at the value of £1,538.

The owners of the Te Whaiti blocks were also subject to similar takings but for different reasons. Forty-eight acres was taken from seven of the blocks in the Te Whaiti valley (10 had no deduction), totalling 336 acres, to contribute to a road that would junction with the existing main road through to Lake Waikaremoana. This connecting road was built, although the land was taken along the forest line in the Te Whaiti Valley instead of the Te Whaiti Residue land further to the north. But the connecting road to the southern Minginui block, for which the owners had 306 acres taken (£325), was only built so far as a farm on

844. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p 11

former Crown land, for which the Crown was legally obliged to form road access.⁸⁴⁵ In contrast, the Urewera Lands Act 1921–22 required the Crown to construct two arterial roads in the Whakatane and Waimana Valleys, and to form legal access to the blocks from those roads. Reconciling the distance between these roads and the Hikurangi–Horomanga and Te Whaiti blocks proved too difficult an undertaking for the Crown, despite the fact that a significant amount of land was taken for this purpose.

Elsewhere in the scheme, inconsistencies in how the one-quarter deduction was calculated affected blocks in the Tarapounamu, Maungapohatu, Waimana, Ruatahuna, Ohaua, and Ruatoki series.⁸⁴⁶ In the vast majority of these cases, the commissioners (or whoever did the calculations) incorrectly made the roading deduction equal one-quarter of the net area rather than the gross area. A similar error had been made with the survey deduction, but in this instance the error slightly favoured the owners. The outcome of this error in the Ruatahuna series was that only 22 per cent on average was deducted, which meant that the owners retained around 600 acres more than they should have.⁸⁴⁷ These gains were slightly countered by the excessive deductions in three Waimana series blocks (Tarahore, Opei, and Oueariu), which averaged out at 29 per cent.⁸⁴⁸ But overall the difference in favour of the owners across all the blocks (with the exception of the Te Whaiti series) only amounted to around 800 acres. This was several times less than the Crown's gain through the survey deduction errors, which totalled some 4,000 acres.

Such frequent survey and roading deduction miscalculations, not to mention unexplained changes in methodology (such as between the Te Whaiti series road deductions and those in other blocks) are indicative of the Crown's haphazard approach to the scheme. Neither the commissioners nor other officials ever published a final reckoning of the outcomes of the scheme, either in the blocks awarded or in the areas deducted. A list of areas and deductions for each block, included in the Urewera minute book 2A, was prepared in mid-1924, but because the commission continued to move small numbers of shares between series in the last stages of consolidation this list was altered by a number of crossouts and insertions.⁸⁴⁹ Nevertheless, counsel for both the Crown and the claimants have accepted

845. Robertson, 'Te Urewera Surveys' (doc A120), p 151; Clayworth, 'The Te Pahou Blocks' (doc A19), pp 34–35

846. Miscalculations occurred in the following blocks: Apitihana (Ruatahuna and Tarapounamu series), Kiritahi, Maramataupiri, Omakoi, Onini, Paripari, Porere, Tatahoata, Tataramoa, Tarahanga, Te Pua, Te Tawai, Umuroa, Waipakau, Wairere, Wharekakaho (Ruatahuna series), Waipatukakahu (Maungapohatu series), Korouanui (Ohaua series), Otairangi/Tewhatawha/Waitapu, Awamutu (Ruatoki series), Tarahore, Opei and Oueariu (Waimana series). In the cases of Opuatawhiro (Waimana series) and Umukahawai (Tarapounamu series) the deductions were correct, but misrecorded as 51 acres instead of 81, and 457 acres instead of 497.

847. Based on the Commission's figures, there were 4,495,062 one-penny shares (collectively worth £18,729) in the Ruatahuna series, while the total roading contribution was £4,090 (or 21.8 per cent of the total). On an area basis, the contribution percentage was closer to one-quarter (10,418 acres out of 46,270, or 22.5 per cent). See Robertson, 'Te Urewera Surveys' (doc A120), p 154.

848. Robertson, 'Te Urewera Surveys' (doc A120), p 154

849. Amendments were made to the following blocks: Waipatukakahu, Maungapohatu, Pukiore, Apitihana, Matera, and Te Whaiti Residue. See Urewera minute book 2A, 9 April 1924 (doc M30), pp 207–208, 211–212, 215–218.

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that the final, post-alterations deduction was calculated to be 39,355 acres (worth £19,975).⁸⁵⁰ Although this figure was still an estimate of the actual amount of land that was taken, which became part of the large block awarded to the Crown in 1927 as Urewera A (482,300 acres), 39,355 acres is a sufficiently accurate figure. The exact addition to the Crown award on the ground is likely to have varied from this total, because of the numerous discrepancies – usually small – between the calculated final block areas and the areas actually surveyed.

14.9.6 14.10.6 Were the terms of the 1958 roading settlement fair?

Maori owners of the newly consolidated blocks did not quickly forget the promises that had been made to them. By the late 1930s, leaders began pressing the Government for answers about the non-completion of the arterial roads. Officials confirmed the unofficial policy that had developed since the road work first began to be abandoned in the early 1920s: the roads would not be completed. But it was two decades before the Crown responded to repeated protests from Maori owners, when negotiations for a settlement commenced. The Crown acknowledged that compensation was due to the owners for the contribution they had made as part of the consolidation scheme, which would discharge the Crown of its statutory obligation. In 1957, shortly after the creation of Te Urewera National Park, the parties negotiated a settlement of £100,000 in cash to be paid the following year to a newly created trust board.

Having established how much of the roads were completed and how much land the Crown acquired for the cost of their construction, we turn our attention to the final part in the story of the Urewera Consolidation Scheme: the 1958 settlement and the question whether its terms were fair. Claimants maintained that the settlement were less than adequate. Particular issues were:

- ▶ the length of time taken to reach a settlement,
- ▶ the process by which the negotiations took place,
- ▶ the payment of compensation in money rather than the return of land,
- ▶ whether the cash settlement was proper compensation for the range of effects suffered through the Crown's failure to construct the roads, or simply the price of the land taken for the roads, plus interest.
- ▶ whether a trust board was the appropriate body to receive the settlement.

The Crown, however, disputed these points: the settlement was fair in the circumstances of the time, and provided full monetary compensation for the land that was contributed, given that the land had been incorporated into Te Urewera National Park by this time.

As we have explained above, the policy decision to abandon the Crown's roading obligations came somewhat later than its abandonment on the ground (when funding of regular

⁸⁵⁰ Crown counsel, closing submissions (doc N20), topics 18–26, p 59; counsel for Wai 36 Tuhoe, closing submissions (doc N8), p 57; counsel for Tuawhenua, closing submissions (doc N9), p 195

maintenance ceased in 1930), and only after Maori owners began raising objections. The decision by Acting Native Minister Frank Langstone in October 1937 to formally abandon all arterial road construction came on the back of the report from Under-Secretary for Native Affairs, ON Campbell, that there was ‘probably a contractual obligation upon the Crown to make these tracks reasonably available for the use of the Urewera people.’⁸⁵¹ Campbell was the first official to draw attention to the Crown’s roading obligations since Knight’s similar observations in 1929.⁸⁵² Dick’s subsequent report on the issues concluded that around £73,500 had been spent on the roads, but that the cost of completing the roads would be around £230,000. On the basis of these figures, he argued that further road development was ‘unwarranted’, and advised that this amount should be spent developing land for farming at Ruatahuna and in the Whirinaki Valley instead.⁸⁵³ Robertson, Under-Secretary for Lands and Survey, endorsed this recommendation, noting that while the ‘arrangements entered into at the time of consolidation cannot be said to have been fulfilled’, it was ‘not desirable to make some of the roads, such as that from Ruatoki to Ruatahuna’, given that ‘the expense would be enormous’, and ‘the upkeep would be heavy with no rateable property to provide rates.’⁸⁵⁴ Langstone approved Robertson’s recommendation to abandon all road construction.⁸⁵⁵ But no action was taken to compensate the owners in the form of funding for land development. Despite the fact that the failure to complete the roads had very noticeable effects by 1937 (as observed by officials such as Shepherd and Galvin, and Dick), it took a further 21 years before a settlement was reached. The outbreak of the Second World War meant that any serious consideration of compensating owners did not occur until 1946.

When the subject of the Crown’s roading obligations did arise again, it was only after concerns were raised by the Public Works Department that funds were being squandered on repairs to the old stock route between Maungapohatu and Ruatahuna, which had been made available – independently of the Crown’s obligations under the consolidation scheme – and amounted to £100 per annum for three years.⁸⁵⁶ There was a view that repair work should be abandoned and more drastic solutions applied:

851. ON Campbell, Native Under-Secretary to Acting Native Minister, 20 May 1937 (quoted in Easthope, ‘Maungapohatu’ (doc A23), p 208)

852. Easthope, ‘Maungapohatu’ (doc A23), p 208; Cleaver, ‘Urewera Roading’ (doc A25), p 81

853. RG Dick to Under-Secretary for Lands, 20 August 1937 (Robertson, supporting papers to ‘Te Urewera surveys’ (doc A120(a)), p 162)

854. W Robertson to Native Under-Secretary, 23 September 1937 (quoted in Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), pp 292–293)

855. Cleaver, ‘Urewera Roading’ (doc A25), pp 106

856. Easthope, ‘Maungapohatu’ (doc A23), pp 217–218. The funds had been secured after representations to government by the Moderator of the Presbyterian Church of New Zealand.

in my opinion these people should be compelled to evacuate this village and should be established by the Native Department somewhere in the vicinity of Ruatahuna, where they are accessible.⁸⁵⁷

Even the Consolidation commissioners had never gone so far as considering a settlement of such ancestral significance as Maungapohatu would be abandoned.

But the Public Works Department asked Judge Harvey of the Waiariki Maori Land Court to negotiate the evacuation of Maungapohatu (though Easthope noted that the Native Department was ‘much more cautious’ in its approach in passing on the request from the Public Works Department).⁸⁵⁸ Inquiries by the court’s deputy registrar, JJ Dillon, found the families at Maungapohatu very determined to stay there: they wanted the Government to provide Post Office and educational facilities, as well as the road access that was due to them. Dillon recommended that the people stay in their settlement and reminded Judge Harvey of the Crown’s obligations under the consolidation scheme. He said that at least a four-foot track from Papatotara should be maintained, as well as cattle droving access between Waimana and Maungapohatu.⁸⁵⁹

Judge Harvey was more opposed to the proposition of negotiating the evacuation of Maungapohatu than his registrar, calling the proposal ‘fatuous’. He told the Native Department that the Crown must either commit the annual interest on £20,000 or return the land which was the form of the original contribution:

The facts are that various commissions and delegations have promised amenities to these Maungapohatu people from time to time and that the Crown has had the use of some £20,000.0.0 of Maori money since 1921, obtained upon a promise to provide arterial access to these people. If the Crown is prepared to revest the £20,000.0.0 worth of land in the Natives, it is possible that the Tuhoe tribe may be willing to relieve it of the responsibility to provide the promised arterial access, but so long as the Crown is not prepared to do so it should, I think, spend the interest on the amount (say) £700.0.0 per annum, or an accumulation of £17,500.0.0 to date, towards the object.⁸⁶⁰

In the face of Judge Harvey’s forcefully stated position that the Crown was obligated either to complete the roads or to provide compensation to the owners, the Native Department remained unmoved. The department rejected Harvey’s argument, pointing to the fact that the Crown had already spent £73,500 on the roads, and thus it had no further obligation to the Maori owners.⁸⁶¹ No further action on the settlement was taken at this time.

857. A G St George to Resident Engineer, 27 November 1945 (quoted in Easthope, ‘Maungapohatu’ (doc A23), pp 218–219)

858. Easthope, ‘Maungapohatu’ (doc A23), pp 220–221

859. Easthope, ‘Maungapohatu’ (doc A23), pp 221–223

860. Judge Harvey to Native Under-Secretary, 17 July 1946 (quoted in Easthope, ‘Maungapohatu’ (doc A23), p 223)

861. Easthope, ‘History of the Maungapohatu and Tauranga Blocks’ (doc A23), p 224

Frustrated by the continuing Crown inaction in relation to the promised roads, Takurua Tamarau and 93 others finally petitioned Parliament in August 1949. The petition noted that lands (the area of which was wrongly given as 24,000 acres) had been taken in return for the construction of two arterial roads in the Whakatane and Waimana valleys, but that these roads had not been built. The petitioners asked for these lands to be returned by the Crown.⁸⁶² This request echoed Judge Harvey's view three years earlier, that the lands taken should be returned if there was no intention by the Crown to build the roads.

In January 1951, Under-Secretary for Maori Affairs, T T Ropiha, produced a report for the Maori Affairs Select Committee on the petition. Citing Dick's report, Ropiha noted that the Maori owners had contributed lands worth £19,620 in return for the Crown's undertaking to build the arterial roads. He similarly concluded that the high construction cost associated with the roads (£230,000, according to Dick's 1937 estimate) meant that they were not worth building. Following the receipt of this report, the committee met with a delegation of Maori owners. Takarua Tamarau told the committee that they sought the return of land for the settlement of Tuhoë returned servicemen and timber for improved housing. The committee then recommended that the petition be given further consideration. In his report, Ropiha noted the obvious course of action: 'it appears that if anything is to be done, it will be the return to the Maoris of some of the present Crown land.'⁸⁶³ Thus – in the wake of Judge Harvey's recommendation and the petition from Maori owners – a senior Government official contemplated the possibility of a return of the land as early as 1951.

But little progress was made towards a settlement until 1957. During this time, the Crown instead began to pursue a policy of acquiring more Tuhoë land, as it sought to protect forests from private sawmiller interest in logging Maori land. E B Corbett – who became Minister of Lands, Forests, and Maori Affairs, under the Holland Government from December 1949 – continued to push for forest preservation as he moved towards the creation of Te Urewera National Park in 1954. In December 1953, in a bid to meet what he now saw as the justifiable wishes of Tuhoë for economic development of their timber resource, Corbett arrived at a compromise: milling would be allowed on parts of blocks, while the remaining forested area (which the Crown would offer to purchase) would be preserved.⁸⁶⁴ As we explain in chapter 16, the task of deciding where milling would occur was given to the Urewera Land Use Committee, formed from Crown and Tuhoë representatives in 1954. In the same period, the Maori Affairs Department conducted negotiations with landowners over the future level of Crown support for the Ruatahuna and Ruatoki Development Schemes.⁸⁶⁵ In the

862. Cleaver, 'Urewera Roding' (doc A25), pp106–109

863. Ropiha to Minister of Maori Affairs, 25 January 1951 (quoted in Cleaver, 'Urewera Roding' (doc A25), pp110–111)

864. SKL Campbell, 'Te Urewera National Park, 1952–75' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 1999) (doc A60), pp 33, 48–52, 57–62

865. Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp343–345; Oliver, 'Ruatoki Block Report' (doc A6), pp208–209

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early 1950s, the issue of compensation for the failure to build roads thus fell off the Crown's agenda.

But the Maori owners refused to let the matter drop. At a May 1953 hui at Ruatahuna, Te Pakitu Wharekiri had given an account of the effects of the lack of roading on the Whakatane Valley blocks. A motion was passed that the Crown would again be asked to complete its promise and build the roads. On the back of this request, the Secretary for Maori Affairs enquired into the fate of Takurua Tamarau's petition. Director-General of Lands, DM Greig, merely replied that the petition was being given 'further consideration'.⁸⁶⁶ But this was clearly not the case. Tui Tawera, of the Western Tuhoe Tribal Executive, next raised the issue with Corbett in February 1955, but was told that the Urewera Land Use Committee had been too busy to consider it, and that a further study was required. By 1957, Maori owners had become exasperated by attempts to get the Government's attention, and decided to go to the press. Tui Tawera somewhat provocatively told the *Bay of Plenty Beacon* that the owners would accept compensation of £9 million (a figure which he based on an average timber value of £150 per acre over 60,000) for their roading contribution.⁸⁶⁷

This move to go public proved successful. In August 1957, the new Minister of Lands R G Gerard submitted a memorandum to Cabinet outlining his proposed solution (Corbett had resigned because of poor health). Gerard provided a brief historical overview of Crown purchasing in the Reserve and the Urewera Consolidation Scheme, noting that though 115 miles of the promised arterial roads remained to be completed, their completion was 'impractical and uneconomic'. Because the Crown had not fulfilled its agreement with Maori about roading under the consolidation arrangements, there was a 'moral obligation [on the Crown] to either return the land or compensate the Maoris'. He added, we note, that because the roading that had been done (apart from the main highway) had fallen into disuse because of lack of maintenance, 'any expenditure on it should be discounted'. But returning the land flew in the face of the Government's attempts to acquire the remaining Maori land in the former Reserve and to include it as part of the newly formed national park. The land contributed by Maori owners toward the cost of road construction (given as 39,355 acres) was 'difficult to define'. More importantly, however, in Gerard's eyes, 'it would comprise land which in the interests of soil conservation should be retained in its natural state'. For this reason, and given the Crown was now 'the legal owner of the 39,355 acres, morally, it would appear to be in adverse possession', the Crown 'should compensate the Maoris by a cash payment'. Gerard proposed, as 'a preliminary approach' to negotiations, a payment of £19,975 with 5 per cent compound interest from 1 January 1922, which totalled £113,400. In conclusion, Gerard recommended the Crown to 'lock up' the remaining part of the Crown's land awarded it in the UCS (330,000 acres) for conservation purposes, by

866. Director-General of Lands to Secretary for Maori Affairs, 10 July 1953 (quoted in Cleaver, 'Urewera Roading' (doc A25), p 112)

867. Cleaver, 'Urewera Roading' (doc A25), pp 111–113

including it in the national park, and to complete the roading settlement: the Crown would be unable to purchase any more Maori land until those two issues were resolved.⁸⁶⁸

On 1 October 1957, Takurua Tamarau and Sonny White led a 30-strong deputation to Wellington to meet with Gerard and Corbett.⁸⁶⁹ Corbett acknowledged that towards the end of his term of office, he felt that the Crown's breach of promise with respect to the arterial roads was 'the one injustice . . . that was crying out to be righted'. But he also told the deputation that there was no prospect of having their land returned, as they had requested in their 1949 petition. Corbett explained that there were two reasons why the land could not be returned. First, it would be 'absolutely impossible in view of the way interests lie . . . to hand back 39,000 acres out of 300,000 because no interest had been defined as to where that area lay'.⁸⁷⁰ It should not pass without comment that when the Crown was faced with exactly the same problem prior to consolidation, it found a way through it when it served its interests. Corbett's statement was based on the findings of a report on the roading and survey contributions, written earlier in the year by RE Stone and DJ Mitchell of Lands and Survey (discussed above). Stone and Mitchell concluded that though it was possible to say which groups contributed towards road (and survey) costs, it was not possible to indicate where the land was taken by the Crown.⁸⁷¹ The second reason was that the Crown had decided that the land was to be kept 'forest clad'. As he put it:

One point I want to make abundantly clear – that the whole of the Urewera purchase has been declared Rahui, a National Park. It is completely tied up; it is tapu, and I think that I should make that clear to you because there has been, for years while it was Crown land and not tapu, a feeling that some day somebody would come along and exploit it. It is not possible today, or in the future, because by Act of Parliament the whole of the land has become a reserve that cannot be touched.⁸⁷²

In fact, while Cabinet had authorised the addition of 330,000 acres of Crown land to Te Urewera National Park in August 1957, the Order-in-Council legalising this change was not issued until 25 November.⁸⁷³ The land had not been 'tied up'; Ministers had merely decided that it would be so, as Gerard's earlier memorandum to Cabinet revealed. There was, therefore, no legal or logical reason why appropriate land could not have been excluded from the Park and returned to Maori owners.

868. Minister of Lands to Cabinet, 5 August 1957 (Crown counsel, 'Urewera Consolidation and Roothing document bank' (doc M31a), pp 1700–1702)

869. Cleaver, 'Urewera Roothing' (doc A25), p 113

870. 'Notes of a deputation which waited on the Hon RG Gerard, Minister of Lands', 1 October 1957 (Nikora, 'The Urewera Consolidation Scheme' (doc E7), app D, p 72)

871. RE Stone and DJ Mitchell, 'Urewera Roothing – Urewera Lands Act 1921–22', 2 July 1957 (Crown Law Office, 'Document Bank: Urewera Consolidation and Roothing' (doc M31(a)), pp 1694–1699)

872. 'Notes of a Deputation which Waited on the Hon RG Gerard, Minister of Lands', 1 October 1957 (quoted in Nikora, 'The Urewera Consolidation Scheme' (doc E7), app D, pp 73–74)

873. Campbell, 'Te Urewera National Park' (doc A60), pp 86–88; *New Zealand Gazette*, 28 November 1957, p 2217

Instead of returning land, Corbett recommended that compensation be offered to the owners in the form of a cash payment, which could be vested in a Trust Board.⁸⁷⁴ Such a sum, he said, ‘must be a fair amount, satisfactory to the honour of Government, who has failed to pay what would have been £20,000 in 1922 and not paid since, and satisfactory to the people who have been denied their property rights for so long.’⁸⁷⁵ Sonny White’s response to the proposal for a cash settlement was to describe the importance of the roads to the Maori owners’ hopes for economic development, and the effect that the failure to construct the roads had on their development: ‘They [the Maori owners] thought that the Crown was going to put roads in straight away and it would then be a means to open up country, and at that time they were living off the land.’⁸⁷⁶ In other words, it was not just the loss of the land, it was the loss of the opportunities available had the roads been constructed, that was at issue.

Although the notes of the meeting do not reveal whether the Crown made an initial offer at that time, it appears that Sonny White at the very least was briefed on its likely terms: the return of land was not on the table and a cash settlement would be the Crown’s only offer. On 6 November, five weeks after the Wellington meeting, a hui was held at Ruatoki to receive the Crown offer. More than 100 representatives of the Maori owners attended. Speaking on behalf of the owners, White opened the proceedings by saying that a cash settlement should be based on 1922 land values (rather than allowing for an increase in values due to current interest in the timber, as Tui Tawera had suggested to the *Bay of Plenty Beacon*). White then proposed the same terms that Gerard had set down in his August memorandum: the settlement should be based on the original value of the contribution (£19,975) plus 5 per cent per annum, compounding interest.⁸⁷⁷

Speaking for the Crown, EP Wakelin (Commissioner of Crown Lands in Hamilton), stated that the Crown had agreed to repay the original value of the land with compound interest at current rates for the 35 years since the Crown had received the contribution. He had been instructed to offer £100,000 in full settlement, with 5 per cent interest on top of this until the payment was actually made (the following year). But, as Cleaver notes, 5 per cent compounding interest on the £19,975 contribution over 35 years should have seen the owners receive £110,182.⁸⁷⁸ Even Gerard had earlier proposed that the proper amount should be £113,400, based on interest over 35 years and six months.⁸⁷⁹ The reduced amount cannot be put down to the extra 5 per cent interest Maori owners would receive until the

874. Cleaver, ‘Urewera Roding’ (doc A25), p 114

875. ‘Notes of a Deputation which Waited on the Hon RG Gerard, Minister of Lands’, 1 October 1957 (quoted in Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), app D, pp 72–73)

876. ‘Notes of a Deputation which Waited on the Hon RG Gerard, Minister of Lands’, 1 October 1957 (quoted in Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), app D, p 76)

877. Cleaver, ‘Urewera Roding’ (doc A25), pp 116–117

878. Cleaver, ‘Urewera Roding’ (doc A25), p 117

879. Draft memorandum to Cabinet from Minister of Lands, 5 August 1957 (Crown counsel, Urewera Consolidation & Roding document bank (doc M31a), p 1702)

payment was actually made, as Corbett had earlier explained (at the 1 October meeting) that this sum had not been budgeted for in the 1957–58 financial year (ending on 31 March). The Crown's final offer, therefore, was a significant discount on the terms proposed earlier, though Tuhoe would not have been aware of this.

Tuhoe signalled their approval of the terms that Wakelin put to the hui. As Sonny White said: 'There was no doubt from the applause that the people unanimously accepted the Crown's offer.'⁸⁸⁰ The following day, Takurua Tamarau, Sonny White, and Tui Tawera accepted on behalf of Tuhoe the £100,000 compensation (together with interest accrued from 6 November) as a 'full settlement.'⁸⁸¹ The hiatus between the settlement and the actual payment allowed the Maori Affairs Department to arrange for the constitution of a Tuhoe Maori Trust Board, so that it could receive the payment. This Board was subsequently made a legal entity by section 9(1) of the Maori Purposes Act 1958, which came into force on 25 September 1958, while section 9(3) of the same Act contained the appropriation for the compensation to be paid to the Board in return for the 'discharge of all claims and demands against the Crown.' The beneficiaries of the Trust would be 'the persons to whom land was allotted under section seven of the Urewera Lands Act 1921–22 and their successors in title (being Maori or the descendants of Maoris)' (section 9(2)).

Can it be said that the roading settlement was fair, both in its terms and in the process by which it was achieved? Counsel for the Wai 36 Tuhoe claimants submitted that the settlement failed to take into account the full range of effects the Maori owners suffered due to the Crown's failure to construct the arterial roads. Counsel argued that a proper settlement would have applied the legal principle of '*restitutio in integrum*', and that the owners were entitled to claim damages in the same way as a plaintiff in a civil case. This means that the offending party (in this case, the Crown) would ensure that the offended party (the owners who gave land as their roading contribution) were left no worse off by the contractual breach, and equally the offending party should not be able to profit as a result of the breach. The various losses suffered by the Maori owners, counsel for Wai 36 Tuhoe explained, may be defined as the restitution interest (the original contribution made by the party to the contract), the reliance interest (the losses resulting from the steps taken by the party in the belief that the contract would be fulfilled), and the expectation interest (the loss of benefit, and opportunity to profit from the completion of the contract).⁸⁸²

Counsel for Wai 36 Tuhoe observed that the Crown could have done more to meet the restitution interest, as it was within the power of the Crown to return the land taken. Instead, by offering only a cash payment, counsel argued that Maori owners were short-changed, since the valuations on which the payment was based (the same as those used for Crown

880. 'Report of a meeting held at . . . Ruatoki . . . on Wednesday 6 November, to discuss a settlement of the Urewera roading petition' (Crown counsel, Urewera Consolidation & Roading document bank (doc M31a), p 1704)

881. Cleaver, 'Urewera Roading' (doc A25), p 118

882. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 139–140

purchasing in the Reserve blocks and the consolidation scheme) were too low. On the question of the reliance interest, counsel noted that the Crown gave no remedy to Tuhoe owners who had sought to take their respective awards along the line of the promised roads, and were subsequently left with titles to blocks with little practical access. As for the expectation interest, counsel observed that nothing was offered to compensate Tuhoe for the investment they had made in blocks which were meant to have road access, or for the profits which that investment might have been expected to generate, but did not. Finally, counsel pointed out that the estimated cost of road construction ballooned to £225,000 by 1922: compensation should have been based on the increased value of what was promised, rather than the original and inaccurate estimates. Not to do so would see the Crown profit by its breach of contract, since it did not have to meet this unforeseen expenditure.⁸⁸³

Crown counsel, in contrast, submitted that the settlement was ‘reasonable in all the circumstances’. The Crown based its compensation on the full value of the land when the contribution was made, allowing for a 5 per cent annual interest rate in the interim period. This amount was in fact generous, counsel implied, because a significant portion of the arterial roads were actually built. Counsel acknowledged that ‘there were flow-on effects’ for the Maori owners due to the Crown’s non-completion of the promised roads and that these effects would be subject to the Tribunal’s consideration. However, counsel argued, ‘a damages approach is not appropriate for historical grievances.’⁸⁸⁴

We agree with the Crown that the approach proposed by counsel for Wai 36 Tuhoe would ordinarily be inappropriate for settling contemporary Treaty claims, which settlements are based on a different set of criteria. But the question before us is whether the 1958 settlement was adequate compensation for the Crown’s failure to meet its obligations under the Urewera Consolidation Scheme. By this measure, the settlement is clearly found wanting, and we have been significantly aided by the criteria counsel for Wai 36 Tuhoe put to us.

The settlement was first and foremost unfair because the Crown deliberately shut off the legitimate option of returning the land, which was the Maori owners’ preferred form of compensation after the Crown had ruled out the possibility of completing the roads. Both Judge Harvey and the Under-Secretary for Maori Affairs considered that returning the land was the most sensible course of action to compensate the owners. And in fact there is no reason why the land could not have been returned, even if it was not in the form of an addition to each of the 183 blocks from which deductions were made. It would have been difficult to return the land in this way to each of these blocks: although the approximate amount of land deducted was known, the boundaries of the blocks were only roughly drawn according to ‘good fencing lines’. The boundaries of each of the 183 blocks would have required re-surveying to include the additional area, and given how this played out in the consolidation scheme it is unsurprising that this was never contemplated. But other

883. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 139–140

884. Crown counsel, closing submissions (doc N20), topics 18–26, pp 102–103

options could have been explored, similar to Knight's early proposal to take land for survey costs from a single area from the lands considered unsuitable for settlement. A single area within the Crown's award could have been returned to the co-ownership of all the Maori owners of consolidated blocks in accordance with their shares. Other areas were available for return, such as the part of the Ruatahuna Township Reserve that was utilised by the Ruatahuna Development Scheme, as well as some of the land around Minginui and on the Whirinaki block which the Crown set aside to exchange with lands subject to milling restrictions. Instead, Corbett simply told Maori owners in the October 1957 meeting that the land could not be located, and therefore could not be returned. There were any number of permutations that might involve the return of land, but the Crown would not consider any of these because it had its own agenda. It wanted more land, not less.

In fact, Corbett's statement at the meeting with Maori owners disguised the Crown's true intentions, which were disclosed in Gerard's memorandum to Cabinet: the Crown would not return the land to Maori because it in fact wished to acquire more land from them (for the national park). Ultimately, the Crown was only motivated to come to a settlement when it was in its interests to do so. Maori owners had to wait 20 years after they began making forceful protests, because the Crown did not consider it a priority. The fact that Ministers only took action to compensate the owners when it was anxious to negotiate to acquire even more Maori land is a further indictment on the settlement. Had their petition been addressed with some degree of urgency, land might have been returned to them. Instead, the Crown proceeded from the early 1950s with its plans for the creation of the national park. At a crucial point, when it was decided to put all of its land into the park (which included the Maori owners' land contribution for the roads), the owners were told that no land was available for a settlement. In chapter 16, we consider these events in the context of the park's history, and whether the park's creation and management constituted a fresh Treaty breach against the Maori owners of the former Reserve. At the very least, it is clear that the settlement cannot be considered 'reasonable in all the circumstances' when it was achieved primarily to facilitate Crown acquisition of Maori land, as the broken promises of the Reserve resonated decades later. It can hardly be considered as the basis of a settlement for one of the key failed promises of the Urewera Consolidation Scheme, which Maori owners had been led to believe would see the end of Crown purchasing as well assistance in development opportunities through the construction of arterial roads. Such a settlement can hardly be considered appropriate restitution for one of the key broken promises of the Te Urewera Consolidation scheme: that Maori owners would secure arterial roads as the basis for economic development.

But given the circumstances of the negotiations, it is not surprising that Maori owners quickly gave up their long-standing quest to have land returned and instead agreed to the Crown's cash offer. Counsel for Wai 36 Tuhoe questioned the process through which the

negotiations took place and whether the Maori owners were given adequate opportunity to seek legal advice in the negotiations.⁸⁸⁵ From the records of the meetings on 1 October and 6 November, the Maori owners appear to have had no legal representation or professional advice. They were subsequently left to negotiate directly with Ministers who had already established that no land would be offered back and that a cash settlement would be offered instead that would merely compensate for the value of the land plus interest. The owners' rapid acceptance of the first offer is perhaps understandable, given their repeated failures to have their protests taken seriously. But more importantly, their discussions with Gerard and Corbett left them with little choice: the land, they were told, could not be returned to them because it was now part of the national park. This was, in fact, not true. Yet, Corbett (like Coates in May 1921) had assured them of his determination to see justice done – and he did so at what was effectively his farewell meeting with Tuhoe leaders – which must have carried considerable weight with those leaders when they came to consider the offer. It is also possible that the impending general election (held on 30 November) impinged on the negotiations. Indeed, Sonny White questioned whether the assurances relative to the National Park would be affected by it.⁸⁸⁶ Certainly it would have been difficult for the Crown to revise its offer if the owners had rejected it on 6 November. Given that the Crown had delayed negotiating a settlement with the Maori owners for so long, it should have done more to ensure that the negotiations took place on a more even footing.

These circumstances alone mean the settlement was improper. But it is also clear that what was agreed to was less than generous, in light of the full range of impacts of the Crown's failure to meet its promise. The monetary compensation offered was less than the face value of the original contribution, plus the 5 per cent compounding interest over the 35 years the Crown had been the beneficiary of the contribution. It cannot be said that this final reduction to £100,000 made the offer 'a fair amount, satisfactory to the honour of Government'. Purely on a financial basis, the £100,000 payout compares very unfavourably with the recommendation made by RG Dick in his report written 20 years earlier, that the estimated expenditure needed to complete the roads (some £230,000) 'should be expended in the development' of areas at Ruatahuna and in the Whirinaki valley instead. And although the Crown did spend some £73,500 on constructing parts of the arterial roads (according to Dick's 1937 figures), this does not make the settlement 'reasonable' either. The Crown's promise under the consolidation scheme was to complete two arterial roads, not a small portion of them. Indeed, when the Crown reneged on its obligation to build the roads, it was saved a great deal of expenditure which it would have otherwise incurred. Its failure to properly estimate the cost of the roads was a mistake entirely of its own making. So in our view, it would be reasonable to expect that the Crown would share with the Maori owners

885. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), p 139

886. Report of a meeting held at . . . Ruatoki . . . on Wednesday 6 November, to discuss a settlement of the Urewera roading petition' (Crown counsel, Urewera Consolidation & Roothing document bank (doc M31a), p 1703)

the huge saving it obtained by being released from its obligation to build the roads, and that saving must have been much greater than R G Dick's figure 20 years earlier.

The settlement also made no attempt to address the very obvious prejudice suffered by Maori owners of the consolidated blocks located along the promised arterial road lines. This is what counsel for Wai 36 Tuhoe identified as the 'reliance' and 'expectation' interest. As we have explained, Maori owners were led to believe that their contribution would ensure the roads were built promptly. The prospect of having these roads was one of the key reasons why they agreed to the consolidation scheme in the first place. In the next chapter, we explain how the partially completed roads provided little practical benefit to the Maori owners, especially after maintenance work was abandoned. Yet, significant effort was expended in developing farming operations in the expectation that the roads would provide access to markets.

On top of this, officials failed to give notice to Maori owners that the Crown was abandoning its commitments to the roading scheme. It was not until 1946, when the court deputy registrar, Dillon, travelled to Maungapohatu to ascertain whether the community would accept evacuation, that the Crown seems to have made an effort to have its policy explained on the ground. Only after this did Takarua Tamarau petition for the return of the owners' roading contribution. And it took another eight years before the Crown made the owners an offer of settlement. Equally, the settlement offered no remedy for the ongoing costs such blocks would be faced with after 1957 because of the lack of roads.

Some claimant groups also raised concerns about the way the settlement money was transferred to Maori owners. Counsel for both the Tuawhenua and Nga Rauru o Nga Potiki claimants submitted that the Crown should have ensured that compensation was made directly to the owners, rather than to a newly formed trust board.⁸⁸⁷ We have not seen any evidence to indicate that Maori owners at the time were unhappy with this decision. Although it was Corbett who first suggested a Trust Board at the 1 October meeting,⁸⁸⁸ Sonny White observed at the hui on 6 November that 'in their earlier meetings, they had decided on a Trust Board to administer the moneys for the benefit of all the Tuhoe people.'⁸⁸⁹ In their letter accepting the Crown's offer the day after it was made, Takarua Tamarau, Sonny White, and Tui Tawera stated that a unanimous decision had been reached to form a Tuhoe Trust Board to be recipient of the compensation. There is no clear evidence, therefore, to indicate that a Trust Board was imposed on Tuhoe against their wishes.⁸⁹⁰ The claims now made indicate current dissatisfaction with the Trust Board rather than a legitimate complaint as

887. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 72–73; counsel for Tuhoe Tuawhenua, Second Amended Statement of Claim, 30 September 2004 (doc 1.2.12(b)), p 234

888. Cleaver, 'Urewera Roading' (doc A25), p 115

889. Report of a meeting held at . . . Ruatoki . . . on Wednesday 6 November, to discuss a settlement of the Urewera roading petition' (Crown counsel, Urewera Consolidation & Roading document bank (doc M31a), p 1704)

890. Tamarau, White, and Tawera, to R G Gerard, Minister of Lands, 7 November 1957 (Crown counsel, Urewera Consolidation & Roading document bank (doc M31a), p 1705a)

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to the recipient of the settlement monies. Further, it seems reasonable that the settlement was handled on a collective basis, since all blocks (except for the majority of those in the Te Whaiti series) had been subject to the same one-quarter deduction for roading costs, irrespective of their location. Had the Crown returned land, as we have noted, we would expect it to have been returned to a collective body or bodies that would have administered the land on behalf of the people. The trust board was probably the best equivalent to a committee of management available at the time to receive the settlement money.

While we are unable to fault the manner in which the settlement money was handed over, this does not alter our overall assessment of the settlement itself. It was unreasonable that the Maori owners had to wait until 1957 before the Crown was willing to offer any compensation. The road work itself was quickly abandoned shortly after the discovery that the Crown's land would not be suitable for settlement. By the end of 1929, the Public Works Department had determined that the roads would not be worth completing; a policy that was formally adopted by Ministers in 1937, following increasingly insistent protests from Maori owners who wanted either the return of land or the completion of the roads. Given these factors, and given the importance of the roading promise to the Urewera Consolidation Scheme, some form of settlement should have been immediately forthcoming. Instead, the Maori owners had to wait another 20 years. A fair settlement would have seen the return of the land plus adequate compensation for the reliance and expectation interest. As it stands, Maori owners received a payment that has been of great benefit to them, but the land remains in Crown ownership.

14.9.7 14.10.7 Conclusions – roads

The Consolidation Scheme Report had noted that the promise of arterial roads was one of the key factors that persuaded Maori owners of the Reserve to support the proposed consolidation scheme. The authors noted: 'the Urewera Natives were moved to agree to the consolidation proposals chiefly by the consideration that out of the scheme would emerge for the non-sellers defined sections, ready surveyed and accessible by or handy to arterial roads.'⁸⁹¹ Sonny White repeated these themes in 1957, during the settlement negotiations:

This land. The Tuhoes that didn't want land, the Crown bought them out; the Tuhoes who wanted land kept it but contributed a substantial amount towards roading. I was only 20 at the time. At that time the only outlet for the Ruatahuna people who were trying to eke out a living was from Whakatane, and the mere fact of the Crown promising a road down the Whakatane was the thing that these people – who were the only land-minded ones of the Tuhoes – grasped because they wanted to make progress. They thought that the Crown was going to put roads in straight away and it would then be a means to open up country,

891. Knight, Carr, and Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, p7

and at that time they were living off the land. These were hard years and they were trying to make a living off the land, and they did this fully expecting that the road would be put in very shortly. So I think, Sir, that most of those people, because of the promise to put these roads down the rivers, felt they would consolidate their interest down the rivers because of the promise of the roads going down the rivers. That was the biggest factor in their giving land for roading.⁸⁹²

Seen in the light of these hopes, the quick abandonment of the Crown's promise and the final decision in 1937 not to deliver upon it is particularly egregious. Maori owners of the Reserve, from the proposals of Numia Kereru and Rua Kenana in 1908, had placed considerable stock in the development potential associated with the introduction of main roads in their rohe. Yet, in return for giving up a quarter of what would have been their future lands, the Maori owners (apart from those who had land lying along the Rotorua–Waikaremoana road, or the Whirinaki Valley road), were left with either no road access at all or access from unmaintained roads and tracks that rapidly deteriorated.

One of the worst aspects of the consolidation scheme is that the Maori owners need never have sacrificed a single acre to pay for arterial roads. As we have seen, Government policy at the time was to fund main roads from the public works account. Sometimes, the Crown was reimbursed for part of the cost, whether by local contributions or by charging a higher price for Crown land, but by no means always. Mostly, the Government expected to be repaid in a more general way through economic development and an increased tax base. The problem for Maori was that all this funding was focused on opening up new districts or 'back-blocks' for European settlement. In the meantime, the Crown had steadfastly resisted pressure to build roads in Te Urewera (to keep the prices paid to Maori lower), but it was finally ready to provide roads in 1921 in expectation of an influx of settlers. Thus, neither law nor policy required the Maori owners to contribute towards the payment for these roads. They need never have lost a quarter of their remaining land for roads that – to make matters worse – were never built. In our view, the Maori owners were misled into thinking that a contribution for roads was required. Ultimately, the responsibility for misleading the owners lay with Ministers at the May 1921 Ruatoki hui.

In the event, the roading commitment made by the Crown in the Urewera Consolidation Scheme was more than Government departments were willing to fulfil after plans for settlement were abandoned; the revised and increased estimates for the cost reminded officials that the Crown did not fund main road construction through Maori land, and diverted the work elsewhere. The difference can be seen today in the upper Waimana Valley and the Waioweka Gorge; but also in all the land remaining in Maori ownership in Te Urewera, which was 25 per cent smaller than it would have been otherwise. The discovery that Maori

892. Transcript of visit by Takarua Tamarau, Sonny White, and 29 others of Tuhoe to EB Corbett and RG Gerard, 1 October 1957 (Nikora, 'The Urewera Consolidation Scheme' (doc E7), app D, p 76)

owners alone would use the roads meant that there was no longer a sufficient justification for the investment, because their needs did not factor in the Crown's plans for regional economic development. This was the ultimate outcome of the Urewera Consolidation Scheme: the failure of the Crown's promises to create a self-governing Native Reserve and the failure of the Crown's alternative plans for the land, which only served to further undermine the hopes of Maori owners to develop their remaining lands.

Tuhoe persistence finally secured a Crown response to their search for the return of land for the roads that had been promised. In 1957, the Minister of Lands was prepared to acknowledge (in a memorandum to Cabinet) a 'moral obligation' to either return land or compensate the owners. But Tuhoe leaders were told that the land could not be returned because it was not clear how it could be done – and in any case the land was 'tied up' in the Te Urewera national park. It was not, in fact, as no order in council had been issued; only the Cabinet decision had been taken. But that decision reflected the Crown's anxiety to acquire more Maori land for scenery and catchment conservation purposes, and for the national park. Putting its own land in the park, and settling the roading grievance, Cabinet understood, were the preconditions for success in purchasing Maori land. Gerard's proposed settlement figure of £113,400, that is £19,975 with 5 per cent compound interest from January 1922 was then cut back to £100,000 (plus interest until payments were made) – a less than generous offer in all the circumstances. Tuhoe, evidently without legal representation, were left with little room to negotiate; they were told at the outset that the offer on the table was a cash settlement. It was not surprising, after so many years, that they accepted it.

14.10 14.10 TREATY ANALYSIS AND FINDINGS

Broken promises piled upon broken promises: that is the story of the UDNR Act and the Urewera Consolidation Scheme.

In essence, the Crown argued in our inquiry that a consolidation scheme was the fairest and most effective way to divide the interests of the Crown and Maori in the Reserve, that the surviving Maori owners consented to the scheme in principle and in its details, and that the scheme was carried out fairly and with an eye to the mutual benefit of both parties. While survey costs 'roused suspicions', cheaper methods of survey were not viable and there is simply insufficient evidence to determine whether Maori were treated unfairly, or to explain why they had not received land transfer titles after the surveying was completed (and, therefore, to determine whether the Crown was at fault). The Crown's one concession of Treaty breach was in respect of roads. While it affirmed the principle that Maori should have contributed land towards the costs of roads, the Crown conceded that the roads were never completed, which was fatal to the integrity of the scheme, prejudicial to Maori, and in

breach of the Treaty. In respect of the Waikaremoana block, the Crown admitted that it was 'unconscionable' for it to have acquired Ruapani interests worth 15 shillings an acre for the price of six shillings per acre, but it made no other concessions.

The claimants, on the other hand, argued that they never gave their free, willing, or informed consent to the Urewera Consolidation Scheme. Because the Crown had closed the avenue of partitioning in the court, they were left with no choice. They did not consent to the scheme. Further, they argued that the Crown favoured its own interests at the expense of theirs in the division of the land. In particular, the Crown acquired the whole of Waikaremoana by the threat of compulsion, leaving Tuhoe no choice but to exchange their interests, and leaving Ruapani and Kahungunu with no choice but to sell at the Crown's price. It was unconscionable, the claimants said, that the Crown obtained not only Waikaremoana but also almost half of the land with which they entered the scheme by means of improper survey costs, the roading contribution, and fresh Crown purchase of individual interests during the scheme. Also, the claimants argued that they effectively paid twice for the survey of their lands (because the cost of survey had been factored into the low valuations made in the 1910s), that they were over-charged for the surveys, that the resulting land loss was excessive, and that cheaper methods could have safely been used since they never got the promised land transfer titles. The claimants agreed with the Crown that its failure to complete the promised arterial roads was in breach of the Treaty, but they also argued that they should never have had to make a contribution in the first place, and that the contribution was excessive because (once again) they were paying twice.

In our analysis of these arguments, we paid particular attention to the origins of the scheme and the question of Maori consent to it (in principle and in its particulars). In our view, the Crown had indeed left those among the peoples of Te Urewera who still clung to their unsold individual interests with little choice; since the option of partitioning in the Native Land Court had been taken away by law, and since they could do nothing else legally with their remaining land except sell it to the Crown, a consolidation scheme was literally the only game in town. Having said that, however, the non-sellers were aware of consolidation in a more positive sense as a tool to rescue scattered and unusable interests and to pool them for the purposes of economic development. Although they had no choice, in effect, they welcomed the outcomes they expected to be achieved by a consolidation scheme. They wanted to separate their interests from the Crown and locate them on the ground. They also wanted to stop the bleeding of individual interests and guarantee their ownership of what they had left; land transfer titles, they were told, were the answer. Although Ngata advised that Crown financial and business assistance would be required before Maori farming could really be made a success on their consolidated lands, this advice was ignored for at least a decade.

Thus, we cannot find that the peoples of Te Urewera were coerced into accepting a consolidation scheme. Rather – in the circumstances in which a decade of unremitting Crown purchasing had left them – they welcomed it as the only possible way forward.

This does not mean, however, that the surviving Maori owners gave their free, willing, and informed consent to the particulars of the scheme that was put in front of them. This question turns on the events of two hui: the May 1921 hui at Ruatoki, at which the assembled owners agreed in principle to a scheme; and the August 1921 hui at Tauarau, at which the owners organised themselves into consolidation groups and negotiated many of the details of the scheme with the Crown's representatives, Knight and Carr, assisted by their selected representative, Apirana Ngata. In this respect, the Tauarau hui was crucial. Officials had had months to prepare a draft scheme that would deliver the Crown's objectives: as much land as possible for settler sheep farms, timber milling (especially at Te Whaiti), and watershed conservation. The Maori owners, however, were only given two days to respond to the Crown's proposals, and they did not have the kind of information or advice that Mr Nikora suggested was essential for owners to make informed choices in a consolidation scheme. As a result, the Maori owners were clearly on the back foot at Tauarau, and the Crown had a significant advantage. As one example, we note that Maori might have organised the size and location of their consolidation groups differently, had they been properly informed as to how much greater were the costs for surveying remote blocks that were small in size and (because of the number of blocks) had so many boundaries.

Nonetheless, we agree with the Crown that the Maori owners bargained hard and with some success. Ngati Whare and Ngati Manawa leaders, for example, were able to secure separate arrangements for Te Whaiti in recognition of their limited interests in most of the lands that would form part of the scheme. Tuhoe acquired much more of what was thought to be the farmable land in the north of the Reserve than the Crown had planned to allow them, and they forced the inclusion of Waikaremoana lands in the scheme by threatening a total withdrawal if their wishes were not met. Ngati Ruapani secured agreement to separate arrangements with them, since they had no land in the scheme outside Waikaremoana into which their interests could be exchanged. Also, the Maori owners were allowed complete autonomy as to the size, number, and composition of their consolidation groups, and exercised a significant degree of choice as to where those groups would have their interests located. We see no reason to doubt that the owners' committee was representative, and that it was – for the brief period it operated – a vehicle for the autonomy of the surviving owners. To that extent, the claimants shaped many of the outcomes of the scheme, since the Tauarau hui decided the division of four-fifths of the land in a relatively final fashion. (The exact location of boundaries still had to be established on the ground.)

According to the Crown, we should judge the outcomes of the Tauarau hui by the promises made by Ministers to Maori, especially at the preceding May 1921 hui at Ruatoki. In sum, Coates and Guthrie promised that the scheme and its outcomes would be to the mutual

benefit of Maori and the Crown (meaning future settlers), that Maori interests would be protected (especially by 'their' Native Minister), that the Government desired to do them justice, and that the Government desired justice for both its peoples. A previous generation of Maori leaders had heard these kinds of promises before, when Seddon and Carroll toured Te Urewera in 1894, and when they had assembled in Wellington to negotiate with Seddon in 1895. According to Crown counsel, this time the promises were kept: the consolidation scheme was of genuine mutual benefit to Maori and the Crown, and Maori interests were protected (except in the failure to build roads).

As we discussed in section 14.5.1(6), we accept these standards as minimum standards for judging the scheme. At the time that Seddon first promised the mutual benefits and protection inherent in the Treaty (see chapter 9), the Reserve lands were still the undisturbed rohe of the autonomous peoples of Te Urewera. But at the time that Coates and Guthrie made similar promises at Ruatoki, the supposed Reserve was in ruins, Maori autonomy had been gravely undermined, and a consolidation scheme was only necessary because the Crown had created what it called a 'parlous' state of affairs by breaking its promises and relentlessly purchasing individual interests. Mutual benefit and equally fair outcomes for Maori and the Crown would have been the appropriate Treaty standards, where there was a level playing field for both Treaty partners, but that was not the situation in Te Urewera in 1921. Essentially, the Crown put to us that it should benefit mutually with Maori from a consolidation of interests which it had purchased in massive breach of the Treaty, and to the great prejudice of the peoples of Te Urewera. We cannot agree with that proposition. Mutual benefit and equally fair outcomes for both 'co-owners' in the Reserve are *minimum* standards for the Crown to have met in carrying out the Urewera Consolidation Scheme.

To a large extent, the Tauarau hui did meet those minimum standards. As Coates had instructed, there was a 'round-the-table conference' characterised by 'give-and-take' and the 'spirit of reasonableness'. A significant degree of autonomy was accorded to the Maori owners: they organised their own consolidation groups and locations through their own elected committee; and the committee bargained with the Crown and secured agreement to some of its wishes. But there were also ominous signs for how the scheme might be carried out after the hui: Maori had agreed to pay for surveys in land without knowing how expensive the surveys would be or how much land might be taken; Maori had agreed to a roading contribution to the tune of £20,000 worth of land; and Maori had agreed to what was in fact a draft scheme but no process had been set down for how that scheme would be finalised or how future decisions would be made. In the event, the owners' committee never met again and the Crown dealt only with the much smaller collectives (the consolidation groups) created at the hui, which – as we have seen – operated from a more unequal position of power after the Tauarau hui.

Finally, in respect of the arrangements negotiated between the 'co-owners' of the Reserve at Tauarau, the Crown had made three definite promises to the Maori owners, all of which it

failed to keep. These promises were recorded by Ministers and officials at the time as being: first, a promise that no more individual interests would be purchased, at least until after the scheme was completed (a promise confirmed by Coates after the hui); secondly, a promise of land transfer titles (at the cost of full surveys by theodolite, to be paid for in advance by a deduction of land prior to survey); and, thirdly, a promise of two arterial roads and side roads to provide access to the newly consolidated Maori-owned lands. To have met its own standards of mutual benefit, protection of Maori interests, and justice to Maori, the Crown at least had to honour these definite undertakings to Maori.

After the completion of a draft scheme at Taurarau, the Crown's conduct changed considerably. It did not – as Mr Nikora suggested would have been appropriate in a well-conducted scheme – refer the final version of the scheme back to its co-owners for their approval before setting its terms by statute. Then, Consolidation commissioners were appointed with sole authority to make final decisions about the location of awards and any other matters to do with the scheme. While the officials themselves had recommended giving the Maori owners a right of appeal to an independent arbiter – by their reckoning, the Chief Judge – the legislation did not include this safeguard. Thus, the Urewera Lands Act 1921–22 gave the Crown co-owner absolute power to make all further decisions in the scheme. This Act was in breach of the Treaty principles of partnership and autonomy, depriving Maori (who were co-owners with the Crown) of any further powers of decision-making, and giving them no avenue of redress if the Crown co-owner made decisions that favoured its own interests.

In terms of prejudice, we note that the commission was in fact commendably flexible in its decisions about the northern parts of the Reserve, and met the wishes of the Maori co-owners there to a considerable extent. It was otherwise, however, in the case of the Te Whaiti and Ruatahuna lands.

In the case of Te Whaiti, the commission refused to alter the provisional arrangements negotiated at that place after the Taurarau hui, wrongly stating that those arrangements had been final. Instead, it used its absolute powers in favour of the Crown's interests, so as to obtain the lion's share of the millable timber on the blocks. Maori interests were, on the whole, relegated to a comparatively worthless residue block, instead of the Te Whaiti valley where the owners had wished to locate them. We agree with Ngati Whare and Ngati Manawa that the Crown has breached the principles of the Treaty of Waitangi, to their significant prejudice. As we found in chapter 13, the Crown acquired its interests in the Te Whaiti blocks in breach of its Urewera District Native Reserve promises and in breach of the Treaty. It should, therefore, have accorded the Maori owners first choice for the location of their remaining interests, and it should have done everything in its power to honour that choice. Instead, the Crown breached the principles of partnership, active protection and – particularly – redress of past breaches when it forced its own choices on the peoples of Te Whaiti, sacrificing their interests in favour of securing their valuable timber for itself.

At Ruatahuna, the situation was somewhat different. Te taha apitihana leaders did not dispute the location of their interests so much as the conduct of the scheme as a whole. They wished to withdraw unless the Crown met their concerns, especially in respect of its ongoing purchase of individual interests, the amount of land being taken for surveys, the taking of any land at all for roads, and what they considered to be their forced evacuation of Waikaremoana.

This opposition to the scheme did win one major concession: survey costs for their lands were significantly lower than for other lands in the Reserve, after the passage of special legislation to permit cheaper survey methods at the discretion of the commissioners. Otherwise, however, the commission simply imposed its will on te taha apitihana, as the law allowed it to do, locating all their interests in one 'composite title' regardless of their wishes. Ultimately, the passive resistance (through non-participation) of te taha apitihana may even have made it easier for the commission to secure a significant amount of southern Ruatahuna lands for the Crown, which it wanted for watershed conservation purposes. This ran contrary to the decisions at Tauarau, which had seen Maori interests concentrated in the old (Reserve) Ruatahuna blocks and the Crown's interests excluded. Some of those who had wanted to protect the heartland (Te Manawa o Te Ika) were forced to take part of their interests elsewhere. Also, the Crown awarded itself a 60-acre township reserve without the consent of the local community to either the creation or the location of the proposed township.

As at Te Whaiti, the Crown's previous Treaty breaches in its acquisition of interests meant that it had to put the wishes of the Maori owners first. Whether or not they should have been allowed to withdraw from the scheme altogether – which was not the majority wish at Ruatahuna – the commission should never have been empowered with sole decision-making authority. Its use of this power to crush te taha apitihana and locate their interests despite their opposition and non-participation, and to secure for the Crown land sought by both co-owners (Tuhoe and the Crown), was in breach of Treaty principles. This was not the partnership, the active protection, or the redress of just grievances that the peoples of Te Urewera had been promised in the Treaty.

Not all of the claimants' contentions, however, can be upheld. We are satisfied from the evidence before us that the Crown did not acquire a 'windfall' of 45,000 acres, nor did it acquire land for public works over and above its existing entitlement. Further, it agreed to set aside 27 small papakainga and urupa reserves free of charge to the Maori owners, over and above Maori entitlements as at the beginning of the scheme in 1921. While we cannot accept the claimants' contention that there was a 'general failing' to make the reserves sought by Maori, we do note that six proposed reserves (including Maungapohatu, Huiarau, and Waikokopu) remained Crown land and were not set aside in the proper manner, despite legislative authority to do so. This appears to have been a deliberate move on the part of the Crown. Officials' immediate reaction (prompted by the commissioners) was to consider the

value of the area to the Crown for ‘forest or climatic’ reserves. They at once also costed the surveys for setting aside Maori reserves and concluded that Maori interests needed no more protection than was afforded by the creation of the Crown reserves. Even though a survey of the proposed Maungapohatu burial reserve was made in 1924 after Tuhoe leaders continued to raise the matter with the commissioners, and a list of names was forwarded, the reserve was not vested in Maori. The commissioners further failed to recommend to ministers that the Waikokopu hot springs be vested in Maori, once the provisions of the 1923 amending legislation provided them with the opportunity to revisit their earlier decision that the springs be vested in the Crown. These decisions had very important consequences for Maori, since all the reserves remained in Crown ownership. The failure to make these reserves, which Maori had sought and (in most cases) understood the commissioners to be recommending on their behalf, was in breach of the principle of active protection.

We also note here that the commissioners refused what was, in all the circumstances, a modest increase of Ngati Ruapani’s reserves in 1925 (from 607 to 3,220 acres, or one-tenth of what they had sold to the Crown). Ruapani made this request after the Tapper’s farm deal had fallen through but the Crown had nonetheless proceeded with the taking of two of their four southern reserves, which was finalised in January 1925, thus leaving them with even less land south of the lake instead of the promised increase. The commissioners found Ruapani’s request for more reserves ‘unreasonable’ and saw ‘no reason why the original agreement to return 600 acres should not be adhered to.’⁸⁹³ In our view, circumstances had clearly changed by 1925 and the commissioners were not justified in refusing the Ruapani request. We thus find the Crown in breach of its Treaty duty of active protection.

What was particularly worrying about the Crown’s conduct, however, and did not bode well for the promises made at the Ruatoki and Tauarau hui in 1921, was the commissioners’ purchase of individual interests while they were implementing the consolidation scheme. Despite Coates’ acknowledgement of a promise to the Maori owners, and despite Maori protest, the Crown purchased individual interests equivalent to 5,976 acres during the course of the scheme. This was in violation of the Treaty principle of active protection. It was not the honourable conduct required of a Treaty partner.

Overall, we find that Maori did consent to the Urewera Consolidation Scheme but that they lacked the technical information and advice at Tauarau that might have enabled them to make the best or the most strategic choices. Much of the Crown’s conduct at Tauarau, however, was in keeping with Treaty principles. Although Maori owners were inevitably on the back foot in responding to the Crown’s proposals, we do see signs of the give and take, the spirit of reasonableness, and above all the making of decisions at a round-table conference of equals, which Coates had instructed the officials to pursue. Certainly, what happened at Tauarau was much more ‘equal’ than what was to follow.

⁸⁹³ Urewera minute book 2A, 22 February 1925, p 228 (Vincent O’Malley, comp, supporting papers to ‘Waikaremoana’ (doc A50(a)), p 333)

Nonetheless, the origins of the scheme in the broken promises of the UDNR and the Crown's purchase of undivided individual shares, in breach of the Treaty, meant that the interests of the Maori owners now had to come first. 'Mutual benefit' and equality of outcomes was not something to which the Crown was entitled, given the manner in which it had made itself a co-owner in the Reserve. The Crown agreed to some of the owners' requests at Tauarau, and their committee had considerable autonomy in determining both the consolidation groups and the broad location of their interests. But what followed the Tauarau hui was not consistent with Treaty principles. The Crown co-owner legislated itself absolute power to make all further decisions. The draft scheme was made final (and changed in significant ways) without referring it back to the Maori owners' committee for their consent. And the commissioners used their power to favour the Crown's interests at Te Whaiti and Ruatahuna, imposing decisions on the peoples there in violation of the Treaty and to their prejudice. Even worse, the commissioners resumed purchasing individual shares as if they were Crown purchase agents, in violation of the Crown's promise and Treaty principles.

We turn next to three features of the consolidation scheme which require more detailed consideration and findings: the Crown's acquisition of the Waikaremoana block; the Crown's acquisition of one-fifth of the remaining Maori land for survey costs with a promise that full surveys would result in land transfer titles; and the Crown's acquisition of a quarter of the remaining Maori land on the basis that this contribution was necessary in return for its promise to build arterial roads – a promise that the Crown concedes it did not keep.

Dealing with Waikaremoana first, we find that there was a degree of compulsion in the Crown's acquisition of that block. First, Ministers made their intention to acquire Waikaremoana clear at the May 1921 hui; the only question, as far as they were concerned, was *how*. As a result, Tuhoe were alarmed at Tauarau when the Crown proposed to exclude the block from the scheme. The alternatives were compulsory takings under the scenery legislation and – once again – the purchase of individual interests outside the control of Maori collectives and of no permanent benefit to them. When Tuhoe expressed their desire to have Waikaremoana in the scheme, so that they could exchange interests and thereby save more land at their main settlements, Guthrie was in favour but Coates preferred to use the scenery legislation. When that became known, Tuhoe were so alarmed that they threatened to overthrow the scheme and Coates relented. While compulsion was not overt, therefore, it was a definite factor in the choice made at Tauarau to vacate the Waikaremoana block in favour of other lands.

Secondly, Ngati Ruapani and Ngati Kahungunu were left with little choice but to agree to sell their interests to the Crown. Neither could exchange Waikaremoana lands for lands elsewhere in the scheme, and the Crown's decision to acquire the whole block had been confirmed at Tauarau. Again, the question was *how*. Ngata negotiated their asking price

down from £1 per acre to a minimum of 16 shillings, then agreed with Knight to a price of 15 shillings per acre, which was imposed on Ngati Ruapani and Ngati Kahungunu without their consent. In a way, this was less important for Ngati Ruapani because by 1921 they were confined to small reserves on the south shore of the lake, all that was left to them of the four southern blocks. Their agreement with Ngata was based more on the key promise that the Crown would buy farmland for them south of the lake (for which they were prepared to give up part of their purchase money and two of their less useful reserves), and that they would be paid in debentures (which would give them some immediate cash but also a longer-term investment).

Subsequent events reflect no credit on the Crown. Ngati Ruapani refused to accept the 800 acres of farmland purchased for them south of the lake because the Government had paid £9 an acre for it (almost twice the Government valuation). They would not accept the loss of one-third of the value of their Waikaremoana lands for so little land in return. The outcome was that Ngati Ruapani received no extra land south of the lake, still lost two of their four reserves, but without payment, and retained only tiny reserves (607 acres) north of the lake. This was a serious breach of the Treaty, by means of which Ngati Ruapani were rendered virtually landless.

Also, while the Crown agreed in 1923 to pay Ngati Ruapani for their northern reserves and then return them free of charge, in order to offset lowering the price per acre to 15 shillings, the commissioners then purchased some individual interests for cash instead of debentures, and at a rate of six shillings per acre instead of the promised 15 shillings per acre. Ngati Kahungunu owners, on the other hand, received nothing in return for the Crown's unilateral lowering of the price from 16 to 15 shillings an acre. Tuhoe, in the meantime, had exchanged their interests at only six shillings an acre, a rate set unilaterally by officials at Taurarau, which bore no relation to what both Knight and Ngata thought was the real value of the land (Knight thought it was worth 13 shillings an acre on average).

This aspect of the Crown's acquisition of the Waikaremoana block was also in breach of the principles of the Treaty of Waitangi. Not only was there an element of compulsion in the Crown's dealings with all three groups – Tuhoe, Ngati Ruapani, and Ngati Kahungunu – but it also breached the principle of equal treatment when it purchased the interests of two groups at a much higher rate than those of Tuhoe, when all three groups were tenants in common and entitled to the same increase in value. The principle of equal treatment, as the Tauranga Tribunal described, applies to 'the Crown's treatment of Maori, one with another, and one iwi with another.'⁸⁹⁴ It was not consistent with the Treaty for the Crown to 'allow one iwi an unfair advantage over another'. For the Tauranga Tribunal, this principle applied to whether the Crown treated hapu equally in its land dealings in the aftermath of the Tauranga confiscation. Here, we note that the Crown was in breach of the Treaty when

894. Waitangi Tribunal, *Te Raupatu o Tauranga Moana* (Wellington: Legislation Direct, 2004), pp 24–25

it 'underpaid' Tuhoe (by exchange of interests, not in a literal payment) at a rate of nine shillings per acre. Also, as Crown counsel accepted in our inquiry, it was 'unconscionable' for it to have paid Ngati Ruapani owners six shillings per acre in cash when they were specifically entitled to 15 shillings per acre. It was no less unconscionable, in our view, that their shares that were exchanged were valued at six shillings per acre. In addition, the Crown should not have denied Ngati Kahungunu compensation for lowering their price to 15 shillings an acre, when it was prepared to compensate Ngati Ruapani for the same action. In all these ways, the Crown treated the various tribes unfairly in relation to one another. All owners lost out: Tuhoe were 'underpaid' by nine shillings an acre; Ngati Kahungunu were 'underpaid' by 1 shilling an acre, and some Ngati Ruapani owners were 'underpaid' by nine shillings an acre for their individual shares.

Finally, the Crown failed to deliver on its undertakings with regard to the Waikaremoana debentures. First, the Crown's chosen administrator – the Native Trustee – failed at times to pay interest on the debentures during the Depression. Secondly, the Crown unilaterally altered the terms of the debentures, ultimately extending their period 25 years past the point when they should have expired, and paying lower interest rates than originally agreed – again, without consultation or consent. When the Crown finally paid out the principal in 1958, it did so without regard to inflation and thus underpaid owners who had so long been denied the principal. These shameful actions were in breach of the principles of partnership and active protection. Any private debtor would have ended up in court but the Crown simply legalised its actions, as so often has been the case in its dealings with the peoples of Te Urewera.

Next, we turn to survey costs and the Crown's promise of land transfer titles. After an extensive review of the evidence, we find that the Crown completely defaulted on its promise of indefeasible titles to the Maori owners; the only co-owner to obtain a land transfer title was the Crown. Although the Urewera Lands Act imposed hurdles in the way of registration, the reality was that the Maori-owned blocks were not registered because their surveys were not completed to the requisite standard. While the Crown's award was supported by a full survey plan, the Maori-owned blocks had only a topographical plan, which precluded their registration in the land transfer system.

Nonetheless, the commissioners took 31,500 acres – almost one-fifth of the land left to Maori at the beginning of the scheme – to pay for full surveys by theodolite, on the justification that such surveys were needed to support land transfer titles. Since the Maori owners ended up with topographic plans anyway, we cannot escape the conclusion that they would have been just as well served by cheaper methods of survey. Such methods would have allowed them to keep significantly more land for the same result (topographical plans). The Maori owners thus got the worst outcome in both respects – excessive land loss for survey costs and no land transfer titles. The Crown's failure to keep its promise was inconsistent with the honour of the Crown and in breach of the principle of active protection. This

failure exacerbated its refusal to use cheaper survey methods, which was also in breach of its obligation actively to protect Maori and their lands. This was not the ‘mutual benefit’ promised by the Crown, since the Crown got the only land transfer title as well as a large new area of Maori ancestral land.

Further, the Crown’s acquisition of almost one-fifth of the remaining Maori land for survey costs fell short of Treaty standards in a number of ways.

First, since the surveys were only necessary because the Crown had undermined the collective authority of Te Urewera tribes, broken its UDNR promises, and purchased one half of the inalienable Reserve by obtaining individual interests in breach of the Treaty, the Crown should have borne the full costs of the surveys. No Maori land should have been taken to pay for them.

Secondly, the acquisition of such a large extent of the Maori owners’ remaining land for surveys was far in excess of what was reasonable, even if they had obtained land transfer titles (which they did not). As we found in chapter 10, Maori owners who wanted to clothe their land with titles and use it in the colonial economy might have expected to lose about 5 per cent for that purpose. But the surviving Te Urewera owners in 1921 were already in possession of titles from the Urewera commissions and the Native Appellate Court, and they had been the most steadfast opponents of selling; hence, to lose well in excess of 5 per cent of their land for surveys because other owners had sold undivided interests and because their old titles were now considered worthless was in breach of the Treaty principles of equity (fair play) and active protection. Maori non-sellers should not have lost a single acre, let alone 18 per cent of their remaining land. Some owners lost much more than 18 per cent of their blocks because of the relatively low valuation of their lands, as compared to other, more highly-valued blocks. We suspect that all Maori owners lost out, however, because their survey deductions were calculated at unfairly discounted, out of date valuations, instead of at new, proper, up-to-date Government valuations.

Thirdly, due to an error in the earlier part of the implementation of the scheme, land was wrongly deducted at an average rate of 2s 8d per acre instead of 2s 6d, resulting in the Crown’s wrongful acquisition of an extra 4,000 acres of Maori land. This error was not corrected in the blocks that had already had land deducted, despite its discovery in 1923, mid-way through the implementation of the scheme. The failure to correct the error and return the wrongfully acquired land was in breach of the Crown’s Treaty obligation actively to protect Maori and their lands.

Fourthly, the set rate of 2s 6d per acre does not appear to have been lowered to account for common boundaries, whether with the Crown or other Maori-owned blocks. The available evidence supports the contention that common Crown–Maori boundaries were surveyed at Maori expense, and that the Crown’s award (by default) was surveyed at Maori expense. But a definitive answer is not possible because the final cost of the surveys (as compared to the estimates on which the deductions were made) is not known. From the evidence available

to us, it is likely that the estimated and final costs were close, and Maori may well have paid for the Crown's land transfer title, but it is not possible to say for sure. We cannot, therefore, make a finding of Treaty breach on these matters.

We do, however, note the shoddy record keeping and relatively opaque processes adopted by the commission, which resulted in the Crown today excusing itself of Treaty breach because 'suspicions' had been 'roused' in terms of survey costs but could not be proven. Parties in this inquiry have been hampered by the Crown's poor record keeping. The minutes of the commission, for example, are fragmentary at best (and non-existent by the end). While this does not, of itself, constitute a Treaty breach, the scheme failed to meet Mr Nikora's standard of transparency, which, as he observed, is a hallmark of a sound consolidation scheme.

Finally, we turn to the Crown's promise to build roads in Te Urewera, predicated on the Maori contribution of some £20,000 worth of land – one quarter of their remaining land in the consolidation scheme blocks, amounting to almost 40,000 acres.

First, we agree with the Crown's concession that its failure to complete the promised roads was fatal to the integrity of the consolidation scheme, prejudicial to Maori interests, and in breach of the Treaty. We do not, however, accept the Crown's submission that it had, at least, constructed one-third of the promised roads. As we discussed above, the correct figure lies somewhere between one-quarter and one-third, but a failure to maintain the roads has fatally compromised the utility of much that was built. The Crown's failure to keep its promise, therefore, is in no way mitigated by its construction of part of the promised roads.

Secondly, we agree with the claimants that they were under no obligation to have provided a single acre of land for arterial roads. We cannot accept the Crown's submission that local contributions of this kind were a prerequisite to attracting Government funding. The evidence before us is that central government funding was mostly reimbursed in the form of economic growth and an increased tax base. Most of the Crown's expenditure on roads in the central North Island, for example, was made without a matching local body subsidy. Loading the costs onto the sale price of Crown land only recovered about a tenth of the Crown's expenditure. Main roads, therefore, were often – perhaps mostly – built by central government funds without a local contribution. The Maori owners assembled at Ruatoki and Tauarau did not *have* to agree to a contribution, let alone such a large one as a quarter of their remaining land. So why did they?

As we see it, they were misled by Ngata and by Ministers into thinking that they did have an obligation to pay for roads alongside their co-owner, the Crown. Ngata's motive was clear: he knew that most Government money went into building roads for land being opened up for settlement, and very little for Maori land. He hoped to secure swift, early action on roads that would help the development of the surviving Maori land in Te Urewera. Guthrie hastened to agree with the proposition that Maori land in Te Urewera had to pay for its share of roading. By the time the Crown made its detailed proposals at Tauarau, it

was seeking £32,000, half the estimated cost of the arterial roads. While Ngata and the owners negotiated this figure down, they did so in a situation where, we are sure, the owners did not realise that they were making a gift to the Crown. Later, when te taha apitihana and others objected to the loss of land for roading, the Crown – in all honesty – should have admitted that they were under no obligation and it should have given up its claim to this land. We find that the Maori owners were under no obligation to have given land for roads, that they did so without informed consent, and that the Crown should have immediately returned this land when objections surfaced later during the scheme. Its failure on these counts was in breach of the principle of active protection.

It is equally clear that the 1958 settlement did not adequately address what had become a long-standing grievance: the Crown's failure to complete the arterial roads. The Crown only negotiated a settlement when it suited its own purposes, so as to advance the further acquisition of Maori land. The Crown's roading plans and its eventual settlement of the issues were deeply flawed at every turn. These matters are valid grievances for the claimants in our inquiry.

When we consider the scheme as a whole, taking into account the Treaty breaches in its component parts, we find that the Urewera Consolidation Scheme was conceived and carried out in breach of Treaty principles. A consolidation scheme was only necessary because the Crown broke its UDNR promises, and it resulted in a fresh legacy of yet more broken promises. Knight reminded the Crown of at least some of these in 1929 to no avail.

From at least the death of Seddon in 1906 until the resignation of Ngata as Native Minister in 1934, it seems undeniable that the Crown wilfully misremembered its obligations to the peoples of Te Urewera. And, with Ngata's departure from the Government, few were left who remembered what the Crown had promised at all, and what it owed to the peoples of the land soon to become a very special form of property for the nation, a National Park.

We turn next to the impacts of the Crown's Treaty breaches, from its first failure to implement the self-government provisions of the UDNR Act, through to its unrelenting purchase of individual interests in the 'inalienable' Reserve, and on through its acquisition of Waikaremoana and its implementation of the Urewera Consolidation Scheme in the 1920s. By the scheme alone, the Maori owners lost some 40 per cent more of their land to survey costs, deductions for roads, and the commissioners' purchase of individual interests (not counting the sale of interests in Waikaremoana). What was the cumulative effect of so much loss?

CHAPTER 15

**KAI TE ORA TONU TE WAIRUA O WENEI TANGATA
(THE SPIRIT OF THESE PEOPLE IS ALIVE):
THE IMPACTS ON MANA MOTUHAKE AND MANA WHENUA OF
THE CROWN'S DEFEAT OF THE UREWERA DISTRICT NATIVE
RESERVE ACT, AND THE UREWERA CONSOLIDATION SCHEME**

A waiata of Mihikitekapua:

<i>Te roa o te whenua te tawhaia atu</i>	<i>I travel such a long way</i>
<i>E noho ana hoki au i Poneke raia.</i>	<i>To reach distant Wellington.</i>
<i>Awhi ana hoki au ko koe te Karauna</i>	<i>When I embrace you the Crown</i>
<i>Te whakairitanga mo te mate o te tinana.</i>	<i>I know it will destroy me.</i>

Tuawhenua Research Team, 'Ruatahuna: Te Manawa o Te Ika Part Two:
A History of the Mana of Ruatahuna from the Urewera District
Native Reserve Act 1896 to the 1980s', April 2004 (doc D2), p ii.

The claim of Wharekiri Biddle, introduced by his daughter Hinerangi:

Kei te puku o tana kereme, ko te whakakahore i te mana motuhake, kare i rereke i etahi o nga kereme a Tuhoe. Kore rawa ia e whakaae kia riro ma te Karauna e tohu te huarahi mo nga whenua, me tana iwi. Otira koinei tonu te otinga atu o tana kereme. . . .

Te whakatakoto tikanga mo te whenua, e pa ana ki te Tuawhenua, me te whakakahore i nga tikanga whakahaere rauemi i raro i te mana motuhake

Te whakakiki kia totarawahiria nga rangatira o Tuhoe, me te kore e aro mai ki nga wawata o Tuhoe ki te whakatu i tona ake kawanatanga. . . .

Te hoko whanako i nga whenua o te Tuawhenua

Te rukahu o te whakakotahi o Te Urewera, i kore ai e taea te ahu i nga whenua

Te whanako i te whenua i runga i te whakaara utu mo te ruri me nga utu huarahi i te kaupapa whakakotahi

Te hanga tuarua i nga mana hapu ki nga whenua o Te Urewera i raro i te kaupapa whakakotahi . . .

. . . ko ana korero ki te Ropu me te Karauna. Ko tana korero ki a koutou, kia u tana kereme – me nga kereme a etahi – ki uta. Ko te tumanako kia u tika i enei raupanga me nga whakamanatanga e whai ake ana.

At the heart of [my father's] claim lies the prejudice against te mana motuhake o Tuhoe, as it lies in all the claims of Tuhoe. . . .

The imposition of land tenure systems on the lands of the Tuawhenua with little regard for our own ways for managing resources under mana motuhake

The fuelling of the division in the leadership in Tuhoe, and the failure to acknowledge or support Tuhoe's wish for its own local government. . . .

The illegal and unfair purchase of interests in the Tuawhenua lands

The deceit of the Urewera consolidation as an opportunity for our people to undertake development of their lands

The robbery of land through imposing survey and roading costs in the consolidation scheme

The reconstruction of hapu rights to the lands of the Tuawhenua through the consolidation scheme. . . .

[H]is words were for the Tribunal and the Crown. He wanted to tell you that he hoped his claim, and the claims of others, would not be in vain. That there was some hope for justice and fairness in this process and the processes of settlement to follow.

—Hinerangi Biddle, Kaikorero, undated (doc D31(a)), unpaginated;

Hinerangi Biddle, Kaikorero, undated (doc D31), pp 2–3.

15.1 INTRODUCTION

For the peoples of Te Urewera, the impacts of the Crown's failure to ensure the Urewera District Native Reserve Act (UDNR Act) was implemented as it should have been were deeply felt and enduring. They were impacts on all the peoples of Te Urewera: their mana motuhake and their mana whenua. Today the most obvious symbol of dispossession is Te Urewera National Park, which was eventually created in place of the self-governing Reserve, on lands acquired by the Crown by purchase in defiance of the provisions of the UDNR Act and through the implementation of the Urewera Consolidation Scheme (UCS) that followed.

In chapters 13 and 14, we have found that the Crown breached the Treaty, first in its failure to implement the UDNR Act in accordance with its provisions, and in the spirit of its agreement with Tuhoe and Ngati Whare, and subsequently in its design and implementation of the Urewera Consolidation Scheme. The Crown made little effort to ensure that the key promises of the UDNR Act were fulfilled: it failed to establish an effective system of local land administration and local governance, and it over-rode the provisions that would

have protected the Reserve from piecemeal alienation. It then embarked on a programme of unrelenting purchase of individual owner interests, which it hastily legalised.

The Urewera Consolidation Scheme of the 1920s was itself a key prejudice arising from Crown Treaty breaches in respect of the Urewera District Native Reserve; but new breaches were committed in the scheme's design and implementation. In particular, the Crown failed to keep three promises made to owners of Reserve blocks at the start of the scheme: that no more individual interests would be purchased by the Crown until after the scheme was completed; that owners would receive land transfer titles to the new blocks that would emerge from the consolidation scheme; and that two arterial roads and side roads would be built to provide access to those blocks.

We have delayed until now our consideration of the impacts on claimants of the Crown's Treaty breaches in connection with the collapse of the Urewera District Native Reserve, and the implementation of the consolidation scheme, so that those impacts can be weighed across the whole period covered by chapters 13 and 14 and the years that followed. We focus here on political impacts, and the most direct social and economic impacts of the Crown's broken promises and shirked responsibilities. Later in this report, we examine more broadly the socio-economic profile of the peoples of Te Urewera, from the late nineteenth century to recent times.

In broad terms, the period from 1896 to 1930 saw the dashing of the hopes of Te Urewera leaders. For Tuhoe and Ngati Whare in particular, the Crown's failure to ensure that its recognition of their mana motuhake (embodied in the Act) was followed by the setting up of the promised committees, and especially by the establishment of a strong bilateral relationship with their leaders through the General Committee (Komiti Nui), was a severe blow. The Act which should have guaranteed Maori ownership and management of Reserve lands had instead been the instrument of individualisation of title, extensive loss of ancestral lands and increased community tensions. In the wake of extensive Crown purchasing during the latter part of the 1910s especially, Te Urewera communities (which had already endured a prolonged titles and appeals process with the Urewera commission and the Native Appellate Court) faced yet another reorganisation of their titles in the Urewera Consolidation Scheme, as well as substantial land deductions to meet their agreed share of the costs of surveys (to provide them with secure titles) and roads (to provide access to the land and transport of their produce).

Although, by the end of this period, the aspirations of Te Whitu Tekau leaders for Te Rohe Potae had been systematically thwarted by a series of Crown actions, those aspirations remained. Tamati Kruger told us that even today, the legacy of Te Whitu Tekau leaders lives on to give strength to the people:

Kai te ora tonu wenei tangata – kai te ora tonu te wairua o wenei tangata . . . Ko ratau kanoahi kua ngaro atu engari ko enei kupu, te wairua o enei korero, e kore e mate.¹

These people are still alive – the spirit of these people is alive . . . Their faces have now disappeared, but their words and their feelings will never die.²

In this chapter, we trace the extent of the prejudice to the peoples of Te Urewera caused by the Crown's acts and omissions, as well as considering those which affected particular iwi. Our analysis focuses on impacts on mana motuhake (political authority) and mana whenua (authority over land). We have asked two questions:

- ▶ What were the impacts of Crown acts and omissions on self-government in Te Urewera, and the relationship of its peoples with the Crown?
- ▶ What were the impacts of Crown acts and omissions on hapu relationships with their land, and on the economic capability of the peoples of Te Urewera?

15.2 MANA MOTUHAKE: WHAT WERE THE IMPACTS OF CROWN ACTS AND OMISSIONS ON SELF-GOVERNMENT IN TE UREWERA, AND THE RELATIONSHIP OF ITS PEOPLES WITH THE CROWN?

Summary answer: *The peoples of Te Urewera were prejudiced in both the short and the long term by the Crown's failure to ensure that the self-governing structures which were at the heart of the UDNR Act were established and became fully operational in a timely fashion. The General Committee, which was not set up until 1909, was placed under pressure by the Crown's new preoccupation with land purchase for settlement in the Reserve. The Committee's meetings became focused on responding to the wishes of the Crown to buy land, and there was no room for it to chart a course for the future, to consider its functions in relation to those of the komiti hapu, or to discuss how to manage the lands of the Reserve. The komiti hapu seem to have had only a brief life. One development initiative that was brought before the General Committee, and which it supported, was that of Ngati Whare for commercial cutting of their Te Whaiti timber in 1914; yet the Crown failed to take the necessary steps to bring this to fruition. As the General Committee was by now completely sidelined by the Crown, which began to purchase individual shares in Reserve blocks in defiance of the law, there was no further possibility of such initiatives. Maori self-government was left with no legal vehicle in the UDNR. The tribal and hapu committees could not protect the interests of communities as the Crown accelerated its purchasing throughout Reserve blocks.*

1. Tamati Kruger, claimant transcript of oral evidence (te reo), Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44), p 37

2. Tamati Kruger, claimant translation of transcript of oral evidence, Mataatua Marae, Ruatahuna, 17 May 2004 (doc D44(a)), p 23

The repeal of the UDNR Act by the Urewera Lands Act 1921–22 removed even the possibility that the General Committee might yet be revived. An Act which we found was of constitutional importance was simply set aside. Thus the peoples of Te Urewera lost the legal means of collective tribal representation in dealing with the Crown and with local government. After the mid 1910s, ad hoc tribal bodies were formed as needed. The first was a short-lived owners' committee to deal with Crown officials about consolidation, in 1921. The next was the Tuhoe komiti raupatu in 1923, which organised the Tuhoe claim against the Crown arising from the eastern Bay of Plenty confiscation (1866), and raised funds to support these efforts. In the 1940s and 1950s, tribal institutions were formed again – though this time their origins were rather different. At the local level, tribal committees were formed under the Maori Social and Economic Advancement Act 1945, an Act often criticised as being designed to limit Maori autonomy, rather than give full expression to it. In Te Urewera however, some committees and their executives formed under this Act flourished over decades, involving their local communities fully and turning them to their own purposes. Their vigour is a reminder of how komiti hapu might have operated much earlier to sustain their communities, had they not been marginalised by Crown inertia, or by Crown determination that there was in fact no place for them in post-UDNR Act governance. In 1958, the Tuhoe Maori Trust Board was formed to receive and administer the roading settlement compensation paid by the Crown for failing to honour its promises of roads, made at the start of the consolidation scheme. Though these were perhaps not the most auspicious circumstances for the rebirth of a tribal institution, the board served a useful purpose thereafter; its very origins, however, reflected the defeat of the self-governing institutions of 1896.

A further prejudice arising from the Crown's failure to see self-governing institutions firmly established in the Reserve was the damage to the relationship between the Crown and the peoples of Te Urewera. The Treaty relationship, once established, was permanent – but in the wake of the consolidation scheme it was in tatters. Te Urewera leaders attempted throughout to maintain that relationship. Tuhoe hosted governors, and were active during the First World War in assisting the war effort, establishing a recruiting committee, and raising funds – though Rua Kenana held himself aloof. The Ngati Whare rangatira, Te Wharepapa Whatanui, also sought to keep his people's relationship with the Crown warm, but was snubbed. Tuhoe, Ngati Whare, Ngati Manawa, and Ngati Ruapani were all disillusioned by the extent of Crown purchasing, and the workings and outcome of the consolidation scheme; each of them suffered as a result. The defeat of the UDNR Act had left them unable to protect themselves from these acts, and their long-term grievances against the Crown were very evident in our hearings of their claims.

15.2.1 Political authority undermined through the defeat of the UDNR Act

The Crown's failure to ensure the early establishment of the komiti hapu and the Komiti Nui (General Committee) that was at the heart of the UDNR Act, and to ensure that self-government in the Reserve became a reality, was of lasting prejudice to Tuhoe, Ngati Whare, and the peoples of Te Urewera generally.

We emphasised in chapter 9 that the UDNR Act did not confer self-government on Te Urewera. The peoples of Te Urewera were already autonomous. What the Act did was to recognise Maori authority – tino rangatiratanga or mana motuhake – and give it a vehicle: tribal committees. The key test of the Act, and the Crown's commitment to it, therefore, was the establishment of the committees and their becoming operational in a timely fashion.

The impacts of the Crown's failure of this test were legion. The still-fragile trust of Te Urewera leaders in Crown assurances, which they had made the difficult decision to commit to, soon began to unravel. In the end, the committees were created not because this was what the law required to give effect to its main purpose of self-government, but because the Crown found itself hoist by its own petard: it could not achieve its developing aims of opening Te Urewera to mining and to Pakeha settlement unless it negotiated with the General Committee. In other words, self-government in Te Urewera was no longer an end in itself to the Crown; it had become a means to an end.

It is hard to see how any institution could survive this kind of initiation. The test the Crown had set for the General Committee was whether it could embark on its role, years after it had expected to, and simultaneously withstand the pressures of meeting the Crown's agenda – an agenda which took little account of the aspirations of the peoples of Te Urewera. We have seen that the Crown wrongly gave Te Urewera leaders to understand that they had to meet the costs of surveys (which meant that they had to make land available for settlement), and that it interfered more than once in the composition of the Committee, changing the law to allow itself to do so. When Crown representatives belatedly went to Te Urewera to talk to their leadership, it was not to assist in the creation of all the committees, to get them up and running – but to indicate to the General Committee what the Crown's wishes were. The meetings of the Committee, therefore, were essentially dominated by discussion of how to respond to those wishes. There was no room for it to chart a course for the future, to consider its own functions in relation to those of the komiti hapu, or to discuss how to manage the lands of the Reserve. This was very evident in the virtual suspension of the Committee after purchasing was initiated but put on hold until the final stages of the titles appeals process were completed in 1913.

The impact of all this was to undermine local confidence in the General Committee's ability to represent their interests. The komiti hapu were involved briefly, presenting reports to the August 1909 meeting of the Committee about areas of land they wished to lease and develop; but the focus then shifted to the Crown's wish to purchase. Rua Kenana's anxiety

to sell land to raise funds for development opened the door to government intervention. Numia Kereru, the chairman, found it difficult to withstand this Government push, and its determination to secure Rua's place on the General Committee. Ngati Whare and Ngati Manawa had their own concerns. The Ngati Manawa rangatira, Harehare Atarea, was uneasy about the nominal authority of the General Committee (with its Tuhoe majority) over the Te Whaiti lands, at a time when the titles still had not been finally settled,³ and the Ngati Whare rangatira, Te Wharepapa Whatanui, was apprehensive in 1912 that the General Committee seemed not to know how to deal with their application to arrange timber cutting rights with interested Pakeha. In such circumstances it was difficult for the General Committee to establish or maintain any unity of purpose.

It was especially telling therefore that in 1914, when titles had been settled, Ngati Whare returned to the General Committee to secure endorsement of their agreement with a commercial company to buy cutting rights to part of the Te Whaiti timber, only to meet with total disappointment. The Crown was now ready to roll out its own purchasing agenda with renewed vigour, and it allowed the initiative of Ngati Whare and the General Committee to get lost in the system, so that the proposed agreement never got off the ground.

For both Ngati Whare and the Committee, the lesson was that any exercise of authority to progress Te Urewera development initiatives would be obstructed, rather than assisted. There was no point embarking on such a path. This lesson was rammed home as the Crown began purchasing from individuals in 1915, without involving the General Committee which under the law it should have made its purchases from. Finally, as we have seen, it legislated to legalise its proceedings. Its message was that if it did not need the General Committee for land purchase, it was not needed at all. The immediate prejudice, of course, was the removal of the key protective mechanism for individual owners that had been envisaged in the Act, to ensure that any alienation of Reserve land that might be considered necessary was carefully managed, so that the interests of communities were central.

The General Committee had little recourse in the face of such a systematic downgrading by the Crown of its role and functions. In a rearguard action, a number of petitions were sent to the Government, as we have seen. In 1918, Te Rawaho Winitana and 99 others asked the Crown to reappoint the Committee so it could administer the Waikaremoana, Ruatahuna, and Ruatoki blocks under the UDNR Act; they clearly saw what was missing, and still hoped some of the original purposes of the Act might be realised.⁴ The hope, after all, had been that komiti would manage development of their lands to engage with the

3. John Hutton and Klaus Neumann, 'Ngati Whare and the Crown, 1880-1999' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2001) (doc A28), pp184, 187, 190

4. Rawaho Winitana and 99 others to Minister of Native Affairs, 23 September 1918 (Cecilia Edwards, comp, supporting papers to 'The Urewera District Native Reserve Act 1896, Part 3: Local Government and Land Alienation under the Act', various dates (doc D7(b)(i)), p1159)

colonial economy. Te Amo Kokouri and 121 others tried again soon afterwards, without success.⁵ The setting up at Ruatahuna of a komiti kaumatua to resolve disputes points to both the vacuum left in the absence of komiti hapu, and the fact that it had now to be filled informally, by local initiative – not under the Act. This was a telling commentary on the fate of self-government at the hapu level.

The consequence of the fate of the UDNR Act was that Maori self-government in Te Urewera was left with no legal vehicle. The repeal of the UDNR Act by the Urewera Lands Act 1921–22 removed even the possibility that the General Committee might yet be revived. We found in chapter 9 that the passing of the UDNR Act in 1896 was a high-water mark in that it placed Tuhoe and the Crown in a Treaty-based relationship for the first time and enshrined that relationship in legislation. The Act was also of constitutional importance; it was the first time the colonial state had recognised a Maori district to be set aside entirely as a reserve for its people, to be governed by them through a legally empowered local authority ‘in accordance with their own traditions.’⁶ It was a constitutional first for New Zealand, and for Maori. It created institutions through which the relationship between the peoples of Te Urewera and the Crown could be mediated – which was what Te Whitu Tekau had sought since 1872.

The Crown’s initial failure to ensure that key provisions of the Act were given effect to, its deliberate undermining of the Act, and finally its repeal of the Act, must signal that it rapidly back-pedalled from breathing life into the arrangement it had created with Te Urewera leaders. It spelt the end of the hopes built up by Te Whitu Tekau leaders; and that leaders such as Numia Kereru carried into the early twentieth century. The Crown’s defeat of the UDNR Act did not, and could not, erase the Treaty relationship, for Treaty relationships endure. The Crown continued to owe Treaty duties to Tuhoe, as it always had; Tuhoe also had Treaty obligations, even in the face of its partner’s Treaty-breaching acts. But the defeat of the UDNR Act brought to an end a unique period in the political history of the peoples of Te Urewera. The prejudice arising from the dismantling of their newly-made constitutional arrangements was long term. From the 1910s there was no statutory means of collective tribal representation in dealing with central and local government.

Once the General Committee had been totally marginalised by the Crown, such matters were dealt with by ad hoc bodies. When Tuhoe next faced the Crown on an issue of major tribal importance – negotiations about the consolidation of their lands – they had to do so through a newly constituted owners’ committee. At that point, we note – after seven years without communication, and rejecting earlier Tuhoe requests that it be revived – the Native Minister looked around for the General Committee, wondering if it might not be useful in assisting the Crown through the consolidation process. This of course appears

5. SKL Campbell, ‘Land Alienation, Consolidation and Development in the Urewera 1912–1950’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 1997) (doc A55), p 25

6. Richard Seddon, 24 September 1896, NZPD, 1896, vol 96, p 166

highly cynical. But in the absence of the Committee, an owners' committee was constituted at the Tauarau hui in 1921 specifically to negotiate with Crown officials and help kick-start the process of managing the redistribution of land rights, through directing the formation of consolidation groups. Its life was short in the extreme: two days – though it may have operated informally over some three weeks. After the Tauarau hui, the owners could only engage with the consolidation commissioners as relatively small whanau collectives.

Tuhoe's next major battle would be the pursuit of their confiscation claim against the Crown. For this they established a new komiti, the komiti raupatu, in 1923 – not long after the work of consolidation got under way. At the time a number of petitions were being sent to the Government in anticipation of an inquiry into confiscation. A major petition in the name of Te Kapo-o-te Rangi Keehi was sent on behalf of the 'tribes of Tuhoe' from Ruatoki in 1920; a Ngati Kareke petition was sent in 1924. The Sim Commission sat at Opotiki and at Whakatane in March 1927; Captain William Pitt was hired to provide legal assistance to Tuhoe in their claim. As we recorded earlier, no Tuhoe people were called to give evidence before the Sim Commission, and the commission's report barely addressed Tuhoe grievances; it merely concluded that confiscations in the Bay of Plenty affecting them had been 'fair and just'. Clearly Tuhoe were not considered to have any standing in proceedings of this kind, a result surely of the fact that they lacked a strong tribal body accustomed to deal with bodies such as the commission. The outcome, in our view, reflected and perpetuated an outmoded and ill-informed outsider view of the iwi simply as rebels (historically, it was quite wrong, see chapter 4), as if their subsequent relationship with the Crown had not been formed at all. That relationship had, however, been lost to sight, outside Te Urewera.

Thirty years later, the impact of the Crown's undermining of the exercise of mana motuhake would be underlined further when Te Urewera National Park was created; as we will see, the peoples of Te Urewera were barely consulted about the establishment of the national park on the former Reserve lands. And though room was made for Tuhoe and later Ngati Kahungunu representation on the board that administered the park, they had no representation on the board as of right.

From the mid-1930s, Tuhoe leaders no longer sought tribal self-government from the Crown. They had been down that path, and it had led nowhere. They realised also that there was little appetite amongst politicians or the wider public to reinstate self-government, and they did not raise the prospect in discussions. By then they were preoccupied with the very pressing issue of the survival of their people on their ancestral lands. The activities of tribal committees established under new government legislation (from the late 1940s), and the Tuhoe Maori Trust Board (from the late 1950s), reflect this focus in a new age.

Some hope was offered for the exercise of authority at the local level by the tribal committees and executives established after the Second World War under the Maori Social and Economic Advancement Act 1945. There were four executives (taraipara) in Te

Urewera: Eastern Tuhoe (Waimana), Western Tuhoe (Ruatoki/Waiohau), Southern Tuhoe (Murupara/Minginui/Te Whaiti), and Tuhoe Manawaru (Ruatahuna). There was also a Waikaremoana tribal committee.⁷ The Crown characterised the Act as providing ‘for the social and economic advancement, and the promotion and maintenance of the health and general well-being of the Maori community’.⁸ Tribal executives (drawn from tribal committees, with a Maori Welfare Officer appointed by the Native Minister) had the power to make by-laws on water supply, health, sanitation, law and order (Maori wardens), recreation, and protection of burial grounds.⁹

It is evident from the limited evidence before us that Te Urewera committees in some areas were more active than in others, and that ‘[l]ocal leadership definitely participated’ in their work,¹⁰ though in Sir Hugh Kawharu’s view ‘[l]eaders recognised by traditional criteria did not . . . necessarily depend upon this committee organization for the exercise of their leadership’.¹¹ He may have had in mind a rangatira like Pakitu Wharekiri, whose authority throughout the whole valley at Ruatahuna was emphasised in the evidence before us (see chapter 2). He was, Rongonui Tahi told us, ‘the last rangatira to really enforce a form of traditional social control as part of our self-governance’.¹² We note that Pakitu Wharekiri was not a member of the first tribal executive elected at Ruatahuna, though he took the lead in the late 1940s in correspondence with the Welfare Controller in Wellington about how the committees were to work, and their responsibilities.¹³

Mr Tahi told us that the tribal executive ‘is the platform for all major issues that arise within each community and basically the maraes are the focus of the executive . . . to assist marae committees and its structures to address certain issues, social issues, land issues, almost just about anything that affects a marae or hapu community’. The elders ‘are really the backbone of any executive’, right till the present day. And he agreed with counsel for Wai 36 Tuhoe claimants that Tuhoe had adopted the committees as their own.¹⁴ The Manawaru committee (Ruatahuna) was a community organisation, whose discussions ranged widely; a Maori welfare officer, Wishie Jaram, wrote in 1963 that the executive committee was the

7. This committee was within the Ngati Kahungunu tribal district proclaimed under the 1945 Act in 1948; after 1962 it was within the Tai Rawhiti district. See map ‘Te Urewera District Maori Council and Maori Executive Areas’ in Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera Nga Iwi Te Whenua Te Ngahere: People, Land and Forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), pp 301, 303.

8. Crown counsel, statement of response, 13 December 2004 (paper 1.3.7), p 50

9. The Maori Welfare Act 1962, which expanded and revised the Maori Social and Economic Advancement Bill 1961 created the New Zealand Maori Council and district Maori councils, and renamed the tribal executive committees as Maori executive committees and the tribal committees as Maori committees. Welfare officers were no longer part of the committees and executives, though they could act as advisers: see sections 6(2), 9, 12, 15, and 17.

10. Brian Murton, summary of ‘Stage Three – Socio-economic Impact Issues’, 10 January 2005 (doc J10), pp 69–70

11. IH Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Oxford University Press, 1977), p174

12. Rongonui Tahi, notes in English of evidence, 22 June 2004 (doc E26), p 2

13. Tuawhenua Research Team, ‘Ruatahuna, Te Manawa o Te Ika, Part Two: A History of the Mana of Ruatahuna from the Urewera District Native Reserve Act 1896 to the 1980s’, 2004 (doc D2), pp 372–373

14. Rongonui Tahi, under cross-examination by counsel for Wai 36 Tuhoe, 1 July 2004 (transcript 4.7, pp 197–198)

'driving force' in the valley, dealing with all local matters: 'I find they are not too bound in worrying about Committee procedure . . . what counts with the Committee in this area is that they are doing and carrying out the wishes of the people regardless of whether the suggestion came from a member or non-member.'¹⁵ In other words, the communities had made the new structures work for them. Fifty years after the passing of the UDNR Act, the promised komiti hapu had finally taken form in Te Urewera – but under a different Act, of national application, which spelt out quite different purposes for tribal committees. The Crown accepted the position of some claimants that despite the focus of the 1945 Act on economic development, the Native (later Maori Affairs) Department 'retained control and decision making functions over land, forestry and other enterprise'.¹⁶

The vigorous engagement of Tuhoe executives under the Act is a reminder of how komiti hapu might have operated much earlier to sustain their communities, had they not been written out of the script by Crown inertia, or Crown resolve that there was after all no place for them in post-UDNR Act governance. But under the 1945 Act their roles were limited. In general, executives represented local interests (particularly on health and education issues) to the Government on many occasions. The focus of the komiti hapu under the UDNR Act, by contrast, was intended to be the direction and management of local affairs and lands.

At iwi level, the Tuhoe Maori Trust Board was created in 1958, so that there was finally a Tuhoe authority. Ironically, the purpose of the board was to receive and administer compensation made for a previous Treaty breach: the Crown's failure to build the roads promised in the Urewera Consolidation Scheme. In other words, the creation of this new body marked the failure of the Crown to deliver on its earlier promises. Trust boards were, by this time, the Crown's preferred mechanism for delivering compensation to iwi; the Tuhoe Maori Trust Board was established under the Maori Trust Boards Act 1955. Brenda Tahī, for the Tuawhenua researchers, suggested that under the statute, the focus was on accountability to the Crown, and that it did not provide a system of accountability to the people.¹⁷ But at the time, Tuhoe saw the board as a useful tribal body. It became the only institution with the capacity to deal over the long term with officials and ministers on behalf of the iwi and, as Tahī acknowledged, it had a wide range of responsibilities.¹⁸

15.2.2 The damage to the peoples' relationship with the Crown

For decades after the loss of the General Committee, Tuhoe were unable to deal with the Crown and its agencies from a position of strength. And not only was tribal governance

15. WN Jaram, Welfare Officer, 'Report for period 1 January 1963 – 31 December 1963' (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 410)

16. Counsel for Wai 144, closing submissions, 3 June 2005 (doc N19), p 199; Crown counsel, closing submissions, June 2005 (doc N20), topic 39, p 28

17. Brenda Tahī, oral evidence, Mataatua Marae, Ruatahuna, 1 July 2004 (transcript 4.7, p 242)

18. From 1971 it became the Tuhoe Waikaremoana Maori Trust Board.

fatally undermined by the Crown's defeat of the UDN Act, but the impact of discarding the General Committee, sustained Crown purchase into the Reserve and the implementation of the Urewera Consolidation Scheme on the relationship of the peoples of Te Urewera with the Crown was damaging in the extreme.

That relationship, which had begun so badly in the war years of the 1860s and 70s, had made a new beginning subsequently, when there was de facto recognition of Te Whitu Tekau and its policies by Crown officials. In 1896, it finally seemed that a real basis for a strong future relationship had been achieved, but it could not simply be left to grow cold. Yet that was what happened. We have referred earlier to the growing anxiety of Te Urewera leaders about the slow establishment of the General Committee – though they countered this initially by making trips to Wellington themselves – but this anxiety was not easily laid to rest. In 1904, when Carroll accompanied the Governor, Lord Ranfurly, on a visit to Te Urewera his rebukes of Tuhoe at the hui at Ruatahuna made a strong impression. When speakers voiced 'a distrust of the Government in regard to their lands', he dismissed their concerns, and was critical of their internal tensions in the Urewera commission hearings – as well as their dislike of the dog tax, and their inability to maintain their sheep.¹⁹ Binney, noting his exhortation that they be 'prosperous', pointed out that it was difficult to be prosperous 'when the staple crops have failed for six successive years . . . when there was a visibly high mortality rate amongst the young people as well as old; when there was no good land left in Tuhoe hands; and when there was no employment' (other than casual jobs).²⁰

Carroll's 'insults as a Minister of the Crown' would have cut deep, the Tuawhenua authors suggested; and the people's mistrust of him and of Crown policies was very evident in the waiata they composed subsequently.²¹ In February 1906, Ruatahuna leaders expressed their concerns in a public letter to the newspaper *Te Pipiwharuroa*, inviting the motu to the opening of the 'model pa' Te Tahī-o-te-rangi at Mataatua to be held the following month:²²

Haere mai ki te hui whakamaharatanga ki o tatou kaumatua kua ngaro ki te po, ngaro whenua, ngaro tangata, ngaro mana, ngaro mahi, me era atu tini mahi, i roto i enei ra o te Pakehatanga i te mea kua ngaro haere to taua ahua Maoritanga i runga i o taua moutere, ka hoki whakamuri te tangi o te ngakau ki nga mahi o te wa e mau ana to taua mana Maori ki runga i a taua.

(Welcome to the gathering to commemorate our elders that have passed away, bereft of land, bereft of people, bereft of power, bereft of work, bereft of speech and many other

19. Malcolm Ross, *Through Tuhoe Land. Lord Ranfurley's Farewell to the Maori People* (Christchurch: Christchurch Press, 1904), p 29 (Judith Binney, 'Encircled Lands, Part Two: A History of the Urewera 1878–1912' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A15), p 300)

20. Binney, 'Encircled Lands' (doc A15), p 302

21. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 102

22. Rawiri Kokau and others, 'Te Pipiwharuroa', nama 95, pepuere 1906 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 104). The building of a 'replica fighting pa' had originally been suggested by Lord Glasgow in 1896 as a tourist attraction. See Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 100.

things in these days of Pakeha influence, due to the oppression of our Maori influence in these islands, the heart turns back to grieve for the ways of the time when our Maori authority was fast in place over us.)

The response of the leaders, the Tuawhenua authors explained, was ‘the celebration of the model ancient pa’: ‘Na reira ka tumanako te ngakau kia whakamahia he pa whakamaharanga ki nga mahi o nehera hei whakatoputanga mai i nga morehu o nga iwi e noho matara ana ki tera wahi ki tera wahi (For these reasons, the heart sought to erect a pa in commemoration of the ancient ways and to bring together the survivors of the tribes living on alert in all parts.)’²³

The pa, we were told, was an impressive sight. It was named Te Tahī-o-te-rangi for one of the great Tuhoe ancestors, a great tohunga – his name evoking ‘powerful images of the supernatural, of great powers and influence’, of the seas of the Bay of Plenty, and the Mataatua tribes. The pa symbolised the legacy of a ‘proud and powerful past’; but also the importance to Tuhoe not just of looking back to times when mana Maori governed the people, but of regaining control of their destiny.²⁴ It was at this great hui – which Carroll attended, to discuss the Government’s wish to open Te Urewera to prospecting – that Tuhoe established their own Komiti Nui o Tuhoe. It was 10 years since the UDNR Act had been passed – which Tuhoe had expected to signal the control of their own affairs, with Crown recognition. Instead, they were still mourning the demise of Maori authority. And, as we have seen, their new Komiti would be short lived, as the Government moved slowly to establish a Committee under the UDNR Act, and to influence its membership.

Yet, through all these years, Tuhoe attempted to maintain their relationship with the Crown. When Lord Ranfurly visited Tauarau Marae at Ruatoki in 1904, medals that had been presented to a Te Urewera contingent on the occasion of the Duke of York’s visit to Rotorua in 1901 were ‘proudly worn’ at Tauarau, ‘affirmations of Tuhoe’s sustained relationship with the Crown.’²⁵ The Governor’s visit, Binney noted, had been prepared for with care; it was a great event, and leaders from other iwi had been invited. In addition (at Carroll’s urging) the visit coincided with the second general conference of the district Maori councils, established under the Maori Councils Act 1900; delegates from the councils were therefore also hosted. Lord Ranfurly reported a mood of ‘fervent loyalty’, and also sent medals to the chiefs at Ruatahuna and Ruatoki to commemorate their hospitality to him. He spelt out in his own notes the context in which he understood the significance of the invitation extended to him, and of the meeting. The people of Te Urewera, he said, had not been conquered in the wars, and had afterwards kept to themselves. Subsequently:

23. Rawiri Kokau and others, ‘Te Pipiwharauoa’, nama 95, pepuere 1906 (Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 104)

24. Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 105

25. Binney, ‘Encircled Lands’ (doc A15), p 307

The treaty of peace between the Pakeha and this tribe took the form of a special Act of Parliament, which granted to them entire control over their own territory.²⁶

As Binney rightly pointed out, however, what Tuhoe really wanted now were the promised committees – the vehicles of that self-government – and a ‘sustained relationship’ with the Government.²⁷ Visiting governors – even the premier, in the case of Ward – maintained the relationship at a symbolic level; but it was the working relationship that was crucial – and that, as we have seen, had brought only discouragement.

In the First World War, Te Urewera leaders remained supportive. Even as the Crown embarked on its purchasing campaign in the Reserve, they embarked on assisting the war effort. That also was an exercise of mana motuhake. In 1916, though Rua Kenana was opposed to supporting the war effort, Numia Kereru established a recruiting committee, with representatives from Ngati Rongo, Hamua, Ngati Koura, Te Mahurehure, and Ngati Tawhaki. Herries recorded his pleasure at the ‘loyalty of the Tuhoe tribe and the desire to raise men to fight.’²⁸ Even before this, as we have seen, Te Pouwhare wrote to the Government about the wish of Tuhoe to subscribe funds for the war effort, by selling shares in various blocks; he would write again in 1916.²⁹ Many Tuhoe men did go to the war (including a number from Ruatahuna). Their names were among those identified at a consolidation commission meeting in 1924 in a list of 31 Tuhoe men who had sold their lands before they enlisted, and returned ‘landless’; they now sought land from the Crown. According to the Tuawhenua report, at least one of the Ruatahuna men became an owner in a block, which he later farmed.³⁰

But in the longer term, as Crown purchasing and the consolidation scheme unfolded over the next 10 years, followed by the disappointments of unfulfilled Crown promises of roads and titles, there would be a heavy toll on the relationship of Tuhoe with the Crown. It is evident in the claim of Wharekiri Biddle of Ruatahuna, part of which we cited at the beginning of this chapter, about which his daughter Hinerangi spoke to us. The claim is more than a statement of grievances arising from the Crown’s land policies; it reveals a complete lack of faith in a Crown which could systematically pursue such policies. The words he chose (‘te hoko whanako/the illegal and unfair purchase; ‘te rukahu o te whakakotahi o Te Urewera/the deceit of the Urewera consolidation’, ‘te whanako i te whenua i runga i te whakaara utu mo te ruri me nga utu huarahi/the robbery of land through imposing survey and roading

26. Malcolm Ross, *Through Tuhoe Land. Lord Ranfurly’s Farewell to the Maori People* (Christchurch: Christchurch Press, 1904), pp 67–68 (Binney, ‘Encircled Lands’ (doc A15), p 308); Lord Ranfurly, ‘New Zealand Notes 1901–1904, pp 396–397, 402–403 (Binney, ‘Encircled Lands’ (doc A15), pp 298–299)

27. Binney, ‘Encircled Lands’ (doc A15), p 309

28. Herries’ note on Numia Kereru to Native Minister, 6 March 1916 (Cecilia Edwards, ‘The Urewera District Native Reserve Act 1896, Part 3: Local Government and Land Alienation under the Act’(commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(b)), p 226)

29. Edwards, ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)), pp 226–227

30. Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), pp 260–261

costs') conveyed his deep scepticism about the Crown's motives. And that scepticism was directed at what Mr Biddle clearly saw as the Crown's determination to undermine mana motuhake: 'Kei te puku o tana kereme, ko te whakakahore i te mana motuhake, kare i rereke i etahi o nga kereme a Tuhoe. (At the heart of [my father's] claim lies the prejudice against te mana motuhake o Tuhoe, as it lies in all the claims of Tuhoe.) But, his daughter added, the distinctiveness of his claim was its focus on social and economic issues, including economic development, local services, and road access. In his mind, she said, 'our elders were poor not just because they lost their land, but because they were kept poor by the government's intent and action.'³¹

That lack of faith in the Crown was expressed also by Tamati Kruger in his evidence given at Maungapohatu. We have quoted it earlier in chapter 3, but we return to it here because its scorn of the values the Crown seemed to embody arose from the historical experience of Tuhoe:

Kua roa ahau e noho ana i tou marae, to te karauna . . . Ko au atu hoki ko te kotahi rautau ahau i aiane, e titiro ana ki a koe ki te karauna. Ae, he roa tou marae, te marae o te karauna . . . Engari tino popoto to pae-tapu. Ko te roa o to pae-tapu he nui noa iho mou. Ko koe ano, ko koe anahe ka ahei ki te noho i to pae-korero, notemea ko ingoa o to pae-korero ko 'Matapiko' . . . Ko te whare o te karauna, ae, he whare paikea, te whare o te karauna, ara atu te nui, ara atu te roa, ara atu te papai. Kii tonu i te whakaairo moni. Engari ko te tara-iti a to whare, he nui ake i te tara-nui notemea kua waiho e koe te wahi nui mou, a, ko te wahi iti mo nga manuhiri, kia kikini ai, kia kopapa ai te noho a o manuhiri.³²

I have been sitting at your marae of the crown for a long time . . . For 100 years I have observed you, the crown. Yes your marae is long, the marae of the government . . . But your sacred pew is very short. The length of your sacred pew is only long enough for you . . . One is [not] allowed to sit on your pew of speeches because the name of your pew of speeches is 'selfish' . . . The house of the crown is a whale house, as big and as long; it has all the modern conventions. It is full of dollar signs. However the host's privilege is wider than the guest's privilege, because you have commandeered the greater place for yourself and the narrower place for your guest, so they may feel the pinch and cramp.³³

Over time, the Crown, with its long reach, and its insatiable quest for power, had restricted Tuhoe in the exercise of their authority. Partnership, evidently, was of no importance to the Crown.

31. Hinerangi Biddle, kaikorero, undated (doc D31), pp 2–3; Hinerangi Biddle, kaikorero, undated (doc D31(a)), unpaginated

32. Tamati Kruger, transcript of oral evidence, Mapou Marae, Maungapohatu, 21 February 2005 (doc K34), pp 18–19

33. Tamati Kruger, claimant translation of transcript of oral evidence, Mapou Marae, Maungapohatu, 21 February 2005 (doc K34(a)), p 12

The experience of Ngati Whare, as it was explained to us, was also one of disempowerment. Their rangatira, Te Wharepapa Whatanui, had long been a force in Te Urewera by the time of the consolidation scheme. He had been a key speaker when Ngati Whare welcomed the Premier, Seddon, to Te Whaiti in 1894. He took up with enthusiasm Seddon's encouragement to establish a school (which Ngati Whare had in any case already written to the Minister of Education about), and the school was opened at the end of 1896.³⁴ The Education Department, according to Hutton and Neumann, considered Te Whatanui 'an important ally among a people who were thought to be at best indifferent towards the Crown and certainly no loyal subjects'; the department considered the school a 'far advanced outpost'.³⁵ Te Wharepapa Whatanui had sought development of the Te Whaiti timber resource over some years before the Crown defeated his attempts in 1914–15. He was a member of the General Committee. He had, as he reminded Carroll in 1910, made gifts to three successive governors when they had visited Te Whaiti and Ruatoki; and had donated land at Te Whaiti for a police station, and offered land to the Government.³⁶ Hutton and Neumann suggest however that Ngati Whare 'appear to have dropped from the Crown's view' after 1910.³⁷ The new Native Under-Secretary was unaware of who Te Whatanui was.³⁸ He remained an important leader, however. Ten years later, in the wake of Crown purchasing in the Te Whaiti blocks, Te Whatanui led a deputation to ask the Minister of Lands (and Prime Minister), William Massey to partition the block and set aside an inalienable piece of land, about 1,000 acres, as a village for the people.³⁹ Nothing came of this request; officials were by then considering consolidation. BY 1925, Te Whatanui was expressing to the Native Minister the full force of Ngati Whare disillusionment with the decisions of the commissioners, with the loss of 'large valuable areas' to the Crown, and with the prices paid by the Crown for their valuable timber, after prohibiting the people from dealing with companies which offered a much higher price.⁴⁰

Ngati Whare resentment would still be evident when official NJ Galvin of the Department of Lands visited Te Whaiti in 1936, and was received less than cordially. Given that Galvin proposed that the Crown buy the Te Whaiti Residue 2 block, it was not surprising that he got a 'frosty reception'.⁴¹ Pera Meihana told Galvin that:

34. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 229–247

35. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 246

36. Whatanui to Carroll, 29 July 1910 (Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 219)

37. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 219

38. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 220

39. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 211

40. Te Wharepapa Whatanui to Coates, 1 May 1925 (Richard Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi: A History' (commissioned research report, Wellington: Crown Forestry Rental Trust, 1999) (doc A27), pp 227–228); W Whatanui to Coates, 15 October 1925 (Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 228)

41. Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 230

I think you are a bit late in the day. If you are to value our land, our afforestation, you should consider the land that has already been disposed of, a matter of thousands of acres.

...

The Crown came along and bought our land, not only the timber but the land itself, at a rate of 8/6d per acre . . . A very valuable block, Te Whaiti No 2, had very valuable timber on it. The Crown came along and took our land, timber and all, 21/- per acre. Therefore, today – it is only today that I have realised, that this land that was taken by the Crown at 8/6d per acre and 21/- per acre, we were robbed of. We were simply robbed.⁴²

This was a graphic demonstration of Ngati Whare's view, 40 years after the UDNR Act, of their treatment by the Crown.

The peoples of Waikaremoana, finally, fared no better; they also have a dark view of the impact on their own authority of an overbearing and unresponsive Crown. The communities of Ngati Ruapani, Tuhoe, and Ngati Kahungunu had experienced military conflict in the 1860s, in what we found was a war of subjugation, followed by large-scale land alienation when the Crown subsequently acquired the four southern blocks as a result of repeated breach of Treaty principles. And although the Native Land Court had awarded the bed of Lake Waikaremoana to lists of Tuhoe, Ngati Ruapani, and Ngati Kahungunu owners in 1918, the Crown immediately lodged an appeal, which would not in fact be heard for more than 20 years, leaving ownership up in the air while the Crown began hydro-electricity development.⁴³ The Urewera Consolidation Scheme, as we have seen, left Ngati Ruapani at Waikaremoana with a fragment of their original lands. Ngati Ruapani retained just 14 small reserves in the Waikaremoana block, and Ruapani and Tuhoe owners retained only two of their southern blocks reserves. They had become isolated, hemmed in on small bits of land or dispersed to other areas.

The last straw was the Crown's defaulting on the terms of the debentures that Ngati Ruapani had finally agreed in 1921 would constitute the payment for their interests in Waikaremoana block. For nearly two years during the depression they received no interest payments at all; and this was followed by the Crown's reducing the rate of agreed interest payable to them (five per cent) after the debentures were converted into Government stock paying a lower rate. Ngati Ruapani's reaction to the Crown's high-handed treatment was evident in a number of ways. A housing inspector who visited Waimako and Te Kuha in 1937 found that his offers of assistance were met with suspicion, because Maori were concerned they would risk being put out of their homes if they accepted government help (of which they stood in great need), but then failed to make their repayments; and they would not sign the necessary forms. The prejudice arising from the shattering of their relationship

42. Notes of a conference between Mr Galvin and representatives of the Maori people of Te Urewera, Te Whaiti, 5 July 1936 (Boast, 'Ngati Whare and Te Whaiti-nui-a-Toi' (doc A27), p 230)

43. Tony Walzl, 'Waikaremoana: Tourism, Conservation & Hydro-Electricity (1870–1970)' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A73), pp 166–167

with the Crown was such that they no longer even wished to accept government help. The Gisborne Native Office commented at the time that ‘this Tribe are notorious for the hostile attitude they display to all overtures from Government bodies even though well intentioned, due entirely to what was considered unfair treatment in the past, particularly with the administration of Waikaremoana Debentures . . . every effort should be made to propitiate this unhappy Tribe.’⁴⁴

As late as 1959, the people were still petitioning parliament and putting their case to the Prime Minister, Walter Nash, in person, for payment of the full five per cent interest which they believed was due to them – because that was what had been agreed. How could the Crown unilaterally change the terms of such an important agreement?⁴⁵ And they were still getting no satisfaction. The Government, Nash told them, could not afford to pay more at the time; retrenchment during the depression affected Pakeha in the same way as Maori, and his government had not been in power then.⁴⁶ These were not answers which laid the basis for rekindling a relationship.

The peoples of Waikaremoana no longer exercised authority over their own domain as they had in the past; little of that domain remained to them. And because of that, their mistrust of the Crown had become ingrained.

For Ngati Ruapani, Des Renata expressed their sense of helplessness:

The Ngati Ruapani leadership structure has been broken as a result of the Crown actions and attitude towards Maori over the years. Our leaders had their mana diminished because what they said meant nothing to the Crown and they could make no difference. The Crown just had their set agenda.⁴⁷

Renata’s words conveyed more than disillusionment with the Crown; they also underlined a strong theme that emerged from the evidence of some speakers at our Waikaremoana hearing: despite the inner strength of their whanau and communities, the people felt that outsiders considered them second class citizens; they could not be comfortable in a Pakeha world.

Jenny Takuta-Moses (Hinekura Te Riu) of Tuhoe, Ngati Hinekura, Te Whanau Pani, and Ngati Ruapani expressed her anger at the cumulative impact of Crown actions in these words:

44. Registrar, Native Land Court, Gisborne, to Native Under-Secretary, 19 August 1937 (Vincent O’Malley, ‘The Crown’s Acquisition of the Waikaremoana Block, 1921–25’, report for the Panekiri Tribal Trust Board, May 1996 (doc A50), pp 149–150)

45. Nash visited Ruatahuna in December 1959, and responded to the request put to him by Tui Tawera (signatory to the petition) for an answer on the debentures issue. See O’Malley, ‘The Crown’s Acquisition of the Waikaremoana Block’ (doc A50), p 156

46. ‘Extracts from Representations to the Minister at Ruatahuna by the Tuhoe People’, 11 December 1959 (Vincent O’Malley, comp, supporting papers to ‘The Crown’s Acquisition of the Waikaremoana Block, 1921–1925’, various dates (doc A50(c)), pp 808–809)

47. Desmond Renata, brief of evidence, 22 November 2004 (doc 124), p 21

You people from the Crown, you people who are not part of my ancestry, you have come into Waikaremoana and over 150 years or inside of three generations you have taken our mountains, our lakes, our forests, and our lands so we can no longer sustain a living. You have made us landless and homeless.⁴⁸

And Lorna Taylor of Tuhoe, Te Whanau Pani, Ngati Hinekura, and Ngati Ruapani ki Waikaremoana, echoed the impacts of the Crown's acts on the people's relationship to the land and on mana motuhake:

Our kinship tie to the whenua has been eroded for we no longer have kainga around Lake Waikaremoana . . . Frustration for those of us that have been deprived of the richness within our culture abounds and as we have watched Te Mana Motuhake o Tuhoe being systematically eroded while our way of life also erodes has aggravated matters for many of our whanau.⁴⁹

Mana motuhake and mana whenua were eroded together – as other claimants in our inquiry stated too. Mana motuhake, after all, was required to protect mana whenua.

15.3 MANA WHENUA: WHAT WERE THE IMPACTS OF CROWN ACTS AND OMISSIONS ON HAPU RELATIONSHIPS WITH THEIR LAND, AND ON THE ECONOMIC CAPABILITY OF THE PEOPLES OF TE UREWERA?

Summary answer: *With the undermining by the Crown of the institutions through which mana motuhake, as guaranteed under the UDNR Act, was to be exercised, the ability of the iwi to protect their mana whenua was severely compromised. By the end of Crown purchasing and the consolidation scheme, Maori owners retained just under 165,000 acres of their former Reserve lands. The first prejudice therefore was the sheer amount of land lost. The majority was alienated through the purchase by the Crown of individual shares; further land was alienated as Maori owners paid in land for surveys (to assure themselves of state of the art titles promised by the Crown, which never eventuated) and arterial roads (which were never completed). The Crown emerged from the scheme with its many interests, purchased in most Reserve blocks, consolidated into one vast block, Urewera A. In the short term, because the Crown abandoned its plans for Pakeha farming settlement of the Reserve, it does not seem that the impact on customary uses of that land was marked. The impact on such uses by communities to whom the long-unused Crown land remained their backyard, and on their kaitiakitanga, would come later, when the Crown created the Te Urewera National Park on its land. In particular, it was only after this that Tuhoe discovered that the Maungapohatu burial reserve on their sacred*

48. Jenny Takuta-Moses, brief of evidence, 18 October 2004 (doc H35), p 7

49. Lorna Taylor, brief of evidence, 18 October 2004 (doc H17), p 14

mountain had not in fact been vested in them, a matter which deeply offended the people, but which was not resolved until 1977. There would be long-term impacts also on those communities whose lands were surrounded by the park, both of access to their own lands, and trespass by park visitors on their lands (we discuss these in chapter 16).

For the many Maori owners who retained at least some of their shares in Reserve blocks, despite the unremitting pace of Crown purchase, consolidation brought mixed results in terms of settling their titles. It meant that after a prolonged title process which they had embarked on in 1899 (the completion of which took far longer than they had expected, till 1913), they now had to begin again in 1921. During consolidation their 51 blocks became 183 blocks held at whanau level. Hapu had failed to secure the titles they expected during the Urewera commission process; and Crown purchasing and consolidation finally put paid to any remaining hope of hapu titles. Whanau now had to choose which lands to hold and which to give up in order to consolidate their interests in no more than three of the newly created blocks; in short, they had to decide to give up associations with particular hapu and whanau food gathering and bird-catching places in order to concentrate holdings in areas of greatest ancestral importance to them, where they might also maximise their economic opportunities for the future. For many this meant difficult decisions, and sometimes uncomfortable outcomes in terms of tikanga both for those who moved out of blocks, and those into whose established areas they moved. By the end of consolidation owners at last had some certainty for the future as to which lands were theirs, and which belonged to the Crown; but they were prejudiced by the giving of so much additional land (31,500 acres) to pay for land transfer titles which they had been told would assist them in borrowing and land development. Not only was the promise a hollow one, but these titles were never produced by the Crown. Whether owners were prejudiced by the lack of such titles for their own development purposes is a moot point. Consolidation did not solve the problem all Maori owners faced in the absence of community titles, and because of the land court's decision much earlier that all heirs should succeed equally to the shares of a deceased owner. Fractionation of titles continued after consolidation, and lenders never looked kindly on multiple ownership.

The peoples of Te Urewera had already had their economic capability greatly reduced by extensive Crown purchasing in the 'rim' blocks and the four southern blocks – compounded, in the case of Tuhoe, by the loss of their best lands in the eastern Bay of Plenty confiscation. The most significant loss sustained by Maori as a result of purchasing in the Reserve, and consolidation, was that of three quarters of their forest asset. Ngati Whare and Ngati Manawa of Te Whaiti were the only block owners whose timber was valued separately from the land; they were however, greatly underpaid for their timber, and the Crown secured the financial benefit of much of that milling timber for itself. The hopes of Ngati Whare and Ngati Manawa rested on the timber milling industry that developed on their former lands, and the ongoing employment that it provided. Tuhoe owners in the rest of the Reserve who sold shares were

paid nothing for their timber. Those who were awarded blocks with millable timber during consolidation were able to mill some of them from the 1950s when the Crown began accepting milling applications, some time after milling became commercially profitable. We explore the extent to which owners were allowed to mill their timber in later chapters.

The impacts of loss of farming land were not generally as great, partly because Maori did succeed during consolidation in retaining much of the land that was already cleared and farmed, and partly because the land was largely second or third class land anyway. Ngati Whare, however, lost three-quarters of the open land between Te Whaiti and Minginui to the Crown award – which might otherwise have stood them in good stead when cobalt deficiency was identified soon afterwards as the cause of ‘bush sickness’ in stock, and it was realised that the problem could be solved. As it was, they were reduced to a few blocks in the Te Whaiti valley, with little hope of a secure economic future on their ancestral lands. In the wake of consolidation, Tuhoē’s economic base had been further reduced to a series of blocks that would always offer limited opportunities for development. The difficulties they faced, however, were compounded by the Crown’s failure to complete the arterial roads, or maintain the section it did build. Whakatane Valley lands were left without roads or tracks; the owners of Waimana series blocks had temporary road access only, until the road became impassable through lack of maintenance. Maungapohatu saw a first stage in construction – a six foot track – but nothing more, and ultimately was left without decent access. Dairy farmers were severely affected; after consolidation they broke in new land, and co-operated to overcome the difficulties posed by lack of decent roads, and to support their families, until lack of road access brought them to a standstill. The core Ruatahuna and Ruatoki communities looked to the government for assistance with land development schemes; but the future for many was more seasonal work beyond the rohe. For Ngati Ruapani and Tuhoē of Waikaremoana the position was worse. They had virtually no productive land, and few economic options. This was aggravated when the Crown failed to ensure payment of interest on the Ngati Ruapani debentures on time during the depression. By the 1930s those who visited the small Te Kopani reserve were shocked by the poverty there.

BY 1930, the Crown owned four-fifths of the land in the former protected Urewera District Native Reserve. It was not left to the peoples of Te Urewera as an endowment for the future; but was purchased for a purpose for which it was never used, Pakeha farming settlement. Ultimately the land would be used for the ‘national interest’.

15.3.1 Introduction

The Reserve lands were the last lands of the peoples of Te Urewera; their owners in turn were to feel the full force of the impacts of the Crown’s acts and omissions on their ability to exercise mana whenua and protect their lands: not only did they lose the greater part of

their land, but they were left without usable titles, access to finance and the infrastructure they needed for development. The exercise of mana whenua, as we explained in chapter 2, was integral to hapu identity and well-being. The impact of loss of land and authority over it on such a scale was therefore wide-ranging.

In the course of Crown purchasing (to March 1919), interests equivalent to 330,264 acres (that is, 51 per cent of the Reserve) – land which was not yet defined on the ground – passed out of the hands of the Maori owners. By the end of the Urewera Consolidation Scheme, with further purchasing, and the land acquired by the Crown for the costs of surveys and building arterial roads, this had increased to 482,300 acres. Loss of land on that scale in itself diminished mana whenua. And while customary rights were re-ordered into new blocks, each with lists of individually named owners, there was no sign of hapu titles in the new land records; hapu lands and authority were accorded no recognition. We found in chapter 13 that the Crown breached the principle of active protection in failing to intervene when it became clear that the Urewera commission was focused on lists of names and relative shares (mirroring land court practice), rather than on deciding the hapu titles that Tuhoe and Ngati Whare had been so anxious for. Customary rights had been replaced not by hapu or community titles (which would have prevented fractionation through succession), but by individualised titles. The Crown then failed to ensure that komiti hapu and the tribal General Committee – the new bodies specified in the UDNR Act – were established promptly, which left a management vacuum at the very point when management was most needed.

The prejudice arising from early Crown failures in implementing the UDNR Act affected all those who made claims before the Urewera commission. Their title problems began with the long delays before titles initially awarded by the commission were finalised, as the appeals process dragged on and on. This meant continuing uncertainty for those involved in appeals. The Crown's delay in providing for the hearing of appeals (not once but twice) meant that it was 1913 before many titles were finalised.

No sooner had the titles been finalised, than the Crown began a period of intensive purchasing of Reserve lands, subjecting owners to yet another period of uncertainty about their titles. Those who did not sell had no means of knowing how their own interests might translate into land on the ground; and the Crown compounded this by preventing owners from securing partition orders in the Native Land Court. The reason it could purchase in the Reserve was because titles had been individualised, and because it decided, after an initial brief period from 1909 to 1910, to ignore the General Committee, opening new blocks to purchase according to its own timetable, and transacting with individual owners instead of the General Committee, as legally it should have. Owners were prejudiced in that they were denied the protection of the tribal body – as they had also been denied the active involvement of their komiti for a number of years, in decision-making about the future of their

lands. That vacuum in itself would pave the way to easier purchase, for when it started, the komiti had barely had a chance to plan land use in a way which might have reassured those they represented. Owners were left facing a future in which their main options seemed to be wage earning away from home, and sale of some of their shares.

In the longer term, Reserve block owners were prejudiced further when they had to face the Crown's eventual solution to its unrestrained purchasing: a consolidation scheme. In the course of the scheme, owners saw their allocation to 51 Reserve blocks by 1921 (the number had grown from 34 in 1902) reworked, so that the much smaller amount of land they now retained, was re-divided into 183 blocks. In accordance with government plans for consolidation, these were, in essence, whanau blocks, approximating Western family holdings. Hapu titles remained unattainable. And nearly all the new blocks, unlike Pakeha family holdings, had multiple owners whose shares were succeeded to in accordance with the established land court system of equal succession.⁵⁰ Consolidation could not solve title 'problems' (problems which were the result of Crown policy and practice) while the introduced system of equal succession to an owner's interests continued – which it did, and largely still does.

As the Hunn Report (1960) would later point out, consolidation might be described as 'long laborious and futile' – futile because, despite the initial reduction in numbers of owners, the ownership began to increase immediately, 'so consolidation is never really completed at all'.⁵¹ This is borne out in Te Urewera, where fractionation of title continued in consolidation blocks. An example is Ahirau Block, 187 acres, for which title was issued to 20 owners on 10 April 1922; by 1995 the names of successors to just one of those owners covered pages of court records, and some of those held only 1/4158 of a share.⁵² This was the land holding system to which Reserve block owners were condemned by the failure to ensure hapu titles, the extent of Crown purchasing, and the nature of the Crown's solution to its own problem of extracting the countless interests it had purchased in a usable block of land.

In this section, we examine the impacts of the contraction from the larger Reserve blocks to smaller consolidation blocks that was the outcome of the dual processes of Crown purchasing and the Urewera Consolidation Scheme. Among these were the loss of significant wahi tapu and the Waikokopu springs taonga (which the Crown took in its own award); and the loss of connections with ancestral lands as a result of choices owners had to make

50. Two blocks, Awamate and Waikotikoti No 1, were each awarded to just one owner (See 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)', undated, vol1 (doc M12(c)), [pp 35–36]; 'Urewera Consolidation Block Order Files (Paemahoe to Wharepakaru)', undated, vol2 (doc M12(d)), [pp 464–465])

51. J K Hunn, *Report on the Department of Maori Affairs: with statistical supplement, 24 August 1960* (Wellington: Government Printer, 1961), pp 54–55 (Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol2, p 737)

52. 'Urewera Consolidation Block Order Files (Ahiherua to Owaka)', undated, vol1 (doc M12(c)), [p 13]; Whakatane Maori Land Court, minute book 87, 2 March 1995, pp 158A–158Q

when they concentrated their remaining interests. We look also at the effects of the Crown's acquisition of 482,300 acres of former Reserve lands on the economic capability – or the economic power, as Tuhoe put it – of Maori owners of the former Reserve, coming as it did on the back of extensive land loss in other parts of Te Urewera.

15.3.2 Owners' dilemmas: choosing which land to hold, and which to give up

The Urewera Consolidation Scheme confronted owners with various painful choices. At the outset, owners were told that they might select no more than three blocks to take their interests in. Like players facing a discard, they had to decide which land should go and which they should hold. Most owners were well aware that this was their last chance to secure titles to land which might guarantee their future and those of their whanau and their uri whakatipu. Faced with a final decision which would allow them both to retain strong and enduring ties to areas of ancestral significance, and maximise their economic opportunities for the future, most owners chose only two blocks. Thus they concentrated their holdings in traditional areas of settlement which also contained the most usable land for crops and pasture, and which would be serviced by the promised roads; officials by and large were also willing to acknowledge that main settlement areas would remain in Maori ownership.

But this also meant that owners were required to sacrifice their connections to other lands of ancestral importance – all of the former Reserve, after all, was whenua tipuna (ancestral land). In Te Urewera, as in other areas where consolidation took place, this put many owners who wanted to retain their old settlements to which they had (in the official parlance of the time) 'sentimental attachment' (ancestral connection), in a difficult position. Raumoa Balneavis, as we have noted, drew attention to this at the start of the Urewera Consolidation Scheme process in 1921:

During the first week the more conservative elements in the tribe were in the foreground, showing naturally a hesitation to accept consolidation of interests in the fullest sense, and a disposition to magnify sentimental attachment to old kaingas (now practically abandoned) in preference to laying out new farming areas in accord with modern ideas of land settlement. . . .

The abolition of existing Native Land titles and tribal boundaries, and the substitution of Land Transfer titles for defined sections, sounded revolutionary enough to the Ureweras. It meant to them that the land-marks settled after generations of quarrel and bloodshed and later of protracted litigation were to be wiped out. Their expressive way of stating the position was that the titles were to be 'whakamoana-ed' (literally put out to sea).⁵³

53. Balneavis to Coates, 27 August 1921 (SKL Campbell, comp, supporting papers to 'Urewera Overview Project: Land Alienation, Consolidation and Development in the Urewera, 1912–1950', various dates (doc A55(b)), pp 152, 157)

These words hint at the enormity of what people were being asked to agree to. Consolidation schemes always raised issues of tikanga, and clearly there were many who struggled both with abandoning land where their own rights were established, and taking up land where they had lesser rights, or no such recognised rights at all.⁵⁴

The scale on which Crown purchasing was conducted, and the consolidation scheme in which it culminated, would inevitably impact on a range of inherited rights to particular resources that whanau and hapu were accustomed to exercise. Stokes, Milroy, and Melbourne drew attention to established subtribe and family rights to particular food-gathering and bird-catching places, and to ‘particular associations with certain places that give significance to plants gathered there.’⁵⁵ These were the rights people had to decide to give up – outside the main blocks that they now chose in the Urewera Consolidation Scheme. In the short-term, those rights might or might not be affected; in the longer term, such decisions meant the surrender of rights over resources which were important for harvesting particular foods in season, and for contributions of prized foods on important community occasions when the mana of the hapu was at stake. With those rights, cultural knowledge began to be lost too – both techniques for catching birds, and processing berries; for instance, and whanau and hapu histories associated with key sites for different foods and plants. The consequences of the Crown’s acquisitions would not fully hit home until after the creation of Te Urewera National Park, and the imposition of restrictions on the use of the land and resources. In the short term, however, Maori owners would have felt the diminishment of their land base, as smaller blocks with new names were created.

Tuhoe owners made the difficult decision to give up their interests in the Waikaremoana block, which had been hard fought and won in the Urewera commissions, in order to concentrate their holdings in settlements which might better assist them to secure an economic future. But as we explained in chapter 14, owners made this decision only when facing the threat of compulsory acquisition in the Waikaremoana block, and because the extent of Crown purchasing in the Reserve made the option of a transfer of interests from the block to more northern blocks an attractive one. Ngati Ruapani and Ngati Kahungunu owners subsequently alienated their interests there when it seemed they were left with little choice. This contraction of their lands, following the earlier alienation of the four southern blocks, significantly damaged the ability of Waikaremoana peoples to maintain cultural knowledge and essential spiritual connections to the lake itself. Lorna Taylor spoke of social, cultural, and spiritual ramifications of the loss of land and the close association with the lake that was the outcome of this process:

The kinship we have with the elements is essential to maintain balance and harmony. The idea that you only take enough for that meal, and to return your first catch to the water

54. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 738

55. Stokes et al, *Te Urewera* (doc A111), p 353

was practiced by our father as he gathered kai for his whanau and is integral to this notion of balance and harmony. Our kinship tie to the whenua has been eroded for we no longer have kainga around Lake Waikaremoana and there is a deep sense of grief as our links to our ancestors are clouded with the pain of confiscation and denial.⁵⁶

Tamati Kruger explained to us that such losses had the effect of making Tuhoe anonymous – ‘He Whakamaui Tarawa – of unknown identity’.⁵⁷ He described the Crown’s determination to undermine mana whenua at Waikaremoana in these terms:

Na te whakawehe rawa i a Ngai Tuhoe me Nga Hapu o Te Urewera i o ratau whenua i ahei ai te Karauna ki te tango i te whenua me nga rawa. Ko te take, e kore e taea te wete i te hononga i waenga i te tangata whenua me ona whenua: Kei te whenua nga tikanga, ma te mana whenua e u ai nga kaupapa mo nga ra kei te heke mai. He nui nga tikanga i whakamahia e te Karauna hei whakatutuki i tenei ahuatanga i Waikaremoana. Ma te titiro ki nga whenua muru kei roto i nga pukapuka mahere, kua tapiritia atu nei ki enei korero, ka kitea te ngaro haeretanga o nga whenua o nga hapu o Te Urewera me Ngai Tuhoe, kia mahue mai ai he kongakonga noa iho hei turanga mo o matau waewae.⁵⁸

Separating Ngai Tuhoe and Nga Hapu o Te Urewera from their whenua was a primary prerequisite to facilitate the Crown’s designs of land acquisition and resource extraction. This is because the fundamental relationship between tangata whenua and their land is irrevocable: Tradition is Place, and sovereignty over Place is the basis for a sustainable future. The Crown used a variety of mechanisms to achieve this in Waikaremoana. The Confiscations in the map books accompanying this presentation show how the land base of Nga Hapu o Te Urewera and Ngai Tuhoe was whittled away until they had a mere fraction upon which to stand.⁵⁹

While some owners had to move out of blocks that were important to them, others had to accommodate them when they shifted. Relocating interests would be difficult for both groups. At Ruatahuna this would be compounded, we were told, when the consolidation commissioners decided to put various groups of owners together in the Te Apitihana block. Ruatahuna, as we explained in chapter 2, has always been considered by its peoples as Te Manawa o Te Ika: the heart of the fish, the heartland of the Tuhoe people. Over centuries, new arrivals merged with older groups; new hapu consolidated, defending against threats from outsiders. Throughout this time, the peoples of Te Manawa o Te Ika maintained their mana whenua. By the nineteenth century, the Ruatahuna valley was a place of closely layered customary rights. Te Whitu Tekau leaders sought to protect these rights through the UDNR Act, but the Urewera commission title processes led to much disappointment, as its

56. Lorna Taylor, brief of evidence (doc H17), p 14

57. Tamati Kruger, brief of evidence, 18 October 2004 (doc H31), para 11

58. Tamati Kruger, brief of evidence, 18 October 2004 (doc H31(a)), p 4

59. Tamati Kruger, brief of evidence (doc H31), para 7

titles process did not result in hapu titles in the Ruatahuna block, and it took years before a decision on partition of the block was reached during the Native Appellate court proceedings in 1913. The block was initially divided into and investigated in three blocks: Ruatahuna, Huiarau, and Wai-iti; but it was decided in 1902 to treat the whole of the subdivisions as one block. Only in 1913 was the block partitioned into five areas.⁶⁰ This drawn-out process resulted in tensions between communities; tensions which surfaced again during the implementation of the consolidation scheme, dividing communities into pro- and anti-consolidation groups. The outcome was that different hapu interests were amalgamated into one block by the commissioners (the Apitihana block – which comprised Arohana (Ruatahuna 1), parts of Kahui (Ruatahuna 2) and Wai-iti (Ruatahuna 4), and some Tarapounamu – Matawhero lands). We were told that Apitihana groups largely comprised Te Urewera and Ngati Tawhaki hapu. Te Urewera owners who had been owners in the lands of Te Arohana and Kahui now became owners in Ngati Tawhaki's lands of Tarapounamu, and vice versa.⁶¹

Rongonui Tahī spoke with feeling about the impacts of consolidation and the creation of the Apitihana block by commissioners who 'could not define our rights properly'. Such impacts in his view extended beyond the loss of rights to deeper impacts on hapu identity, on tikanga and the preservation of cultural knowledge. The Crown had 'put strangers into the Mataatua lands. Hapu who originally had rights in the bush blocks became owners here irrespective of what hapu they came from. Those people do not have allegiances here and do not know the tikanga of this marae and hapu. . . . It is not right that those people . . . should be owners of the marae.'⁶² Even within a single valley, the impacts of consolidation on mana whenua following Crown purchase or acquisition of land during the consolidation scheme could be marked. The casual attempts of consolidation commissioners to tidy up the interests of those who opposed consolidation and would not cooperate would have long term effects.

One further particular loss was that of Ngati Manawa, who moved out their shares in Tawhiuau block, and thus gave up their maunga tapu Tawhiuau (from which their Kura Kaupapa Motuhake o Tawhiuau takes its name). Ngati Manawa and Ngati Whare both gave up their shares in the block in order to concentrate their holdings around their main settlement in the Te Whaiti valley, pooling their interests from Otairi, Maraetahia, and Tawhiuau blocks – many of which were then placed by Knight in the Residue block, as he strove to secure as much of the timber lands for the Crown as possible. Their maunga is now within the National Park.⁶³

60. Heather Bassett and Richard Kay, 'Ruatahuna: Land Ownership and Administration, c. 1896–1990' (commissioned research report, Wellington: Waitangi Tribunal, 2002) (doc A20), pp 91–93

61. Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 174–175

62. Rongonui Tahī, brief of evidence, 22 June 2004 (doc E25), p 2

63. Counsel for Ngati Manawa, closing submissions, 2 June 2005 (doc N12), pp 11, 49, 55–57, 74

15.3.3 Loss of authority over significant wahi tapu and taonga to the Crown

Significant wahi tapu also passed into Crown ownership through the Crown's failure to create particular reserves for Maori, namely, the Maungapohatu burial reserve and the Huiarau reserve, and the Waikokopu springs taonga. We have found that this failure was in breach of the Treaty principle of active protection. The people had sought these reserves, and there was legislative authority for the Crown to have made them. As a result of extensive Crown purchasing, and the Crown's control of the consolidation process, it was in a position to decide whether to grant requests for wahi tapu and other reserves, or not.

A taonga which was lost to Tuhoe authority, and in particular to Ngati Haka Patuheuheu, in the course of consolidation was the Waikokopu hot springs, located on the edge of the Waikokopu river that runs close to Waiohau marae from Pukehou mountain.⁶⁴ The importance of the ngawha to Ngati Haka Patuheuheu was discussed by Anitewhatanga Hare who recalled a karakia passed down from her elders, sent by Ngatoro-i-Rangi to his tipuna in Hawaiki. Te Pupu and Te Hoata, the fire guardians, arrived, landing first at Whakaari (White Island), and 'left a trail of volcanic fire or mineral springs' on their journey. At Pukehou mountain, in Waiohau, they blew a trail of ahi tipua, sacred fires, opening up waterfalls of hot mineral water. This was their legacy for Waiohau valley.⁶⁵ She described Tauheke pa on Pukehou mountain, and the use of the ngawha for healing, for bathing and (by tipuna kuia) for new born babies, and for strengthening babies' limbs and backs. Hiko to the springs continue today, she told us, to keep the tradition alive.⁶⁶

Despite the importance of the ngawha to Ngati Haka Patuheuheu, however, and despite their representations to the consolidation commissioners that the 'waters were of great medicinal value & highly prized by the local people', the ngawha were awarded to the Crown by the commissioners.⁶⁷ On 27 February 1923, when the commissioners met at Waiohau, it was stated by Wiremu Bird that the 'elders had asked [. . .] to get reserved the Hot Springs within the Pukehou Blk' and that 'general approval was expressed by all those present'. But, as we have seen, the commissioners then decided to establish 'an area of 10 to 15 acres as may be required to become Waikokopu Hot Springs', to be included in the Crown award.⁶⁸ The reserve was shown as an 11-acre block encompassing Waikokopu spring (labelled 'Crown

64. Counsel for Wai 36 Tuhoe, closing submissions, 30 May 2005 (doc N8(a)), p169

65. Anitewhatanga Hare, brief of evidence, 15 March 2004 (doc C17(a)), p29

66. Anitewhatanga Hare, brief of evidence (doc C17(a)), pp 30-31

67. Urewera commission, minute book 1, 27 February 1923 (doc M29), p 283; counsel for Ngati Haka Patuheuheu, closing submissions, 31 May 2005 (doc N7), p 146

68. Urewera commission, minute book 1, 27 February 1923 (doc M29), p 283

land’) on a 1924 plan, and was ultimately included in the Crown award gazetted as Urewera A on 23 June 1927.⁶⁹

Ani Hare spoke sadly of the dwindling of the ngawha, the loss of ‘bubbling pools’ and warm water as time passed, and forestry works began, with the roots of pine trees taking their toll. Yet such wahi tapu were crucial for ‘[t]he survival of our hapu, and our iwi . . . [t] hose special places give our people their tino rangatiratanga, their inheritance, their legacy. (Ko nga wahi tapu te oranga o tenei hapu, o tenei iwi. Ma enei wahi, ka ora tonu te hapu, te iwi o tena whenua, o tena whenua. Ka ora tonu te “tino rangatiratanga”)⁷⁰

Counsel for Ngati Haka Patuheuheu spoke of the impact on the mauri of the taonga as a result of the Crown’s failure to protect it; he referred to Dr Suzanne Doig’s evidence that exotic forests could dry up spring-fed side streams, as pine trees sucked water from the soil.⁷¹ Geothermal waters, she said, could be affected in the same way – a point that the Crown accepted – though counsel added that knowledge of the water requirements of pine trees did not exist in the early part of the twentieth century when the forests in the region were developed.⁷² There is insufficient evidence before us on the specific impact of exotic forestry on Waikokopu springs for us to be able to reach a conclusion on the point.

Counsel for Ngati Haka Patuheuheu considered the possibility that the Crown took title to the springs in order to create a trust for the people. If so, he said, there was no sign that it had managed them as a trustee. Instead, it seemed that the springs had become part of the National Park.⁷³ The Crown agreed that this seemed to be the case; it was unable to clarify the matter further for us.⁷⁴ The relevant *Gazette* notice suggests, however, that Waikokopu springs may well not be included in the Park (though they are on Crown land between Pukehou and Tapakiekie blocks). The boundary description indicates that the National Park boundary ran along the southern, eastern and northern boundaries of Pukehou block.⁷⁵ This remains a live issue.

69. For the 1924 plan, see ML 13614. The commissioners vested in the Crown all the Urewera Reserve (except those areas needed to satisfy native awards) on 16 July 1925 (Urewera commission, minute book 2A, 16 July 1925 (doc M30), p 239. The Chief Surveyor approved sheet 1, ML 14218 (the survey plan of Urewera A block, which included the 11-acre block at Waikokopu) on 6 December 1926. See also ‘Proclaiming Native Land to have become Crown Land’, 23 June 1927, *New Zealand Gazette*, 1927, no 43, p 2121.

70. Anitewhatanga Hare, brief of evidence (doc C17(a)), pp 16, 30–31

71. Counsel for Ngati Haka Patuheuheu, closing submissions (doc N7), p 149; Suzanne Doig, ‘Te Urewera Waterways and Freshwater Fisheries’, report commissioned by the Crown Forestry Rental Trust, October 2002 (doc A75), p 220

72. Suzanne Doig, under cross-examination by counsel for Ngati Haka Patuheuheu, 19 August 2004 (transcript 4.9, pp 166–167); Crown counsel, closing submissions (doc N20), topic 29, p 33

73. Counsel for Ngati Haka Patuheuheu, closing submissions, 31 May 2005 (doc N7), pp 148, 151. Counsel cited a map in evidence of Tamaroa Nikora. See ‘Survey Plan ML 21742 of Te Manawa-o-Tuhoe A Block’, in Tama Nikora, ‘The Urewera Consolidation Scheme (1921–1926): An Analysis’, June 2004 (doc E7), appendix C2, sub-app E, which contains an annotation of the 1957 *Gazette* notice enlarging Te Urewera National Park; the annotation however is incorrect.

74. Crown counsel, closing submissions (doc N20), topic 29, p 30

75. ‘Adding Land to the Urewera National Park’, 28 November 1957, *New Zealand Gazette*, 1957, no 89, p 2217

Authority over the Waikokopu springs has been lost to the hapu, and to the iwi. Initially this may have been simply because the commissioners lacked the authority to make the springs a reserve for Maori at the time when it was sought; though if so, we were not certain why they failed to advise ministers that the reserve be created when an amendment to the law soon afterwards opened a path to that outcome. We are not certain why the Crown, 90 years later, would wish to retain the ngawha.

Requests for the setting aside of the Huiarau reserve (200 acres), and for the Maungapohatu reserve (500 acres) had also been made in 1923, and were dealt with in Wellington at the same time. Takarua Tamarau explained to the commissioners that Huiarau was 'regarded . . . [as] a sacred place associated with their ancestors as recorded in their legends.'⁷⁶ The commissioners forwarded the request from Maori to the Native Department twice, in both 1923 and 1925; on the second occasion (following a meeting with people on the Waikaremoana block to discuss reserves there) they also sent a list of 14 'natives to be appointed trustees.' These included Rehua Te Wao, Waipatu Winitana, Tekoteko Hatata, Takarua Tamarau, and Karu Te Rangihau.⁷⁷ The Maungapohatu and Huiarau reserves were not made, which in our view was because the Crown wanted control of the area for 'Forest or Climatic reservations' and because officials balked at the costs of surveying out six reserves (including three pua manu) requested at that time.⁷⁸ Thus, as the Tuawhenua report authors wrote about Huiarau: 'a significant waahi tapu of Tuhoe was vested in the Crown, later to become public property as a national park.'⁷⁹

The Maungapohatu burial reserve was also included in the Crown's large Urewera A block which the commissioners awarded to it in 1925; the block was gazetted Crown land in 1927. Though the burial ground was eventually returned, 50 years later, the failure to reserve it at the time would be an ongoing grievance for Tuhoe. This is hardly surprising. Stokes, Milroy, and Melbourne wrote of the significance of the maunga as 'the most tapu place, a burial ground and identifying landmark of the Tuhoe tribe.'⁸⁰ They pointed out that the creation of a reserve had first been raised with the Urewera Commission in 1899, when Tukuaterangi emphasised its importance to the people:

that the whole mountain may be kept tapu, sacred, (whakatapua) for our burial places; Maori mana, identity and prestige are embodied in that whole mountain. Let 1000 acres be reserved, or less, and let the surveyor define this land correctly so that the Maori sacred

76. Urewera Consolidation Minute Book 1, 25 April 1923, p 336; Bassett and Kay, 'Ruatahuna: Land Ownership and Administration' (doc A20), p 162

77. Carr and Knight to Under-Secretary for Native Department, 20 May 1925 (SKL Campbell, comp, supporting papers to 'Land Alienation, Consolidation and Development in the Urewera, 1912–1950', various dates (doc A55(c)), pp 284–285)

78. Note endorsed on Knight and Carr to Coates and Guthrie, 6 August 1923 (Crown counsel, closing submissions (doc N20), topics 18–26, p 44)

79. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 181

80. Stokes et al, *Te Urewera* (doc A111), p 12

places are protected. All our ancestral mana from time immemorial is enshrined in that mountain.⁸¹

Tamaikoha, Numia Kereru, and Tutakangahau all supported the request, and the chairman gave a favourable response. But in 1901 the chairman stated that the commission had ‘no power to make reserves of this kind.’⁸² Twenty years later, at a consolidation commission hearing in January 1922, Pinohi Tutakangahau tried again, noting that the reserve at Maungapohatu had ‘apparently been over-looked.’⁸³ The commissioners indicated they would recommend that the Crown permanently reserve 500 acres of the Maungapohatu mountain.⁸⁴ In 1924, a list of 24 names was put in to the commissioners to be declared trustees of the Maungapohatu reserve under section 11 of the Native Land Amendment and Native Land Claims Adjustment Act 1923. This list was stated later to be ‘representative of all Tuhoe hapu,’⁸⁵ underlining its importance to the iwi. The same year, a survey was made of an area of 586a 3r 32p for the burial reserve.⁸⁶ But despite this, as we explained in chapter 14, title to the reserve was not created. It was however excluded from the Te Urewera National Park when the park was extended in 1957.⁸⁷

None of this was discovered until 1964, when the local people complained about visitors interfering with graves on the maunga (we discuss this further in chapter 16). But one impact of the Crown’s failure to ensure that the burial reserve was made when it should have been, was that it took a long time to uncover and rectify the problem. Even after it became evident (in 1974) that the Crown was prepared to return the reserve, questions of legal access, consultation with the Park Board, how to achieve reversioning (and in whom), all delayed things further.⁸⁸ It was November 1976 before the Chief Judge of the Maori Land Court heard an application that the reserve be set aside as a Maori reservation in accordance with resolutions passed at a general meeting of Tuhoe at Te Whai a te Motu (Ruatahuna). On 10 January 1977 the judge ordered the vesting of the reserve in 875 persons as tenants in common.⁸⁹ This list in fact included a number of Ngati Hinaanga. On 24 February 1977, the

81. Urewera Minute Book 3, 29 March 1899, pp 182–183 (Stokes et al, *Te Urewera* (doc A111), p 12)

82. Urewera Minute Book 5, May 1901, p 343 (Jonathan Easthope, ‘A History of the Maungapohatu and Tauranga Blocks as Defined by the First Urewera Commission’, report commissioned by the Crown Forestry Rental Trust, 2002 (doc A23), p 255)

83. Urewera Minute Book 1, 22 January 1922, p 17 (Tamaroa Nikora, brief of evidence, 16 February 2005 (doc K14), p 4)

84. Extract from Urewera Minute Book 1, 22 January 1922, p 17 (Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), p 255)

85. Tamaroa Nikora, personal communication to J Easthope, 13 December 2001 (Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), p 256)

86. Easthope, ‘A History of Maungapohatu and Tauranga Blocks’ (doc A23), p 257

87. ‘Adding Land to the Urewera National Park’, 28 November 1957, *New Zealand Gazette*, 1957, no 89, p 2217

88. On the issues that arose between 1974 and 1976, see Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), pp 257–263.

89. The Chief Judge recorded that the land was vested in the 875 persons found to be owners by the second Urewera commission in 1907. See Rotorua Maori Land Court, minute book 184, 10 January 1977, pp 124–126.

land was gazetted as a Maori reservation ‘for the purpose of a burial ground and as a place of historical interest for the common use and benefit of the peoples of Tuhoe.’⁹⁰ And on 6 October 1977 the court vested the reserve in the Tuhoe Waikaremoana Maori Trust Board to hold in trust for the beneficiaries.⁹¹

The depth of feeling among Tuhoe at the fate of the burial reserve, and its lack of title, was very evident during this period. At the September 1976 hui at Ruatahuna, John Tahuri spoke of the lack of title as ‘a matter of continuing grievous harm to us’, and of the delay since ministers had been asked in 1971 and 1973 to return ‘our sacred mountain’. Tama Nikora spoke of the meeting as the culmination of Tuhoe requests, pursued by the trust board, in line with the ‘spirit of Tuhoe requests [which] indicate that Tuhoe desire to secure title to Maungapohatu and to keep the mountain sacrosanct forever’. He set the history of the Crown’s failure to ensure that the reserve was made in the context of Crown involvement in Te Urewera over decades, including land dealings since the Waiohau fraud, artillery being stationed at Ruatoki and Te Whaiti after Tuhoe opposed government surveyors in 1895, the UDNR legislation, followed by the worst fears of Tuhoe coming to pass, notably massive Crown land purchasing during the 1910s.⁹² Officials later struggled with the wording of a press release after the Minister asked for due publicity to be given to the Crown’s return of the mountain to Maori. As the Commissioner of Crown Lands (Velvin) put it in February 1977:

It would appear that the Tuhoe people were, and indeed still are, very aware that the Crown should probably never have acquired the Burial Reserve. This became evident during discussions at the recent Court Sittings when the Tuhoe Waikaremoana Maori Trust Board were reluctant to organise any festivities on their Marae in conjunction with the return of their Mountain.⁹³

Easthope noted that there is no evidence that the Crown ever offered an apology for its omission, or we might add, the prejudice to the people arising from the reserve being surrounded by the National Park (which we address in chapter 16).⁹⁴ For Tuhoe, there remain issues as to whether ‘all sacred sites on Maungapohatu were returned’, and how the burial reserve should be more effectively protected.⁹⁵

90. ‘Setting Apart Maori Freehold Land as a Maori Reservation’, 24 February 1977, *New Zealand Gazette*, 1977, no 19, p 404

91. Rotorua Maori Land Court, minute book 187, 6 October 1977, p 74

92. ‘Minutes of general meeting of Tuhoe Tribe’, Ruatahuna, 18 September 1976 (Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), pp 260–261)

93. Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), pp 263–264; Velvin to Coad, 25 February 1977 (Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), p 264)

94. Easthope, ‘A History of Maungapohatu and Tauranga Blocks’ (doc A23), p 264

95. Consolidated statement of Tuhoe claims, February 2000 (SOC 1.6(a)), p 19 (Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), p 266). In respect of the Maungapohatu mountain burial reserve, see also Tamaroa Nikora, brief of evidence (doc K14), p 8.

15.3.4 Continuing uncertainty about rights and titles

For the peoples of Te Urewera, the wrench of abandoning some ancestral lands in the course of the consolidation scheme, because they might seem of less economic use for the future, was increased by the realisation that the titles process they had grappled with between 1899 and 1913 was being superseded by a new process. Most saw little alternative to engaging, however, if they were to escape the no man's land of uncertain titles in which Crown purchasing had stranded them.

Lack of certainty about titles caused problems which rose to the surface in various ways. Disputes occurred both during the period of Crown purchase, and as the process of consolidation unfolded.

In the purchase period, there were tensions between sellers and remaining owners in a given block, since it was not clear what had been sold and therefore, what land and resources were retained by remaining owners. Owners who had not sold might find it difficult to protect what they regarded as their own resources. In one case, Tupata Tamana wrote to William Herries in March 1918 about sellers of shares who had been alarming the remaining owners in Ruatoki, Paraeroa, Taneatua, and Tarapounamu by coming onto the land and killing pigs and cattle, shooting birds, splitting posts, and lighting fires.⁹⁶ The same sort of uncertainty also clearly lay behind the 1923 request of some Ruatahuna owners to the consolidation commissioners for information as to who had sold shares in their blocks, so that they might draw some conclusions about the location of sellers' interests. As Bassett and Kay suggested, these owners seem to have been thinking in terms of a Native Land Court partition, whereby traditional land areas of the sellers would be awarded to the Crown. Although they were opposed to consolidation, they still wanted their own lands defined and protected.⁹⁷ As we noted earlier, the commissioners declined to supply lists of sellers' names, stating that they would fix the boundaries once they knew where 'non-sellers' wished to be located.

While unresolved titles led to tension within communities, they could also, on occasion, lead to tension with the Crown. A well known case was at Te Whaiti, where the Crown took steps to stop owners using timber on the land while it was buying into the block. In 1917, the Crown responded to a small-scale post-cutting operation on the Te Whaiti 1 block by applying to the land court for an injunction against all timber cutting on the block. In other words, it faced the same problem faced by Maori owners who had not sold – a problem caused however by its own purchase of undivided shares and policy of delayed partition – how to protect interests in resources it believed it was entitled to. In this case, what was at stake was the Crown's undefined interest in valuable timber. The Solicitor-General's opinion was that, since those who had not sold were joint owners of the blocks with the Crown, there was nothing illegal in their cutting timber; but they must 'account to the Crown for

96. Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 21

97. Bassett and Kay, 'Ruatahuna: Land Ownership and Administration' (doc A20), p 147

the Crown interest in the timber so cut by them.⁹⁸ The court granted the injunction, though it was 'sympathetic towards the argument of the non-sellers that they were prevented from deriving any benefit from their land', and did so only after Bowler waived any claim the Crown had to the royalty payment on the posts which had already been sold.⁹⁹ Such 'spurious magnanimity', as Boast called it, was evidently the result of Bowler's reading of both the court's attitude and that of owners: 'a claim for royalty on the part of the Crown would have created a lot of ill-feeling', he wrote, 'and would have greatly prejudiced future purchases.'¹⁰⁰

In effect, the Crown was able to prevent owners who did not wish to sell from using their timber resource at a time when they had few other sources of income. Bowler, Boast stated, was 'particularly vexed by the possibility that some of those cutting the timber had sold their interests to the government'; but this scenario, in Boast's view, was 'not . . . typical': most who cut timber were non-sellers, or partial sellers, or were cutting timber on their wives' shares.¹⁰¹ Purchasing continued after 1917 until 1920, and the final surveying out of interests did not take place till 1924.¹⁰² Hutton and Neumann, in their evidence for Ngati Whare, described the move as 'effectively signalling an end to Ngati Whare's pit sawing and post splitting revenue' (though some illegal post-splitting may have continued).¹⁰³ The Crown refused owners' repeated requests for a partition, on Bowler's advice. The result of the economic constraints caused by Crown purchasing, in Boast's view, was that owners were 'hemmed in . . . in every direction . . . [forced] into an economic limbo.'¹⁰⁴

The consolidation scheme itself produced more difficulties in the 1920s, as owners sought the final security of title they had been promised. Disputes that came before the consolidation commissioners are a strong reminder of the disruption that the whole process caused on the ground among the people who had to work through the aftermath of decisions about where each of them would take their land. Owners found, for instance, that they might have to disentangle their interests in land held in common, or in other shared property.

The commissioners, to whom disputes over stock or dwellings might be taken, most commonly settled such arguments by deciding that the improvements would be left on the property, with the recipient of the land compensating the group that was moving out with

98. Solicitor-General to Native Under-Secretary, 10 October 1917 (Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi' (doc A27), p 178)

99. Klaus Neumann, 'That No Timber Whatsoever Be Removed: The Crown and the Reservation of Maori-owned Indigenous Forests in the Urewera, 1889–2000', report commissioned by the Waitangi Tribunal, 2001 (doc A10), p 44

100. Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi' (doc A27), p 180; Bowler to Native Under-Secretary, 3 January 1918 (Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi' (doc A27), p 180)

101. Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi' (doc A27), p 178

102. Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi' (doc A27), p 224

103. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 211

104. Boast, 'Ngati Whare and Te Whaiti-Nui-a-Toi' (doc A27), p 181

an equivalent amount of interests, to be taken as land elsewhere in the scheme.¹⁰⁵ Another example is the Paraeroa-Taneatua sheep run, which had been managed by Te Hata Waewae; the payment of compensation in this case represented the break up of a joint venture. The run had carried 900 sheep and 40 cattle on four river flats (the Tatua, Rangahe, Rewatu, and Hakaukopua flats) and adjoining hill country.¹⁰⁶ As Te Hata Waewae explained to the Commission, the sheep had cost £425, and he had put in a substantial part of this sum, but Tamarehe [Waewae] and Paora Noho had each also contributed to it. The latter's share had subsequently been bought out by Waihirere Whakamoe (since deceased), and his interest was represented by Noema Whakamoe, who had put in a competing claim for the same river flats. In recognition of Waihirere's contribution, Te Hata Waewae acknowledged a debt to Noema Whakamoe of £37, while '[i]t was also arranged between the parties that they themselves would settle the ownership of the sheep as some of the groups interested would get bush areas & would not therefore be in a position to feed them. Hata was to carry on in the meantime.'¹⁰⁷

One of the most heavily contested areas in the consolidation scheme process was the Paraeroa B flat, within the Paraeroa-Taneatua sheep run, which was claimed by no fewer than seven parties. In its decision, the Commission disallowed all but three of the claims, but allowed Te Hata Waewae and Mihaka Matika to harvest their current crop on the cultivations they had claimed (which ended up on lands awarded to others), and to remove the fencing around these cultivations. But Mihaka Matika was given the opportunity to clear a new area for himself.¹⁰⁸ Another case of improvements being removed involved property at the Umuroa flat within Ruatahuna 5, which was subject to claims from Wahia Paraki, Matamua Whakamoe, and Wharepouri Te Amo. The Commission opted to give most of the flat to Wahia Paraki's group, but set aside 12 acres for Matamua Whakamoe.¹⁰⁹ Subsequently, rather than receive compensation, Matamua Whakamoe removed a wharepuni, two kitchens, and two whata (elevated platforms for food storage) from the land that had been awarded to Wahia Paraki.¹¹⁰

105. See, for example, Urewera commission, minute book 1, 27 February 1923 (doc), p 277, about a large compensation involving two groups of claimants to Oputea: Group 47C gave up shares equating to 120 acres from its award to Group 47 E.

106. Nikora, 'The Urewera Consolidation Scheme' (doc E7), app D, p D-32

107. Urewera commission, minute book 1, 8 November 1922 (doc M29), pp 191–193

108. Urewera commission, minute book 1, 16 May 1922 and 16 November 1922 (doc M29), pp 129–134, 216–220

109. Bassett and Kay, 'Ruatahuna: Land Ownership and Administration' (doc A20), p 148; Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 166–167

110. Urewera commission, minute book 2A, 11 March 1924 (doc M30), p 100

15.3.5 The ultimate uncertainty: the Crown's failure to produce land transfer titles, and the impact of multiple ownership

While whanau were grappling with such day-to-day upheavals, the greater hope was that they would gain the state-of-the-art titles they had been promised, which would not only bring them security after a generation without it, but would allow them to reap the benefits of good titles: in particular, access to finance for development. Owners had been very aware of the problems caused by their unresolved titles, and by the general public view of Maori (that is, Land Court) titles as offering quite inadequate security for lenders. Fred Biddle, as we have seen, spoke of these problems in no uncertain terms to the parliamentary delegation that visited Ruatoki in February 1921: 'We are not the acknowledged owners of any piece of land – we have no title in the pakeha sense . . . Even if we had a title we have no money and the banks and other lending institutions will not lend to Maoris.'¹¹¹ Mr Biddle's complaint that banks and other institutions would not lend to Maori was hardly an overstatement. The Central North Island Tribunal, which considered the financial barriers to farming faced by Maori, concluded that they were 'caught in a vicious circle of debt, as prejudice and title difficulties forced them, in many cases, to rely on the more dubious and expensive private lenders.'¹¹² The Tribunal pointed to the difficulties Maori faced in entering farming on an equivalent basis to other landowners of limited means. In fact, under the provisions of the UDNR Act, owners of Reserve blocks could not have mortgaged their land anyway – even if their titles had been more settled through this period. Not until the completion of consolidation in 1927 could owners have attempted to raise finance.

One result of the lack of access to funding was that Te Urewera leaders looked to sell land to the Crown in order to fund land development – as Rua Kenana did in 1908, hoping to raise funds for clearing and stocking land at Maungapohatu, although interestingly his earlier preference seems to have been that the Crown advance funds for development.¹¹³ Hori Hohua and three others similarly contacted Carroll in 1912 stating they were 'anxious to sell' interests in Waikarewhenua, Omahuru, and Paraoanui in order 'to secure the money for the purchase of milch-cows and sheep', and in 1915, Hohua told the member of Maui Pomare, that he and others were still keen on selling 'to get money for the purpose of improving those portions of our land which we desire improved as farms.'¹¹⁴ While it may have been more common for owners to sell simply to relieve immediate hardship, obviously any sale to raise development funds represented a loss of land that might have been retained if some form of alternative financing had been made available.

111. 'The Urewera Lands', 19 February 1921, *Whakatane Press* (Vincent O'Malley, comp, supporting papers to 'The Crown's Acquisition of the Waikaremoana Block, 1921–1925', various dates (doc A50(b)), pp 559–560)

112. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 957

113. Edwards, 'Urewera District Native Reserve Act 1896' (doc D7(b)), pp 62, 70; Binney, 'Encircled Lands' (doc A15), p 395

114. Hori Hohua and three others to Carroll, 1 March 1912, and Hohua to Pomare, 21 August 1915 (Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 20)

In the end, Maori owners had to offer more land – 31,500 acres – to pay for surveys, which would underpin the land transfer titles the Crown promised at the start of the UCS, and which they were assured would solve their problems. That too, was land they could ill afford to lose. As we have seen, land transfer titles were not obtained because the Maori-owned blocks were not supported by full survey plans and so could not be registered in the land transfer system. For Maori owners of the new blocks emerging from the consolidation scheme, like their predecessors, the UDNR block owners, secure titles remained a mirage. Thirty years of inquiry, presentation of evidence, title orders, and title reorganisation, had left them with little to show for their endeavours and compromises. For land transfer titles – even if they had been obtained – would doubtless not have met the needs of block owners. Consolidation, as we noted above, did not solve title problems because blocks were still multiply owned. Even where there were comparatively small numbers of owners in a consolidation block at the outset, succession meant that their numbers rapidly increased. And, as the Crown acknowledged, crammed titles were unattractive to potential lenders.

The difficulties still facing Maori farmers generally in accessing finance by the late 1920s were a key reason why Ngata, as Native Minister, embarked on his development schemes, with state provision of finance available nationally. And four such schemes were secured in Te Urewera, solving the immediate problem of development finance: Ruatahuna, Ruatoki, Waiohau, and the Ngati Manawa scheme (there were no schemes in the Waimana and Whakatane Valleys, or at Maungapohatu or Te Whaiti.) We discuss the schemes further in chapter 18, along with a more far-reaching solution to title issues adopted across much of the UCS block lands as the development schemes began to wind down in the 1960s and 1970s – amalgamation accompanied by the establishment of trusts.

Ultimately, Reserve block owners and their descendants would face the same recurring title problems as Maori owners elsewhere whose lands had been through the land court and had been alienated through the purchase of individual shares. Like other owners, the UCS block owners had the worst of both worlds: they had neither legally recognised community titles, nor freehold individual titles. And Crown attempts to convert their various interlocking rights into titles which would be recognised in the colonial economy, led simply to the undermining of mana whenua.

15.3.6 Cumulative loss of economic capability: understanding the context of alienation of Reserve lands and resources

Given that mana whenua signifies the exercise of authority to ensure that land and its resources sustain the community, or as Tuhoe put it to us, economic power, what was the impact of the widespread loss of Reserve land and resources on the economic future, and the well-being, of the peoples of Te Urewera?

In general, counsel for the various claimants with interests in the former Reserve lands have argued that the cumulative effect of Treaty breaches was directly responsible for the lack of economic prosperity experienced by the UDNR and UCS block owners at the time and in the decades that followed. A particular grievance of the claimants is the Crown's failure to provide arterial roads, as promised under the UCS, rendering the development of many consolidation blocks impossible.¹¹⁵

The broad response of Crown counsel has been to argue that the Crown's actions in Te Urewera were not the primary drivers of economic deprivation suffered by Maori owners of the former Reserve lands, as they were greatly affected by changes in the wider economy, many of which the Crown was unable to control. Crown counsel also submitted that the Crown employed initiatives such as Maori land development schemes to help the peoples of Te Urewera catch up, so to speak, with the rest of the New Zealand in economic terms.¹¹⁶

The true effect of land alienation during this period can only be understood in the context of earlier losses. Before Crown purchasing began in the Reserve in the 1910s, the Crown's earlier Treaty breaches had already dramatically reduced the lands of the peoples of Te Urewera, and taken a heavy toll on their economy. For Tuhoe, there had been substantial losses from the 1866 eastern Bay of Plenty raupatu, that is, of their rights and interests within 100,000 to 120,000 acres of land on the fertile coastal plain inland from Whakatane. In chapter 4, we estimated these to amount to an equivalent of 59,655 acres (within our inquiry district), or 71,136 acres (within the Wai 36 Tuhoe boundary). The confiscation cost Tuhoe the opportunity to further develop their arable farming operations, from which they had been deriving produce for commercial sale for more than three decades by that time. Effectively, the arable farming resource that was available to Tuhoe had been reduced by no less than one half by a single Crown action. This same land also had plenty of potential for pastoral farming, so Tuhoe might have become an important regional producer of wool, meat, and eventually butter and cheese. At the same time, the people also effectively lost their capacity to gather kaimoana from Ohiwa Harbour, depriving them of yet another key resource, and reducing their resilience when other food sources ran short.

Tuhoe, Ngati Ruapani, and Ngati Kahungunu lost just over 168,000 acres with the alienation of the four Southern Blocks (to the south-east of Lake Waikaremoana) in 1875. As described in chapter 7, this was mainly broken hill country, and thus not nearly as versatile as the coastal plains near Whakatane, but after the Crown acquired and on-sold it, it would be used as grazing land for livestock.

115. Counsel for Ngati Haka Patuheuheu, closing submissions (doc N7), p 164; counsel for Wai 36 Tuhoe, closing submissions, pt A, 31 May 2005 (doc N8), pp 57–58; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 82, 135, 138–139; counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), pp 205, 244; counsel for Nga Rauru o Nga Potiki, 3 June 2005 (doc N14), pp 349–350; counsel for Ngati Whare, closing submissions, undated (doc N16), pp 3, 86–87, 90, 121; counsel for Te Mahurehure, closing submissions, 14 June 2005 (doc N21), pp 14–15; counsel for Wai 144 Ngati Ruapani, closing submissions in reply, 8 July 2005 (doc N30), p 66

116. Crown counsel, closing submissions (doc N20), topic 32, p 2

In the western and northern rim blocks, Native Land Court processes and subsequent Crown and private purchase led to further widespread alienations. In a series of transactions in the 1880s and 1890s involving the Heruiwi and Whirinaki blocks, their owners (mainly Ngati Manawa) lost to the Crown 10,000 acres of high quality podocarp forest (that is, all of it) and 20,000 acres with arable potential. And private buyers secured 30,000 of the 40,000 acres of high to medium-quality arable lands from Tuhoe, Ngati Manawa, and Ngati Haka Patuheuheu respectively, in acquiring the northern half of Waimana, almost all of Kuhawaea, and the southern half of Waiohau 1. The latter sale, as seen in chapter 11, was based on fraud, and was grimly resisted by Ngati Haka Patuheuheu through the courts until their eviction in 1907. Kuhawaea and the northern half of Waimana were both developed as pastoral estates by their owners, although they subsequently became the location for dairy-based farm settlement schemes (Waimana in the mid-1900s and Galatea in the early 1930s), while the accessible podocarp forest became the western half of Whirinaki State Forest, in which the Crown began logging in 1938. The land with arable potential in Heruiwi (1–3), meanwhile, became part of the planted area of the Crown's Kaingaroa State Forest. What makes the losses of economic opportunity arising from these alienations even more poignant is that many of the employees in Kaingaroa Forest, and suppliers of goods (like fence posts) to the Galatea Estate, were to be drawn from the peoples of Te Urewera.

The total loss from the Raupatu, the alienation of the four southern blocks, and of the rim blocks (246,000 acres) by 1904 amounted to some 474,000 acres, or 37 per cent, of the 1,266,000 acres that the peoples of Te Urewera had originally had ownership rights to.¹¹⁷ Each of these processes had gnawed away at the land and resources available to the peoples of Te Urewera outside the UDNR. The economic resources available to iwi and hapu with interests in the Reserve were therefore greatly reduced by 1910 – when purchasing began – compared to what they had been five decades earlier.

By 1930, of their former holdings beyond the Reserve, Maori owners retained 80,404 acres, or just 13 per cent.¹¹⁸ The lion's share of the land in the former UDNR had been secured by the Crown through its purchasing programme and the Urewera Consolidation Scheme. Maori emerged from the scheme with a mere 106,287 acres which had been now divided into 183 blocks and 27 very small reserves. They still also had their remaining land in the Ruatoki blocks (after the completion of the Ruatoki-Waiohau Consolidation Scheme) and a handful of other areas. Their total land-holdings in the former Reserve had been reduced from approximately 650,000 acres to just under 165,000 acres, that is, 25.3 per cent.¹¹⁹ This, in stark terms, was the fate of the Reserve which the UDNR Act 1896 was designed to pro-

117. Calculated from our figures in chapters 4, 7, and 10.

118. This comprised 69,764 acres from the rim blocks, 10,498 acres from the four southern blocks, and 142 acres from the Eastern Bay of Plenty Raupatu. See chapters 4, 7, and 10.

119. This figure (164,790 acres) includes former Reserve blocks which were not part of the Urewera Consolidation Scheme: Manuoha and Paharakeke, Tapatahi, Whaitiripapa and the Ruatoki blocks (less some 2,100 acres, that is, total Crown awards in Ruatoki under the Ruatoki Consolidation Scheme).

tect. Overall, across both the former Reserve lands, and those outside the Reserve, Maori retained 19.3 per cent of the approximately 1,266,000 acres in our inquiry district. More than 80 per cent of their lands were no longer in their ownership.

How did the loss of so much land affect the economic capability of Maori communities who had already been working from a diminished resource base? We look first at the major resource that was lost – forest – and the intended use – farming – of the land that remained.

15.3.7 Impact of forest losses in former Reserve lands

The most valuable asset within the Reserve, or at least the one with the most prospective value, was not its agricultural land (despite the Crown's determination during the 1910s to establish farms for settlers there), but its timber. Most of the Reserve after all was made up of rugged hill terrain, and nine-tenths of it was under forest – the largest untapped forest in the North Island.

After the consolidation scheme, only about 85,000 acres of forest (of some 530,000 acres) in the former Urewera District Native Reserve was retained in Maori ownership in consolidation blocks.¹²⁰ And the only valuation which took separate account of the timber, before the Crown started purchasing in the 1910s, had been the one for Te Whaiti, where the timber had been ascribed a value of less than £30,000. The official view had been that timber only needed to be included in the land valuation if it could be economically extracted, and if there was an immediate commercial market. After all, what use was prospective value when the Crown wanted to open the land up for settlement straight away? The result was that the Crown paid less than £30,000 for the entirety of the timber it acquired from the division of the land.

(1) *Te Whaiti losses*

Perhaps the biggest loss in terms of the forest resource was suffered by the Te Whaiti owners. The consolidation commissioners included all 12,000 acres of high value totara forest to the west of the Whirinaki River in the Crown award, as well as almost all of the rimu-matai-hardwoods forest flanking the open land on the eastern side of the Whirinaki Valley.¹²¹ Apart from some small bush areas at the back of Crown sections that were offered for sale or lease in 1924,¹²² all of this softwood and rimu-matai-hardwoods forest was subsequently

120. We arrive at this figure by subtracting from the 590,000 acres in the UCS the 74,000 unforested acres referred to in McIntosh Ellis's 1923 report, minus the unforested proportion of Ruatoki (roughly 14,300 acres), which gives a figure of some 60,000 acres. See Director of Forestry to Minister of Forestry, 3 May 1923 (Paula Berghan, 'Block Research Narratives of the Urewera, 1870–1930', resource document for Urewera District Treaty Issues, 2001 (doc A86), p 549).

121. 'Te Urewera Inquiry District Overview Map Book Part Three', produced by the Crown Forestry Rental Trust, 2003 (doc A132), plate 27

122. The inclusion of forested areas in the Crown sections between Minginui and Te Whaiti can be seen in the map in Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 201.

transferred into Whirinaki State Forest, in which milling began in 1938.¹²³ In comparison, Ngati Manawa were restricted to patches of rimu-matai-hardwoods forest on the Minginui block, and a few hundred acres of lower value rimu-tawa forest in the Tawa-a-Tionga and Ponaua blocks in the northwest corner of Te Whaiti, while Ngati Whare were left with about 7,500 acres of less valuable rimu-tawa and tawa forest, again in the north-west corner of Te Whaiti, and in blocks alongside the Okahu Stream.¹²⁴ From 1928 onwards, Ngati Whare and Ngati Manawa tried to make the most of their reduced timber assets by securing private milling agreements for areas of a number of blocks.¹²⁵

As a result of Crown purchase and the consolidation scheme, the owners of Te Whaiti 1 and 2 blocks secured only part of the value of their trees – though the most prized timber in the Reserve, as described in chapter 13, was to be found in the softwood (podocarp) forest at Te Whaiti. Its value was greater, as concerns had begun to be expressed in official circles from about 1907 that the once boundless national supply of native timber would soon start to run out.¹²⁶ In 1923, the value of the forests across the whole Reserve was estimated by the Director of Forestry, Leon MacIntosh Ellis. As we have seen, he told the Minister of Forests, Sir Robert Heaton Rhodes, that:

The Urewera forest wealth indeed is one of the greatest national forest assets controlled today by the State . . . It is estimated that there are between five and eight thousand million super feet of useable and merchantable timber in the Urewera with a composition of approximately 60 per cent Rimu, Matai, Totara, White Pine and Miro, and 40 per cent Beech, Tawa, Maire and miscellaneous.¹²⁷

Ellis expected that the forests of the former UDNR would in future produce 50 million superficial feet per year.¹²⁸ These estimates of timber volume may have been somewhat on the high side; an assessment of 40,000 acres of forested land in the Ruatahuna and Tarapounamu blocks in the 1950s found that they contained 230 million super feet of timber.¹²⁹ Projecting the average timber volume from this assessment, that is, 5750 super feet

123. 'Te Urewera Inquiry District Overview Map Book Part Three' (doc A132), plate 27; SKL Campbell, 'Te Urewera National Park 1952–75', report commissioned by the Crown Forestry Rental Trust, 1999 (doc A60), map 2; Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 11

124. Determined from visual inspection of forest boundary and block boundary. See Ngati Whare map book (doc G33), maps 11B–11F; Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 524, 574; 'Te Urewera Inquiry District Overview Map Book Part Three' (doc A132), plate 27. For block acreages see Nikora, 'The Urewera Consolidation Scheme' (doc E7), tbl D.

125. Stokes et al, *Te Urewera* (doc A111), pp 228–230; Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 308–321, 325–326, 330; Neumann, 'That No Timber Whatsoever Be Removed' (doc A10), pp 60–71

126. Brian Murton, 'The Crown and the Peoples of Te Urewera: The Economic and Social Experience of Te Urewera Maori, 1860–2000', report commissioned by the Crown Forestry Rental Trust, 2004 (doc H12), pp 729–730

127. LM Ellis, Director of Forestry, to Minister of Forestry, 3 May 1923 (Berghan, 'Block Research Narratives' (doc A86), p 549)

128. LM Ellis, Director of Forestry, to Minister of Forestry, 3 May 1923 (Paula Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera', various dates (doc A86(j)), p 3425)

129. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 348

per acre, over the whole forested area of the Reserve would give a total of around 3250 million super feet. Even so, this would still give a prospective value in the 1920s (using Ellis' 60:40 proportion) of more than £1.05 million.

Had Ngati Whare been able to finalise their agreement with private sawmillers (by selling timber-cutting rights through the district Maori land board) before the Crown began purchasing (which they were well on the path to achieving once they secured General Committee approval in 1914), and had the price for cutting rights been agreed at, say, £4 an acre for 25,000 acres, they might have been looking at an overall figure of £100,000 (minus land board deductions). This was more than three times the timber value ascribed by the Crown to both Te Whaiti blocks when it was poised to begin purchasing. BY 1914, Ngati Manawa were looking at the Ngati Whare initiative with interest, and might well have followed suit.

The contrast between the potential value of the Te Whaiti timber, and the amount paid by the Crown for these blocks when they were purchased, is even more striking; as of July 1921, the total spent by the Crown in acquiring shares in Te Whaiti 1 and 2, Maraetahia, Tawhiuau, and Otairi stood at £42,793.¹³⁰ The owners of the Te Whaiti (series) blocks might well have been able to keep their lands intact for future use, such as exotic forestry plantings, if a regular income had been available. The denial of opportunities to derive income through the sale of timber-cutting rights as Ngati Whare hoped to achieve – thus had a longer-term impact on development.

In the long term, the Crown's acquisition of Te Whaiti did lead to some economic opportunities for Ngati Whare. Hutton and Neumann note that Ngati Whare 'embraced the [employment] opportunities offered by the Forest Service between 1938 and 1986', and also 'made the best of a bad situation' in regards to deriving revenues from the Te Whaiti Nui a Toi forest lease'. The Ngati Whare township of Minginui, 'arguably the only Maori-owned kainga in New Zealand', was centred on forestry income.¹³¹ On the whole, however, the establishment of the timber industry on the back of aggressive Crown purchasing consigned Ngati Whare and other Te Urewera peoples to the role of labourers and indirect beneficiaries, where they might have been owners.

(2) Forest losses at Waikaremoana

The other location where UCS block owners were to a large degree excluded from much of the adjacent forest was along the Waikaremoana lakeshore. By 1925, as we have seen, Ngati Ruapani's expectations of receiving land south of the lake in return for the sale of their interests in the Waikaremoana block had been disappointed. After they rejected the Tapper's farm transaction as being far too expensive, and found themselves without the land they had hoped for on the southern side of the lake, they attempted to increase the size of the

130. Nikora, 'The Urewera Consolidation Scheme' (doc E7), tbl A

131. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), p 819

reserves on the northern side, to augment the debentures that were now to be their sole recompense by the Crown. They sought areas encompassing some 3,220 acres, of which 2,625 acres was forest. The commissioners, as we have seen, deemed this acreage to be unreasonable, since the parties had agreed in 1923 that the owners would accept 607 acres (to include their cultivations), while the Crown would pay them for the whole block including the reserves. In effect, the owners would be paid for 607 acres, which they were to keep.

Ngati Ruapani attempts to secure more land in the Waikaremoana block were thus unsuccessful. The area under forest that they secured across all the reserves remained at just 215 acres, 150 of which were included in Te Puna, and 50 in Hopuaruahine East. The Mokau reserve, which Ruapani had hoped to increase to 300 acres, and contained the pua manu, remained at 30 acres; no bush was included in the 30 acres, and the same was true of two other reserves which the people had hoped would be enlarged. Overall, they were granted less than 10 per cent of the forest they had hoped for.¹³² Evidently the Crown was nervous about the threat to the lake's potential as a scenic asset and for hydro-electric power generation if the surrounding hill slopes were cleared of bush. DH Guthrie, Minister of Lands, had told UDNR owners at the Ruatoki meeting in May 1921 that it was 'absolutely necessary . . . that we should preserve the bush . . . If we allow the whole of the bush around the Lake to be felled . . . the level of the Lake will fall.'¹³³ The Crown thus retained the greater part of the forest in and adjacent to the Ngati Ruapani reserves. And Ngati Ruapani were prejudiced by the Crown's refusal to provide them with something approaching an economic base – that is, a greater area of land for their communities, and more forest which might have served them in various ways, including the provision of traditional foods.

(3) Forest losses elsewhere in the Reserve

In the remainder of the southern Reserve blocks, the Crown secured less of the forest. Tuhoe block owners in the consolidation scheme retained much of their land in the northern Ruatahuna and southern Tarapounamu–Matawhero blocks, which together contained (according to the 1950s assessment referred to above) some 230 million super feet growing on 45,000 acres.¹³⁴ These rimu-matai-hardwood forest bands provided the best timber outside Whirinaki State Forest. Between the 1940s and 1970s, parts of most blocks were logged by private millers. But by that time Maori owners faced tight Crown control of logging in the interests of combating erosion and preventing flooding.¹³⁵ To the east, the Maungapohatu

132. Urewera commission, minute book 2A, 22 February 1925 (doc M30), pp 226, 228–229

133. Minutes of Ruatoki meeting, 22 May 1921 (O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), p 84). As O'Malley noted on page 65, a Royal Commission on Forestry had recommended a reserve be made on Waikaremoana on scenic and water conservation grounds in 1913, and this view was subsequently endorsed by the Auckland and Hawke's Bay Scenic Preservation Boards.

134. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 348

135. For details of this milling, see Neumann, 'That No Timber Whatsoever Be Removed' (doc A10), pp 88–138, 193–200.

consolidation blocks contained about 3,400 acres of forest, although the Crown's proscriptions on milling meant half of this was off-limits to logging operations. Despite the fact that the forest composition was less desirable – that is, it was rimu-tawa forest – it also attracted the attention of commercial millers in the 1950s and 1960s.¹³⁶

Finally, at the eastern edge of the former Reserve were the nearly 38,000 acres of rimu, miro, and beech forest in Manuoha and Paharakeke, which had escaped Crown purchasing and the consolidation scheme. To prevent the immediate logging of part of Manuoha and any future logging of Paharakeke, both were purchased from the incorporations that owned them by the Crown in 1961 for addition to the National Park.¹³⁷

On the remaining UCS blocks (in the Waimana and Whakatane Valleys, at Raroa, in the north and west of Hikurangi-Horomanga, and at Ohau), together with the Ruatoki block, there were about 40,000 acres of rimu-tawa and tawa forest.¹³⁸ Half of this was in the Whakatane Valley blocks (the Ruatoki series), which were found in 1972 to be carrying a timber volume of 126 million super feet, but only a quarter of the area (5,164 acres) was deemed suitable for logging.¹³⁹ Apart from some milling of timber on forested areas of Ruatoki itself in the 1950s,¹⁴⁰ all of this area was left more or less untouched by the timber industry.¹⁴¹ All of the similarly composed forest in the surrounding Crown award was included in the National Park.

(4) Conclusion – forest losses

Reserve owners lost three-quarters of their forest asset to the Crown under the consolidation scheme. The owners of the Te Whaiti blocks were the only owners whose timber was valued separately from the land. In the short term Ngati Whare were unable – after the Crown failed to follow through procedures at its end – to finalise a deal with a commercial

136. 'Map 27. Forest Type Map within Te Urewera District Inquiry' in 'Te Urewera Inquiry District Overview Map Book Part Three' (doc A132), plate 27; Neumann, 'That No Timber Whatsoever Be Removed' (doc A10), pp 154–157; Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 229–238

137. Neumann, 'That No Timber Whatsoever Be Removed' (doc A10), pp 176, 184–185; A D McKinnon, Inspector in Charge, New Zealand Forest Service, 'Report on proposed purchase by Crown for a National Park. Manuoha and Paharakeke blocks', 18 May 1961 (Brent Parker, supporting papers to 'The Crown Purchase of Manuoha and Paharakeke Blocks', various dates (doc M20(a)), pp 55–57, 59, 62)

138. This is based on an examination of where the bush edge was shown on contemporary maps, and later assessments of forestry potential. In relation to the amount of forest, as opposed to scrub, on the Hikurangi-Horomanga UCS series blocks, see J Canning for Rotorua Conservator of Forests to District Rural Valuer, 25 February 1975 (Crown Law, supporting papers to 'Compensation for Restrictions Placed on Milling of Native Timber in the Urewera', various dates (doc M27(a)), pp 490–492); for the other UCS series, and Ruatoki, see Stokes et al, *Te Urewera* (doc A111), pp 135, 150, 161, 167, 169.

139. A P Thomson, Director General of Forests, to Minister of Forests, 8 August 1972 (SKL Campbell, comp, supporting papers to 'Te Urewera National Park 1952–75', various dates (doc A60(b)), p 227)

140. Steven Oliver, 'Ruatoki Block Report', report commissioned by the Waitangi Tribunal, 2002 (doc A6), pp 203–208

141. Brad Coombes, 'Cultural Ecologies of Te Urewera [11]: Preserving 'a great national playing area' – Conservation Conflicts and Contradictions in Te Urewera, 1954–2003', report commissioned by the Crown Forestry Rental Trust, 2003 (doc A133), pp 32–37

sawmiller which it seems would have earned them considerably more in the short term than the prices the Crown paid. In the longer term the retention of the land itself would have allowed them to benefit from development opportunities arising from the planting of exotic forests.

The owners of all the other Reserve blocks who sold shares, received no additional payment for this potential future asset because their timber was not given any value in the 1910s. In the longer term, owners who did retain their shares, were ultimately able to enter into milling arrangements some 40 years later, when milling became economic for private companies. Not all block owners were so fortunate; some were unable to mill because of government restrictions.

The Crown milled the valuable Te Whaiti forest that it secured through purchase and the consolidation scheme, which was incorporated into Whirinaki State Forest. Forest on the rest of the block which the Crown acquired through the consolidation scheme was preserved, after officials eventually determined that its greater value lay in the provision of what might today be termed 'environmental services' (the regulation of soil erosion, weed growth, and water flow) to the Whakatane and Waikaremoana catchments, downstream from the Reserve lands; and to a lesser extent in its use as a tourist destination. The land was no less valuable to the Crown as a conservation forest, which meant that it had no less exchange value (had a fair and proper transaction been made) for its Maori owners. That was shown quite conclusively in the Crown's purchase of Manuoha and Paharakeke blocks in 1961, which we will discuss in a later chapter. Through their effective donation of all this timber to the Crown, Reserve owners, and owners of UCS blocks made a substantial, unacknowledged, contribution to the public good.

The peoples of Te Urewera lost a vast indigenous timber resource for which they were paid nothing (with the exception of the Te Whaiti owners, who were underpaid). Not only was much of this resource millable, but forest clearance could have been followed by the development of exotic forestry and some pastoral farming. All of these opportunities were foreclosed by the massive loss of land in the Reserve through Crown purchases and the land secured by the Crown during the course of the consolidation scheme. In cold hard economic terms, therefore, regardless of whether milling was in the best interests of the environment, the peoples of Te Urewera suffered very significant prejudice in the loss of so much land and forest.

15.3.8 Impact of loss of farming lands

The effects of Crown purchasing and the consolidation scheme on the collective farming potential of block owners were not as great as those on their forest resources. Given the mountainous nature of much of the terrain, and the instability of much of the hill slope

soils, the opportunity for land development across the greater part of the consolidation scheme lands was always open to doubt.

Ngati Whare and Ngati Manawa owners at Te Whaiti would nevertheless lose heavily, as three-quarters of the area of open land between Te Whaiti and Minginui ended up in the Crown award. At Waikaremoana, Ngati Ruapani would be confined to very small reserves north and south of the Lake. Tuhoe retained most of the Ruatoki lands – the best arable lands that they had left after the Raupatu losses – though for that very reason the land came under great pressure. But in the rest of the Reserve, where their farming was at the margins, the loss of surrounding lands through purchase – plus the additional land which Tuhoe owners made over to the Crown to pay the cost of surveys and arterial roads – would bring its own difficulties. And farm operations that were under way would be severely compromised by the Crown's failure to build the promised arterial roads, or to ensure that small sections that were built were maintained.

(1) *The farm lands of Te Urewera*

Much of the area covered by the consolidation scheme within the former Reserve was rough hill country under forest – though there were areas of several thousand acres of level or undulating land at Te Whaiti, Ruatahuna, and Maungapohatu, together with smaller areas of river flats along the Whakatane and Waimana River valleys. As described below, these cleared areas had long been cultivated, and more recently used for pastoral farming by the owners, though with mixed results.

Within the Reserve, the remaining quality lands for farming were at Ruatoki, between the Raupatu line and the head of the valley to the south. More than 4,000 acres of fertile river flats straddled the Whakatane River, which was suited to both cropping and pastoral farming, together with another 6,000 acres of land which was suitable for the immediate grazing of livestock. After 1900, there had been a shift from sheep farming to dairying, stimulated by the establishment of a dairy factory in Taneatua in 1900, then a cheese factory at Ruatoki itself in 1908.¹⁴² Dairying suited the needs of Maori development, because it required smaller farms than rearing sheep, but more year-round labour for the same area of land. And there was considerable success at Ruatoki initially; within a year of the factory opening there were more than 40 local suppliers,¹⁴³ and by 1917 Judge Browne was able to observe in his census enumerator's report that Ruatoki's farmers were 'large suppliers of milk', with many owning their own horses and drays and taking contracts. He also noted that they had of late increased their already large supply of maize very considerably.¹⁴⁴ But the pressures on 'the only good agricultural land possessed by the Tuhoe tribe'¹⁴⁵ continually

142. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 489–490

143. Berghan, 'Block Research Narratives' (doc A86), p 199

144. Judge Browne, undated, AJHR, 1917, H-39A, p 3 (Campbell, 'Land Alienation, Consolidation and Development' (doc A55), p 111)

145. Best to Native Under-Secretary, 27 November 1903 (Berghan, 'Block Research Narratives' (doc A86), p 197)

increased. Competition among owners led to repeated partitioning during the early decades of the twentieth century, as owner groups sought to demarcate areas they could farm themselves.¹⁴⁶ By the time of the consolidation scheme, much of the river flats had been broken into farmlets which were only 20 to 30 acres in size.¹⁴⁷

Outside Ruatoki, there were around 5,000 acres of high to medium-fertility arable land at Waimana, and another 5,000 acres of similar land on the Rangitaiki plain, split between northern Waiohau 1 and northern Whirinaki. From 1915, however, small areas of Waimana land (which was also subject to repeated partitioning) began to be sold off to neighbouring Pakeha farmers, so that by the 1930s the area of land retained by Maori at Waimana was down to 4,100 acres (see chapter 10). And the remainder of the rim block lands, like much of the Reserve, was composed almost entirely of rough hill country under forest, which for reasons of climate, isolation, drainage and slope stability would have had limited value for farming even if it had been cleared.

Crown expectations of pastoral farming in Te Urewera were finally recognised as unrealistic and, as we have seen, were scaled back from some 370,000 acres of farm land in 1915 to 50,000 acres in 1923. For this (and for the Te Whaiti forests) the Crown had purchased the equivalent of approximately 345,000 acres.¹⁴⁸ Officials who revised Crown estimates at the time included Skeet, the Commissioner of Crown Lands. They stated that only 'a few thousand acres' in the river flats were fit for dairying, while for 'pastoral purposes considerable areas would carry grass for periods up to 10 years'; these could only be 'classed as inferior second class land'.¹⁴⁹ And the more modern system of land capability classification (derived from work done initially by the Ministry of Works in the 1960s), deemed most of the former Reserve to be 'non-arable land' with either moderate or severe 'limitations to use under perennial vegetation such as pasture or forest'; while some land had such severe limitations that it was simply not suitable for cropping, pasture or forestry.¹⁵⁰

But for the peoples of Te Urewera, the loss of this vast extent of land – in purely economic terms – made its impact on the viability of farming that they had embarked on in their own long-established communities. For them, what was at stake was the economic survival of communities which – as a result of the cumulative loss of farm lands and other resources – were increasingly pushed to the brink. They were not seeking large profitable enterprises,

146. Oliver, 'Ruatoki' (doc A6), pp 112; Stokes et al, *Te Urewera* (doc A111), pp 134–136

147. Extract from *New Zealand Gazette*, 'Extending Prohibition of Alienation of certain Native Land', 8 December 1927, *New Zealand Gazette*, 1927, no 84, p 3621 (Campbell, comp, supporting papers to 'Land Alienation, Consolidation and Development in the Urewera, 1912–1950', various dates (doc A55(a)), pp 39–40)

148. Philip Cleaver, 'Urewera Roding', report commissioned by the Crown Forestry Rental Trust, 2002 (doc A25), p 76

149. HM Skeet, GT Murray, and WC Roberts to Under-Secretary for Lands, 15 March 1923 (Berghan, 'Block Research Narratives' (doc A86), p 548)

150. 'Map 25. Landuse Capability within Te Urewera District Inquiry' in 'Te Urewera Inquiry District Overview Map Book Part Three' (doc A132), plate 25

but to be good farmers on ancestral lands, with an income that was adequate to secure basic commodities for their whanau and their contribution to the wider community.

The impact of Crown purchasing on local farming operations therefore was keenly felt. This is evident in the details of Maori farming that we know of. It was small scale, and confined to particular areas. At the start of the consolidation process, areas within the Reserve that could be developed were, to a greater or lesser extent, already being utilised by their Maori owners (see table 15.1). The Rotorua Conservator of Forests, H A Goudie, made just this point in a 1921 report, when he commented that most of the cultivable land was already occupied by kainga and cultivations, as a result of which he anticipated that the Crown would not gain much of this in its award.¹⁵¹ But this is not to say that no new land would be cleared for farming subsequently; it is clear from the evidence before us that in suitable areas whanau did exactly that in later years.

In the northern half of the area covered by the consolidation scheme (that is, the northern UDNR except for Ruatoki, Whaitiripapa, and Tapatahi) the main areas of cultivation were strung out along the Whakatane and Waimana River valleys. None of the Whakatane River valleys ended up in the Crown award, although it did acquire 90 acres of alluvial flats between Hanamahihi and Ohaua.¹⁵² In the Waimana River valley, the Crown acquisitions seem to have been more significant – they included both Taurawharona and Uroeroa, for example, which were two of the locations owners had wanted reserved from sale when offers were first made to sell land in the valley in 1910.¹⁵³

In the southern part of the Reserve, the two main centres of cultivation were at Ruatahuna and Maungapohatu. We know, from a number of sources, the extent of cultivated land at Ruatahuna. At Ohaua, near Ruatahuna to the north, the valley land was also being farmed. Speaking of this area in 1921, Goudie observed that ‘the Natives have succeeded in getting quite a good sward of Cocksfoot and other grasses and I understand that the saving of the Cocksfoot seed is quite an industry with them.’¹⁵⁴ By 1919, the Ruatahuna owners had 1,300 acres cleared and sown in pasture for the purposes of feeding both sheep and cattle,¹⁵⁵ while there were also numerous whanau cultivations scattered around the district, which were chiefly used for growing potatoes.¹⁵⁶

151. Bassett and Kay, ‘Ruatahuna: Land Ownership and Administration’ (doc A20), p 176

152. Urewera commission, minute book 2A, 5 March 1924 (doc M30), p 82

153. Edwards, ‘Urewera District Native Reserve Act 1896’ (doc D7(b)), p 115; Binney, ‘Encircled Lands’ (doc A15), map 22, p 429

154. H A Goudie, Conservator of Forests, ‘Report on the Urewera Country’, 21 September 1921 (Berghan, ‘Block Research Narratives’ (doc A86(j)), p 3412)

155. This was despite the fact that a later map of land use capability classifications shows that the area at Ruatahuna with moderate limitations for arable use was only in the order of 1,000 acres. See Bassett and Kay, ‘Ruatahuna: Land Ownership and Administration’ (doc A20), pp 114–115; Berghan, ‘Block Research Narratives’ (doc A86), p 177; ‘Te Urewera Inquiry District Overview Map Book Part Three’ (doc A132), plate 25.

156. Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), pp 84, 231–232, 273, 293; Bassett and Kay, ‘Ruatahuna: Land Ownership and Administration’ (doc A20), p 106; Miriama Howden, brief of evidence, 11 May 2005 (doc D26), p 3

Area	Grassed or cleared area (plus cultivated area where stated)	Notes
Ruatoki 1, 2, 3 ¹	(1930) 2,000 acres in sown pasture or cultivation, plus approx 12,000 acres in rough grass / fernland	
Oputea ²	Unknown area in sown pasture or cultivation	Included 20 acres in sown pasture offered for lease
Whakatane Valley ³	750 acres in sown pasture or in cultivation	Did not include clearings at Hanamahihi, Te Hono, Waikohu Stream
Lower Waikare Valley ⁴	120 acres in rough grass	
Ohaua ⁵	(1937) 150 acres cleared for pasture	
Ruatahuna ⁶	1,300 acres in sown pasture; (1931) 3,000 acres cleared	
Te Whaiti-Ruatahuna road (Tarapounamu) ⁷	Approx 750 acres cleared for pasture	Included 270–300 acres at Ngaputahi, 200 acres at Wilson's clearing (Umukahawai)
Raroa ⁸	Approx 150 acres cleared	
Waimana (Tauranga) Valley ⁹	(1929) 500 acres in sown pasture, and 24 acres in maize	Did not include areas of grassed or cultivated land alienated (eg, around Tauwharemanuka)
Maungapohatu ¹⁰	2,000 acres in sown pasture	
Te Whaiti ¹¹	Approx 10,000 acres in rough grass or fernland	
Waikaremoana ¹²	360 acres in sown pasture or cultivation, plus 140 acres in fernland	

1. David Alexander, 'The Land Development Schemes of the Urewera Inquiry District' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A74), p 13. Approximate rough grass/fernland area determined by subtracting forested area marked on contemporary maps (see maps in Stokes, et al, *Te Urewera* (doc A111), p 135)

2. Berghan, 'Block Research Narratives of the Urewera' (doc A86), pp 20–21. The commissioners were 'surprised' by the extent of the growth of grasses at Oputea. Urewera commission, minute book 1, 27 February 1923 (doc M29), p 282. It seems reasonable to assume that all of this grassed and cultivated area would have been encompassed by the 566 acres described as 'light scrub' when the Oputea block's forestry potential was investigated in 1975 (J Canning to District Rural Valuer, 25 February 1975 (Parker, supporting papers to, 'Compensation for Restrictions Placed on Milling of Native Timber in the Urewera' (doc M27(a)), p 492)

3. J McKinlay to Chief Surveyor, 8 July 1921 (Bruce Stirling, comp, supporting papers to 'Te Urewera Valuation Issues' various dates (doc L17(b)), pp 58–73); J McKinlay, 'Urewera Native Reserve Road', 18 June 1921 (Berghan, comp, supporting papers to 'Block Research Narratives of the Urewera', various dates (doc A86(h)), pp 2606a-2606g)

4. J McKinlay to Chief Surveyor, 8 July 1921 (Stirling, supporting papers to 'Te Urewera Valuation Issues' (doc L17(b)), p 73)

5. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 292. A 1921 account refers to this area 'North of the Ruatahuna' producing a good sward of cocksfoot: see H A Goudie, Conservator of Forests, 'Report Upon the Urewera Country', 21 September 1921 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), p 3412).

6. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 145; Bassett and Kay, 'Ruatahuna: Land Ownership and Administration' (doc A20), pp 224–226

7. L J Poff to Chief Surveyor, 18 July 1921 (Stirling, supporting papers to 'Te Urewera Valuation Issues' (doc L17(b)), pp 77–78); 'Copy of report by Mr Munro, 1921 (Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 492); Urewera commission, minute book 1, 17 February 1923 (doc M29), p 258

8. Approximate rough grass/fernland area determined by subtracting forested area marked on contemporary maps (see map in Stokes et al, *Te Urewera* (doc A111), p 167)

9. Cleaver, 'Urewera Roding' (doc A25), p 94. See, in relation to the improved areas acquired by the Crown at Tauwharemanuka, the valuations of Section 1, Block VIII, and Section 1, Block XI, Urewera SD (Stirling, supporting papers to 'Te Urewera Valuation Issues' (doc L17(b)), pp 101, 106).

10. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 515

11. H A Goudie, Conservator of Forests, 'Report on the Urewera Country', 2 September 1921, p 5 (Berghan, supporting papers to 'Block Research Narratives' (doc A86(j)), p 3411)

12. Urewera commission, minute book 2A, 22 February 1925 (doc M30), p 226

Table 15.1 Reserve areas being farmed at the time of the Urewera Consolidation Scheme

Maungapohatu had an even larger area of cleared land than Ruatahuna, even though, according to the land use capability classification, its best land was non-arable, with moderate limitations for use under forest or pasture.¹⁵⁷ The geologists H A Gordon and A McKay had observed large areas under sown grass together with groves of fruit trees when passing through Maungapohatu in the mid-1890s,¹⁵⁸ and this developmental work was built on by Rua and his followers when they moved there in 1907. By early 1908, a further 730 acres of grass had been sown in the area around Toreatai, and a further 290 acres prepared.¹⁵⁹ In the same year, another geologist, Dr JM Bell, recorded 'fields of ripening corn, orchards of plum and apple, growing potato crops, and sheep, cattle and horses' at Maungapohatu.¹⁶⁰ Eventually, some 2,000 acres were laid down in pasture, but the pastoral farming ambitions of Rua's community were put paid to when, following the police expedition and arrest of Rua in 1916 (and the court cases which ensued), they sold their flock of 357 sheep and an unknown number (perhaps in the hundreds) of cattle.¹⁶¹

Maori owners retained most of the cultivable land at Ruatahuna after the consolidation scheme; the only cultivable land awarded to the Crown seems to have been the 60-acre township reserve.¹⁶² Officials noted the potential of land for further development there – the valuer JH Burch, for example, described the partitions Arohana and Kahui (Ruatahuna 1 and 2) as 'good easy country' and 'good quality easy country' respectively in 1919¹⁶³ – but Knight recorded in 1921 that the Crown purchasing efforts could not prise them out of their owners' hands. As a result the owners retained the benefit of these lands; Te Whenuanui observed in 1928, when advocating the establishment of a dairy factory, that there were 6,000 acres fit for dairying at Ruatahuna. Three years later, the Crown initiated the Ruatahuna Development Scheme, the only Maori land development scheme to be tried within the area encompassed by the UCS. Maungapohatu also seems to have escaped losing any areas of cultivable land to the Crown, but for reasons of deteriorating access (discussed in greater detail below), the community was unable to sustain itself, and it slowly faded away.

There were less extensive cultivated areas at Te Whaiti, along the road between Te Whaiti and Ruatahuna, and around the northern shore of Lake Waikaremoana. On the face of it, Te Whaiti had the most farming potential – indeed more potential than Ruatahuna or Maungapohatu – with around 15,000 acres of land lying along the Whirinaki Valley to the southwest of the Te Whaiti settlement having only 'moderate limitations for arable use'. Furthermore, about two-thirds of this area was already open grass and fernland.¹⁶⁴ Te

157. 'Te Urewera Inquiry District Overview Map Book Part Three' (doc A132), plate 25

158. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 256–257

159. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 515

160. Binney, 'Encircled Lands', vol 2 (doc A15), p 379

161. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 515–516

162. Urewera commission, minute book 1, 5 July 1923 (doc M29), p 372

163. District Valuer, 'Valuation form' (Bassett and Kay, 'Ruatahuna: Land Ownership and Administration' (doc A20), pp 114–115)

164. 'Te Urewera Inquiry District Overview Map Book Part Three' (doc A132), plate 25

Whaiti owners had introduced sheep to the valley in 1884, and around 400 sheep had been depastured at Te Whaiti by 1900;¹⁶⁵ but ‘bush sickness’ (a condition where animals became anaemic and malnourished, caused by a cobalt deficiency in the soil) largely put an end to sheep farming.¹⁶⁶ The Te Whaiti community used their open land instead as grazing for horses and limited numbers of cattle (which, as Hutton and Neumann note, did not seem to suffer so badly from ‘bush sickness’ when they foraged in the bush),¹⁶⁷ as well as growing potatoes, maize, and a variety of other vegetable and fruit crops. As the frosts of 1898, 1900, and 1915, and the potato blight of 1905–1907 showed, these could nevertheless be badly affected by adverse weather events and diseases.¹⁶⁸

The remaining clearings along the road between Te Whaiti and Ruatahuna, and on the Waikaremoana lakeshore, together accounted for about another 1,000 acres of cultivated land (see table 15.1). The Waikaremoana lakeshore clearings, in contrast, were used for grazing stock: a 1919 petition by Te Amo Kokouri, opposing the proposed Crown purchase of interests in the Waikaremoana block, observed that sheep and cattle were on the land.¹⁶⁹ In 1925, when Ngati Ruapani suggested larger reserves in the block, 360 acres were described as being in cultivation or sown grass, and another 235 in second growth or fern.¹⁷⁰

The cultivable lands at Te Whaiti, the clearings between Te Whaiti and Ruatahuna, and the lakeshore cultivations at Waikaremoana had contrasting fates when the Crown secured its award in the UCS. The 600 or so acres of reserves for Ngati Ruapani at Waikaremoana seem to have included all their cultivated lands, but (as described above) little else. Along the road between Te Whaiti and Ruatahuna, Maori owners seem to have retained almost all of the cleared land, with the exception of some at Ngaputahi and Taurawharona.

(2) The impact of loss of farm land on Te Whaiti owners

In terms of future farming potential, the Maori owners at Te Whaiti perhaps lost most heavily. Three-quarters of the area of open land between Te Whaiti and Minginui were to end up in the Crown award. It is true that this land had initially been held in poor regard, having been valued at five and six shillings per acre when the Te Whaiti block was valued (first as

165. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 270; Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p 79

166. Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p 177. ‘Bush sickness’ was characterised by ‘a general wasting or ill thrift, impaired appetite, anaemia, loss of weight, and death’: see IE Coop, *The Principles and Practice of Animal Nutrition* (Wellington: Government Printer, 1949, revised ed, 1961), p 34.

167. Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), pp 177n, 414

168. Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), pp 130, 150–151, 204, 256, 410–413

169. Berghan, ‘Block Research Narratives’ (doc A86), pp 371–372

170. Urewera commission, minute book 2A, 22 February 1925 (doc M30), p 226

a single block, and then separately as Te Whaiti 1 and 2).¹⁷¹ Goudie had commented that Te Whaiti must have ‘extremely low value as grass country’, as he noticed during his 1921 inspection of the area that there was little to be found among the 10,000 acres of open bracken covered land there,¹⁷² and similarly Munro (an Agricultural Department official who accompanied Goudie) had remarked that even the best of the open country at Te Whaiti would be ‘very difficult and expensive to bring into profitable pasture’.¹⁷³

At the same time, Ngati Manawa received only about 900 acres of this land in the Minginui block, and about 500 acres of unforested hill country in the Tawa-a-Tionga and Ponaua blocks,¹⁷⁴ and Ngati Whare only about 1,500 acres divided between several blocks, the largest of which was the 293-acre Tauwharekopua block. There were probably another 1,000 acres or so of open land around the base of forest-covered hill blocks such as Kaitangikaka and Te Whaiti Residue, but such areas could not have been combined easily into a modern farm.¹⁷⁵ As it turned out, only one Crown section offered for sale (cheaply) in 1924 was taken up (leased by the local postmaster and policeman, HM Macpherson); part of another became the site of the Presbyterian Maori Boys’ Farm in the mid-1930s.¹⁷⁶

But in the 1930s it was discovered that cobalt deficiency (the cause of ‘bush sickness’) could be treated with stock supplements or cobaltised fertilizers – and at that point the land became more valuable. If Ngati Whare and Ngati Manawa had retained it, they would have been able to expand farming operations.¹⁷⁷ We add that the unsold areas of Crown land would later be proposed for inclusion both in compensation packages for Tuhoe – once

171. Bruce Stirling, ‘Te Urewera Valuation Issues’, report commissioned by the Tuhoe-Waikaremoana Maori Trust Board, 2005 (doc L17), pp127–128; Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), p201; FW Flanagan, Valuer-General, to Native Under-Secretary, 23 August 1915, enclosure to TW Fisher to WH Bowler, Native Land Purchase Officer, 2 September 1915 (Edwards, supporting papers to ‘Urewera District Native Reserve Act 1896, pt 3’ (doc D7(b)(i)), pp1317–1318)

172. HA Goudie, Conservator of Forests, ‘Report on the Uriwera Country’, 21 September 1921 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), pp3411–3412)

173. Copy of report by Mr Munro, 1921 (Berghan, supporting papers to ‘Block Research Narratives’ (doc A86(j)), p3428)

174. All but the southern end of the Minginui block was free from forest. See ‘Te Urewera Maps including Te Whaiti, Tarapounamu, Ohaua, Maungapohatu, and Ruatahuna Series Consolidation Blocks’ (doc M12(b)). The western half of Ponaua and the northern half of Tawa-a-Tionga similarly lacked forest cover. See ‘Ngati Whare Map Book for Treaty of Waitangi Claim Wai 66’ (doc G33), maps 11E, 11F). Also see Urewera commission, minute book 1, 3 to 4 May 1922, 4 to 5 July 1922 (doc M29), pp99–101, 371; Nikora, ‘The Urewera Consolidation Scheme’ (doc E7), tbl D.

175. The blocks Tauwharekopua to Waikotikoti on one side of the river, and from Te Tuturi to Te Tawhitiwhiti on the other, had an area of just under 1,300 acres; the western end of Te Waireporepo would have provided Ngati Whare with perhaps another 200 acres of level or rolling open land. See ‘Ngati Whare Map Book for Treaty of Waitangi Claim Wai 66’ (doc G33), maps 11B, 11C.

176. Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), pp419–420, 473; Peter Clayworth, ‘The Te Pahou Blocks: A Report on the Wai 725 Claim’, report commissioned by the Waitangi Tribunal, 2002 (doc A19), p35

177. Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), pp79, 177. Interestingly, Judge Harvey observed in 1944 that cobalt was needed to keep stock in good health on the Presbyterian Maori Boys’ Farm at Te Whaiti. Judge Harvey to Under-Secretary, Native Department, 13 July 1944 (John Hutton and Klaus Neumann, comps, supporting papers to ‘Ngati Whare and the Crown, 1880–1999’, various dates (doc A28(a)), p69)

the Crown imposed restrictions on timber milling – and in Te Whaiti land development schemes.¹⁷⁸

(3) *The impact of land loss, and the Crown's failure to provide promised arterial roads, on Tuhoe*

For Tuhoe, the impact of Crown purchasing and the Urewera Consolidation Scheme, was also significant – even though they may not have lost extensive tracts of farm land. Above all, the failure to build the arterial roads to service farming blocks, which people took up *because* of the promised roads, would leave them high and dry.

Most farming land in the steeper parts of Te Urewera was second or third-class land. And as we have seen, farmable land was confined to particular areas. The figures for cleared land from the available reports underline both the serious impact of earlier losses of high quality farm land (particularly in the Raupatu and the rim blocks) and the importance of ensuring by the 1920s that communities' economic capability was preserved. One of the key benefits of the traditional Tuhoe economy (as Murton observed) was resource security, because communities could draw on diverse resources from various places at different times of the year.¹⁷⁹ This was not unlike the kind of investment diversification evident in the broader New Zealand economy, in which individuals could either obtain credit, draw on savings, or sell assets, in order to tide themselves over during periods when their income was not meeting their expenses. The Crown's decision to restrict Maori owners participating in the consolidation scheme to just a few locations, and to the smaller blocks that were favoured at the time, would highlight the problems of resource insecurity. In an example of a commissioners' decision that was unhelpful in terms of established arrangements to maximise labour and use of resources, land at Te Waiiti was divided into four blocks, plus a papakainga, even though the commissioners recognised after their site visit 'that the clearings and cultivations are of a communal nature and not the work of any particular family'.¹⁸⁰ Stokes, Milroy, and Melbourne cited Te Waiiti as an example of arbitrary decisions on block boundaries made by the Commission, whereby it had allocated 'ownership' of pieces of land which had been formerly subject to flexible overlapping use rights.¹⁸¹

The long-term loss to Tuhoe communities was that of nearby productive lands, which would remove their buffers. They were accustomed to compensating for meagre resources by taking advantage of multiple complementary ones. This can be seen in operation with use by the people of Ruatahuna of the areas of grassed farmland at Ohaua. In 1937, R G Dick, formerly a surveyor in Te Urewera, described Ohaua as having 150 acres 'at present haphazardly used for sheep and cattle grazing'. He was wrong when he asserted that it was

178. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 424–427, 530; Campbell, 'Te Urewera National Park' (doc A60), p 68; Coombes, 'Cultural Ecologies 11' (doc A133), pp 591–594

179. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 113–142

180. Urewera commission, minute book 2A, 24 March 1924 (doc M30), pp 146–147

181. Stokes et al, *Te Urewera* (doc A 111), p182

‘gradually being abandoned’,¹⁸² for he visited in the winter, and what he did not recognise was that Ruatahuna farmers relied, and would continue to rely on, this land for summer grazing. Korotau Tamiana told us that his father’s father and others had lived at Ohau originally, and ‘would go back there all the time’. Much of the land had long been developed by the time he was farming there with his father in the 1950s. The Ohau land was crucial for them:

The farms at Ohau were a critical support to our farms at Ruatahuna to fatten the stock and rest the land at Ruatahuna. The land at Ruatahuna was not good enough and there was just not enough developed land here for the number of farms. The land and climate at Ohau was much better for farming.¹⁸³

In the same way, Tuhoe communities were able (as they still do to some extent) to supplement food they could purchase and produce from their own farms and gardens by hunting and harvesting traditional foods in the bush. This had proved especially important during the early 1930s when, at one point, as Kaaho Rurehe and others noted in a petition to Ngata, a short-term food shortage at Ruatahuna was so severe that they faced being reliant on a harvest of tawa and hinau berries to get the community through until summer.¹⁸⁴ Forest foods often remained important. Potato gardens within the forest were afforded a level of protection against damage by frost, so even when it came to crop production, the presence of accessible forest close to kainga helped increase the resistance of communities to food shortages like those experienced in 1898.¹⁸⁵ Adjacent bush areas also provided cattle with a source of supplementary forage.¹⁸⁶ Wild pigs were often hunted too, even though many people kept domestic pigs.¹⁸⁷ In 1904, it was observed that forest undergrowth was being burnt at both Ruatahuna and Te Whaiti to cultivate productive hunting grounds; wild pigs were attracted to feed on the roots of the young ferns that subsequently established themselves.¹⁸⁸

Tuhoe farmers and their whanau would be more immediately affected however by the Crown’s failure to build the roads promised to the people at the start of the consolidation scheme, and to ensure maintenance of the limited stretches that were built. Its failure to provide permanent access to blocks in the Whakatane and Waimana Valleys created a lasting sense of loss and injustice among Tuhoe. As counsel for the Wai 36 Tuhoe claimants put it,

182. RG Dick to the Under-Secretary for Lands, 20 August 1937 (Stephen Robertson, comp, supporting papers to ‘Te Urewera Surveys: Survey Costs and Land Valuations in the Urewera Consolidation Scheme, 1921–22’, various dates (doc A120(a)), p161)

183. Korotau Tamiana, brief of evidence, 10 May 2004 (doc D20), pp 3–4

184. David Alexander, ‘The Land Development Schemes of the Urewera Inquiry District’, report commissioned by the Crown Forestry Rental Trust, 2002 (doc A74), pp 253–254

185. Murton, ‘The Crown and the Peoples’ (doc H12), p 306

186. Urewera commission, minute book 2A, 21 February 1925 (doc M30), p 220; Hutton and Neumann, ‘Ngati Whare and the Crown’ (doc A28), pp 177, 414

187. Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 233

188. Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 232

because of this failure, 'owners were not able to use the land as they had intended – homes could not be built, timber could not be milled, land could not be developed'; in addition, the lack of roads 'isolated Tuhoe communities from commercial markets'.¹⁸⁹ Counsel for Tuhoe Tuawhenua observed that the Crown ignored requests to build the promised roads even though 'Tuhoe were suffering economic loss by the absence of the adequate roading'.¹⁹⁰ Crown counsel acknowledged that the Crown failed to construct the two arterial roads (up the Whakatane River and Waimana/Tauranga River valleys),¹⁹¹ and accepted that the absence of the arterial roads limited farm development, altered the pattern of settlement, and restricted access to services.

The Crown's abandonment of the roads impacted in different ways on Maori landowners, depending on where they lived and worked. The vast majority of Whakatane Valley lands were left without any roads or tracks passing by them, so that owners were left to cope with what amounted to a pre-UCS standard of access. The owners of Waimana series blocks between Waimana and Tawhana were for a time provided with road access, but it proved only temporary, given the lack of maintenance. The Maungapohatu landowners further up the Waimana Valley saw a first stage in construction (the six-foot track) but never anything more. The poor quality and lack of roads had severe consequences for Tuhoe communities, who had to work doubly hard to make productive use of their isolated lands. Upon visiting Matahi, the main village between Waimana and Tawhana, in 1935, Galvin and Dun observed that 'as elsewhere, the Natives are in poor circumstances . . . they are, however, using their limited areas of workable land to the best of their ability'.¹⁹²

Dairy farmers were severely affected. They had made a determined beginning. The District Engineer remarked in 1929 that around 1,000 acres in the Waimana Valley were suitable for dairying; already there were 181 cows being milked, with 500 acres being under grass and 24 acres in maize.¹⁹³ In 1949, there were 1,400 acres of cleared land in the valley, although by then some 450 acres had reverted.¹⁹⁴ In 1936, according to Galvin and Shepherd's report for Lands and Survey, between 400 and 500 cows were being grazed on the Waimana blocks, including 259 milking cows split between 15 suppliers on the Maori-owned blocks and 42 on two leased Crown sections.¹⁹⁵ This was just 10 years on from the

189. Counsel for Wai 36 Tuhoe, closing submissions (doc N8(a)), pp 138–139, 217

190. Counsel for Tuawhenua, second amended statement of claim, 30 September 2004 (paper 1.2.12(b)), p 199

191. Crown counsel, closing submissions (doc N20), topics 18–26, pp 96, 98

192. Galvin and Dun to Conservator of Forests, 29 April 1935 (Campbell, comp, supporting papers to 'Te Urewera National Park 1952–75', various dates (doc A60(a)), p 33

193. Cleaver, 'Urewera Roding' (doc A25), p 94

194. Under-Secretary of Maori Affairs to Commissioner of Works, 30 June 1949 (Cleaver, 'Urewera Roding' (doc A25), p 96)

195. Jeffrey Sissons, *Te Waimana, The Spring of Mana: Tuhoe History and the Colonial Encounter* (Dunedin: University of Otago Press, 1991) (doc B23), p 274

opening of the Matahi road bridge which had allowed block owners along the valley to start supplying cream to the Opotiki dairy factory.¹⁹⁶

Further up the line of the promised Waimana Valley road, Rua Kenana had persuaded his followers to rebuild their community at Maungapohatu in 1927, and as Binney related, it was a flourishing community of around 150 people for the next two years.¹⁹⁷ Rua and his followers had established 2,000 acres of good grass by 1916, but after the police expedition and the sale of livestock to pay for court trials, their grazing lands deteriorated and became infested by ragwort. The latter infestation led in turn to many cattle deaths when they were first reintroduced in the late 1920s.¹⁹⁸

The alternative route to the west, the old stock route from Ruatahuna, was in a bad way, being described in a 1927 petition from 139 Ruatahuna and Maungapohatu residents as 'almost impassable'. While they waited in vain for the road, the community had to rely on the 19 miles of six-foot bridle track between Maungapohatu and Tawhana for bringing in supplies. This required a two-day trip by packhorse to reach Matahi.¹⁹⁹ Land development thus occurred more slowly at Maungapohatu than in the blocks further down the valley. In 1929, CE Bennett of the Public Works Department reported that 'the Natives are farming their properties in a very small way indeed'; most of the grassland had reverted to scrub, and 'at present 300 head of cattle are being run and a few acres are under cultivation in maize, etc.'²⁰⁰

But it was inevitable that the Waimana Valley road would deteriorate without maintenance by either the Crown or local government after 1930, progressively reducing the level of access to both Maungapohatu and the blocks between Waimana and Tawhana. The people of Maungapohatu had the greatest length of poor quality track to traverse. In 1935, Galvin and Dun found the road to be 'rapidly deteriorating, on account of inadequate maintenance', and the position in Maungapohatu as a result, 'most depressing'.²⁰¹ BY 1937, the track from Tawhana was described as being in 'an extremely poor state, being almost completely blocked by slips, windfalls, and washouts over a length of 8 miles.'²⁰² Te Heuheu Wakaunua later wrote that people had started moving away as soon as maintenance had stopped, and by 1936 the population had dropped to 111.²⁰³ In the meantime, the road between Tawhana

196. Sissons, *Te Waimana* (doc B23), pp 270, 273

197. Sissons, *Te Waimana* (doc B23), p 272; Judith Binney, 'Maungapohatu Revisited, or: How the Government Underdeveloped a Maori Community', *Journal of the Polynesian Society*, 1983, vol 92, no 3 (doc A128), p 361

198. Binney, 'Maungapohatu Revisited' (doc A128), p 365

199. Residents of Ruatahuna and Maungapohatu to Minister of Public Works, 21 June 1927 (Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), p 192); Binney, 'Maungapohatu Revisited' (doc A128), p 364

200. Bennett to Minister for Public Works, 29 October 1929 (Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 193-194)

201. Galvin and Dun to Conservator of Forests, 29 April 1935 (Campbell, comp, supporting papers to 'Te Urewera National Park 1952-75', various dates (doc A60(a)), p 32

202. R Semple, Minister for Public Works, to Minister of Native Affairs, 2 March 1937 (Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 205-206)

203. Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 199, 217-219, 221-222

and Waimana had also suffered, with the Whakatane Chamber of Commerce being moved to write to the Native Under-Secretary in 1935 about the need for urgent repairs, since the state of the road was interfering with deliveries to the dairy factory.²⁰⁴ Ironically, when in 1937 money was approved for remedial work on the track between Maungapohatu and Ruatahuna, after the Native Under-Secretary highlighted the Crown's outstanding roading obligations under the consolidation scheme, most of the funds were redirected to repairs on the Tawhana road.²⁰⁵ These did not have a lasting effect though, as by 1940 the cream truck could no longer reach Tawhana, and soon afterwards it was unable to go beyond Whakarae (which was less than half the distance from Waimana to Tawhana).²⁰⁶ BY 1942, the road was said to be in 'a dangerous state'.²⁰⁷ Sissons has noted that the owners' situation became so desperate that they offered up most of their lands in exchange for Crown land at Galatea in 1944, but as this area had been set aside by officials for post-war rehabilitation farms, no exchange was considered.²⁰⁸

The struggle of Tuhoe farmers was brought to the Government's attention by influential outsiders as well as by the people themselves. Over the next few years, letters from JS Jessep (the East Coast commissioner) and the Waimana Branch of Federated Farmers informed both the Minister of Public Works and the Prime Minister of the ongoing interruption of cream deliveries,²⁰⁹ while a petition from 42 Matahi residents in 1947 observed that the farms further up the valley had already been abandoned. In 1948, JT Boynton wrote to the Minister of Public Works expressing the sadness of the Eastern Tuhoe Tribal Executive that the land between Matahi and Tawhana was being deserted due to its having been 'virtually cut off'.²¹⁰ Maungapohatu suffered a similar fate, although in its case some officials had gone so far after the Second World War as to advocate that it would be better if the community was evacuated. Judge Browne, as we have seen, put paid to this proposal, which surfaced after the Public Works Department became concerned that it was squandering funds (a mere £100 per annum for three years) on repairs to the old stock route between Maungapohatu and Ruatahuna. This expenditure had been agreed to on condition that local Maori provide unpaid labour each year to the value of approximately one third of the grant. This the Maungapohatu people had agreed to.²¹¹ With only very limited funding

204. Cleaver, 'Urewera Roothing' (doc A25), pp95-96

205. Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 208-214

206. Sissons, *Te Waimana* (doc B23), p 276

207. Secretary, Opotiki Dairy Association, to Minister of Agriculture, 10 April 1942 (Cleaver, 'Urewera Roothing' (doc A25), p 96)

208. Sissons, *Te Waimana* (doc B23), p 276

209. Cleaver, 'Urewera Roothing' (doc A25), p 96

210. Sissons, *Te Waimana* (doc B23), p 276; Boynton to Minister of Public Works, 11 September 1948 (Cleaver, 'Urewera Roothing' (doc A25), p 99)

211. Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 217-219

being granted for track repairs during the late 1940s, by the early 1950s Maungapohatu had been more or less abandoned in terms of permanent settlement.²¹²

It is true that it cannot be proved that the farms and communities of the Waimana Valley and Maungapohatu would have thrived if roads had been provided. After all, the contemporary evidence on the four development schemes at Ruatoki, Waiohau, Murupara, and Ruatahuna, which all benefited from good road access from the 1930s onwards, shows that these scheme farms also struggled in terms of their financial performance for long periods.²¹³ Murton's view in fact was that 'even with road access, the small size and barely economic nature of the farms [in the Waimana Valley], especially in relation to other work opportunities, might have led to their abandonment anyway.'²¹⁴ We accept that in the long term, small scale dairy farming on marginal lands was always going to be problematic.

But when Shepherd and Galvin visited the Waimana series blocks between the Waimana and Tawhana areas in 1936, they remarked that: 'With financial assistance and better road access, the carrying capacity of these areas can be considerably increased in addition to which many now unused areas can be brought into production.' They also recommended – unsuccessfully as it turned out – that the request of the Waimana Valley owners to be 'brought into a Native Land Development Scheme' once title, area, and ownership information had been collected, be granted.²¹⁵ This suggested a need for some reorganisation of the farm properties like that which occurred in the other development schemes in Te Urewera. In the case of the Waimana series blocks between Waimana and Tawhana, progress was made up to the mid-1930s, when herd numbers were still increasing. Whether this build-up would have continued, or whether numbers were reaching their limit due to the small farm size and difficult environment, is not clear. The other handicap was a loss of productivity due to the spread of ragwort. Shepherd and Galvin observed that: 'Every acre of land cleared of bush immediately becomes a source of ragwort and it is quite evident that the whole of this bush is permeated with this weed.'²¹⁶ But even so, there were solutions. The Tawhana block owner Horopapera Tatu noted that when the ragwort came it had been 'very bad'; but said he had been able to kill it off with 200 lambs.²¹⁷

By the 1940s the output of the farms was dropping from its earlier peak of 80,000 pounds of butterfat per year; in 1945 it had fallen to 'just about half' of that.²¹⁸ Output had dropped still further by 1949, and the ragwort infestation had prompted a major change in stocking ratios, so there were only 148 dairy cows but 1090 breeding ewes. Butterfat production

212. Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 218–219, 225–227

213. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 595–599

214. Brian Murton, summary of evidence (doc J10), p 24

215. Shepherd and Galvin to Under-Secretary for Lands, undated, ca 1936 (Stokes et al, 'Te Urewera' (doc A111), p 168)

216. Shepherd and Galvin to Under-Secretary for Lands, undated, ca 1936 (Sissons, *Te Waimana* (doc B23), pp 274–275)

217. Interview with Horopapera Tatu (Sissons, *Te Waimana* (doc B23), p 284)

218. JS Jessep to Minister of Public Works, 23 April 1945 (Cleaver, 'Urewera Roothing' (doc A25), p 96)

was recorded as being just over 18,000 pounds, and the Under-Secretary of Maori Affairs doubted it could rise beyond 30,000 pounds in the future, while the breeding ewes were together producing about 30 bales of wool.²¹⁹ Most suppliers were getting fourpence per pound for butterfat, according to Sissons,²²⁰ but presumably if the condition of the farms and road had been improved they would have been able to obtain what Ruatoki Development Scheme farmers were getting in the mid-1930s, that is, about ninepence per pound.²²¹ At this rate, 80,000 pounds of butterfat would have generated a collective income of approximately £3,000, or around £175 per farm – a level of income that would have made the Waimana series farms no more than marginal.²²² Whether these farms could have climbed out of their difficult circumstances, given the gradual spread of ragwort and the small farmable areas within the blocks, is difficult to say. But certainly the deterioration of the road made farming an increasingly uneconomic prospect as time went on.

The farming potential of Maungapohatu, meanwhile, was debated by officials at the time. In his 1929 report to the Public Works Department, CE Bennett had considered that there were ‘about 500 acres of land suitable for dairying adjacent to the road, and possibly 3,000 to 4,000 acres of hill country which might be worth settling’ at Maungapohatu.²²³ Galvin and Dun had also asserted in 1935 that re-grassing and fencing would enable ‘800 to 1000 sheep, [together] with the necessary cattle’, to be grazed on 1,000 acres around Maungapohatu,²²⁴ and the following year Shepherd and Galvin similarly concluded that farming might even be profitable with limited Crown assistance.²²⁵ But in the end Maungapohatu was written off. RG Dick argued in his 1937 report on the roading scheme that altitude and isolation made Maungapohatu ‘useless as an area for native development’, and there were better ways for the Crown to develop Te Urewera than building the proposed arterial roads.²²⁶

As it turned out, a forestry road was constructed through to Maungapohatu from the Rotorua-Waikaremoana highway by the Bayten Timber Company in the early 1960s,²²⁷

219. Under-Secretary for Maori Affairs to Commissioner of Works, 30 June 1949 (Cleaver, ‘Urewera Roothing’ (doc A25), pp 96–97)

220. Sissons, *Te Waimana* (doc B23), p 273

221. The income of the Ruatoki Development Scheme, when divided by the amount of butterfat produced by the Scheme farms, comes out at just under ninepence per pound for the 1934–35 year, and just over ninepence per pound for the 1935–36 year. By 1939/40, the scheme income averaged one shilling three pence per pound. See Alexander, ‘Land Development Schemes’ (doc A74), pp 92–93.

222. Based on a comparison with Ruatoki unit development farmers; see Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), pp 572–578.

223. Bennett to Minister for Public Works, 29 October 1929 (Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), pp 193–194)

224. Galvin and Dun to Conservator of Forests, 29 April 1935 (Campbell, comp, supporting papers to ‘Te Urewera National Park 1952–75’, various dates (doc A60(a)), p 33); Campbell, ‘Te Urewera National Park’ (doc A60), pp 24–25

225. Shepherd and Galvin to Under-Secretary for Lands, undated, ca 1936 (Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), p 201)

226. Dick had estimated that it would cost £230,000 to build the arterial roads up the Waimana and Whakatane Valleys: see RG Dick to Under-Secretary for Lands, 20 August 1937 (Robertson, supporting papers to ‘Te Urewera Surveys’ (doc A120(a)), pp 162–163); Cleaver, ‘Urewera Roothing’ (doc A25), pp 103–105.

227. Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), pp 229–234

allowing the belated resumption of farming operations there. And in the wake of a favourable report regarding its farming potential, the Maungapohatu landowners amalgamated most of the lands into a single block in 1962, which the Maungapohatu Incorporation subsequently leased as a sheep and cattle station.²²⁸ Aubrey Tokawhakaia Temara told us that '[t]he farm has had a very unhappy existence', and was 'always going to struggle' given its location, size, and capital structure.²²⁹ But he also said that the farm had been crippled financially since logging finished in the mid-1970s by its losing battle to maintain the forestry road on its own; the poor state of this road in turn impaired farm performance, since at times it was impossible to bring in materials such as fertilizer or even to transport livestock.²³⁰ It was only in 2000–2001 that the Minister of Conservation, Sandra Lee, agreed that the Crown should fund the maintenance of the road, since it was also providing access to parts of the National Park, and the Crown should be responsible for its safety.²³¹

The survival of the farm over such a long period,²³² despite the additional roading burden, lends weight to the contention of Galvin and Dun in 1935 that some form of pastoral farm development at Maungapohatu was viable. It is true that the operation of the lands as a single station, without a permanent population,²³³ suggests that even if the Crown had built the arterial road as promised a community of the size of Maungapohatu in the 1920s and 1930s could not have been sustained by farming alone. It might, however, have given it a fighting chance.

A further impact arising from the Crown's failure to build arterial roads, in our view, which is specific to the Maungapohatu blocks, is that once milling rights to their timber were granted in 1959, the owners received a lower royalty for their timber than would otherwise have been the case. As noted above, the timber on these blocks was extracted using an access road built by the Bayten Timber Company, which would not have been necessary had there already been a road. It was estimated by Bayten that construction of their road would cost £20,000, but when the actual cost proved to be around £60,000, the company went back to the Maori Land Court to ask if it could pay a reduced royalty.²³⁴ This later link-

228. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), pp 36–37; Aubrey Tokawhakaia Temara, brief of evidence (doc K15), p 6. The Incorporation had advertised the farm lease over 750 acres, with a further 750 acres suitable for development (RM Velvin to Director-General of Lands, 2 August 1976 (Parker, 'Statement in relation to Compensation for Restrictions Placed on Milling of Native Timber in the Urewera' document bank (doc M27(a)), p 388).

229. Aubrey Tokawhakaia Temara, brief of evidence (doc K15), p 5

230. Aubrey Tokawhakaia Temara, brief of evidence (doc K15), pp 6–7

231. Apart from urgently needed repairs worth \$260,000, it was estimated that maintenance costs would be \$30,000 per annum. See Tama Nikora, brief of evidence in respect of land and ownership issues at Maungapohatu, 16 February 2005 (doc K13), pp 9–10; Coombes, 'Cultural Ecologies 11' (doc A133), p 118; Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 252–253.

232. The Maungapohatu Incorporation was wound up in 1994, and replaced by an Ahuwhenua trust. See Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 38.

233. Stokes et al, *Te Urewera* (doc A111), p 162

234. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), pp 19, 32, 34; Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 229, 238

ing of the royalty to the costs of providing road access suggests that, if roads had been there in the first place, the royalty originally offered to the Maungapohatu owners would have been even higher.

In the Whakatane Valley, only four miles out of a possible 60 miles of arterial road were ever built.²³⁵ The potential of roads to enhance the development of the blocks in the valley is thus even more difficult to judge. However, the prospect of an arterial road had prompted additional development of the Ohau and Tarapounamu blocks immediately to the north of Ruatahuna.²³⁶

When roads were promised in the consolidation scheme, the Ruatahuna people awaited them with great anticipation, hoping it would facilitate their farm development. Wharekiri Biddle recalled his father Pakitu Wharekiri explaining how he and others had begun catching calves of feral cattle in the Pukareao Valley, bringing them back to Ohau to tame them.²³⁷ They cleared the river flats and lands up the sides of the valley.²³⁸ Te Whenuanui III proposed to Ngata that a dairy factory be established at Ruatahuna. A dairy inspector who visited the district in 1929 reported that there was a great deal of suitable dairying country, and although there was more land which was unsuitable, there would be sufficient land for a 100 ton butter factory. 'Taking the cream out would be impracticable owing to the state of the roads.'²³⁹ But he stopped short of recommending the establishment of a dairy factory at that time because of the threat of ragwort. He did recommend the release of a moth to control the ragwort, but there is no evidence that this suggestion was followed. Ngata, by then Native Minister, visited Ruatahuna in January 1931, finding 'some distress' because unseasonal frosts had destroyed the potato crop; he suggested a development scheme.²⁴⁰ In May, Pakitu Wharekiri sent a petition to Ngata on behalf of 'Tuhoē at Ruatahuna' about the problems the people still faced, reiterating their hopes for work on the road, to provide employment, and bring the Ohau lands into the development scheme.²⁴¹ Ngata, the Tuawhenua researchers stated, would have known that the route lay on the promised arterial road to Ruatoki.²⁴² They concluded that:

With no sign of the road from Ruatahuna to Ruatoki and proposals for development in Ruatahuna being rejected, it was probably never clear to the people of Ruatahuna just what the government intended for them.²⁴³

235. Cleaver, 'Urewera Roding' (doc A25), p102; Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), p 225

236. Cleaver, 'Urewera Roding' (doc A25), pp 93-94

237. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 236

238. Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 267-268

239. W Dempster to Director, Dairy Division, 6 March 1929 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p236)

240. Ngata to P Buck, 8 March 1931 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 267)

241. Pakitu Wharekiri to Native Minister, 4 May 1931 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 270)

242. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 270

243. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 237

Pakitu Wharekiri, writing in October 1933, referred to earlier requests he had made for the road to be widened to Mataatua so that wool and sheep could be carted by lorry; and again, he now asked just for a six foot track to Ohaua 'so that he could extend his farm to grazing there.'²⁴⁴ In 1935, Galvin and Dun remarked on poor economic conditions at Ruatahuna, concluding that but for the development scheme, the 'local Natives would either have been destitute or starved out.'²⁴⁵ In 1937, RG Dick commented on 'a lack of access' to Ohaua, mistakenly concluding (as we have seen) that because of this it was gradually being abandoned.²⁴⁶ In the late 1940s there was still no more than a possibility that road access might be provided between Ruatahuna and Ohaua, after the Ruatahuna Development Scheme farm supervisor, Temuera Morrison, had advocated the extension of the Mataatua road a further eight miles north of Ruatahuna.²⁴⁷ But Tipi Ropiha, Native Under-Secretary, echoed previous official advice by concluding that the cost of road construction would far exceed the benefit to be derived from it.²⁴⁸

Evidence given by Korotau Tamiana and Menu Ripia highlighted the access problems that plagued farmers at Ohaua and at Hanamahihi in the post-war years, before the Ruatahuna farm amalgamation in 1962. Korotau Tamiana told us that his father, Tamiana Tawa, ultimately grazed 150 cattle and 330 sheep at Parakaeaea and Ohaua, while Menu Ripia's father, Hikawera Te Kurapa, grazed 150 sheep and 200 cows at Hanamahihi. Both men had broken in land for farming and laboured ceaselessly.²⁴⁹ The wool from Hikawera Te Kurapa's farm at Hanamahihi had to be taken out by horse track to Ruatoki (a three-day trip with at least six packhorses – or longer if the lower river was badly in flood, and a more arduous route had to be followed).²⁵⁰ In the end, Menu Ripia told us: 'The difficulties of farming there without road access made it too hard . . . for my father to continue.'²⁵¹

Korotau Tamiana spoke of the impact of there being no roads at Ohaua, which the farmers there found a 'frustration':

The old people used to complain about not having any roads. Eventually, they had to form their own tracks to get down to the stock yards at Paripari and Manatihono. If there had

244. Pakitu Wharekiri to Ngata, 20 October 1933 (David Alexander, comp, supporting papers to 'The Land Development Schemes of the Urewera Inquiry District', various dates (doc A74(b)), pp 563–564)

245. Galvin and Dun to Conservator of Forests, 29 April 1935 (Campbell, comp, supporting papers to 'Te Urewera National Park 1952–75', various dates (doc A60(a)), p 32

246. RG Dick to Under-Secretary for Lands, 20 August 1937 (Robertson, supporting papers to 'Te Urewera Surveys' (doc A120(a)), p 161). See also Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 187, 292.

247. Alexander, 'Land Development Schemes' (doc A74), p 290; Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 321–322

248. Under-Secretary for Maori Affairs to clerk, Maori Affairs Committee, 23 August 1950 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 356)

249. Korotau Tamiana, brief of evidence (doc D20), p 3; Menu Ripia, brief of evidence, 10 May 2004 (doc D16), p 2

250. Menu Ripia, brief of evidence (doc D16), pp 2–3

251. Menu Ripia, brief of evidence (doc D16), p 4

been proper roads the droving of stock and transporting equipment and materials would have been much easier.²⁵²

He added that it was a big job getting the plough, disc, harrows, and scarifiers to Ohaua, and they used the river in flood to get some of the larger equipment there, floating them down the river. But in the end Tamiana Tawa's farm at Parekaeaea was amalgamated into the Ruatahuna Development Scheme – a huge disappointment to him, his son told us, because after all his work, it 'went back under the Maori Affairs.'²⁵³

William Te Rangiua (Pou) Temara also spoke about his grandfather Tamahou Tinimene moving to Waikarewhenua at the end of the Second World War, to clear-fell the land to grow food and run sheep. The second reason for moving there was that:

[t]hey talked about, and believed, that a road would eventually be built from Ruatahuna to Ruatoki following the Ohinemataroa River. If the road was built, it would be possible to form a road from Waikarewhenua to meet the main road at the mouth of the Waikare River. Such a road would be of benefit to the families with lands down the river. So they went to Waikarewhenua with those hopes.²⁵⁴

But, he added, '[t]he reality is, that without motorised access, Waikarewhenua was never going to be economically viable. The road they believed would be their economic salvation was not built.'²⁵⁵

Subsequently, in 1953, Pakitu Wharekiri described the sorry predicament of the Whakatane Valley farmers this way:

the Maori owners began to develop the land in the hope that the road soon will be formed, many of those who have started to farm are dead, and much of the land that was cleared has returned to second growth. Some of the descendants . . . are still farming, and transport their wool by pack horses to Taneatua, which takes four hours, or one and a half hours to adjoining farm[s]. When [the] river's in flood, the wool will have to remain until the next season, causing great hardship to these farmers and their families, unless they prepare stores for six months ahead.²⁵⁶

It is clear that farmers struggled on with determination against high odds, making a life for their families, co-operating with one another to overcome the difficulties that lack of transport posed. They aimed, Korotau Tamiana told us, 'to reach the goal of developing

252. Korotau Tamiana, brief of evidence (doc D20), p 5

253. Korotau Tamiana, brief of evidence (doc D20), pp 4–5, 8

254. William Te Rangiua Temara, brief of evidence, 21 June 2004 (doc E10), pp 3, 11

255. William Te Rangiua Temara, brief of evidence (doc E10), p 16

256. 'Minutes of Tuhoie conference, Uwhiarae Marae, Ruatahuna', 23 May 1953 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 357. While in theory wool could be sold at any time, local wool sales would have been much less regular.

their land, everyone was trying to meet the goal of having the best farms in New Zealand . . . something to pass to their children and mokopuna.²⁵⁷

The evidence of Korotau Tamiana, Menu Ripia, and Pou Temara indicates that the farms at Ohaua and Tarapounamu probably had similar grassed areas and flock size to those of Ruatahuna's development scheme farms.²⁵⁸ Although Korotau Tamiana observed that '[t]he land and climate at Ohaua was much better for farming' than that at Ruatahuna,²⁵⁹ one would expect the extra costs imposed because of the isolation of the two neighbouring areas (Ohaua and Hanamahihi) would have made the financial returns fairly similar. Ruatahuna's unit farms enjoyed a short period of profitability at the start of the 1950s, as Alexander's evidence on the development schemes demonstrated, but otherwise struggled; indeed, in his summary for the period 1937–1945, he noted that '[t]hey had small flocks, which in most cases were not sufficient to provide a fulltime income.'²⁶⁰ Perhaps so, but we note the comment on Ropi Te Whenua's farm at Ohaua in a 1942 unit farming assessment which suggested that three unit farms should be dispensed with. The problem of 'track access' was mentioned, as well as 'the need to blade shear sheep and pack out the wool'; but still, despite this, 'Ropi's unit had turned a substantial credit for his account.'²⁶¹ And the question must be asked how the fortunes of the Ruatahuna, Ohaua, and Tarapounamu farms might have fared with the more direct route to Whakatane (a larger potential market than Murupara or Te Teko), which the Whakatane Valley arterial road would have provided.

Across the three areas left roadless – the Waimana Valley blocks, the Maungapohatu series, and the Ruatoki series – farming endeavours had survived for not much longer than a generation. With roads, farming would undoubtedly have survived for longer, and may well have continued, though in that case it probably would have proceeded on a different basis. Intensive dairying on relatively small grassed areas seems to have been the initial goal of Waimana and Maungapohatu block owners, but the scourge of ragwort compelled a shift in emphasis towards sheep, for which small blocks were not well suited. Likewise, as dairy farms became mechanised and electrified, it became more difficult for owners of small herds with limited capital to compete.²⁶² Together these factors made it necessary for the owners to consider amalgamation, which Maungapohatu block owners agreed to in 1962. Such factors unrelated to roads would have been less significant for the mixed livestock farms along the Whakatane Valley. Presumably their owners would have had to seek

257. Korotau Tamiana, brief of evidence (doc D20), p7

258. In 1951, the Ruatahuna unit farmers typically had 100–350 acres under grass, on which they grazed 200–500 sheep, and under 100 store cattle. See Ashley Gould, 'Development Schemes', report commissioned by the Crown Law Office, 21 March 2005 (doc M6), pp74–76.

259. Korotau Tamiana, brief of evidence (doc D20), pp3–4

260. Alexander, 'Land Development Schemes' (doc A74), pp286, 295, 304

261. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p317. The three units in question were in fact closed, but reinstated after the unit farmers protested.

262. Murton, 'The Crown and the Peoples' (doc H12), p 597

additional income from elsewhere, as many of the Ruatahuna Development Scheme farmers did. They might, however, have survived, and been able to stay on their own lands.

The fact that factors other than the lack of roads contributed to the difficulty of farming along the arterial road routes does not however diminish the responsibility of the Crown. By promising to provide roads in the first place, officials had promoted the development of blocks which were then left increasingly inaccessible when the roads were not built. Tuhoe owners were stranded, locked into what became a futile battle to carry on without roads, while continuing to sink their investment in farming blocks which had no access. They were not even advised when the decision was taken not to complete the roads. Whether any alternatives were open to these owners is a moot point. They might perhaps have been able to redirect their resources into farming at Ruatahuna or Ruatoki. They might have supplemented such a move with co-operative sheep farming, or cropping – less reliant on every-day transport – at places like Matahi. The Crown might have made land available to owners for exchange, had it entered into open discussions with them.²⁶³

We add that the roading settlement of 1958 made no provision for the very obvious prejudice suffered by owners of UCS blocks located along the promised arterial roads, when those roads failed to materialise. Nor did it offer any remedy for the ongoing costs such blocks would be faced with after that date because of the lack of roading. The Maungapohatu farm offers an example where these future costs were quite predictable; yet in this case it took the Crown until 2001 to provide a remedy (in the form of meeting maintenance costs for the Maungapohatu access road), and then only on the basis that it provided access to Department of Conservation lands as well. And in the case of the Maungapohatu milling grants and the Maungapohatu Incorporation farm, owners lost out by having to contribute financially to roading that should have been in place already.

15.3.9 The impact on the peoples of Waikaremoana

For the peoples of Waikaremoana, Ngati Ruapani, and Tuhoe, the consolidation scheme, as we have seen, was an unmitigated disaster. They emerged from the scheme with little land. On the northern side of the lake, Ngati Ruapani had been able to secure only 607 acres of reserves. Two of these reserves had the largest areas of cultivated land (150 acres and 50 acres respectively). On the south-eastern side, Ngati Ruapani and Tuhoe retained only Te Kopani and Heiotahoka reserves. In total they were left with only 1,900 acres. Given that there were more than 300 Ngati Ruapani owners included in the first Waikaremoana residue group, this would equate to about six acres per person.

²⁶³ Crown lands were available, for instance, at Tuararangaia, in Waiohau 1A, and in Tahora 2. See Peter Boston and Steven Oliver, 'Tahora' report commissioned by the Waitangi Tribunal, 2002 (doc A22), pp166, 180–182, 221–223; Peter Clayworth, 'A History of the Tuararangaia Blocks', report commissioned by the Waitangi Tribunal, 2001 (doc A3), pp114–115; Bernadette Arapere, 'A History of the Waiohau Blocks', report commissioned by the Waitangi Tribunal, 2002 (doc A26), pp71–72.

But what Ruapani did have was the Crown's undertaking to pay them for their interests in the Waikaremoana block in debentures; half-yearly payments of interest would be made to the Native Trustee to distribute to them. The Trustee however began defaulting on its payments during the depression; by March 1932 they were owed £4,175. Some payments were made in May and July, but £1,709 remained outstanding; and some beneficiaries complained that they had received nothing for more than two years.²⁶⁴ Admittedly, as O'Malley has observed, the annual amount paid to each person would not have been large – just over £3 – but in an impoverished community the payments were much needed.²⁶⁵ Subsequently, the debentures were converted into 4 per cent stock (and some, as they matured subsequently, were converted at a lesser rate), until the capital was repaid in January 1957.

Because the Crown promise to pay Ngati Ruapani in debentures was a key part of the terms on which consolidation was settled with them, we refer here to some of the impacts of the Crown's failure to ensure that payments were made at the times laid down. The delayed interest payments and lack of capital return had a significant effect on the peoples of Waikaremoana, particularly during the depression. By 1931, lack of work meant they were unable to meet new liabilities such as power bills. Kehua Winitana and others wrote to the Native Minister on behalf of holders of the Waikaremoana debentures seeking an advance on the interest payments or sale of their debentures.²⁶⁶ Early in 1932, Ngati Ruapani were still unable to pay their power account due to the Native Trustee failing to pay interest owing on the debentures.²⁶⁷ All power bill arrears were paid off when payments were finally made in subsequent months; the Government retained some of the interest arrears and transferred them to the Public Works Department for that purpose.²⁶⁸ But paying for power remained a problem, and in July 1934, the Public Works Department cut off the electricity supply to Kuha Pa because of unpaid bills. Power was reconnected after the Acting Registrar of the Native Land Court in Gisborne wrote to the Works department at Tuai expressing regret that the department could not have waited, as previously, until the interest on the debentures was paid out in October. He pointed out, among other things, that the young men from the settlement were away possum hunting to help pay for necessities.²⁶⁹ It is clear that poverty persisted. Medical officer H B Turbott recorded in 1936 that the people at Waimako Pa could not raise the relatively modest cost of less than £4 for a badly needed new water tank.²⁷⁰

264. O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), p 139

265. O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), pp 132–133, 135

266. O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), p 133

267. O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), pp 135–137

268. O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), p 137. The Government was able to withhold some of the interest arrears under section 96 of the Native Purposes Act 1931.

269. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 552

270. Walzl, 'Waikaremoana' (doc A73), p 233

There was not enough food either. In 1932, the secretary of the Wairoa-based Kahungunu Association wrote to Ngata, to raise the issues of food shortages and delay in paying out debenture interest on behalf of Waikaremoana representatives. He requested an advance on the debenture payments to purchase flour and sugar.²⁷¹ In 1933, Judge Carr of the Native Land Court wrote to the Native Department that the beneficiaries of the Waikaremoana debentures were 'facing winter practically destitute'.²⁷² The coroner visited Kuha and Waimako Pas in 1934 to investigate deaths there, which he attributed to malnutrition: 'It is pitiful to visit them and see the conditions in which they live. Having no feed for cows the children have no milk and the winter months in that locality are weeding out the frail'.²⁷³ The Welfare Officer in Wairoa – who visited the pa and estimated the total population to be 200 people in 58 families – found the situation to be not as bad as the coroner had reported. However, he recommended immediate food aid, the provision of seed potatoes and maize, and two unemployment contracts, one to prevent flooding of garden land and the other to fence the land.²⁷⁴ Although this aid provided some temporary relief, in early September 1934 a number of debenture beneficiaries petitioned the Tairāwhiti District Māori Land Board to pay them their interest immediately, as they were short of flour and sugar, and could not wait until December.²⁷⁵

Housing conditions for Waikaremoana Māori were also an ongoing cause of concern. In 1933, a lawyer acting on behalf of some of the beneficiaries wrote to the Native Minister to try to obtain some of the principal and interest on the debentures to improve their housing:

The people who have seen us are either living in other peoples houses or else are living in small sheds or hovels. We may say that the evidence of poor living conditions and of serious over-crowding in some small houses was very striking. We found from our enquiries that some of the applicants are living in small iron sheds without floors or windows and in one case a family is living in a corn-crib which has been slightly improved for human habitation. In another case a group of families totalling 15 or 16 persons are dwelling in one small house.²⁷⁶

The application came to nothing, despite being supported by Judge Carr, who wrote to Ngata that 'several of the people concerned are said to be roaming from friend to friend without any habitation of their own'.²⁷⁷ Problems continued despite an improvement in

271. O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), p138

272. President, Tairāwhiti District Māori Land Board, to Native Under-Secretary, 2 May 1933 (Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 553)

273. Carr to Registrar, 28 June 1934 (Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 533)

274. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 553–554

275. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 554

276. Gerard O'Malley to Native Minister, 31 July 1933 (O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), p 144)

277. Carr to Native Under-Secretary, 21 February 1934 (O'Malley, 'The Crown's Acquisition of the Waikaremoana Block' (doc A50), p 145)

national economic conditions after 1934. In 1937, a Native Department housing inspector who visited the pa at Waimako and Kuha opined that ‘most of the houses are not fit to be called houses.’ His offers of assistance, as we have seen, were met with suspicion because Maori were concerned they would risk being put out of their homes if they accepted government help. Most therefore refused to sign the required forms.²⁷⁸ But, like Maori elsewhere, even those Waikaremoana people who did apply for subsidised loans had trouble getting them because of lack of income and the fact that their houses were on native reserve land.²⁷⁹ The registrar of the Gisborne Native Land Court wrote to the Native Under-Secretary in frustration, stating that: ‘The position of the Waikaremoana Natives, as you are aware, has given grave concern not only to this Board but also to the Hospital and Charitable Aid Board, to sundry Members of Parliament, the Health Department and various missionaries.’²⁸⁰ No assistance was forthcoming. In 1939, the *Wairoa Star* reported the difficulties faced by Maori in obtaining adequate security to qualify for assistance. The paper described the state of Maori housing in the district, which included Waikaremoana, as ‘almost desperate.’²⁸¹

Vernon Winitana spoke to us about Ngati Ruapani memories of this time:

The issue of debenture payments is still with us today, with many people having been told the stories first hand from their whanau. Our people repeatedly asked for the debenture payments when they were due but were always faced with excuses. We had little food, couldn’t pay for doctors to visit, or for outstanding bills – in particular power bills – and when our people would ask for payment of their debentures they would be told ‘You ungrateful people, don’t you know there’s a depression on.’

Our people here were so desperate that Timi Kara [James Carroll] went around Wairoa township collecting food and clothing from his relations for our people. That was why he was held in such high regard in later years during the Lake lease negotiations and given a small portion of land at the Lake for his whanau [the Timi Taihoa reserve in the Waikaremoana block].²⁸²

15.3.10 Impacts on mana whenua – conclusion

By 1930, what had been intended as a self-governing Reserve, in full ownership and control of its Maori owners, was reduced to a shadow of its former self. These former owners no

278. P Tureia to Registrar, 12 July 1937 (O’Malley, ‘The Crown’s Acquisition of the Waikaremoana Block’ (doc A50), pp 148–149)

279. O’Malley, ‘The Crown’s Acquisition of the Waikaremoana Block’ (doc A50), pp 149–152

280. Registrar, Native Land Court, Gisborne, to Native Under-Secretary, 16 September 1937 (O’Malley, supporting papers to ‘The Crown’s Acquisition of the Waikaremoana Block’ (doc A50(c)), p 787)

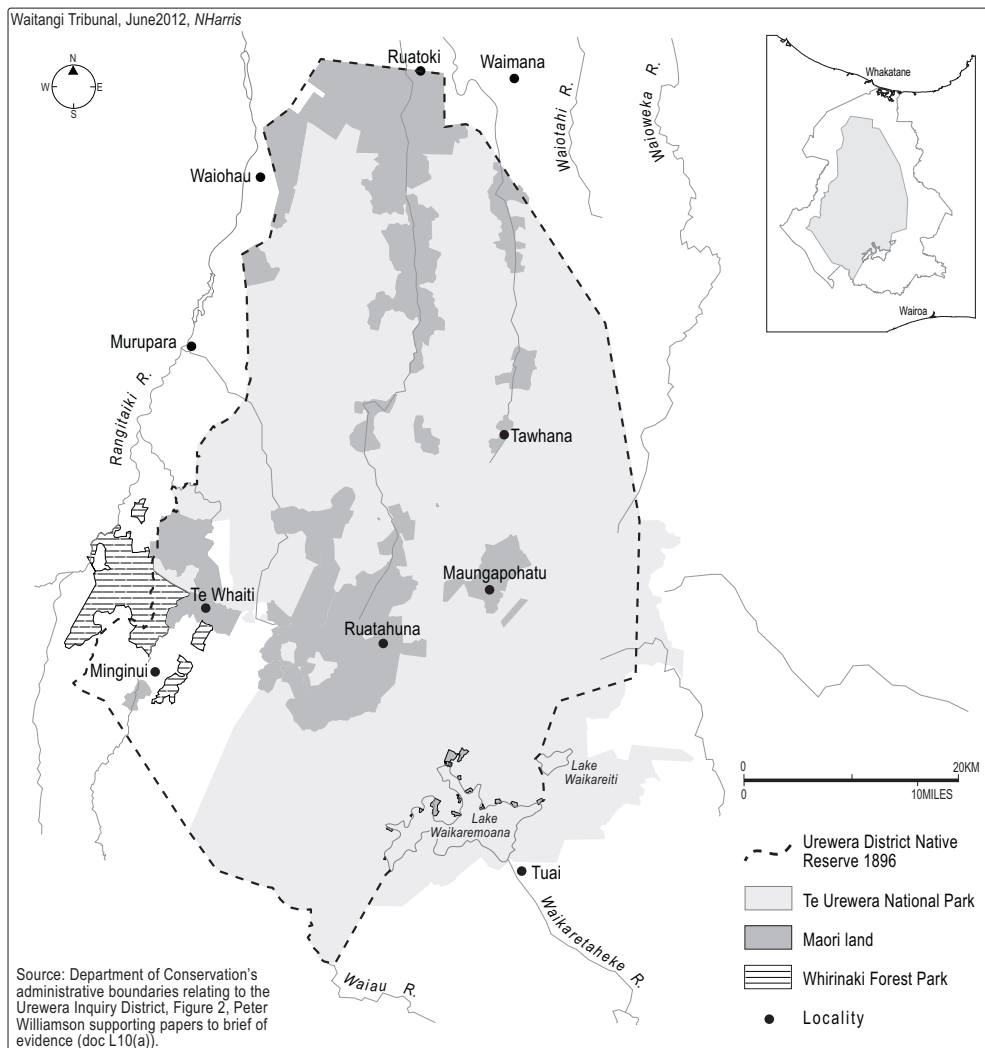
281. ‘Maori Housing – Scheme for Wairoa – Benefit to Natives – Difficulty of Security’, *Wairoa Star*, 6 March 1939 (O’Malley, supporting papers to ‘The Crown’s Acquisition of the Waikaremoana Block’ (doc A50(c)), p 781)

282. Vernon Winitana, brief of evidence, undated (doc H28), p 9

longer had a legal right to 482,300 acres of their ancestral heartland, which had become Crown land. Their ability to exercise kaitiakitanga over taonga within their rohe would be put to the test in subsequent years, as we explore in the next chapter. On top of this, the fragment of their remaining land had been fundamentally reordered: their new blocks of land were in multiple ownership, and titles would fractionate with each succeeding generation. Some owners – as many as ten percent – became landless; an outcome which officials took little care to avoid. The wider and inevitable result of land alienation on this scale was a substantial reduction in the economic capability of communities who had already lost their best land. To pose the question of whether Reserve block owners generally retained ‘sufficient’ land would in our view do no more than highlight the fate of a Reserve which the Crown had committed itself to protecting. It is not a question we should have had to ask. And the answer is so obvious we refrain from spelling it out.

In 1896, the Crown promised to recognise and give effect to the mana motuhake and mana whenua of Te Urewera peoples. Instead it systematically undermined both. It could not however erase either. In the words of Tamati Kruger, the spirit of Te Whitu Tekau is still alive. Nevertheless, the hopes of Te Whitu Tekau were dashed and their worst fears realised by 1930.

We now turn to examine how the peoples of Te Urewera fared when, in the mid-1950s (in a two-stage process), the Crown turned the land it had been awarded into a national park.



16.1 TE UREWERA NATIONAL PARK, AND MAORI LAND

In 1954, the Urewera National Park was created. With the addition of most of the Crown's remaining land from the UCS (in 1957) and the Manuoha and Paharakeke blocks (in 1961) the boundaries of the park as it is today were formed.

CHAPTER 16

TE KAPUA POURI: TE UREWERA NATIONAL PARK

Official History

As a result of this tour [Premier Seddon's tour of Te Urewera in 1894] and a later visit by Tuhoë chiefs to Wellington, Seddon made several proposals to the Tuhoë including the appointment of a commission to define land boundaries and the election of an advisory committee, as well as the provision of schools and roads. Seddon suggested that native forests and birds should be protected, but that English birds and trout should be introduced to add to local food supplies. He also proposed that there should be more attractions for European tourists.

This led to the passing of the Urewera District Native Reserve Act 1896. Unfortunately it did not work well in practice, and it was not until 1921 that the Crown and Maori owners reached a workable agreement, set down in the Urewera Lands Act 1921–22. This act remains the basic charter of Urewera land and the Crown land defined in this way has now become part of Urewera National Park.'

From a Department of Lands and Survey publication, 1983

Tuhoë history

SONNY WHITE: I have arranged for Mr J Keane, a Solicitor of Rotorua, who is well versed in the history of our land, to give you a summary of the land deals which have taken place in the Urewera. It is important that you should hear this history from our point of view as we feel it shows how the Maori rights in the area have been gradually reduced. You can also see how our people are very suspicious of any moves which any Government may make to take away from us, whether by purchase or otherwise any more of our land . . .

'J KEANE: You may wonder why it is that negotiations by the Crown during the 1930's and two years ago have broken down. But the brief history which I propose to give you of the Urewera lands should

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throw considerable light on the attitude of the owners and you will be able to appreciate that a very serious problem is involved in it.

‘As is stated in the historical review contained in the report tabled in the House in 1921, “Prior to the year 1896, it may be said that the Queen’s writ did not run in the area.”

‘In 1896, Premier Seddon and the Minister of Maori Affairs paid a personal visit to the area and negotiated with the owners and the Urewera District Native Reserve Act 1896 was passed.

‘In the debate in the House, Sir James Carroll (then Mr) is reported . . . as saying “it is their (the owners’) ardent wish that this land be preserved to them.” Mr Seddon in concluding his speech stated, “I hope to see this Bill passed and placed on the Statute Book and an opportunity given to the Tuhoe people to conserve their lands to themselves, thus maintaining a pledge given over a quarter of a century ago by Sir Donald McLean.”

‘That pledge was given 80 years ago, was confirmed 60 years ago and the owners request that it be maintained. In this connection, the owners look with hope towards their Minister . . . [that] the promise of Sir Donald McLean given about 1870 and confirmed by Mr Seddon in 1896, that their lands be conserved to them will also be fulfilled.

‘The second question which exercises the minds of the owners is the fact that their ancestral lands have, over a lengthy period, been whittled down . . .

‘If the small area left to them is also taken for a National Park, they will lose those lands forever and will receive in exchange, money which will be of no use to them as they will not have the lands to use it. The ancestral lands will be gone and the Tuhoe people scattered.’

From the minutes of a meeting between Tuhoe and
Minister of Maori Affairs Ernest Corbett, 1953

Resolving Grievances for the Good of All New Zealanders

‘I HAVE prepared this evidence to assist a resolution to long standing issues. The unresolved grievances impact virtually daily on the work of my staff and the organisation I represent. I know they can weigh heavily on local people as they go about their daily business.

‘The grievances unresolved reduce our collective potential to restore and maintain Aotearoa New Zealand’s natural heritage. Resolution is thus not only an issue for the claimants. Enduring and equitable resolution is keenly sought by non claimants as well. Resolution will enable us all to move on proactively and productively for the good of this country and our people.’

From the evidence of Peter Williamson,
Department of Conservation conservator, 2005

16.1 INTRODUCTION

Te Urewera National Park was established in the Waikaremoana district in 1954 and then extended in 1957 to take in much of the rest of Te Urewera. The park consists of 212,673 hectares (525,526 acres) of former Maori land. It is made up almost entirely of the Crown's award from the Urewera Consolidation Scheme (UCS), with the addition of the north-eastern portion of the former Waiau, Tukurangi and Taramarama blocks (acquired by the Crown in the mid-1870s), the Manuoha and Paharakeke blocks (added in 1962), and the bed of Lake Waikaremoana, which the Crown leases from its Maori owners.

New Zealand's national parks preserve our heritage: the iconic landscapes, animals, and plants that are distinctively our own. Their ecological significance as the jewels of the conservation estate is matched only by their profound cultural importance. Te Urewera National Park is no exception, as the Department of Lands and Surveys described in a 1983 publication:

Its vast size allows a wealth of plant and animal life to be preserved within its boundaries. It is also the largest untouched native forest tract in the North Island, making it valuable for its scenic beauty alone . . . In establishing the park, it was ensured that the Urewera would be retained in its natural state, for the use of all people.¹

For Maori, as the Waitangi Tribunal explained in its Wai 262 report, national parks are of immense significance and value because they preserve the ancestral landscape encountered by the first voyagers from Hawaiki, and also many of the treasured birds and plants that are now hardly to be found outside of New Zealand's conservation estate. For the cultural survival of Maori as Maori, access to and some control over the conservation estate in general, and national parks in particular, is seen as vital.²

But the history of the creation of Te Urewera National Park is a painful one. This chapter of our report is about the claims we received in relation to the Park. It may be difficult for New Zealanders to appreciate why something so highly valued should have resulted in Maori grievances and Treaty claims. To understand that point, it must be remembered that Te Urewera National Park dominates the district and its Maori communities, most of which are located alongside or even inside the park. The park, now and in the future, is of huge concern to local iwi. Its origins lie in the past – nearly a century ago – but in this chapter, for the first time in this report, we also deal with events that unfolded in the lifetimes of many of those who spoke to us in the hearings, and that have left a bitter taste.

For the claimants who appeared before us, and whose homes are within or adjacent to the park, its lands are lands with which they have strong and lasting ancestral connections, whose histories are so well known to them, and whose resources they have used for

1. *Land of the Mist: The Story of Urewera National Park* (Gisborne: Department of Lands and Survey, 1983), p 5

2. Waitangi Tribunal, *Ko Aotearoa Tenei: A Report into Claims Concerning New Zealand Law and Policy Affecting Maori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, ch 4, esp p 363

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hundreds of years. To them, the national park is a massive and intrusive block of Crown land in their midst. They see it as a stark contrast to the remnants left to them in the wake of a succession of Crown acts over several generations – confiscation, war, and illegal purchasing in all their lands – where they have struggled for a long time to survive. And yet they also see it as still ‘their’ land, their turangawaewae, still a place for them to exercise long-held rights of customary use and for which they are the kaitiaki or responsible guardians.

To understand the park’s place in the lives of the Maori communities of Te Urewera, we begin with a brief traverse of its boundaries. At more than half a million acres, these boundaries touch all the Maori communities of the area. Maungapohatu is completely surrounded by park lands. Ruatahuna, the ancient centre of Tuhoe, still a strong community, is bounded by the park on three sides. Waimana and Ruatoki, core Tuhoe communities, border the park to the south. Te Whaiti, the major community of Ngati Whare, and Murupara, home of Ngati Manawa, lie to the west of the park in the Whirinaki Valley. Near Lake Waikaremoana, the marae complexes of Te Kuha and Waimako on Te Kopani Reserve are three kilometres from the park.

Belonging to some of these core communities are significant ‘enclaves’ of Maori land inside the park. Tuhoe, Ngati Kahungunu and Ngati Ruapani share ownership of the lake-bed of Waikaremoana. There are 607 acres of Ruapani reserves on the northern fringes of Lake Waikaremoana, which became reservations under section 439 of the Maori Affairs Act in 1972. Otherwise, all the Maori land inside the park is owned by Tuhoe.

The way in which the park and its administration has been superimposed on Maori communities, for whom its lands are turangawaewae, sets Te Urewera National Park apart from any other in New Zealand (see map 16.1). In the claimants’ view, its presence has blighted their economic development and turned their last few lands they still retain into ‘virtual park’, yet they gain no corresponding benefits. The Crown, they say, tried for decades to wrest their remaining lands from them for the park, and also put tight restrictions on their ability to make any economic use of their lands. The claimants also see their kaitiakitanga and their customary use rights as inhibited or prevented by the park. In their eyes, the park was designed for preservationists and recreational users at the expense of tangata whenua. Rather than the claimants having a sufficient role and authority in decision-making and management of the park, they argue, they are treated as one group of submitters among many. Their wishes are disregarded and their values set at nought. The park is not a ‘good neighbour’.

The Crown denies these allegations. In its view, there was indeed ‘insufficient partnership in the Crown/Urewera Maori relationship prior to the 1980s’. But ‘the level of consultation and involvement of Urewera Maori in the management of the Park’ would only be ‘considered inadequate by today’s standards.’³ In fact, the Crown’s submission is that

3. Crown counsel, closing submissions, June 2005 (doc N20), Topic 33, p 2

there have been no Treaty breaches in the establishment or management of the park, nor in any of its impacts on its Maori neighbours. The park is not a 'bad neighbour'. In particular, the Crown's view is that the Department of Conservation (DOC) does much more than consult Maori as stakeholders. The claimants' evidence is focused too much on formalities and structures, the Crown asserts, and plays down the ways in which their wishes have been accommodated in the management and running of the park. Further, while the Crown admittedly tried for many years to buy more Maori land for the park, it says that its efforts were unsuccessful and therefore of little effect. It only managed to buy Manuoha and Paharakeke in the east of the inquiry district, which it says it purchased from willing sellers for a fair price.

But it is not just the presence of the park that is at the heart of the grievance of the peoples of Te Urewera. It is its history. It is the fact that the park lands, just fifty years before, had been the Urewera District Native Reserve (UDNR) – lands that were entirely Maori-owned, that were in 1896 offered the protection of their own Act of Parliament. Within the Reserve, the Crown agreed, at that time, the peoples of Te Urewera were to be self-governing. This was a unique recognition of tribal self government. And yet the Crown, as we have seen in chapter 13, engineered the collapse of the Reserve in the early twentieth century by failing to ensure the prompt creation of the General Committee, the vehicle for self-government and the collective management of the Reserve lands. Having failed to ensure that the Committee had the chance to become an effective body, the Crown then ignored it altogether and embarked on the illegal purchase of owners' undivided, individual interests in the Reserve (for a settlement scheme that never happened). As we saw in chapter 14, the eventual separation of Crown and Maori interests occurred in the 1920s' consolidation scheme, through which the Crown secured yet more large areas of land for survey costs and in part payment for roads. Ngati Ruapani in particular were left virtually landless.

The Crown's ownership of the national park daily reminds the peoples of Te Urewera that these wrongs of the past have not yet been put right. Only a small proportion of their lands remain for them; by far the greater part passed unjustly into the hands of the Crown. Because of this, and because the park is founded on cultural beliefs that seem at odds with their knowledge of and dependence on the sustainable use of natural resources, it remains a foreboding presence. So, while the park lands lie outside the Bay of Plenty raupatu (see chapter 4), it was quite often said at our hearings that the park lands are among those confiscated by the Crown. The park has come to symbolise all of the Crown's wrongs against Te Urewera peoples, as well as their continuing struggle for recognition of their rights.

Crown counsel observed:

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The Crown has conceded Treaty breach in respect of the Crown's conduct in purchasing shares in land within the Urewera District Native Reserve. The Crown award, following consolidation, forms a substantial portion of the current National Park.⁴

Yet, the Crown's position in our inquiry was to divorce this reality from the national park, as though history had stopped in 1927. In our view, this kind of thinking in the past has done both Crown and claimants a great disservice. The park rests on a defective foundation and until that is acknowledged and its implications resolved, the peoples of Te Urewera will never entirely accept the park or its kaupapa. Our purpose in this chapter, therefore, is to highlight the fundamental basis of the claimants' grievance, which has been widely publicised but is little understood by New Zealanders, and to determine why the intervening years from 1954 have further intensified that grievance, and levelled it ever more specifically at the park.

16.2 ISSUES FOR TRIBUNAL DETERMINATION

In order to determine whether the claimants' allegations about the park are well-founded, there are five key questions to be answered in this chapter:

- ▶ Why and how was a national park established in Te Urewera?
- ▶ How has the national park affected the economic opportunities of Maori communities in Te Urewera?
- ▶ Did the Crown purchase Manuoha and Paharakeke from informed and willing sellers, and was the purchase fair in all the circumstances?
- ▶ How has the national park affected the ability of Te Urewera peoples to continue their customary uses of park lands and their exercise of kaitiaki responsibilities?
- ▶ To what extent have the peoples of Te Urewera been represented or otherwise involved in the governance, management and day to day administration of Te Urewera National Park?

We turn next to an explanation of key facts about Te Urewera National Park, which the reader must understand before we set out the essence of the differences between the parties, and then analyse and make findings about the claims before us.

4. Crown counsel, closing submissions (doc N20), Topic 33, p 2

16.3 KEY FACTS

16.3.1 The establishment of a national park in Te Urewera

Te Urewera National Park was established in 1954, under the National Parks Act 1952. The park was greatly expanded in 1957, and today occupies an area of 212,673 hectares (525,526 acres), making it New Zealand's fourth largest national park. It is made up almost entirely of the Crown's award (482,300 acres) from the Urewera consolidation scheme, with the addition of the north-eastern portion of the former Waiau, Tukurangi and Taramarama blocks (some 20,000 acres), the Manuoha and Paharakeke blocks (around 38,000 acres, added in 1962) and the bed of Lake Waikaremoana, which the Crown leases from its Maori owners.

Before 1952, there were just four national parks: Tongariro (1894), Egmont (1900), Arthur's Pass (1929), and Abel Tasman (1942). Parks (and other forms of state protection such as scenic reserves) reflected colonists' concerns to preserve remnants of the natural environment and 'wilderness' landscapes. Even so, Ngati Tuwharetoa played an important role in New Zealand's first national park (Tongariro) and maintained important links with it. Governing legislation – individual Park Acts, the Public Domains Act 1881 and the Public Reserves, Domains and National Parks Act 1928 – provided for tourist accommodation and recreational facilities to be developed in the protected areas, but prohibited permanent settlements or the removal of plants and other materials.

The Crown had long considered the scenic landscapes and rugged mountain forests of Te Urewera as worthy of some form of state protection. After abandoning plans for farm settlement schemes, the Crown considered national park status in the 1930s as it contemplated the best use of the land it had been awarded there through the consolidation scheme, on the basis of its extensive purchasing. Protection of the catchment forests and scenic landscapes of Te Urewera had become important elements in Crown policy; but it rejected a national park option in favour of multi-purpose Crown management, including the need to take account of the economic needs of Maori communities in the district. During the 30 or so years that elapsed between the Urewera Consolidation Scheme and the establishment of the national park, there were comparatively few restrictions imposed on the use of the lands the Crown had acquired, so customary uses of those lands by the peoples of Te Urewera continued largely unabated.

A proposal for a national park in Te Urewera was raised again in the context of the passing of the National Parks Act 1952. Interest groups such as the Federated Mountain Clubs, the Royal Forest and Bird Protection Society, and scientific bodies, had sought new legislation that provided more certainty about the purposes of national parks as protection for remaining native forests and wilderness landscapes, and a more coherent administration. Their interests dovetailed with government concerns to protect important forest catchments and water supply areas in the national interest. The 1952 Act encouraged the establishment

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of a new group of national parks including Sounds (Fiordland) (1952), Mount Cook (1953), Te Urewera (1954), Nelson Lakes (1956), Westland (1960), and Mount Aspiring (1964).

The National Parks Act 1952 set out its purposes and the principles to be observed in the administration of national parks. It spelt out the general purposes of national parks as ‘preserving in perpetuity . . . for the benefit and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality or natural features so beautiful or unique that their preservation is in the national interest’ (section 3(1)). All but one of the five principles to be observed by park administrators emphasised preservation – of nature, of native flora and fauna, of sites and objects of historical interest, and of soil, water and forest conservation areas. The fifth principle was that the public should have freedom of entry and access to national parks so that they may ‘receive in full measure the inspiration, enjoyment, recreation and other benefits to be derived from mountains, forests, sounds, lakes, and rivers’ (section 3(2), as amended in 1972).

The Act’s purposes and principles made no mention of Maori interests. The underlying premise was that the Act’s articulation of the ‘national interest’ in national parks, and of ‘the benefit and enjoyment’ that ‘the public’ obtain from national parks, applied equally to all New Zealanders.

A fundamental question that the Act raised for park administrators was how to achieve the purposes of preserving the natural resources of national parks while allowing the public to enjoy them. Other provisions of the 1952 Act provided guidance on this issue by identifying activities that, generally, could or could not be undertaken in a national park. Those provisions made plain, for example, that certain recreational uses of national parks by the public were allowable – including tramping and skiing – as was the building of huts and ski tows to facilitate the enjoyment of park visitors engaged in those activities. Other allowable uses related to public purposes, and to the grant of rights to use water for electricity generation. But the Act made plain that it was generally not allowable to remove anything at all from a national park – including any plant or stone. The particular blend of recreational and preservationist interests promoted by the 1952 Act reflected the influence of the recreational and conservation groups most closely involved in the Act’s development.

Maori were not consulted about the 1952 Act. It did not require formal acknowledgement or representation of Maori interests on either the new nationwide policy body, the National Parks Authority, or on the park boards established for each new park. The peoples of Te Urewera were not consulted about the Act or the government proposal made during parliamentary debates on it for a national park in Te Urewera. They were consulted about the name in early 1954, after the National Parks Authority had recommended a park in the district.

Te Urewera National Park was established in two stages, in 1954 and 1957. The first National Parks Authority recommendation in 1953, was for a smaller area than the

Government wanted. This area of around 116,000 acres included the important and scenic Waikaremoana forest catchment. It deliberately excluded, for the meantime, forest areas where Crown and Maori landholdings remained mixed together, and where the Authority wanted to know more about the commercial potential for milling.

Government minister Ernest Corbett (minister for Lands, Forests and Maori Affairs), who was anxious to establish a park in Te Urewera, met with Tuhoe in December 1953 at Ruatahuna. For the first time, Corbett heard Tuhoe concerns for the survival of their communities and their determination to remain on their own lands. Acknowledging the justice of their concerns, Corbett suggested that the land around Ruatahuna should be classified according to whether it could be safely milled. Development could then proceed on suitable land, while the Crown acquired steep erosion-prone Maori land for the park, in exchange for Crown land elsewhere in the district. An agreement was forged between Corbett and Tuhoe on this basis. Following this, the smaller park area (116,000 acres) as recommended by the Authority, was gazetted 'Urewera National Park' in 1954.

Three years later, in 1957, the park area was considerably expanded to just over 450,000 acres when an additional 334,000 acres of Crown land was gazetted. During 1954–55, the Urewera Land Use Committee had classified Maori land around Ruatahuna under the agreement reached between Corbett and Tuhoe. This enabled substantial milling of forests there. But the proposed land exchanges fell through, because of a lack of suitable Crown land for exchange. In mid-1955 the Crown reverted to relying on purchasing Maori land. Its own large block was added to the park in the hope this would overcome continuing Tuhoe reluctance to part with more of their own land for the park. By 1957, therefore, a very large national park had been created in Te Urewera under administration that was not required to take formal account of Maori interests and with statutory purposes that were not easily compatible with the continued viability of Te Urewera communities.

16.3.2 Te Urewera National Park administration 1954–1980

Since 1952, the national parks administrative regime has always involved a central statutory body, a second-tier set of statutory bodies at park or regional level, a government department, and a Minister. However, the nature and roles of those various components of the regime have changed dramatically over the years in the wake of several Government reviews and legislative changes. It is necessary to provide a brief overview of these often complex changes.

There have been three different bodies with nationwide responsibilities for national parks. They are:

- ▶ The National Parks Authority (1952–1981);
- ▶ The National Parks and Reserves Authority (1981–1990), and now

Administrative bodies	Function
National Parks Authority	Nationwide policy and advisory role for all national parks.
1954–1961, Commissioner of Crown Lands From late 1961, Te Urewera National Park Board	<p>Statutory members:</p> <ul style="list-style-type: none"> ▶ Director-General of Lands (chair) ▶ Deputy Director-General of Lands (deputy chair) ▶ Secretary for Internal Affairs ▶ Director of Forestry ▶ General Manager, Department of Tourism and Health Resorts ▶ General Manager, Tourist Hotel Corporation ▶ Royal Society – one representative ▶ Forest and Bird – one representative ▶ Federated Mountain Clubs – one representative ▶ Park board representative(s) – originally one, then two ▶ No statutory provision was made for Maori representation. <p>District Commissioner of Crown Lands (chair) plus up to eight members appointed by Minister of Lands on advice of National Parks Authority.</p>
Department of Lands and Survey (Hamilton)	<p>No statutory place for Maori but Tuhoe were always represented by one member (and, for a time, two members) and, from 1974, Ngati Kahungunu were also represented by one member.</p>
Minister of Lands	<p>Administration of National Parks Act 1952 (including from 1969, employment of park rangers and other specialist staff).</p> <p>Responsible for national parks system, acting on the advice and recommendations of the National Parks Authority.</p>

Table 16.1: Te Urewera National Park administration, 1954–80

- ▶ The New Zealand Conservation Authority (since 1991).

At the next level, of the park or region, Te Urewera National Park has been the responsibility of six different statutory bodies:

- ▶ The Commissioner of Crown Lands for South Auckland (1954–1961);
- ▶ Te Urewera National Park Board (1962–1981);
- ▶ The East Coast National Parks and Reserves Board (1981–1990);
- ▶ The East Coast Conservation Board (1990–1998);
- ▶ The East Coast Hawke’s Bay Conservation Board (1998–2009); and now
- ▶ The East Coast Bay of Plenty Conservation Board.

As well, there have been two government departments responsible for the administration of the National Parks Acts 1952 and 1980, both of which have made internal changes to their organisation that have affected their administration of the park. And naturally, the two Ministers responsible for those departments have been involved. The departments are:

- ▶ The Lands and Survey Department (until 1987); and, since then
- ▶ The Department of Conservation.

The 1952 Act provided that individual park boards were to manage each park but that, until a board was appointed, a district Commissioner of Crown Lands of the Department of Lands and Survey could exercise virtually all of its powers. In Te Urewera, the Commissioner of Crown Lands for South Auckland managed the national park from 1954 until late 1961, when a park board was appointed by the Minister. At that time, as the Act prescribed, the Commissioner became the park board’s chair. During the lifetime of Te Urewera national park board (until 1980), its appointed members were, typically, a mix of local farmers, public servants, local government officers, members of the Forest and Bird Protection Society or the Federated Mountain Clubs, and one or two representatives of local iwi. Iwi representatives were appointed by ministerial convention rather than through statutory provision, a convention that has continued on all subsequent regional boards which have replaced the park board.

The 1952 Act also empowered the park boards to employ rangers to manage the day-to-day operations of the parks. Park rangers were employees of the Te Urewera national park board until 1969 when, as part of a move to professionalise the Department of Lands and Survey’s approach to national parks and reserves administration, they became employees of that department. During the 1970s, the department added other professional staff – including planners and landscape architects – to assist with park management. Te Urewera National Park became divided into three management sectors – Aniwaniwa/Waikaremoana, Murupara, and Taneatua – for administrative purposes. The Waikaremoana sector included the park headquarters at Aniwaniwa, situated beside Lake Waikaremoana, a lake which Crown officials considered the centrepiece of the park and the region. The park’s visitor centre and museum was opened in 1976 at Aniwaniwa, and the museum became a registered

collector of taonga under the Antiquities Act 1975. Ranger stations were established at Murupara and Taneatua (however, the ranger for the Taneatua or northern sector was based at Whakatane until 1979), with the chief ranger based at Aniwanuiwa.

In order to promote the consistent administration of New Zealand's national parks by the park boards, the National Parks Authority was empowered to issue General Policy statements, in which it interpreted the Act's meaning or intentions on important issues, to guide park management. It issued two General Policy statements during its lifetime, in 1964 and 1978. The 1964 General Policy for national parks contained 30 brief, mainly non-prescriptive, statements on a range of subjects that park boards would need to consider. One prescriptively worded policy was that a park board must produce a 'master plan' that clearly identified the resources of the park and their values. The Te Urewera National Park Board issued its first plan in 1976. The plan emphasised the 'wilderness' character of the park and the need to preserve it, and the board outlined its policies for the park over a wide variety of subjects.

The expansion of the park in 1957 meant that it enclosed or abutted some 133,298 acres of Maori land. That land was comprised of 180 small blocks which the owners had retained in the wake of the Urewera Consolidation Scheme. The majority of these blocks were adjacent to the park, but many of them became completely surrounded by the park.

Park administrators referred to the blocks that were completely enclosed by the park as the 'Maori enclaves'. Tuhoe lands enclosed by the park at the time of its expansion in 1957 include several isolated blocks in or near the upper Ohinemataroa or Whakatane valley between Ruatoki and Ruatahuna; and in the upper Waimana valley including Tawhana and Tauwharemanuka; blocks totalling 6529 acres at Maungapohatu; and the bed of Lake Waikaremoana, owned by Tuhoe, Ngati Ruapani and Ngati Kahungunu. In addition, Ngati Ruapani owned 14 small reserves around Lake Waikaremoana totalling 607 acres. In 1977, the Crown returned to the Tuhoe-Waikaremoana Maori Trust Board the Maungapohatu burial reserve, which had been a separate Crown reserve that was not included in the park but was encompassed by it. As a result, Tuhoe's sacred maunga became another block of Maori land that was enclosed by the park.

Of the Maori land blocks that abutted the park after 1957, the majority were also owned by Tuhoe. These included many blocks in the upper Ohinemataroa (Whakatane) river valley just south of Ruatoki, some smaller blocks of land in the upper Waimana river valley near the communities of Matahi and Whakarae, and a large area of forested land surrounding Ruatahuna of at least 40,000 acres. Furthermore, the Manuoha and Paharakeke blocks (comprising 38,000 acres of forested land situated at the head of the Wairoa River north-east of Lake Waikaremoana) also abutted the park. Manuoha had been awarded to the descendants of Hinanga by the second Urewera commission. Paharakeke had been awarded to Wi Pere and the hapu of Ngati Maru, Ngati Rua, and Ngati Hine.

The enclosed lands at Maungapohatu and in the upper Waimana and Ohinemataroa (Whakatane) valleys were home to Tuhoe communities which had experienced rapid decline in the 1930s and 1940s, after which only a few families managed to stay on. But even today a few of these blocks are inhabited by one or two whanau running small farms, and many contain abandoned kainga and sacred wahi tapu sites. The tracks to these communities, often along the unformed legal roads that the Crown had promised and failed to build as part of the Urewera Consolidation Scheme, have become the basis for vital tracks within the park. In effect, this means that trampers and hunters regularly have to cross Maori land within the park. Similarly, the public has to cross adjoining Maori land to gain entry to the park from the north and at Ruatahuna.

The Crown continued its active efforts to buy blocks of Maori land within and beside the park after the park was enlarged in 1957. But the only substantial area of Maori land that the Crown succeeded in purchasing was the Manuoha and Paharakeke blocks, which were added to the park in 1962. To ensure public access to the lake, the Crown also attempted to acquire the bed of Lake Waikaremoana, including a ring of land surrounding the lake that had been exposed by the lowering of its water level for electricity generation. Yet, its Maori owners did not want to part with their land. In 1971, an agreement was reached, validated by the Lake Waikaremoana Act 1971, whereby the Tuhoe-Waikaremoana Maori Trust Board, and the Wairoa Waikaremoana Maori Trust Board became owners of the lakebed and leased it to the Crown for inclusion in the park. The lease was backdated to 1967 and was to last 50 years. It was not until the late 1970s that the Crown ended the major push to acquire Maori land beside and within the park.

Soon after the park was created, Maori sold, or attempted to sell to private timber companies, the cutting rights on much of their land adjacent to or within the park. In 1961, the Crown issued a notice under section 34 of the Soil Conservation and Rivers Control Amendment Act 1959 over most of the area that had once been the Urewera District Native Reserve, prohibiting logging unless permitted by the Soil Conservation and Rivers Control Council. However, some intermittent milling occurred after 1961 (largely resulting from prior agreements reached between Maori and timber companies), especially at Maungapohatu from 1962 to 1976. The first road connecting Maungapohatu to the outside world was built in 1964 by a private timber company. As the public gained better access to Maori land, some wahi tapu sites were desecrated, removed or vandalised.

The creation of Te Urewera National Park brought about a series of restrictions on the customary uses made of its lands and resources by the peoples of Te Urewera. The 1952 Act made it an offence to shoot at any animal, or take any plant or tree, without the permission of the park board. In Te Urewera, permission to take some culturally important plants, such as kiekie and pikopiko, was often granted despite the provisions of the Act, but for some years this was not official park policy; rather, it occurred on an ad hoc and inconsistent

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basis. Park policy did not make any formal provision for customary harvests until 1989; prior approval of park management had to be obtained.

Hunting anywhere in the park required a permit, first from the Commissioner of Crown Lands, then from the park board. The use of pig dogs for hunting also required a permit, and the park board banned their use between 1973 and 1982. A permit system for horses was introduced from 1971. The right of Maori to use horses to access their own lands was always and still is recognised, though from 1989 the policy became more restrictive. Commercial and recreational hunting was also encouraged as a means to control introduced wild animals, provided hunters obtained permits.

While commercial hunting for opossum skins and deer provided some limited employment to local Maori, tourism within the park never provided many employment opportunities. In 1975, the park board granted its first concession to a Maori commercial tourist venture to operate treks through the park.

16.3.3 Te Urewera National Park Administration 1980–1990

A new era of national parks administration began in 1980 when the National Parks Act 1952 was repealed and replaced by the National Parks Act 1980. While the 1980 Act largely re-enacted the purposes and principles of the 1952 Act, it completely changed the framework for administering national parks so that policy and planning functions became more open to input from interested members of the public, and control of day-to-day operations passed from the park board to departmental (Lands and Survey) officers. To achieve these ends, the 1980 Act abolished the National Parks Authority and the individual park boards and replaced them with a National Parks and Reserves Authority and regional parks and reserves boards. The new bodies were made up of knowledgeable private citizens, and their policy, planning, advisory, and monitoring responsibilities stretched beyond national parks to include important public reserves in the region. In the extensive East Coast region, within which Te Urewera national park was located, the minister's appointments to the East Coast National Parks and Reserves Board included one Tuhoe and one Ngati Kahungunu representative.

Sections 41 and 42 of the 1980 Act state that neither the Minister nor the Director-General can delegate their powers to anyone outside the department, which meant that responsibility for the administration of national parks was held by the Department of Lands and Survey until 1987, and has been held by the Department of Conservation since 1987.

National park management plans are made compulsory by the 1980 Act, which prescribes a consultative process, including public submissions, for developing and reviewing them. A park management plan is a vital document because the Act requires departmental staff, and also the Minister when exercising particular powers conferred by the 1980 Act, to act consistently with a park's plan.

Administrative bodies	Function
National Parks and Reserves Authority	<p>Nationwide policy and supervisory role for all national parks, plus any functions delegated by the Minister in relation to public scenic reserves.</p>
<p>Ten members appointed by Minister of Lands:</p> <ul style="list-style-type: none"> ▶ three nominees of Royal Society, Forest and Bird Protection Society and Federated Mountain Clubs, plus ▶ three appointed in consultation with Ministers of Tourism and Local Government; plus ▶ four appointed (after public notice and nominations) for their special knowledge or interest in matters connected to national parks and reserves or wildlife. 	
East Coast National Parks and Reserves Board (serviced by Lands and Survey, Napier)	<p>Policy, planning, monitoring and advisory roles for the region's national parks and public scenic reserves.</p>
Until 1987 – Department of Lands and Survey (Gisborne)	<p>Park management (role virtually identical to role of park boards under 1952 Act).</p>
From 1987 – Department of Conservation – (Rotorua and Gisborne)	
Until 1987 – Minister of Lands	
From 1987 – Minister of Conservation	<p>Responsible for national parks system with policy role exercised on advice of National Parks and Reserves Authority and operational powers (mostly delegated to Director-General) exercisable consistently with park management plans</p>

Table 16.2: Te Urewera National Park Administration 1980–90

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In 1983, the National Parks and Reserves Authority issued its General Policy for national parks – a much more detailed and prescriptive document than its predecessors. The review of the Te Urewera national park management plan also began at that time but was not completed until 1989. In part this was due to the Department of Lands and Survey switching responsibility for the park's administration from Hamilton to its Gisborne office. But even more disruptive was the major restructuring of the conservation estate that culminated in the Conservation Act 1987. Among other things, that Act vests in the new Department of Conservation the responsibility for national parks previously exercised by Lands and Survey. It also requires the department to administer the Act so as to give effect to the principles of the Treaty of Waitangi.

A report published in 1986 by Evelyn Stokes, Wharehuia Milroy and Hirini Melbourne on the peoples of Te Urewera and their relationship with the forests had some influence on the 1989 plan for Te Urewera National Park. It brought together information about the history of the area, the socio-economic circumstances of its Maori communities, and their criticisms of the park's administration. While the 1989 management plan recognised that Te Urewera is Tuhoē's homeland, it continued the overarching policy emphasis on preservation and recreational interests. A new element of the preservationist policy was to not identify wahi tapu sites if Maori did not want them publicised. The plan also noted Te Urewera was 'one of the least visited national parks in New Zealand'.⁵

While the 1980 Act preserved the 1952 Act's restrictions on hunting and gathering, there was recognition in the 1983 nationwide and 1989 park policies that customary gathering of plants might be allowed, with the prior approval of park management, provided plants were not rare or vulnerable, and demands 'not considered excessive'. In the Waikaremoana sector of the park, park staff authorised the Waikaremoana Maori Committee to give permission to those it approved to collect pikopiko and rongoa from 1986, but not for other plants. The use of horses to gain access to Maori land within the park and for wild animal control was confined to the Murupara and Taneatua sectors of the park.

16.3.4 Te Urewera National Park administration 1990-present

The latest era in the administration of national parks began in 1990 when the Conservation Law Reform Act amended the Conservation Act and the National Parks Act by abolishing the National Parks and Reserves Authority and regional boards and replacing them with the New Zealand Conservation Authority and regional conservation boards. These bodies, which have policy, planning, advisory and monitoring responsibilities, have jurisdiction over a far broader range of public conservation lands than did their predecessors. For the first time, there is a statutory guarantee of Maori membership of the central body – the

5. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999*, Department of Conservation, 1989, p 32

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Administrative bodies	Function
New Zealand Conservation Authority	<p>Thirteen members appointed by Minister of Conservation:</p> <ul style="list-style-type: none"> ▶ Three Maori members, two of which are appointed by the Minister in consultation with the Minister of Maori Affairs, and one is nominated by Te Runanga o Ngai Tahu; ▶ Two members, after consultation with the Minister of Tourism; ▶ One after consultation with the Minister of Local Government; ▶ Three on the recommendation, respectively, of the Royal Society of New Zealand, the Royal Forest and Bird Protection Society of New Zealand and the Federated Mountain Clubs of New Zealand; ▶ Four following a public notice and nominations process. <p>Up to 12 members, appointed by the Minister after a public notice and nominations process and after consultation with the Conservation Authority.</p> <p>No statutory Maori representation, but Tuhoë were at times represented by one member.</p> <p>Up to 12 members, appointed by the Minister after a public notice and nominations process and after consultation with the Conservation Authority.</p> <p>No statutory representation for Maori, but Tuhoë were always represented by one or two members, and Ngati Kahungunu represented by one member from 1999 to circa 2002.</p> <p>Up to 12 members, appointed by the Minister after a public notice and nominations process and after consultation with the Conservation Authority.</p> <p>No statutory representation for Maori, but Tuhoë always represented by two members.</p>
East Coast Conservation Board (1990–98)	<p>Policy, planning, monitoring, and advisory roles for the region's national parks and public scenic reserves.</p>
East Coast Hawke's Bay Conservation Board (1998–2009)	<p>Management of conservation areas and Te Urewera National Park.</p>
East Coast Bay of Plenty Conservation Board (2009–present)	<p>Responsible for conservation lands and national parks; policy role exercised on advice of New Zealand Conservation Authority and operational powers mostly delegated to Director-General of Conservation and exercisable consistently with park management plans.</p>
Department of Conservation – (Gisborne and from 2009 Rotorua)	
Minister of Conservation	

Table 16.3: Te Urewera National Park Administration since 1990

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Conservation Authority. A number of conservation boards also have statutorily guaranteed Maori membership, but that is not the case for the board that has responsibility for Te Urewera National Park. From 1990 until 1998, that board was the East Coast Conservation Board but changes to conservancy boundaries have meant that, from 1998 to 2009, the park was in the East Coast Hawke's Bay Conservancy and, since 2009, has been in the East Coast Bay of Plenty Conservancy. In general, Tuhoe were represented by one or two members on each of these boards, while Ngati Kahungunu were represented by one member on the East Coast Hawke's Bay conservancy from 1999 to about 2002, and have not been represented on the other boards.

In the 1990s, a number of on-going formal and informal joint initiatives were established between DOC and local Maori. These included the Puketukutuku Peninsula Kiwi Restoration Project (which also involved Landcare Research up until 2002) at Lake Waikaremoana, the Northern Te Urewera Ecological Restoration Project mainly based in the Waimana valley, a joint DOC/local hapu Aniwaniwa Museum management and review team, and an informal cooperative agreement between local Maori and the Aniwaniwa area office of DOC that allows hapu representatives from Ruatahuna and Waikaremoana to attend the area office's bi-monthly project planning meetings. The latter initiative is sometimes referred to as 'the Aniwaniwa model'.

In late 1997 and early 1998, a group of some 50 local Maori and their supporters – Nga Tamariki o Te Kohu – occupied an area of the shore near Home Bay that had been exposed by the lowering of the level of Lake Waikaremoana. They cited DOC mismanagement of the local environment as a principal motivation. The Crown established a Joint Ministerial Inquiry (Conservation and Maori Affairs) in 1998 to investigate the grievances of Nga Tamariki o Te Kohu with reference to DOC's management and also to identify processes to resolve the issues raised by the occupiers.

Originally called Urewera National Park, the park's name was changed to Te Urewera National Park in 2000. This change was first requested by a Tuhoe park board member in 1973. Throughout our discussion, we use the title Te Urewera National Park.

In 2003, the latest management plan for Te Urewera national park was approved by the East Coast Hawke's Bay conservation board. For the first time, the plan recognises the peoples of Te Urewera as kaitiaki of 'nga taonga o Te Urewera'.⁶ The 2003 management plan also states that plant collection will only be authorised in 'special circumstances', but allows that a process may be established between the Department of Conservation and Maori that avoids the need for separate applications to be assessed for every instance of use. In 2005, the New Zealand Conservation Authority issued the most recent General Policy for national parks.

6. Department of Conservation East Coast Hawke's Bay Conservancy, *Te Urewera National Park Management Plan*, Gisborne: Department of Conservation East Coast Hawke's Bay Conservancy, 2003, p 37

16.4 THE ESSENCE OF THE DIFFERENCE BETWEEN THE PARTIES**16.4.1 Why and how was a national park established in Te Urewera?**

The claimants' strong feelings about the establishment of a national park in Te Urewera were very evident in their submissions. Counsel for Wai 36 Tuhoe submitted that 'New Zealanders need to understand that this "national asset", Te Urewera National Park, was acquired through manipulation, deception and fraud. The Crown does not have clean hands when it comes to the UDNRA.⁷ In response, the Crown acknowledged that it purchased 'a significant proportion of the lands incorporated in Te Urewera National Park' between 1910 and 1921. It acknowledged also that it has conceded Treaty breach in respect of its purchasing shares in land within the Urewera District Native Reserve. The Crown award following consolidation, on the basis of that purchasing, 'forms a substantial portion of the current National Park.'⁸

The claimants further alleged that the decision to establish a national park in Te Urewera reflected the long-standing Crown perception of their lands as unspoilt scenic wilderness requiring preservation and protection. This focus, they submitted, disregarded the continued presence of the peoples of Te Urewera, and their existing relationship with the land, its waters, and its forests, even when their customary harvests were clearly sustainable.⁹ The establishment of Te Urewera National Park was a significant step in government policy as the area now had a single purpose – water, forest and soil conservation – rather than development and settlement.¹⁰ What is more, the area that made up Te Urewera National Park was now set aside in perpetuity for this single purpose.¹¹

The claimants all stated that the values underpinning a national park were foreign to them, and were imposed without taking into account the views of the peoples of Te Urewera, forcing them to adjust their tikanga.¹² For them, the national park represents the most significant of the Crown's imposition of foreign values upon them, in a history of such impositions.¹³ All claimants argued that the Crown failed to adequately consult them over the park's establishment in 1954 and again over its first significant expansion in 1957.¹⁴

7. Counsel for Wai 36 Tuhoe, closing submissions, pt A, 31 May 2005 (doc N8), p 42

8. Crown counsel, closing submissions, June 2005 (doc N20), topic 33, p 2, n1

9. Counsel for Wai 36 Tuhoe, closing submissions, pt B, 31 May 2005 (doc N8(a)), pp 189–190; counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (doc N14), pp 84–106

10. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 95; counsel for Wai 144 Ngati Ruapani, closing submissions, 3 June 2005 (doc N19, app A), p 128

11. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), p 128; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 95

12. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 189–190; counsel for Ngai Tamaterangi, attachment to closing submissions, undated (doc N2(a)), pp 106–107

13. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 75

14. Counsel for Ngai Tamaterangi, closing submissions (doc N2), p 67; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 189; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 109–110; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), p 129; counsel for Wai 36 Tuhoe, closing submissions in reply, 9 July 2005 (doc N31), p 51

The Crown, however, argued that the Government had consulted Tuhoe over the park's establishment, and had shown in doing so a pragmatic recognition of the need to win acceptance of the national park designation among the local Maori inhabitants. Since Maori were owners of adjacent land that was likely to be affected by the creation of the park, consultation was appropriate, 'even in the context of the time'.¹⁵

16.4.2 How has the national park affected the economic opportunities of Maori communities in Te Urewera?

The peoples of Te Urewera claim that the national park has unduly restricted the retention, development, and use of their land, while giving them very little economic opportunity.¹⁶ As counsel for Nga Rauru o Nga Potiki put it, the park is 'larger than its boundaries', and has made their land 'peripheral and subordinate to the main purpose of the entire region', which is conservation rather than development and settlement.¹⁷

The claimants argue that the Crown and the park board embraced a long-term policy of purchasing Maori land within or neighbouring the park, and made persistent efforts to acquire their land. Claimants generally criticised these attempts as inappropriate given the limited lands remaining to them. They criticised also the Crown's motives for trying to acquire more Maori land to add to the park – to avoid 'incompatible land uses' – and, in some cases also, its methods.¹⁸

Claimants contend that once the park board accepted that Maori land within and beside the park could not be acquired, it sought to restrict the land's development and use.¹⁹ One prominent restriction occurred through the Crown using the Soil Conservation and Rivers Control Amendment Act 1959 to prohibit or restrict the logging of Maori land within and beside the park.²⁰ Claimants stated that they were not compensated for being unable to realise their timber assets under the Act; failed compensation negotiations were predicated on the Crown acquiring the land in question in exchange.²¹ Claimants alleged other restrictions resulted from the park board 'colluding' or 'working together' with other Crown and

15. Crown counsel, closing submissions (doc N20), topic 33, p 4

16. Counsel for Wai 621 Ngati Kahungunu, closing submissions, 30 May 2005 (doc N1), pp167–168; counsel for Wai 36 Tuhoe, closing submissions, pt B, 30 May 2005 (doc N8a), pp195, 201; counsel for Nga Rauru o Nga Potiki, closing submissions, 3 June 2005 (N14), p 112; counsel for Wai 144 Ngati Ruapani, closing submissions, 3 June 2005 (doc N19), pp 61–62

17. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 95–96, 112

18. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8(a)), pp 201–202; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 112, 248; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), p 56; counsel for Wai 144 Ngati Ruapani, synopsis of closing submissions (doc N19, appendix A), pp 136, 145–146

19. Counsel for Wai 144 Ngati Ruapani, synopsis of closing submissions (doc N19, app A), p140

20. Counsel for Tuawhenua, 30 May 2005, closing submissions (doc N9), pp 290–291; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 177–178

21. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), p 147; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 183

local government agencies to restrict development on Maori land within and beside the park.²²

Consequently, the claimants' view is that the Crown has 'effectively included the whole of Te Urewera in the National Park' without payment or compensation.²³ Counsel for the Wai 144 Ngati Ruapani claimants painted a picture of how the Crown's restrictions have 'hamstrung' the use of the Waikaremoana reserves: their owners 'couldn't farm, hunt, or fish. They couldn't mill, sell or lease their lands to raise any money.'²⁴ Furthermore, 'the Crown prevented the permanent occupation of the land, the erection of dwellings, or any economic utilisation of the land, including efforts by the hapu of Waikaremoana to engage with the tourism trade.'²⁵ Overall, counsel for Wai 36 Tuhoe considered that 'rather than lend assistance or support' the Crown has 'unsympathetically obstructed' their attempts to develop their remaining lands, and has failed to meet its obligation actively to protect them in the development of their lands.²⁶

Claimants consider that the park itself has provided them with very few economic opportunities. They submitted that efforts by Maori to establish and operate commercial ventures using the park have been 'thwarted' or 'frustrated' by 'restrictive policies.'²⁷ Counsel for Nga Rauru o Nga Potiki argued that before 1990, the park afforded only minimal employment for local Maori, apart from that available through temporary employment schemes, and that the employment offered by park administrators generally has largely been confined to Aniwanui, rather than elsewhere in the park. Claimants do acknowledge that, since 1990, DOC has made some efforts to increase the number of Maori staff.²⁸

The Crown denied all of these claims. Crown counsel accepted that efforts were made to acquire Maori land for the park, but said these only occurred 'from time to time' and that the dealings were appropriate under the National Parks Act 1952 and general policies. It denied undue pressure was ever exerted on any Maori owners to sell their lands, since land was not acquired if owners were not willing to sell. Crown counsel considers that these attempts to acquire Maori land have had minimal impacts since only two blocks were ever purchased, 'partly due to financial constraints', for inclusion in the park.²⁹

22. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 194–195; counsel for Tuawhenua, 30 May 2005, closing submissions (doc N9), p 292; counsel for Tuawhenua, appendix to closing submissions (doc N9(a)), p 137; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 112; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), p 59

23. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 65

24. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), p 101

25. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), p 136

26. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 201–202

27. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 114; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), p 145. Also see counsel for Tuawhenua, synopsis of closing submissions, 10 June 2005 (doc N9(b)), p 28

28. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 113, 121

29. Crown counsel, closing submissions (doc N20), topic 33, p 18

16.4.3

The Crown rejects the claims that it placed ‘severe restrictions’ on the use and development of Maori land, ‘although logging was regulated.’³⁰ Crown counsel denied that logging was prohibited as a result of the Soil Conservation and Rivers Control Amendment Act 1959, although certain areas of Te Urewera ‘could be restricted as a result’ of the Act’s provisions ‘to prevent erosion and flooding of lower catchment areas’. Despite these restrictions, Maori landowners of forest blocks obtained ‘considerable economic benefits from their timber assets’ and ‘where restraints were imposed, compensation in the form of land purchase and land exchange was negotiated on occasions.’³¹

General policies stressed the threat posed to achieving national parks’ purposes by ‘incompatible land uses’ of adjacent lands. As such, ‘certain restrictions’ were placed on Maori land within the park to ensure the protection of the national park through which the land is accessed. Crown counsel denied that there was any collusion between the park board and other agencies or that they ‘worked together’ to restrict development of Maori land adjacent to the park. Instead, the park board followed general policies that emphasised the need to seek cooperation with local authorities, government agencies and landowners to ensure compatible land uses of adjacent lands. Crown counsel also asserted, with regard to the proposal to develop the Waikaremoana reserves, that concerns about the impact of Maori land development upon the park were legitimate, and many Maori shared such concerns.³²

Crown counsel submitted that a Tuhoë owned and operated company has been awarded commercial concessions on a ‘preferential basis’. Crown counsel denied all claims regarding employment. Counsel argued that the peoples of Te Urewera have not been excluded from employment in the park, and while DOC appointments are based on merit, it has involved kaumatua in staff selection processes. Local Maori currently hold 40 per cent of staff positions in Te Urewera and at Aniwanuiwa.³³

16.4.3 Did the Crown purchase Manuoha and Paharakeke from informed and willing sellers, and was the purchase fair in all the circumstances?

Claimants submitted that they were forced to sell the Manuoha and Paharakeke blocks to the Crown for inclusion in the park in 1961.³⁴ Counsel for Wai 621 Ngati Kahungunu claimants argued that the owners agreed to sell the cutting rights to the land to a private timber company in 1960, but they were ‘effectively blocked’ from selling their timber by the Crown as ministerial approval for the agreement was not granted. This was because the

30. Crown counsel, closing submissions (doc N20), topic 33, p 19

31. Crown counsel, closing submissions (doc N20), topic 39, p 24

32. Crown counsel, closing submissions (doc N20), topic 33, pp 19–20

33. Crown counsel, closing submissions (doc N20), topic 33, p 7, topic 40, p 4

34. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), pp 97, 152; counsel for Ngai Tamaterangi, closing submissions (doc N2), p 50

Crown wanted to appease public opinion, prevent logging, prevent erosion and environmental damage, and include the land in the park.³⁵ Counsel for Ngai Tamaterangi claimants also noted the Crown placed a notice under s 34 of the Soil Conservation and Rivers Control Amendment Act 1959 on the blocks in 1961 which also prevented the owners from logging timber on the blocks.³⁶ Claimants contended that the owners were not informed by the Crown about ‘the true valuation of the land’ and as a result they accepted a sum ‘significantly lower than the market value’ of £140,000 for the land and timber, unaware of the higher Crown valuation of £160,000 for the land.³⁷ Counsel for Ngai Tamaterangi claimants subsequently argued the Crown ‘failed to discharge its duties to act in good faith’ and further submitted that earlier Crown valuations placed even higher value on the land and timber, namely £250,000 in 1956 and £435,000 in 1959.³⁸

Counsel for Te Whanau a Kai concluded: ‘The owners sold because they were unable to gain economic benefit from the forests located on the block and Dr Neumann’s evidence indicates that the price paid in 1961 was significantly less than market values.’³⁹

The Crown denied that the owners were forced to sell the blocks – the owners freely made a decision to sell the blocks to the Crown in the interests of conservation.⁴⁰ The owners requested that the Crown purchase the blocks because they believed ‘milling of the timber on those blocks was likely to cause erosion and flooding problems downstream.’⁴¹ Crown counsel submitted that negotiations between the owners and the Crown began before a notice was issued under the Soil Conservation and Rivers Control Amendment Act 1959, and when the notice was issued, it was not a factor in the negotiations.⁴² Crown counsel acknowledged that public pressure was ‘a factor’ in the Crown deciding to purchase the blocks, but argued that the ‘driving force’ was genuine official concern over the potential for erosion.⁴³ Crown counsel also denies that they did not inform the owners about the valuation of the land and the timber, as ‘the basis of the valuation of the blocks was clearly explained to the representatives of the owners’ and the owners voted to accept the offer. Furthermore, the Crown’s ‘fair valuation’ offered a ‘reasonable price’, as earlier valuations had overestimated the amount of timber on the land.⁴⁴

35. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), pp 152, 164

36. Counsel for Ngai Tamaterangi, closing submissions (doc N2), p 51

37. Counsel for Te Whanau a Kai, closing submissions (doc N5), p 42; counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 97; counsel for Ngai Tamaterangi, closing submissions (doc N2), pp 51–52

38. Counsel for Ngai Tamaterangi, closing submissions (doc N2), pp 50, 52

39. Counsel for Te Whanau a Kai, closing submissions (doc N5), p 42

40. Crown counsel, closing submissions (doc N20), topic 16, p 92

41. Crown counsel, closing submissions (doc N20), topic 16, p 92

42. Crown counsel, closing submissions (doc N20), topic 16, p 92, citing Neumann, ‘That No Timber Whatsoever Be Removed’ (doc A10), p 183

43. Crown counsel, closing submissions (doc N20) topic 31, pp 29–30

44. Crown counsel, closing submissions (doc N20), introduction to submissions, p 35 and topic 16, p 9

16.4.4 How has the national park affected the ability of Te Urewera peoples to continue their customary uses of park lands and their exercise of kaitiaki responsibilities?

The claimants submitted that the National Parks Act 1952 did not ‘contemplate the continued presence of Maori communities within national Parks, nor the continuation of Maori customary harvests, even when those harvests are clearly sustainable.’⁴⁵ The Act made the customary harvest of native plants an offence unless authorised by a park board. The narrow focus on public use of national parks for non-consumptive tourist and recreational activities has caused added restrictions in Te Urewera, such as the curtailment of local hunters’ customary use of horses and pig dogs.⁴⁶

The claimants compare the Crown’s promise of self-government, made to their tipuna, with their own subjection to a ‘permit culture’ where special exemptions to park rules must be obtained in order to maintain their way of life in their traditional communities. Even now, when customary uses of indigenous plants are allowed if certain criteria are met, the exercise of such rights remains ‘entirely at the discretion’ of the Department of Conservation, which implements park policy.⁴⁷ Similarly, the traditional use of horses and dogs on the lands that now comprise the park is limited by legislation and policy that favours other park users, although other users do not depend on the park to maintain their lifestyle and culture.⁴⁸

It is not only ‘consumptive’ customary practices that have been restricted by park values and administration: the preservation of tangata whenua history, names, sites of significance, artefacts and other taonga has also suffered.⁴⁹ Claimants submitted that the interpretation of the history of Te Urewera has focused unduly on colonial interaction with the area, that taonga have been vandalised, stolen and, in some cases, exhibited without claimant permission, and that there has been inappropriate publication of the location of sites of cultural significance such as urupa.⁵⁰ Furthermore, claimants argued that the Crown has failed to prevent the public from trespassing on Maori land within and adjacent to the park, and has failed to adequately delineate the boundaries between the park and Maori land.⁵¹

In general, the claimants do not see their situation as having been much improved over the years, despite the changes that have been made to the national parks’ regime. They

45. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 189

46. Brad Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 9 (cited in counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 190)

47. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 197

48. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 120

49. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 200

50. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 77; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 200; counsel for Tuawhenua, closing submissions (doc N9), p 293; counsel for Tuawhenua, appendix to closing submissions (doc N9(a)), p 183; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), p 59

51. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), p 143 ; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 202–203; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 118, 241

argue that the National Parks Act 1980 has the same policy underpinnings of preservation of ‘scenery . . . ecological systems, [and] natural features’ and the same objectives of furthering a perceived national interest and public access.⁵² The Conservation Act 1987 similarly adopts preservation policies that are ‘essentially western derived and inherited regimes.’⁵³ It makes ‘no significant move towards expressly incorporating a Maori ethic into the practice of conservation’. In contrast to the Maori environmental ethic, ‘human use and impacts are viewed as environmentally damaging.’⁵⁴

The Crown denies that it ever placed ‘severe restrictions’ on cultural practices.⁵⁵ Crown counsel acknowledged that in the 30 or so years before the national park was created, there were few restrictions imposed on the use of the Crown’s lands in Te Urewera. With regard to customary harvests of indigenous plants, counsel submitted that similar latitude continued until the 1980s, when the law itself became more tolerant.⁵⁶ Customary harvesting was allowed in the earlier period of the park’s operation, counsel maintained, because even before national policy gave it limited recognition, the park board exercised a degree of latitude in its response to requests for access to customary resources.⁵⁷ Although the governing legislation provides for the protection of indigenous plants, it has always allowed customary harvests with the prior written consent of the Minister of Lands or his successor (from 1987) the Minister of Conservation.⁵⁸ A procedure has always existed, therefore, for access to customary resources to be gained and more recently, access has expanded with the development of a national policy that provides for limited cultural harvesting in national parks.⁵⁹ But ‘there is a ‘delicate balance between protection and take’ and so ‘there is no “right” to a continual harvest. Permits must be granted by DOC for certain species to be harvested.’⁶⁰ In similar vein, the Crown submitted that park management took account of traditional uses of horses and dogs even when nationwide policies did not recognise those uses.⁶¹ Crown counsel denied that it has not taken reasonable steps to stop trespass onto Maori land within and beside the park. Counsel stated ‘the Crown cannot reasonably be expected to “ensure” protection of such a large area, within resource constraints and subject to the actions and will of private individuals.’⁶²

The Crown’s response to more recent claims about national park administration emphasises the changes that have occurred since 1987, with the enactment of the Conservation Act

52. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p98

53. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14) p103

54. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p105

55. Crown counsel, closing submissions (doc N20), topic 33, p19

56. Crown counsel, closing submissions (doc N20), topic 33, p14

57. Crown counsel, closing submissions (doc N20), topic 33, p14

58. Crown counsel, closing submissions (doc N20), topic 33, p16

59. Crown counsel, closing submissions (doc N20), topic 33, pp14, 16

60. Crown counsel, closing submissions (doc N20), topic 33, p17

61. Crown counsel, closing submissions (doc N20), topic 33, p9

62. Crown counsel, closing submissions (doc N20), topic 33, p20

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and the creation of the Department of Conservation. Tangata whenua are now formally recognised as kaitiaki of the taonga of Te Urewera and are accorded a status above that of other citizens but, the Crown submits, claimants have not taken sufficient account of the impact this has had on the park's administration.⁶³ For example, Crown policy and practice is now 'committed to interpreting sites of significance to Maori only with their agreement and assistance'.⁶⁴ The Crown also detailed the legislative protection now afforded to Maori artefacts and wahi tapu, submitting that it is consistent with the Crown's Article 2 obligations.⁶⁵

16.4.5 To what extent have the peoples of Te Urewera been represented or otherwise involved in the governance, management and day to day administration of Te Urewera National Park?

All claimants contended that they have been largely or totally excluded from the management and operations of Te Urewera National Park.⁶⁶

Before 1962, claimants argued that there was no consultation at all with local Maori in respect to park management.⁶⁷ Claimants argue that there has not been 'adequate Maori representation' on the various boards that have been responsible for managing Te Urewera National Park from 1962.⁶⁸ Tuhoe claimants submitted that although there has been Tuhoe membership on these boards since 1962, this has not reflected the importance of their interests in Te Urewera.⁶⁹ They consider it significant that the Crown failed to give statutory membership to Tuhoe on these boards; instead, they asserted, the composition of the park board and its successors has been weighted against Tuhoe.⁷⁰

Claimants criticised the incorporation of Te Urewera National Park into regional boards from 1980 which, they claim, have rendered 'park management as a remote and alienating force which is insensitive to local contexts'.⁷¹ Counsel for the Wai 621 Ngati Kahungunu claimants submitted that 'the Crown's establishment of an East Coast Conservancy . . .

63. Crown counsel, closing submissions (doc N20), topic 33, p 3, p 14

64. Crown counsel, closing submissions (doc N20), topic 40, p 5

65. Crown counsel, closing submissions (doc N20), topic 40, pp 8, 11

66. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 110–114; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 153, 190–193; counsel for Tuawhenua, closing submissions (doc N9), pp 290–291; counsel for Ngati Haka Patuheuheu, submissions in reply (doc N25), p 62; counsel for Wai 621 Ngati Kahungunu, written synopsis of closing submissions (doc N1), p 167; counsel for Ngai Tamaterangi, closing submissions (doc N2), p 67; counsel for Ngai Tamaterangi, appendix to main submission (doc N2(a)), pp 107–108; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), pp 130–131, 133–135

67. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 75; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 191; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), pp 111–112

68. Counsel for Wai 621 Ngati Kahungunu, written synopsis of closing legal submissions (doc N1), p 167

69. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 110; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 190

70. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 75; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 190, 193; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 111

71. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 111

placed tangata whenua input into the Park Board at arm's length with the result that again rangatiratanga was diluted, and central Crown authority expanded.⁷²

Claimants submitted that the input of the peoples of Te Urewera into park management plans has been 'limited at best', and the consultation process conducted for these plans 'has been dominated (numerically) by the submissions of civic, recreation and conservation groups'.⁷³ Increased consultation with Tuhoe over the 2003 management plan has not substantially changed the park's 'underlying policies', and counsel for Wai 36 Tuhoe argued that Tuhoe need to be actively involved from the outset in the development of these plans, and the management of the park generally.⁷⁴

Claimants asserted that the Conservation Act 1987 has made very little change to the overall relationship between Crown and Maori, despite the requirement that the Act be interpreted and administered so as to give effect to the principles of the Treaty.⁷⁵ Claimants argued that the legislative requirement that the Department of Conservation 'give effect' to Treaty principles, should involve much more than mere consultation, and establish genuinely participatory approaches.⁷⁶ 'Novel approaches to collaborative management' have evolved at Aniwaniwa in recent years, but claimants contend they are limited because they depend on the goodwill of local Department of Conservation staff and their 'intimate relationships' with local Maori rather than any change in departmental policy: the approaches are not integral to the philosophy and management of the department, and 'all key decisions remain the preserve of the Crown'.⁷⁷ Counsel for Nga Rauru o Nga Potiki claimants added that the innovation has not been extended to all areas of the park.⁷⁸ Overall, counsel for Wai 36 Tuhoe submitted that 'the National Park has never embraced Tuhoe as an equal partner'.⁷⁹

The Crown's view is that there has been 'effective representation and active participation by Tuhoe' in the administrative bodies of the park. Even in the early period, there was a Tuhoe presence on the park board despite the absence of any statutory requirement for their representation. The Crown submitted that Tuhoe members of the park board won 'important concessions' and ensured that 'Tuhoe did not become invisible to Park administration

72. Counsel for Wai 621 Ngati Kahungunu, written synopsis of closing legal submissions (doc N1), p 9

73. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 153, 191; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), p 135

74. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8); counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 192

75. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), pp 75–76; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 193; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), pp 135–136; counsel for Tuawhenua, closing submissions (doc N9), p 292

76. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), p 192; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), pp 136, 147

77. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 110; counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19, app A), pp 147–150; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 193, 203

78. Counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 110

79. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 75

(even when there was no formal process for tangata whenua involvement in Park affairs).⁸⁰ The Government's decision in the 1970s and 1980s not to guarantee Maori representation by statute was made because the existing situation was 'sufficient' and because of concern over how to represent 'the range of Waikaremoana iwi and hapu'.⁸¹ Overall, 'representation on boards and informal involvement has been substantive and provisions for participation have increased over time,' particularly since 1980.⁸²

Crown counsel submitted that there is insufficient evidence for the claimants' argument that the involvement of third parties – such as environmental and recreational groups – in the development of park policies and plans 'has been at the expense of Urewera Maori'.⁸³ The park's management plans have all reflected years of interaction between park administrators and local Maori (including their representatives on the board), and as a result the park's plans have been considerably ahead of general policies in taking account of the interests of the peoples of Te Urewera.⁸⁴

The Crown rejected the claim that since the Conservation Act 1987 little fundamental change has occurred. Crown counsel submitted that 'since the Conservation Act 1987, significant and consistent efforts have been made to improve consultation processes with Māori in respect of management of the park, including plans'.⁸⁵ DOC has given effect to the principles of the Treaty and the formal status of the peoples of Te Urewera as kaitiaki of the park when administering the park.⁸⁶ The Crown contended that substantial consultation with local Maori has taken place, and that at Aniwanuiwa, participation by local Maori has moved beyond consultation, to community involvement and partnership.⁸⁷

16.5 WHY AND HOW WAS A NATIONAL PARK ESTABLISHED IN TE UREWERA?

Summary answer: *The Crown was able to decide when and how to create a national park in Te Urewera because by 1930 it owned a very large block of land (some 400,000 acres) there. The greater part had been acquired through massive, predatory, and at times illegal purchasing of owner shares in the Urewera District Native Reserve in the early twentieth century. In 1921, the Crown decided on a large-scale consolidation scheme to separate the interests it had purchased in many blocks from those of the Maori owners, and consolidate them in one large block. It had intended to use the land it acquired for farming settlement, but abandoned this*

80. Crown counsel, closing submissions (doc N20), topic 33, p 7

81. Crown counsel, closing submissions (doc N20), topic 33, p 6

82. Crown counsel, closing submissions (doc N20), topic 33, p 11

83. Crown counsel, closing submissions (doc N20), topic 33, p 10

84. Crown counsel, closing submissions (doc N20), topic 33, p 9

85. Crown counsel, closing submissions (doc N20), topic 33, p 8

86. Crown counsel, closing submissions (doc N20), topic 33, p 14

87. Crown counsel, closing submissions (doc N20), topic 33, pp 7, 11

aim by 1924 when it was clear there was no market for the land and – as was finally admitted – the land was totally unsuitable for clearance and farming on a substantial scale. In the 1950s the Crown created Te Urewera National Park in two stages (1954 and 1957), bringing in most of this former Reserve land, as well as some 20,000 acres of land within three of the former ‘four southern blocks’ to the south-east of Lake Waikaremoana, which had been wrongly acquired from its Maori owners in the mid-1870s. The origins of most of the park land thus lay in Crown purchase from individuals belonging to Maori communities established in the Reserve for many generations, and in the resulting consolidation scheme which saw their main settlements become islands in the large block of land awarded to the Crown. Once the national park was created, and extended, the settlements were dwarfed by the park.

Te Urewera National Park was established under the National Parks Act 1952, the first Act which centralised the administration of national parks, and laid out a coherent rationale for them. The Act reflected a longer tradition of official protections for scenic areas, natural features, and indigenous flora and fauna developed since the late nineteenth century in response to small but enthusiastic groups who wanted to preserve unique species and landscapes for posterity. Preservationists also encouraged the official creation of nature reserves and the setting aside of large ‘wilderness areas’ as places of retreat. Maori concerns, their relationships with the natural world and their sustainable use of its resources were often ignored or dismissed. By the early 1940s, New Zealand had four national parks; Tongariro (1894), Egmont (1900), Arthur’s Pass (1929), and Abel Tasman (1942). A pragmatic approach was taken to reserves and parks with certain activities considered acceptable for public enjoyment, recreation and tourism, such as hunting of introduced game animals, and provision of accommodation and recreational facilities; while permanent settlement and activities such as removal of plants and other materials were not.

Parts of Te Urewera district were identified by colonists and officials as having scenic and recreational values from the late nineteenth century and a national park was proposed several times but not proceeded with. Alternative models were considered in the mid-1930s, when the Crown was investigating how to best use the large Crown award it had secured from the Urewera Consolidation Scheme. At the time, there was some consideration of the fragile economic position of Maori communities in Te Urewera. But forest catchment protection, scenic landscapes, indigenous plants and animals, and recreation were confirmed as important protection issues to be balanced against the economic value of milling timber, including timber on lands retained by local Maori communities. A proposal for a national park was rejected at this time in favour of Forest Service management.

In the early 1950s, the national park proposal was raised again, this time in a rather different context. Alongside a boom in demand for timber there was a growing public movement to save important remaining areas of indigenous forests, combined with concerns to protect important catchment forests to prevent flooding and destruction of productive downstream farmlands.

Influential interest groups emphasised all these issues. The Government itself placed great importance by this time on protecting watersheds for water and soil conservation. There was thus political support for new National Parks legislation. The National Parks Act 1952 clarified the principles and aims of national parks and established a new overarching National Parks Authority to guide policy, on which interest groups were to be represented. A new cluster of national parks were established under the Act, including Te Urewera (1954), originally known just as Urewera National Park.

Ernest Corbett, Minister of Lands, Forests, and Maori Affairs in the National Government, was persuaded at this time that a national park, which offered the highest form of state protection for forests, was required for Te Urewera. He did not consult with the peoples of Te Urewera over the Act or his proposal for a national park. Corbett was determined from the outset to have a large national park in the area, and never changed his mind. He was never prepared to consider alternatives (as he was at the same time for Tararua, which became a forest park – allowing for a range of public uses). And he never considered what a park might mean for traditional uses of its resources by Maori. The new National Parks Authority did resist Corbett's pressure initially, recommending a considerably smaller national park area for Te Urewera than he had wanted. This was centred on the scenic landscapes, important catchment forests, and water supplies of the Waikaremoana area. The Authority also recommended the Minister should ask Te Urewera peoples for a name for the park. But it did not consult with Maori either, though it is evident that one of the reasons it decided against recommending a larger park was the proximity of Maori land and settlements to such a park. It did, however, flag its intention of extending the park in future.

Armed with the Authority recommendations but aware of some Tuhoe disquiet about the park, Corbett finally met face to face with Tuhoe at Ruatahuna in late 1953. Here he heard first-hand the people's determination to retain their remaining land and the critical importance of their timber to their economic survival. Tuhoe were prepared to assist the Crown in its soil and water conservation objectives, and in preserving scenery, but they were also worried about the impacts of an extensive national park, particularly on their plans to mill timber on their own lands for their livelihoods. Corbett was prepared to agree that Maori had a right to exercise their development rights in a controlled way. A new policy framework was agreed for classifying Tuhoe lands according to whether they could be milled and then farmed, milled only, or their forests left intact. The Crown would compensate for restricted milling by offering Crown lands in the area in exchange. Corbett did not, however, discuss what a national park administered under the new Act might mean for local communities, and he left it to officials to raise the proposed park name at a later meeting in early 1954. In July 1954, the smaller area was gazetted a national park under the 1952 Act.

Within three years, however, the park area was substantially expanded, this time including the greater part of the remaining Crown land (330,000 acres), except for some state forest

areas. Corbett's Land Use Committee and its land classification exercise turned out to be a short-lived, if welcome, interlude of government recognition for Tuhoe interests – which did allow owners to mill most of the land classified for that purpose. But the Crown soon had to acknowledge it did not have enough suitable land to exchange to allow Tuhoe to farm elsewhere in the district. By 1955, it reverted to a policy of further purchase of Maori land, contrary to Tuhoe understandings, and regardless of Tuhoe wishes to remain on their ancestral lands, and sustain their whanau. The Crown was not able to buy land, however, or convince some owners that they should not mill their own lands if they wished to. By mid-1957, it faced conflicting pressures. A Native Land Court decision upheld the right of Maori owners (if all agreed) to mill their lands, since the Land Use Committee's classifications had no legal standing. At the same time, recreational interest groups urged the Minister to answer their concerns that no further milling should take place in Te Urewera. The government response was to bring the greater part of its land into the park, and at the same time to settle Tuhoe's long-standing grievance over unbuilt arterial roads, towards whose cost they had contributed a great deal of land. Land was not returned, as Tuhoe had wanted – which would not have made sense to a government anxious to acquire more Maori land – but monetary compensation was paid. These two moves, it hoped, would ensure Maori willingness to sell their own forested lands, so that they could be added to the park. Tuhoe were not consulted about the decision to expand the park, but were later informed of it. This new large extension was gazetted in November 1957. The park now enclosed or abutted remaining Maori land and settlements. The existence of a large national park established under legislation which had no formal requirements to take account of Maori interests, and based on assumptions that their remaining lands and settlements were an 'anomaly' that did not 'belong' in a national park, had major implications for the peoples of Te Urewera, especially Tuhoe.

16.5.1 Introduction: why a national park?

Te Urewera National Park is so well known, and seems so long established, that it might be assumed that the large block of Crown land there (several hundred thousand acres) was always destined to be a national park. But it was not.

The park was established under the National Parks Act 1952, the first Act which centralised the administration of national parks, and laid out a coherent rationale for them. This came from a longer tradition of developing state and local concern for protection of New Zealand natural areas and resources. From the late nineteenth century there was a growing interest among settlers in preserving scenic and natural areas. This drew on both 'New World' influences, particularly the creation of Yellowstone National Park in the United States in 1872, and on home-grown concerns that the spread of settlement was beginning to threaten New Zealand natural areas and native species. The tradition of setting aside

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reserves and domains for various practical purposes, such as river protection and the management of catchment or 'climatic' forests, was expanded to include protection of remnant native plants and birds (in off-shore sanctuaries) and remaining New Zealand wilderness landscapes. By the 1890s scenic areas were considered especially important for tourism, but increasingly also to protect unique landscapes deemed important for all New Zealanders. New Zealand's first national park was set aside in 1894.

There was also a long-standing colonial interest in the scenery of Te Urewera, especially the beauty of Lake Waikaremoana and the surrounding area. In the 1930s, serious attention was again given to state protections for the landscapes and forests of the district. By this time the Crown had emerged from the Urewera Consolidation Scheme with a vast tract of land, the outcome of years of illegal purchasing of individual shares in many Maori blocks, in defiance of the provisions of the UDNR Act 1896. Its original plan of using the Crown land for farm settlements had been abandoned by 1924 as unrealistic. At this time, the possibility of a national park was considered by officials – and rejected. For the time being, active Forest Service management for a mix of protection and commercial activities was considered the best option. Management aims included control of the catchment forests for water supply, erosion prevention (to protect downstream productive Bay of Plenty farmlands), and hydro-generation purposes, protection of scenic areas for tourism, and careful regulation of what was now a major source of indigenous timber, while also making provision for the economic needs and property rights of local Tuhoe landowners and communities. The pressures on this kind of management increased substantially in the later 1940s. A boom in demand for indigenous timber increased concerns about soil erosion and flood protection, and there was growing public pressure, spearheaded by various interest groups, to preserve remaining forest wilderness areas.

We consider the passing of the National Parks Act 1952 and the creation of Te Urewera National Park in this context. Why, by 1952, was a national park already being proposed as the most suitable form of protection for the forests of this area even while other kinds of protection for similar purposes were being proposed for other districts? How far was there consultation with Te Urewera communities about the creation of the Park? Why was the Park created in two main stages: the first, smaller park area, gazetted in 1954, based around Lakes Waikaremoana and Waikareiti; the second, in 1957, involving a major expansion to the park, with the inclusion of the greater part of the Crown land (over 300,000 acres) that had been left out in 1954. We consider, above all, how far the decisions about a national park were affected by the presence of resident Maori communities in the district and by Crown recognition of its responsibilities to them. Such communities were perceived as a complication that sat uneasily with official and public perceptions of national parks. How did the Crown respond to the pleas of Tuhoe that their interests and future must be considered too?

16.5.2 The origins of national parks: the development of official protections for parks and reserves

Te Urewera National Park was created in 1954. Already by then there had been a series of much smaller reserves created in the district for scenic and forest reserve purposes. But this did not mean that in the 1950s a national park was the only or best available option to meet Crown or public concerns about Te Urewera, or to allow for the possibility of Te Urewera communities maintaining their long-standing relationships with park lands and their sustainable use of its resources.

National parks developed from official ideas of the kinds of state protection that could be offered for natural areas, resources, and scenic landscapes. Parks were in fact just one form of officially recognised protection. The dominant colonial approach to natural areas in New Zealand had always been that they needed to be 'broken, tamed and turned over to productive use'.⁸⁸ Nevertheless, there was also an acknowledgement that certain natural areas required protection, generally for practical purposes, such as safeguarding water supplies and preventing flooding of productive lands (by preserving 'climatic' forests); but also for public enjoyment and as places for sport and recreation. A system of officially set aside public domains, reserves, and parks reflected this, and was enshrined in legislation such as the Public Reserves Act 1881 and Public Domains Act of the same year. This kind of legislation provided for the administration of reserves in ways that reflected the concerns of colonists. Reserves were 'set aside' for temporary uses but were not to be lived in. Removal of materials and plants was often prohibited, but some activities, such as recreation and hunting and providing for tourists, were considered acceptable. By contrast, there were also large areas of Crown land in many rugged, still-forested areas, widely used by both colonists and Maori for hunting, and administered with a light hand.

While the destruction of forests to clear land for farming continued at pace, some colonists began to appreciate that native species, natural resources, and picturesque local landscapes might disappear in the face of unrestrained settlement. Support grew for more official protections, and for closer management and 'wise use' of natural resources to ensure they were safeguarded for the future. Within this wider movement, there were also those who called for preservation of native birds and plants, and scenic areas, for their own value.⁸⁹ Preservationist views were initially most enthusiastically supported in New Zealand by middle-class men – politicians, lawyers, and businessmen, as well as some scientists and surveyors.⁹⁰

88. Michael Roche, *History of New Zealand Forestry* (Wellington: New Zealand Forestry Corporation Ltd, 1990), p 402

89. Paul Star, 'Humans and the Environment in New Zealand, c. 1800 to 2000', in *The New Oxford History of New Zealand*, ed G Byrnes (Auckland: Oxford University Press, 2009), p 62

90. Paul Star and Lynne Lochhead, 'Children of the Burnt Bush', *Environmental Histories of New Zealand*, ed Eric Pawson and Tom Brooking (Auckland: Oxford University Press, 2002), p 124

From the later nineteenth century, preservationists encouraged the official creation of ‘nature reserves’ and sanctuaries and also the setting aside of large ‘wilderness areas’ to remain ‘untouched’ by the inexorable spread of settlement and indeed, all human ‘interference’, as places primarily of retreat and enjoyment.⁹¹ These ideas were encouraged by a combination of home-grown and imported ideas. Natural and wild places were confirmed as places not for habitation, but as retreats ‘for mental and spiritual rejuvenation where physical recreation could . . . take place.’⁹²

The creation of Yellowstone National Park in North America in 1872, the first ‘national park’ in the world, described as a ‘vast wildlife reserve’ with a quite magnificent terrain of ‘roaring geyser basins, mountains of black glass, travertine terraces, canyons of coloured earth’, was welcomed by influential public figures in New Zealand. William Fox, a former premier, admired the way the United States Government ‘had legislated to turn Yellowstone into a “public park” to protect the area from the blight of entrepreneurs exploiting the natural beauty of the surroundings’. The park was set aside under federal law, reserved ‘from settlement, occupancy, or sale . . . and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people.’⁹³ In the mid-1870s, Fox urged New Zealand to do the same – his first concern being the ‘hot springs’ district of the central North Island.⁹⁴ He was not as successful in this as he had hoped. Nevertheless, these ideas helped influence new legislative protections; the Land Act 1885 contained provisions for designating mineral springs and ‘natural curiosities’ as reserves.⁹⁵

Home-grown influences also helped encourage further official protections of natural areas and indigenous plants and animals. Among these was the advocacy of influential Canterbury preservationist and runholder Thomas Potts, who was active in calling for protections as early as the 1850s. In 1878 and 1882, Potts proposed a system of ‘national domains’, including a mix of production forests, forest reserves (as nurseries and store houses for New Zealand flora and for the protection of soil and water catchments), and refuges or sanctuaries for native plants and animals (where hunting would be prohibited and exotic animals excluded).⁹⁶ From the early 1890s, more kinds of reserves and sanctuaries were established, many on offshore islands, along with protections for indigenous birds and plants, and separate measures for scenery preservation. New Zealand’s first national park, Tongariro, was created by Act of parliament in 1894. This was not a wholly Pakeha enterprise. It is well known that Ngati Tuwharetoa played a crucial role in its formation. Ngati Tuwharetoa ariki,

91. Geoff Park, ‘Effective Exclusion? An Exploratory Overview of Crown Activities and Maori Responses concerning the Indigenous Flora and Fauna, 1912–1983’ (commissioned research report, Wellington: Waitangi Tribunal, 2001) (Wai 262, doc K4), pp 336–337

92. Tony Walzl, ‘Waikaremoana: Tourism, Conservation & Hydro-Electricity (1870–1970)’, report commissioned by the Waitangi Tribunal, October 2002 (doc A73), p 31

93. David Thom, *Heritage: The Parks of the People* (Auckland: Lansdowne Press, 1987), pp 22–24

94. M M Roche, ‘A Time and Place for National Parks’, *New Zealand Geographer*, vol 43 (2), October 1987, p 104

95. Star and Lochhead, ‘Children of the Burnt Bush’, p 123

96. M Roche, *A History of Forestry*, p 402; Young, *Our Islands, Our Selves*, pp 74–77

Horonuku Te Heuheu, made a tuku of the peaks of the Ruapehu and Tongariro mountains in 1887, in circumstances which are being considered in detail by the Waitangi Tribunal in its National Park inquiry.⁹⁷ This early leadership resulted in a strong connection between Ngati Tuwharetoa and Tongariro National Park, which the Crown has long acknowledged. The Tongariro National Park Act 1894, formally establishing the park, thus provided for continuing Ngati Tuwharetoa representation among trustees on the park board. But we note that despite this important initiative by the iwi, the same legislation continued preservationist assumptions that a national park would be ‘untouched’ by human settlement. The preamble recorded that the ‘residue’ of Ngati Tuwharetoa lands within the park boundary were ‘of no use or benefit to the Native owners’ and were being acquired ‘from time to time’ by the Crown by purchase for implementing ‘the intention of the original gift’. Section 3 provided that all persons who located or settled upon what were now considered park lands would, in general, be treated as trespassers and removed.

By 1920, the Scenery Preservation Board alone (established under the Scenery Preservation Act 1903) had set aside hundreds of thousands of acres as reserves, some of which would later be incorporated into national parks.⁹⁸ And more national parks were also created in the period from 1900 to the early 1940s: Egmont (1900), Arthur’s Pass (1929), and Abel Tasman (1942).⁹⁹

Alongside this expansion in protected natural areas, further links were made between preservation and landscapes and flora and fauna of ‘national’ New Zealand importance. This was linked with a growing sense of nationhood and national pride among colonists. Scientists tapped into this sentiment, arguing for preservation of national parks and reserves in a natural state, free of introduced exotics. By the 1920s, links between national identity and native flora were being made more explicit – as in the call by a member of Parliament in 1922 for ‘our beautiful native vegetation in our national parks’ to remain undisturbed.¹⁰⁰ They were also being promoted by prominent New Zealanders such as James Cowan who wrote in 1925 that: ‘landscape beauty is bound up with the soul of a country’. And National Parks should be treasured as much for New Zealanders as tourists since ‘they make a definite impress on our spirit of nationhood’.¹⁰¹

The growing public acceptance of these arguments meant that earlier ideas of ‘improving’ national parks with introduced species came to be considered increasingly inappropriate. The planting of heather in Tongariro National Park from 1916 is a well-known example of an act by a warden that was later singled out as quite inappropriate. He had hoped, with prime

97. Te Heuheu Tukino to Ballance, Native Minister, 23 Hepetema 1887 (and translation), ‘Tongariro and Ruapehu National Park (correspondence relative to a gift of portion of)’, AJHR, 1887, sess 11, G-4, pp 1–2

98. Thom, *Heritage*, p 124

99. Department of Statistics, *New Zealand Official Yearbook 1990* (Wellington: Department of Statistics, 1990), pp 428–430

100. WH Field, 17 October 1922, NZPD, 1922, vol 198, p 231 (Thom, *Heritage*, p 134)

101. James Cowan, *New Zealand Life*, vol 1, no 8, 1925, p 3 (Star and Lochhead, ‘Children of the Burnt Bush’, p 132)

ministerial support, to establish grouse shooting in the park to help encourage tourists. The grouse shooting did not succeed, but the heather soon ‘overwhelmed the indigenous plants of the tussock grasslands.’¹⁰² The detrimental impacts of introduced animals such as deer, opossums, chamois, goats, and thar on forest ecosystems, including national parks, were increasingly recognised by the 1920s and 1930s, although for some time, government agencies were often reluctant to act against exotic game animals.¹⁰³ In 1926, the Under-Secretary for Lands and Survey rejected an approach by the aristocratic English group, the Society for Preservation of the Fauna of the Empire, to consider stocking New Zealand’s national parks with various African and North American animals, stating that: ‘Our National Parks are in effect sanctuaries for the Dominion’s indigenous plants and animals, and the established policy is to strictly preserve them as such.’¹⁰⁴

The assumptions driving preservationist ideas of ‘untouched’ wilderness and natural areas of national importance beyond the bounds of colonial settlement had major implications for Maori. They had been settled on many of these lands for centuries and their communities remained closely bound to them and dependent on their resources, even more so as their holdings were reduced as Pakeha settlement expanded. Their place in a preservationist worldview was unclear. Idealised views of wilderness landscapes seldom addressed the question of how indigenous peoples might continue to sustain themselves there.

In the 1930s, recreation, preservationist, and scientific interest groups continued to press for official protection of parks, reserves, sanctuaries and scenic areas of national interest and often reached a common view of what might be appropriate activities in these areas. The Federated Mountain Clubs (formed 1931), ‘representing the largest number of park users and knowledgeable enthusiasts – the trampers and climbers,’¹⁰⁵ was perhaps the most important and influential of these, along with the Royal Forest and Bird Protection Society and the Royal Society. The Federation took an active lead in seeking to influence parliament and government agencies responsible for administering parks and reserves. They argued for the ‘national’ importance of many areas. As L O Hooker of the Federation put it: ‘I have now realised that the work we are doing . . . is one of Dominion-wide importance, not only for the present generation but for posterity.’¹⁰⁶ The Federation wanted many areas of Crown land currently being informally used for recreational activities to be more effectively

102. Park, ‘Effective Exclusion?’, pp 340–341

103. Brad Coombes, ‘Cultural Ecologies of Te Urewera I: Making “scenes of nature and sport” – Resource and Wildlife Management in Te Urewera, 1895–1954’, report commissioned by the Crown Forestry Rental Trust, 2003 (doc A121), pp 307–308, 321, 328–330; Park, ‘Effective Exclusion?’, pp 271, 342, 405, 516–518, 531

104. Under-Secretary for Lands and Survey to Society for the Preservation of the Fauna of the Empire, 1926 (Park, ‘Effective Exclusion?’, p 341)

105. Jane Thomson, *Origins of the 1952 National Parks Act* (Wellington: Department of Lands and Survey, 1975), p 8 (Cecilia Edwards, comp, supporting papers to ‘Selected Issues: Te Urewera National Park’, various dates (doc L12(a)), p 1360)

106. L O Hooker, ‘Federated Mountain Clubs report re reserves work’, 17 May 1934 (Thomson, *Origins of the 1952 National Parks Act*, p 8 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1360))

A Tuhoe View of 'Wilderness' and National Parks

PAKEHA Perceptions of the forest environment are frequently coloured by European cultural interpretations of "romantic" forest wilderness and attitudes towards "primitive" forest peoples. The concepts of a national park and "wilderness experience" are derived from a European industrial society.'

—Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera: Nga Iwi te Whenua te Ngahere/People, Land and Forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), p xiv

protected with some kind of reserve or park status, but on condition of guaranteeing public access and continuing recreational activities. They also sought reforms of existing reserves and national parks legislation to gain what they saw as more consistent and clearly stated purposes for national parks in particular. The principles articulated and promoted by the Federation included free public access to national parks, rights of camping, and hut building in the parks. The Federation forged alliances with preservationists and scientists over national parks to strengthen support for their aims. To this end they accepted that 'Native plant and animal life should as far as possible be preserved, and introduced plant and animal life should as far as possible be exterminated. Development of parks for recreation should be undertaken only in conformity with this principle.'¹⁰⁷

Preservationists accepted that their emphasis on 'untouched wilderness' did not mean all activities were to be excluded. Some uses and activities were considered compatible with overall preservation goals and not compromising 'untouched' wilderness, while others were not. A pattern had developed in the administration of Crown reserves and parks reflecting the perceived divergence between more 'untouched' scenic areas, public parks, and nature reserves and sanctuaries, administered by the Lands (later Lands and Survey) department, and the more utilitarian Forest Service management of catchment forests and production forests. In practice, for some kinds of activities for recreation, sporting, and public enjoyment purposes, there was considerable overlap. The Forest Service was mainly focussed on timber production and management, and the protection of catchment (climatic) forests for water and soil protection. But it was also able to set aside native forest reserves for sanctuary preservation and scientific purposes, and it encouraged recreation and sporting interests in some forests, including catchment forests, where these activities were not incompatible with its main management responsibilities. From the 1930s, especially, it promoted 'wise

¹⁰⁷ A E Galletly to Minister of Lands, 15 June 1938 (Thomson, *Origins of the 1952 National Parks Act*, pp 9–10 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), pp 1360–1361))

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use' or 'multiple use' policies for indigenous forests, for what was described as careful and sustainable management for both production and protective functions.¹⁰⁸

The Lands and Survey department was mainly responsible for scenic and nature reserves, and sanctuaries, but it was also responsible for settlement of Crown lands and for taking care that protection reserves did not unduly 'interfere' with settlement or other productive land uses. Where Crown lands remained unsettled, it followed a pragmatic policy of a mix of protected areas (in anticipation of formal reserves) and a range of permitted public uses alongside core departmental responsibilities, including licensed grazing, taking of firewood, hunting and fishing, and a variety of recreational activities. This pragmatic approach also extended to its early administration of national parks where, as noted, taking or disturbing native plants and birds was generally prohibited but in early years at least such 'improvements' as exotic game animals were accepted. Legislation such as the Public Domains Act 1881 and, later, the Public Reserves, Domains, and National Parks Act 1928, allowed for purposes such as leasing some areas (to help pay the costs of administration and to make use of the more productive areas) and for the provision of accommodation and facilities for tourism and recreation interests. The Egmont National Park Act 1900 also provided for the possibility of leasing some park land (section 12) for accommodating tourist needs, as did general provisions in the 1881 and 1928 Acts. The earlier pattern of individual constituent Acts for national parks also allowed a considerable degree of local variation in park administration and management to meet local community concerns and agreements (such as the Tongariro National Park Act 1894).

16.5.3 Early Crown consideration of official protections for the landscapes and forests of Te Urewera

A national park for Te Urewera, based round Waikaremoana, had first been suggested by Apirana Ngata in 1909. He had 'no doubt', he told parliament, that if the peoples of Te Urewera were approached properly, they would agree to a Reserve for a large tract of the country between Lake Waikaremoana and Ruatahuna Valley for a national park similar to the Tongariro Park, to be a 'reserve for all time'. There must be 'somewhere in this country . . . through which no roads can be taken'.¹⁰⁹ Nothing came of his suggestion at the time, but it recognised the appeal of natural landscapes and scenic beauty of the area to early tourists. Early descriptions had also reflected the often ambivalent view of the place of Tuhoe settlements in 'unspoilt' wilderness landscapes. In 1873, for example, Colonel JHH St. John had commented about Lake Waikaremoana that:

108. Roche, *History of New Zealand Forestry*, pp 414–415

109. Ngata, 21 December 1909, NZPD, 1909, vol148, p1388

The tourist . . . has before him a glassy inland sea enclosed around by high cliffs and peaks, and rendered attractive by the wilderness of the scene. For, with the exception of a few patches of Maori cultivations, the country all about is just as it was left by Dame Nature when in her last throes she dug out and filled this huge crater and piled up the mountains surrounding it.¹¹⁰

Elsdon Best, engaged by the Lands and Survey Department in the late 1890s to publish a travelogue describing the beauty of the region for tourists, also referred to the lake and surrounding area in poetic terms as ‘the untouched wilderness as upon the morning of the first day’. He maintained that:

It would be difficult to select a more delightful place in which to spend a holiday than the bays and inlets of the ‘Star Lake’ as it is often termed . . . and the camper, artist or geologist who would fail to enjoy such a holiday in Tuhoe land, let him camp by city streets.¹¹¹

By the 1890s, the Crown was assuring Tuhoe and Ngati Whare in negotiations over the creation of the Reserve in 1896 that they could expect benefits for their communities from tourism in their protected mountains and forests.¹¹² In the wake of these discussions, trout and deer were introduced for further tourist enjoyment (in circumstances which we consider in a later chapter), and tourist accommodation was provided at Waikaremoana under the auspices of the new Department of Tourist and Health Resorts, the first government tourist department in the world. The department opened the 15-room Lake House by the lake in 1903, and later had a launch built for excursions on the lake.¹¹³

The potential importance of the Waikaremoana area for tourism development, scenery preservation, and very soon also as an important catchment forest continued to be recognised through the early twentieth century. In 1913, a Royal Commission on Forestry proposed that all the land from the water to the sky at Waikaremoana be designated a scenic reserve.¹¹⁴ Similar proposals from various Scenery Preservation boards followed. The opening of the Rotorua-Wairoa highway in the 1930s, at a time of substantial increase in car ownership, was expected to herald a new phase in tourism opportunities for Waikaremoana. Officials remained convinced through the 1930s of the crucial importance of purchasing the scenic bush to the skyline along the Te Whaiti-Waikaremoana road.¹¹⁵ At the same time, the practical value of the Waikaremoana forest catchment for soil and water conservation

110. JHH St John, *Pakeha Rambles through Maori Lands* (Wellington: Robert Burrett, 1873; Christchurch: Capper Press reprint, 1984), pp 192–193 (Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera: Nga Iwi te Whenua te Ngahere/People, Land and Forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111), p 211)

111. Elsdon Best, *Waikare-moana: The Sea of the Rippling Waters* (reprint, Wellington, 1975), pp 28, 39 (Walzl, ‘Waikaremoana’ (doc A73), p 47)

112. Coombes, ‘Cultural Ecologies I’ (doc A121), pp 48–49

113. ‘Second Annual Report of Department of Tourist and Health Resorts’, 1 May 1903, AJHR, 1903, H-2, p xi

114. ‘Report of the Royal Commission on Forestry’, AJHR, 1913, C-12, p xix

115. Coombes, ‘Cultural Ecologies I’ (doc A121), p 105

purposes continued to be recognised; the ‘climatic’ importance of the area was referred to in the same breath as its scenic qualities. In the early 1920s, the lake was also being considered for hydro-electricity development, another practical reason for protecting the water source.¹¹⁶

The possibility of a national park in Te Urewera was raised again in the mid-1930s, and again came to nothing. By this time, the Crown was contemplating the future of the lands it had acquired from Maori through its extensive purchasing in the Reserve blocks and the subsequent consolidation scheme. As we have noted in our earlier chapters, the Urewera A block awarded to the Crown at the end of the consolidation scheme in 1927 was 482,300 acres, while Maori were awarded approximately 106,000 acres. The Crown had already accepted by the 1930s that its plans for extensive farm settlement of its lands were no longer realistic, and had abandoned them. It then turned its attention to other options for the entire Te Urewera region ‘in the best interests of the state.’¹¹⁷

A number of Crown agencies were involved in the 1930s in investigating possible alternative uses for the lands the Crown had acquired – in particular the Forest Service and the Lands and Survey Department. Two delegations of officials were sent to Te Urewera, and two reports were written, as well as a series of recommendations made by an inter-departmental committee in Wellington. The Forest Service, with its major responsibilities for ‘climatic’ or catchment forests and for regulating and managing indigenous timber production, was very interested in the district. MacIntosh Ellis, the first director of the Forest Service, had recognised the importance of Te Urewera forests as early as 1921. He had instructed the Rotorua Conservator, H A Goudie, to provide a comparative analysis of Te Urewera ‘functioning as a State Forest and as an area given over to settlement with the consequent denudation of forest.’¹¹⁸ Goudie had recognised the importance of the catchment forests for the productive capacity of farmlands in the eastern Bay of Plenty, claiming that the ‘denudation of the Uriwera [would be] a crime against posterity.’¹¹⁹ After an inspection of the Waimana Valley in 1922, he urged that the forests adjacent to the Waimana River must be retained or the consequences for the ‘fertile territory’ at Waimana, Taneatua, and Whakatane would be disastrous.¹²⁰ This, and the timber potential, convinced the Director of Forestry to state in May 1923 that ‘The Urewera may be developed into a great National Timber Farm and

116. SKL Campbell, ‘Te Urewera National Park 1952–75’, report commissioned by the Crown Forestry Rental Trust, 1999 (doc A60), pp 16–17

117. Under-Secretary for Lands to Commissioner of Crown Lands, Auckland, 14 March 1934 (Campbell, ‘Te Urewera National Park’ (doc A60), p 23)

118. L MacIntosh Ellis to H A Goudie, 21 July 1921 (Klaus Neumann, ‘That No Timber Whatsoever be Removed’, report commissioned by the Waitangi Tribunal, 2001 (doc A10), p 55)

119. H A Goudie, ‘Report upon the Uriwera Country’, 1921 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 55)

120. H A Goudie to Director of Forestry, 23 February 1922 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 56)

Protection Forest.¹²¹ He wanted the entire area to be proclaimed a State Forest – that is, it would come under the control and management of the State Forest Service created by the Forests Act 1921–22.

By the 1930s, the Forest Service still had a strong interest in the district – particularly in the protection of catchment forestry and regulation of the indigenous timber resource. And already it was flagging the need for more Maori land for these purposes. But at a time of deepening economic recession the cost of purchasing such land (estimated at £78,479) was a deterrent.¹²²

The Department of Lands and Survey, with its responsibilities for settlement and scenic and other reserves, had a number of interests in Te Urewera, including the long-recognised tourism potential of the district, especially around Lake Waikaremoana. Officials decided it was necessary ‘to make a thorough exploration and survey of the whole of the Urewera to determine exactly what should be done with the country in the best interests of the State.’¹²³ At this time the Under-Secretary for Lands noted that no decision had yet been made as to whether the greater part of the district was to be ‘a Forest Reserve, a Scenic Reserve, or any other kind of reserve; but it is perfectly plain that the reservation of the greater part with a view to retaining the land in its natural state has always been contemplated.’¹²⁴ It had not, of course. Government plans for an extensive farming settlement scheme, as we have seen, were abandoned just a few years earlier.

In 1935, a joint team of Lands and Survey and Forest Service officials (Field Inspector MJ Galvin and Forest Ranger DD Dun) was appointed to report on the future of Te Urewera.¹²⁵ They were to focus on the ‘question of conservation of the forests for the regulation of stream flow and the protection of the plains in the lower country’, on timber supplies, and on what areas ‘should be dedicated as national reserves for the preservation of the natural features of the country and for river conservation.’¹²⁶ Their report found that the entire area lying north of the Waikaremoana road (a mix of Maori and Crown land) was of no value as a commercial timber proposition. The valuable pockets of commercial timber in this area were small and isolated, and inaccessible or too difficult to mill. The only area considered suitable for production forestry was in the Whirinaki Valley.¹²⁷ The real value of the rest of the Urewera forests was for water and soil conservation purposes. The Urewera dis-

121. Director of Forestry to Minister of Forestry, 3 May 1923 (Campbell, ‘Te Urewera National Park’ (doc A60), p19)

122. Director of Forests to Conservator of Forests, 4 October 1933 (Campbell, ‘Te Urewera National Park’ (doc A60), p 20)

123. Under-Secretary for Lands to Commissioner of Crown Lands, Auckland, 14 March 1934 (Campbell, ‘Te Urewera National Park’ (doc A60), p 23)

124. Under-Secretary for Lands to Commissioner of Crown Lands, Auckland, 14 March 1934 (Campbell, ‘Te Urewera National Park’ (doc A60), p 23)

125. Campbell, ‘Te Urewera National Park’ (doc A60), p 23

126. AD McGavock to Conservator of Forests Rotorua, 15 March 1934, and W Robertson to Commissioner of Crown Lands, Auckland, 7 March 1935 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 72)

127. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 72–75, 78–80

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tract (both Crown and Maori land) comprised the catchment area of three large rivers – the Rangitaiki, Whakatane, and Waimana. Together they served 200,000 acres of farming land in Whakatane county, including the Rangitaiki drainage area, reclaimed and protected by public works at great cost. It was believed that all this land, as well as the Galatea Settlement and (to a lesser degree) the Opotiki flats, served by the Waioweka River, would sustain serious damage if the Urewera were divested of bush: ‘the plains would be parched in the summer and subjected to devastating floods in the winter’.¹²⁸

The report reflected the developing focus of Crown policy for Te Urewera, which increasingly centred on preserving the forests for national timber regulation purposes, primarily in the name of soil and water conservation.¹²⁹ From this point onwards, as the Tuawhenua research team put it, ‘the policy of preservation of the Urewera underpinned all other relevant policies and the Crown’s general approach’.¹³⁰ Officials considered how this protection would be best achieved, whether as ‘Provisional State Forest, Conservation, Scenic region or Crown Land’. Two proposed alternatives for overall management were:

- ▶ supervision by the State Forest service, both of Crown milling areas and forests reserved for climatic purposes (with full cooperation from Lands and Survey in the protection of scenery and native birds); or
- ▶ special legislation for control of ‘the Urewera’, including the appointment of an honorary Committee of Control representing the Lands and Native departments and the State Forest service, to advise the Government on all matters pertaining to the region.¹³¹

Thus, Crown officials were ready to try an experimental regime, largely under Crown control, to take account of what they saw as the complexities of the district. These included Maori ownership rights and some means of recognising the needs of existing Maori communities (through the Native department). Not surprisingly, the Forest Service was strongly in favour of the first option; the Rotorua Conservator of Forests claimed that:

This Service should be the forest authority with full control in the management of all Crown forest whether it be protection forest or capable of commercial exploitation.¹³²

128. Galvin and Dun to Conservator of Forests, Rotorua, 29 April 1935 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 39–40)

129. Under-Secretary of Lands and Director of Forestry to Minister of Lands and Commissioner of State Forests, 23 December 1948 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 71–73); Heather Bassett and Richard Kay, ‘Ruatahuna: Land Ownership and Administration, c 1896–1990’, report commissioned by the Waitangi Tribunal, 2002 (doc A20), pp 175, 177–180; Brian Murton ‘The Crown and the Peoples of Te Urewera: The Economic and Social Experience of Te Urewera Maori, 1860–2000’, report commissioned by the Crown Forestry Rental Trust, 2004 (doc H12), pp 749–750; Richard Boast, ‘The Crown and Te Urewera in the 20th Century: A Study of Government Policy’, report commissioned by the Waitangi Tribunal, 2002 (doc A109), p 258

130. Tuawhenua Research Team, ‘Ruatahuna: Te Manawa o Te Ika, pt 2: ‘A History of the Mana of Ruatahuna from the Urewera District Native Reserve Act 1896 to the 1980s’, 2004 (doc D2), p 311

131. Galvin and Dun to Conservator of Forests, Rotorua, 29 April 1935 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 41–42)

132. Conservator of Forests to Director of Forestry, 8 May 1935 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 75)

So although the forest would be ‘a great national playing area for at least the North Island’, and a sanctuary for birds and native flora, he explicitly rejected the option of a form of National Park with its own board of management. He argued that the central (Tongariro) National Park covered very different terrain, with snowy mountains, volcanoes, and wide bare spaces. By contrast, he wrote, Te Urewera forest required careful and proper management; evidently he did not see current national park management as adequate. He accepted that there might be public objections to this option (presumably due to suspicions about the adequacy of Forest Service protection) and argued these might be overcome if the Forest Service offered a different form of protection. Here he foreshadowed the later solution for Waipoua forest (which we discuss below). This was also similar to what in later years would be developed into ‘forest park’ proposals:

There will no doubt be opposition from certain sections of the public towards any attempt to proclaim it State Forest but this could be overcome by creating it a ‘Forest Sanctuary’ which would efficiently secure it for all time as a national reserve and also assure its proper control and policing etc.¹³³

An inter-departmental committee made up of senior officials from the Lands and Native departments, as well as the Director of Forestry and the Commissioner of Crown lands then made recommendations to the Government in 1936. Their key recommendation was a compromise. They proposed that the whole ‘Crown award’ from the Urewera Consolidation Scheme (for which they gave a figure of some 370,000 acres) – with the exception of some 40,000 acres in the Whirinaki Valley to be proclaimed a State forest, and milled – should be made a reserve for ‘scenic and historic purposes’, administered by the State Forest Service under special legislation.¹³⁴ So the committee also rejected the possibility of a national park, opting instead for overall Forest Service control. But most of the area (apart from one area to be set aside for commercial timber production) should be managed for a range of ‘multiple use’ activities, including catchment control, possible forest sanctuaries, and public recreation and enjoyment; presumably also (given their other comments on local Maori communities) they envisaged some opportunities for those communities to sustain themselves. The committee stressed the importance of active management of the crucial catchment forests. It noted the ‘enormous value’ of Te Urewera for water-conservation purposes, and the disastrous results for the river valleys that would result from destruction of the forest.¹³⁵

The committee also accepted the importance of scenery preservation for tourism purposes and to this end recommended that negotiations be conducted with Maori in the hope

133. Conservator of Forests to Director of Forestry, 8 May 1935 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p75)

134. In addition it proposed that 2800 acres in the valley be retained as Crown land, to be used for supply of fencing posts and other government requirements for land development schemes.

135. Under-Secretary for Lands to Minister of Lands, 24 February 1936 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 44–46)

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of preserving the bush on Maori land along the Te Whaiti-Waikaremoana road, which it felt was 'destined to be one of the most important scenic highways in the Dominion'. While the recommendations assumed yet more land would be acquired from Maori, the committee nevertheless seemed to accept the continuing presence of Maori communities in the area. The committee believed that such overtures would be well-received by Maori and also suggested the acquisition of a block of some 6000 acres of Maori land on the western side of the Whirinaki River, at a probable cost of £7,500 to £10,000, which it suggested should be held in trust, and spent 'meeting the needs of the Urewera Natives'.¹³⁶ This land included the bulk of the remaining Maori-owned land in the Whirinaki Valley, although Galvin and Dun had suggested that just 1100 acres be purchased for its soil and water conservation value.¹³⁷

The committee's rejection of the option of a national park in Te Urewera was based on what it called 'administrative difficulties', without elaborating what it meant by these.¹³⁸ Two major considerations may have influenced this decision. The committee may have accepted the Forest Service argument that national park administration at this time (with machinery provided by the Public Reserves, Domains, and National Parks Act 1928) would not be up to providing the level of control and expertise required for protecting the important catchment forests. The local representation on many national park boards was often subject to criticism at this time for being ineffective and over-concerned with local jealousies.¹³⁹ The committee may also have been concerned with the 'difficulties' raised by the continuing presence of Maori land in the midst of Crown land in the area now proposed for protection. The committee's proposed solution followed the well-trodden path of recommending that even more land be purchased from Maori, thus further reducing their property rights in the area. This idea would be resurrected in the early 1950s when a national park option was again being proposed for Te Urewera. We return to this point below.

In the mid-1930s, when these recommendations were being made, officials and the Government at least recognised the need to engage with Te Urewera communities over their proposals, and the need to take account of continuing community needs. A second official deputation, comprising Chief Clerk George P Shepherd of the Native Department and Galvin, was sent to Te Urewera in May 1936. They were charged with negotiating with Maori to preserve the bush along the Te Whaiti-Waikaremoana road, as recommended by the committee and with reporting on the future of the district. They were also to investigate 'the circumstances and living conditions of the Maori people residing in the area and the

136. Under-Secretary for Lands to Minister of Lands, 24 February 1936 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 45-46)

137. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 77-78

138. Under-Secretary for Lands to Minister of Lands, 24 February 1936 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 45)

139. Meredith Stokdijk, 'Between Two Acts: An Investigation into Attitudes and Lobbying in New Zealand's National Parks Movement 1928-1952', MA thesis, University of Canterbury, 1988, pp 47-49

matter of road access to and from the principal Maori settlements.¹⁴⁰ The inter-departmental committee's comment that it was 'essential that the goodwill of the Natives should be secured' in order to gain support for forest protection measures evidently carried weight.¹⁴¹ Galvin and Dun, similarly, had maintained that helping the people of Maungapohatu would 'ensure their co-operation in Forest preservation measures'.¹⁴²

Shepherd and Galvin arrived at Matahi bearing a message of goodwill from the Native Minister. They were welcomed by Rua Kenana and his people. They proceeded via Tawhana (where they also stopped) to Maungapohatu, carrying their message from the Government of the importance of preserving the forest, which they considered was warmly received at the various communities. A key, and very long, meeting was held at Ruatahuna, in the whareniui Mataatua, where many owners of the lands abutting the scenic road at Waikaremoana were present. They already had offers for the timber on the land, and they evidently wanted to know what the Crown would counter-offer. But at this stage, the officials were not able to give them the answers they sought as they did not know how much land the Crown wanted to acquire, or what value to put on it. Nor did they know whether the Crown would offer cash, or land in exchange, another matter raised by owners.¹⁴³

A number of themes emerged from the deputation's report. It was felt that a good start had been made in discussions about preserving the bush along the Te Whaiti-Waikaremoana road (and a return visit was required to complete them). Shepherd and Galvin also believed that Maori were already under considerable pressure from unscrupulous millers, who they believed were encouraging owners to think the timber on this land was much more valuable than it really was. They wanted more certainty about the estimated value of the timber before entering into discussions with the owners aimed at acquiring the land along the road. Shepherd and Galvin also recommended that only if the owners proved 'intractable' should the Government consider taking the land under the Public Works Act for scenery preservation purposes. They emphasised the need to recognise the value of forest land the Crown hoped to acquire from Maori for scenic and water conservation purposes. They acknowledged that Maori were living in difficult economic conditions, and their needs had to be properly considered. It was important that they received a 'quid pro quo' in return for the lands acquired, whether this was a cash payment or an exchange with Crown land suitable for farming (see sidebar).¹⁴⁴

140. Galvin and Shepherd, interim report to Under-Secretary for Lands, undated (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 47)

141. Under-Secretary for Lands to Minister of Lands, 24 February 1936 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 46)

142. Galvin and Dun to Conservator of Forests, 29 April 1935 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 33)

143. Shepherd and Galvin, interim report on Urewera District Lands, memorandum to the Under-Secretary for Lands, undated (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 47-50)

144. Shepherd and Galvin, interim report on Urewera District Lands, memorandum to the Under-Secretary for Lands, undated (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 54-56)

Who Would Benefit from Preservation of Te Urewera Forests?

IT is an undoubted fact that the preservation of this timber is of more direct value to the European Community than to the Natives themselves, and if the preservation of the forest as we recommend is to be pursued as a definite Government policy, it becomes increasingly clear that the Government will require to give earnest consideration to the needs of the aboriginal inhabitants of this area.'

—Shepherd and Galvin, interim report on Urewera District lands, memorandum to the Under-Secretary for Lands, undated (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 57)

The Shepherd and Galvin report acknowledged (as had Galvin and Dun's) the now fragile economic position of Maori communities in Te Urewera. In many cases they were now dependent on casual road work, seasonal shearing, and the sale of timber posts to Europeans 'who very often fail to pay them.' The officials discussed the potential for farming on the river flats between Waimana and Tawhana, noting the need for financial assistance and better road access (pointing to the fact that the road had fallen into disrepair, and work to fix it would provide considerable employment), and recommended a Native Land Development scheme. They considered that the Government ought to seriously consider supporting farming at Maungapohatu; though they doubted that loans could be repaid with interest. However, they considered that otherwise 'the undertaking would prove self-supporting . . . and might even make a profit.' It would also be a 'social success' and, given the vast crop of ragwort they had seen there, it would be in the public interest that the land be farmed or the people moved out, and the land re-afforested. 'The latter', they added, 'can hardly be contemplated as the Maoris have their roots very deeply embedded in the soil and their removal would be very difficult indeed.' They recommended construction of a track from Maungapohatu to Papatotara, and reconditioning of the six-foot track from Tawhana to Maungapohatu, as well as immediate installation of a telephone line from Ruatahuna so that the people would no longer be so isolated.¹⁴⁵ Galvin and Dun had previously argued that revitalising farming at Maungapohatu, where 1000 acres had been felled and grassed (though farming was suffering because of lack of fencing and stock), would greatly improve life for the 200 to 300 'impoverished Natives' who lived there. And they added that at

145. Shepherd and Galvin, interim report on Urewera District Lands, memorandum to the Under-Secretary for Lands, undated (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 51–53, 56–58)

Ruatahuna the people had been saved from destitution or starvation by the land development scheme.¹⁴⁶

While the Crown was now clearly committed to forest and scenic protections for much of Te Urewera, this series of reports revealed that, in the 1930s, the Crown was also mindful of its responsibilities to Maori communities of the area and the need to practically accommodate their needs and concerns. This was evident in the willingness to send deputations to engage with local communities, and the inclusion of Native Department officials. The interaction between officials and Maori provided important information to the Crown about these communities and reminded the Government of their continuing presence, their tenuous economic position, and their determination to remain on their ancestral lands. The various recommendations still advantaged the powers and interests of Crown agencies, and the preferred fall-back solution was still to seek to extinguish Maori property rights to 'simplify' administrative difficulties. But the reports and the proposals that followed indicated that taking account of Maori rights and interests and devising innovations to meet local circumstances was possible at the time. At this time, these proposals went nowhere – perhaps because the Government became preoccupied with the Te Whaiti timber, as a private company was anxious to secure rights to it. In response, the Government considered acquiring Te Whaiti Residue B block and four adjacent smaller blocks to proclaim them a Scenic Reserve so that they would not be logged, offering Maori owners farm land in exchange. But the exchange did not eventuate, for reasons that are not clear.¹⁴⁷ Meanwhile, the Government embarked on milling its own timber in the Whirinaki Valley from 1938. The rest of the Crown land, in accordance with the recommendation of the officials, was to 'be held strictly for water conservation and scenic purposes.'¹⁴⁸ Over the next decade, the Forest Service continued to regulate the timber resource and manage the catchment forests, including the regulation of Maori timber cutting rights (which we discuss further below). It would be the early 1950s before proposals were again put forward for a national park in Te Urewera.

16.5.4 The origins of the National Parks Act 1952

Following the Second World War, recreation and preservationist interest groups began intensifying pressure for greater protections for landscapes and natural areas that were now under greater threat due to post-war demand for timber and for greater use of natural resources. In response to imminent threats to native forests and bird life especially, these

146. Galvin and Dun to Conservator of Forests, 29 April 1935 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 32–33)

147. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 81–83

148. Under-Secretary for Lands and Director of Forestry to Minister of Lands and Commissioner of State Forests, 23 December 1948 (Heather Bassett and Richard Kay, comps, supporting papers to 'Ruatahuna: Land Ownership and Administration, c. 1896–1990', various dates (doc A20(b)), p 82)

groups intensified their efforts to extend national parks and reform their administration. If supply of timber and access to resources were in the national interest, they argued, reformed national parks were required to protect areas of ‘national’ interest and importance.¹⁴⁹ They found support for this position amongst Lands and Survey officials, many of whom shared similar interests and aims. A key official was Ron Cooper, Chief Clerk of the Lands and Survey Department and, from 1946, Chief Land Administration Officer, who was a parks enthusiast himself. In a 1944 talk to the Tararua Tramping Club, he noted that national parks might be scientific reserves (as, we might note, in Europe and Japan) or wilderness areas to which the public had access (as in North America). He saw New Zealand parks as belonging to the latter category with clear limits on the kinds of human activity allowed. Such a park would essentially be:

a wilderness area set apart for preservation in as near as possible its natural state, but made available for and accessible to the general public, who are allowed and encouraged to visit the reserve.¹⁵⁰

In this view, recreation and enjoyment were to be the main public activities. However, advocates such as Cooper continued to be willing to accommodate the views of scientists and others interested in preserving natural scenery and indigenous species, as long as these principles of public access were met. Cooper agreed such recreational uses would also mean that natural scenery, flora, and fauna would be ‘interfered with as little as possible’. He supported the idea of a better articulated national policy for protection of nationally significant areas and agreed that national parks should contain scenery of ‘distinctive quality, or some natural features so extraordinary or unique as to be of national interest and importance, and as a rule . . . extensive in area.’¹⁵¹ When the National Parks Authority was finally established under new legislation in the early 1950s, the Federated Mountain Clubs representative on it claimed the new policies reflected, in large measure, the advocacy of the Mountain Clubs executive, adding ‘we see what we almost are inclined to call “our Act” on the Statute book’.¹⁵²

This movement for park reform took place alongside the first large public campaigns in New Zealand to save areas of important indigenous forests now threatened by milling. The Forest Service administered a number of these forests on Crown land and argued that their ‘multiple use’ management was best suited for the forests to meet a range of objectives

149. Thomson, *Origins of the 1952 National Parks Act*, pp 8, 13 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1360, 1362)

150. Cooper, ‘Address delivered to Members of the Tararua Tramping Club, Wellington’, 21 January 1944 (Thomson, *Origins of the 1952 National Parks Act*, p 11 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1361))

151. Cooper, ‘Address delivered to Members of the Tararua Tramping Club’, 21 January 1944 (Thomson, *Origins of the 1952 National Parks Act*, p 11 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1361))

152. National Parks Authority, minutes, 15 April 1953 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 65)

including protection of forest catchments, public recreation and hunting, provision for forest reserves and sanctuaries where necessary, as well as responsibly regulating indigenous timber management and production in the post-war boom, before exotic forests came on stream. Preservationists, however, rejected Forest Service management, claiming the Service was too vulnerable to milling pressure and not sufficiently committed to preserving some forests forever. They began campaigns for some forests to be ‘permanently’ and ‘absolutely’ protected and, for this, national park status appeared the best option, especially if it could be argued the forests were significant for the whole country. Preservationists joined forces with recreational interests, scientists, and water and soil conservation authorities to press for permanent protection of indigenous forests in the ‘national interest’ as national parks.

The best known and first major campaign to save an important indigenous forest was that to save the remnant Waipoua kauri forest in Northland in the late 1940s. The Crown purchased this forest from Maori in the nineteenth century, and had designated it a state forest from 1906. From almost the same time, preservationists had attempted to have it permanently saved. Efforts were put on hold during the depression and the Second World War, but after the war and with more immediate milling threats, a campaign began again for the ‘absolute and permanent’ protection of Waipoua forest, as either a protected reserve or even a national park.¹⁵³ Forest and Bird Protection Society members, along with scientists, interested members of the public, recreational groups, the Royal Society, and local authorities, worked towards the common aim of permanent protection for the forest. Support also came from LW Parore, a descendant of one of the original owners, who claimed the original purchase was based on an understanding that the forest would be placed under a permanent protective rahui. He also supported the forest being designated a national park, under a joint Maori-Pakeha board of trustees.¹⁵⁴ Even amendments to the Forests Act in 1948 and 1949 to make it legislatively clear that some forest areas could be established as ‘forest sanctuaries’ under Forest Service control failed to allay concerns. A compromise protection was eventually reached in 1952, and Waipoua forest was gazetted a ‘forest sanctuary’ (under the Forests Act 1949).¹⁵⁵

This campaign strengthened resolve to secure reform of the national parks legislation. Interest groups again used strategic alliances successfully to achieve a wide range of support, against a background of heightened environmental awareness. In the 1940s, Forest and Bird Society members, for example, supported and helped publicise the work of the recently established Soil Conservation and Rivers Control Council, pointing to the importance of protecting catchment forests to prevent destructive floods, erosion and the loss of prime

153. Roche, *History of New Zealand Forestry*, pp 405–412

154. Roche, *History of New Zealand Forestry*, pp 405–412. The Parore petition was submitted to parliament in 1947.

155. Roche, *History of New Zealand Forestry*, p 414

farmland in the national interest. This was especially persuasive in the 1940s as memories were still fresh of recent damaging floods that had led to the creation of these agencies. This included the dramatic floods of April 1938 in Gisborne and Hawke's Bay. In the course of two major storms, enormous quantities of silt had been carried down rivers, and flooding, slips, and landslides caused extensive damage to roads and bridges throughout the district. A public works camp by the Kopuawhara River was overwhelmed, and 21 lives lost.¹⁵⁶

The Minister of Public Works, who visited the Esk Valley, scene of the worst devastation in Hawke's Bay, spoke of his horror in powerful terms when he introduced the second reading of the Soil Conservation and Rivers Control Bill three years later: 'the washing of millions of tons of spoil and rubbish into the river . . . [f]ences and hedges were not to be seen, and houses were standing half-buried'. This was the product of 'erosion in the higher country.'¹⁵⁷ The floods had major political impacts, enabling scientists (well aware of pioneering American work on soil conservation) to gain significant influence with government policies. Norman Taylor and Vladimir Zotov, working under the auspices of the Department of Scientific and Industrial Research (DSIR), published articles which provided evidence for the argument 'that the country was in desperate need of a coherent policy of soil and water conservation.'¹⁵⁸ The Government set up a Land Deterioration and Soil Erosion Committee, chaired by Taylor. The findings of the committee led to the Soil Conservation and Rivers Control Act 1941, and the work of catchment boards.¹⁵⁹ The work of geographer Kenneth Cumberland, aimed at a wider audience, was an enormous wake-up call about the impact of 'pioneer destruction of the resources of a little known environment', which had led to the 'disastrous' outcome of soil erosion.¹⁶⁰ Preservationists were able to use this growing understanding and acceptance of these links between native forest protection and the public interest to call for the permanent protection of important remaining catchment forests, including those in Te Urewera.

Work on a new National Parks Bill (drafted by Ron Cooper) survived the change of government in late 1949, and with the support of the new National Government emerged as the National Parks Bill 1951. This Bill both reflected the national interest, that is the need to protect important catchment forests and water supplies, and recognised the concerns of the special interest groups who had worked so hard for reform (trampers, skiers, the Federated Mountain Clubs, Forest and Bird, and Royal Society members). The Bill was delayed partly by the snap election of 1951, following the major waterfront dispute of that

156. LW McCaskill, *Hold this Land: A History of Soil Conservation in New Zealand* (Wellington: AH & AW Reed, 1973), p 15

157. HT Armstrong, 3 September 1941, NZPD, 1941, vol 260, p 453

158. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 84

159. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 85

160. Kenneth B Cumberland, *Soil Erosion in New Zealand: A Geographic Reconnaissance* (Wellington: Soil Conservation & Rivers Control Council, 1944), p 3. Cumberland, appointed to the Department of Geography at the University of Canterbury in 1938, spent six years studying soil erosion all over New Zealand; he was later appointed professor at the University of Auckland.

year, and partly to allow time for further consultation with a variety of government departments, Commissioners of Crown Lands, interest groups, and individuals. It was then introduced in 1952.¹⁶¹

Ernest Corbett – the Minister of Lands, Forests, and Maori Affairs in the first National Government – explained the Bill in terms of both the national interest and the interests of recreational groups. He stated it was, in part, a consolidating measure of earlier provisions concerned with national parks – the ‘principal playing-areas of New Zealand’.¹⁶² It replaced the former Public Reserves, Domains, and National Parks Act 1928. It was the first Act to deal solely with national parks, as opposed to other kinds of reserves and domains. Its main purpose was to preserve nationally important areas of distinctive scenery or beautiful or unique natural features. Other important objectives were the maintenance of soil and water quality, conservation, and provision of improved public access, although the public would be required to accept ‘a marked degree of responsibility’ in return for that privilege.¹⁶³ Corbett emphasised the national importance of protecting and holding ‘in trust for the people’ important New Zealand watersheds, the ‘sources of most of our rivers which, in turn, supply the power for hydro-electricity as well as the essential supplies of water for the cities’ alongside areas of significant importance for ‘vigorous sports’, the ‘great panoramas that Nature has provided’, and reserves for native bird life that would feel ‘perfectly safe’ in national parks that were to be made free of introduced pests.¹⁶⁴

The response of the House was generally enthusiastic, with considerable cross-party support for the principles set out in the Bill. Robert Semple, for example, described the remaining forests as ‘the lungs of New Zealand’.¹⁶⁵ Corbett heartily agreed with this, while other members spoke of tourism, trout fishing, and the need to preserve forests from the axe.¹⁶⁶

The National Parks Act 1952 included for the first time a statement of clear overall purpose for national parks (section 3(1)). This was:

preserving in perpetuity as National Parks, for the benefit and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality or natural features so beautiful or unique that their preservation is in the national interest.

The Act provided that national parks were to be administered and maintained having regard to these general purposes, so that:

- (a) They shall be preserved as far as possible in their natural state:

161. Edwards, ‘Selected Issues’ (doc L12), p 6

162. Corbett, 5 August 1952, NZPD, 1952, vol 297, p 712

163. Corbett, 5 August 1952, NZPD, 1952, vol 297, p 713

164. Corbett, 5 August 1952, NZPD, 1952, vol 297, p 714

165. Robert Semple, 6 August 1952, NZPD, 1952, vol 297, p 714

166. William Bodkin, 5 August 1952, NZPD, 1952, vol 297, pp 720–721

(b) Except where the Authority otherwise determines, the native flora and fauna of the Parks shall as far as possible be preserved and the introduced flora and fauna shall as far as possible be exterminated:

(c) Their value as soil, water, and forest conservation areas shall be maintained:

(d) Subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the native flora and fauna or for the welfare in general of the Parks, the public shall have freedom of entry and access to the Parks, so that they may receive in full measure the inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, lakes, and rivers. (section 3(2)):

The 1952 Act created a new National Parks Authority (section 4). Its membership comprised senior government officials (including the Director-General of Lands, the Director of Forestry, and the General Manager of the department of Tourist and Health Resorts), and one appointment each on the recommendation of the Royal Society, the Forest and Bird Protection Society, and the Federated Mountain Clubs. The final appointee was to represent the National Park Boards which were constituted under the Act. Subject to the overall provisions of the Act, the duty of the new National Parks Authority included (section 6):

(a) To advocate and adopt schemes for the protection of National Parks and for their development on a national basis:

(b) To recommend the enlargement of existing Parks and the setting apart of new ones:

(e) Generally to control in the national interest the administration of all National Parks in New Zealand.

In undertaking these duties, the Authority was also to 'have regard to any representations . . . made by the Minister to give effect to any decision of the Government in relation thereto, conveyed to the Authority in writing' (section 7).

Previous national parks (Tongariro, Egmont, Abel Tasman, Arthur's Pass) and the Sounds (Fiordland) reserve were now declared national parks under the 1952 Act and became subject to it (section 9). The Act also provided (section 10(1)-(2)) for Crown land to be added to national parks on the recommendation of the Authority to the Minister. And for the purpose of providing 'more suitable boundaries', or for exchanging land within the park for other more suitable land, land might be excluded from the park by Order in Council. As with earlier legislation, it was assumed that private ownership and settlement was not appropriate within national parks and the Crown was empowered to negotiate to purchase private land or any right of way over private land for a park, or to accept it as a gift, to extend an existing park. Land or a right of way over it might otherwise be taken as a public work under the Public Works Act 1928 (section 13(1)). We will discuss the individual national park boards created under the Act later in this chapter.

What the Act did not do was make specific provision for Maori interests either on the ground or (with the historic exception of the Tongariro board) in the new parks' governance and administration structures. Perhaps this was not surprising since, as Crown witness Cecilia Edwards has commented, during the period of consultation on the Bill: 'It seems reasonable to conclude that no special account was taken of Maori interests.'¹⁶⁷ Their omission from the Authority and park boards was despite specific provisions in the Act for representation on those bodies of trampers, Forest and Bird supporters, and skiers, as well as for taking account of their interests in parks. There was no provision even for official representation of Maori interests: although Lands, Forestry, and Tourism officials were represented on the Authority, Maori Affairs Department officials were not. This was also the case for park boards constituted under the new Act, even if these were to be in areas where Maori land ownership would be affected. The focus of the new Act on areas of national significance under a new national authority left no room to accommodate local Maori concerns in new parks that would be set up under the Act.

The member for Southern Maori, Eruera Tirikatene, appeared to accept during the debates that he could do little in the face of overwhelming support for the principles now clearly articulated in the Bill. He assured the House that he supported the Bill in principle, and paid tribute to the role of Te Heuheu in establishing New Zealand's first national park. As a representative of the Maori people, he felt the need to assure the House he was not 'endeavouring to throw a spanner into the works.'¹⁶⁸ But he made a plea for recognition of Maori rights, for consultation with Maori when new national parks were created, and for the payment of adequate compensation should more of their land be acquired for national park purposes:

After all, these areas are their sole heritage. . . . Maori owners would concur in what it was proposed to do, but there should be discussion with them so that they would be fully aware that the areas involved were going to be taken over for national parks, and if they were holding the property for the future benefit of themselves or of their families then that should be taken into consideration when compensation was being computed.¹⁶⁹

As its supporters hoped, the new National Parks Act, with its more clearly articulated objectives for parks, and the overarching National Parks Authority it created, helped spur the establishment of a new cluster of six national parks in 1952 and succeeding years. Among these was Te Urewera (1954), where the Government flagged its intention to create a national park at the time of the debates on the Bill. We turn now to consider whether, by this time, a park like this was the only practical option for Te Urewera, in light of the Crown's objectives.

167. Edwards, 'Selected Issues' (doc L12), p 7

168. Eruera Tirikatene, 5 August 1952, NZPD, 1952, vol 297, p 724

169. Eruera Tirikatene, 5 August 1952, NZPD, 1952, vol 297, p 724

16.5.5 Why did the Government want a national park in Te Urewera by 1952?

The proposal for a national park in Te Urewera had been rejected in the 1930s, but the new enthusiasm for national parks in the 1950s meant that the idea was once again revisited. While many of the issues relating to management of Crown lands in Te Urewera remained the same by this time – including protections for catchment forests, scenic landscapes, regulating milling – other factors had changed. The new Minister, Ernest Corbett, had assumed the key portfolios of Lands, Forests, and Maori Affairs in December 1949. Corbett, as we have seen, actively promoted the accommodation of recreation, preservation, and ‘national interest’ measures in the new National Parks Act. He had a good relationship with many of the relevant interest groups, and firmly supported the permanent protection of crucial catchment forests as a matter of urgency, in the national interest. He was particularly concerned about the threat posed by sawmillers, and the adequacy of existing regulation of timber milling (some of which was still based on wartime measures). Early in his term in office, Corbett had been made aware of this ‘threat’, as it was seen to exist, in Te Urewera. At this time, ongoing negotiations over timber milling in Te Urewera dovetailed into broader considerations about forest protection, and the possibility of creating new national parks.

The government’s interest in regulating timber milling in Te Urewera had undergone a series of developments in the period before Corbett took office. Since the 1930s, the Forest Service had used available powers to deny sawmillers consent to mill timber on Maori land (see sidebar). Fearing that approving any one application would have a domino effect, the Forest Service adopted a strict approach ‘as a matter of practice.’¹⁷⁰ This policy was implemented with the related intention that Maori owners would feel pressured to sell their other remaining asset – their land. They resisted, but only with difficulty. Ministers and officials consistently acknowledged that the Crown was morally obliged to compensate Maori for effectively freezing their timber assets.¹⁷¹ But agreed settlements over the value and means of compensation proved very elusive. The Crown wanted to buy land together with its timber. It was also willing, in theory, to negotiate exchanges of forest for farm land. Maori landowners would not willingly part with their land, and they accepted the need for some protection forests, but they wanted to be compensated for being forced to forgo their property rights in commercial timber, either through cash payments or land exchanges. Given these

170. Director-General of Forestry to Commissioner of Crown Lands, Gisborne, 22 July 1953 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp102–103); AL Poole, ‘Urewera Maori Lands: Summary of Forest Service Activities 1953–1957 when Hon EB Corbett was Minister of Lands and Forests’, 6 October 1960 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc 60(a)), p111); Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 63–70, 92, 121; Campbell, ‘Te Urewera National Park’ (doc A60), pp 51, 60; ‘Facts and Figures of the Urewera Maori Lands in Relation to the Four Catchment Areas, National Parks and State Forests, Delivered by Honourable ET Tirikatene, Minister of Forests, at Ruatoki, 22.11.59’ (Tamaroa Nikora, ‘Te Urewera Lands and Title Improvement Schemes’, 2004 (doc G19), app c, p 6)

171. See MJ Galvin and DD Dun, ‘Report by Officers of the Lands and Survey Department and the State Forest Service on the Urewera Forest’, 29 April 1935 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 36); Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 80, 98, 106; Corbett, 24 April 1953, NZPD, 1953, vol 299, p 264; Bassett and Kay, ‘Ruatahuna’ (doc A20), pp185–186.

The Consent Process for Milling on Maori Land

In the late nineteenth century and through much of the twentieth century Maori could mill timber on their own land, but other parties could not do so without Crown consent. Before 1949 the Commissioner of State Forests (latterly the Minister of Forests) approved applications on a simple year or nay basis under section 35(2) of the Forests Act 1921–22.

The Forests Act 1949 (section 65(1)) and the Maori Affairs Act 1953 (section 218, which superseded existing controls over logging on Maori land), both provided more flexibility: consent could be given in whole or part, and with or without conditions. The owners' economic interests were also now considered, by the Maori Land Court or (until 1952) a Maori Land Board.

The legal process was meant to work like this: sawmillers wanting to mill a Maori land block would ask the Maori Land Court to summon a meeting of owners. If the court agreed to do so, then the owners would vote on a resolution put to them by the millers quoting a price for selling cutting rights. Votes were proportional to share holding. If the vote favoured selling, the land was inspected by Crown forestry officials, who recommended whether or not the Minister of Forests should give consent. Finally, the Maori Land Court would confirm or reject the proposal, based on its assessment of whether or not the owners were getting a fair deal.

circumstances, the obvious compromise was land exchange.¹⁷² However, in a sign of things to come, even early land exchanges considered in the 1930s for Te Whaiti lands foundered, despite seeming enthusiasm from all sides, apparently because Crown officials already considered the Crown had insufficient land suitable for exchange.¹⁷³

As demand for timber boomed following the war, Maori owners were anxious to take advantage of their now commercially valuable timber asset. Their forests around Ruatahuna, Maungapohatu, and along the Waimana and Whakatane Rivers were, according to evidence provided to us, the 'last substantial areas of privately-owned merchantable indigenous forest in the North Island'.¹⁷⁴ This placed great strain on the Crown strategy of continuing to deny sawmillers the right to mill on Maori land. Owners of four blocks near Ruatahuna (Te Huia, Okete, Whakapau, and Kopuhaea) were especially bitter over being persistently

172. Secretary, Maori and Island Affairs Department, to Director-General of Forests, 24 December 1971 (Brent Parker, comp, 'List of Documents – Compensation for Restrictions Placed on Milling of Native Timber in the Urewera', various dates (doc M27(b)), pp 1017–1018)

173. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 83; John Hutton and Klaus Neumann, 'Ngati Whare and the Crown, 1880–1999', report commissioned by the Crown Forestry Rental Trust, 2001 (doc A28), pp 322–324

174. Klaus Neumann, 'That No Timber Whatsoever be Removed: Summary of Evidence and Response to Relevant Issues', 2004 (doc G1), p 2

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denied the right to establish a mill of their own and the loss of development opportunities this meant.¹⁷⁵ Unsurprisingly, small-scale timber milling by Maori (in which the Crown had no capacity to interfere), and illegal logging by sawmillers on Maori land both increased, even while this tended to reduce potential prices and provided little basis for sustained economic development.¹⁷⁶ This in turn had helped fuel preservationist concerns that Forest Service control was not sufficient to save the resource.

In 1949, the Labour Government approved the purchase of 11 blocks where it had earlier denied consent to mill (five at Te Whaiti, two in the Waimana Valley, and the four Maori blocks at Te Waiiti near Ruatahuna).¹⁷⁷ Tuhoe had made clear to Crown officials that while they were most unwilling to sell their land, they would agree to refrain from milling certain areas if they were permitted to develop others.¹⁷⁸ A partial compromise had been thrashed out roughly along these lines with Prime Minister (and Minister of Maori Affairs) Peter Fraser's special negotiator and senior Maori Affairs officials over the four Te Waiiti blocks. The proposed settlement provided for the Crown to purchase just the Te Huia block, with payment for both land and timber, reservation of tapu sites, and permission for milling on the three other blocks. The Prime Minister had approved of this settlement.¹⁷⁹

Corbett had, however, decided not to continue the Labour Government's attempt at compromise with the owners. The Director-General of Lands (DM Greig) and the Director-General of Forestry (A R Entrican) had been opposed to the terms of the compromise, and wanted to prevent milling in all four blocks, and to acquire them to preserve the forests.¹⁸⁰ The Under-Secretary for Maori Affairs, Tipi Ropiha, had tried to keep the interests of Maori communities of the district before the new National Government, but his advice was not heeded. Ropiha pointed out to Greig that the compromise would provide local communities with an economic future and employment in an area where they had virtually no other prospects, whereas buying the entire blocks would render their owners landless and without assets.¹⁸¹ He reminded Corbett of 'the rights of the owners to realise their assets and the longstanding policy of not permitting Maoris to divest themselves entirely of their lands.'¹⁸²

But in Corbett's view the public good was overriding: 'The public welfare in relation to erosion and scenery preservation must be paramount. The question of rights of individuals

175. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 91, 99–100; Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 331–335

176. A L Poole, 'Urewera Maori Lands: Summary of Forest Service Activities 1953–1957 when Hon EB Corbett was Minister of Lands and Forests', 6 October 1960 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 111); Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 107–108, 110–111

177. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 100, 107. The blocks were Kopuhaea, Te Huia, Okete, Whakapau, Matera, Tawa-i-Tionga, Ponaua, Te Whaiti Residue A, Te Whaiti Residue B, Pahekeheke, and Tarahore no 2.

178. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 100

179. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 103–104

180. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 104

181. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 104

182. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 104–105

Preservation of the Forest on the Te Waiti Blocks: 'A Matter of National Importance'

Crown representative Mr Wright told a meeting of assembled owners of the Te Huia, Okete, Whakapau, and Kopuhaea blocks, held at Ruatahuna in May 1951:

We are today discussing a matter of National importance which affects both the Maori and Pakeha peoples. On the advice of the State Forest Service the Government has decided that these bush areas should be preserved for all times. You Maori people know this land better than the Pakeha, and you also know that if we cut away this mountain bush, we will not get the rainfall which is required to cultivate the lower areas. Furthermore if you look around the hilltops today, you can see where the cleared land has become eroded. . . . These are some of the reasons why the Government has decided that the timber on these blocks should not be cut. The Government could also see that unless they bought the blocks and the timber it was depriving owners of revenue rightly belonging to them . . . Briefly, the Proposal is that you sell these blocks to the Crown for the Capital Value thereof plus the value of the timber which is to be appraised by the State Forest Service if you agree to the sale. The areas occupied by yourselves to be excluded from the Sale. I repeat that this is a matter of national importance. In a recent matter, much more serious, the Maoris were the first to come forward and gave us the Maori Battalion and I hope you people will realise that this while not so serious, is also a matter which affects the people of New Zealand, both Maori and Pakeha.

To this, Rewi Petera replied, on behalf of the Te Huia owners, that they did not wish to sell:

we attach great historical and sentimental value to these blocks. That is why we still live and work on these remote ancestral lands. Loss of these lands would sever deep-rooted connections with the past. . . . We do not wish to sell to the Crown, or to any individual or concern.

—Minutes of meeting of assembled owners held at Ruatahuna, 8 May 1951
(Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 106–107)

and land disposal is a secondary one.¹⁸³ And this was what his officials had told assembled owners at Ruatahuna in May 1951 (see sidebar). The owners, in response, firmly stated that they were determined not to part with their remaining ancestral lands. This was a warning that the situation would not be resolved as easily as the Minister had imagined. Advice from his officials, however, would only have strengthened Corbett's existing views. In late 1951, Dun (the Conservator of Forests at Rotorua) briefed the Director of Forestry on the dangers

183. Corbett to Under-Secretary for Maori Affairs, 20 April 1950, written on Ropiha to Minister of Maori Affairs, 14 April 1950 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 105)

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of increased sawmilling interest in the district because of the scarcity of native timbers and the willingness of millers to pay ‘excessive’ royalties to owners. He noted two recent applications for milling rights on State Forest land, adding that one of them was ‘only a prelude to milling in Maori owned blocks lying deep in the Urewera.’ Other applications had been received for the Minister’s consent to the milling of Maori-owned forest. It was clear that ‘the Urewera is being attacked all round the perimeter while some places like Ruatahuna, Tiri Tiri and Tawhana are deep within the Urewera Country.’¹⁸⁴

Corbett’s approach to timber milling in Te Urewera, and his search for possible solutions, was reinforced by growing public support for saving forests and for reforming and extending national park areas. Following the campaign to save Waipoua forest, interest groups were continuing to seek further national park protection for other areas they argued were of national importance. This included Te Urewera, where they feared pressure from sawmillers, and doubted that continued Forest Service management would be sufficient to protect them.¹⁸⁵ Neumann explained to us that from the early 1950s, the Forest and Bird Protection Society ‘was by far the most important non-governmental organisation lobbying for the cessation of logging in the Urewera.’¹⁸⁶ It had able local leadership, including Bernard Teague, the chairman of the Wairoa branch, who has been described as ‘the chief protagonist of the [Urewera] park.’¹⁸⁷ Teague was a Wairoa resident and nurseryman, who led summer camps to Waikaremoana at this time, arranging a programme of speakers and leading local walks. Teague led the Society’s campaign to have Te Urewera declared a national park.¹⁸⁸ He would later be appointed to the Urewera National Park Board.

By 1952, when parliament passed the new National Parks Act, Corbett had already decided that the Crown’s land in Te Urewera would be set aside as a national park. He attended the Forest and Bird Society annual general meeting in June 1952, using the occasion to make an announcement about the park. Bernard Teague gave a talk to the meeting on ‘The Forest Land of the Tuhoe Tribes’, illustrated with many lantern slides. We were not given evidence of the details of Teague’s talk, but his views at this time are evident in his articles and publications. In a later article published in *Forest and Bird*, for example, Teague ended with these words:

Here in these halls of Tane, if we can check destroying animals and prevent fire, men and women centuries hence will still hear the dawn chorus of the birds, will still see the wood pigeon swoop across the valley, will still follow trails that were pioneered in the stone age and will find pleasure, recreation and health.¹⁸⁹

184. Conservator of Forests to Director of Forestry, 4 September 1951 (Bassett and Kay, supporting papers to ‘Ruatahuna’ (doc A20(b)), p 86)

185. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 85

186. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 140

187. Thom, *Heritage*, p 156

188. Thom, *Heritage*, p 157

189. Teague, *Forest and Bird*, ca 1952 (Thom, *Heritage*, pp 156–157)

'A Living Museum, a Heritage for Our People'

Harry Dudfield, the member for Gisborne, explained to parliament why Te Urewera was suitable for protection as a national park:

I understand, too, that the Minister of Lands was most impressed with the possibility of the Urewera country becoming a national park. . . . it is the largest remaining block of virgin bush in the North Island. It contains over 700,000 acres – that is inclusive of Native lands. Also within its bounds is Waikaremoana, perhaps the gem of all the lakes in the North Island. The combination of Waikaremoana and the bush behind is unrivalled as a scenic asset. It is not only necessary to preserve Waikaremoana for all time as a scenic asset, but also because a considerable part of the electric power of the North Island is generated from the outfall from the lake. Unfortunately, there, as in many other forest areas, the axe and the saw are making inroads. I appeal to the Minister . . . to make sure that this beauty-spot is secured as a national asset before the damage becomes irreplaceable. We cannot afford to allow the beautiful green hills to go, bringing about erosion to complete the damage. The Urewera country teems with animal and bird life. About thirty of our indigenous birds still exist there. The Urewera country should be preserved as a living museum, a heritage for our people. I daresay that many people who advocate permission being given to the sawmillers to go into that area do not realize that the top soil in the Urewera forest is a light, pum-ice soil. It is only held on the hills by the bush and the undergrowth, and if the hills were stripped of the bush the fertile flats of the Bay of Plenty would be rapidly reduced to a desert. It would be a disaster to the Bay of Plenty farmers if the bush were stripped.

—Harry Dudfield, 6 August 1952, NZPD, 1952, vol 297, p 768

Teague also made clear links between saving the forests and their importance to the national economy. He wrote that:

The scenic aspect, as wonderful as it is, is not the most important. The most important reason why we should fight for these forests is the economic aspect. From the standpoint of water conservation, erosion, ruination of vallies and lower [river] silting up, the problem of resultant costly catchment boards, all these are important points.¹⁹⁰

Following Teague's talk at the annual general meeting, Corbett announced to the meeting that the Government intended to create a national park of 490,000 acres in Te Urewera.¹⁹¹

190. Bernard Teague to Secretary, Forest and Bird Protection Society, 1 August 1955 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 140)

191. Thom, *Heritage*, p 156

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The chairman of the new National Parks Authority would later refer to ‘certain commitments’ the Minister had made to the Society.¹⁹²

Corbett also openly supported a park in Te Urewera in the debates on the National Parks Bill in August 1952. Both he and a number of members spoke in favour of establishing a national park there under the new Act, and with a minimum of delay. Harry Dudfield, the member for Gisborne, stated that Te Urewera was ideal for a national park because of its ‘virgin bush’, important both for birds and for protecting farmland in the Bay of Plenty, and because of the beauty of Lake Waikaremoana and its importance for hydro-electricity generation. All of these made the national park option the best solution as a ‘national asset’.

Corbett then foreshadowed the setting aside of a park in Te Urewera. His view was that the ‘national importance’ of water and soil conservation protection meant that a national park was required:

A lot of that land is very broken in character. It would create a very dangerous position from the point of view of erosion if the land were denuded of those forests. Also in that area rise many of the larger rivers that flow through the Bay of Plenty District, besides those going into Lake Waikaremoana. The necessity for water conservation demands the protection of those forests as a national park. The matter has to be viewed from the national angle.¹⁹³

Corbett indicated to parliament that the park would be created in Te Urewera out of the lands already effectively controlled by the Crown (then around some 400,000 acres). But it would be desirable, he said, to include a further 100,000 acres still owned by Maori. This was a crucially important statement: Corbett was in fact referring to all the land that Maori retained in the heart of Te Urewera. As we will see, this Crown goal would continue to shape its policy in the longer term. Corbett told parliament that discussions about acquiring Maori land had already begun. However, the prospect of timber milling on Maori land posed an impediment to the Crown’s acquisition of it. He claimed that:

At one time the Maoris were willing to make them [the forests] available to the Crown to form the Tuhoe National Park. But the high value that is placed on our diminishing indigenous timbers to-day and the desire of the sawmillers to acquire these diminishing stocks have caused the Maoris to view the matter with different eyes.¹⁹⁴

Corbett seemed to be arguing that high timber prices were the only factor preventing Maori from selling to the Crown. He made no mention of the importance to Tuhoe of staying on their own lands, and having some means of sustaining themselves, as had been

192. National Parks Authority, minutes, 19 August 1953 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 45)

193. Corbett, 6 August 1952, NZPD, 1952, vol 297, p 771

194. Corbett, 6 August 1952, NZPD, 1952, vol 297, p 771

consistently made clear to the Crown in the past. He assured parliament that timber cutting would not be allowed where there was a danger of causing flooding (in the catchment forests) and it was only a matter of coming to some agreement about the acquisition of the timber and adequate payment for the land involved. Responding to concerns about payment of compensation, Corbett stressed that there had been no suggestion that any land would be taken for public purposes, but did not rule out the possibility. If any land was taken, he said, the Government had no intention of paying compensation below 'present-day value'.¹⁹⁵ This was an apparent reference to the earlier attempts of the Labour Government to purchase some Maori-owned blocks, which had been continued under his own direction. We refer to this issue further below.

By 1952, therefore, Corbett and his colleagues in government had become convinced that the best option for the 'national asset' of Te Urewera forests and landscapes was a national park under the new Act. This was based on a combination of factors: scenic qualities, recreational values, and the protection of indigenous flora and fauna, as well as preserving important catchment forests for a range of purposes, including hydro-electricity generation. A park would also combat the sawmilling threat. And it would provide a means of breaking the deadlock over what was fast emerging as the 'problem' of continuing Te Urewera Maori ownership of nationally important forest areas.

Corbett would later reiterate in parliament the importance he attached to national soil and water conservation issues in the decision to create a national park in Te Urewera, because:

no Government with any sense of responsibility would allow these vital areas [Te Urewera watersheds] to be denuded of their forests, endangering our water-supply, creating inevitably a flood menace on the rich, low land [of the Bay of Plenty], and also to a lesser degree removing a scenic beauty that can never be restored. That comes definitely third. The first is the water-supply; the second, soil protection and river control.¹⁹⁶

The national interest was of most concern to the Government: catchment forestry and water storage protection. Scenic protection, while of value, was no longer of key importance.

The Government's determination and its sense of urgency meant that there was no time and no real interest in exploring other possible options for state protections for Te Urewera at this time. But there were other options. Forest Service 'multi-purpose' management was a possibility, perhaps with more focus on providing some permanent sanctuary areas within the forest, as was done with Waipoua. This could have provided more opportunity for restricted milling in some areas to maintain the economic viability of Maori communities. This was the result in some other forest areas as a result of community concerns.

195. Corbett, 6 August 1952, NZPD, 1952, vol 297, p 771

196. Corbett, 24 April 1953, NZPD, 1953, vol 299, p 264

The Tararua ranges, for example, were also being proposed as a possible national park at this time. They also contained important catchment forests and impressive landscapes, and were of great interest to recreational users and those seeking protections for indigenous plants and animals. Local communities had been using the ranges, most especially the foothills, for a variety of purposes since they had become ordinary Crown land many years before. These included camping, picnicking, tramping, hut building, hunting, and firewood collecting.¹⁹⁷

However, with the passing of the new Act in 1952, with its national emphasis and more rigid restrictions, questions were raised about the impact of such restrictions on current activities and possible loss of local control over uses of the ranges, including hunting. The Forest Service responded to these concerns with an experimental 10-year management plan, which took effect in 1954, for the ranges to be managed as a new kind of 'forest park' under 'multiple use' management, allowing a wider range of uses, and with local community input through a forest park board. The Forest Service also offered existing expertise and experienced rangers, not immediately available through a national park. The 'forest park' proposal was argued to be similar to existing woodland parks in Britain, where planted forests and very old woodlands were managed together under special provisions (including allowing for some milling).¹⁹⁸ The new National Parks Authority accepted that public support meant the experiment could go ahead and Tararua became New Zealand's first 'forest park' from 1954.¹⁹⁹ It was a popular option and similar 'forest park' management plans were implemented for other forest areas, with local interest group support, even before the first 10-year experiment ended. This resulted in formal legislative recognition of the 'state forest park', providing for 'public recreation and . . . enjoyment' of areas of state forest land, in conjunction with other purposes of state forests, in a 1965 amendment to the Forests Act.²⁰⁰ Twenty forest parks were established in the period from the amendment of the Forests Act to the mid-1980s.²⁰¹

Clearly, other options were available for protecting the forests of Te Urewera, even in the early 1950s. A different solution might have allowed for use of the forests by the resident Maori communities. But Corbett was determined to have the national park option for Te Urewera and he was not prepared to wait for other options to be discussed or tried. Even so, the establishment of the Te Urewera park was not as straightforward as he anticipated and eventually it occurred in two stages. The first, in 1954, created a relatively small park while just three years later, in 1957, it was substantially enlarged. We turn now to considering how and why this happened.

197. Chris Maclean, *Tararua: The Story of a Mountain Range* (Wellington: Whitcombe Press, 1995), pp 183, 190

198. National Parks Authority, minutes, 15 April 1953 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), pp 58, 72)

199. Thom, *Heritage*, p 157

200. Forests Amendment Act 1965, ss 63A–63C

201. Department of Statistics, *New Zealand Official Yearbook 1990*, p 431

16.5.6 Why was Te Urewera National Park created as a small park in 1954?

The national park, as created in 1954, was considerably smaller than Corbett had wanted. This was because the question was by this time largely outside of his control. The responsibility for investigating and recommending the establishment of any new national parks now fell to the new National Parks Authority; a park could only be declared by order in council on the Authority's recommendation to the Minister. The Authority had its own concerns. It hesitated to recommend a large national park because it ran up against what was now being identified as the 'problem' of Maori land in Te Urewera. It also wanted further information about whether the timber on those lands was commercially viable. Both of these factors made the Authority hesitant to declare a large area of Te Urewera as park land.

The National Parks Authority met for the first time in April 1953. The question of creating new parks arose at once. The Authority was required, as we noted above, to 'have regard' to representations made to it by the Minister to give effect to any government decision, and conveyed to it in writing. The Minister's influence was crucial in shaping its discussions about a national park in Te Urewera. He did not shrink from leaning on the Authority, such was his anxiety to ensure that a large park would be created there. His commitment to a park would later be emphasised by the chairman of the National Parks Authority, who referred to the Minister's 'very strong views about the Urewera'.²⁰²

Corbett attended the Authority's inaugural meeting and urged it to make Te Urewera a priority for consideration as a national park. Information was distributed before the meeting indicating that preservation of the timber on some 400,000 acres of Crown lands in Te Urewera was essential for soil and water conservation, and that declaring the area a national park was probably the 'most appropriate' course of action. The Authority was also informed that the Minister 'had directed that urgent consideration be given to the constitution of the Crown owned areas as a National Park'.²⁰³ When Corbett addressed the meeting, the issue of Maori land in Te Urewera surfaced at once. He urged that 'certain areas in the Dominion should remain inviolate from commercial exploitation, particularly the Tararuas and Urewera and more of the South Island alpine chain', adding that he referred to Te Urewera in particular because of 'the problems of administration of Maori land'.²⁰⁴ Te Urewera should be a priority – partly, Corbett said, to assist the Government in its negotiations with Maori. The Government, as he had flagged in parliament, wanted to purchase more Maori land for the park. It had already turned its attention to Maori land north of the Waikaremoana road

202. National Parks Authority, minutes, 19 August 1953 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 45)

203. Agenda for National Parks Authority meeting, 15 April 1953 (Campbell, 'Te Urewera National Park' (doc A60), pp 49–50, 53)

204. National Parks Authority, minutes, 15 April 1953 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 83–84)

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previously suggested by officials ‘for scenic and water conservation purposes,’²⁰⁵ and to several other Maori-owned blocks.²⁰⁶ We discuss this development further below.

Corbett believed that it would be easier to buy Maori land if Crown land there was also designated national park to preserve the forests. There would then be ‘less difficulty’ in acquiring the Maori land because Maori would then be reassured that the Crown was genuinely interested in protection, rather than in acquiring forest land which it might then mill at some future time. If Maori were confident that the Crown genuinely intended conservation not commercial exploitation, this would assist him ‘in his dealings as Minister of Maori Affairs’:²⁰⁷

Now if we have a national park where we intend to preserve an area of virgin forest inviolate, we then immediately remove that suspicion that is in the minds of Maoris to-day, that the acquisition of areas inside the Urewera, the Tuhoe country, is being carried out with the ultimate intention of the Crown to exploit it. So I hope that the Urewera – the Crown land there, will be created a National Park and it will clear my way as Minister of Maori Affairs in my dealings with the Maoris. I have no doubt that the Maoris are still suspicious – they trust me but they don’t trust Government. I have the Maoris regard in so far as integrity is concerned, but I would like to see that policy followed there.²⁰⁸

Although Corbett mentioned ‘the Tararuas,’ then also being considered by the Authority as a national park, he clearly did not feel this area warranted such urgent attention. This was mainly, it appeared, because he did not consider it had the same ‘problems’ of Maori land ownership. Tararua could wait a little longer. This would mean, as we have noted, that the opportunity arose there to experiment with alternatives more appropriate to local community needs. But Corbett did not believe the Te Urewera forests could wait. Greig, the Director-General of Lands, was now, under the Act, also the new chairman of the National Parks Authority. He spoke in support of Corbett, arguing that ‘the conservation of the whole of the Urewera country depended on the acquisition of the balance of Maori land.’ And he reiterated that the Crown could not secure the remaining Te Urewera land (the figure given was approximately 102,000 acres)²⁰⁹ if Maori thought the Crown wanted it for commercial timber exploitation: ‘Piecemeal purchases were being attempted but the Maoris had to be assured that if they sold the timber it would not be used for timber extraction but would

205. Greig to Director of Forestry, 18 May 1948 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 70)

206. National Parks Authority, minutes, 15 April 1953 (Campbell, ‘Te Urewera National Park’ (doc A60(a)), pp 83–84)

207. National Parks Authority, minutes, 15 April 1953 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 83–84)

208. Address by the Minister of Lands to the inaugural meeting of the National Parks Authority, 15 April 1953 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 61)

209. National Parks Authority, minutes, 19 August 1953 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 96)

be conserved in perpetuity. If the Maoris could be assured of this, acquisition would be assisted.²¹⁰ He acknowledged however that there were insufficient funds to pay for all the land.

The Government's position on acquiring Maori land – and the Authority's support for it – was ominous for Te Urewera communities. Corbett had had no discussions with their leaders. Tuhoe communities all stood to be affected by the creation of a national park, as did other peoples of Te Urewera who owned blocks adjacent to the proposed park. Tuhoe, Ngati Ruapani, and Ngati Kahungunu had been found by the courts to be the owners of the bed of Lake Waikaremoana. While Tuhoe had agreed to some forest protections on the steep catchments of the district, they had no reason to expect this would impact on their current uses of the land as ordinary Crown land. This was similar to the uses communities made of Crown ranges in other parts of the country. But a national park would be different. Already it was having a major influence on the Government's approach to Maori land in Te Urewera. And there was no Maori representation on the new National Parks Authority, or even a Maori Affairs official who might have spoken for their interests.

In the short term, the Authority's anxieties about the complications Maori-owned land posed for a national park would have a considerable impact on their decisions about Te Urewera. Despite Corbett's pressure for a large park, the Authority moved cautiously. Its members were prominent men, many of whom had a long-standing interest in promoting national parks and they were clearly wary of making hasty decisions which might lead to parks being undermined by resistance and controversy. Though Corbett's wishes clearly carried weight, the members proceeded to deliberate carefully and resolved to visit all potential national park areas before making their recommendations – although they did agree they would visit Te Urewera first. They also called for maps of both Te Urewera and the Tararua ranges (both having been proposed as national parks) showing 'State Forest and water conservation reserves, the status of the land otherwise and any privately-owned bush'.²¹¹

The Authority met again on 19 August 1953 with the intention of making decisions on which national parks it would recommend, based on its own investigations and on official reports providing information on the proposed areas. The question facing members in respect of Te Urewera was how much land the new park should include. They had received a number of reports stressing the importance of the steep rugged mountain areas for both scenic and catchment purposes. This included one by eminent scientist WRB Oliver who gave his opinion that the rough mountainous nature of country in Te Urewera and the covering of 'untouched' forest made it suitable for a national park. He noted that the kinds of forest (rimu, rata, tawa) made it different from the beech forest of Tongariro, and that in

210. National Parks Authority, minutes, 15 April 1953 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 93)

211. National Parks Authority, minutes, 15 April 1953 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 91)

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his assessment the land was too steep for farming. He recommended that the park include the area around Waikaremoana, and the headwaters of the Ruakituri River.²¹² Following an inspection in late June 1953, the Department of Lands and Survey also stressed the importance of the critical catchment areas while advising ‘in the meantime’ that the Authority recommend only that land within the watersheds of Lakes Waikaremoana and Waikareiti should be declared a National Park.²¹³ This meant that the park would be considerably smaller than Corbett wanted.²¹⁴

The Authority decided at its meeting to recommend a national park for Te Urewera and passed several resolutions to this effect. It decided also on a staged approach to the creation of the park. It recommended that, as a first stage, the watershed area of Lakes Waikaremoana and Waikareiti (approximately 83,500 acres), as well as areas of Crown land and scenic reserves along the Waikaremoana-Te Whaiti Road (approximately 3500 acres) should be designated national park. This was a total of around 87,000 acres (the final gazetted area would amount to just over 121,052 acres). The chairman had already told the Minister what was being proposed, and told the meeting that Corbett was ‘not very happy about it’. However, the Minister was assured the Authority was willing to consider a significant extension to the park once it became more knowledgeable about the district. It is clear from the Authority’s discussions that members decided to start with a small park for two main reasons. First, they were nervous about reserving in the park areas of timber that might be ‘most valuable in the economy’; secondly, they feared getting too close (in the meantime) to areas of Maori land. As one member explained: ‘We are leaving out Crown land to the north and north-west which, of course, is largely interspersed with Maori land.’²¹⁵

The evidence indicates that the Authority carefully considered the competing needs of catchment protection and commercial timber milling. Any future arrangement would require cooperation between the Authority and the State Forest Service to ensure that forest areas with commercial potential were not included in the area it would recommend for a national park. But there was no voice on the Authority to raise the economic interests of Te Urewera Maori communities, even though the chairman acknowledged that the district was ‘substantially populated’ by Maori. The Authority made one recommendation about consultation with local Maori leaders: that they might be asked about the name of the

212. Oliver was a botanist and ornithologist, and had retired some years earlier as director of the Dominion Museum: see WRB Oliver, ‘Notes on Geology and Botany for Proposed National Park – Urewera Country’, undated (Tony Walzl, comp, supporting papers to ‘Waikaremoana: Tourism, Conservation & Hydro-Electricity (1870–1970)’, various dates (doc A73(a)), p 419).

213. National Parks Authority, ‘minuted paper re Proposed New National Park – Urewera Country’, 14 August 1953 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 96)

214. Director-General of Lands to Commissioner of Crown Lands, Gisborne, 22 July 1953 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 102–103)

215. National Parks Authority, minutes, 19 August 1953 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 46–47); (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 100–101). It should be noted that there are two versions of the minutes of 19 August on our record (one filed in Edwards’ supporting papers, and one filed in Campbell’s); we have drawn on both.

proposed park. The names 'Waikaremoana', 'Urewera', and 'Tuhoe' were all suggested at the Authority's August 1953 meeting.²¹⁶ The chairman, conscious of the importance of having 'the goodwill of the Maoris in that area' (as he put it), asked:

Would there be any tactical advantage by deferring the decision of a name and perhaps the Minister of Maori Affairs or some-one else saying to the Maori people, even although there is a lot of Crown land it is substantially populated by Maoris, whether their leaders had any name they would favour. They might have some historical name that might be of very great moment.

It was then decided to leave the matter to the Minister, who might 'consider it wise to discuss a suitable name with the leaders of the Maoris'.²¹⁷

In September 1953, in a press release, the Government welcomed the work of the National Parks Authority and the policies it was developing for national parks based on the objectives set out in the Act. These included encouraging preservation of the parks as much as possible in their natural state, the setting aside of special wilderness areas in them, and confirming the prohibition against taking specimens of flora and fauna except for authorised and agreed purposes such as scientific or educational reasons. It also included encouraging the provision of suitable hostels, camping grounds, and accommodation houses for public visitors. The Minister announced his approval of the Authority's recommendation to declare a part of the Urewera country a national park under the Act. He explained that the Authority had given preliminary consideration to the establishment of a national park in this area at its first meeting the previous April and had since visited and obtained reports on the area. The Minister made it clear that important though this area was, with its scenic attractions at Waikaremoana, it was only the nucleus of a future park. More land would be added as opportunity offered. This would mean acquisition for public enjoyment and recreation, of the 'last' compact area of forest and mountain country left in the North Island, country that was easily accessible (with the road through it from Wairoa to Rotorua) and within easy distance of the centres of Gisborne, Wairoa, Napier, Hastings, Opotiki, Whakatane, Tauranga, Galatea, Murupara, Rotorua, and Hamilton. The Minister intended inviting Maori who 'dwell nearby, and whose ancestral domain once included the wild and beautiful country of the nucleus, to intimate their wishes in regard to a suitable name'.²¹⁸

216. National Parks Authority, minutes, 19 August 1953 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p100)

217. National Parks Authority, minutes, 19 August 1953 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 48)

218. Department of Lands and Survey, press release, 29 September 1953 (Walzl, supporting papers to 'Waikaremoana' (doc A73(a)), pp 414-418)

16.5.7 To what extent were Te Urewera leaders consulted about the establishment of the Park, and what account was taken of the interests of the peoples of Te Urewera?

Up until this point, the interests of the peoples of Te Urewera had hardly rated a mention in all the discussion of the new park. This was despite the fact that Maori owners had continued to bring the issue of milling timber on their lands to the government's attention. In late 1952, Corbett had refused consent to the sale of millable timber on three Ruatahuna blocks. Tuhoe leader Sonny White informed Corbett that the owners were 'extremely upset by the decision', and invited him to Ruatahuna to discuss the issue.²¹⁹ Their wish for dialogue increased when they learned of Corbett's enthusiasm for creating a national park in Te Urewera.

In January 1953, the *Rotorua Post* reported that Corbett was intending to visit Ruatahuna that month 'to discuss with members of the Tuhoe tribe, who own the large forests there, the proposal to form a Urewera National Park'. It was explained that a committee of Maori owners had been set up to discuss the proposal with the Minister, and Sonny White had been elected chairman. This was to be Corbett's first visit to Te Urewera. He would be able to see for himself the large areas of forest it was hoped to preserve as a national park as well as seeing 'the land development work of the Urewera Maoris'. Interviewed by the paper, White indicated that the forest owners 'wanted to see large portions of it preserved as a national park'. But there were 'tracts also which should be developed to support the Maori people who lived in the hills'. They hoped that the Minister would look at the land and come to an appreciation of their point of view.²²⁰ This report produced at least one further Tuhoe response – a telegram to Wellington signed by Tui Tawera (then secretary of the Western Tuhoe tribal executive) 'for the Tuhoe people'. The telegram read: 'We, the confederation of tribes of the Tuhoe people kindly ask you to advise the Hon Minister of Lands that we refuse to enter into negotiations with the Government on the question of preserving the Urewera forest as a National Park.'²²¹ Tawera was among those leaders who worked to get resolution of the issue of the unfinished arterial roads – about which Tuhoe had sent a major petition in 1949 – and also to secure the interest that Ngati Ruapani considered remained owing on their debentures since 1932 (see chapter 14). His message thus reflected general dissatisfaction with the government's intent to tie up the forests of Te Urewera in a national park, while a range of past and current grievances remained unaddressed.

The possibility of Tuhoe questioning the park proposal prompted a lengthy memorandum from the Director-General of Lands, Greig (dated 6 February), in which he reminded the Minister that he had already made a statement to the Forest and Bird Protection Society some months earlier that Te Urewera would be set apart as a scenic reserve or national

219. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 340

220. *Rotorua Post*, 24 January 1953 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 82)

221. T Tawera to Tiaki Omana, 30 January 1953 (Walzl, supporting papers to 'Waikaremoana' (doc A73(a)), p 428)

park. Greig wrote diplomatically that ‘some of the newspaper reports on your statement were rather misleading with the result that the local Maoris thought that their interests were being overlooked’. Officials had subsequently noted a hardening of attitudes among owners of the various blocks the Crown was trying to buy ‘for scenic purposes’, having prohibited the sale of timber cutting rights to private sawmillers (we discuss these restrictions further below). Greig understood that reports that Corbett intended to visit Tuhoe at this time were mistaken, but he advised Corbett to take the opportunity to make a personal visit to Te Urewera ‘to explain the Crown’s objectives to the Maoris’. He suggested that now there was publicity about a possible impending visit (even though inaccurate) this might be the right time for him to go.²²² Corbett resisted this suggestion, replying that he would make his visit ‘at a later date’. It seems that he preferred to wait until the new National Parks Authority had considered the question of creating a park in Te Urewera.²²³ In fact, Corbett did not go to Te Urewera until December 1953, after the Authority had made its recommendation to him. Given the powers of the Authority, he may have felt that an earlier visit by himself would have been premature; but it meant that the Authority visited Te Urewera without any high level contact having been made with Te Urewera leaders.

Corbett’s eventual visit to meet Tuhoe in December 1953 was a very important occasion. The proposed national park had not yet been gazetted, and did not even have a name. Corbett, as we have seen, was already determined to create a national park. He still intended to pursue his policy of purchasing Maori land, but it seems that the January newspaper reports, and Greig’s consideration of them, may have led him to reconsider his approach.

By visiting Te Urewera, Corbett would finally have to face the reality of Tuhoe’s determination to stay on their own lands and their unresolved grievances, including timber milling restrictions. In preparation, Corbett sought cabinet approval to make a proposal to Tuhoe.²²⁴ With the crucial catchment forests safely embedded in the proposed park, he said, the ‘blanket ban’ on milling on Maori land over the whole district could be reconsidered.²²⁵ Corbett acknowledged in his submission to Cabinet that ‘[t]he Maoris do not wish to sell their land, and because of protracted negotiations, consent to mill timber should not in equity be withheld any longer.’²²⁶ It might now be possible to allow Maori to retain, clear, and develop some of their land, while the Crown would purchase the rest and add it to the new park.

222. Director-General of Lands to Minister of Lands, 6 February 1953 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(a)), pp 431–433)

223. Director-General of Lands to Chief Surveyor, 2 March 1953 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(a)), p 429)

224. Secretary of the Cabinet to Minister of Forests, 7 December 1953 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 114)

225. ‘Main remarks of Mr Greig at meeting of owners at Ruatahuna on the 18th October 1955 when over 100 Maori people of Ruatahuna and their representatives at law (bush and otherwise) were present’ (Bassett and Kay, supporting papers to ‘Ruatahuna’ (doc A20(b)), p 228)

226. Minister of Forests to all members of Cabinet, undated, ca 6 December 1953 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 122)

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Corbett did no more than sketch the broad direction of his suggested new approach, the crux of which was to identify land that could be safely milled, with the Forest Service and Maori together establishing 'a suitable formula for long term management' equitable to Maori, yet 'meeting in full the requirements' of watershed and scenic protection.²²⁷

The problem with Corbett's approach to the park was that he appeared to know very little about Te Urewera communities, or the history of the Urewera Consolidation Scheme which had produced both the Crown's award, and the final demarcation of the lands Maori would retain. He understood simply that the Crown had a very large block of land whose future needed to be decided, that significant pockets of adjacent Maori land were a complication, and that sawmillers were threatening essential forests. By the time he went to Te Urewera he had publicly committed himself to a park, and to the importance of continuing to acquire Maori land.

It was not until he arrived at Ruatahuna, a few days after Cabinet had approved his proposal, that Corbett was confronted with the full force of Tuhoe feelings about the long history of Crown policy in Te Urewera.²²⁸ This crucial hui was attended by many Tuhoe land owners, and clearly considerable thought had been given as to how best to present their case to the Minister. In his opening address, Sonny White welcomed the first Minister of the Crown to visit them in 20 years. He began by emphasising that, for Tuhoe, the discussion concerned their turangawaewae and their survival as a people. He told Corbett that:

The owners of the Ruatahuna lands are all united in one wish – that they want to return home to live on their own lands. . . . The problems which both you and ourselves are facing to-day are not only of the soil and the trees but they are mainly of the fate and souls of the Tuhoe people. Deny these people their land and they must suffer severely.²²⁹

He confirmed that, as Corbett had told Cabinet, Tuhoe were reluctant to sell. But he also indicated this went far beyond a reluctance to accept government prices. Tuhoe did not intend to part with any more of their land; they wanted to try to develop it (through farming and forestry) so it could support them. White highlighted the injustice of preventing the people from realising the economic benefits of the lands left to them after a history of loss. This had occurred even in his own lifetime, White said, when the Urewera Consolidation Scheme had not resulted in a positive outcome for Maori owners. He drew a direct link between the history of government actions in Te Urewera, and Tuhoe suspicion of government moves which might lead to further land loss, whether by purchase or otherwise:

227. Minister of Forests to all members of Cabinet, undated, ca 6 December 1953 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 122)

228. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 123–124

229. 'Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953', minutes, 10 December 1953, MA1, file 19/1/135, pt 2, Archives New Zealand, Wellington

We will explain to you later how many of us have sacrificed a lot to enable us to consolidate our interests at Ruatahuna and now we find that after such sacrifice it is the proposal of certain Government Departments that we should sell this sacred land. We do not understand why we are denied the right of milling the timber and developing the land, when only a few miles from here the State Forest Service sold a large block of standing timber not less than 3 years ago.

Offers have been made by the Government Departments to purchase certain areas as scenic reserves. The elders of our people agree that in principle certain portions of their land should be made available to the State for scenic preservation but due to the inherent suspicion of past Government moves, the people have not been prepared to sell voluntarily any one piece of their land. . . . It is important that you should hear this history from our point of view as we feel it shows how the Maori rights in the area have been gradually reduced. You can also see how our people are very suspicious of any moves which any Government may make to take away from us, whether by purchase or otherwise any more of our land.²³⁰

Sonny White and John Tahuri outlined their hopes for development on their own lands, their need for employment and ongoing income to sustain their communities, and their frustration with government restrictions. John Rangihau reminded the Minister about the problems facing the Ruatahuna community. He estimated 350 to 400 people were still living there on the land. There were 10 marae and an effective tribal committee, as well as a branch of the Maori Women's Welfare League, but opportunities for education and work were limited. Half of the community had been compelled to leave. Nevertheless, Rangihau, like White, emphasised that they 'still look on the Urewera district as their real home habitat'.

Two Pakeha, the Reverend JG Laughton and J Keane (one a long-time friend who had come to Te Urewera as a missionary 35 years before; the other a lawyer who had clearly spent time trying to understand the history of Tuhoe land loss), spoke in support of Tuhoe. They emphasised the importance of Tuhoe's ancestral connection with the land and forests, the history of delayed and forgotten 'pledges' that their lands would be preserved to them, and the heightened importance, when so much of their land now belonged to the Crown, of developing the remainder for their own benefit (see sidebar).²³¹

It was this history, Keane said, which explained why Tuhoe were so opposed to losing any more land to a national park:

The Tuhoe people have always had a pride in their ancestral land and now with so little of it left, they desire to keep that and to work it for themselves. If they are not permitted to sell [a] portion of the timber on the lands, they will remain the owners of a valuable asset

230. 'Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953', minutes, 10 December 1953, MA1, file 19/1/135, pt 2, Archives New Zealand, Wellington

231. 'Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953', minutes, 10 December 1953, MA1, file 19/1/135, pt 2, Archives New Zealand, Wellington

The Importance of Tuhoe Lands and their History, as Explained to Corbett at Ruatahuna

At the December 1953 meeting in Ruatahuna, the overwhelming importance of their lands to Tuhoe was underlined by Reverend Laughton:

They are very much the people of these hills. This countryside is part and parcel of their life. Every man and woman here traces their ancestry to one or other of a group of illustrious names and each one of those names is identified with a mountain . . . These are not mere matters of sentiment, but are indications of the manner in which the whole life and history of these people is integrated in this majestic land.

Laughton warned that if they were unable to extend the use of their remaining lands so as to sustain a higher proportion of their growing families, they would 'suffer that kind of deprivation which again and again around the world has planted deep roots of bitterness and animosity between race and race'. Traditional community life had survived in Te Urewera:

Family life is emerging but does not yet take over from the tribe, which from time immemorial supplied the sanctions and disciplines of life and gave direction to its pattern. . . . The community takes responsibility and there is always sanctuary in the community for every member of it, but the title to that life with all its rich social heritage, is in the share, however small, in the tribal land which is the basis of the whole tribal structure. There is nothing that these people fear more than that any of them might lose a bit of land which is their title to their place in the tribe.

If Maori lost their turangawaewae, if they no longer had a place to stand, they would become 'homeless wanderer[s]':

The solicitor for the Ruatahuna landowners, Mr Keane, turned then to the political history and the promises that had been made by the Crown. Keane began by asking why negotiations had broken down between Tuhoe and the Crown in the 1930s and again in the past two years. He told Corbett that a 'brief history . . . of the Urewera lands should throw considerable light on the attitude of the owners and you will be able to appreciate that a very serious problem is involved'.

Keane then traversed the visit of Premier Seddon and the Minister of Maori Affairs in 1896, the agreement then negotiated, and the UDNR Act. Carroll was quoted as supporting Tuhoe's 'ardent wish' to have the land 'preserved to them' and Seddon as acknowledging an earlier promise of McLean, in about 1870, that Tuhoe would be able to 'conserve their lands to themselves'. They still looked for those promises to be fulfilled: 'That pledge was given 80 years ago, was confirmed 60 years ago and the owners request that it be maintained.' He went on to note that despite the promises, 'their ancestral lands have, over a lengthy period, been whittled down'. Between 1896 and 1921, the Crown had acquired about 345,000 acres at 15/- per acre, including 70,000 acres in Te Whaiti where timber was being milled at a 'considerable profit' to the Forest Service of £75 per acre. The consolidation

commissioners and Ngata were quoted as supporting the wish of the young people of Tuhoe to be put in a position to be able to farm some of their lands.

Keane reminded the Minister of the large amounts of land that Maori owners had contributed at the time of consolidation for surveys and for arterial roads. The rest they wished to keep for themselves.

—'Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953', minutes, 10 December 1953, MA1, file 19/1/135, pt 2, Archives New Zealand, Wellington

with which they cannot deal. They will thus lose the use of large areas which would be available after clearing for development and they will also lose timber royalties, with which they could develop the cleared lands.

Furthermore, if more of their lands were set aside for a national park, Tuhoe would lose potential employment in the timber industry, one of the few economic opportunities that could keep their young people at home until farm land was available to them.

The Crown already owns nearly half a million acres in that area and the owners feel that that area is quite sufficient for a National Park. If the small area left to them is also taken for a National Park, they will lose those lands forever and will receive in exchange, money which will be of no use to them as they will not have the lands to use it. The ancestral lands will be gone and the Tuhoe people scattered.²³²

Keane suggested a compromise. While the owners would not agree to land sales, he thought they would make a 'solemn pledge' to preserve the forest of the high country and the scenic road provided that the Government gave something 'realistic' for the sale of timber and development. He then outlined a basic classification system of farmable, intermediate (safely millable), catchment, and scenic land along the main road. Ultimately, he urged, Corbett must 'weigh the welfare of these people against the advantages to the Nation'.

And Sonny White entreated the Minister:

We say, without any hesitation at all that it would be wrong, very wrong, to make all of our country National Park, as we know a lot of it can be farmed as soon as the forest is removed and secondly we are sure that in the years to come a lot more of it can be brought into sound and productive farm land . . . If you decide that no further areas are to be developed and

232. 'Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953', minutes, 10 December 1953, MA1, file 19/1/135, pt 2, Archives New Zealand, Wellington

no further forest is to be cleared, we feel that you are condemning Ruatahuna to stagnation and we know that this means a social problem. . . . Unfortunately the land being farmed is not adequate to support our population and many have to go away to earn their living. If we had more land then we could produce more for the good of the country and would support more of our people. Deny us this and you create a human erosion problem.²³³

The authors of the Tuawhenua Report suggested to us that this vision reflected ‘a simple strategy for economic development: clear all the land suitable for farming, undertake controlled logging of the intermediate areas; establish a sawmilling industry for employing the young; use the royalties to develop the land; transport milled logs to a railhead which could be then back loaded to Ruatahuna with fertiliser.’²³⁴ This was the competing vision of a Tuhoe community for continuing to survive on ancestral lands with some hope of a viable economic base. And it required a response from the Minister that recognised the impact a national park would have on their community, and offered a realistic solution.

Corbett’s reply to Tuhoe indicated that he was only now realising the full implications of balancing his national park protection policy with what he clearly saw as the justified grievances of Tuhoe. Corbett told the people that while he had inherited the policy of restricting timber milling on Maori land, he had followed it because he thought that ‘basically, the policy is right.’²³⁵ He emphasised that the soil erosion problem affected New Zealand as a whole, as did preservation of the ‘last remaining’ native bush (the national interest). On the other hand, he signalled his readiness to compromise with local community concerns when he told the meeting that he did not want ‘to see the Maori of to-day starved’ while making provision for the various elements involved in the future of the area:

I have been looking for a solution to the problem of how I could keep the big rahui (reserve) and we are going to have a national park and at the same time I want to see it substantially enlarged. I want to see the scenic beauty of this marvellous road, which will be your memorial in 100 years’ time, preserved and I want to see you get some use out of your timber and that land that is worth farming under to-day’s conditions. . . . I want to see protection given to the farm lands below. I want to see the water shed protected. I want to see the Maoris with the right to use what is theirs.²³⁶

233. ‘Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953’, minutes, 10 December 1953, MA1, file 19/1/135, pt 2, Archives New Zealand, Wellington

234. Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 343

235. ‘Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953’, minutes, 10 December 1953, MA1, file 19/1/135, pt 2, Archives New Zealand, Wellington

236. ‘Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953’, minutes, 10 December 1953, MA1, file 19/1/135, pt 2, Archives New Zealand, Wellington

Corbett now returned to the older proposals of possible exchanges of Maori forest land required for protection purposes for suitable Crown-owned land elsewhere in Te Urewera; which he described as ‘Tuhoe land’.²³⁷

The Ruatahuna hui thus seemed to mark a turning point: Tuhoe had had the opportunity to put to the Minister their case for preserving their lands, and for the first time Corbett seemed to appreciate that Maori interests must be taken account of. Both sides came away from the hui believing that progress might at last be made. For Tuhoe, the signs that they might gain real Crown assistance must at first have seemed especially promising. But, as Neumann noted to us, Corbett’s policy was most remarkable for what he did not discuss, including what he now intended with his policy of purchasing Maori lands.²³⁸

The records of the Ruatahuna meeting also indicate that while Corbett spoke of a national park or big ‘rahui’ (reserve) and the possibility of extending it, he did not explain the implications of this under the new National Parks Act for Tuhoe communities in terms of their continued use of what would now be national park forests. In fact the new national parks legislation anticipated considerably more restrictive protections than had been the case before: local communities all over New Zealand were used to utilising unsettled Crown land in rugged ranges and catchment forests for purposes such as hunting, and even in national parks, until now, practical administration had been more lax and responsive to local interests (if not Maori ones). A number of interest groups had managed to secure protection for their own activities and interests under the new National Parks Act, but its focus on national issues and more centralised control had already begun to raise questions (as happened in respect of the Tararua ranges). The new Act, as we have seen, offered no acknowledgement of Maori concerns or representation in new Park structures. It is not clear to what extent Tuhoe appreciated the implications of a new national park in their midst, or what they understood (or thought Corbett meant) when he used the term ‘rahui’. This was the case with the smaller area recommended for a park in 1954, but even more so for the larger park Corbett wanted. If Corbett had raised these issues, there might have been some opportunity to clarify matters or to begin discussions on Maori use of park lands and resources; but it seems he did not. He does not seem even to have raised the proposed name of the national park at this time, in spite of the recommendation of the Authority. The other major issue Corbett failed to discuss was the Government’s wish to continue to purchase Maori land in Te Urewera. He did resurrect the possibility of land exchanges, leaving Tuhoe with the expectation that their communities would receive some economic support, especially as they seemed at last on the verge of being able to take advantage of some selected commercial milling.

237. ‘Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953’, minutes, 10 December 1953 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p124)

238. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p123

Following the discussions at Ruatahuna, Corbett established two official committees to negotiate the details of the solution proposed to meet Tuhoe wishes. It was left to officials, at one of these meetings, to raise the issue of the name for the proposed national park. In March 1954, the members of the Urewera Land Use Committee, appointed in March 1954, met with Maori representatives Sonny White and John Rangihau at the Maori Land Court. At the very end of this meeting Greig (who represented the Lands Department on the committee, and was also chairman of the National Parks Authority) raised the question of the name of the proposed park, asking that it also be considered at the meeting to be held at Ruatahuna later that week. The options were evidently discussed at that hui.²³⁹ The Authority chairman reported to the Secretary for Internal Affairs that the ‘representative’ meeting of the Tuhoe people had recommended the name ‘Urewera’ be adopted.²⁴⁰ Campbell noted, on the basis of personal communication with Tama Nikora, that it is more likely that local Maori elders actually chose the name ‘Te Urewera’ National Park, not ‘Urewera National Park.’²⁴¹ We agree.

Once Tuhoe had been consulted about the park’s name (further discussed later in the chapter), the Crown proceeded to gazette the smaller national park area as recommended by the National Parks Authority. The ‘Urewera National Park’ was established in July 1954, containing just over 121,052 acres.²⁴² This comparatively small park was centred on Lakes Waikaremoana and Waikareiti. It included much of the Waikaremoana scenic area surrounding the lake, long identified as the most scenic of the district landscapes, large areas of indigenous forest with native birds, and the crucial catchment and water storage areas to be held in the national interest. As explained in the first National Parks Authority bulletin, it preserved ‘the many attractive scenic features and innumerable places of historic interest’, while safeguarding the catchment ‘on which depends the efficient functioning of the hydro-electric power installations of Kaitawa, Tuai and Piripaua in the Waikaretaheke Valley.’²⁴³ The beds and waters of ‘all smaller lakes, rivers, and streams’ were included in the park.²⁴⁴ The Maori reserves in the Waikaremoana block were excluded from the park – though, as we shall see, this exclusion remained a constant irritation to the Government

239. The intended date of the meeting (27 March 1954) is referred to in the minutes of the inaugural meeting of the Urewera Land Use Committee. See Urewera Land Use Committee, minutes, 24 March 1954 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p124. The minutes refer throughout to ‘Mr Gregg’, but it is clear that Greig’s name has been mis-spelled.

240. Chairman, National Parks Authority, to the Secretary for Internal Affairs, 1 April 1954 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p107)

241. Campbell, ‘Te Urewera National Park’ (doc A60), p55

242. ‘Lands in South Auckland and Gisborne Land Districts Declared to be a National Park’, 29 July 1954, *New Zealand Gazette*, 1954, no 46, pp 1211–1212

243. National Parks Authority Bulletin no 1, 1954 (Campbell, ‘Te Urewera National Park’ (doc A60), p 54)

244. Beds and waters of these waterways were specified in the second schedule of the Order in Council, which designated Crown Land subject to the provisions of the Land Act 1948, to be included in the park. See ‘Lands in South Auckland and Gisborne Land Districts Declared to be a National Park’, 29 July 1954, *New Zealand Gazette*, 1954, no 46, p 1212.

and park administrators, who attempted over a number of years to ensure they were added to the park.

16.5.8 Why was the national park expanded in 1957, and were Te Urewera leaders consulted?

We now turn to consider why, just three years later, the park area was considerably expanded and, this time, most of the rest of the Crown land in the district was included. For the peoples of Te Urewera, particularly Tuhoe, this expansion was of much greater significance for their future than the 1954 creation of the park. As the Crown's vast block of land was absorbed into the park, their own lands now adjoined the park or were enclosed by it. From an administrative point of view they became untidy 'pockets' in and around the new park entity. The inclusion of Crown land was justified on the grounds that this might encourage Maori to offer their own land, and though this was not successful at the time, Crown attempts to secure Maori land continued for years afterwards. A key reason for subsequent developments was the discovery that the Crown did not have enough farming land to offer Tuhoe in exchange for their land that was wanted for the park.

The Urewera Land Use Committee, set up at Corbett's direction after the meeting, was tasked with classifying Maori land around Ruatahuna into areas that could be milled, and areas that should be left substantially untouched. It reported to another committee established by Corbett, the 'Principal Committee', a special interdepartmental committee of senior officials from the Departments of Lands, Forestry, and Maori Affairs, to negotiate with Tuhoe over the proposed solutions.²⁴⁵ The Land Use Committee worked hard on classifying land around Ruatahuna so that by mid 1955 it had completed its task in the area.²⁴⁶ Some 45,000 acres were classified (see sidebar).²⁴⁷

The Committee's work allowed Maori land owners around Ruatahuna to realise a considerable proportion of their timber assets (we discuss this further in chapter 18). To this extent, therefore, the Crown's new policy was a success. There were, however, limits to that success. The committee's activities were largely confined to Tuhoe lands around Ruatahuna. The owners of forest land at Maungapohatu, at Manuoha and Paharakeke, and in the Te Whaiti blocks, as well as owners of land in the Whakatane and Waimana River valleys,

245. AL Poole, 'Urewera Maori Lands: Summary of Forest Service Activities 1953–1957 when Hon EB Corbett was Minister of Lands and Forests', 6 October 1960 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 111)

246. Director-General of Lands to Commissioner of Crown Lands, Hamilton, 1 April 1954 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 115–117); Boast, 'The Crown and Te Urewera in the 20th Century' (doc A109), p 196; Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 124; Campbell, 'Te Urewera National Park' (doc A60), p 69

247. Minister of Lands to all members of Cabinet, 24 June 1955 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 126). Campbell provided a good outline of the workings of the Urewera Land Use Committee. See Campbell, 'Te Urewera National Park' (doc A60), pp 65–69.

The Urewera Land Use Committee: Classifying Land and Forest for Milling or Preserving

The Urewera Land Use Committee was appointed in March 1954 as a non-statutory body without legal powers, originally consisting of representatives of the Departments of Lands, Forestry, Works, and Agriculture. Duncan MacIntyre (representing the Department of Maori Affairs) was convenor and secretary. Sonny White and John Rangihau represented Maori land owners at an 'exploratory' meeting on 24 March. It was agreed that Sonny White join the committee, as well as an official from the Department of Maori Affairs in Rotorua.¹ White was soon after elected chairman.² The Land Use Committee classed Maori land according to the level of milling that should be allowed. There were three categories of land, and most blocks contained land in each:

- ▶ A – areas from which the forest could be removed entirely making way for farming;
- ▶ B – areas on which timber could be removed, but where undergrowth should be left to regenerate because the land was not suitable for farming;
- ▶ C – areas which must remain as protection forest or where the forest was required for scenic purposes.³ It was later agreed that particular trees marked out by the Forest Service could be milled on c class land.⁴

By June 1955, the Land Use Committee had classified 48 blocks around Ruatahuna, totalling 45,000 acres. Most of the land (26,732 acres) was categorised as generally unsuitable for milling; 8043 acres was classified for restricted milling, and 4762 acres as suitable for farming. Almost all blocks had some land classified as unsuitable for milling.⁵ The special Principal Committee then confirmed these classifications, and began to use them as the basis for negotiations with Tuhoe.⁶ The Maori Land Court also agreed to use the land classifications as the basis for approving milling consents.⁷ Subsequently, milling licences were granted for most of the Ruatahuna lands classified as 'A' or 'B' and much of this land was milled.⁸

1. Urewera Land Use Committee, minutes, 24 March 1954 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 121)

2. Campbell, 'Te Urewera National Park' (doc A60), p 66; Director-General of Lands to the Commissioner of Works, 1 April 1954 (Bassett and Kay, supporting papers to 'Ruatahuna' (doc A20(b)), p 95). The committee members were: Collett and Lysaght for the State Forest Service; Linton for Maori Affairs; Hayman for the Ministry of Works; and Hewitt for the Department of Agriculture.

3. A L Poole, 'Urewera Maori Lands: Summary of Forest Service Activities 1953–1957 when Hon EB Corbett was Minister of Lands and Forests', 6 October 1960 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 112); Bassett and Kay, 'Ruatahuna' (doc A20), pp 188–189.

4. Neumann, 'That No Timber Whatsoever be Removed' (doc A10) p 124; District Officer, 'Basis of agreement reached between members of the Principal Committee Messrs. Greig, Ropiha, Poole (Barber, Secretary) and Judge Harvey', 18 January 1955 (Bassett and Kay, supporting papers to 'Ruatahuna' (doc A20(b)), p 118)

5. Minister of Lands to all members of Cabinet, 24 June 1955 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 126). Campbell provided a good outline of the workings of the Urewera Land Use Committee. See Campbell, 'Te Urewera National Park' (doc A60), pp 65–69.

6. Bassett and Kay, 'Ruatahuna' (doc A20), p 190

7. Boast, 'The Crown and Te Urewera in the 20th Century' (doc A109), pp 196–197; Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 138; Kinloch, Department of Lands and Survey, to Rotorua Maori Land Court, 18 January 1955 (Bassett and Kay, supporting papers to 'Ruatahuna' (doc A20(b)), p 117)

8. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 138; Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 775

were not party to the agreement.²⁴⁸ Most importantly, however, the work of the committee raised the question of how the Crown would compensate Tuhoe in respect of lands which the Committee decided should not be milled. And if they could not be compensated in land, what alternatives remained if the Crown wanted to preserve the forests? The Crown's answer, in fact, was to buy the land for the park.

In fact, negotiations over how to compensate Maori for the ongoing restrictions on developing their B- and C-class land were soon derailed by some already familiar problems. As we have seen, when Tuhoe representatives had agreed to Corbett's new policy framework in the December 1953 meeting, the only form of compensation discussed with them was land exchange.²⁴⁹ Tuhoe were prepared to negotiate on that basis, as Sonny White explained: 'We want high country land exchanged for Tuhoe land now in the possession of the Crown wherever possible as we do not wish to shift out of the Urewera. We are happy there.'²⁵⁰

But it became apparent that, at much the same time as the Committee was finishing its work in June 1955, the Lands Department was reaching the conclusion that it did not have enough land suitable for farming to provide in exchange for the land deemed necessary for forest protection. It had only about 12,500 acres in the Whirinaki and Minginui valleys suitable for the purpose. However, this land was valued at just £30,000, which as we will see, was well below the value of the Ruatahuna land and timber that could not be milled. There were likely to be further difficulties in matching exchanges fairly to the value of the timber. The Crown decided it was better not to try.²⁵¹

Buying Maori land in fact remained absolutely central to the Crown's agenda, though Crown officials said nothing to Tuhoe about these plans during the delicate time when the land use committee was classifying land. In the first years of the park administration there were repeated references by both senior Crown officials and park administrators to plans

248. Neumann 'That No Timber Whatsoever be Removed' (doc A10), pp 124–125

249. Director-General of Lands to Commissioner of Crown Lands, Hamilton, 1 April 1954 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 115–118)

250. Urewera Land Use Committee, minutes, 24 March 1954 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 120)

251. Minister of Lands to all members of Cabinet, 24 June 1955 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 126); Campbell, 'Te Urewera National Park' (doc A60), p 70

to negotiate to buy Maori land, plans which were of course ‘closely linked’ to the work of the land use committee.²⁵² As the Director-General of Lands put it to the Commissioner of Crown Lands, Gisborne: ‘There are already quite a few areas of Maori land which are subject to a prohibition of cutting rights . . . All of these areas must ultimately come into the Park.’²⁵³ Officials shared a confident expectation that it was only a matter of time before Maori were compelled to sell such land, allowing the park to ‘ultimately become a large rounded out area.’²⁵⁴

Thus, in 1955 the Crown moved again to a focus on outright purchase. In a memorandum to cabinet in mid 1955, Corbett supplied valuations for B and C category lands, as well as minimum Forest Service royalty rates for timber in C areas. The latter figure was £142,905; but, as Corbett pointed out, the owners would want full market rates for their timber, which would amount to about £250,000. He gave a total figure for the cost of B-class land and C-class land and timber of about £300,000, and recommended that Cabinet approve expenditure of this amount. He did not think the answer was to allow the lands to remain in Maori ownership with ‘absolute prohibition against milling’; in fairness to the owners, they should be compensated in cash.²⁵⁵ The Minister added that, given the amount and cost of land the Crown had already acquired in Te Urewera by the end of the Consolidation Scheme – 345,076 acres for under £200,000 – the total cost to the Crown of acquiring this region would amount to £500,000, which he thought ‘not unreasonable especially in view of the present value of the asset to the country.’²⁵⁶ In other words, the Crown would secure an important asset for a reasonable price. He did not comment on how this would meet the Crown’s responsibility to Tuhoe communities. Cabinet duly approved expenditure of £300,000 ‘for the purchase of Maori lands in the Urewera.’²⁵⁷

Corbett’s Principal Committee took the changed policy to Tuhoe at Ruatahuna in October 1955. Officials emphasised the new focus on land purchase and the fact that there was limited land for exchange, but did not reveal how limited.²⁵⁸ The Crown would buy

252. Bassett and Kay, ‘Ruatahuna’ (doc A20), pp 209–210

253. Director-General of Lands to Commissioner of Crown Lands, Gisborne, 30 September 1953 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 109)

254. Urewera National Park Annual Report for the year ended 31 March 1954 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 138); Urewera National Park Annual Report for the year ended 31 March 1955 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 139–140); Urewera National Park Annual Report for the year ended 31 March 1956 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 144–146)

255. Minister of Lands, memorandum for all members of Cabinet, 24 June 1955 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), pp 125–127)

256. Minister of Lands to all members of Cabinet, 24 June 1955 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 126); Campbell, ‘Te Urewera National Park’ (doc A60), p 70

257. Secretary of Cabinet to Minister of Lands, 15 August 1957, AAFD W2347/811, CAB 271/3/1, Archives New Zealand, Wellington; see also AL Poole, ‘Urewera Maori Lands: Summary of Forest Service Activities 1953–1957 when Hon EB Corbett was Minister of Lands and Forests’, 6 October 1960 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p 113)

258. Bassett and Kay, ‘Ruatahuna’ (doc A20), p 195

the B land which was unsuitable for farming, and would be prepared to buy the land and timber on C land. Not surprisingly, Corbett's 'solution' now began to unravel. Officials and owners became embroiled in disagreements over the process of appraising Ruatahuna timber blocks in order to assess timber values and classify the land into A, B, and C categories. Piecemeal negotiations proceeded in fits and starts, and soon stalled.²⁵⁹ Meanwhile milling continued around Ruatahuna, albeit still largely based on the land use committee classifications. Encouraged, sawmillers began making offers to mill the large and hitherto untouched Maungapohatu blocks.

In the end, Corbett, frustrated with the limited success of efforts to acquire the Ruatahuna lands for the national park, decided that the time had come to put all remaining Crown land into the park. In March 1957, after another year of Maori landowners hanging on tenaciously in spite of Crown purchase efforts, the Minister's Principal Committee, charged with negotiating with Tuhoe, confirmed that the perceived Crown reluctance to put its own land in the park, was causing them some difficulty:

the Maoris in the Urewera view with some concern that although the Crown is quite prepared to buy their land for addition to the National Park no effort is being made by Government to add the large block of Crown land in the Urewera to the National Park. This state of affairs could be somewhat embarrassing as far as the Crown's negotiations in the Ruatahuna Region are concerned.²⁶⁰

The committee concluded that a decision was now required on whether Crown land would be added to the park.

Matters came to a head in mid 1957. In July 1957 a forest ranger reported that the Pamatanga block (a block of 403 acres in the Ruatahuna series) was being milled, and urged that the position be 'critically examined in the public interest'.²⁶¹ This was despite Pamatanga being zoned C (to remain as forest) by the Land Use Committee. The Deputy Registrar of the Maori Land Court at Rotorua immediately filed an application for an injunction to stop milling. Judge Prichard dismissed the application in his decision of 15 July 1957, on the grounds that no legal wrong had been done by either the owners or the millers. The three owners, who had all agreed to the cutting of the timber, had decided not to apply to the land court for confirmation because this would lead to ministerial conditions based on the Land Use Committee zoning of the block, and they were within their rights to do so.²⁶² The decision 'highlighted the fact that the work of the Land Use Committee had no legal standing';

259. Bassett and Kay, 'Ruatahuna' (doc A20), pp 194–196, 198

260. Director-General of Lands to Poole, 'Principal Committee, Addition to Urewera National Park', 22 March 1957 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 149)

261. Forest Ranger Buckingham to Conservator of Forests, Rotorua, 11 July 1957 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 135–136)

262. Rotorua Maori Land Court minute book 105, pp 380–382

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its land categorisations were not legally enforceable.²⁶³ An official in the Department of Maori Affairs at Rotorua wrote to the Secretary of Maori Affairs that more milling of Te Urewera blocks with a small number of owners was likely to follow.²⁶⁴

Corbett was also under pressure from interest groups such as the Forest and Bird Protection Society and recreational groups who wanted to be sure milling threats over the whole area were removed.²⁶⁵ Forest and Bird had convened a meeting in Rotorua in February 1957, to help coordinate the efforts of organisations opposed to milling of Te Urewera forests. Government representatives and high ranking officials attended, as well as delegates from various recreational clubs; Tuhoe representatives had been invited, but did not attend. The Society was given the job of arranging a deputation to meet government ministers. The deputation met Corbett on 17 July, and asked for a binding classification of all Te Urewera forest lands likely to be milled. It urged the Government to acquire all Maori lands classified B or C, if possible by exchanging them for farm lands. And it wanted the Government to add the remaining Crown land to the Te Urewera park. Corbett was quoted as saying that ‘until such time as the Crown vested its own lands in the area in a National Park, very little could be done to persuade the Maori people to make any such move themselves.’²⁶⁶ We do not know whether the date of the meeting was arranged after the land court decision on Pamatanga, or whether it was a coincidence; but in any case, it is clear that the pressure on the Minister was mounting.

On 1 August 1957, Corbett made an important proposal to Cabinet. His recommendations addressed two issues together: the adding of the Crown land to the park, and the settlement of the Tuhoe roading grievance by payment of compensation. We have referred to this memorandum in chapter 14 in the context of the Crown’s roading settlement. Tuhoe had been seeking the return of the land they had contributed for arterial roads (at the time of the consolidation scheme) for a number of years, without success. We reiterate here that the Minister explicitly stated that the purpose of putting the remaining Crown land into the park, which was necessary for soil conservation purposes, and of making compensation for the unbuilt roads, was to assist further purchases of Maori land:

No success with further essential Crown purchases of Urewera Maori land is likely to result unless the Crown first ‘locks up’ the 330,000 acres and settles the roading question.²⁶⁷

263. Bassett and Kay, ‘Ruatahuna’ (doc A20), p 198

264. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 136

265. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 27–28, Campbell, ‘Te Urewera National Park’ (doc A60), pp 83–84

266. Whakatane County Council, minutes, 22 July 1957 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 142–143)

267. E.B. Corbett, Minister of Lands, memorandum for all members of Cabinet, circa 1 August 1957 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 143)

Cabinet approved the Minister's recommendation to add the Crown land to the park at its meeting on 5 August, and referred the question of 'compensating the Maoris for land contributed for roading' to a committee convened by Corbett.²⁶⁸

In chapter 14, we were critical of the Crown's actions to settle the roading grievance at this point, tied to its decision about expanding the park, on several grounds:

- ▶ it delayed the roading settlement until 1957 when it finally suited it to act, because it now wished to acquire more Maori land in Te Urewera;
- ▶ it told the owners that it could not return the land they had contributed for roads, as they wanted, because the land had been deducted from many blocks and could not be located – without considering any options for its return;
- ▶ it is clear that the Crown did not wish to return land, because in fact its aim was to acquire more Maori land for the national park; and
- ▶ the Crown land put into the park included the 39,355 acres which Maori had contributed for roads.

The remaining Crown holdings in Te Urewera would be added to the park, then; and the park, it was hoped, would be further expanded by the addition of land that the peoples of Te Urewera still retained. The Director-General of Lands explained the decision to the Commissioner of Crown Lands in these terms:

This important step evidences the Government's desire to close up the Crown holdings in the Urewera to prevent the timber being milled thus ensuring their retention as a Bird Sanctuary and a conservation and recreational area. It will too, as you will appreciate, assist greatly in the Crown's negotiations with the Maoris to purchase certain of their Urewera timber owned lands.²⁶⁹

Once the Government had made the decision, the matter was considered by the National Parks Authority at its meeting on 10 September 1957. The Authority received the Government's 'recommendation', and accordingly decided to recommend that the Minister issue an Order in Council declaring the area of approximately 330,000 acres of Crown land to be included in the Park.²⁷⁰ Evidently the Authority was now convinced it had sufficient information to do so, assisted by the work of the committees set up to negotiate with Tuhoe and classify lands to meet their development needs.²⁷¹ But in any case, the government had left it little choice. Notes written on the minutes of the decision clarify that the land involved was all of Urewera A block which was not already included in the Park; and

268. Secretary of the Cabinet to Minister of Lands, 6 August 1957 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p143)

269. Director-General of Lands to Commissioner of Crown Lands, Hamilton, 27 August 1957 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p153)

270. National Parks Authority, minutes of meeting on 10 September 1957, 'Additions to Urewera National Park' (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p154)

271. Campbell, 'Te Urewera National Park' (doc A60), p86

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that all Maori lands were to be excluded, but ‘the beds of all Rivers Streams etc’ were to be included.²⁷² It was well understood that this decision was expected to place more pressure on Maori to sell their lands now partly enclosed within the new park area. The *Napier Daily Telegraph*, welcoming the decision, added that: ‘Much more land (under Maori ownership) is still required to complete the project planned’ – though securing it would be a complex undertaking, given multiple ownership and the issues of timber valuation and ‘competing offers’ for compensation of commercial development. Maori rights in the area, however, were ‘virtually unqualified, and the Government has affirmed that there can be no question of taking the land from the tribes without their consent or at less than market value.’²⁷³

As we will see, this would be a continuing theme in official correspondence from this point. When Dr Allan North raised a number of issues with Greig relating to the park in December 1957, including the need to appoint a park board promptly, Greig’s reply went straight to the importance of delaying a decision so crucial to the park’s administration until more Maori land was purchased:

I feel that the proposal to create a Board is premature until further progress has been made in the negotiations with the Maori owners for the acquisition of further Maori held land for incorporation in the park. Some of the Maori land is strategically placed and its addition to the park could make a marked difference in the administration of the park.²⁷⁴

How far were Te Urewera leaders consulted about the decision to expand the park so dramatically? We are not aware that they were consulted at all. They may well have learned of it from newspaper reports in August, as apparently the Commissioner of Crown Lands, Hamilton, who administered the park, did.²⁷⁵ What we can say is that Tuhoe were informed of the impending park expansion by Corbett, at the meeting they had with him and the new Minister of Lands, R G Gerard, on 1 October 1957 (Corbett had recently resigned due to ill health). This meeting was held to discuss compensation for the roads the Crown had promised in the course of the Urewera Consolidation Scheme, but which it had never built (see chapter 14). Corbett explained the expansion of the park in the context of trying to ease suspicions about the possible Crown exploitation of its own timber lands and again seemed to indicate that he still considered the park ‘Tuhoe country’, and that its dedication as a park would be a lasting tribute to them:

One point I want to make abundantly clear – that the whole of the Urewera purchase has been declared Rahui, a National Park. It is completely tied up; it is tapu, and I think that I

272. National Parks Authority, minutes of meeting on 10 September 1957, ‘Additions to Urewera National Park’ (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p154)

273. *Napier Daily Telegraph*, 10 August 1957 (Campbell, ‘Te Urewera National Park’ (doc A60), pp85–86)

274. Chairman, National Parks Authority, to Dr Allan North, 23 January 1958 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(a)), p559)

275. Director-General of Lands to Commissioner of Crown Lands, Hamilton, 27 August 1957 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p153)

should make that clear to you because there has been, for years while it was Crown land and not tapu, a feeling that some day somebody would come along and exploit it. It is not possible today, or in the future, because by Act of Parliament the whole of the land has become a reserve that cannot be touched, and I believe that it will be the greatest memorial to any tribe in New Zealand. It is Tuhoe country and the greatest memorial any tribe can have is a reserve dedicated for all times.²⁷⁶

We note especially the terms in which Corbett spoke about the Crown's decision to pay monetary compensation to Tuhoe for the unbuilt roads – rather than returning land, as Tuhoe had petitioned for, and as Under-Secretary Ropiha had reported to the Maori Affairs Select Committee should be done. Corbett tied the decision not just to the difficulty of clarifying which land should be returned, but to the fact that the land was now to be part of the park, to protect its forests:

When I looked at it [the Crown's block] on the maps and read all the reports I saw that it was absolutely impossible in view of the way interests lie, and also in view of the fact that the Crown has ruled that the land is to be kept forest clad, to hand back 39,000 acres [the amount Tuhoe had given to the Crown to pay for the roads] out of 300,000 because no interest had been defined as to where the area lay.²⁷⁷

We conclude from what Corbett said that the extension of the park had not previously been discussed with Tuhoe leaders.

In response, Tuhoe again welcomed the prospect that areas of forest would be permanently protected. Takarua Tamarau told Corbett:

You don't know how glad I am that you have decided along those lines to preserve the Urewera as forest for the Dominion, and I think you have taken a step in the right direction with the decision you have given us today, and we Tuhoe people will see that we play our part and adhere to your wishes.²⁷⁸

However, there was still no evidence of any discussion with Tuhoe of the implications of such a large park for their use of the forests or for their nearby communities. Nor is it clear what Tuhoe may have understood by Corbett's use of the terms 'rahui' or 'tapu' or even 'reserve' when it was closely linked to the term 'Tuhoe country'. It is possible, for example, that he gave the distinct impression that the tribe's relationship with the lands comprising

276. 'Notes of a Deputation which waited on the Hon R G Gerard, Minister of Lands', 1 October 1957 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 157–158). Corbett had retired from his ministerial portfolios by then due to ill-health, but attended the meeting hosted by new Lands Minister Gerard because of his by then long-standing association with Tuhoe.

277. 'Notes of a Deputation', 1 October 1957 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 156)

278. 'Notes of a Deputation', 1 October 1957 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 159)

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the park would be recognised and preserved for the future. Nor did Corbett speak of the Government's intention to keep purchasing though it was known that Tuhoe were now even more reluctant to part with more lands.

We suggested in chapter 14 that Tuhoe welcomed the resolution of the issue of the unbuilt roads, after many years' delay. Their leaders were clearly anxious, on such an auspicious occasion – at which the departing Minister had spoken at length of his long-held wish to right what he called 'the one injustice . . . that was crying out to be righted' – not to introduce any jarring note. Even so, Sonny White, after making due acknowledgements, referred briefly to the park in these terms:

You know, and we all know, the attitude of the Crown as regards high lands in the Urewera, and with your high officers here we are endeavouring to make that a National Park. My own personal view is that it should be made a National Park but not at the sacrifice of the owners. I have all along expressed the wish, the hope, that it could be done fairly and squarely.²⁷⁹

Was the park extended fairly and squarely? Certainly, given the Government's determination to see that extension finalised, it had become inevitable. No consideration was given to making it a forest park (as with Tararua). Tuhoe leaders were not offered any opportunity at the 1 October meeting of discussing a proposal for extension; rather they were informed of the decision that had been taken, and announced (even if not yet gazetted). They were told the land had been 'tied up', when in fact (as we noted earlier) there was no legal reason why the land they had contributed for roads could not still have been returned. The extension of the park was finally gazetted in November 1957.²⁸⁰ This added some 334,300 acres of Crown land to the park, substantially increasing it to a total of around 455,352 acres. The new configuration of the park meant that it now enclosed or abutted some 88,000 acres of Maori land. And, as we have seen, it also enclosed Lake Waikaremoana, the jewel that officials and park administrators had long considered the centrepiece of the region.²⁸¹

16.5.9 The park's creation – conclusions

By 1957, a large national park had now been established on much of what had previously been the Urewera District Native Reserve agreed with Tuhoe and Ngati Whare leaders in 1896, and enshrined in its own statute. The park as first created in 1954, on the recommendation of the new National Parks Authority, was considerably smaller than the government had wanted. In 1957, the park was greatly extended when the Crown decided to add to it 330,000 acres, that is, most of its Urewera A block acquired in the course of the

279. Notes of a Deputation, 1 October 1957 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), pp 156, 159)

280. Walzl, 'Waikaremoana' (doc A73), p 378

281. B Briffault, Department of Lands and Survey, 'note for file', 26 August 1980 (Parker, 'List of Documents – Compensation for Restrictions Placed on Milling of Native Timber in the Urewera' (doc M27(b)), p 507)

consolidation scheme, except for state forest land. This expansion of the park would have lasting impacts on the peoples of Te Urewera, particularly Tuhoe.

The Crown told us that since the land was Crown land, there was no statutory obligation to consult with Maori about its incorporation in a National Park, but that consultation had occurred. It cited a scheduled February 1953 visit by Corbett to Te Urewera, at which proposals to form the park were to be discussed. It seems, however, that this visit did not take place.²⁸² We were further referred to discussions about the 1957 addition to the park between a Tuhoe deputation and the Minister of Lands on 1 October 1957. Such consultation was ‘appropriate’, the Crown said, given that Maori were ‘adjacent land owners.’²⁸³ And it was particularly the case because the Maori-owned land which did not form part of the park was likely to be affected by such decisions. That statement on its own would tend to imply that Maori were consulted for no other reason than that they were adjacent land owners.

In fact, the Crown went on to qualify its position. Its 1953 discussions with Tuhoe, counsel said, took place ‘in the context of a key period of consultation and negotiation between Te Urewera Maori and the Crown on a range of issues.’ These included the Tuhoe wish to develop certain areas, discussions on the failure to build promised arterial roads, and negotiations about Lake Waikaremoana.²⁸⁴ The Crown thus recognised that the peoples of Te Urewera were by no means just adjacent land owners; that it was in fact engaged in a range of discussions with iwi of Te Urewera which reflected their past relationships, their particular property rights, and previous Crown undertakings – including its response to Tuhoe pleas that they not be pushed off their remaining land, and that what they most wanted was an economic future there.

Though official meetings with Tuhoe did not begin until December 1953, after the Government had made up its mind to have a park in Te Urewera, it is true that the Crown did listen then and – however briefly – did attempt to meet Tuhoe wishes. But the arrangements entered into in 1954–55 through Corbett’s Land Use Committee (charged with classifying lands to identify which could be milled, and which could not), led to a short-lived reprieve for Tuhoe owners (especially those at Ruatahuna). They did not lead to the kind of wider solutions that the people had hoped for, especially securing farm land through exchange with the Crown. And many owners beyond Ruatahuna had stood aloof from the start. After a brief period of engagement with Tuhoe, the Government returned by mid 1955 to its preferred solution of purchase of Maori land for the park in order to prevent Maori owners from milling their forests.

But Tuhoe owners did not wish to sell land (as they had explained to the Minister at length in December 1953), and some began to mill their timber. Officials came to the view

282. SKL Campbell, summary of evidence for ‘Te Urewera National Park, 1952–75’, 20 September 2004 (doc H9), p 10

283. Crown counsel, closing submissions (doc N20), topic 33, p 4

284. Crown counsel, closing submissions (doc N20), topic 33, p 4

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that the Government must put its own vast landholding (the Urewera A block) into the park if Maori owners were to be persuaded to sell. By mid-1957 things came to a head. A decision of the Maori Land Court in the Pamatanga case found that if all Maori owners of a block zoned to remain as forest by the Land Use Committee agreed to mill their land, they were within their legal rights to do so. There was no requirement to seek confirmation by the land court and expose themselves to ministerial conditions. Very soon afterwards, the Forest and Bird Protection Society (which had been active in coordinating opposition to milling in Te Urewera for some time) urged the Minister to buy Maori land other than that classified for farming, to provide land to exchange with owners if it could, and to add its own land to the park.

The Minister of Lands sought Cabinet approval on 5 August 1957 for a two-pronged approach to finalising the expansion of the national park: the remaining Crown land should be put in the park, and the Tuhoe grievance about arterial roads (for which they had contributed a substantial quantity of land, but which had not been built), should be settled. (This was a long-standing grievance, which the Government addressed only in 1957, when it suited it to do so.) Settling these two issues, the Minister argued, would clear the way to the purchase of Maori land required for the park. The Government approved the park recommendation. The National Parks Authority, after the event, recommended the addition of the Crown land to the park. Tuhoe were not consulted; they were informed of both government decisions at a meeting with the Minister of Lands (and with Corbett, who had by then resigned because of ill health) on 1 October 1957, well after the decisions had been made. They were told the decision about the park was irrevocable – though the new park boundaries would not in fact be gazetted until November.

There was no meaningful discussion with Te Urewera leaders about either the creation of the park (in 1954) or its extension (in 1957). The Government was already committed to a large park by 1953, and in that sense the die was cast before it held its first discussions with Tuhoe. In 1955 and in 1957, when the Government made decisions about reviving its attempt to buy Maori land, there was little evidence of concern for the predicament of Tuhoe. There was no discussion with them of alternatives to a massively increased national park – such as a smaller increase, or a forest park – or even how to accommodate their traditional uses of park resources, let alone provide for an economic base.

The circumstances in which the decision for expansion was made would over time compound the problems of the peoples of Te Urewera – both because the park came so close to their own lands, and because the Crown now expected that Maori owners would be encouraged to offer more land for sale. In addition, the new park was to be administered according to an Act that had clear national purposes and objectives that made no formal recognition of Maori concerns, with provision for a local park board that was not formally required to consider Te Urewera Maori settlements or interests in the area. This both reflected and

reinforced the existing official mindset that they and their communities were an ‘anomaly’ in the new park. The acquisition of more land would remove the anomaly, facilitate access to park lands for visitors, and make administration of the park easier. All of this was a powerful recipe for future tensions.

In the following sections, we turn to examine in more detail how the existence of this large national park and its administration impacted on Te Urewera communities – in particular on their economic development opportunities, and on their maintaining customary uses and their kaitiaki responsibilities for the lands, forests, and waters of Te Urewera, and tribal wahi tapu and taonga.

16.6 HOW HAS THE NATIONAL PARK AFFECTED THE ECONOMIC OPPORTUNITIES OF MAORI COMMUNITIES IN TE UREWERA?

Summary answer: *The establishment of Te Urewera National Park in 1954 (as expanded in 1957) has had four main effects on the economic opportunities available to the Maori communities enclosed by or adjacent to the park.*

First, as a matter of Crown policy, the park administrators have attempted to prevent any uses of neighbouring land that might conflict with or threaten the conservation values of the park. These include the milling of indigenous timber, deer farming, and the planting of pine trees for exotic forestry. Buffer zones are thus created around the park by negotiation with landowners and by cooperation (some called it ‘collusion’) with local authorities. Also, outright purchase of buffer zones for the park has been a favoured tactic, although this was not very successful in Te Urewera.

Secondly, the official view by the late 1950s was that Maori would have to sell their land to the Crown and move away from the park altogether; their presence was a ‘problem’ to be solved by their removal. Broadly speaking, this remained the Crown’s goal until the end of the 1970s. Nonetheless, as the Crown pointed out in our inquiry, it only succeeded in buying Manuoha and Paharakeke (38,000 acres). Since most of the Crown’s purchase ambitions went unfulfilled, the Crown’s view is that its policies had little real impact. We do not agree. Tipi Ropiha, Under-Secretary for Maori Affairs, advised his Minister in 1950 that the Crown had to balance the need for protection forests in Te Urewera with the need for Maori to retain and derive an income from their last remnants of ancestral land. Corbett agreed and permitted applications for controlled milling alongside the new national park. Had such a balanced approach continued in the 1960s and 1970s, the Crown would have fostered Maori economic initiatives on their lands where practicable, instead of doing its best to preserve their small forests intact while it sought ultimately to acquire them for the park.

Maori did not disagree that protection forest should be preserved where truly necessary, but their view was that so much of their rohe was already tied up as national park lands that surely they must be allowed to mill and develop the remainder without risking significant erosion and flooding. By the 1970s, Tuhoe leaders were increasingly desperate as the timber industry based at Ruatahuna, Minginui, and Murupara looked likely to decline. This would remove the main source of employment in the inquiry district and leave local Maori communities with no economic prospects to fall back on if their land remained locked up from effective use. Also, it was not clear how much of that land was farmable even if cleared; Crown (formerly Maori) land elsewhere in their rohe began to seem the only viable solution.

Thirdly, public opinion pressed for Maori-owned forests to be preserved and added to the park, and opposed the controlled milling instituted by Corbett back in 1953. This resulted in most of the initiatives to acquire Maori land in the 1960s and 1970s. The park was more a beneficiary than a cause of these initiatives, although the two were inextricably linked. The park's establishment embodied and gave a specific shape to the Crown's forest preservation policies. Had the park not existed, for example, it is fairly certain that the millable parts of Manuoha and Paharakeke would have ended up in state forest after the Crown purchased these blocks in 1961, once the erosion-risk areas had been protected.

In the 1970s and early 1980s, Tuhoe leaders were so desperate for an economic base that they negotiated with the Crown to lease their lands to the park on a semi-permanent basis, or to exchange these lands for other lands in their rohe that could be used for farming or forestry. Ultimately the negotiations failed for several reasons: it was extremely difficult to match values and opportunities as between the land to be given up and the land to be obtained; Tuhoe were not convinced that they should relinquish their last pieces of ancestral land at all, even in exchange for land elsewhere in their rohe; and the Government no longer needed to acquire the land officially because the cessation of native logging meant that these lands were no longer 'at risk'. The park had so much influence over what its neighbours could do that, as the commissioner of Crown lands put it in 1984, 'when all is said and done' these lands were already 'virtual national park'.

The exception was Lake Waikaremoana, the jewel in the park's crown, and the 14 Ngati Ruapani reserves on its northern shores. There was a sustained and long-term campaign to acquire the lakebed and the reserves so as to secure the park authorities' control of the lake and its environs. This had nothing to do with risks of erosion or flooding. Having this land as only 'virtual' park was not enough to ensure public access and a 'pristine' lakefront. This was because the use of the lake for hydroelectricity had lowered the level to the point where the whole of the lake was bounded by a ring of newly exposed Maori land. Although they did not attempt to do so, the Maori owners could have prevented access to and use of the lake. Ultimately, the Maori owners' bargaining position was strong enough to prevent an outright sale and to insist on a lease and annual rental. Thus, the park enabled the lake's owners to

finally obtain an economic return on their 'asset' from 1971 (backdated to 1967). The Crown has now been paying rent for the lake's bed and margins for 45 years. But we agree with the claimants that the rent should have been backdated (at least) to 1954, to pay for the Crown's use of the lake in the national park from that date.

From 1954 to 1972, the Crown prevented the Ngati Ruapani owners of the lakeside reserves from making any economic use of their land, or even from living on it. There was a sustained campaign to purchase these reserves (a total of 607 acres), which were all that remained to Ngati Ruapani in the Waikaremoana block after the Urewera consolidation scheme. Under that scheme, the Crown had also acquired two of the four southern block reserves and had – in violation of promises – failed to secure Ngati Ruapani sufficient land to either the south or the north of the lake. Ruapani had tried in vain to get a modest increase in their northern reserves, and now they were prevented from using or living even on the small reserves that they had secured. So important were these last vestiges of their ancestral lands that the owners successfully resisted the Crown's pressure to sell. Ultimately, they were made into historic and scenic reservations in 1972 under section 439 of the Maori Affairs Act 1953; this confirmed their status as 'virtual park'. As far as we are aware, the owners still derive no economic benefit from these lands.

Fourthly, the park offered local people some economic opportunities that might otherwise not have existed, including tourism enterprises (on their own forested land and possibly also in the park), commercial pest-control, and permanent or casual paid employment in the park.

We agree with Professor Murton that the Crown's failure to build the promised roads (see chapter 14) has had a crucial influence on the numbers of tourists and the kind of tourism possible in the park. Nonetheless, safari or adventure tourism ought to be more of an opportunity than it is; lack of infrastructure and finance has kept even low-impact tourism ventures to a minimum, not helped by an overly restrictive stance on the part of the park authorities. As a result, commercial hunting and trapping for pest control is the main way in which local Maori derive some economic benefit from the park. This has been significantly affected in recent years by DOC's use of poison-based control even in accessible areas, where hunting and trapping would (in the view of the Conservation Authority) be as effective as poisons. The need to consider Maori interests in pest control policies has been made clear to park authorities but the outcomes were not clear to us.

Finally, the park itself offers opportunities for permanent and casual employment. Local Maori have mainly been casual employees, especially through welfare-funded schemes in the early 1980s. We lack evidence to assess the extent of the employment opportunities in the park, and whether local Maori have been able to take sufficient advantage of them. The evidence from DOC is that the make-up of its workforce does not currently 'fully reflect the local population'. In our view, taking into account the legacies of past Treaty breaches and the ways in which the park has constrained the economic opportunities available to local communities,

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there is justification for preferring local people where there are equivalent knowledge and skills, or – where there are not – making training available. In the past, a blind spot existed in terms of valuing Maori knowledge and skills; the 1986 Stokes, Milroy, and Melbourne report called for serious attention to the possibility of employing ‘local rangers’ or ‘native liaison officers’ as in the United States national parks. Despite cautious interest within Lands and Surveys, this option was not adopted. Today, DOC accepts that development opportunities must be devised so as to increase the representation of local Maori in its workforce.

Overall, the economic opportunities created by the park have not balanced the constraints its existence, and sometimes its philosophy and management, have placed on the Maori land inside or adjacent to its borders. More could be done to foster Maori tourism ventures, to protect Maori interests in pest-control policies, and to value local knowledge and expertise in employment.

16.6.1 Introduction

The sheer scale of Te Urewera National Park, and its configuration – abutting or enclosing much of the land Maori communities have retained in Te Urewera – means that ‘Maori self-determination and economic development is, to a considerable extent . . . a function of conservation authorities’ flexibility in managing the park and its commercial concessions.’²⁸⁵ For much of the postwar era, Tuhoe leaders were deeply concerned with trying to find some way to make their surviving ancestral lands a source of income – at first to support their communities and later to provide a viable tribal homeland for those who still lived in the area or chose to return.

The issue we address here is how Te Urewera National Park has affected the economic development of the Maori communities of Te Urewera, as they have sought to survive on their remaining lands. We consider whether and to what extent the park has restricted retention, development, and use of neighbouring Maori land. And we examine also whether it has provided the peoples of Te Urewera with an alternative means of livelihood, through commercial concessions or employment. In short, we ask: What sort of neighbour has the park been to the Maori communities of Te Urewera? In what ways has the park helped or hindered the peoples of Te Urewera in their efforts to survive on their turangawaewae? Has it created the ‘human erosion’ problem that the peoples of Te Urewera feared?

These are vital issues for the peoples of Te Urewera. When the park was formed in the 1950s, many communities were already in a precarious economic situation in terms of their lands. In the wake of the consolidation scheme they had retained about 25 per cent of their lands in the former Reserve, in the form of 180 small and increasingly uneconomic blocks

²⁸⁵ Brad Coombes, ‘Cultural Ecologies of Te Urewera II: Preserving “a great national playing area” – Conservation Conflicts and Contradictions in Te Urewera, 1954–2003’, report commissioned by the Crown Forestry Rental Trust, 2003 (doc A133), p 528

(see chapter 14).²⁸⁶ The owners of these blocks faced all the manifold difficulties of trying to develop multiply-owned Maori land, including the near impossibility of gaining development finance, and inherent problems with land administration. They were further handicapped by beginning from a particularly low economic base. They had only relatively small areas of land cleared for cropping, pasture, or dairying. The great bulk of their remaining land was densely forested, and most of this forest was remote and inaccessible hill country. As we shall see in chapter 18, Crown assistance with the development of Maori farming had begun in the 1930s, but there were only four farm schemes in the inquiry district and their scale was too limited – on their own – to secure Maori economic success on their remaining Te Urewera lands.

One key question facing Tuhoe was: would their remaining land be able to contribute in any meaningful way to their economic and cultural survival in Te Urewera? For that question, the constraints imposed by the existence of a national park, alongside the perception that Maori land was needed to prevent erosion and flooding just as much as land actually owned by the Crown, was very important.

It is important to establish from the outset that since the park's creation, the majority of communities in and around it have suffered from endemic and long-term relative deprivation. That is, a pattern of low income levels, high unemployment, and poor quality housing and health has persisted since the 1950s in most of these communities relative to the rest of New Zealand, including most Maori.²⁸⁷

To continue living in Te Urewera and to improve their circumstances, the peoples of Te Urewera could certainly ill afford to lose any more land, and would, rather, need assistance with extensive land development. It was axiomatic that any such development would be predicated on milling timber, both as a source of finance and to clear a larger base of farmable land (or, alternatively, for new crops of exotic forests). The peoples of Te Urewera would also need the park itself to provide them with economic opportunities, through tourism and employment.

We note, however, that land – and forestry on Maori-owned land – was not the only economic opportunity for the Maori communities of Te Urewera at the time the park was established. The majority of Maori communities beside or inside the park missed out on the major economic development that occurred in inland Eastern Bay of Plenty, including the south-west area of our inquiry district, from the 1940s onwards. Major government and private investment in the forestry industry, centred on the Kaingaroa forest, led to the Forest Service establishing Minginui village in the late 1940s, and the blossoming of Murupara as a centre for logging operations during the 1950s and 1960s. These 'timber towns' on the south-western fringe of Te Urewera National Park offered stable employment and relatively good income, quality housing, good quality services and other benefits to hundreds of

286. In addition to these 180 blocks, there were 27 small reserves totalling 95 acres.

287. See Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 36, 1069–1222, 1673–1721, 1943–2075.

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Maori from Te Urewera.²⁸⁸ Yet, major economic investment did not occur in the rest of Te Urewera (dominated as it was by a national park), and few benefits spread to other communities outside the timber towns. As the timber towns grew, Tuhoe communities near to the park such as Ruatoki, Waimana, Ruatahuna and Waiohau either stagnated or experienced rapid depopulation during the 1950s, 1960s, and 1970s. Many Tuhoe moved to these towns and beyond largely in search of employment.²⁸⁹

The above Tuhoe communities were often the ones who were most dependent on the park's resources for supplementing food supply and income. While they had retained some land suitable for farming, the land could not support a large population as it was either fragmented into small uneconomic parcels, or, as we have noted, held in largely unsuccessful farm development schemes. The outward migration was compounded by the closure of private industries in Ruatoki and Ruatahuna during the 1960s and 1970s, which had provided important sources of employment.²⁹⁰

By about the mid-1970s, the forestry industry in Te Urewera began to decline, and by the late 1970s there was much discussion about the future of that industry.²⁹¹ In the mid to late 1980s, the cessation of native logging and corporatisation, together with associated restructuring of government departments, contributed to a stark socio-economic crisis in Te Urewera. The timber industry in the south-west of our inquiry district rapidly contracted and then virtually disappeared. Many Maori lost jobs, including those made redundant by the restructuring of the electricity industry in Waikaremoana. The towns of Murupara and Minginui rapidly declined, and have remained in dire poverty since.²⁹² Despite decades' worth of efforts to solve the land problem – too little land, too little usable land, and too little land that they were actually allowed to make use of – Tuhoe leaders could not offer a viable land-based solution for their people to fall back upon. Today, the highly vulnerable communities of Te Urewera are among some of the most deprived in New Zealand. Yet, it is these communities which must provide the tribal base if Tuhoe people are to survive as Tuhoe.

288. See for instance Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 481–564; Heather Bassett and Richard Kay, 'Ngati Manawa and the Crown, c 1927–2003', report commissioned by the Crown Forestry Rental Trust, 2004 (doc C13), pp 57–117

289. For a broad overview of this migration, see Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 1045–1222.

290. Steven Oliver, 'Ruatoki Block Report', report commissioned by the Waitangi Tribunal, 2004 (doc A6), p 199; Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 409

291. See for example Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 631–701; Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 1147–1161.

292. Hutton and Neumann, 'Ngati Whare and the Crown' (doc A28), pp 701–780; Bassett and Kay, 'Ngati Manawa and the Crown' (doc C13), pp 173–224; Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 558–567; Kararaina Rangihau, 'Waikaremoana Housing Project: Community Profile October 2003', p 7 (appendix to Kararaina Rangihau, brief of evidence, 18 October 2004 (doc H43); G G Natusch, *Power from Waikaremoana: A History of Waikaremoana Hydro-Electric Power Development* (Tuai: Electrocorp, 1992), p 74

We shall discuss the timber industry and related socio-economic matters later in the report. Its relevance here is that, to an extent, it cushioned the impact of the under-development of Maori land (whether for forestry or farming) until the 1970s. That is an important context to keep in mind throughout this section of the chapter.

In this section, we consider how and to what extent Crown policies in respect of the park have affected the economic opportunities available to the Maori communities living inside or adjacent to it. We have structured our analysis around the following two key questions:

- ▶ How did the Crown try to influence the use and development of Maori land adjacent to Te Urewera National Park?
- ▶ What economic opportunities has the park afforded the peoples of Te Urewera?

16.6.2 How did the Crown try to influence the use and development of Maori land adjacent to Te Urewera National Park?

(1) Introduction: The acquisitive park?

The configuration of Te Urewera National Park in 1957 meant that it enclosed or abutted some 133,298 acres of Maori land.²⁹³ It also encircled Lake Waikaremoana, which Crown officials always considered the centre-piece of the region. The Crown well knew that the presence of Maori communities living in and around a national park in Te Urewera would pose it ‘problems of administration.’²⁹⁴ As we have seen, the Crown only expanded the park to surround so much Maori land because it believed that it would ultimately acquire the land.

The presence of the park intensified the conflict between the Crown’s wish to protect native forest throughout the region, and the need of the peoples of Te Urewera to gain a livelihood from their remaining land. Ministers and senior officials were well aware of their conflicting obligations, including the obligation actively to protect the people of Te Urewera in the possession of their ancestral lands. In April 1950, Tipi Ropiha, the head of the Maori Affairs Department, described the problem very clearly to his Minister, Ernest Corbett, who was also responsible for the other relevant portfolios (Lands and Forests):

293. This figure comprised: the Tuhoe lands later amalgamated into Te Pae o Tuhoe (21,225 acres), Te Manawa o Tuhoe (22,549 acres), Tuhoe Kaaku (4722 acres), and Tuhoe Tuawhenua (39,741 acres); the Maungapohatu blocks (6529 acres); the Waikaremoana reserves (607 acres), and Manuoha (19,672 acres) and Paharakeke (18,253 acres). Officials commonly counted only the Tuhoe amalgamated lands in such calculations, for example: B Briffault, Maori Division, file note to Department of Lands and Survey, 26 August 1980 (Brent Parker, comp, ‘List of Documents – Compensation for Restrictions placed on Milling of Native Timber in the Urewera’, various dates (doc M27(b)), p507).

294. National Parks Authority, minutes of inaugural meeting, 15 April 1953 (SKL Campbell, comp, supporting papers to ‘Te Urewera National Park 1952–75’, various dates (doc A60(a)), p 83); Under-Secretary of Lands to Minister of Lands, 24 February 1936 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p45)

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In most cases, the land and timber represents the sole wealth of these people and if these are to be 'frozen' as it were, it seems clear that they are being indefinitely deprived of the ordinary rights of private ownership. The people of the Urewera in particular, are growing fast in numbers and are looking about them for means of providing avenues of employment for their younger people and for the means of providing reasonable housing conditions and a higher standard of living.

If, for the benefit of the community generally, these people are not to be permitted to sell their timber privately, it seems only reasonable that the community generally should recompense them for their loss – in other words the Crown should buy the land and timber. This is not, however, the whole story. The sale of these lands would leave the present owners virtually landless: a state of affairs which the body of Maori land legislation is designed to prevent and which it has always been considered a special duty of this Department to avert.

Certainly a large proportion of the land in the Urewera is unlikely ever to be of much use from a farming or pasture point of view, but a certain amount is considered to be reasonably workable.

The problem is one of conflicting interests and objects and no clear-cut solution presents itself. It is possible, however, that some compromise could be reached as between the interests of the Maori owners and residents and the soil conservation and scenic requirements. I consider that the treatment of the forest in the district should be studied and planned as a whole with a view to reconciling these two aspects.²⁹⁵

In this section, we examine the Crown's part in attempts to negotiate solutions to the dilemma that Ropiha set out so clearly. In particular we examine how and why the Crown remained so long wedded to its preferred policy solution: acquiring the remaining Maori land in Te Urewera in order to add it to the park. Crown officials and the park's management (first the Commissioner of Crown Lands for South Auckland, and then the Urewera National Park Board) often tried to acquire Maori land to add to the park, and did not desist until the end of the 1970s. Yet, as the Crown has pointed out, their efforts were largely unsuccessful (although with two important exceptions). We also examine the various other ways in which Crown officials and the park's management attempted to restrict the use and development of adjacent Maori land. We place particular emphasis on Crown efforts to incorporate Lake Waikaremoana and the Maori reserves surrounding the lake into the park after the event (they were included as 'virtual park' from 1954).

295. T T Ropiha, Under-Secretary for Maori Affairs, to Ernest Corbett, Minister of Maori Affairs, 28 April 1950 (Brian Murton, supporting papers to 'The Crown and the Peoples of Te Urewera: The Economic and Social Experience of Te Urewera Maori, 1860–2000', various dates (doc H12(a)(H)), p 135)

‘THE SECOND ‘embrace’ of the Crown is Te Mowai Whenua. In this period of about 1930 to 1980, it is the Crown actively spinning a web of policies designed to protect the Urewera for the purposes of others, and to relocate the people of the Urewera elsewhere. The people of Ruatahuna wanted development to underpin an economy for the benefit of their families and future generations. Instead at first they were given menial jobs for unemployment relief. Then they were asked by the Crown to make sacrifices – not to cut their timber, and not to develop their land. They made these sacrifices believing that they would receive fair compensation for what they had forsaken, but the Crown was more interested in just acquiring virtually all the lands that Tuhoë had left in the Urewera so it could protect that too forever. By the end of Te Mowai Whenua, the people were leaving Ruatahuna, for work and for the services and the assistance denied those who remained. The second embrace of the Crown left Te Manawa o Te Ika at its lowest ebb. Ruatahuna had been all but abandoned.’

—Tuawhenua Research Team, ‘Ruatahuna: Te Manawa o Te Ika, Part 2: A History of the Mana of Ruatahuna from the Urewera District Native Reserve Act 1896 to the 1980s’, 2004 (doc D2), p iii

(2) *Continuing Crown attempts to acquire ‘Maori enclaves’ and borderlands*

Following the park’s expansion in 1957, Crown officials and the park’s management made no secret of their intention to acquire more Maori land in Te Urewera to add to the park. Indeed, until the mid-1970s, at least, officials almost universally thought it was only logical, obvious, and inevitable that most of the remaining Maori land in Te Urewera should become part of the park.²⁹⁶ Tipi Ropiha retired as Under-Secretary for Maori Affairs in 1957. After his departure, there is little evidence that Maori Affairs promoted his view that the Crown must balance the needs of soil conservation and scenery preservation against the need to assist Maori to retain their last pieces of ancestral land. Throughout this period, no arm of government considered it feasible that the peoples of Te Urewera could remain on lands surrounded by a national park. In Crown officials’ minds, the question was when, not if, they would relinquish their lands to the park.²⁹⁷ As we shall see, the two things which

296. Under-Secretary for Maori and Island Affairs to Secretary, Urewera National Park Board, 15 December 1969 (Bassett and Kay, supporting papers to ‘Ruatahuna: Land Ownership and Administration’ (doc A20(b)), p 24; Director, Forest Management, to Deputy Director-General of Forests, 15 October 1970 (SKL Campbell, comp, supporting papers to ‘Te Urewera National Park, 1952–75’, various dates (doc A60(b)), pp 207–208); Turley, Commissioner of Crown Lands, to Director-General of Lands, 15 March 1971 (Murton, supporting papers to ‘The Crown and the Peoples of Te Urewera’ (doc H12(a)(H)), p 139; Director-General of Lands to Minister of Lands, 18 September 1972 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(b)), p 231

297. Coombes, ‘Cultural Ecologies II’ (doc A133), p 24

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above all others stymied the ‘acquisitive park’ was a lack of funds with which to follow through on this pervasive goal, and steadfast Maori resistance to it.

In many respects, there was simply a continuation of Crown policy since the mid-1930s. That is, the Crown saw acquiring Maori land as the best solution to the moral dilemma posed by insisting on forest preservation in Te Urewera (apart from in the Whirinaki valley). Since forest preservation was perceived as fundamentally incompatible with the presence of the peoples of Te Urewera, they would have to be helped to live elsewhere.

We will discuss the full ramifications of the Crown’s milling restrictions for the peoples of Te Urewera in chapter 18. Our specific interest here is in analysing the extent to which the two policies (forest protection and Crown acquisition of Maori land) overlapped. How was the Crown’s wish to protect forest on Maori land affected by the presence of the park?

Before we address this question, we need to examine briefly the respective roles played by the Crown and the statutory bodies involved in the park’s management in trying to acquire Maori land to add to the park, or to otherwise restrict Maori communities in the use and development of their land. We remind the reader that our jurisdiction is limited to evaluating the Treaty consistency of legislation and of the policy, conduct and omissions of the Crown. Crown efforts to acquire Maori land, in particular, often involved negotiations between the peoples of Te Urewera and the highest levels of government, namely ministers of the Crown and senior officials. But the National Parks Authority was involved in an advisory role, and the park’s management also played a part on the ground, and much of the evidence before us focused on their activities in trying to control Maori land use and development. The Commissioner of Crown Lands for South Auckland, an important Crown official, managed and administered the park in its formative years. But, between 1962 and 1981, the Urewera National Park Board carried out those functions. It is our view that neither the National Parks Authority nor the park board are ‘the Crown’ for the purposes of our jurisdiction (see sidebar). This means that our examination here is focused on relevant legislation and on the policies, acts, and omissions of government officers – notably ministers and senior public servants – who are, without doubt, ‘the Crown’.

The purposes and principles of the National Parks Act 1952 emphasised the importance of park landscapes and their native flora and fauna being preserved in perpetuity (see Key Facts, 16.3). Consistent with that emphasis, the functions of the National Parks Authority included recommending to the Minister how to protect and improve existing parks. Thus, it was empowered:

- ▶ to advocate and adopt schemes for the protection of national parks,
- ▶ to recommend to the Minister the enlargement of existing parks,
- ▶ to recommend how to allocate moneys appropriated by Parliament for the maintenance and improvement of national parks, and

An Issue of Jurisdiction

The jurisdiction of the Waitangi Tribunal is to examine for their consistency with Treaty principles any New Zealand laws made on or after 6 February 1840, and any policies, practices, acts, or omissions of 'the Crown' that have been made or have occurred on or after that same date (Treaty of Waitangi Act 1975, s 6). Counsel for the Wai 36 Tuhoe claimants asserted that the park board was 'the Crown' (counsel for Wai 36 Tuhoe, closing submissions (doc N8), p 3). If that is correct, it would render the park board's decisions and practices subject to our assessment of their Treaty consistency.

We do not agree that the park board is properly regarded as a part of the Crown. The primary legal test for determining whether a particular entity is the Crown is the control test, which focuses on the nature and degree of control that the Crown or government has over the entity.¹ Our account in the Key Facts section of this chapter reveals that the park board was a statutory body whose membership, while chaired by the local Commissioner of Crown Lands, included a majority of non-government employees. Its functions and powers, defined in the National Parks Act 1952, required it to give effect to that Act as well as to General Policies announced by the National Parks Authority. There were some prescriptive requirements in the law and in those policies, binding the park board to particular courses of action, but in many situations the park board had considerable discretion to decide what, exactly, should happen in Te Urewera National Park. Sometimes the approval of the National Parks Authority was needed before a park board's decision took effect. But, in our view, the park board was not subject to the direction or control of any minister or any other Crown officer or body such as would be necessary for it to be regarded as a part of, or acting as an agent of, the Crown.

Counsel for the Wai 36 Tuhoe claimants did not assert that the National Parks Authority was part of the Crown but we have considered that matter too. In particular, we note the words of section 7 of the National Parks Act 1952 that, in carrying out its role, the Authority was to 'have regard to' any representations the Minister of Lands made to it in writing to give effect to any Government decision. Could those words have given the Crown such a degree of control over the Authority as to make it part of the Crown? Our answer is no. We note, in support, that when the National Parks Act 1952 was repealed and replaced in 1980, the minister sought (unsuccessfully) to have the words changed so that the Authority would be required 'to give effect to' government policy.² In other words, the minister himself considered that the requirement that the Authority 'have regard to' his representations did not bind the Authority to comply with those representations.

It is our view that, on a strict legal analysis, the requirement that the National Parks Authority 'have regard to' ministerial representations left it free from government control, so that it was not part of the Crown but was an independent statutory body. While the fact that a majority of its members were very senior Crown officers could give rise to questions about the extent to which the Authority was truly independent of Crown influence, we note that those officers were from departments with very different purposes, which would lessen any risk that they would adopt and press for a single

Government 'line'. Also, the influence of the non-public servant members, representing the three interest groups and the park boards, cannot be overlooked.

The result is that our examination in this chapter does not consider the Treaty consistency or otherwise of the policies and practices, acts and omissions of the park board or the National Parks Authority (or their successors). Instead it is focused on the consistency with Treaty principle of, first, the legislation that governs New Zealand's national parks and, secondly, various relevant policies, practices, acts, and omissions of Crown officers – most notably, ministers of the Crown and departmental officers when they are clearly acting as such in their dealings with Te Urewera National Park.

1. For a discussion of the law governing the issue, see Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (Wellington: Legislation Direct, 2008), pp 870–886.
2. Edwards, 'Selected Issues: Te Urewera National Park' (doc L12), p 26

- to recommend the acquisition by the Crown of any private land for the purposes of improving a national park.²⁹⁸

The 1978 General Policy was the first to refer to land adjacent to national parks.²⁹⁹ It provided that:

Where possible, the use of areas adjacent to national parks will be influenced so that there is no detrimental effect on ecosystems within a park and park values are not destroyed or dominated. It may be desirable for land adjacent to a park to be placed under some other type of reservation and managed and controlled by the park board. Where adjacent land is considered an essential addition but cannot yet be purchased, it may be designated for proposed national park, to give some measure of protection.

Co-operation and good working relationships will be sought with planning authorities and other public agencies, organisations, and individuals to seek their co-operation in maintaining the quality of the environment surrounding a national park.³⁰⁰

Crown historian Cecilia Edwards has summarised that policy as identifying three appropriate methods for influencing the use of adjacent land so as to protect a national park:

298. National Parks Act 1952, ss 6(a)-(c), 13

299. The 1964 General Policy did state that the Authority's policy on recommending the acquisition of land for a new park was to consider five factors, one of which was the availability of fund for the purpose. See National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1964), p 4 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1251).

300. National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1978), p 3.6 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1265)

acquiring the land; 'seeking the cooperation of the land owner to manage these adjacent lands in a compatible manner'; and 'seeking the cooperation of local authorities'.³⁰¹ The bottom line, as National Parks Authority policy stated, was that 'no undesirable development is undertaken on land adjoining National Parks'.³⁰²

That policy was clearly 'owned' by the Department and Minister of Lands and Survey. In 1977, the year before the General Policy was published, the department had issued a manual to its staff on the subject of identifying and assessing potential areas for new parks and additions to existing parks. It stated there that while the management and control of the National Parks Authority and park boards might be confined to parks, 'preservation and protection must begin further afield. Both bodies must necessarily interest themselves in the areas immediately adjacent to the park'.³⁰³ As well, when it came to purchasing land to add to a park, the roles of the department and minister were critical, because they held the Government's purse strings. That purse was not large, however. In the ordinary course of events, the department had a limited annual budget, of perhaps only a few thousand pounds (and later typically a few tens of thousands of dollars) with which to buy land for all New Zealand's national parks.³⁰⁴

Those matters provide essential context for the efforts made by the various entities – the park board, the National Parks Authority, officers of the Department of Lands and Survey, and the minister – that were involved in the attempts made to purchase Maori land for addition to Te Urewera National Park. As we will see, the park board often initiated negotiations with individual land owners. But it had no role in actually buying land.³⁰⁵ The park board's key role was rather to identify for the National Parks Authority which areas of Maori land the Crown should buy.³⁰⁶ The Authority might then in turn recommend that the Minister of Lands acquire the land. No land could be added to a national park without this recommendation.³⁰⁷

The evident enthusiasm of local Crown officials and some park board members for buying large areas of Maori land must therefore be seen in that context. The park board had no power to buy land. The Department of Lands and Survey did have that power but had a very limited budget for buying land for national parks. In the ordinary course of events then, Crown officials simply could not fulfil the policy of acquiring the remaining Maori land in

301. Edwards, 'Selected Issues' (doc L12), p 87

302. Chairman, National Parks Authority, to all national park board chairmen, 'Use of land adjoining National Parks', 22 August 1977 (Coombes, 'Cultural Ecologies II' (doc A133), p 78)

303. Department of Lands and Survey: Assessment and Identification of Potential Areas for National Parks, July 1977 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 96)

304. The annual budget allocations are tabulated in Edwards, 'Selected Issues' (doc L12), pp 115–116.

305. See, for example, B Briffault, Note for File: 'Tuhoe Maori Lands – Combined Committee', Department of Lands and Survey, 26 August 1980 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(H)), p 136; Coombes, 'Cultural Ecologies II' (doc A133), p 31.

306. Coombes, 'Cultural Ecologies II' (doc A133), pp 25–62; Campbell, 'Te Urewera National Park' (doc A60), pp 89–90, 94; Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 438

307. Campbell, 'Te Urewera National Park' (doc A60), p 43

and around Te Urewera National Park. Instead, this policy was only successful whenever the political will arose to find sufficient funds for the negotiation of specific purchases. As we have seen, Corbett had succeeded in having Cabinet set aside £300,000 to buy Maori land in Te Urewera, but his plans lapsed. The political will to buy Maori land in Te Urewera to add to the park remained, however, and was given fresh impetus after public concern arose in the late 1950s that milling on Maori land might cause flooding and erosion. The Crown responded by imposing new milling restrictions and by negotiating the last major purchase of Maori land in Te Urewera.³⁰⁸

In sum, we are satisfied that whenever the Te Urewera park board, or the National Parks Authority, or their successors attempted to influence the use and development of adjacent Maori land by trying to have the Crown acquire that land, or to restrict its use and development by seeking the cooperation of landowners or local authorities, they were working to the clear direction of legislation and Crown policy.

(a) *Overlapping policies – milling restrictions and attempts to expand the park:* As the park proposal took final shape between 1953 and 1957, milling on Maori land also gathered momentum. The first grants to sawmillers of cutting rights to forest on Maori land under Corbett's compromise solution were confirmed in 1955. Four years later Minister of Forests Eruera Tirikatene pointed out to the peoples of Te Urewera assembled at Ruatoki that they had sold cutting rights to the forest on some 69,000 acres. This included nearly all of the easily accessible timber on Maori land in Te Urewera.³⁰⁹ As we saw in the preceding section, this was only possible because of Corbett's acceptance that New Zealand governments could not – in all conscience – keep preventing the milling of land decade after decade, if Maori were not willing to sell it. Thus, the creation of the park did not have the effect of preventing this burst of milling activity in Te Urewera (which, consents having been given, continued into the 1960s and 1970s). Rather, it may well have facilitated it once Corbett's work to create a national park revealed the nature and extent of Tuho's problem to him in 1953. In any case, the establishment of the park in 1954 coincided with the creation of the Urewera Land Use committee, the classification of Maori-owned land for controlled milling, and an unprecedented Crown liberality in agreeing to milling. Corbett had the contradictory hope that much of this land would nonetheless still be sold or exchanged for the park, especially after he secured its massive expansion in 1957.

In 1958, following the park's expansion, Maori landowners suddenly found themselves owning large areas of forest adjacent to or even inside the park, most notably: some 38,000 acres on the Manuoha and Paharakeke blocks in the Wairoa River catchment; some 22,800

308. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 205–206

309. Eruera T Tirikatene, *Urewera: Facts and Figures of the Urewera Maori Lands in Relation to the Four Catchment Areas, National Parks and State Forests, Delivered by the Honourable ET Tirikatene, Minister of Forests, at Ruatoki, 22/11/59* (Wellington: New Zealand Forest Service, 1959) (Tama Nikora, 'Te Urewera Lands and Title Improvement Schemes', 2004 (doc G19), app C, p 95, pp 107–118)

acres on the Whakatane River blocks above Ruatoki; 4722 acres on the Waimana River blocks, and some 6529 acres at Maungapohatu.³¹⁰ Furthermore, the park almost completely encircled almost 40,000 acres around Ruatahuna, including around 24,275 acres of forest on steeper slopes which the land use committee had deemed unsuitable for milling.³¹¹ How was the Crown's wish to protect this forest affected by the presence of the park?

As we saw earlier, when Corbett persuaded Cabinet to place all the Crown land in Te Urewera into the national park in August 1957, he hoped this was the way to overcome Maori owners' reluctance to sell their lands.³¹² Initially, Corbett's plan seemed sound: after Crown officials again reassured Tuhoe assembled at Ruatoki in November 1957 that the entire Crown award was to become national park, Sonny White suggested that this would 'quieten the doubts of the people about the Crown's intentions' so that purchase offers 'would be listened to in a better spirit'.³¹³

However, the Crown still made no headway in purchasing Tuhoe land around Ruatahuna for the park. As we have seen, Tuhoe had cooperated with Corbett's compromise on the understanding they would be offered land exchanges. They were much less willing to sell land.³¹⁴ As the Tuawhenua researchers explained, this was:

Te Manawa o Te Ika, this was Te Kohanga o Tuhoe. They didn't want to sell it in 1919 and they didn't want to sell it in 1955.³¹⁵

Negotiations soon lapsed, seemingly once both parties realised that the Crown's funds were quite insufficient to match the prices that sawmillers could offer for timber.³¹⁶

In the years that followed, officials continued consistently to advocate adding the Maori land and forests of Te Urewera to the park. Key lobby groups such as Forest and Bird vigorously promoted this policy, and it was supported also by the Whakatane County Council.³¹⁷ The political will to enact the policy remained intact at the highest levels for some time too.

310. Conservator of Forests, Rotorua, to Director-General of Forests, 14 February 1972 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(b)), p 215); Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19, app C), p 118

311. The original amount of C-class land on the Ruatahuna blocks from which only marked trees could be taken was 26,732 acres. Despite various difficulties there is convincing evidence that the system was largely adhered to, since in 1972 the amount of millable timber remaining in the Ruatahuna district was estimated at 108 million board feet, only 10 per cent less than the estimate for the amount on 'C' class land 15 years earlier. See Conservator of Forests, to Director-General, New Zealand Forest Service, 14 February 1972 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(b)), p 215); Minister of Lands to all members of Cabinet, 24 June 1955 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 126).

312. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 143

313. 'Report of Meeting at Ruatoki on 6 November 1957 to discuss settlement of the Urewera Roding Petition' (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 164)

314. Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 349-350

315. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 349

316. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 143; Campbell, 'Te Urewera National Park' (doc A60), p 72; Director-General of Forests to Conservator of Forests, 6 November 1957 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 142)

317. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 140-144

Prime Minister Walter Nash, for instance, in 1959 reiterated to Tuhoe the Crown's willingness to purchase for the park all B- and C-class lands.³¹⁸ (B-class land was suitable for milling but not for farming afterwards, and C-class land was not considered safe or suitable for milling.)

(b) Milling at Maungapohatu: During the late 1950s, the issue of milling on Maori land in Te Urewera erupted into the public consciousness. The public was concerned in particular by news in 1958, a year in which the Rangitaiki Plains had experienced severe floods,³¹⁹ of a proposal by the Bayten Timber Company to cut a road right through the national park in Te Urewera and mill some 2000 acres of forest on Maori land at Maungapohatu. The attempt to develop Maori land deep within the park is important because the public reaction to it prompted the Crown to place a new blanket form of restriction on milling in Te Urewera, and to purchase the Manuoha and Paharakeke blocks to add to the national park. But even though the Maungapohatu land was milled, its owners did not succeed in salvaging an economic future for their land and their community.

In agreeing to milling, the Tuhoe people of Maungapohatu were attempting to seize a priceless opportunity to at long last return to redevelop their lands, once home to the community founded by the charismatic leader Rua Kenana in the early twentieth century. Rua and his followers had cleared some 2000 acres and ran around 5000 sheep and cattle at Maungapohatu.³²⁰ As we discuss in a subsequent chapter, after the disruptions of his arrest and imprisonment, Rua persuaded his people to rebuild their community at the mountain in 1927. Like other Tuhoe, he anticipated that the Crown would fulfil its commitment to build an arterial road between Waimana and Maungapohatu. As we saw in chapter 14, the peoples of Te Urewera parted with approximately 40,000 acres to the Crown in payment for this and one other arterial road, neither of which the Crown ever completed.³²¹ While the Maungapohatu community survived 'more or less intact' until 1931, the Crown's failure to honour its commitments was a crucial factor in the inexorable decline of the community.³²² However, a few families stubbornly remained on the land until the 1980s at least; indeed, the last permanent resident passed away just a few months before we arrived in February 2005.³²³ The Maungapohatu lands also remained a site of regular pilgrimage, for

318. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 177, 230

319. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 151, 154–157

320. Jonathan Easthope, 'A History of the Maungapohatu and Tauranga Blocks as defined by the First Urewera Commission', report commissioned by the Crown Forestry Rental Trust, 2002 (doc A23), pp 150, 231–232

321. Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 192, 219; Judith Binney, Gillian Chapman, and Craig Wallace, *Mihaia: The Prophet Rua Kenana and His Community at Maungapohatu* (Auckland: Auckland University Press and Bridget Williams Books, 1996) (doc A112), p 156

322. Binney, Chapman, and Wallace, *Mihaia* (doc A112), p 116; Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 192–194

323. There were three families resident in the early 1960s. See Campbell, 'Te Urewera National Park' (doc A60), pp 139–140. The 1971 census records 13 people resident at Maungapohatu, and the 1981 census records four people.

The owners of the Maungapohatu lands resolved in 1962 to set aside royalties from the sale of timber to form a capital fund to support land development. Quoting the minutes of their meeting, it was recorded that they:

spoke of the days a generation ago when the whole Maungapohatu Valley was thickly populated in a number of villages . . . and how due to the fact that the promised roading was never put through nearly all except a few families had drifted away to other places and soon there would 'only be the lonely mountain with the kereru . . . for company'. Others . . . spoke of the fertility and potential of the valley where the grass sown in the time of Rua was still doing well and so were cattle and sheep that were running there. Some of the owners . . . said that over the years the Maori land in the Urewera had been almost entirely alienated and the only way to hold this valley was to farm it. Now is the time, the tide is full, money is coming in and the road is partly constructed.¹

1. Minutes of a meeting of assembled owners, Maungapohatu Block, at Rewarewa Pa, Ruatoki, on 27 January 1962, 31 January 1962 (Neumann 'That No Timber Whatsoever be Removed' (doc A10), p 197)

their owners, for Tuhoe generally, and for followers of Rua's teachings. But Maungapohatu was now marooned deep in the national park.³²⁴

The owners of the Maungapohatu lands tried very hard to ensure they capitalised on the chance to return home which the milling agreement offered them. They knew that, as Judge Prichard of the Maori Land Court impressed upon them, this was 'a harvest which falls due not in every lifetime but in every thousand years'.³²⁵

The key to the agreement that the owners forged was the timber companies' promise to do what the Crown had failed to do in the 1920s: build roads from Ruatahuna to Maungapohatu, where they would erect a mill, and then from Maungapohatu to the Waimana Road.³²⁶

The milling proposal faced many hurdles. The Maori Land Court understandably took a cautious approach, and delayed matters till 1962 until convinced that the owners would receive fair prices for their timber, and could form an incorporation which would have reasonable prospects of successful land development.³²⁷

324. Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 221, 227

325. Prichard decision, Rotorua Maori Land Court, 10 January 1958 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 155)

326. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), pp 33-34; Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 154-156

327. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 155-156, 197-198

Meanwhile, officials' inspections determined that the timber company could cut the promised roads without causing excessive erosion, after which the National Parks Authority agreed to their construction, and in 1958 the Crown granted the company a 21-year easement to use the road.³²⁸

Crown officials expected that the Whakatane County Council would eventually take over responsibility for the road.³²⁹ In a cruel irony, the council refused to do so until the provisions of the Urewera Lands Act 1921–22 were repealed and the lands became rateable; yet these lands had been exempted from rates largely because there were no roads to access them.³³⁰ Claims about rating will be addressed in a later chapter. Here, we note that central government officials and the council agreed that for the moment the road should remain private.³³¹ Since long term use was still expected, the company paid a levy to the Commissioner of Crown Lands (then the park's administrator), to fund ongoing road maintenance once logging ceased.³³²

The milling proposal also needed consent from the Minister of Forests, now the Member for Southern Maori, Eruera Tirikatene. But Tirikatene disliked the land use classification system used at Ruatahuna which his officials recommended, as it involved time-consuming land inspections and line cutting, and required him moreover 'to impose on the Maori owners restrictions that could not be imposed on other private land owners.'³³³ Finally, as Tirikatene shrewdly realised, the Government's reluctance to provide compensation in a form acceptable to the owners meant they either had to sell their lands, or were forced 'to act, as it were, as a non-paid banker for the State.'³³⁴

Tirikatene eventually agreed to give consent to the Maungapohatu application in April 1959, on condition that 'safeguarding legislation in respect to soil erosion and water conservation be brought down' later that year, which could then be applied to all landowners and not just Maori.³³⁵ Meanwhile the Minister developed a new form of consent that allowed him to impose restrictions as and when it was found that milling was likely to have adverse

328. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 32; Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), p 251

329. Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), p 231

330. Bassett and Kay, 'Ruatahuna Land Ownership and Administration' (doc A20), pp 320–321

331. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 32; Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp 231–233

332. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 35

333. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 158–159

334. Tirikatene to Director of Forestry, 1 October 1958 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 158–159)

335. Tirikatene, 'Consent to the sale of Maori owned timber – Maungapohatu Blocks', undated, ca 1 April 1959 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 159)

effects.³³⁶ This was the form of consent first issued for milling on five Maungapohatu blocks in June 1959.³³⁷

Under that consent, milling on the Maungapohatu blocks occurred between 1962 and 1976 without causing any particular erosion problems.³³⁸ The Bayten Timber Company built the promised logging road from Ruatahuna, and to celebrate its opening in 1964 more than 1500 people travelled along it to Maungapohatu.³³⁹ But the company failed to fulfil its other key promises to the people: the road had proven so expensive that the owners had to agree to forego the further obligation to connect Maungapohatu to the Waimana Road, and the company also failed to build a mill at Maungapohatu.³⁴⁰ Instead, in 1965 the company transferred its cutting rights to the C & A Odlin Timber and Hardware Company Limited.³⁴¹

The logging road allowed the Maungapohatu Incorporation to farm the land originally cleared by Rua's community. However, as Aubrey Temara emphasised to us:

The farm has had a very unhappy existence. It has suffered immensely due to a range of reasons for substantial parts of its uneconomical lifetime. Given its location, the size and capital structure of the farm, it was always going to struggle.³⁴²

The Incorporation's efforts were not helped by the attitude of the park board. It opposed, for example, attempts to diversify into deer farming in the 1970s because of the possibility deer would re-enter the park. These attempts ultimately foundered anyway in the face of the Incorporation's ongoing financial difficulties, which forced it to lease the farm to a local Tuhoe farmer.³⁴³ However, according to Aubrey Temara, it was the park board's subsequent failure to maintain the road to Maungapohatu, after logging wound up and the road easement expired in 1979, that sounded the 'death knell of the farm'.³⁴⁴ He commented: 'There is only one thing worse than no access into land screaming for development and that is developed land whose access has been cut off'.³⁴⁵

The park board refused to maintain the road from Ruatahuna, despite acknowledging that it had inherited accumulated royalties of almost \$20,000 imposed for the sole purpose of maintaining the road once logging ceased, and despite Tuhoe making it very clear they

336. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp156, 160–161; Campbell, 'Te Urewera National Park' (doc A60), p76

337. Tirikatene, *Urewera: Facts and Figures of the Urewera Maori Lands*, p13 (Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), app C, p104)

338. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p198

339. See <http://www.nzhistory.net.nz/page/opening-first-road-maungapohatu>, accessed 9 July 2012.

340. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p198; Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p38

341. Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), pp238, 251

342. Aubrey Temara, brief of evidence, 16 February 2005 (doc K15), p5

343. Aubrey Temara, brief of evidence (doc K15), p6; Coombes, 'Cultural Ecologies II' (doc A133), p74

344. Aubrey Temara, brief of evidence (doc K15), p7

345. Aubrey Temara, brief of evidence (doc K15), p7

still desired fully formed legal road access.³⁴⁶ Instead, as Tama Nikora put it, the park board ‘appropriated’ the royalties.³⁴⁷ The board argued that neither it nor the Crown bore any legal obligations to maintain the road – or even to use the money for its intended purpose, which it argued had been misconceived, since ‘little real thought’ had been given to what would happen on the land once the logging rights expired.³⁴⁸ But the board thereby showed its ignorance of the entire basis upon which the Maori owners had agreed to milling in the first place: that the road would allow them to use and develop their land. The consequence of the road falling into a terrible state of disrepair was, Aubrey Temara suggests, that:

stock management deteriorated when fences fell into disrepair, pastures regressed, fertilization was non-existent (fertilizer trucks couldn’t or refused to go to Maungapohatu) and stock could not be moved to and from the sale yards.³⁴⁹

Many years later, Minister of Conservation Sandra Lee responded to requests from Aubrey Temara to have the road upgraded, and ensured that DOC repaired the road.³⁵⁰ This caused what Richard Boast calls ‘a storm of public outrage nationally’ over public money being spent on a ‘road to nowhere.’³⁵¹ Yet, the Crown’s obligation to provide Maungapohatu with functioning road access ‘has always been clear.’³⁵² The Crown’s failure to do so between the 1970s and 2001 was the final straw for the farm’s survival. As Neumann concluded, ‘[t]he rejuvenation of the Maungapohatu settlement – the goal for which the owners sacrificed their forest – has so far not happened.’³⁵³

Meanwhile, however, the Maungapohatu proposal proved a lightning rod for a growing storm of public disquiet over milling on Maori land in Te Urewera. It gave much of the impetus to a petition to Parliament organised by Violet Rucroft (later Briffault), President of the Whakatane branch of Forest and Bird, which called for much tighter restrictions on logging in Te Urewera. The Rucroft petition gathered 19,804 signatures in just 10 weeks in 1959, mainly from the Bay of Plenty.³⁵⁴ This petition had a considerable impact on the Government.³⁵⁵ In effect, it pushed the Government into a policy of public appeasement.

Public opinion as reflected in the Rucroft petition increasingly – and wrongly – perceived all Maori land in Te Urewera as lying in the middle of the national park.³⁵⁶ Vociferous pressure groups such as Forest and Bird mobilised this opposition very effectively, to such a

346. Coombes, ‘Cultural Ecologies II’ (doc A133), p 115

347. Tama Nikora, ‘Te Urewera Lands and Title Improvement Schemes’ (doc G19), p 38; Coombes, ‘Cultural Ecologies II’ (doc A133), p 117

348. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 114–115

349. Aubrey Temara, brief of evidence (doc K15), p 6

350. Aubrey Temara, brief of evidence (doc K15), p 7

351. Boast, ‘The Crown and Te Urewera in the Twentieth Century’ (doc A109), pp 220–221

352. Easthope, ‘A History of the Maungapohatu and Tauranga Blocks’ (doc A23), pp 252–253

353. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 198

354. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 150–151

355. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 154, 163–167

356. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 140–141, 167

degree that it propelled the government to arrive almost simultaneously at two critical decisions over 1960 and 1961: to buy the Manuoha and Paharakeke blocks to add to the national park, and to place a new form of blanket restriction on timber milling consents in Te Urewera.³⁵⁷ We discuss each of those matters in turn.

(c) The purchase of Manuoha and Paharakeke for the park: The remote Manuoha and Paharakeke blocks (38,000 acres) are covered in predominantly beech forest interspersed with podocarps such as rimu and miro.³⁵⁸ They were the last substantial areas of Maori land in the Wairoa catchment – and the only substantial areas of Maori land that the Crown succeeded in buying to add to the national park. These blocks had been cut out of Maungapohatu by the second Urewera commission in 1907. Manuoha was awarded to the descendants of the Ngati Kahungunu tupuna Hinganga (for the ancestor Hinganga and Ngati Hinganga, see chapter 2). Paharakeke was awarded to Wi Pere and three hapu, variously identified in our hearings as hapu of Ngati Kahungunu and as hapu of Te Whanau a Kai.³⁵⁹ As with all Urewera commission (later land court) titles, these blocks were in the undivided ownership of lists of individuals until 1937, when each of them was partitioned in two. In July 1955 the blocks' owners held a joint meeting at Wairoa and re-collectivised, forming two separate incorporations in an effort to take advantage of the new commercial opportunities offered by milling their timber.³⁶⁰

The blocks' purchase was subject to detailed claims in our inquiry about the incorporated owners' willingness to sell, whether sale should have been necessary to realise the value of their timber resource, and over the valuation and the price paid. We discuss all of these claims fully in the next section of this chapter. Our specific interest here is in why the Crown bought the land.

In 1959, the owners of the Manuoha block deferred consideration of an offer from the Bayten Timber Company to buy their timber, and instead offered to sell the land and timber to the Crown. It declined the offer, citing lack of funds.³⁶¹ The owners of the Manuoha block then agreed in May 1960 to sell cutting rights to the Bayten Timber Company.³⁶² The transaction required the consent of Minister of Forests Tirikatene. He repeatedly delayed his decision, since both he and the Minister of Lands, and their senior officials, now considered that the land should instead be purchased to add to the park.³⁶³

357. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 186–187

358. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 178

359. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), pp 94–95, 165; counsel for Te Whanau a Kai, closing submissions, 30 May 2005 (doc N5), p 42

360. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 172–173

361. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 176–177

362. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 172

363. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 180, 184–85

Why had the Crown changed its mind? Klaus Neumann has argued that the Crown was now prepared to buy the land because it wanted to appease public fears about erosion.³⁶⁴ The Crown in our hearings acknowledged that public pressure was ‘a factor’, but argued that the ‘driving force’ was genuine official concern over the potential for erosion.³⁶⁵

We consider that the balance of evidence supports Neumann’s views. First, it is important to note that the decision to purchase was effectively made twice, either side of the general election of late 1960. The Minister of Lands in the new National Government was told that the previous Labour administration had decided to purchase the blocks in September 1960 ‘as a result of reports that logging operations in this catchment would cause great public alarm.’³⁶⁶ Furthermore, officials’ advice, such as that of Director-General of Forests Entrican to his Minister, was quite explicit about the determinative significance of public opinion: ‘in view of the serious concern of the Wairoa people I would have no alternative but to recommend that the whole of the two blocks should be purchased for incorporation in the National Park.’³⁶⁷ The new National Government shared this concern, and again decided to purchase.

The decision to purchase both blocks for the park was made even though there was no proposal to log Paharakeke (and some officials thought severe access problems would eventually dissuade Bayten from logging Manuoha too).³⁶⁸ In addition, while officials clearly thought that wholesale land clearance would cause significant erosion, there was little prospect of this occurring. Any milling would be subject to strict controls (and in point of fact existing milling operations on similar and adjoining state forest land continued without incident or uproar throughout the 1960s).³⁶⁹ In their deferred 1959 resolution, the Manuoha owners had already decided themselves that milling should be strictly controlled, and they were thus prepared to abide by any restrictions that were attached to the cutting rights.³⁷⁰ Both the Director-General of Forests, and the Secretary of the Soil Conservation and Rivers Control Council, therefore believed that it was not strictly necessary ‘to close the areas up untouched for soil conservation reasons.’³⁷¹ Opinion was divided among the ranks of the Forest Service. Senior head office official A D McKinnon argued that it was not safe to take the risk that any logging might lead to erosion, nor to rely on the possibility that prohibitive costs would prevent such logging without the Government having to lift a finger.³⁷²

364. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp180

365. Crown counsel, closing submissions (doc N20), topic 31, pp 29–30

366. Director-General of Lands to Minister of Lands, 20 February 1961 (Brent Parker, comp, supporting papers to ‘Crown Purchase of the Manuoha and Paharakeke Blocks’, various dates (doc M20(a)), p 74)

367. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 180

368. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp180, 182

369. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp180–183, 221–222

370. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p176

371. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p183

372. A D McKinnon, Inspector-in-charge, New Zealand Forest Service, ‘Report on proposed purchase by Crown for a national park Manuoha and Paharakeke blocks’, 18 May 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 61)

In finally recommending the purchase to his Minister in May 1961, the Director-General of Lands judged that the 'bulk of opinion' in the Forest Service favoured purchase for the national park rather than selective cutting.³⁷³

Although senior officials thought purchase preferable to milling for several reasons, including an implied commitment from the Crown to owners that it would complete the purchase, their advice continued to emphasise the determinative significance of public opinion. As the Director-General of Lands made clear:

Public opinion is a potent factor in this case. . . . Timber milling in the Urewera led more than 19,000 people to petition parliament in 1959 to preserve the indigenous forests of New Zealand. The Lands Committee recommended that this petition be referred to Government for favourable consideration and Cabinet on 21 March 1960 agreed that the petitioners be told that legislation to preserve forests had been covered by the Soil Conservation and Rivers Control Amendment Act 1959. The petitioners and others are likely to react vigorously to any apparent Government sanction of even controlled cutting in this important catchment.³⁷⁴

Final Cabinet approval for purchase was based on submissions from the Minister of Lands, which effectively glossed over why officials had decided purchase was preferable to controlled milling. After highlighting the dangers of erosion in Te Urewera generally, the Minister simply noted that 'the Forest Service and Soil Conservation Council both advise against milling on these blocks.'³⁷⁵ The desirability of adding the land to the national park appeared as a secondary reason for purchase.³⁷⁶ It was on this basis that Cabinet approved negotiations for purchase on 7 August 1961 for between £140,000 and £160,000. The owners agreed to sell the blocks for the lower of these figures (only one owner dissented), and after the deal was signed off on 25 October 1961, the lands were brought into the park the following year.³⁷⁷

We will consider whether this was a fair purchase later in the chapter (see section 16.7). Our conclusion at this point is that the most important factor in explaining the Crown's purchase of Manuoha and Paharakeke was the perceived need to appease the public's fear of erosion and floods, and to satisfy their expectation that the Crown would prevent such

373. Director-General to Minister of Lands, 15 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 66)

374. Director-General of Lands to Secretary to the Treasury, 26 June 1961 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 183)

375. Gerard, Minister of Lands, to Cabinet, 1 August 1961 (Parker, supporting papers 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 46-47)

376. Gerard, Minister of Lands, to Cabinet, 1 August 1961 (Parker, supporting papers 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 46)

377. Brent Parker, report in relation to the Crown Purchase of Manuoha and Paharakeke Blocks, 5 April 2005 (doc M20), p 5; Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 230-231

catastrophes by adding the land to the national park.³⁷⁸ Thus, the park's presence played an important role in shaping how the Crown weighed up whether to allow milling to proceed, while imposing whatever conditions were needed to control erosion, or to buy the land and timber. Public interest in Te Urewera had been raised by the park's creation, and strongly favoured halting logging on Maori land in Te Urewera and, where possible, adding it to the park.

Broadly speaking, we do not consider that the eventual outcome in the case of the Manuoha and Paharakeke blocks reflects badly on the Crown, except on a specific issue of valuation and price (see 16.7). These blocks were not home to Maori communities. Their owners initially offered the blocks to the Crown freely, and proved quite willing to part with the land. However, it was quite a different story with lands in and around the park that were home to Tuhoe and Ngati Ruapani.

(d) A blanket ban – the section 34 prohibition on activities causing erosion: At the same time as it negotiated the purchase of Manuoha and Paharakeke to appease public opinion, the Crown also placed a new blanket restriction over Te Urewera in 1961 that prohibited any activity likely to cause erosion. This prohibition was issued on 30 June 1961, and remained in place until 1993. No activity whatsoever 'likely to facilitate soil erosion or floods or cause deposits in watercourses' could now occur in Te Urewera without the consent of the Soil Conservation and Rivers Control Council.³⁷⁹ The council gained this extraordinary authority by means of a notice issued under section 34 of the Soil Conservation and Rivers Control Amendment Act 1959.

The trigger – but not the cause – for the Crown's decision to issue the section 34 notice was its inability to control renewed logging on steep land on the small Heipipi block near Ruatahuna. The land use committee had determined most of the block should not be milled, but because the block had fewer than 10 owners they did not need the Maori Land Court's approval to cut the timber, and so could not be made to abide by any conditions set out by the land use committee.³⁸⁰ But this was an isolated case of logging occurring on an erosion-prone block. The Crown issued the section 34 notice as a response to public fears of erosion. But Crown officials did not believe any significant erosion was going to occur.³⁸¹

The vast area covered by the Crown's blanket restrictions consisted almost exclusively of Maori and Crown land, and bore a remarkable resemblance to the former boundaries of the

378. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 176–187

379. Soil Conservation and Rivers Control Amendment Act 1959, s 34 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 147–148)

380. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 166–167; Neumann, cross-examination by Crown counsel, 15 September 2004 (transcript 4.10, p 70)

381. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp viii, 165–168; Klaus Neumann, under cross-examination by counsel for Wai 36 Tuhoe, 15 September 2004 (transcript 4.10, p 73)

Urewera District Native Reserve.³⁸² Yet, scarcely 60 years previously the Crown had promised the peoples of Te Urewera they would hold all of that land ‘intact, that your forests may continue to exist . . . so that you may live and shall be undisturbed.’³⁸³ The claimants in our inquiry have long resented the Crown’s imposition of the section 34 notice, as restricting their property rights, preventing economic development, and impinging on their mana motuhake. Reflecting that concern, counsel for the Wai 36 Tuhoe claimants suggested it had effectively made all Maori land in Te Urewera into national park.³⁸⁴

It is not at all difficult to understand why the peoples of Te Urewera might resent the Crown assuming the power to control whether trees might fall on their land, purely in the interests of protecting farmers in the Bay of Plenty or Wairoa. But the fact is that the most accessible of Maori land in Te Urewera had already been logged or approved for logging. Further, and crucially, the notice did not apply retrospectively: all of the existing consents allowing milling on Maori land were able to continue. Finally, partial consent was still given to some new logging proposals. In effect, therefore, while the section 34 notice could have resulted in a highly restrictive regime, this is not necessarily what occurred in practice.³⁸⁵

We discuss the detail of how the section 34 restrictions were applied, and their effects in practice, later in our report (see chapter 18). Here, we are concerned with the significant implications for owners of Maori land around the national park.³⁸⁶ The first implication was that Maori could no longer log their land themselves, or enter into any arrangements with sawmillers at all, without gaining approval from the Soil Conservation and Rivers Control Council, a body on which (unlike the land use committee) they had no representation, and whose interests were closely aligned with the park administration. In a 1971 report for the Minister of Maori Affairs, the head of the Maori Affairs department acknowledged that ‘many applications’ to mill had never even been made ‘because the owners and the millers knew full well that permission would not be granted.’³⁸⁷ The second implication was potentially positive: landowners now had the legal right to compensation (under section 37 of the Act) if they could show that they had lost income as a result of the milling restrictions.³⁸⁸ But, as the Secretary of Maori and Island Affairs pointed out to his Minister, ‘the right was ineffectual’ because it required convincing a sawmilling company to apply for consent to mill, waiting to see what restrictions were imposed, and then negotiating compensation for

382. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 168–169

383. ‘Urewera Deputation, Notes of Evidence’, p 22 (Cathy Marr, comp, supporting papers to ‘The Urewera District Native Reserve Act 1896 and Amendments, 1896–1922’, various dates (doc A21(b)), p 186)

384. Counsel for Wai 36 Tuhoe, closing submissions, pt A, 31 May 2005 (doc N8), p 65

385. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 189, 206

386. Neumann, under cross-examination by counsel for Nga Rauru o Nga Potiki, 15 September 2004 (transcript 4.10, pp 77–79)

387. Secretary of Maori and Island Affairs to Minister of Maori Affairs, 3 June 1971 (Parker, ‘List of Documents’ (doc M27(b)), p 1031)

388. Campbell, ‘Te Urewera National Park’ (doc A60), p 75

the injurious effects of those restrictions.³⁸⁹ All in all, as Tama Nikora suggests, the use of the section 34 notice was a ‘heavy handed means of controlling land use in Te Urewera.’³⁹⁰ We will return to this important issue of compensation in chapter 18.

The evidence of Tama Nikora is that the restrictions imposed by the section 34 notice caused Tuhoe to begin to consider the future of their forest lands at hui from 1962. That year Tuhoe met the Minister of Maori Affairs, Ralph Hanan, at Ruatoki, and asked to open negotiations with the Crown for redress for historic and ongoing timber restrictions. They were told, in the words of Tahī Tait, that ‘as we had not lost our trees there was nothing to compensate.’³⁹¹ By 1964, they had decided to begin by amalgamating their lands enclosed by the park in the Whakatane River valley, and then to attempt to gain collective compensation for the effects of milling restrictions over these lands.³⁹² In June 1969, three members of the Tuhoe Maori Trust Board applied to the Maori Land Court for a trust to be formed for these blocks, totalling 22,813 acres, with themselves as trustees.³⁹³ Early the next year they sought consent from the Soil Conservation and Rivers Control Council for the cutting of all timber on these lands. These moves initiated the entwined processes of land amalgamation and compensation negotiations with the Crown which were to preoccupy Tuhoe for more than 10 years.

(e) A new round of negotiations – Tuhoe try to salvage an economic future and the Crown tries to expand the park: Tuhoe knew they faced a precarious future. They confronted the real possibility that their people might no longer be able to maintain viable communities on their ancestral lands. Their efforts to extricate themselves from what had become a highly vulnerable position were courageous: they amalgamated their lands to provide a collective basis for some economic land use and development, and to allow collective negotiations with the Crown over timber milling restrictions. These efforts were also dangerous: they opened up the opportunity for the Crown to apply pressure towards fulfilling its hopes of acquiring all the Maori land enclosed by the park.

In the following discussion, we consider an aspect of the Crown’s conduct during the protracted negotiations with Tuhoe. At issue is the part played by the Crown’s desire to expand the park, as opposed to the Crown’s obligation to compensate Maori for historic timber restrictions, and its attitude towards ensuring that Tuhoe retained the capacity to sustain their collective identity in their turangawaewae.

389. Secretary of Maori and Island Affairs to Minister of Maori Affairs, 17 April 1972 (Parker, ‘List of Documents’ (doc M27(b)), p1002)

390. Tama Nikora, ‘Te Urewera Lands and Title Improvement Schemes’ (doc G19), p 21

391. Minutes of Meeting of Tuhoe Tuawhenua Trust, 28 September 1974 (Bassett and Kay, supporting papers to ‘Ruatahuna Land Ownership and Administration’ (doc A20(a)), p109)

392. Nikora, ‘Te Urewera Lands and Title Improvement Schemes’ (doc G19), pp 21–22

393. ‘Application for Constitution of a Trust’ and letter: Urquhart, Roe, and Partners to Registrar, 13 June 1969 (Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 441)

Tama Nikora succinctly summarised the problems which Tuhoe confronted by the 1960s:

Tuhoe held increasingly uneconomic blocks of land with inadequate titles, no legal access, a burgeoning number of individual, and especially absentee owners, and no governance structures with authority over Tuhoe lands. Tuhoe had no roads, much undeveloped land, and almost no income as milling petered out, farming became less lucrative, and the timber-milling restrictions began to bite. The Crown still coveted Tuhoe land for the National Park and imposed rating on some Urewera blocks, which made them vulnerable to alienation. . . . The overall situation was clearly an urgent one.³⁹⁴

The problem with rating to which Nikora alludes arose after the removal of the general rating exemption for Te Urewera lands in 1963. Significant elements in Tuhoe soon became preoccupied by the concern that failure to pay rates would lead to piecemeal land alienation to the Crown.³⁹⁵ The *New Zealand Herald* reported that some members of the park board viewed this prospect very differently:

The Urewera National Park Board expects to be able to buy large areas of Maori land within the park when the payment of rates on the land is enforced.

Mr BHN Teague said the Minister of Internal Affairs, Sir Leon Gotz, had made it very clear that Maoris would have to pay rates on land inside the park.

'If they are going to be asked to pay rates they are going to sell their land to avoid paying' he said.³⁹⁶

The park board subsequently denied any intent to apply pressure in this way.³⁹⁷ By this time, however, it had already made 'many attempts' to have the Crown acquire small portions of the Maori land enclosed by the park.³⁹⁸ As Bassett and Kay argued, one of the 'driving forces' behind the effort to amalgamate the titles of their scattered lands was Crown efforts to acquire land for the park. And this remained a core topic of debate and negotiation between the Crown and the Tuhoe Maori Trust Board, once amalgamation got underway.³⁹⁹ The board was entrusted with ensuring that amalgamation could help resist this pressure or at least take advantage of it to obtain other (farmable) land within their rohe, and provide the capacity for collective decisions about how to forge an economic future for their people.

394. Tama Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 9

395. See, in particular, Minutes of Meeting of Tuhoe Tuawhenua Trust, 28 September 1974 (Bassett and Kay, supporting papers to 'Ruatahuna Land Ownership and Administration' (doc A20(a)), pp 109–115).

396. *New Zealand Herald*, 14 September 1963 (Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera: nga iwi, te whenua, te ngahere* (Hamilton: University of Waikato, 1986) (doc A111), pp 102–104)

397. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 30

398. B Briffault, Note for File, Department of Lands and Survey, 26 August 1980 (Parker, 'List of Documents' (doc M27(b)), p 507); Coombes, 'Cultural Ecologies II' (doc A133), pp 28–31; Campbell, 'Te Urewera National Park' (doc A60), pp 94–100

399. Bassett and Kay, 'Ruatahuna' (doc A20), p 270

‘FROM the year 1967 we met as a people and in these meetings we considered our plight both socially and in respect of land and resolved to attend to our social and economic advancement. While as a people we were poor the Tuhoe Trust Board was asked to bear the burden.’

—Submissions on behalf of the Tuhoe-Waikaremoana Maori Trust Board to the Royal Commission on Maori Courts 1980 (Brent Parker, ‘List of Documents – Compensation for Restrictions placed on Milling of Native Timber in the Urewera’, various dates (doc M27(b)), p 548)

By this time, members of the Tuhoe Maori Trust Board had begun to wrestle with the conclusion that, since the Crown had rendered their people’s forested lands incapable of economic use, they might have little option but to relinquish them, and use the proceeds to develop land elsewhere. The application to form a trust over the Whakatane River lands stated that the ‘obvious future’ for the blocks was the sale of timber to the Crown, and the land to the national park. The introduction to the court’s minute book elaborated:

since timbers that could be extracted have been taken from the majority of Urewera lands, the Tuhoe people have been exercising in their minds ways and means of utilising the remainder of their lands which for some time they and the Crown have considered for the most part as suitable only for inclusion in the Urewera National Park.⁴⁰⁰

In August 1969, John Rangihau, newly appointed to the park board, explained to his fellow members that ‘the general purpose of the Tuhoe was to amalgamate’, beginning with the Whakatane River blocks and Waikaremoana reserves, then the Maungapohatu blocks, and finally the Ruatahuna blocks, ‘in order to ensure that all the land is held intact for the owners or sold for inclusion in the Park, and not cut up piecemeal.’⁴⁰¹

Next month, at an early planning meeting for the development of the park’s ‘master plan’, Rangihau clarified the tribe’s purposes. He emphasised that Tuhoe were increasingly determined to hold on to all of their lands. Further, though they supported the idea of preservation of the remaining forest and were prepared to work with the park board, they wanted an economic benefit as well. As Rangihau put it:

400. Introduction to Whakatane Minute Book 58 (Clementine Fraser, ‘Amalgamation of Urewera Lands 1960–1980s’, report commissioned by the Waitangi Tribunal, 2004 (doc F3), p 17)

401. Urewera National Park Board, minutes, 13–14 August 1969 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60((b)), p 190)

Tuhoe had always regarded the Ruatahuna/Maungapohatu area as the very centre of their history and culture. As a tribe they were the last to resist the march of 'westernisation.' He thought that recently their feelings had begun to harden against selling any more of their land. There was not a very large acreage still held, nor was it of any great value in comparison with the lands still owned by other tribes elsewhere. Nevertheless, they did not want to see it cleared, because they felt their spirit was still linked closely to the forest in this area. They were prepared to work in with the Board so long as the land could still remain in their possession. There was some feeling that while they wanted to retain ownership yet let others use it, there should nevertheless be some financial return for the use made of it, ie, possibly lease of the land to the Government for Park purposes.⁴⁰²

By November 1969, Rangihau made clear to the Commissioner of Crown Lands and other officials that Tuhoe had 'gone cold on the idea of sale.'⁴⁰³ The Crown, however, had not.

In 1970, an interdepartmental committee appointed to gauge the potential for erosion if the Whakatane River blocks were milled reported that there were 'no technical reasons' why controlled cutting of some 5000 acres of forest scattered over 29 of the 34 blocks should not occur. It noted, further, that all of the extensive milling around Ruatahuna had to date not caused any significant erosion. In fact the committee suggested that it might reduce erosion over the long term by allowing better pest control.⁴⁰⁴

The committee nevertheless suggested that the Crown decline consent to mill the Whakatane River blocks, and instead try to buy all of the land and timber for the national park. Only if this failed, they said, should the Crown allow controlled cutting.⁴⁰⁵ Senior forestry officials, the park board, and the National Parks Authority all concurred. Purchase would be ideal, since the land was a 'logical' addition to the park.⁴⁰⁶

Tuhoe were angered by this decision. They felt it showed the restrictions on milling their land were less about soil conservation and more about 'manoeuvrings to take yet more Tuhoe land for the National Park.'⁴⁰⁷ Certainly, as the chair of the park board explained to the Director-General of Lands, the board's 'accepted policy' was that any Maori land enclaves should be acquired when an opportunity arose. This policy had indeed just been formally set out in the park board's draft management plan, which stated: 'Ideally the lake-

402. Urewera National Park Master Planning Team Meeting, 29 September 1969 (Campbell, supporting documents to 'Te Urewera National Park' (doc A60(b)), p185)

403. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 443

404. 'Logging in the Ureweras: Whakatane Blocks', signed by Revington (Engineer, Bay of Plenty Catchment Commission); Skudder (Principal Ranger, NZ Forestry Service); and Anaru (Soil Conservator, Ministry of Works), undated, ca September 1970 (Campbell, 'Te Urewera National Park' (doc A60(b)), pp 209-210)

405. Campbell, 'Te Urewera National Park' (doc A60), p 109; Report on Logging in the Ureweras: Whakatane Blocks, undated (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(b)), p 209)

406. Director, Forest Management, to Deputy Director-General of Forests, 15 October 1970 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(b)), pp 207-208); Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 444-445

407. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 23

bed together with all other Maori enclaves in the Park should be purchased by the Crown for inclusion in the Park but . . . the Crown should accept a long term lease with perpetual rights of renewal.⁴⁰⁸ The park board justified its policy as a means towards ‘a more convenient and more easily administered boundary’ and better public access.⁴⁰⁹

The peoples of Te Urewera had no input to this plan. Their interests were officially represented only by the Department of Maori Affairs, which considered it ‘logical that most or all of this land should eventually be acquired by the Crown for Park purposes.’⁴¹⁰ It is significant, however, that the park staff vehemently disagreed with the board’s stance. The rangers’ written submission on behalf of all staff argued that acquisition of Maori lands would in fact detract from the appeal of the park to many visitors, who found the ‘intimate association of the people and the land’ one of its most important qualities. They thought the park board was ‘impertinent’ to seek to acquire the Tauwharemanuka and Tawhana blocks which were currently being successfully farmed; they pointed to the importance of the grassed Maori lands of the Waimana Valley as a ‘Park asset’; and they highlighted the spiritual significance of the Hanamahihi and Te Hono blocks, site of ‘Tuhoē’s ancient school of learning’. The staff consensus was that instead of trying to acquire Maori land, the park should ‘encourage Tuhoē to retain their lands, and assist them to administer the lands to the mutual advantage of the Park, the public, and the owners’. The staff concluded that it was to the advantage of all if ‘Tuhoē become themselves the vehicle for interpreting the areas to the general public.’⁴¹¹

The staff submission prompted the park board to amend the plan in 1970:

to remove any implication that influence should be brought to bear on the Maori owners of enclaves within the Park to sell or lease the land for Park purposes but at the same time to establish the principle that if the owners should ever wish to dispose of their land the Crown should be given the first opportunity to buy or lease it for Park purposes.⁴¹²

As we have just seen, however, Crown officials and the park board had all concurred that Maori should not be allowed to mill any land in the Whakatane River Valley, and instead had decided to try and purchase their land.

However, officials faced a critical stumbling block in acquiring such a large area of Maori land and timber: the prohibitive cost involved. Forestry officials at this stage thought owners

408. Department of Lands and Survey, *Planning Team report: Urewera National Park Management Plan* (Hamilton: Department of Lands and Survey, 1970), p15 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1338)

409. Edwards, ‘Selected Issues’ (doc L12), p51; National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1978), p3.5 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1264)

410. Secretary for Maori and Island Affairs to Secretary, Urewera National Park Board, 15 December 1969 (Coombes, ‘Cultural Ecologies II’ (doc A133), p42)

411. Chief Ranger on behalf of staff, to Department of Lands and Survey, Hamilton, ‘Submission to Urewera National Park Board on the policy and management plan’ (Coombes, ‘Cultural Ecologies II’, pp 44–45)

412. Urewera National Park Board, minutes, 2 December 1970 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p336)

would expect perhaps \$1,500,000 for their timber alone.⁴¹³ The Director-General of Lands agreed that the allocation of funds for National Park purposes ‘simply does not run to the level involved here.’⁴¹⁴ In March 1971 he therefore sought the help of the Soil Conservation and Rivers Control Council, arguing that the primary reason for restricting milling on the land was the risk of erosion; the desire to gain the land for the national park was ‘a secondary reason.’⁴¹⁵ Unsurprisingly, none of the senior officials from Lands, Forests, or Works could find sufficient funds in their budgets or exchangeable land with which to compensate owners. In the end, therefore, there was no other option but to grant consent to controlled milling. No milling took place, however; instead the matter became embroiled in the wider issue of compensation for milling restrictions on Maori land throughout Te Urewera.⁴¹⁶

Tuhoe succeeded in opening up this issue through their meeting with Duncan MacIntyre, the Minister of Lands, Forests, and Maori Affairs, at Ruatahuna in April 1971. Tuhoe chose the time and place for this hui with great care, as marking the centenary of their momentous meeting at Ruatahuna 100 years before when they decided to ‘give their allegiance to the Government as a Tribe.’⁴¹⁷ As we explained earlier in our report, Tuhoe continue to date the beginning of their relationship with the Crown to the April 1871 hui at Ruatahuna. But the hui did not signal an unconditional acceptance of Crown authority. As Tamati Kruger explained to us, both Tuhoe and the Crown held mana; not the Crown alone (see chapter 8).

The worst fears expressed by Te Whitu Tekau had already been realised. Now Tuhoe told Minister MacIntyre that their ‘greatest concern . . . is the possibility which has arisen that they could be reduced to a non-entity.’⁴¹⁸ To stave off the prospect of annihilation, Tuhoe asked for help with land amalgamation, ‘to hold onto what little land we have left.’⁴¹⁹ Forestry was seen as ‘the answer to the economic utilisation of some of their lands’, which they feared

413. Director, Forest Management, to Deputy Director-General of Forests, 15 October 1970 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(b)), p 207); Campbell, ‘Te Urewera National Park’ (doc A60), pp 109–111; Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 15 March 1971 (Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 445)

414. Director-General of Lands to Director of Water and Soil Conservation, Ministry of Works, 23 March 1971 (Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 446)

415. Director-General of Lands to Director of Water and Soil Conservation, Ministry of Works, 23 March 1971 (Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 446)

416. See Director-General of Forests to Minister of Forests, 30 September 1971 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(b)), pp 211–212).

417. Presentation To the Honourable Duncan MacIntyre, Nga Take a Ngai-Tuhoe, 23 April 1971 (Bassett and Kay, supporting papers to ‘Ruatahuna Land Ownership and Administration’ (doc A20(c)), p 293); Judith Binney, summary of ‘Encircled Lands’ (doc B1(d)), p 22; Tuawhenua Research Team, ‘Ruatahuna’ (English), vol 1 (doc B4(a)), p 252; Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 427

418. ‘Honourable Duncan MacIntyre, Nga Take a Ngai-Tuhoe’, 23 April 1971 (Bassett and Kay, supporting papers to ‘Ruatahuna Land Ownership and Administration’ (doc A20(c)), p 295)

419. Len Rangī (at hui with MacIntyre), April 1971 (Tama Nikora, ‘Te Urewera Lands and Title Improvement Schemes’ (doc G19), p 27)

THERE IS not much Tuhoe land left . . . We believe, Sir, that we would find no peace in heaven if we suffer these remnants to be alienated.’

—Sonny White, presenting the submissions of the Tuhoe Maori Trust Board to the Hon Duncan MacIntyre (To the Honourable Duncan McIntyre, ‘Nga Take a Ngai-Tuhoe: “Te Kotaki A Tuhoe, E Kata Te Po”’) 23 April 1971 (Bassett and Kay, supporting papers to ‘Ruatahuna Land Ownership and Administration’ (doc A20(c)), p 298)

would otherwise be lost. And they pressed for compensation for the injustice imposed by milling restrictions.⁴²⁰

MacIntyre returned from the meeting demanding to know what truth there was in Tuhoe’s representations over the injustice of milling restrictions. The Secretary of Maori Affairs outlined to his minister the ‘long and complicated’ history of the Crown’s milling restrictions, which he summarised as:

really another case where the State, for the good of the community generally, wishes to prevent the owners of Maori land from dealing with it (ie by selling their timber) but being less than enthusiastic about making a fair arrangement to compensate those owners.

Tuhoe, he said, had behaved ‘extremely well’, especially since there was:

room to doubt whether the motives of the Government in imposing these restrictions are confined merely to the soil erosion aspect. There has for example been mention from time to time of scenic reservations.⁴²¹

MacIntyre then told his officials that ‘he was determined to see that steps were taken to do justice’ to Tuhoe before he left office.⁴²²

Far from this happening, as we shall explain in more detail in chapter 18, Tuhoe instead became embroiled in complex negotiations over their lands that lasted at least 10 years, had very limited success, and were extremely controversial amongst the Tuhoe people. We will not rehearse these events in detail here (the issue of compensation for timber restrictions is discussed in chapter 18, and the issue of title amalgamation is the subject of several specific

420. Tama Nikora, ‘Te Urewera Lands and Title Improvement Schemes’ (doc G19), p 27; ‘Honourable Duncan MacIntyre, Nga Take a Ngai-Tuhoe’, 23 April 1971 (Bassett and Kay, supporting papers to ‘Ruatahuna Land Ownership and Administration’ (doc A20(c)), p 302)

421. Secretary of Maori Affairs to Minister of Maori Affairs, 3 June 1971 (Parker, ‘List of Documents’ (doc M27(b)), pp 1029–1031)

422. Director-General of Forests to Deputy Director-General of Forests, 22 December 1971 (Bassett and Kay, supporting papers to ‘Ruatahuna’ (doc A20(b)), p 125)

The Attempted Amalgamations of Tuhoe lands

The Maori Land Court amalgamated Tuhoe lands into four blocks on 14 February 1972. The 33 forested blocks on the western bank of the Whakatane River became Te Pae o Tuhoe (22,549 acres). The lands in 43 blocks around Ruatahuna became Tuhoe Tuawhenua (39,741 acres). The lands in 21 blocks in the Waimana River valley became Tuhoe Kaaku (4722 acres). These three amalgamations were all prompted by the need to negotiate compensation for milling restrictions. The fourth block, Te Manawa o Tuhoe (21,225 acres) amalgamated 58 blocks lying between the Rangitaiki River and the Whakatane River. This amalgamation was prompted by the possibility of using the land for exotic forestry.

Land amalgamation proved to be complex, controversial, and not wholly successful. The Tuhoe-Waikaremoana Maori Trust Board (as it became in 1971) was able to use the four amalgamations as the basis for negotiations with the Crown. But, by the late 1970s negotiations with the Crown over the future of the amalgamated lands had struck a series of stumbling blocks. At this point concern arose among some land owners over the question of who had control over their lands, spiralling into court action over the Tuhoe Tuawhenua lands. Numerous failures of due process in the formation of the amalgamations were uncovered, revealing what Tama Nikora calls a 'comedy of errors' (Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19, p 64). The Tuhoe Tuawhenua amalgamation was quashed, and the Tuhoe Kaaku amalgamation remained incomplete. The trust board eventually succeeded only in brokering very limited deals with the Crown and a forestry company over lands in Te Manawa o Tuhoe.

For more information about the process and outcomes of title amalgamation in these four blocks, see chapter 19 (forthcoming in part 4 of the pre-publication version of this report).

claims, which we address in chapter 19). Nor do we wish to suggest that there were ever any easy answers: the fundamental problems involved in reconciling the needs of the peoples of Te Urewera with wider interests in forest preservation had been evident since the 1930s.

We do, however, point out that Duncan MacIntyre was the first minister of the Crown since Corbett in the mid-1950s to have the ability to confront the full concerns of the peoples of Te Urewera. MacIntyre, like Corbett, was Minister of Lands, Forests, and Maori Affairs, and so had the capacity to do what Ropiha had recognised was necessary in 1950: to study and plan for the treatment of the forest in Te Urewera 'as a whole with a view to reconciling these two aspects' of forest protection and the retention of ancestral Maori land. MacIntyre established a working party committee of Tuhoe-Waikaremoana Maori Trust Board members and Crown officials from his various departments to negotiate a settlement.

TE UREWERA

16.6.2

We also think it important to remember just what was at stake in the negotiations that consumed Tuhoe in the 1970s. The Tuhoe leadership was trying to extricate its people from what threatened to become a truly terrible predicament, as the one bright spot – forestry to the south-west at Minginui and Murupara – also seemed increasingly at risk. They were therefore prepared to take desperate measures. In fact, they had been driven to the point of deciding that their remaining ancestral lands were so hampered by the Crown’s web of preservation policies that they could not provide their people with a future:

the effect of all the current pressures could lead to their total eviction and forced cessation of centuries of continuous occupation. The welfare of communities surrounding Te Urewera National Park is a matter of continuing serious concern to this Board who sees the question as being essentially one of survival, let alone a dire need to improve their circumstances as soon as possible.⁴²³

The desperation of the Tuhoe-Waikaremoana Maori Trust Board is most evident in a dramatic proposal they put to the Minister of Maori Affairs Matiu Rata on 18 June 1974. Frustrated by three years of fruitless interdepartmental bickering and negotiation the trust board proposed an all or nothing ‘packaged deal’ to clear away ‘pettifogging detail’.⁴²⁴ Under this deal, the Crown could lease all of Tuhoe’s remaining lands for 99 years (with no right of renewal), with the exception only of papakainga and urupa. In return the trust board asked for equivalent leases on fully stocked farmland in the Bay of Plenty or Waikato.⁴²⁵ It is highly doubtful that Tuhoe really had such loosely specified distant locations in mind; Judge Gillanders Scott had already emphasised to Minister Rata that ‘the exact words put to me by several of the elders’ were that any exchange ‘would have to be for land which can be “seen and be be-holden by Tuhoe”’; in other words, it would have to be within their rohe.⁴²⁶

At a meeting in Ruatahuna, in September 1974, a relatively small number of Tuhoe land owners agreed that negotiations could proceed between the trust board and Crown officials under this basic framework. But they did so with great reluctance, having deep concerns over the proposed leases’ lengthy term and sweeping extent.⁴²⁷ As Tu Tawera emphasised:

423. Secretary, Tuhoe-Waikaremoana Maori Trust Board, to National Parks Authority, 6 September 1977 (Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), pp 409–410)

424. Tuhoe-Waikaremoana Maori Trust Board to the Minister of Maori Affairs, 18 June 1974 (Parker, ‘List of Documents’ (doc M27(b)), p 828)

425. Tuhoe-Waikaremoana Maori Trust Board to the Minister of Maori Affairs, 18 June 1974 (Parker, ‘List of Documents’ (doc M27(b)), p 828)

426. Judge K Gillanders-Scott to Matiu Rata, Minister of Maori Affairs, 29 March 1974 (Parker, ‘List of Documents’ (doc M27(b)), p 842)

427. Minutes of a Meeting of the Tuawhenua Trust, Ruatahuna, 28 September 1974 (Bassett and Kay, supporting papers to ‘Ruatahuna Land Administration and Ownership’ (doc A20(a)), pp 109–115; Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 450–453)

EITHER GIVE US land for value or the other alternative is to wipe us off the face of the earth and take our land. This is a cry from an old person who has lived in the area and who has come through all this period.'

—John Rangihau to Minister of Maori Affairs Matiu Rata, 9 July 1974 ('Minutes of a meeting with the Tuhoe Maori Trust Board', 9 July 1974 (Parker, document bank (doc M27(b)), p 820)

We keep saying that we are doing this for our children's sake. Yet it appears to me that we are going to have no room for them to have a say or play a part in the long term future of our land. I feel very strongly about tying up our land for such a long time.⁴²⁸

Negotiations now recommenced through the reconvened working party committee. The trust board decided to separate negotiations on the three substantially forested blocks (Te Pae o Tuhoe, Tuhoe Kaaku, and the Tuawhenua lands), from those over the Te Manawa o Tuhoe block, where they hoped to arrange forestry plantations.⁴²⁹ The park board's role in this process was to indicate just which lands it saw as 'desirable acquisitions'.⁴³⁰ Over the course of 1975, it stated that it wanted all of Te-Pae-o-Tuhoe (22,549 acres), Tuhoe Kaaku (4722 acres), and the Maungapohatu lands (excepting the burial reserve) of about 6500 acres. It also wanted 'roughly the whole' of the Tuhoe-Tuawhenua block (39,741 acres), that is the lands around Ruatahuna, except for 'land that is settled and under occupation'; and all of Te Manawa-o-Tuhoe (21,225 acres) excluding the 9400 or so acres planned for afforestation.⁴³¹ All in all, therefore, the park board sought to acquire at least 70,000 acres of Tuhoe land to add to the park.

The way in which the park board approached deciding which areas of the Te Manawa o Tuhoe block were appropriate additions is particularly telling. It first insisted on a 'buffer zone' of almost 4500 acres to separate the land which Maori proposed to afforest from the

428. 'Minutes of a meeting of the Tuawhenua Trust' 28 September 1974 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 451)

429. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 47

430. Coombes, 'Cultural Ecologies II' (doc A133), p 49; Minutes of Meeting of Committee set up by Minister of Lands to Investigate Possible Exchanges of Tuhoe Lands, 19 November 1975 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(I)), p 70)

431. Note for file, Commissioner of Crown Lands, 2 April 1975 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(I)), p 66); Urewera National Park Board, notes of meeting of planning and buildings committee, 7 July 1975 (Coombes, 'Cultural Ecologies II' (doc A133), p 37); 'Tuhoe Lands Chronology of Events', undated (Parker, 'List of Documents' (doc M27(b)), p 763)

current park boundaries.⁴³² But it then proposed that the buffer zone should be acquired for the park too. Park staff and Crown officials stated that the land quality and character was suitable, and would provide additional legal access points to the park. Their third reason for acquiring the buffer zone land in the Whakatane Valley was that, from a ‘planning point of view and taking a long term viewpoint[,] it would be in the interests of the Park to have included all of the Whakatane Valley’. Buying the ‘buffer zone’ would ‘tend to “close off” the valley in a pincer movement and while offering a measure of “protection” from the ubiquitous pine plantations could also influence the thinking of future acquisitions up valley.’⁴³³ In other words, this purchase was recommended as a tactical move in support of a long term strategy: completely isolating all Maori land in the Whakatane Valley in order to increase the likelihood that it might be sold for inclusion in the park.

The proposed ‘Heads of Agreement’, drafted for the trust board’s consideration by the Commissioner of Crown Lands and Chairman of the park board, R M Velvin, was emphatic:

The Urewera National Park Board and the Crown are desirous of including within the boundaries of the Urewera National Park the Tuhoe lands comprised in the Tuhoe Tuawhenua, the Te Pae-o-Tuhoe and the Tuhoe Kaakuu Blocks for the more efficient management of the National Park and for the preservation of the forest and vegetation on these blocks.⁴³⁴

Velvin proposed that Tuhoe ‘would surrender day to day control’ of these three blocks to the Crown, by leasing them in perpetuity for inclusion in the national park. In return, the Crown offered to afforest to an equivalent value two abandoned farm settlements totalling 6000 acres at Matahina and Ashdown, on the eastern bank of the Rangitaiki River.⁴³⁵

The trust board took the Crown’s proposal to their people gathered at Ruatahuna in October 1978. Tuhoe rejected the deal. They were not prepared to accept that the quantity and value of Crown land being offered was an adequate exchange for what was the bulk of their remnant land. The trust board did not feel able to push the matter, as it had not yet

432. ‘Te Manawa o Tuhoe’, 23 April 1975, enclosure to Conservator of Forests to Commissioner of Crown Lands, Hamilton 24 April 1975 (Parker, ‘List of Documents’ (doc M27(a)), p 478)

433. J A Tobin, Planning Officer, to Chairman, Urewera National Park Board, 9 March 1976 (Parker, document bank (doc M27(a)), p 406)

434. Heads of Agreement Between Tuhoe-Waikaremoana Trust Board and Her Majesty the Queen and the New Zealand Forests Service, undated (Murton, supporting papers to ‘The Crown and the Peoples of Te Urewera’ (doc H12(a)(I)), p 36)

435. Commissioner of Crown Lands, Hamilton, to Secretary, Tuhoe-Waikaremoana Maori Trust Board, 31 May 1977 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(b)), p 339); Conservator of Forests (Rotorua) to Director-General of Forests, 12 December 1977 (Murton, supporting papers to ‘The Crown and the Peoples of Te Urewera’ (doc H12(a)(I)), pp 30–34)

finalised its own position. The impetus from Tuhoe therefore fell away.⁴³⁶ Meanwhile, key Crown officials' enthusiasm for the proposed deal over the forest enclaves also cooled, primarily due to rapid increases in the value of native timber.⁴³⁷ It was agreed to try and progress the Te Manawa o Tuhoe proposals instead. The trust board, indeed, always prioritised negotiations over the Te Manawa o Tuhoe block, as a 'test case', which would enable development on some of their remaining land, and prove to their people that something substantive could come of these negotiations with the Crown.⁴³⁸ This would also prevent the Crown officials from simply negotiating for what they most wanted – the forest enclaves within the park – which they saw as much more desirable acquisitions than the more peripheral portions of Te Manawa o Tuhoe.⁴³⁹

Tuhoe had formed a development plan for Te Manawa o Tuhoe, combining a land exchange with leases for afforestation to the Forestry Service and to private interests. The land exchange involved the Crown acquiring the freehold to the 4430 acres of Tuhoe land seen as most 'essential' to the park in exchange for the freehold to 1160 acres of Crown land near Waiohau, which the trust board planned to plant in pines. This forestry project would be funded by a combination of the proceeds of the leases and government grants.⁴⁴⁰

As we discuss further in chapter 18, this complex package 'deal' met a series of obstacles. The exchange proposal first stalled in 1978, after the Maori Land Court ruled that landowner objections meant the trust board could 'treat but no more' with the Crown over the exchange. Once the block was surveyed, however, the board would be permitted to conclude negotiations over the leases. Then a succession of complications delayed matters and upset the agreed values for exchange (most importantly the lengthy time needed to survey

436. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 835; Tuhoe Lands Working Party Committee, minutes, 11 October 1978 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(I)), pp 53–55). See also Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 7 October 1977 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(I)), pp 46–47); Campbell, 'Te Urewera National Park' (doc A60), pp 118–125; Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 51.

437. Commissioner of Crown Lands, Hamilton, to Secretary, Tuhoe-Waikaremoana Maori Trust Board, 31 May 1977 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(b)), p 339); Commissioner of Crown Lands to Director-General of Lands, 17 June 1977 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(I)), pp 25–26; Conservator of Forests (Rotorua) to Director-General of Forests, 12 December 1977 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(I)), pp 30–34); Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 15 December 1977 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 460); Tuhoe Lands Working Party Committee, minutes, 11 October 1978 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(I)), p 80)

438. Tuhoe Lands Committee Working Party Committee, minutes, 24 March 1977 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(b)), pp 330–331); Secretary, Tuhoe-Waikaremoana Maori Trust Board, to Minister of Lands, 18 May 1977 (Parker, 'List of Documents' (doc M27(b)), p 808)

439. Commissioner of Crown Lands, Hamilton, file note, 4 January 1979 (Murton, supporting papers to 'The Crown and the Peoples of Te Urewera' (doc H12(a)(I)), pp 13–14)

440. Minister of Forests and Minister of Lands to Cabinet, undated (Parker, 'List of Documents' (doc M27(b)), p 811)

the block, problems posed by planned hydroelectric developments, and Forestry service planting on the Waiohau lands).

The exchange proposal fell into abeyance, and by the time it was finally dismissed in 1988 the Lands Department was reported as having no interest in it.⁴⁴¹ However, the two leases were eventually negotiated: the Crown leased some 5230 acres for afforestation in 1979, and a subsidiary of Tasman Forestry Ltd leased another 5985 acres in 1981.⁴⁴²

The collapse of the proposals for Te Manawa o Tuhoe effectively ruled out any chance of re-opening negotiations for the other three forested blocks. Thus, in April 1979 Velvin directed the Department of Lands and Survey planning officer that he was not to take 'further action' to acquire Maori land in the Whakatane and Waimana valleys.⁴⁴³ From this point onwards, Crown officials and the park's management have only ever showed intermittent and low key interest in acquiring small blocks of Maori land to include in Te Urewera National Park, and these followed initiatives from landowners themselves; no acquisition has eventuated.⁴⁴⁴

Various reasons for the complete breakdown in negotiations have been suggested to us, and we explore these further in chapter 18.⁴⁴⁵ In brief, our view is that, first, the proposed arrangements were technically very complex, involving establishing values for packages of land and native and exotic timber and maintaining equity between them over time. Secondly, and crucially, both parties became sceptical of the benefits of any proposed deal. Tuhoe landowners became increasingly distrustful of the proposal that they effectively relinquish their forest lands. Some lost faith in the trust board, too, as hopes arose that commercial helicopter hunting and deer farming might make their lands viable.⁴⁴⁶

Crown officials, meanwhile, were also largely content to let matters lie. This was partly due to the ever increasing costs of acquiring the Maori lands and timber. But it was also, we consider, because the Crown increasingly perceived it had little to gain by acquiring the Maori land for the park: since milling the forest covering the land was no longer an option, there was simply very little that could be done to it.

Key elements in Tuhoe that remained committed to attempting to negotiate the land exchanges had anticipated the potential for this problem to emerge. They adopted a rather extraordinary response to try to forestall it. In late 1976 Tama Nikora pressed the park

441. Commissioner of Crown Lands, Hamilton, file note, 4 January 1979 (Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 831–833)

442. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 48; Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 831–833; Campbell, 'Te Urewera National Park' (doc A60), p 120

443. R M Velvin, Chairman, Urewera National Park Board, to Planning Officer, Urewera National Park Board, 27 April 1979 (Campbell, 'Te Urewera National Park' (doc A60), pp 124–125)

444. Coombes, 'Cultural Ecologies II' (doc A133), pp 64–65

445. Nikora, 'Te Urewera Lands and Title Improvement Schemes' (doc G19), p 31; Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 836–837; Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 461; Campbell, 'Te Urewera National Park' (doc A60), p 109

446. Tuhoe Lands Working Committee, minutes, 11 October 1978 (Parker, 'List of Documents' (doc M27(b)), p 698–700)

board into trying to gain a ministerial requirement that the Maori enclaves be designated as proposed national park in local body district plans.⁴⁴⁷ Nikora was perhaps prompted to adopt this tactic because (as we discuss in the next sub-section), in about 1970 just such a designation had been placed over the Waikaremoana reserves.

Designations of private land as ‘Proposed National Park’ provided that no activity could occur on the land without the consent of the authority with financial responsibility for the designation. Designation by Ministerial requirement so interfered with owners’ property rights that, as Department of Lands and Survey advice to park boards carefully explained, it ‘should be avoided if at all possible’, as it ‘indicates eventual purchase by the body having financial responsibility’.⁴⁴⁸

After the park board chairman Velvin (who was, of course, the Commissioner of Crown Lands) explained that the Department of Lands and Survey would have to formally initiate any such proposal as the park board could not accept financial responsibility, the park board resolved to request the Department to do so. Nikora raised the idea again in 1977 at a meeting of the working party committee trying to negotiate the exchanges of Tuhoe lands. Velvin opposed the idea, arguing that designation of Maori land had caused ill-feeling elsewhere, and was inappropriate while the parties remained in negotiation. But Nikora insisted that the designation was needed, because ‘the possibility existed that the Crown could abandon the exchange proposals at any stage leaving the Tuhoe people almost nothing as far as their land was concerned and he considered that a Ministerial designation would protect them and hold the Crown to complete the current dealings’.⁴⁴⁹

In 1978, the park board once again resolved to seek a ministerial requirement for a designation, and now approached the National Parks Authority. In doing so it anticipated that the designation might serve dual purposes. On the one hand, the board echoed Nikora, restating his hope that a designation would have the effect of ‘forcing the various parties to pursue the negotiations more actively’. But, on the other hand, the designation appealed to the board as ‘restraining the owners meanwhile from undertaking any development of the land that would conflict with the National Park concepts that were strictly applied in the park land surrounding the enclaves’.⁴⁵⁰

The Chief Ranger listed the designation’s likely effects – just in respect of Maungapohatu – as restraining ‘incompatible developments’ such as: extensive planting of exotic trees; the

447. Urewera National Park Board, minutes, 8 December 1976 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 362)

448. Lands and Survey: Identification and Assessment of Potential Areas for National Parks (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 95, 97)

449. Tuhoe Lands Combined Committee Working Party Committee, 24 March 1977 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(b)), p 333)

450. Urewera National Park Board, minutes, 12–13 September 1978 (Campbell, ‘Te Urewera National Park’ (doc A60), p 124); Urewera National Park Board, minutes, 8 December 1976 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 362); Urewera National Park Board, ‘annual report for the year ended 31/3/1979’ (Campbell, ‘Te Urewera National Park’ (doc A60), p 124)

development of deer farming; the development of a tourist-oriented airstrip; the construction of buildings that might perpetuate the existence of the logging road. It would also, 'under certain circumstances', bring about 'eventual purchase' for the park.⁴⁵¹

The Crown did not grant the park board's request that the Maori land which it sought to acquire be designated proposed national park.⁴⁵² In addition to the reasons already given by Velvin, the most obvious cause for this is the potential for a very large liability to be incurred. But, as we have seen, Nikora's fears were realised: the negotiations were abandoned.

In summary, we have emphasised that to understand what role the Crown's desire to expand the park played in the negotiations of the 1970s, it is necessary to consider just what was at stake for the parties to these negotiations. Tuhoe had perceived that their very existence in Te Urewera was in peril. Their leadership addressed the fundamental questions of whether and on what terms Tuhoe communities might still have a future in Te Urewera, or whether they should simply surrender their forest lands to the park.

For its part the Crown at times acknowledged that its honour was at stake, and admitted an obligation to see justice done to Tuhoe for the effects of milling restrictions. But by the mid-1970s the Crown considered these effects were largely historical. And, since the Crown was only prepared to provide compensation by acquiring title (by purchase or perpetual lease) over land where milling was restricted, its motives for discussing compensation dovetailed neatly with its desire to acquire more land for the park.

We therefore fully concur with Neumann that '[a]ny interest the Crown had in purchasing further land within the old boundaries of the Urewera District Native Reserve stemmed not so much from its desire to compensate Maori [for the milling restrictions] but was motivated by ideas to enlarge the Urewera National Park'.⁴⁵³ In many ways, enlarging the park for this reason was more a matter of convenience than of ideology. As we have seen, public fears about soil erosion, flooding, and deforestation (more so than any real risk of such things) were a key driver in the Crown's actions. Maori Affairs officials such as Jock McEwen reminded ministers that Maori owners were surely entitled to compensation. But the Government was mostly adamant that it would acquire their land and trees for all time, rather than pay them (for the meantime) not to log their forests. In these negotiations, the park was the intended beneficiary rather than the key motivator.

As the negotiations dragged on, the Crown's interest in acquiring more Maori land for the park became somewhat academic. There are many reasons for this. At a technical level, it became harder and harder for officials to match the values attributed to the forest on Maori land with those for proposed exotic forestry on Crown land. But, more importantly in our view, officials had less and less reason to try: since sawmilling on Maori land in Te

451. Chief Ranger to Chairman, Urewera National Park Board, 26 July 1979 (Coombes, 'Cultural Ecologies II' (doc A133), p 83)

452. Coombes, 'Cultural Ecologies II' (doc A133), p 82

453. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 204

Urewera had wound up, there was no longer any imminent danger to the remaining forests. This meant in effect, as the Commissioner of Crown Lands made explicit in 1984, that the Maori enclaves throughout the park were already ‘when all is said and done, protected as virtual national park’.⁴⁵⁴

(3) Lake Waikaremoana and the Waikaremoana reserves

The Crown’s interest in securing the Maori ‘reserves’ in the Waikaremoana block for the national park stemmed from the desire to have complete control over development around the lake, considered then as now the centre piece and main attraction of the national park. The park management wanted to retain its monopoly on lakeside development and associated tourist revenue. It also wanted to ensure that the lake margins remained ‘pristine’. These motivations were interwoven with the Crown interest in purchasing the bed of Lake Waikaremoana. We consider broad issues relating to Lake Waikaremoana in a subsequent chapter. Our concern here is simply with the Crown’s attempts to incorporate the reserves and the lake into the park.

The Waikaremoana reserves were created in the course of the Urewera Consolidation Scheme. As we discussed in chapter 14, through the scheme the Crown acquired all of the large Waikaremoana block (73,667 acres), with the exception of these 14 small reserves totalling 607 acres, which Ngati Ruapani retained on the lake shore. Tuhoe and Ngati Kahungunu retained no lands whatsoever in the block. As we saw in chapter 14, the Crown’s subsequent failure to honour its promises to provide Ngati Ruapani with additional land south of the lake meant that many of the reserves’ owners already possessed insufficient lands.

The attractions of Lake Waikaremoana mean that these reserves are potentially extremely desirable and valuable lakeside real estate. Yet, the Crown promptly restricted their use and development. The Crown prohibited any alienation of the reserves (including timber cutting) other than to itself from 1929 until 1972. It did so explicitly to protect its monopoly on tourist revenue around the lake.⁴⁵⁵ Throughout the 1930s and 1940s, Crown officials actively enforced the prohibition prior to the park’s creation. They stopped the reserves’ owners from taking any timber from their land. And they prevented owners from developing their land to gain from the demand for lakeside accommodation.⁴⁵⁶ This, it should be noted,

454. Commissioner of Crown Lands, Hamilton, ‘Head Office committee: reserves – protected private land, South Auckland Land District’, 23 October 1984 (Coombes, ‘Cultural Ecologies II’ (doc A133), p23)

455. Walzl, ‘Waikaremoana’ (doc A73), pp 255–259

456. Walzl, ‘Waikaremoana’ (doc A73), pp 253–266, 328–330; Craig Innes, ‘Report on the Tenure Changes Affecting Waikaremoana “Purchase Reserves” in the Urewera Inquiry’, report commissioned by the Waitangi Tribunal, 2003 (doc A117), pp 22, 28–32

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was at a time when the Waikaremoana peoples were described as having been reduced by Crown actions over their lands to an ‘appalling state of indigence.’⁴⁵⁷

Unsurprisingly, the Waikaremoana reserves were a particular focus of claims before us that the Crown placed ‘severe restrictions’ on the use and development of Maori land. The claimants further alleged that the park board colluded with other agencies to prevent development on the Waikaremoana reserves.⁴⁵⁸ The Crown has denied these claims, on the basis that many Maori shared officials’ and park management’s legitimate concerns over development around the lake.⁴⁵⁹

We have no doubt that the Crown and park management, working in close conjunction with local authorities, did severely restrict use and development of the Waikaremoana reserves, both before but particularly after the creation of Te Urewera National Park.

As soon as the national park was established Crown officials tried to buy the reserves.⁴⁶⁰ This followed the National Parks Authority’s recommendation that the park administration ‘take early action to acquire the odd pockets of Maori land bordering Lake Waikaremoana.’⁴⁶¹ In 1955, the Director-General of Lands affirmed that Crown policy was definitely to acquire the reserves for the park.⁴⁶² He told the Commissioner of Crown Lands for South Auckland, then in control of the park’s management and administration, that in view of the National Park Authority’s recommendation, and its ongoing interest, you ‘should not lose sight of any possibility of acquiring any of these areas.’⁴⁶³

However, discussions between the commissioner, his counterpart in Gisborne, and the Ngati Kahungunu leader (and member of the Wairoa County Council) Turi Carroll, concluded that the reserves were not ‘odd pockets of Maori land’ but had been specially constituted for specific hapu, and any previous suggestions that they could be disposed of were ‘out of order.’⁴⁶⁴ In fact, they determined that:

457. Registrar of the Native Land Court, Gisborne, to Native Under-Secretary, 4 August 1938 (Vincent O’Malley, supporting papers to ‘The Crown’s Acquisition of the Waikaremoana Block, 1921–25’, various dates (doc A50(c)), p784)

458. Counsel for Wai 144 Ngati Ruapani, synopsis of closing submissions, 10 June 2005 (doc N19(a)), p37; Nga Rauru o Nga Potiki, amended consolidated particularised statement of claim for Waikaremoana, 8 October 2004 (claim 1.2.1(b), SOC EE), p43; Wai 36 claimants, first amended particularised statement of claim, 27 April 2004 (claim 1.2.2(a), SOC IX), p193; Ruatoki cluster of Nga Rauru o Nga Potiki, amended consolidated particularised statement of claim for Ruatoki, 8 October 2004 (claim 1.2.8(b), SOC FF), p117

459. Crown counsel, closing submissions (doc N20), topic 33, p19

460. Tony Walzl, summary of ‘Waikaremoana: Tourism, Conservation & Hydro-Electricity (1870–1970)’, 20 September 2004 (doc H7), p15; Vincent O’Malley, summary of ‘The Crown’s Acquisition of the Waikaremoana Block, 1921–25’, September 2004 (doc H5), p22

461. National Parks Authority, minutes, 19 August 1953 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(a)), p101)

462. Walzl, ‘Waikaremoana’ (doc A73), p386

463. Director-General of Lands to Commissioner of Crown Lands, Hamilton, 21 May 1956 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(a)), p485); Director-General of Lands to Commissioner of Crown Lands, Gisborne, 16 October 1956 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(a)), p484)

464. Walzl, ‘Waikaremoana’ (doc A73), p387; Commissioner of Crown Lands, Gisborne, to Director-General of Lands, 16 November 1956 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(a)), p483)

It is neither logical nor reasonable to attempt to incorporate them into the Park, and we feel sure that any meetings of Assembled Owners would refuse to agree. . . .

The suggested giving of the Reserves in exchange for notices commemorating their Family Elders' names is really 'swopping substance for shadow' because Maoris have equal rights with Pakeha over the Park, but have exclusive rights to the Reserves.⁴⁶⁵

When the Director-General of Lands persisted in trying to buy the reserves, negotiations became entwined with efforts to acquire the lakebed for the park.

The Crown had always wanted to establish its ownership of the bed of Lake Waikaremoana. As we will discuss in more detail later in the report, the Government had appealed the 1918 Maori Land Court decision that Maori owned the lakebed in accordance with their own customs and usages, 'freed from any qualification or limitation which would attach to them if the rules and presumptions of English law were given effect to.'⁴⁶⁶ The Crown's concern in 1918 was that this decision might set a precedent for Maori ownership of the beds of other large lakes, in particular Lake Taupo and the Rotorua lakes. But the Crown's appeal was not finally heard until 1944, by which time the Crown had negotiated settlements for those other lakes, and so saw the question as more a matter of principle.⁴⁶⁷ The Crown lost its appeal, comprehensively, though it only finally conceded the case on 13 September 1954, days before the deadline to appeal to the Supreme Court.⁴⁶⁸

The Waikaremoana peoples were now the recognised legal owners of the bed of Lake Waikaremoana. They also now owned Patekaha Island, of almost 20 acres, and several other small islets in the lake. Meanwhile, however, the Crown continued acting as if it owned the lakebed. Most importantly, in 1944, the same year in which the courts confirmed that the Waikaremoana peoples owned the lakebed, the Crown continued developing its Waikaremoana hydro electricity scheme by driving a tunnel through the lake's natural earth dam, and starting to draw water directly from the lake.⁴⁶⁹

We assess the injurious effects of the hydroelectric scheme in a subsequent chapter. Here we note only that it lowered lake levels, and so impacted on the lake fishery, as well as affecting tourism.⁴⁷⁰ But another, quite unexpected consequence was that lowering the lake's level created a substantial ring of Maori-owned land around the waters' edge (some 280 acres in total). This made anyone accessing the lake, or building amenities on its shore, liable for

465. Commissioner of Crown Lands, Gisborne, to Director-General of Lands, 16 November 1956 (Campbell, supporting papers to 'Te Urewera National Park' (doc A60(a)), p 106)

466. Maori Appellate Court, minutes, 28 March to 1 August 1944, 'Lake Waikaremoana Crown Appeal, Judgement', September 1944 (doc H2), p 154; Emma Stevens, 'Report on the History of the Title to the Lake-bed of Lake Waikaremoana and Lake Waikareiti', report commissioned by the Crown Forestry Rental Trust, 1996 (doc A85), p 37

467. Walzl, 'Waikaremoana' (doc A73), p 353

468. Walzl, 'Waikaremoana' (doc A73), pp 352-353

469. Walzl, 'Waikaremoana' (doc A73), pp 358-359

470. Walzl, 'Waikaremoana' (doc A73), pp 359-364

trespass. As the Minister of Lands, Clarence Skinner, pointed out to Prime Minister Walter Nash:

if the Maoris cared to exercise their rights they could stop all access to the lake. Moreover, the National Parks Authority is being prejudiced in its plans for the development of the Park because it cannot establish parking areas, conveniences etc. near the water's edge as these would be on Maori land.⁴⁷¹

Also, since Waikaremoana was a 'private lake', a later Crown Law opinion in 1966 said that there was no public right of boating either; not only did boaters have to trespass on private land to get to the lake, they were still trespassing once they were on it.⁴⁷²

Only now that it realised that the park's core interests were at stake, did the Crown at last commit to serious negotiations over ownership and use of the bed of Lake Waikaremoana. Until this point negotiations had been only intermittent, and on the Crown's behalf decidedly half hearted. There was a gulf between the owners and the Crown over the value of the lake, and the form any compensation should take. In fact officials saw little need for any settlement. They considered that there was no need to pay for past or future use of the lake, arguing there was little development of the lakebed itself, and that the owners had not been prejudiced by use of the water flowing from the lake for hydro-electric purposes.⁴⁷³

At this stage officials also did not consider that the lake was needed for the national park (over and above the fact that it was already located inside it). As the Director-General of Lands, whose Department was running the park before a park board was appointed, put it:

Certainly from added scenic views the lake is of value to the Park but apart from this is not an integral part of the Park. Any restrictions governing the Park area do not effect [*sic*] the lake nor do they conflict with the lake's use. Consequently it is of no great concern whether the lake forms part of the Park or not.⁴⁷⁴

So, when pleas from Waikaremoana Maori in 1958 prompted Prime Minister and Minister of Maori Affairs Walter Nash to reconsider negotiating, officials struggled to provide a basis for a Crown position.⁴⁷⁵ They eventually based a suggested settlement offer of £10,000 purely on the value of the lake for generating fishing licence revenue.⁴⁷⁶ During this process officials agreed that the Waikaremoana reserves should be bought as well, and proposed offering their owners £2,000.⁴⁷⁷

471. Minister of Lands to Minister of Maori Affairs, 8 December 1959 (Tony Walzl, comp, supporting papers to 'Waikaremoana: Tourism, Conservation & Hydro-Electricity (1870-1970)', various dates (doc A73(b)), p 920)

472. Walzl, 'Waikaremoana' (doc A73), pp 464-465

473. Walzl, 'Waikaremoana' (doc A73), pp 391-396

474. Director-General of Lands to Commissioner of Works, 18 June 1958 (Walzl, 'Waikaremoana' (doc A73), p 397)

475. Walzl, 'Waikaremoana' (doc A73), pp 398-400

476. Walzl, 'Waikaremoana' (doc A73), p 438

477. Walzl, 'Waikaremoana' (doc A73), pp 404-405

When the Waikaremoana peoples came in force to Wellington in August 1959, and met with Prime Minister Walter Nash, Minister of Lands Clarence Skinner, and Minister of Forests Eruera Tirikatene, the yawning gap in expectations was immediately apparent. Nash frankly acknowledged he was ‘fearful’ of the prospects for any lakebed settlement. The deputation, for its part, also made clear that the owners of the Waikaremoana reserves would not sell them.⁴⁷⁸ While there was some awareness within Government that the reserves’ owners were a distinct group among those who owned the lakebed, it had been proposed since the late 1950s to deal with them at the same time so as to save trouble and expense (for the owners).⁴⁷⁹ Mr McGregor of Wairoa, who spoke on behalf of the Waikaremoana deputation, explained that the reserves ‘had a traditional significance to the people’ and they did not want to sell them.⁴⁸⁰

It seems to have been at this point that Crown officials realised the full implications of having created a ring of Maori land around the lake. Suddenly conscious that the interests of the park were at stake, Minister of Lands Skinner proposed offering £25,000 to purchase the lakebed.⁴⁸¹

The incoming first National Government adopted the gist of Skinner’s revised position. In July 1961 Cabinet resolved to offer £25,000 to purchase the lakebed, the islands in the lake and, despite the owners’ opposition, the reserves as well. This price, according to the new Minister of Maori Affairs, was to be ‘considered as including the settlement of any claims whatsoever that the owners may feel they have against the Crown in respect of its use of the bed and the waters for hydro-electric purposes’, a closely related matter which we will address later in the report.⁴⁸²

Representatives of the owners met to discuss the Crown’s offer with Richard Gerard, the incoming Minister of Lands, and Ralph Hanan, the new Minister of Maori Affairs, together with key senior officials, on 9 August 1961. The owners’ solicitor, Wiren, spoke on their behalf, saying they had decided to refuse the Crown’s offer, the points at issue being whether the Crown would agree to negotiate an annuity, and why the Crown wanted the reserves.⁴⁸³

No answer was forthcoming to the deputation’s first question, but various replies were given to the second. Minister Gerard said only that the reserves and the islands were ‘desirable additions’ to the park. Jack Hunn, Secretary for Maori Affairs, considered that: ‘[i]t

478. ‘Notes of Deputation to the Right Hon the Minister of Maori Affairs, the Minister of Lands and the Minister of Forests’, 19 August 1959 (Tony Walzl, comp, supporting papers to ‘Waikaremoana: Tourism, Conservation & Hydro-Electricity (1870–1970)’, various dates (doc A73(b)), p 933)

479. Walzl, ‘Waikaremoana’ (doc A73), p 389

480. ‘Notes of Deputation to the Right Hon the Minister of Maori Affairs, the Minister of Lands and the Minister of Forests’, 19 August 1959 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), p 933)

481. Minister of Lands to Minister of Maori Affairs, 8 December 1959 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), p 921)

482. Minister of Maori Affairs to Wiren, Ronayne, and Burns, 21 July 1961 (Walzl, ‘Waikaremoana’ (doc A73), pp 444–445)

483. Wiren, ‘Notes of Deputation Held in Hon Mr Hanan’s Rooms’, 9 August 1961 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), p 886)

would just be cleaning up of the Crown ownership in the district. But Minister Hanan elaborated that they would 'complete the possibilities' for developing tourist resorts around the lake.⁴⁸⁴

Wiren then explained that if the reserves were lost 'the people would be completely landless. They were old settlements and the people had lived there.'⁴⁸⁵ At this point the reserves were excluded from the lakebed negotiations, but these continued to flounder over the ongoing gulf in perceptions of the value of the lake, and the issue of payment by means of an annuity.⁴⁸⁶ We are not concerned with the detail of the negotiations in this chapter.

Meanwhile the park board became concerned about rumoured commercial developments on the reserves.⁴⁸⁷ The park board's consistently stated policy was 'to preserve the Lake as far as possible in its virgin state.'⁴⁸⁸ One of the board's primary concerns was the potential for building development on Maori land, both the part exposed by the drop in lake levels, and on the reserves. As the Commissioner of Crown Lands told the Director General of Lands in 1964:

Ever since the Park Board's inception, one of its main concerns has been to try and prevent the beauty of the Lake from being spoiled by the erection of buildings around the foreshore as has happened with most of the North Island lakes: and its constant anxiety had therefore been that the Maori owners of the lake bed or the Reserves might be persuaded to allow building on the lands.⁴⁸⁹

The park board had no legal authority to control use or development on this Maori land, but gained support for its policy of preserving the lakeshore 'free from buildings' from the Wairoa County Council.⁴⁹⁰ However, the council also acknowledged that it was in 'an embarrassing position. It is as anxious as the Board to prevent building around the Lake but it is equally conscious of the limitations of its powers.'⁴⁹¹ The council had 'temporized' by requiring Maori attempting to build on one of their reserves to submit building plans, but could not refuse a building permit 'if application were made in the proper way.'⁴⁹²

484. Minister of Maori Affairs, 'Notes of Deputation Held in Hon Mr Hanan's Rooms', 9 August 1961 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 886)

485. Wiren, 'Notes of Deputation Held in Hon Mr Hanan's Rooms', 9 August 1961 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 886); 'Notes of Deputation', 9 August 1961 (Walzl 'Waikaremoana' (doc A73), pp 445-446)

486. Walzl, 'Waikaremoana' (doc A73), pp 445-447, 450, 452-453

487. Coombes, 'Cultural Ecologies II' (doc A133), pp 53-55

488. Chairman, Urewera National Park Board, to A McPhail, Gisborne, 24 June 1968 (Coombes, 'Cultural Ecologies II' (doc A133), p 86)

489. Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 2 December 1964 (Walzl, 'Waikaremoana' (doc A73), p 458)

490. Urewera National Park Board, minutes, 25-27 November 1964 (Edwards, 'Selected Issues' (doc L12), p 88)

491. Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 2 December 1964 (Walzl, 'Waikaremoana' (doc A73), p 479)

492. Urewera National Park Board, minutes, 25-27 November 1964 (Edwards, 'Selected Issues' (doc L12), pp 88-89)

The park board therefore asked the National Parks Authority to ‘expedite steps’ to acquire both the reserves and the lakebed.⁴⁹³ The Authority agreed, and resolved that as a matter of policy the reserves should be purchased or acquired through exchange as soon as practicable.⁴⁹⁴ Park board members Charlie Nikora and John Laughton were then sent to reassure owners that the board’s desire to acquire the lakebed and reserves was to ensure ‘their beauty would be preserved for all people for all time.’⁴⁹⁵ But they had such ‘a very difficult hearing’ that they suggested dropping the matter of the reserves to concentrate on acquiring the lake.⁴⁹⁶ The Commissioner of Crown Lands for South Auckland (the park board’s chairman) concurred; he reasoned that when this was achieved, the acquisition of the reserves would ‘follow naturally and with not so much difficulty.’⁴⁹⁷ The board accepted this position at its August 1966 meeting.⁴⁹⁸

By now the Government was once more seriously considering acquisition of the lakebed for the park. As the Director-General of Lands put it:

It is felt that a large lake such as Waikaremoana should be in Crown ownership in view of its situation within the Urewera National Park, its use for recreational pursuits and its scenic attractions. I think it is generally accepted among the owners that sale to the Crown is the proper course to follow and the question then arises of what the price should be.⁴⁹⁹

However, at a meeting on 16 November 1966 the owners again rejected the maximum price the Crown was prepared to pay, now £35,000. Eruera Tirikatene and Norman Kirk, leader of the opposition, both indicated to owners at the meeting that a Labour Government would pay more. One official noted afterwards that he thought double the Crown’s proposed figure, at least, would be necessary. But the Commissioner of Crown Lands for South Auckland, F S Beachman, wrote to the Director-General of Lands that he had been told ‘that had we asked them to reserve this land as part of Urewera National Park in such a manner that the Maori people were not having all their ancestral ties (if any) severed completely from it we would not have met with any opposition on cost.’⁵⁰⁰ The Commissioner thought

493. Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 2 Dec 1964 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), pp 644–645)

494. Campbell, ‘Te Urewera National Park’ (doc A60), pp 99, 129; Walzl, ‘Waikaremoana’ (doc A73), p 479

495. T C Nikora, Urewera National Park Board, minutes, 18 February 1965 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(b)), p 289)

496. Urewera National Park Board, minutes, 5–6 May 1965 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 81–82)

497. Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 3 June 1965 (Walzl, ‘Waikaremoana’ (doc A73), p 480)

498. Campbell, ‘Te Urewera National Park’ (doc A60), pp 99–100

499. Director-General of Lands to Secretary of Native Affairs, 7 April 1966 (Walzl ‘Waikaremoana’ (doc A73), p 460)

500. Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 29 November 1966 (Walzl, ‘Waikaremoana’ (doc A73), p 463)

that the owners seemed to be thinking of a Maori Reservation under section 439 of the Maori Affairs Act 1953, with control and management vested in the park board.

The Crown's desire to buy the lakebed was further spurred at this time by growing uneasiness about the nature of Maori rights of ownership, and the ramifications of those rights. First, as we mentioned above, legal advice in December 1966 questioned whether the public had any right of navigation on the lake unless Maori owners granted such rights (and even if there was such a right, boat owners would have to cross privately owned land to get access to the water). Crown lawyers suggested persons boating on the lake were 'probably in law trespassers'.⁵⁰¹ Maori owners had not restricted boating in any way. But the Marine Department could not legally regulate navigation on the lake to ensure public safety.

Further issues surfaced after a deputation from Waikaremoana Maori to the Minister of Lands in November 1967 persuaded the Government to agree to provide a valuation of the bed of Lake Waikaremoana.⁵⁰² Asked whether the owners were willing to include the reserves in negotiations, the deputation yet again reiterated the owners' 'strong objection to sale to the Crown', but agreed to the reserves being valued; and to 'some form of reservation' to prevent sale or commercial exploitation.⁵⁰³

The valuation provoked discussion among officials of the national park board's plan to build a new park headquarters at the lake – which raised questions about the exact location of the lake shore and therefore the extent of Maori title. It emerged that significant features on Maori land included parts of the main highway between the Lake House Motor Camp and Aniwaniwa, parts of the motor camp and motel grounds, two park board huts, and a boatshed.⁵⁰⁴

The valuation also gave officials pause as they sought to clarify the legal situation: were they right in thinking that the Crown owned the waters of the lake, while the bed was vested in Maori owners? Legal advice from the Lands Department Office Solicitor in February 1968 suggested that as Lake Waikaremoana was a non-tidal lake, the bed vested in Maori owners and 'unless there are statutory provisions the water while in the lake, would be in the ownership of the persons owning the bed of the lake or riparian rights'. The Director-General of Lands advised the Valuer-General accordingly that:

In view of the fact that I have no evidence to the contrary, it must be accepted that the waters of the lake are in the ownership of the persons owning the lakebed. The Crown does, however, have the sole right to use these waters for certain purposes.

He referred to the Crown's exclusive statutory right to use water to generate hydro-electric power, stating that the owners of the waters in the lake had 'no right to stop the water

501. Rockel to Secretary of Marine Department, 8 December 1966 (Walzl, 'Waikaremoana' (doc A73), p 64)

502. Walzl, 'Waikaremoana' (doc A73), pp 480–481

503. Handwritten notes on meeting of owners of Lake Waikaremoana with Minister of Lands, 21 November 1967 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), pp 776–777)

504. Walzl, 'Waikaremoana' (doc A73), pp 469–472

flowing from the lake.⁵⁰⁵ We will consider the broader implications of this legal advice in a subsequent chapter. Here, we are concerned to set out the various factors which contributed to the negotiated arrangements in respect of the lake. Of these, the most important was still the perceived effects of Maori landownership on the National Park, and vice versa.

The Valuer-General supplied a special valuation of the lakebed on 14 October 1968: \$147,000 in total, of which \$70,000 was for the land under water, \$73,000 for 280 acres of exposed land, and \$4,000 for improvements. This amount was much more than the Crown had been prepared to pay for the lakebed previously. The Valuer-General also valued the Waikaremoana Reserves at almost \$50,000, which illustrates that the Crown's offer of just £2,000 for the reserves in 1959 was simply risible.⁵⁰⁶

Despite the greatly increased purchase price, the Director-General of Lands urged that the lakebed simply had to be acquired for the park:

The control of Lake Waikaremoana should be in the hands of the Crown so that its boating, fishing and scenic attractions will be preserved for the public for all time. The land outside the title boundary forms the major part of Urewera National Park and the National Parks Authority is being prejudiced in its plans for the development of the Park because it cannot establish parking areas, conveniences etc. near the water's edge as these would be on Maori land. Furthermore, if the Maori owners cared to exercise their rights of ownership they could stop all access to the Lake.⁵⁰⁷

The park board was equally concerned. It saw the control and management of the lakebed and the newly exposed surrounding strip of Maori land as its 'over riding management problem'.⁵⁰⁸

In June 1969, Cabinet approved an offer of \$143,000 (the special valuation minus an allowance for the existing improvements such as the motel and motor camp, spread over 10 years with interest at five per cent per annum. Officials told owners that:

It was the Crown's desire to have the Lake in public ownership as part of the Urewera National Park when it would be available to all the people of New Zealand – including the Maori people.⁵⁰⁹

505. The Water Power Act 1903 vested the sole right to use water for the purpose of generating electricity in the Crown. See Director-General of Lands to Valuer-General, 26 March 1968 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 756).

506. Deputy Valuer-General to Director-General of Lands, 2 October 1968 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 1101)

507. Director-General of Lands to Minister of Lands, 12 November 1968 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 1090)

508. Department of Lands and Survey, *Planning Team report: Urewera National Park Management Plan*, p 16 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1339)

509. Recording Officer, 26 September 1969 (Walzl, 'Waikaremoana' (doc A73), p 474)

But the owners unanimously rejected the Crown's offer. They resolved instead to offer the Government a 50-year lease with a perpetual right of renewal. The rent was to be set at six per cent of valuation, reviewed at 10-yearly intervals. In October 1969, Lands officials told their Minister that there was 'no possibility that the owners will agree to the Crown taking over the lake on any other basis.'⁵¹⁰ Their offer became the basis of the lease agreement finally signed at Taihoa Marae in August 1971, and then formally validated by the Lake Waikaremoana Act 1971. The rental was backdated to 1967.⁵¹¹

We will examine Treaty claims about the lease and its terms, and about the Treaty-consistency of these long negotiations over Lake Waikaremoana, in a subsequent chapter. Here, we note the point that it was the interests of the park that ultimately pushed the Crown to agree to an arrangement by which the Maori owners would at long last obtain a financial return on what was – at one level – an 'economic asset'.

In the submissions of counsel for the Wai 36 Tuhoe claimants, the 'primary focus of the Wai 36 Claim has been the Crown's actions in preventing Tuhoe from obtaining a full economic return from its asset.'⁵¹² One key part of that claim was 'the use of the lake as part of the Crown's scenery preservation and National Parks estate prior to 1967.'⁵¹³ In the claimants' view, the 1971 Act provided for the rental payment to be backdated to 1967. In reality, they argued, it should have dated from the Crown's effective use of the lake for the park (since 1954), and even further back to the prior use of the lake for 'acclimatisation, preservation and tourism', which the claimants dated to 1910. In other words, the Crown used the lake for the national park from 1954 but did not start paying its owners until (effectively) 1967.⁵¹⁴ This point was also made by counsel for Wai 144 Ngati Ruapani, who pointed to the owners' request for an annuity that reflected past use of the lake, which the eventual lease arrangements did not provide.⁵¹⁵

As we have already noted, we will consider claims about the lease in a later chapter. Here, we note our agreement with the claimants that the Crown should have paid for the use of their lake in the national park from 1954, and that the rental should have been backdated to at least that date. In August 1961, the owners had made it clear that they wanted any annuity to reflect the Crown's past use of the lake (described in 1961 as the previous 40 years).⁵¹⁶ During the lengthy negotiations, much of the debate within government had been over whether it really needed to purchase or lease the lakebed, since it effectively already had the lake in the national park. It was the lowering of the lake level, and the sudden creation of

510. Walzl, 'Waikaremoana' (doc A73), p 475

511. Walzl, 'Waikaremoana' (doc A73), pp 475–477

512. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 72

513. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 73

514. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), pp 72–73; counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 146–147

515. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, pp 72–73

516. Counsel for Wai 144 Ngati Ruapani, closing submissions (doc N19), app A, p 72

a ring of Maori land around the lake, that forced the Crown to act so as to secure the lake more practically and effectively for the park. From 1967, the Maori owners – in the form of two tribal trust boards – at last secured an economic return for their ‘asset’. For the 45 years since then, they have received an annual rental. In that sense, the park and its imperatives had a positive effect on the economic opportunities available to Tuhoe, Ngati Ruapani, and Ngati Kahungunu, albeit a tardy one.

The question might be asked: if there had been no national park, would the Crown have had to negotiate an arrangement for public access anyway, for boating, fishing, and other recreational uses of the lake? That would likely have been the case, as occurred for the Taupo waters in the 1920s.⁵¹⁷ But if there had been no park, Maori could have taken a significant role in local tourism, by erecting lakeshore accommodation and taking advantage of prime lakeshore locations. While the existence and needs of the park pushed the Crown into a long-term lease, it also prevented Maori from benefitting from their lake in other ways, had some other kind of access arrangement been negotiable.

Despite Crown officials making ‘every endeavour’, the arrangements for the lease of the bed of Lake Waikaremoana did not include the Waikaremoana reserves.⁵¹⁸ Yet, the Crown did not give up on the idea of purchase. As the Commissioner of Crown Lands for South Auckland (and park board chairman) emphasised in March 1972, ‘the Crown is actively engaged in attempting to acquire these lands.’⁵¹⁹ But the Crown’s primary focus was now on ensuring that use of the reserves did not threaten the park.

The issue of buildings around the lake had come to a head in 1968, and Crown officials resorted to new tactics. The Chief Surveyor in the Gisborne office of the Lands and Survey Department, who was a member of the Master Planning Committee of the national park board, ‘undertook for the park board’ to approach the Wairoa County Council. He persuaded it to designate the reserves, and the former (exposed) lakebed, as ‘Proposed National Park’ in the draft district plan.⁵²⁰ This occurred after the window for public submissions on

517. See Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 3, pp 1295–1333.

518. Director-General of Lands to Director-General of Forests, 1 September 1972 (Campbell, ‘Te Urewera National Park’ (doc A60), p 131)

519. Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 14 March 1972 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), p 995)

520. Chief Surveyor to Director-General of Lands, 13 December 1968 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), pp 1085–1086; Planning Surveyor to Messrs Porter and Martin, 2 January 1969 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), p 996); Campbell, ‘Te Urewera National Park’ (doc A60), p 131; Chief Surveyor, to Surveyor-General of Lands, 27 March 1972 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 542)

the draft plan closed in August 1968; the plan became operative on 1 January 1971.⁵²¹ Thus, there was no opportunity for the Maori owners to contest this provision in the plan.

Brad Coombes has argued that the park board ‘colluded’ with the Wairoa County Council over the designation.⁵²² Evidently, the two bodies had a close working relationship and nowhere more so than over this matter.⁵²³ In fact, however, their cooperation was at the specific behest of the Crown: the Director-General of Lands assured the Minister of Lands in March 1969 that the park board and county council were together taking action to remove existing unauthorised buildings around the lake, and he was personally ‘ensuring that close liaison is maintained to avoid any further private building around the lake margins pending Crown purchase.’⁵²⁴ Liaison was so close that the park board, the Department of Lands and Survey, and the Wairoa County Council were for some years unsure which of them had financial responsibility for the designation (that is, for funding the ultimate purchase). This was resolved in 1972 when – to dispel doubt – the Department of Lands accepted the financial responsibility.⁵²⁵

It is important that Crown policy for the management of national parks envisaged close cooperation between park boards and local authorities; this is reflected in the 1978 General Policy for National Parks, which expressly instructed park boards as to the essential importance of developing close relationships with local authorities.⁵²⁶ Also, there were overlaps in membership: the National Parks Authority recommended the members of the park boards, and local councillors were sometimes recommended (and appointed) to those boards.

Since Department of Lands and Survey officials, the park board, and the Wairoa and Whakatane county councils openly worked together, as a matter of established policy and practice, their close liaison can hardly be called collusion. But this does not in any way justify their ensuring that the Maori owners of the Waikaremoana reserves could not realise any return on their land.

To understand the actual impact of these restrictions we must consider whether Maori themselves wished to develop their reserves. Crown counsel stressed to us that Maori owners of the Waikaremoana reserves opposed uncontrolled development around the lake. We accept that this was the case by the 1970s. At that time Maori owners repeatedly provided

521. Chief Surveyor to Director-General of Lands, 13 December 1968 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), pp 1085–86; Planning Surveyor to Messrs Porter and Martin, 2 January 1969 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), p 996); submission of the Tuhoë-Waikaremoana Maori Trust Board to Minister of Maori Affairs Matiu Rata, 18 February 1973 (Innes, supporting papers to ‘Waikaremoana “Purchase Reserves”’ (doc A117(d)), pp 259–260)

522. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 4, 59, 561

523. Edwards, ‘Selected Issues’ (doc L12), p 89; Walzl, ‘Waikaremoana’ (doc A73), p 501

524. Director-General of Lands to Minister of Lands, 10 March 1969 (Walzl, supporting papers to ‘Waikaremoana’ (doc A73(b)), pp 1082–1083)

525. Edwards, ‘Selected Issues’ (doc L12), p 91; Chief Surveyor to Surveyor-General, 27 March 1972 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 542)

526. Department of Lands and Survey, ‘Identification and Assessment of Potential Areas for National Parks’, July 1977 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 96)

reassurances that they too wanted the reserves to remain largely undeveloped.⁵²⁷ We accept also that some of the reasons for this attitude were longstanding, since several of the reserves contain urupa and other wahi tapu.⁵²⁸ We also note that Maori appreciated the park board's help in removing huts and camps that had been erected on the reserves without their consent.⁵²⁹

But the owners did not accept that they should have no power to decide whether or not to use or develop any of their land. Their views were tactfully put to the Minister of Maori Affairs, Matiu Rata, in a submission by the Tuhoe Waikaremoana Maori Trust Board in 1973:

Although the reserves were set apart for the undeniable use and occupation of those entitled, the owners say that over the years they have been persistently hampered by one Government official or other as to their use of these reserves. They capitulated to these pressures eventually and allowed their properties to revert to and remain in natural bush, which is the condition in which we find them today.

These reserves have strong historic association and attachment for the owners – some were the scene of battles and massacres, some are burial grounds and others were the settlements of the current generation. For them, therefore, total alienation is a difficult matter.

As the reserves exist today, the public have relatively unrestricted access and in point of fact these lands are used as part of Te Urewera National Park. Public opinion is that these reserves should be part of Te Urewera National Park and should be left in its current state. The public interest has, consequently, been catered for through all these lands being designated as proposed National Park in the Wairoa County District Scheme.⁵³⁰

As this submission makes plain, the owners had only very reluctantly accepted wholesale restrictions on the use and development of their reserves. This is unsurprising given that these reserves were the only lands they had retained in the Waikaremoana block. Tama Nikora was later more forthright: 'illegal victimisation of owners by officials led to their eviction, and subsequent restrictions by the Crown have virtually prevented any use of these lands for their benefit.'⁵³¹ Mr Nikora's statements are not exaggerated. By this time, there had been a long history of pressure on (and interference with) the reserves' owners. Back in 1955, for example, Judge Carr had written to the Commissioner of Crown Lands:

527. Coombes, 'Cultural Ecologies II' (doc A133), pp 55–56

528. Te Wharehuia Milroy and Hirini Melbourne, 'Te Roi O Te Whenua', 1995 (doc A33), pp 276–277

529. Rodney Gallen, brief of evidence, undated (doc H1), p 7; Innes, 'Waikaremoana "Purchase Reserves"' (doc A117), pp 33–34

530. Submission of the Tuhoe-Waikaremoana Maori Trust Board to the Minister of Maori Affairs and Lands Matiu Rata, 18 February 1973 (Innes, 'Waikaremoana "Purchase Reserves"' (doc A117), p 32)

531. Tama Nikora to Evelyn Stokes, 21 April 1986 (Brad Coombes, comp, supporting papers to 'Cultural Ecologies of Te Urewera (II)', various dates (doc A121(a)), p 217)

One learns that Forest Rangers are hounding Maori owners from occupying some of these Reserves while they themselves take possession of and live in whatever buildings the owners have erected. Little do they realise that they (the Rangers) are trespassing.⁵³²

The reserves' owners thought it especially unfair that rates should be levied on land which they were prohibited from using. By February 1973, accumulated rates arrears on the reserves stood at around \$14,000.⁵³³ Rating pressure probably explains why owners held a meeting in early 1972 to discuss the future of the reserves. The kaumatua among the owners were reportedly 'unanimously' in favour of the park having control of and leasing the reserves, but wanted to negotiate the conditions of that control. Rodney Gallen was asked to open these negotiations; first, however, he discussed the matter with John Rangihau, Sir Turi Carroll, and Toki Carroll, and this group developed a tentative proposal which Gallen then put to the Minister of Lands, Forests and Maori Affairs, Duncan MacIntyre, in February 1972.⁵³⁴

One aspect of their proposal was that all but one of the fourteen reserves be leased to the national park. But another key aspect of the proposal was that 'some kind of complex' which 'should as far as possible resemble outwardly at least a Pa or Kainga' be built on the remaining reserve. This would act as a conference centre, and give somewhere to stay for Maori (including the reserves' owners, who would also thereby at last gain some return from their lands) as well as for Pakeha holiday makers and people interested in Maori. It was felt, 'it would be impossible to get a better setting for co-operation' between Maori and Pakeha.⁵³⁵

Minister MacIntyre conveyed to Gallen his favourable 'immediate reaction' to their proposals in March. He noted that with the pending demolition of Lake House there would be 'something of a vacuum' in accommodation.⁵³⁶ But the Commissioner of Crown Lands meanwhile vehemently opposed the proposed building development, writing a confidential memo to his superiors in April 1972 to stress that the Minister needed to be 'fully aware' of the longstanding 'primary objective' of board policy 'to preserve the unique beauty of a lake unspoiled by buildings around its shores.'⁵³⁷

The commissioner argued that both the county council and Maori owners supported this policy. As evidence for this, he noted that the council chairman had reassured officials and the park board that no one had opposed the national park designation when the district

532. Judge Carr to Wakelin, 15 August 1955 (Walzl, 'Waikaremoana' (doc A73), p 386)

533. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 87

534. Gallen to Duncan MacIntyre, 25 January 1972 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 1008)

535. Gallen to Duncan MacIntyre, 25 January 1972 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 1008); Minister of Lands to Gallen, 13 March 1972 (Walzl, 'Waikaremoana' (doc A73), p 499)

536. Minister of Lands to Gallen, 13 March 1972 (Walzl, 'Waikaremoana' (doc A73), p 499)

537. Commissioner of Crown Lands to Director-General of Lands, 27 April 1972 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 999)

plan was publicly notified, and that the council had no intention of lifting it.⁵³⁸ (As we noted above, this change to the district plan was actually made after public notification and the expiry of time for submissions, not before.) After the Director-General of Lands relayed the commissioner's points almost verbatim to the Minister, the proposal was quietly shelved.⁵³⁹

Tony Walzl has noted that local Crown officials and the park board learnt of the proposal to develop one of the reserves at around the same time that they discovered the Department of Maori Affairs planned to lift the longstanding alienation restrictions from the reserves, as part of a nationwide policy of lifting restrictions on alienation that 'were no longer deemed tenable to maintain'. Alarmed Crown officials asked that an exception be made for the Waikaremoana reserves; but the restriction was, it seems, lifted in October 1972. This also caused Maori some concern, as owners were worried that lifting the alienation restrictions would make their land vulnerable to being taken for rates arrears.⁵⁴⁰

The owners of the Waikaremoana reserves had failed to persuade the Crown that some development sympathetic to park values might occur. They were now faced with the possibility of piecemeal alienation in the face of rating pressure. And they too were aware of the need for better management of the reserves, given the difficulty in clearing squatters from their land. The Tuhoe-Waikaremoana Maori Trust Board therefore applied to the Maori Land Court for the lands to be declared Maori Reservations under section 439 of the Maori Affairs Act 1953. After the council remitted the outstanding rates, the reserves were set aside as 'a place of historical & scenic interest and of special emotional association'.⁵⁴¹ We are aware of some controversy over whether or not the trust board could be said to have represented the listed individual owners of these reserves, and whether it had the authority from the owners to make this application. That is not at issue here, where we are concerned with the question of how the Crown's actions affected the choices that were made.

Strangely, it appears that rates continued to be levied. In 1976, Tamaroa Nikora reported to the park board that he had been asked by the owners whether they could derive any income from the reserves, 'since rates were being levied on them'.⁵⁴² As Nikora told the board, commercial use of the reserves conflicted with their preservation for scenic and historic reasons. Yet, according to Stokes, Milroy, and Melbourne, the rates arrears on the Waikaremoana reserves were not finally remitted until 1986.⁵⁴³

538. Commissioner of Crown Lands to Director-General of Lands, 27 April 1972 (Walzl, supporting papers to 'Waikaremoana' (doc A73(b)), p 999)

539. Walzl, 'Waikaremoana' (doc A73), pp 501–502

540. Walzl, 'Waikaremoana' (doc A73), p 500; submissions of the Tuhoe-Waikaremoana Maori Trust Board to the Minister of Maori Affairs Matiu Rata, 18 February 1973 (Craig Innes, comp, supporting papers to 'Report on the Tenure Changes Affecting Waikaremoana "Purchase Reserves" in the Urewera Inquiry', various dates (doc A117(d)), p 257)

541. Innes, 'Waikaremoana "Purchase Reserves"' (doc A117), pp 33–34

542. Urewera National Park Board, minutes, 11 March 1976 (Edwards, 'Selected Issues' (doc L12), p 94)

543. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 86

Use and development of the reserves continues to be tightly controlled, as Desmond Renata told us:

Our ability to use the reserves is restricted. You can't get over the reserves unless you have a boat. You can't build on the reserves, you can't even have vegetable gardens there. I can't go and catch a trout unless I have a piece of paper, or a permit to go and shoot something. This was once just the way of life.⁵⁴⁴

In sum, when the park was first formed in 1954 the National Parks Authority had already recommended that the Waikaremoana reserves be acquired for the park. From then until the present, the Crown and park management have ensured that Ngati Ruapani have had almost no capacity to enjoy the use of their land, still less develop it. There is no better example of Maori land in Te Urewera being treated as virtual national park.

(4) Conclusion

[o]The Crown has taken a close interest in controlling Maori land use and development in Te Urewera, especially in and around Te Urewera National Park. The Crown's reasons for doing so are underpinned by its forest protection policy, which in turn reflects the interests of Bay of Plenty and Hawkes Bay farming communities. The Crown has protected those communities as a matter of national importance. It has not seen protecting the economically marginal communities of Te Urewera as similarly important.

The establishment of the national park heightened the Crown's interest in controlling Maori land use and development. As Richard Boast states, the park is 'the dominant territorial and political reality of Te Urewera'.⁵⁴⁵ The park's establishment embodied and gave a specific shape to the Crown's forest preservation policies. The park's governing legislation, and Crown policy, has ensured that the park's management and administration is dedicated to furthering these preservationist policies, and to providing public access to their park for recreation. The economic needs of Maori communities have been seen as peripheral to – and sometimes incompatible with – those purposes. Worse, this has meant that park management before the 1980s saw Maori communities trying to live on their own lands as the 'Maori problem' – one that presented them with 'special difficulties'.⁵⁴⁶

Before the 1980s, the default policy position of the Crown and of park management was that virtually any and all Maori land in and around the park should be acquired. The Crown has not succeeded, however, in purchasing substantial areas other than Manuoha and Paharakeke. The Crown suggested to us that its attempts to purchase land therefore had a minimal impact. We, however, concur with Brad Coombes' reply to Crown counsel on this

544. Desmond Renata, brief of evidence, 22 December 2004 (doc 124), p 6

545. Boast, 'The Crown and Te Urewera in the Twentieth Century' (doc A109), p 245

546. Bassett and Kay, 'Ruatahuna: Land Ownership and Administration' (doc A20), pp 210–211; Coombes, 'Cultural Ecologies II' (doc A133), pp 494–495

point: the Crown's efforts to purchase land 'had a lasting impact upon the relationships that could have developed there. These were issues that dominated for a very long time when other issues should perhaps have had equal attention.'⁵⁴⁷

This is not a question of hindsight. As we noted at the beginning of this section, the Under-Secretary for Maori Affairs, Tipi Ropiha, advised his Minister in 1950 that the Crown needed to devise a comprehensive policy that balanced forest protection with the need for the peoples of Te Urewera to retain their small remaining pieces of ancestral land, and to be able to obtain some kind of economic return from it. It was clearly not beyond the capacity of governments to have devised solutions, in partnership with Maori, from the 1950s to the 1970s. Instead, protection forests dominated policy making, as they did the 'public opinion' of low-lying landowners, and Maori interests always took second place. At a time when appropriate solutions could have been devised, planned and implemented, as Ropiha had suggested, the predominant official belief was that Maori would eventually have to sell their land to the Crown and move away from the park.

The team of Ropiha (Under-Secretary) and Corbett (Minister) saw a relaxation of milling restrictions at the very inception of the park, as Ropiha's reasoning bore fruit, and for a time it looked as if Maori would be able to log and develop their small remaining lands while the great majority of the district was kept as protection forests. Maungapohatu, for example, was approved for controlled milling (to be followed by farm development) in 1959. But it was not to be; from the late 1950s, after the massive expansion of the park in 1957, a harder line began to re-emerge. In 1960 and 1961, the Minister of Forests refused to agree to cutting rights on Manuoha, resulting ultimately in the purchase of an extra 38,000 acres for the park. From 1961, virtually the whole of Te Urewera was covered by a section 34 notice under the soil and rivers conservation legislation. While, as we will also discuss in chapter 18, it was still possible to get consent for controlled milling, 'many' applications were deterred after 1961 because it was known they would not be granted.

In 1953, Corbett had accepted the principle that Maori owners should not, in all fairness, be prevented from milling (and developing) land where doing so would not result in erosion and flooding. Then, the principle of compensating landowners where milling *would* have harmful effects was written into the 1959 soil and water legislation. Against these principles stood two things: the lack of budget for a general compensation settlement if the notice was enforced over a wide area; and the public perception that land inside a national park should not be milled, and that all milling on Maori land in or adjacent to the national park was a danger to lower lying farmland. From around the time of the Rucroft petition in 1959, this public perception dominated Crown policy for the next two decades, despite Forest Service reservations as to its accuracy.

547. Coombes, cross-examination by Crown counsel, 2 December 2004 (transcript 4.12, pp 226–227)

The emphasis shifted from allowing Maori to mill where it was safe (the Corbett policy) or compensating where it was not (the 1959 Act) to attempting to negotiate a mass-surrender of Maori land to the national park as cheaply as possible. The Crown made repeated efforts to acquire the Waikaremoana reserves, the bed of Lake Waikaremoana, and all the remaining Tuhoe lands, which their owners had said would never be sold. But, in reality, the Crown lacked the funds or the political will for large-scale purchases. It was cheaper and easier to stop people from using their land than to buy it. The completed purchase of Manuoha and Paharakeke in 1961 was an exception for that reason.

The shift from a purchase to a lease of the lakebed in the late 1960s was a sign of things to come. In the 1970s and early 1980s, the Crown negotiated to obtain all Tuhoe's forest lands for the park, on a new basis of long-term (perpetual) lease or exchange. These long negotiations resulted in very little despite their importance to Tuhoe leaders, who feared for the survival of Tuhoe as Tuhoe if local communities died out, unable to make more economic use of their ancestral lands. While a relatively small amount of exotic forestry was established on Te Manawa o Tuhoe block, the complicated proposals for leasing land to the park in exchange for farm or forestry land went nowhere. Ultimately, Tuhoe were not convinced of the fairness of the proposals, or that they should relinquish yet more ancestral land (even in exchange for land elsewhere in their rohe). For the Crown's part, the cessation of logging on Maori land in the 1970s meant that it no longer needed to persevere. As the commissioner of Crown lands stated in 1984, Tuhoe lands were 'when all is said and done, protected as virtual national park'.

The most egregious example of the Crown's tactics is the long campaign to acquire the Waikaremoana reserves from their Ngati Ruapani owners. These efforts ignored the fact that the Crown's acquisition of the four southern blocks and of large swathes of the Waipaoa block, and its broken promises in the course of the UCS, were directly responsible for rendering Ngati Ruapani virtually landless. The Maori owners' ability to make any use or obtain any economic return from these lands – their last lands – was prevented by the Crown from the park's inception in 1954 until they were finally converted into section 439 reservations in 1972. That the owners successfully resisted outright alienation for so many years and under considerable pressure is a testimony to the great value that they placed on these final pieces of their ancestral Waikaremoana lands.

The history of the lakebed has a different significance for the issues considered in this chapter. There, the Maori owners' long and determined resistance won them a significant victory in 1971. The key here was the lowering of the lake level for hydroelectricity purposes, creating a permanent ring of exposed (dry) Maori land around the whole of the lake. In the face of their refusal to sell, and also the fact that they could deny public access across this land to their lake if they chose, the Crown finally accepted their demand for a lease and annual rental payments. But these were only backdated to 1967 when they should have

been backdated to 1954, the year in which the Crown both accepted Maori ownership of the lake (by not lodging a further appeal) and included the lake inside its boundaries as the centrepiece of the national park. In this instance, the park has resulted in Maori obtaining a return on their 'asset' for the past 45 years, since 1967.

16.6.3 What economic opportunities has the park presented to the peoples of Te Urewera?

(1) Introduction

In the preceding section, we considered the degree to which the creation and management of the national park constrained the economic opportunities available to those Maori communities which still owned land inside or adjacent to its borders. Now, we examine the converse question of whether the park created or facilitated new economic opportunities for these local people. As we have discussed above, the overriding ethos of New Zealand's national parks – as places set apart, to which people may come as visitors but where they do not stay – means that they do not readily lend themselves to that kind of economic opportunity. This is particularly true of Te Urewera National Park, which appears to have become synonymous with 'wilderness' in the eyes of many visitors and park administrators. But, for the peoples of Te Urewera, the park lies in the middle of their turangawaewae. They do not see it as a wilderness at all, but as the place in which they live and from which they need to be able to derive an income.

The peoples of Te Urewera have furthermore had few other economic and employment prospects available to them since the park's creation. We have discussed in a previous chapter how little land remained in Maori ownership by the end of the consolidation scheme, and in this chapter explored how the presence of the park constrained economic use of the remaining lands. The difficult economic situation of Te Urewera peoples was compounded by the decline of the forestry industry from the 1970s and its corporatisation in the 1980s, which resulted in widespread unemployment. The four farm development schemes, too, had run into significant trouble by the 1950s and offered limited support to local communities thereafter (see chapter 18). A full discussion of employment opportunities in the region, and of the economic straits to which the people had been reduced in the final quarter of the twentieth century, will be the subject of a later chapter in this report. Here, we are concerned with the relatively limited question of employment or other economic opportunities created by the presence of a park, its visitors, and its staff. But we must bear in mind that this is only one part of a much larger story.

In this context, and while it is unlikely that anyone expected the national park to be a financial boon compared with other types of land use, whatever economic assistance the park could provide to the peoples of Te Urewera was vital. Inevitably, there has been a clash

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of values and interests; a national park, by its very nature, is not intended to make a great deal of money. The view of many Te Urewera peoples is that a better balance needs to be struck between conservation and social (including economic) values. In the words of Te Wharehuia Milroy and Hirini Melbourne:

Te Urewera people want to be able to get on with their lives in their own way. They need to be able to maintain viable communities in Te Urewera, including local employment, so that migrant kin still have something to come home to. They do not want to be restrained by excessive bureaucratic restrictions, but do recognise the need to provide protection mechanisms for the indigenous forest resource. It is just as valid to argue that Crown policy in Te Urewera forests should include adequate protection mechanisms to ensure the preservation of Te Urewera communities and acknowledge their traditional relationships with their forest environment.⁵⁴⁸

In their 1986 report to the Government, Stokes, Milroy, and Melbourne put forward a similar view:

An overriding concern in management of indigenous forests on Crown lands which lie at the back doors of [Te Urewera] communities should be the welfare of people who live there, obtain their living there and whose social and cultural well-being is closely bound to Te Urewera forests. Protection and preservation of the indigenous forest resource should not be achieved to the detriment of the human communities of Te Urewera.⁵⁴⁹

Economic opportunity in the park exists either through participation in the work of running the park, or through conducting commercial business in it. The peoples of Te Urewera contend that they have not been adequately involved or supported in either. In their view, the park has instead been a further impediment in a district where economic options were already few.

Clearly, though, and as the Crown has cautioned, in assessing how the national park (and Crown policy related to it) has impacted on the economic well-being of Te Urewera peoples, we will need to account for a range of factors, such as:

- ▶ the situation they were in when the park was first set up;
- ▶ the employment opportunities available in the wider area (which will be addressed in a later chapter);
- ▶ the capacity of local people to set up commercial enterprises in, and derive income from, the park;
- ▶ the nature and accessibility of the park itself, and the nature of the tourism industry associated with Te Urewera National Park in particular, and national parks in general.

548. Te Wharehuia Milroy and Hirini Melbourne, 'Te Roi o te Whenua: Tuhoe Claims under the Treaty before the Waitangi Tribunal', undated (doc A33), pp 322–323

549. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 366

As Murton stressed:

Caution needs to be to the fore in assessing the economic impact of the national park, particularly with reference to Crown actions or omissions. Yes, policy and management until recently has been constraining, but other factors, such as remoteness, may have been just as significant in limiting the number of visitors and the need for facilities at places like Ruatahuna.⁵⁵⁰

Here, too, the Government's failure to build the promised roads (see chapter 14) has had long-term consequences. Murton added to his statement above: 'Of course, if the roads promised under the Urewera consolidation scheme had been built, the situation for mass and overseas tourism, in distinction from eco-adventure tourism, may have been very different.'⁵⁵¹

It is with this wider context in mind that we consider, first, commercial use of the park by Te Urewera peoples and, secondly, their employment within it.

(2) Commercial uses of the park

Tourism presents one of few economic uses largely compatible with the park's conservation values and the need for Maori to make a living.⁵⁵² But Brad Coombes' research suggests that the park administration has been 'ambivalent' about Maori and tourism.⁵⁵³ While the potential for Maori involvement in tourism was identified early on, Crown officials and park administrators were initially of the view that Maori communities in and around the park were destined to move elsewhere. Even where it has been recognised that Maori would continue to live alongside the park and needed to derive some income from it, park and government officials have struggled to accommodate commercial activity within the national park framework, and to reconcile it with ideas about Te Urewera as a 'wilderness' landscape.

It is telling that after a deputation from the National Parks Authority visited Te Urewera in 1966, one member, FR Callaghan, considered Tuhoe's role in the park under the heading 'Maori problems'. He recognised Te Urewera as the only park 'which has substantial numbers of Maoris living in enclosed areas close to its boundaries', but clearly saw little future for those communities. He thought the Tuhoe community at Ruatahuna, for example, would dwindle to some six families after milling wound up. In the meantime, however, he thought some use of their 'traditions and skills' should be made, as they might 'display some of their customs to tourist parties passing through the Park in buses', albeit 'on a limited scale, infrequently, with dignity and in a manner which in no way detracts from real meaning and purpose of such functions'. Their 'six or seven meeting houses' should also be 'kept

550. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 970

551. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 970

552. Coombes, 'Cultural Ecologies II' (doc A133), p 88

553. Coombes, 'Cultural Ecologies II' (doc A133), pp 549, 559

in order and properly preserved.⁵⁵⁴ The Authority chairperson, Director-General of Lands R J MacLachlan, gave lukewarm support to this proposal, noting that the Authority did not want to see the peoples of Te Urewera exploited.⁵⁵⁵

The potential of Te Urewera, and Ruatahuna in particular, for tourism development was also highlighted by a visiting American Fulbright scholar, Professor Wilcox, in 1972. After travelling through Te Urewera, Professor Wilcox proposed a circular, tourist route, or 'Maori Ara', from Rotorua to Wairoa, Gisborne, Whakatane, and back to Rotorua. He was particularly interested in Ruatahuna, where he felt a combination of 'tribal effort and government' could make a big difference. Observing Ruatahuna's location at the trailhead of the park and commenting that the community was at a 'critical economic crossroads', which it clearly was with the impending closure of Fletcher's mill at Ruatahuna. Wilcox proposed that a study be done to determine whether the area could be developed as a cultural centre 'to sustain Maori customs' and for tourism. He made specific recommendations for the types of commercial activities and facilities that could be developed: horse pack trips from Ruatahuna, 'Maori'-style accommodation for visitors, a tourist centre, and activities involving interaction between local people and tourists, such as the sharing of skills and knowledge relating to the bush.⁵⁵⁶

The potential for tourism ventures and cultural centres that capitalised on close proximity to the park continued to be discussed in the 1980s. In 1983, a member of the East Coast National Parks and Reserves Board proposed setting up a Maori educational and outdoors centre at Minginui on what he described as 'the fringe' of the national park. The proposal referred to Minginui residents' fears of a loss of jobs and community disintegration when indigenous logging was phased out in Whirinaki. It described a broad section of Minginui residents as having a 'bigotted anti-National Park attitude', and suggested that the centre would 'develop the pupils' appreciation of the NZ National park systems' and help them to overcome the 'stumbling block' that prevented them from 'cooperating with conservation groups'. Notwithstanding the assumption that it was Maori who were 'bigotted' for failing to fit in with the National Park ethos, the proposal contained some reasonably promising suggestions for local employment: 'Courses should be run entirely by Maori instructors with strong emphasis on Maori language and Maori mythology', and should be aimed at 'Maori pupils from throughout New Zealand'.⁵⁵⁷

554. FR Callaghan to McLachlan, 7 November 1966 (Coombes, *Cultural Ecologies 11*' (doc A133), pp 88–89)

555. R J MacLachlan to Chairman, Urewera National Park Board, 8 December 1966 (Coombes, *Cultural Ecologies 11*' (doc A133), p 89)

556. Coombes, *Cultural Ecologies 11*' (doc A133), pp 90–91

557. Dr J F Findlay, 'A Maori educational centre at Minginui', attachment to E G Wilcox, chairman of East Coast National Parks and Reserves Board, Gisborne, to the District Officer, Department of Maori Affairs, Rotorua, 'A Maori educational centre at Minginui', 13 April 1983 (Coombes, supporting papers to *Cultural Ecologies*' (doc A121(a)), pp 144–145)

However, the proposed centre was thoroughly rejected by the Minginui community as it was part of a broader proposal, which included the rationalisation of park boundaries to take in some of the Whirinaki State Forest. Minginui residents at the time were almost unanimously immersed in a struggle against an environmental campaign to end native logging in the Whirinaki forest, and they feared that the proposed change to park boundaries would lead to job losses and hunting restrictions.⁵⁵⁸ As a result, the proposals for boundary rationalisation and the centre were quietly shelved.

Stokes, Milroy, and Melbourne identified a range of ways that Te Urewera peoples could benefit more greatly, and be more involved, in commercial activities relating to the park. Like others before them, they noted that there was great potential for using marae to accommodate visitors and for educational and other services. This was on the proviso, they said, that these enterprises were run by local people, who could help to ensure that marae were treated as living communities, not ‘museums’.⁵⁵⁹ The general manager of the Department of Tourism and Publicity similarly noted in 1985 that potential existed in Te Urewera for ‘further development of Maori tourism in marae visits, hunting and horse trekking’.⁵⁶⁰

The idea of drawing on culture and people’s day-to-day lives to create commercial tourism experiences was clearly not without problems. Tuhoe representative on the park board, Tama Nikora, described the suggestion that marae be used for tourist service as ‘too sensitive a matter for comment’.⁵⁶¹ And, notwithstanding the recommendations they made in their 1986 report, Stokes, Milroy, and Melbourne commented that Te Urewera peoples may adversely react to their culture being used to generate profit. ‘Maori culture and tradition is not a saleable commodity’, they wrote, but they agreed a koha, or donation, was sometimes appropriate.⁵⁶²

Overall, though, we agree with the likes of Stokes et al, that potential exists for tourism development in Te Urewera, which, provided it is done well and led by local people, could help to sustain Te Urewera communities. Like many of the commentators from the 1960s to the 1980s, we consider that tourist development was an important opportunity for local Te Urewera communities to derive economic benefit from the park. And following the decline of the forestry industry in the 1970s, and the loss of employment during corporatisation in the 1980s, it became increasingly important that Te Urewera peoples were able to benefit from it.

558. Hutton and Neumann, ‘Ngati Whare’ (doc A28), pp 691–694; Coombes, ‘Cultural Ecologies II’ (doc A133), p 197

559. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 361

560. BJ Brown, for general manager, Tourism and Publicity Department, to Commissioner of Crown Lands, Hamilton, ‘Urewera-Raukumara land use study’, 15 April 1985 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 91)

561. Tama Nikora to E Stokes, 21 April 1986 (Coombes, ‘Cultural Ecologies II’ (doc A133), pp 91–92)

562. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 360

Outside of the park's main base at Waikaremoana, though, the its often cited potential for tourism has gone largely unrealised.⁵⁶³ Areas like Waimana, Ruatoki, and Ruatahuna, where the majority of Tuhoe people live, have struggled to derive economic benefit from this kind of use of the park. The commentary of the 1960s and 1970s about Ruatahuna's potential for tourist development, for example, is in sharp contrast to how Stokes et al described the town in 1986:

Large numbers of visitors pass through Ruatahuna and some stop at the store or get petrol. Occasionally they stay at a motel. In this part of the Park the bush scenery is something viewed from a car in passing and there appears little to attract the visitor to stay in Ruatahuna Township.⁵⁶⁴

A study of Ruatahuna in 1987 found that just 20 per cent of people of working age had permanent, full-time jobs. Forty-four per cent were unemployed, 26 per cent were in part-time or short-term employment, and the remaining 10 percent were dependent on a benefit. Of those who were working, 90 per cent were dissatisfied with their employment situation.⁵⁶⁵ Similarly, in Ruatoki, which has the largest Tuhoe population of communities in the inquiry district, the unemployment rate in 1981 was 29 per cent.⁵⁶⁶

A lack of basic infrastructure has almost certainly contributed to the lack of tourism development. In 1968–69, the chief ranger at Aniwanuiwa had commented on the potential of towns along state highway 38 (like Ruatahuna) for tourism, reporting that 'the future of this park from the public usage point of view is married firmly to the highway'.⁵⁶⁷ The poor state of the (unsealed) highway, which linked Ruatahuna with Murupara in one direction and Waikaremoana-Tuai in the other, was highlighted in a submission to the Royal Commission on Social Policy in 1987.⁵⁶⁸ It was raised again in 1991, when residents of Te Whaiti, Minginui, Ngaputahi, and Ruatahuna sent a petition calling for urgent attention to address the 'dangerous state' of the still unsealed highway, which they said was 'badly potholed and largely surfaced by clay and mud'.⁵⁶⁹ The earlier (1987) submission also referred to a lack of a rubbish dump and sewerage system: 'Our rubbish is just dumped anywhere along the roads, is an awful eyesore to visitors and residents.' Phone services and television

563. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999* (Rotorua: Department of Conservation, 1989), p 32 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1398)

564. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 205

565. Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 570–571

566. Calculated from Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 126.

567. W Sander, Chief Ranger, to Chairman, Urewera National Park Board, Hamilton, 'Notes for annual report, 1968–69', 14 April 1969 (Coombes, 'Cultural Ecologies II' (doc A133), p 202)

568. 'Submission to the Royal Commission on Social Policy by Ngai Tuhoe', 1987 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 567)

569. Petition, M Sexton and 247 others, to branch manager, Works Consultancy Services, 24 July 1991 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), pp 569–570)

reception were also reported to be poor.⁵⁷⁰ Problems with roads and water supplies, and a lack of refuse disposal were raised again in a meeting of Tuhoe representatives and council in 2002.⁵⁷¹ Clearly problems with roads and basic services would not have helped with attracting tourists to the area. In evidence to this Tribunal, Korotau Basil Tamiana commented that the problems with State Highway 38 had ‘taken Ruatahuna off the tourism map’.⁵⁷²

We note, too, Professor Murton’s general observation that the failure to build the promised roads in Te Urewera (see chapter 14) dictated the nature of the tourism that could take place in the park.⁵⁷³ The ‘limited use of Te Urewera National Park by tourists’ dictated the result for the ‘gateway communities’ – Murupara, Ruatahuna, Onepoto-Tuai, and Waimana – which ‘have not seen a growth in tourist-oriented facilities, such as are found in similar communities in other countries.’⁵⁷⁴ And yet, for many, this is what has saved the park’s value as remote wilderness.

Even if suitable infrastructure had been in place, however, Te Urewera communities have lacked the resources needed to set up commercial operations in the park. The legacy of a loss of land, and the loss of income and widespread unemployment accompanying the decline of the forestry industry, has meant that most local people have simply not had spare financial capital to invest in setting up a tourism venture. Te Urewera communities were also not necessarily well equipped with the kinds of business and administration skills associated with setting up a commercial enterprise – the main forms of employment in the area have historically been forestry, farming, and subsistence activities like hunting. In an address to the Minister of Maori Affairs, Lands, and Forestry in 1971, the chairman of the Tuhoe Maori Trust Board noted the Trust’s desire to establish tourist facilities at Ruatahuna, and investigate the possibility of package tours and trail rides, but identified a ‘lack of suitable personnel to manage tourists’ as one of the main impediments to developing tourism at Ruatahuna.⁵⁷⁵ Not surprisingly, then, the number of applications that local people have made for commercial operations in the park has been very small, and the operations have tended to be modest and small-scale (discussed below).

National and park board policy, and how policy has been applied, has also constrained commercial and tourism development in the park. We begin below with a brief overview of

570. Submission to the Royal Commission on Social Policy by Ngai Tuhoe, 1987 (Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 567)

571. Tuawhenua Research Team, ‘Ruatahuna’ (doc D2), p 568

572. Korotau Basil Tamiana, brief of evidence (in English), 21 June 2004 (doc E11), p 7

573. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 970

574. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 970

575. S White, chairman of Tuhoe Maori Trust Board to Hon Duncan MacIntyre, Minister of Maori and Island Affairs, Lands, Forestry, and Valuation, ‘Nga Take a Ngai Tuhoe, Ruatahuna, 23 April 1971 (Heather Bassett and Richard Kay, comps, supporting papers to ‘Ruatahuna: Land Ownership and Administration, c. 1896–1990’, various dates (doc A20(c)), p 305)

park policy in relation to concessions, and then examine how this policy was applied to the commercial enterprises about which we received evidence.

National policy relating to commercial concessions in the park became more prescriptive over time, but this appears to be partly because it came to contemplate a wider range of commercial activities. The first *General Policy for National Parks*, in 1964, was concerned with providing ‘essential services’, primarily accommodation. As in the National Parks Act, commercial activities appear not to have been much considered, although the policy did also refer to shopping facilities. Although the policy stated that ‘licences’ should be strictly controlled, the criteria for obtaining them were not particularly onerous. In 1968, provisions for commercial operations in the park were expanded to include the need for operators to:

- ▶ have had previous business experience;
- ▶ provide evidence from a professional consultant that their operations would be financially viable;
- ▶ meet acceptable standards of public service; and
- ▶ demonstrate that their activities would not compromise ‘park values’.

A minimal levy of 1.25 per cent of gross turnover, ranging to a maximum of 5 per cent, was also introduced.⁵⁷⁶ A review in 1970 resulted in the added requirement that public applications had to be invited for new concessions. In 1980, it was noted in the concessions policy that consideration would be given to applicants who would deliver the best service to the public at the most reasonable price, and to applicants who have ‘financial resources and managerial competence.’⁵⁷⁷

The concessions policies of the park board were similarly tightened over time, but also gave increasing recognition to the role of Te Urewera peoples in the park. Table 16.4 provides a summary of the park management policies and objectives relating to commercial concessions, from 1976 to 2003.

Tuhoe have sometimes expressed frustration over the bureaucracy of the concessions process. In a 1980 submission to the East Coast National Parks and Reserves Board, the Tuhoe-Waikaremoana Maori Trust Board, while expressing overall support for the commercial concessions policy that had been proposed as part of the draft park management plan, asked that the park board better coordinate its consideration of concessions relating to park and Trust-owned land. This, they said, would result in fairer terms and make the

576. Chairman, National Parks Authority, to all national park board chairmen, ‘Suggested revised criteria and policy for granting of concessions in National Parks’, 7 August 1968; National Parks Authority, ‘Concessions policy in New Zealand national parks’, November 1969 (Coombes, ‘Cultural Ecologies II’ (doc A133), pp 92–93)

577. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 92–94

Year	Reference	Policy or objective
1976		‘provided there is adequate protection for the resource and that reasonable provision for these facilities cannot be made outside the Park, the Board may consider it desirable to grant a “concession” to operate a commercial enterprise in the Park.’ The selection of a concessionaire is made only after the Board is convinced that he can operate to its full satisfaction, both financially and by the provision of an adequate and courteous service to the public.
1989	Policy 4.5.1	Existing licensed commercial concessions (Te Rehuwai Safaris Limited and DR and A Rothschild) will be permitted to continue operating. The Te Rehuwai Safaris’ licence will be in accord with the NPRA guidelines on concessions in national parks.
	Policy 4.5.2	Further low key commercial operations and expansion of existing operations will be permitted only if they are compatible with park values and enhance the use and enjoyment of the park by visitors.
	Policy 4.5.3	Encouragement will be given to concessions which provide authentic Tuhoë cultural experience compatible with the management philosophy of the park.
2003	Objective 9.1.1(a)	Concessions will be considered where the activity is undertaken in a manner compatible with the preservation of natural archaeological and historic values, and in a way that does not compromise the use and enjoyment of the park by other users.
	Policy 9.1.2(b)	To assess applications for concessions having regard to, (but not limited to) the following . . . ii. potential adverse effects of the activity, facility of structure on the following (a–g), and the means by which these effects may be avoided, remedied or mitigated . . . c) historic and archaeological sites; d) sites of significance to tangata whenua . . . v) results of public consultation and advice provided by tangata whenua . . .
	Policy 9.1.2(h)	To encourage concessionaires to notify and consult with tangata whenua and affected parties when lodging an application for a concession and to notify the Department of the initiatives they have taken in this regard.

Table 16.4: Policy and objectives relating to commercial concessions, Te Urewera National Park, 1976–2003

Sources: Urewera National Park Board, *Urewera National Park Management Plan 1976*, p 35; East Coast National Parks and Reserves Board, *Te Urewera National Park Management Plan 1989–99*, p 72; Department of Conservation, *Te Urewera National Park Management Plan 2003*, pp 127–130; (Coombes, ‘Cultural Ecologies II’ (doc A133), p 95)

process easier for applicants. They noted: 'Although the bulk of an operation is on our land it seems that the Park strikes its charges over the whole operation.'⁵⁷⁸

Nonetheless, by the 1980s the idea of acquiring Maori land and relocating communities was gone. The park board had come to see itself – and its new management plan – as using concessions to 'give opportunity to indigenous people.'⁵⁷⁹ The Ranger at Murupara observed in 1986: 'it is the policy of the National Park to assist the local communities in any way we can, especially in ventures such as this.'⁵⁸⁰ He was referring to a Waiohau application in that year for a concession to set up a guided walking or horse trek operation.⁵⁸¹ Potentially, therefore, a change in official attitudes and policies favoured an increase of tangata whenua commercial operations in the park; always provided that such operations were seen as compatible with the core value of minimal recreational impact on its authentic wilderness.

We now turn to examples of how national and park board policies were applied to specific commercial enterprises.

(a) *Venturetreks and Te Rehuwai safaris:* In 1975, Venturetreks, a joint venture by the Tuhoe-Waikaremoana Maori Trust Board and private interests, proposed running guided tours down the Whakatane River with pack horses, camping at various locations within the national park. TB (Buddy) Nikora, secretary of the trust board, advocated for the project to the park board, on the grounds that 'every opportunity' to employ those living in the park's enclaves should be pursued.⁵⁸² However, the park board declined the application based on a 'policy principle' that commercial guided tours into the park should not be allowed.⁵⁸³ Coombes pointed out that this 'policy principle' was the park board's interpretation of policy rather than the letter of the policy set by the National Park Authority itself. The Authority did, though, later that year extend its policy opposing safari hunting on park land to opposing it on land 'adjacent to' a national park, and it is possible the board was already aware of the Authority's stricter stance. The park board's opposition came in spite of the secretary of the park board, LS Watt, acknowledging that the operation 'could probably have gone ahead' without the board's permission, by using the existing legal roadline for

578. Tuhoe-Waikaremoana Maori Trust Board to East Coast National Parks and Reserves Board, submission on the draft Te Urewera National Park management plan, 5 July 1987 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p 250)

579. JC Blount, Chief Ranger, to Commissioner of Crown Lands, Gisborne, 'Hunting and fishing concession – D Biggs', 12 May 1983 (Coombes, 'Cultural Ecologies II' (doc A133), p 558)

580. K Atatu, Ranger, to G Mitchell, Ranger-in-charge, Murupara, 17 October 1986 (Coombes, 'Cultural Ecologies II' (doc A133), p 558)

581. Coombes, 'Cultural Ecologies II' (doc A133), p 558

582. TB Nikora, Secretary, Tuhoe Waikaremoana Maori Trust Board, to Secretary, Urewera National Park Board, 3 June 1975 (Coombes, 'Cultural Ecologies II' (doc A133), p 530)

583. Secretary, Urewera National Park Board, to Secretary, Tuhoe-Waikaremoana Maori Trust Board, 3 July 1975 (Coombes, 'Cultural Ecologies II' (doc A133), p 531)

access through park land and that it had therefore been courteous of the Maori owners to apply for a consent at all.⁵⁸⁴

Venturetreks submitted another application towards the end of 1975, and the board agreed to allow the company to operate on a trial basis for one season, noting that it would provide some employment.⁵⁸⁵ When agreeing to the application, the board made an interesting admission: it 'did not favour commercial activities within the Park unless they provided a necessary service to visitors *which the [Park]Board could not supply* and which at the same time did not conflict with the primary purpose of the preservation of the Park.'⁵⁸⁶ The trial was a success, proving, said Coombes, that 'commercial horse treks were viable and sustainable.'⁵⁸⁷

Before this trial had started, several Tuhoe members based at Ruatahuna formed a second horse-trek company, Te Rehuwai Safaris Ltd. This led to some local tension, and eventually, in June 1976, the park board accepted Te Rehuwai Safaris as the sole operator of guided tours within the park and granted it a trial permit of 12 months (despite the Venturetreks trial having already proved to be a success).⁵⁸⁸ Te Rehuwai was restricted in where it could operate and the type of tour it could conduct (horses carrying in supplies were acceptable; horses carrying people were not), and the board applied a levy of \$1 per client.

The decision to grant a permit to Te Rehuwai Safaris reflected, said the chief ranger at Aniwanui, 'the policy set out in the Management Plan aimed at trying to help the local people to obtain employment in the Park.'⁵⁸⁹ It appears also, however, to have been linked with attempts to negotiate a lease of the Maori-owned land within the park. In a meeting of the national park board in June 1976, when discussing the application from Te Rehuwai Safaris, Tama Nikora noted that if it were declined, 'the owners might not be so ready to consider leasing their land for inclusion in the Park'. In another meeting of the park board, in September 1976, the other Tuhoe member of the board, John Rangihau, asked that the Te Rehuwai application be treated with 'the utmost sympathy'. He observed that whereas Tuhoe people had traditionally been 'cooperative' in relation to the park:

now many of their younger people were being influenced by outside and more sophisticated groups. They wanted to break away from existing land negotiations and were becoming militant in their attitude over matters related to the Park and the lands in which they had an interest. It was necessary therefore that the Board should show sympathy towards the aim of

584. NS Coad, Director-General of Lands and Chairman, National Parks Authority, to all commissioners of Crown lands and national park board chairmen, 11 August 1975 (doc A133), p 531)

585. Coombes, 'Cultural Ecologies II' (doc A133), p 532

586. Urewera National Park Board, minutes, 11 September 1975 (Coombes, 'Cultural Ecologies II' (doc A133), p 532). (Emphasis added)

587. Coombes, 'Cultural Ecologies II' (doc A133), p 534.

588. Urewera National Park Board, minutes, 10 June 1976 (Coombes, 'Cultural Ecologies II' (doc A133), pp 535-536)

589. Urewera National Park Board, minutes, 10 June 1976 (Coombes, 'Cultural Ecologies II' (doc A133), pp 535-536)

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the applicants and try to help them to understand the reasons the Board might not be able to agree fully to their proposals.⁵⁹⁰

In a strongly worded letter in October 1976, Tama Nikora told the board (of which he was a member) that it was wrongly trying to stymie commercial initiative as a lever to force Maori out of the park. Mr Nikora stated that it was 'clear' that the board wished to acquire the 'enclaves' and it was also clear that the board had not properly declared its agenda in this. He argued that it was 'incorrect for the board to unfairly restrict rights of user over these lands or to employ indirect tactics to achieve its objectives at the cost of those land-owners'. In his view, the restrictive terms of the concession to Te Rehuwai Safaris were 'obnoxious' and the board was employing 'blunt tactics as might otherwise be appropriate in the army or police force'. He pointed out that if Tuhoe had been accorded proper access to their lands at the time of the consolidation scheme then there would be no basis for restricting the company's operations, as the guided tours were, after all, conducted mostly on Maori-owned lands.⁵⁹¹

After further complaints, the park board decided to waive the fee for a year. However, the chairman stated it had already given Tuhoe 'every possible advantage' by denying the proposals of other companies and thereby establishing a monopoly (although discussions from the time make it clear that the denial of other proposals was not for the sake of giving Tuhoe an advantage, but because the park wanted to limit the amount of commercial activity).⁵⁹²

Having received positive reviews from the public and park staff, Te Rehuwai Safaris applied for a five-year concession but this was declined. Another one-year concession was given, making long-term planning and employment of staff impossible. In 1980, the board decided to reintroduce the \$1 client levy.⁵⁹³

In 1983, the company again applied for an extension of the terms of its concessions, stating that its new proposal would require access across the park, as well as allowance for hunting and fishing and minor horse riding treks (up until this point only pack horses had been allowed).⁵⁹⁴ The chief ranger, JC Blount, noted that the park board's acceptance of this proposal depended on the management plan: the board could not prevent Maori from accessing their land but whether this permitted 'the use and commercial exploitation of their land through their clients using horses is another matter'.⁵⁹⁵ Following Blount's comments, and criticisms by pony clubs who complained that Maori were receiving preferential

590. Urewera National Park Board, minutes, 9 September 1976 (Coombes, 'Cultural Ecologies II' (doc A133), p 537)

591. Tama Nikora, Urewera National Park Board, to Secretary, Urewera National Park Board, 'Te Rehuwai Safaris application', 29 October 1976 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), pp 142-143)

592. RM Velvin, Commissioner of Crown Lands, to Davenport Buxton Gibson McHardy and Partners, Auckland, 16 December 1976 (Coombes, 'Cultural Ecologies II' (doc A133), p 544)

593. Coombes, 'Cultural Ecologies II' (doc A133), pp 547-548

594. Coombes, 'Cultural Ecologies II' (doc A133), pp 550-551

595. JC Blount, Chief Ranger, to Commissioner of Crown Lands, Gisborne, 'Te Rehuwai Safaris - application for extension to licence', 19 September 1983 (Coombes, 'Cultural Ecologies II' (doc A133), p 552)

treatment, both the Commissioner of Crown Lands at Gisborne and the District Solicitor agreed that the Management Plan did not give Maori landowners the right to take clients through the park on horseback.⁵⁹⁶

Horse treks were not accommodated within the new management plan and when Te Rehuwai Safaris made a similar application in 1986, this aspect of the proposal was again refused. However, the venture (with pack horses) was granted a five-year concession and the proposal for fishing rights was accepted.⁵⁹⁷ A Department of Lands and Survey report in 1986 referred to this longer concession:

The concession is generally in harmony with management objectives and Park values. With the operations being based on Maori land, the Park is principally used only for access to 'traditional' routes with a minimum effect on Park resources and other Park users.⁵⁹⁸

It had taken park officials a decade to come to this conclusion.

In 1986, Stokes, Milroy, and Melbourne described Te Rehuwai as a 'prototype' for tourism in Te Urewera, noting that it not only employed Tuhoe people but was owned and controlled by Tuhoe.⁵⁹⁹ And, as Rongonui Tahi explained to this tribunal, the business has endured, although scaled down since the 1990s.⁶⁰⁰

The degree of control exercised over Te Rehuwai, particularly the series of one-year concessions, and particularly in light of it operating mostly on Maori-owned land, has, however, again caused considerable resentment among landowners trying to derive some income from their land. They see, too, a double standard as operating. The Tribunal was told that:

We sought long term concessions from the National Park for access, but were only allowed yearly concessions. 99% of our operations were carried out on Māori land, 1% on Crown land to do with access, yet we were required to apply for a concession and to pay for it. At the same time, the NZFS and National Park did not consider they should do the same for the access over and use of our lands by their staff and clients. We felt though we had no choice but to accept the requirements.⁶⁰¹

(b) Adventure tourism: As we noted above, the circumstances of Te Urewera limited or shaped the kinds of tourism opportunities available to local Maori. In terms of infrastructure, the lack of roads prevented what Murton called 'mass' tourism, while encouraging adventure tourism. At the same time, local Maori communities lacked the business and

596. Coombes, 'Cultural Ecologies II' (doc A133), pp 552–554

597. Coombes, 'Cultural Ecologies II' (doc A133), pp 555–556

598. Department of Lands and Survey, *Urewera National Park Management Plan 1986 Draft* (Hamilton: Department of Lands and Survey for East Coast National Parks and Reserves Board, 1986), pp 126–127 (Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 207)

599. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 207

600. Rongonui Tahi, brief of evidence, 22 June 2004 (doc E27), p 9

601. Rongonui Tahi, brief of evidence (doc E27), p 8

financial infrastructure to take advantage of tourism-related concessions on any large or systematic scale. In some ways, this dovetailed well: small-scale trekking and hunting/fishing ventures coincided with what the 1989 park management plan referred to as ‘authentic’ Tuhoe cultural experiences. Before the 1980s, policy (both central government and park board) was to acquire Maori land and move the people out altogether. From the 1980s on, however, it was accepted that Tuhoe would remain living inside or adjacent to the park, and that – as part of the park’s landscape, as it were – encouragement would be given to concessions that provided an ‘authentic’ Tuhoe experience compatible with the core wilderness values of the park. Pony club objections to ‘discrimination’ in favour of Tuhoe were still considered pertinent in the early 1980s, but by the end of the decade official thinking had moved on.

Did this result in more tourism concessions for local ventures? The documentary evidence is sketchy on this point. In 1986, in response to the Stokes, Milroy, and Melbourne report, park staff had commented that ‘the park supports the Te Rehuwai concept and would support other locally based enterprises.’⁶⁰² In Coombes’ view, the evidence does not support such a statement.⁶⁰³ When the chief ranger wrote a report in 1983, he only mentioned two operational concessions at that time: Te Rehuwai Safaris (see above); and Ivan White’s, who conducted ‘horse-supported’ safaris in the Waiau Valley. Mr White was allowed to use four horses for cartage purposes, he was not allowed to advertise, his route was restricted, and he had to pay \$1 per client; similar terms to that set for Te Rehuwai Safaris.⁶⁰⁴

According to Coombes, the new management plan in the late 1980s, with its stated policy of encouraging concessions for Tuhoe cultural experiences, ‘inspired several Maori and Pakeha applications for guided walking and hunting.’⁶⁰⁵ These included proposals from Waiohau (which park staff supported) and from Tuai (which was not supported). But Coombes’ report did not cover the fate of these applications or whether concessions were granted for other safari enterprises in the 1990s.⁶⁰⁶ As far as we can tell from the documentary and oral evidence, Te Rehuwai Safaris (and Ivan White) stand alone as having operated these kinds of ventures on any long-term basis. While there may be many reasons for this, including access to finance for starting up such enterprises, it is a disappointing conclusion to the new official willingness to promote such tangata whenua ventures in the park.

(c) Commercial hunting and aerial recovery: The park had major implications for hunting. Recreational and subsistence hunting and the permit system related to it are discussed later in this chapter. Here we look primarily at what opportunities for commercial hunting existed in the park, and whether local people were able to make the most of them. Professor

602. ‘Comments of ranger staff on Stokes report’, 2 May 1986 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 557)

603. Coombes, ‘Cultural Ecologies II’ (doc A133), p 557

604. Coombes, ‘Cultural Ecologies II’ (doc A133), p 558

605. Coombes, ‘Cultural Ecologies II’ (doc A133), p 558

606. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 528–559

Murton commented that it was ‘perhaps fortunate that introduced deer and possums became pests, and given the perennial shortages of money to mount sustained eradication programs, private [commercial and otherwise] hunting necessarily had to be permitted in the park.’⁶⁰⁷ Under the heading ‘pests as resources’, Murton suggested that this created ‘synergies’ between conservation and economic opportunities for Maori. These synergies, he argued, were not given their due weight when conservation authorities made decisions about how to eradicate or control ‘pests.’⁶⁰⁸

The existence of the park put a very high value on pest control in Te Urewera, which might not otherwise have happened to the same extent; but eradication strategies took little or no account of how dependent local communities became on commercial hunting of these ‘pests’. In part, this was because the Forest Service (and later DOC) was always short of money for pest control. Maori valued deer and pigs (in particular) as sources of food as well as for commercial hunting. Yet, from the preservationist perspective, these ‘pests’ did immense damage to the indigenous flora in the park. A vicious circle was created, where Maori obtained income partly because the goal was to eradicate pests, yet total eradication – or pest-control by means other than hunting – might better serve the interests of preservation while conflicting directly with the interests of Maori. Key issues became whether poison should be used (which had many more dimensions than simply the economic), and whether local Maori communities should be preferred to outside hunters or trappers. In a subsequent chapter, we will consider environmental issues about how ‘pests’ were introduced, their effects on the forests of Te Urewera, and the claimants’ concerns about the environmental and cultural dimensions of pest control. Here, we are concerned solely with the national park’s impact on these ‘pests’ as an economic resource for the claimant communities.

We begin our discussion of these issues with the least ‘useful’ of the pests to Maori (because it was not a food resource): the opossum. A national bounty system for opossums was introduced before the creation of the park, in 1950, aimed at encouraging the hunting and trapping of pest species at times when, and in remote locations where, such activities would otherwise be uneconomic.⁶⁰⁹ Despite some aspects of the scheme limiting the involvement of local people, such as the discouragement of (casual) weekend or holiday trapping, steadily increasing numbers of opossum tokens were submitted, with the take in Te Urewera representing a large share of the national one.⁶¹⁰ When Te Urewera was declared a national park in 1954, restrictions were put on the use of guns, horses, and pig dogs, although it is unclear how extensively these conditions were enforced initially. After

607. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 969

608. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 953

609. G O’Halloran, Chairman, report of the ‘inter-departmental committee for the control of noxious animals’, 1951 (Coombes, ‘Cultural Ecologies I’ (doc A121), p 333)

610. Acting Secretary, Internal Affairs, to Director-General of Lands, ‘Opossum bounty scheme’, 27 November 1951 (Coombes, ‘Cultural Ecologies I’ (doc A121), p 334)

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the Urewera National Park Board was formed in 1962, the minutes of one of its first meetings recorded:

Members agreed that since the Maoris had long been accustomed to hunting without permits in park areas adjacent to the lands in which they held interests, immediate insistence that they must apply for shooting permits could only cause much ill feeling.⁶¹¹

Despite the amount of trapping activity, the Conservator of Forests observed that large deer and opossum populations remained in the Waikaremoana area. The Noxious Animals Act 1956 transferred responsibility for ‘controlling and eradicating noxious animals’ to the New Zealand Forest Service. Significantly, section 3 of the Act allowed the Minister of Forests to ‘declare that any specified species of noxious animals may not be hunted or killed’ where they considered the hunting might interfere with studies or other work being done to control the pest. The Forest Service’s first plan for animal control in Te Urewera, covering the period 1960 to 1965, determined that poisoning should begin. Although a range of groups were consulted in the lead-up to this plan, including Federated Farmers, the Travel and Holidays Association, Federated Mountain Clubs, and the New Zealand Deerstalkers’ Association, there is no evidence of local Maori having been involved, nor of consideration of how poison-use would impact on their trapping and hunting activities.⁶¹² As Professor Murton noted, there was some limited employment of local Maori in ground-based poisoning, but none in the cheaper aerial drops that became predominant in the 1990s.⁶¹³

The importance of subsistence and commercial hunting for people in Te Urewera was emphasised in a letter to the commissioner of Crown land in 1962. Responding to a request from the commissioner that he supply comments on a trip from Ruatahuna to Whakarae in the Waimana Valley, one MC Bollinger expressed support for the park’s deer ‘extermination policy’, but noted that it could deprive Maori of an important source of income. He advised that the three families at Maungapohatu, many of the people at Ruatahuna, and those in the Waimana Valley, ‘ha[d] come to depend on pork and venison, and the sale of deer skins as part of their livelihood’.⁶¹⁴

In his evidence in our inquiry, Jack Te Waara, who lived in Ruatahuna from 1959 and later moved to Uwhiarae, described hunting as an important source of income for his family and for many others. He later became a deer culler but found this waged work to be ‘less lucrative’.⁶¹⁵ Like Mr Bollinger, Mr Te Waara was critical of the use of poison for pest-control:

611. Extract from minutes of the Urewera National Park Board, 14–15 March (Walzl, p 490)

612. Coombes, ‘Cultural Ecologies I’ (doc A121), pp 337–341

613. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 952

614. MC Bollinger to Commissioner of Crown Lands, 11 January 1962 (Campbell, supporting papers to ‘Te Urewera National Park’ (doc A60(b)), p 265)

615. Jack Te Piki Hemi Kanuehi Te Waara, brief of evidence, 21 June 2004 (doc E23(a)), p 2

The Crown could've encouraged employment here. Opossum and deer control programmes were still needed. . . . The Government chose to use poison instead. This killed many other animals. I remember seeing herds of pigs lying dead and poisoned.⁶¹⁶

One piece of evidence suggests that the use of poison in the 1960s was not as effective as the bounty system, which had at least provided some income for local people. In a 1968 report about a trip he had recently made through Te Urewera National Park, Jack Lasenby commented:

Removal of the bounty and light trappings and poisonings for skins since has allowed them to breed up again from Marau around to Hopuruahine.⁶¹⁷

A lot of hunting and trapping activity took place on private land neighbouring the park, such as in Ruatahuna's hinterland bush, but much of it also occurred within the park.⁶¹⁸ In 1983–84, for example, 4700 permits to hunt deer, and 580 permits to trap opossums, were issued.

Opossum trappers in Ruatahuna sought to make the most of their local resource, setting up the Ruatahuna Fur and Games Products in 1979, with assistance from the 'Marae Enterprise Scheme' run by the Department of Maori Affairs. Murton recorded that in 1978–79, 40 pressed bales, or approximately 32,000 skins, were freighted out by the local storekeeper, and skins were eventually sold for export. The company did not last, but the opossum skin industry continued through the efforts of self-employed trappers. In the late 1980s, over 200 people made a living from the sale of skins from Te Urewera.⁶¹⁹ According to Stokes, Milroy, and Melbourne in 1986, most people in Te Urewera hunted and trapped to supplement their food supplies or income, and almost all opossum trapping was for commercial purposes (selling skins), and it was an important source of income.⁶²⁰

Tama Nikora, speaking on behalf of the Tuhoe-Waikaremoana Maori Trust Board, highlighted the importance of local people being able to benefit from pest control work at a meeting of the East Coast Parks and Reserves Board on 15–17 July 1987. He stated that while he was not making a case for employing Tuhoe 'on discriminatory grounds', they should be given every available opportunity to compete for the 'noxious resource', and identified Ruatoki, Ruatahuna, Waimana, and Waikaremoana as places where better opossum control was needed.⁶²¹

616. Te Waara, brief of evidence, 21 June 2004 (doc E23(a)), p 4

617. Jack Lasenby, report on visit to Te Urewera National Park, 23–27 January 1968 (Walzl, 'Waikaremoana' (doc A73), p 494)

618. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), pp 948–950

619. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 950

620. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 354

621. Tama Nikora, meeting of the East Coast Parks and Reserves Board, Wai-iti Marae, Ruatahuna, 15–17 July 1987 (Coombes, supporting papers to 'Cultural Ecologies III' (doc A121(a)), p 255)

DOC took over pest control in Te Urewera under the Conservation Act 1987, and pursued a policy of pest-extermination. Throughout the 1990s, various requests were made by local Maori groups for less use of 1080 (sodium monofluoroacetate), and aerial drops in particular, and more pest-control work for local people, through ground-control contracts and bounty systems or some other form of subsidised hunting. Importantly, a 1994 report by the Parliamentary Commissioner for the Environment recommended that continuing heavy reliance on 1080 was not advisable in the long term. The commissioner identified possum control through hunting contracts as a cost-effective alternative for ‘accessible terrain.’⁶²² For ‘areas of very difficult terrain and poor access,’ however, ‘a more cost-effective control than aerial-1080 is not available at the present time.’⁶²³ Where it considered alternatives to 1080 at all over this period, DOC appears to have considered them impractical.⁶²⁴

While DOC still identifies 1080 as a necessary part of pest-control in Te Urewera,⁶²⁵ its use has declined since the 1990s. This decline is part of a national DOC response to public concerns, and effective alternatives being identified (including ground-trapping). In Te Urewera, it appears at least in part to be a result of better dialogue between DOC and local Maori in the Waikaremoana sector of the park. Glenn Mitchell described a hui-a-hapu that the Waikaremoana Maori Committee and DOC arranged at Waimako Marae in 2002, and a subsequent series of hui, which led to an agreement to limit aerial 1080-drops in the Waikaremoana sector of the park to areas where it would be difficult for ground operators to gain access. He conceded that the programme ‘proceeded with mixed blessings,’ but noted that a number of ground-based control contracts had also been made available to the Lake Waikaremoana Hapu Restoration Trust.⁶²⁶

This general approach to pest control, involving dialogue, compromise, and local work opportunities, was advocated by Tuhoe leader Aubrey Temara in 2003:

There are issues with the use of 1080, but if these issues were discussed properly, then I’m sure that there would be no more conflict . . . Control through hunting would be the preference where it is practical and effective . . . It’s not always going to be practical and effective, so there’ll remain a need for poisoning.⁶²⁷

Pest control has continued to represent a substantial proportion of work in the park, but to what degree Maori have benefitted from pest control contracts through the Department of Conservation is unclear. The 1989 10-year park management plan notes that there were 54

622. Parliamentary Commissioner for the Environment, ‘Summary of findings: Possum management in New Zealand’, 1994 (Coombes, ‘Cultural Ecologies I’ (doc A121), p 410)

623. Parliamentary Commissioner for the Environment, ‘Summary of findings: Possum management in New Zealand’, 1994 (Coombes, ‘Cultural Ecologies I’ (doc A121), p 410)

624. Murton, ‘The Crown and the Peoples of Te Urewera’ (doc H12), p 953; Coombes, ‘Cultural Ecologies I’ (doc A121), pp 411–413

625. Peter Williams, brief of evidence, 8 February 2005 (doc L10), p 36

626. Glenn Mitchell, brief of evidence, 7 February 2005 (doc L9), pp 19–20

627. Aubrey Temara, personal communication (Coombes, ‘Cultural Ecologies I’, 2003 (doc A121), p 290)

full-time and 33 part-time opossum trappers operating in the park – we do not know what proportion of these were Maori.⁶²⁸ In 2005, Peter Williamson, conservator for the region, noted that pest control was usually done by contract, via a tendering process that is based on ‘price tendered and contractor experience’, and that in the previous year, approximately \$924,000 had been spent on pest control in Te Urewera.⁶²⁹ While claimants have alleged that people from outside Te Urewera have monopolised these kinds of contracts, we have insufficient evidence to analyse the situation.

In addition to the use of ground and aerial poisons, the use of commercial helicopters for deer hunting was of significant concern to the claimants. In 1980, commercial helicopter operators were allowed to operate in some parts of the park for a trial period, for the purposes of culling animals. Subsequently, the park board and the Forest Service entered into a lengthy and tortuous process to formulate a new animal control plan and amend the existing management plan with as little public input as possible. Brad Coombes’ report set out the details.⁶³⁰ Maori were concerned not only at the threat to their livelihood within the park, but even more with the risk of trespass and poaching on their own land. Soon after the initial trial, rangers noticed an increase of unlicensed and thus illegal helicopter operations within the park. By 1982, 17 helicopters had been licensed, and operators took 135 live deer and 252 carcasses between March and May of that year (which the Forest Service described as ‘pathetic’).⁶³¹ Live deer capture pens were permitted within the park in 1986. Between 1984 and 1987, helicopter operations spread over an increasing area of the park, and there was a reduction in the times of the year when they were excluded.⁶³²

Local Maori voiced immediate concerns about the effects of helicopter operators in the park, concerns Coombes asserted have persisted since.⁶³³ For instance, a Forest Service staff member in Ruatahuna noted in 1980 that Maori in Ruatoki were upset about the likelihood of aerial capture because it would compete with their own interests in capturing deer using horses and dogs. At a public meeting of the park board in Murupara in 1980, a Ruatahuna person ‘spoke of local resistance to helicopters and the threat to livelihood from lack of venison.’⁶³⁴ Coombes also argued that during the early to mid-1980s, there is no evidence that Maori were consulted when the board allowed helicopter usage to be extended throughout the park, and for aerial hunting and not just hunter transport and carcass recov-

628. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999*, p52 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1407)

629. Peter Williams, brief of evidence (doc L10), p36

630. Coombes ‘Cultural Ecologies I’ (doc A121), p382; Coombes, ‘Cultural Ecologies II’ (doc A133), p130

631. JC Sutton, Officer-in-charge, Ruatahuna, New Zealand Forest Service, ‘Environmental period report – Minginui district, 1.4.82–30.6.82’, 12 July 1982 (Coombes, ‘Cultural Ecologies I’ (doc A121), p389)

632. Coombes, ‘Cultural Ecologies I’ (doc A121), pp389, 390

633. Coombes, ‘Cultural Ecologies II’ (doc A133), pp131–132

634. CR Whiting, Officer-in-charge, Ruatahuna, New Zealand Forest Service, ‘Quarterly report Ruatahuna operational area 951 – period 1.10.79 to 31.12.79’, and Urewera National Park Board public meeting, Murupara, 5 June 1980 (Coombes, ‘Cultural Ecologies I’ (doc A121), pp382–383)

ery (as in the initial trial period). The expansion of helicopter operations required changes in the park's management plan. On the advice (and with the consent) of the National Parks and Reserves Authority, the park board decided to alter the management plan in 1982, thus avoiding the need for a formal round of public consultation about the changes.⁶³⁵

In some cases, however, Tuhoe have also sought to use helicopters in the park. This is particularly true of those with land in and around the park who are seeking income from hunting. As Stokes et al noted, 'local people see deer hunting, including use of helicopters, as one of the few ways they can obtain some income from their forests.'⁶³⁶ A deer unit established at Ruatahuna in 1986 used deer captured on Tuhoe Tuawhenua lands. Murton recorded that by 1990–91 there were 372 deer being run, and its velvet production was valued at \$22,400, while culled deer brought in \$3,000.⁶³⁷

(3) Employment of local Maori in the park

The peoples of Te Urewera have never been satisfied with the employment opportunities offered by the park. In essence, they have felt the park employs too few people generally, and too few Maori in particular.

A complaint made by the claimants about employment in Te Urewera National Park is that the knowledge of local Maori about the history of the land and its people has always been undervalued by park administrators, with the result that local people have been underemployed in permanent positions. This, they say, has not only been financially detrimental to the resident communities in and near the park but has also damaged their relationship with park employees and the administrative regime of which they are a part.

The Crown, for its part, focused on DOC and the present employment situation in the park. Crown counsel submitted that its employment policies are 'subject to the State Sector Act 1988', and that 'DOC operates an equal opportunities programme where all appointments to positions are based on merit.'⁶³⁸ Crown counsel also submitted that local Maori currently hold 40 per cent of staff positions in Te Urewera.⁶³⁹

In this sub-section, we examine the main ways that Te Urewera peoples have been employed in the park. For the first three decades of its operation, this was mainly as unpaid 'honorary rangers' and through government-funded work schemes. We then examine their employment situation in the years after the Department of Conservation took over the management of the park in 1987. The park's workforce became more 'professionalised' and a greater number of permanent, paid jobs became available.

635. Coombes, 'Cultural Ecologies I' (doc A121), p 386

636. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 356

637. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 710

638. Crown counsel, closing submissions (doc N20), topic 40, p 4

639. Crown counsel, closing submissions (doc N20), topic 40, p 4

TE KAPUA POURI: TE UREWERA NATIONAL PARK

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	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
Permanent					2	1	2	2	4	4
Casual	2	4	6	9	7	12	16	21	24	16
Total	2	4	6	9	9	13	18	23	28	20
	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Permanent	3	4	6	5	6	5	5	9	7	6
Casual	16	14	22	30	66	75	73	53	24	10
Total	19	18	28	35	72	80	78	62	31	16

Table 16.5: Paid Maori employment in Te Urewera National Park, 1967–86

Source: Coombes, 'Cultural Ecologies II' (doc A133), p 103

(a) *Paid employment, 1954–87*: From 1954 to 1987, it appears that Maori were mostly employed as unpaid honorary rangers or through welfare training/assistance schemes. The park only had a small, paid workforce, and it relied mostly on Lincoln graduates for its rangers. Throughout the 1967 to 1986 period, for which Coombes provided an analysis, there was only a handful of permanent staff drawn from the local Maori community; the peak was nine in 1984.⁶⁴⁰ According to claimant Sidney Paine, when he worked at the National Park in the mid-1980s, all the rangers were still Pakeha.⁶⁴¹ Coombes argued that 'there was a distinct division of labour within the park: (permanent) managers were predominately Pakeha; (casual) labourers were generally Maori.'⁶⁴² On the other hand, casual work often suited Maori as a supplement for other forms of income. In general, he suggested, there appeared to be considerable sympathy among members of the national park and East Coast boards for the idea of offering employment to local Maori wherever possible, but this did not always translate into jobs.⁶⁴³

Later in the chapter, we consider the significance of the honorary ranger system for providing local Maori with a role in the management of the park and as 'ambassadors', representing the people to the park's authorities, and the authorities to the people. Here, we are concerned solely with the issue that these honorary rangers were not paid. No one in our inquiry suggested that volunteer work was unimportant, or that local Maori who were honorary rangers should necessarily have been paid for the work that they did on behalf of the park and of their people. But when Stokes, Milroy, and Melbourne investigated the situation

640. Coombes, 'Cultural Ecologies II' (doc A133), pp 102–103

641. Sidney Paine, brief of evidence, 18 October 2004 (doc H20), p 14

642. Coombes, 'Cultural Ecologies II' (doc A133), p 102

643. Coombes, 'Cultural Ecologies II' (doc A133), p 100

in Te Urewera in 1986, they recommended a re-evaluation of the idea – which seems to have been something of a blind spot at the time – that the only paid rangers should be scientifically-qualified graduates. They called for urgent consideration of greater involvement by local Maori in interpreting the cultural significance of the park for visitors, and proposed employing people who were bicultural and bilingual in Tuhoe dialect as a category of ‘local ranger’, whose specialised skills and knowledge would receive the same recognition and salary as rangers with conservation qualifications. Long-term resident Pakeha might also qualify to be ‘local rangers’.⁶⁴⁴ Another possibility, they suggested, was to create a position of ‘native liaison officer’, like those employed in the United States National Park Service, an option which had been available for some time.⁶⁴⁵ Tama Nikora observed in 1986 (in comments sent to Professor Stokes): ‘[W]ould it be many more years yet, when it would be far too late, before this country will reach the kind of maturity achieved by say the US National Park Service where they endeavour to assist the Indians?’⁶⁴⁶

A significant number of honorary rangers were local Maori during this pre-DOC era. Paid employment, however, was mostly in the form of casual work (see table 16.5). The main source of funding was welfare employment schemes, which peaked in the early 1980s.⁶⁴⁷ These Government-sponsored schemes included the Temporary Employment Programme (TEP) and the Project Employment Programme (PEP), which helped to provide employment opportunities in the park and elsewhere until they were phased out from 1986. The kind of work done in the park under these schemes was track cutting and maintenance, control of introduced plants, and maintenance of other park recreation facilities.

The ranger in charge at Murupara provided figures for the level and type of employment obtained by Maori in the park over the 1967–1986 period (no comparative figures for Pakeha employment were given). These figures are summarised in table 16.5. As noted, the majority of the work was casual. Also, most of this employment was located in Taneatua, just north of our inquiry district. In 1967, the first year for which we have information, there were two Maori staff employed as casual workers at Taneatua. By 1980, there were five permanent employees and 30 casuals, with the majority of workers still based in Taneatua, but some were based in Aniwaniwa and Murupara. Numbers peaked in 1982, with five permanent employees and 75 casuals (approximately one-third based in Taneatua), and over the next four years, the overall number of employees declined sharply. By 1986, at the time the government employment schemes were being phased out and replaced by the ‘Access’ programme, there were six permanent employees but just 10 casuals.⁶⁴⁸

644. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), pp 360–361

645. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 365

646. Tama Nikora to Evelyn Stokes, 21 April 1986 (Coombes, supporting papers to ‘Cultural Ecologies’ (doc A121(a)), p 214)

647. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 102–103

648. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 102–103; Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 315

‘THE [NATIONAL PARK] administration exists to administer the law, a law which states for public reserve lands that they shall be administered for the enjoyment of the public, hence some held unswerving principle, ‘thou shalt not discriminate’. If however it can be admitted that there is local government in New Zealand which endeavours to care for local communities, even in the face of plans by central government, is it not reasonable to suggest that for where the latter has local presence it should be sensitive to the needs of local community and accommodate it where possible? Then too, should not the views of the United Nations be heeded that it is important that cultures be fostered? And, should it not be more clearly recognised that these have place to contribute to diversity and uniqueness of identity [in] New Zealand? Or, would it be many more years yet, when it would be far too late, before this country will reach the kind of maturity achieved by say the US National Park Service where they endeavour to assist the Indians? Lastly, like most land owners, is it not reasonable to suggest that these lands be administered to accord good neighbour policy and to cooperate with them as far as possible?’

—Tama Nikora to Evelyn Stokes, 21 April 1986
(Coombes, supporting papers to ‘Cultural Ecologies’ (doc A121(a)), p 214)

The work done on the schemes was physical in nature, difficult, and sometimes resented because of its low pay. Korotau Tamiana described his experience of working on a PEP scheme in the following way:

The workers were mainly Maori and we were cheap labour for the Crown . . . We had to cut tracks and bench tracks from Ruatahuna to Ruatoki, from Maungapohatu to Gisborne, from Maungapohatu down into the Waimana Valley, from Parahaki to Te Wai-o-Tukapiti up to the Pukeohu range and down into Lake Waikaremoana. We worked around Waikaremoana and opened up a track to Waikareiti . . . It was hard work and the conditions were poor . . . The track we cut to Ruatoki, was 47 miles long and we put it in on foot. On another occasion we had to carry an 18 foot klinker (boat) 900 metres from Waikaremoana to Te Waiti. We put it on two wheelbarrows and the boys had to pull it up. We also put in an effluent pipe from Waikaremoana 2 thousand meters up to Ngamoko . . . We carried all of our equipment on our backs. We worked in a team of 13 men and we worked in 10 day shifts without a day off . . . This was not the 1950s, I worked for DLS and DOC from 1974–1980 . . . We had to work for the DLS and DOC because we were involved with the work schemes and there was no other opportunities.⁶⁴⁹

649. Korotau Basil Tamiana, brief of evidence (in English) (doc E11), pp 3–4

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As the titles of the schemes suggest, the work was temporary (often seasonal) and insecure, although some workers managed to stay on a scheme over several years, working on a succession of projects.⁶⁵⁰

The winding down of these schemes put pressure on permanent staff because they now needed to carry out the work previously done by the scheme workers. In a 1987 submission to the East Coast National Parks and Reserves Board, 'on behalf of those men of Tuhoe who are the hunters and providers of their family', it was proposed that Tuhoe hunters help monitor the parks to lighten the workload of 'already over-burdened' DOC rangers.⁶⁵¹ This request for temporary employment needs to be understood in the context of the widespread unemployment at the time, with corporatisation of the forestry service now in full swing. The chief ranger, Peter Williamson, noted in 1987 that should 'any PEP workers be taken on or any wage workers appointed, because of the employment situation in the area it is likely that those appointments will be of Tuhoe based people'.⁶⁵²

Government-funded programmes such as such as 'Access' and 'Mana Enterprise' provided some training in skills suited to tourism and commerce development. At Murupara, training modules consisted of basic accounting, reception, computer skills, general management, Te Reo, first aid, and small business management.⁶⁵³ At Ruatahuna, a Maori Access scheme on opossum hunting added to the PEP schemes run through two Ruatahuna marae and a training course in weaving.⁶⁵⁴ At Ruatoki, the Kokiri Skill Centre provided training in things like Maori crafts, bushcraft, and tourism.⁶⁵⁵ Later, in the 1989 to 1999 period, there were 44 courses being run across Ruatoki, Ruatahuna, Waimana, Waiohau, Waikaremoana, Tuai, Taneatua, and Rotorua, using general and Maori Access funds.⁶⁵⁶

In general, however, temporary employment and training schemes came to be regarded by locals merely as stop-gaps that did not lead to real jobs.⁶⁵⁷ A Ruatahuna submission to the 1987 Royal Commission on Social Policy stated:

Most of our young people and older unemployed are willing to work and they appeal for the creation of job opportunities in our area. They do not want to leave Ruatahuna nor

650. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 560; Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 1163

651. Peter Owen to East Coast National Parks and Reserves Board, 'draft submission on the draft management plan, being the management proposals for Te Urewera National Park', 24-27 July 1987 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p 241)

652. P Williamson, Chief Ranger, 'Points for the retention of management uses of horses in Te Urewera National Park', 15 September 1987 (Coombes, 'Cultural Ecologies II' (doc A133), p 523)

653. Bassett and Kay, 'Ngati Manawa and the Crown' (doc C13), p 207

654. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 1180; Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 560

655. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 1180

656. Murton, 'The Crown and the Peoples of Te Urewera' (doc H12), p 1183

657. Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 565

do they want to be professional ACCESS trainees or PEP workers. They want real jobs right here.⁶⁵⁸

While we can understand this frustration, employment as park staff could never be a large part of the answer to the issues of unemployment in the inquiry district. Although casual work in the park could certainly help relieve under-employment, there were few permanent jobs on the park's staff.

(b) Employment by the Department of Conservation (post 1987): In our inquiry, we have made significant use of the report prepared in 1986 by Professor Evelyn Stokes, Professor Wharehuia Milroy, and Hirini Melbourne (and filed as evidence in our inquiry). This report, published the year before the Department of Conservation took over the running of the park, marked the beginning of a shift in attitudes towards the need for local people to derive economic benefit from the park. For our purposes here, it prompted debate in particular on whether local enterprises and workers should be afforded priority over those from other areas. As we noted above, the report also called for local rangers with relevant cultural knowledge and skills, or alternatively for the American model of native liaison officers.

In Tama Nikora's opinion, as provided to the report's authors when it was still a draft, this need not have been seen as a 'race' issue but more a 'local' issue; it was important but not determinative that the communities enclosed and overshadowed by the park were Maori.⁶⁵⁹ Clearly the report provoked debate on this issue, and some reflection on the part of Government and park officials. W Kimber, a planning officer at the Lands and Survey Department, initially dismissed most of the draft report's proposals relating to government or park employment of local people. He argued that local people should compete on the open market without government assistance. He rebutted the proposal that local people should be employed by park authorities to interpret Tuhoë history, arguing that such skills should be sold directly to tourists, and commenting that 'Stokes fails to recognise the requirements of the consumer.'⁶⁶⁰ In response to the proposal for marae-based enterprises and government assistance towards set-up costs, he commented that 'Stokes makes another case for preferential treatment of local enterprise'. He agreed that consideration could be given to training locals for tourist enterprises, but argued against subsidising or giving priority to local enterprises.⁶⁶¹ His message for Te Urewera communities was a stark one: 'Any

658. Tuhoë Submissions to the Royal Commission on Social Policy, 1987 (Tuawhenua Research Team, 'Ruatahuna' (doc D2), p 563)

659. Tama Nikora to Evelyn Stokes, 21 April 1986 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p 214)

660. W Kimber, Planning Officer, to Chief Surveyor, 13 January 1986 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), pp 164-165)

661. W Kimber, Planning Officer, to Chief Surveyor, 13 January 1986 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p 165)

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operation should be economically viable and stand on its own two feet. The local people will have to compete.⁶⁶²

Mr Kimber appears to have modified his view following discussion between his Hamilton counterpart, Mr McQuoid, and Tama Nikora. In their joint report, Kimber and McQuoid stated that once it was proven that a proposed visitor service was economically viable, 'preference' could be given to locally-based services. They also conceded that the suggestion of a 'special ranger . . . warrants a close look.'⁶⁶³

Soon after, in a submission to the East Coast National Parks and Reserves Board in July 1987, the Tuhoe-Waikaremoana Maori Trust Board expressed its view that local people should be considered for work opportunities in the park:

we consider that Park Management is in certain respects a form of local government which should be held responsible for the very real effects of its policies on the livelihoods of local communities and their living standards. We ask therefore that for wherever there is work, employment, contract or business concessions that the local communities be given favourable chance of securing same.⁶⁶⁴

Tama Nikora delivered a similar message when speaking to the trust board's submission:

Local communities should be given the chance wherever there is work, employment, contract or business concessions. There is severe unemployment locally, and job creation is needed.⁶⁶⁵

The board chairman, Mr Wilcox, replied that 'Tuhoe have the backing of the Board', and confirmed that 26 permanent jobs could be offered, and social welfare benefits redirected, but parliamentary support must first be obtained.⁶⁶⁶ By September 1987, the promised jobs had not materialised, with Mr Wilcox making the following observations in a meeting of the East Coast board with a delegation of 'young men of Tuhoe':

the previous Commissioner of Crown Lands, with the Chief Ranger and the Board spoke to at least six politicians to try and get the staff available, everywhere we were knocked back.

662. W Kimber, Planning Officer, to Chief Surveyor, 13 January 1986 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p164)

663. R McQuoid, Planning Officer, Hamilton, and W Kimber, Planning Officer, Gisborne, 'Social study draft report by Dr Stokes et al Urewera/Raukumara planning study', 4 March 1986 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), pp 170-171)

664. Tuhoe-Waikaremoana Maori Trust Board to the East Coast National Parks and Reserves Board, submission on Te Urewera National Park draft management plan (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p 249)

665. Tamaroa Nikora, meeting of the East Coast National Parks and Reserves Board, Wai-iti Marae, Ruatahuna, 15-17 July 1987 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p 255)

666. E Wilcox, meeting of the East Coast National Parks and Reserves Board, Wai-iti Marae, Ruatahuna, 15-17 July 1987 (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p 255)

They all said they were well aware of what was necessary in Te Urewera, nothing was ever done.⁶⁶⁷

In the September meeting, the Stokes et al report was also referred to by the spokesperson of ‘the young men of Tuhoe’, Peter Owen, when he argued that the draft park management plan had not captured the ‘rights’ of Tuhoe to develop economically. Mr Owen said that the plan should ‘give Tuhoe the chance to do those things that they need to do to stand up as a people’, including ‘the right of employment in the park.’⁶⁶⁸ The subject of preference being given to local people was raised again: ‘We accept’, he said, ‘that the Park must be administered by DOC so long as they realise that it is Maori land . . . In administering the park we see the need for preference to be given to Tuhoe in day to day management. There are many things that could be done to give these young men work.’⁶⁶⁹

The park management plan for the 10-year period 1989–99 acknowledged something that earlier park administrations had not: that Maori communities ‘will continue to live adjacent to the park’, and that ‘*their lifestyle and livelihood is substantially based on the Urewera forest resource* [emphasis added]’. The plan furthermore noted that ‘[c]onsideration of local social and economic impacts is an important element in park administration.’⁶⁷⁰

This shift in opinion and policy in the 1980s about the need to ensure Maori benefitted economically from the park does not appear to have translated into a significant change in job opportunities in the park. We did, however, receive limited evidence relating to the employment of Maori in the park post the 1980s. The 1989 park plan notes that ‘[r]esearch has not been undertaken to assess the actual or potential economic significance of Te Urewera National Park.’⁶⁷¹ Coombes noted that in 1996, the Aniwanuiwa Area Office of DOC developed a scheme to employ local Maori as hut wardens during the summer period.⁶⁷²

A lack of employment by local people within the park was noted as one of the grievances raised in a ministerial inquiry, following an occupation of the exposed lakebed in 1997–98 (discussed below). The ministerial inquiry did not accept the allegation that ‘the Department of Conservation preferentially employs persons from outside the Lake Waikaremoana catchment’, but noted it had been told about ‘unacceptably high levels’ of local unemployment and poverty. While noting the need for DOC to comply with the provisions in the State Services Act for employing on the basis of merit, the panel noted that

667. E Wilcox, meeting between East Coast National Parks and Reserves Board and ‘the young men of Tuhoe’, 17 September 1987 (Coombes, supporting papers to ‘Cultural Ecologies’ (doc A121(a)), p 266)

668. Peter Owen, meeting between East Coast National Parks and Reserves Board and ‘the young men of Tuhoe’, 17 September 1987 (Coombes, supporting papers to ‘Cultural Ecologies’ (doc A121(a)), pp 261–264)

669. Peter Owen, meeting between East Coast National Parks and Reserves Board and ‘the young men of Tuhoe’, 17 September 1987 (Coombes, supporting papers to ‘Cultural Ecologies’ (doc A121(a)), p 264)

670. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999*, p 32 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1398)

671. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999*, p 52 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1407)

672. Coombes, ‘Cultural Ecologies II’ (doc A133), p 103

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it was reasonable for local people to expect that, where they had the necessary skills and experience for a vacancy, they would be employed in preference to someone from outside the area. The panel also warned DOC that unless it was alert to the difficult social conditions of the local community, it could find its efforts to engage the community in the park frustrated.⁶⁷³

In 2005, the Department of Conservation's Maori workforce in Te Urewera comprised nine permanent and four temporary staff positions, and eight pest control contractors. This appears to be roughly on par with the employment figures in the 1980s. The Conservator told us that local Maori held 40 per cent of the staff positions in 2005 (they represented approximately 73 per cent of the population at nearby Tuai, including Kuha and Waimako),⁶⁷⁴ but it is not clear what proportions were in permanent or part-time positions. He noted also that there had been a shift back to getting work done by contractors, and that these were required, under statute, to be tendered on a competitive basis. Nonetheless, he agreed that DOC 'cannot operate in a vacuum', and had therefore 'actively taken steps to increase community involvement in the functions we perform.'⁶⁷⁵ As Crown counsel noted, Mr Williamson stated at the hearing that 'ideally he would like the make-up of DOC's workforce to reflect fully the local population base.'⁶⁷⁶ His view was that, for 'upper level' positions at least, local Maori would need to supplement their knowledge and experience with scientific training and experience in other districts.⁶⁷⁷ He told the Tribunal:

The idea would be an even better representation by Maori within the workforce, and trying to facilitate that, and . . . we're probably on our way to that with our 40 per cent, but that doesn't represent the population of the area, the population base. So the ideal would be to represent the population of the area in our staffing mix, and that requires, I think, local people to develop themselves to a point where they can take over the management of Te Urewera and the various work that currently DOC is doing in there, if it's still required further out. But in terms of species recovery, we need people who are competent, who are trained, and who can handle the range of species and ecological issues.⁶⁷⁸

This 'ideal' state has not yet been reached. We received no evidence to suggest that any means have been devised for 'the local people to develop themselves', as the Conservator suggested was necessary; this will require the Crown and the people together ensuring that local Maori get the right training and assistance.

673. Coombes, 'Cultural Ecologies II' (doc A133), pp 103–104

674. 'Quickstats about Tuai' Statistics New Zealand, 2006 census data, <http://www.stats.govt.nz>

675. Peter Williamson, brief of evidence on behalf of the Department of Conservation, 8 February 2005 (doc L10), pp 37–38

676. Crown counsel, closing submissions (doc N20), topic 40, p 4

677. Peter Williamson, oral evidence given in response to Tribunal questions, Taneatua, 1 March 2005

678. Peter Williamson, oral evidence given in response to Tribunal questions, Taneatua, 1 March 2005

(4) Conclusion

Given the economic situation that Te Urewera peoples were in by the time the park was created, and given how little land remained in their ownership as a result of failed government promises, it was important that they were able to derive some economic benefit from the park. This need to derive income directly from the park was greater because of the restrictions the park placed on how neighbouring Maori-owned land was used, and by the decline of the forestry industry from the 1970s and the widespread unemployment that flowed from it.

A national park was never going to be a lucrative use of land, but Te Urewera peoples have struggled to capitalise on what economic opportunities the national park has presented. Outside Aniwanuiwa and the Waikaremoana area, tourism has simply not delivered the benefits that were anticipated. The 1989 management plan described Te Urewera as ‘one of the least visited national parks in New Zealand’ (despite being the third largest national park), and identifies its ‘isolation’, its distance from major tourist routes, and a lack of public transport to the park as the main causes.⁶⁷⁹ ‘Isolation’ is perhaps an oblique reference to the lack and poor quality of roading into and linking the communities in, the national park, a legacy of the broken promises in the Urewera Consolidation Scheme and an ongoing issue (see chapter 14). Professor Murton noted that the failure to build roads influenced the kind of tourism that was possible in Te Urewera National Park, and we agree that it was a significant influence.

Thus, commercial use of the park for tourism has been small-scale because the area has struggled to attract tourists, mostly because of roading and infrastructure problems. Also, Te Urewera communities have generally lacked the resources needed to set up and sustain commercial ventures. Even where the necessary capital has been available, the policy relating to commercial operations in the park has been restrictive and sometimes rigidly applied. The tourist venture we received the most evidence about, Te Rehuwai Safaris, has by all accounts been a ‘success story’, in terms of it being a long-term, low-impact activity run by, and benefitting, local people. But the restrictions put on its operations, particularly the series of one-year concessions, were onerous. Furthermore, the evidence suggests that even this ‘prototype’ venture might not have been granted the right to operate in the park at all had the park board not wanted to stay on the right side of those the Crown was negotiating with over the lease of Maori-owned land lying inside the park. Nonetheless, as the claimants pointed out, this safari tourism takes place almost entirely on their own land; they have to cross park land, however, for access.

Local people have been able to derive income through hunting and trapping, and related industries. This income appears to have been fairly modest, but there have also been some quite large-scale operations, like the fur and game centre at Ruatahuna and the live-deer

679. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999*, p 32 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1398)

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capture on Tuawhenua trust lands. The value of the 'noxious resource' and employment related to it has sometimes been overlooked by park and government officials, such as when the national park framework, with its restrictions on dogs, horses and shooting, was first introduced, and when trapping and hunting was eventually reduced or replaced by poison-use and large-scale aerial drops of 1080. More recently, the evidence suggested there is a greater awareness within DOC of the need to work with local people and consider their need for employment when making decisions on pest-control, at least in the Waikaremoana area of the park.

The peoples of Te Urewera have tended to be employed in part-time, short-term, and low-paid work, such as that available through the government work schemes. This is not, however, a national park issue in the strict sense; the kind of work available in the park may have shaped these schemes, but the schemes were not created or funded because work was available in the park. They were funded from welfare monies and were not intended to be a long-term way of funding employment in the park.

We only have selective evidence about fulltime employment, and we are not in a position to comment on budgets, capacity, the full range and extent of work needing to be done at various times, or employment policies. One important issue that emerged in our inquiry was the perceived conflict between best practice employment principles and preferential treatment of local people. This conflict was largely resolved by the end of the 1980s, so that – for two decades now – the park authorities have accepted that there is a need to help local communities and to prefer locals over outside candidates where there are matching qualifications. Stokes, Milroy, and Melbourne pointed out back in 1986 that local Maori have knowledge and skills which deserved recognition in a position of 'local ranger' or (following North American models) 'native liaison officers'. Although Lands and Surveys officials expressed cautious interest in the idea at the time, such positions were not created for the park. Before the 1980s, local Maori contributed their skills and knowledge as unpaid honorary rangers but that position has since been phased out (see below). While we had little evidence about Maori employment in the park from the 1990s, we support the findings of the ministerial inquiry of 1998, that DOC closely consider the social conditions of local people when making decisions about, and employing people in, the park. We note Mr Williamson's evidence that the park workforce does not yet reflect the make-up of the local population, and that development opportunities must be devised so that it can do so.

Te Urewera has generated even less income than most national parks. As noted in the 1989 park management plan, 'income and employment [in Te Urewera] generated through visitor use and administration of the park is relatively low when compared to other national parks in New Zealand'. When referring to Te Urewera park's low visitor numbers, it was noted that 'the park's remoteness and unspoilt natural beauty are . . . special characteristics that visitors find attractive'. This is unlikely to be of much consolation to Te Urewera

peoples seeking a living from the park: tourists seeking a range of services, comforts, and entertainment presumably head elsewhere, while those attracted to an ‘unspoilt’ wilderness do not expect to pay for the experience.

More than 20 years ago now, the plan identified the following sources of employment and income in the park:

the Home Bay Motor Camp, commercial operations such as Te Rehuwai Safaris; and helicopter operations. Professional trappers/hunters (at present about 54 full-time and 33 part-time possum trappers) derive all or part of their living from the park suggesting a substantial income must be gained in total.⁶⁸⁰

The plan also noted that the use of forest resources, like animals and medicinal plants, helped to reduce living costs for local people, and held up soil and water conservation as its ‘indirect economic significance’. Te Urewera peoples seeking economic opportunities from the national park would be forgiven for not finding this list inspiring. Most of these activities – hunting, trapping, use of forest resources (and soil and water conservation) – were taking place long before the park was established, and without a need to compete with others or apply for permits or concessions.

It is entirely consistent with the national parks concept and legislation that government and park officials have been more focussed on the park’s conservation qualities than on the peoples living there, but it certainly has not helped Te Urewera peoples derive income from the park. The failure of the park to deliver much in the way of economic opportunities through tourism mirrors the failure of Seddon’s and Carroll’s vision for Te Urewera over a century earlier. The land has, as Carroll proposed, become ‘a resort for tourists in the future’, but in the present, offers little economically to the peoples of Te Urewera.⁶⁸¹

16.7 DID THE CROWN PURCHASE MANUOHA AND PAHARAKEKE FROM INFORMED AND WILLING SELLERS, AND WAS THE PURCHASE FAIR IN ALL THE CIRCUMSTANCES?

Summary answer: *The Crown put to us that the purchase of the Manuoha and Paharakeke blocks was a ‘willing seller/willing buyer’ arrangement, in which the Maori owners wanted to sell their land and received a fair price for it. The claimants, on the other hand, argued that the owners had wanted to mill their land, not sell it, but were virtually forced to sell at the Crown’s price because they were not allowed to mill it or to make any economic use of it. The claimants also argued that the Crown undervalued the land and timber, failed to disclose the proper*

680. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999*, p 52 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1407)

681. Hon James Carroll, ‘Urewera deputation: Notes of Evidence’, 7 September 1895 (Cathy Marr, comp, supporting papers to ‘The Urewera District Native Reserve Act 1896 and Amendments 1896–1922’, various dates (doc A21(b)), p 165)

information about the valuation (including its upper figure for the sale), and unjustly deprived the owners of £20,000.

In our view, the Crown was a fairly reluctant buyer. The threat of erosion and flooding if these blocks were milled was the main influence on the Crown's decision to try to buy them. The Maori owners had been trying for many years to get their land logged so that it could be farmed, but had been unable to do so. In 1959, they offered the land to the Crown for the good of the nation, and alternatively offered to have any logging tightly controlled. They wanted a fair price and to obtain farmable land instead. While there was some pressure from the Rucroft petition and the knowledge that applications to mill might be rejected, there was no government pressure behind this offer. In fact, the Government declined it because of the perceived price (several hundred thousand pounds by any reckoning). The owners then resumed their attempts to have (controlled) milling and resolved to sell the cutting rights to Bayten Timber Company in 1960. When the application to approve the cutting rights came to the Minister of Forests, it sparked a minor crisis within the Government. Ultimately, after considering various options, the pressure of Wairoa public opinion led to a Crown purchase offer (in principle) in October 1960. The Government contemplated using the public works legislation to take the land compulsorily, but it was not necessary. The owners' representatives agreed (in principle); on the evidence, they were indeed willing sellers. Manuoha and Paharakeke were not core settlement lands, and the owners were anxious to obtain some kind of return on them.

A year's delay ensued while the Forest Service appraised the timber on these blocks (October 1960 to March 1961) and then the Government debated valuations and whether to proceed with the purchase (April to September 1961). Ranger Berryman and his team found that there was significantly less timber (including merchantable timber) than had previously been thought. We see no reason to doubt this appraisal, which was a careful, on-the-ground exercise with a plus or minus margin of error of 16 per cent. This was higher than the desired 10 per cent because of the inaccessibility of parts of Paharakeke. The Rotorua conservator, A P Thomson, valued the merchantable timber at £89,000 and the rest of the timber at £60,000. A D McKinnon at Forest Service head office then suggested that there was actually a range of values for the merchantable timber: from £66,000 to £72,000 to £89,000. He agreed with Thomson's valuation of the non-merchantable timber (at Forest Service minimum stumpage rates) at £60,000. A special government valuation put the land at £5,000 but this was generally agreed within Government to be too low; the correct or fair value was considered to be £9,481, rounded down to £9,000.

Based on these figures, McKinnon recommended a price range from £140,000 to £160,000. Treasury agreed. The Minister of Lands, however, in taking the question of purchase to Cabinet for a decision in August 1961, stated that the valuation of the land and timber was £158,000 (that is, at the upper end). Cabinet signed off on the purchase in August, approving a minimum price of £140,000 and a maximum price of £160,000.

The valuations on which this decision was made, however, fell apart the following week. It was discovered (we have no information as to how) that the Government was legally obliged to match Bayten's offer and to pay £89,000 for the merchantable timber. This meant that the Crown would have to pay its maximum price, unless a new way could be found to justify the minimum offer of £140,000. As a result, the value of the non-merchantable timber was reduced to £45,000, which the Director-General of Lands admitted was an entirely 'arbitrary' figure.⁶⁸² Also, the value of the land was reduced to the government valuation of £5,000, despite earlier agreement that this was too low. In this way, the Government abandoned its own valuations to come up with a justification for the minimum offer.

As it turned out, the incorporations' management committees and the special meeting of owners accepted this price in October 1961 without bargaining. They did so with professional advice – a lawyer and two accountants – and with information about the valuation supplied by the Government at their request. From the evidence available to us, the Government supplied the Berryman report (the appraisal of quantities of timber) but not the valuation material. While the Crown officials at the meeting could not have been expected to undermine its offer, we do not accept that the owners had all the information they needed to make an informed decision. Thus, while they were still willing (indeed, anxious) to sell in October 1961, they cannot really be described as informed sellers.

Nor, in our view, did the Crown make the offer that it knew to be fair. The Minister of Lands had put the valuation at £158,000. Minister of Forests Tirikatene had set the standard when he said in 1960 that this purchase had to be a 'model' purchase, based on an 'accurate and fair measurement and valuation'.⁶⁸³ The Crown's use of monopoly powers required it to act in a scrupulously fair manner. In the case of Manuoha and Paharakeke, the Crown imposed a virtual monopoly by withholding consent to the Maori owners' resolution to sell cutting rights to Bayten Timber Company for more than a year while it negotiated its own purchase instead. Even if Bayten's offer turned out to be too high (in light of costs), it was nonetheless the value set on this timber by the market after the owners had advertised for tenders. But, instead of the Maori owners being allowed to benefit from the market, officials revised earlier valuations of the land and the non-merchantable timber so as to still be able to offer their minimum price. These new figures were then presented as the valuations to the owners and the Maori Affairs Board, who were led to believe that both the Crown's offer and the valuations added up to £140,000. Although the Maori owners were not unwilling sellers, the Crown's virtual monopoly and the long period of anxiety between the agreement to sell (October 1960) and the Crown's actual offer (September 1961) left them little choice but to sell at the Crown's price.

682. Director-General of Lands to Director-General of Forests, 17 August 1961 (Brent Parker, comp, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks', various dates (doc M20(a)), p 43)

683. Entrican, 'Notes for File: Discussion with Minister at his Office, 13-10-60', 17 October 1960 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 181)

Having regard to all the circumstances, we do not think that the Crown offered or paid a fair price.

16.7.1 Introduction: the specific claims about Manuoha and Paharakeke

In this section, we consider the claims that have been made about the Crown's purchase in 1961 of Manuoha and Paharakeke. As we noted in the previous section, these were the only Maori-owned blocks that the Crown ever succeeded in buying for the national park.

Located on the eastern side of our inquiry district at the headwaters of the Ruakituri River, and together comprising some 38,000 acres, these blocks had been created by the second Urewera commission after it heard appeals relating to the Maungapohatu block in 1907. Manuoha was awarded to the descendants of Hinganga (see chapter 2 for a description of Hinganga and of relationships within Ngati Kahungunu). Paharakeke was awarded to Wi Pere and Ngati Maru, Ngati Rua, and Ngati Hine. These hapu were identified at our hearings, by counsel for the Wai 621 Ngati Kahungunu claimants, as hapu of Ngati Kahungunu, and by counsel for Te Whanau a Kai as hapu of Te Whanau a Kai.⁶⁸⁴

The Crown had not purchased any interests in these blocks in the 1910s or 1920s, and they formed no part of the Urewera consolidation scheme (see chapters 13 and 14). For a long time, their owners may have believed that the lands were part of the East Coast Trust (see chapter 12), because they were located in a remote area next to the Tahora 2 block. When they eventually discovered their mistake, because the East Coast commissioner could not approve logging or farming operations, the owners formed incorporations and sought to develop the lands themselves. By the early 1950s, logging began to seem feasible in this remote area. The management committee undertook serious initiatives to arrange for a private company to log the Manuoha block.⁶⁸⁵ As we saw in the previous section, the Crown then stepped in and eventually negotiated a purchase of both blocks in 1961 for the sum of £140,000.

At issue between the Crown and the claimants in this inquiry is whether the Crown purchased the blocks for the national park from informed and willing sellers, whether the sellers received the full value of the timber and the land, and whether the Maori owners should have had to sell the land to realise the value of their timber resource.

According to the late Charles Manahi Cotter, in his evidence for Ngai Tamaterangi ki Ngati Kahungunu: 'Due to a number of circumstances including pressure from the Crown to add it to the National Park, and the fear by some of us that the Crown would take it

684. Counsel for Wai 621 Ngati Kahungunu, closing submissions, 30 May 2005 (doc N1), pp 94–95; counsel for Te Whanau a Kai, closing submissions, 30 May 2005 (doc N5), pp 4–5

685. Richard Boast, 'The Crown and Te Urewera in the Twentieth Century: A Study of Government Policy', report commissioned by the Waitangi Tribunal, 2002 (doc A109), pp 164–166

anyway, that land [Manuoha and Paharakeke] was sold to the Crown.’ In his view, the sale was a forced one, since the owners had ‘no other options for income.’⁶⁸⁶

Counsel for Ngai Tamaterangi submitted: ‘Unable to obtain revenue from the land, the owners were left with little option but to sell the land to the Crown at well under value, and in circumstances where the Crown had not fully disclosed the true value of the land.’⁶⁸⁷ In Ngai Tamaterangi’s view, this alleged failure to disclose the true value was a breach of the Crown’s Treaty duty to act in good faith.⁶⁸⁸

These allegations were also made by counsel for the Wai 621 Ngati Kahungunu claimants:

Kahungunu were unable to manage their lands within the Manuoha and Paharakeke Blocks and were unable to realise the value of their timber resources without alienating the title of these blocks to the Crown. The Crown also failed to negotiate in good faith with the owners, purchasing the blocks for the lowest valuation figure.⁶⁸⁹

Claimant counsel submitted that the owners expected to benefit from the rise in timber values, and there were timber companies ready to negotiate ‘lucrative deals’. Since the Crown was unwilling to compensate owners for timber that they were prevented from milling, they had ‘no choice but to sell lands to the Crown’. Counsel added: ‘The forced nature of the sale of the Manuoha and Paharakeke Blocks, is further evidenced by the Crown acquiring the lands for £140,000, £20,000 less than its highest valuation.’ The amount paid for the land itself, as opposed to the timber, was ‘only a fraction of the total figure.’⁶⁹⁰

Counsel for Te Whanau a Kai also submitted that the owners could not secure any economic benefit from the forests, and that the price the Crown paid them in 1961 was ‘significantly less than market values.’⁶⁹¹

The Crown did not accept these allegations and submitted that the two blocks were purchased from ‘willing sellers at a reasonable price’. Crown counsel questioned whether restrictions on milling had necessarily disadvantaged Maori owners, and argued that the Crown was entitled to govern in the interests of economic and social development and conservation.⁶⁹² The valuations undertaken by the Forest Service were fair, clearly explained to the representatives of the owners, and fully endorsed at a meeting of assembled owners with one dissenter only.⁶⁹³ Crown counsel denied that undue pressure had been placed on them.⁶⁹⁴

686. Charles Manahi Cotter, brief of evidence, undated (doc 125(a)), p 22

687. Counsel for Ngai Tamaterangi, closing submissions, 30 May 2005 (doc N2), p 50

688. Counsel for Ngai Tamaterangi, closing submissions (doc N2), p 52

689. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), p 96

690. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), pp 96–97

691. Counsel for Te Whanau a Kai, closing submissions (doc N5), p 42

692. Crown counsel, closing submissions, June 2005 (doc N20), introduction and overview, p 36

693. Crown counsel, closing submissions (doc N20), topics 14–16, p 93

694. Crown counsel, closing submissions (doc N20), topics 14–16, p 92

16.7.2 The Maori owners attempt to use their lands

There is a long history of attempts by the Maori owners of Manuoha and Paharakeke to use and develop their lands.

Originally, these lands were included in the Urewera District Native Reserve. In 1907, the second Urewera commission cut them out of the Maungapohatu block. As stated above, Manuoha was awarded to the descendants of Hinganga, while Paharakeke was awarded to Wi Pere and the hapu of Ngati Maru, Ngati Rua, and Ngati Hine. None of these groups affiliated with Tuhoe. In 1908, as the General Committee moved towards leasing land to the Crown, Kawana Karatau and 219 other owners petitioned the Government for their portions of Waikaremoana, Manuoha, and Paharakeke to be removed from the ambit of the committee. As ‘non-Tuhoe’, they wanted to take control of their lands and arrange leases themselves. Historian Cecilia Edwards was not able to locate a Government response to this petition.⁶⁹⁵ In any case, Manuoha and Paharakeke remained in the Reserve, although no interests were purchased by the Crown. As we discussed in chapter 13, Wilson and Jordan considered them ‘unfit for settlement at present’ when they evaluated the UDNR lands in 1915.⁶⁹⁶ Because no interests had been alienated, and because the ownership differed from that of other lands in the Reserve, Manuoha and Paharakeke were not included in the Urewera consolidation scheme (see chapter 14).

The land was steep, forested, and remote. As far as the evidence shows, there were no Maori settlements on this land. Eventually, the owners may have come to believe that Manuoha and Paharakeke were included with Tahora in the East Coast trust.⁶⁹⁷ In 1937, a deputation of owners met with the Acting Native Minister, Frank Langstone, asking the Crown to build a road from Wairoa through these lands and down to Waimana, so that they could get paid for roading work and then develop the land for farming. The Native Department discouraged this idea, advising the Minister that the land was too steep and of too poor quality for farming. Undeterred, a meeting of assembled owners at Pakowhai Pa passed a resolution that the land be developed for farming, by means of loan finance from the Maori Affairs Board.⁶⁹⁸ Under section 48 of the Native Land Amendment Act 1936, the Board could lend up to three-fifths of the value of the land for farm development purposes. We have no evidence as to what action, if any, the Board of Maori Affairs took in response to this resolution, but no farm development scheme eventuated.⁶⁹⁹

Before the land could be developed for farming, it would have to be milled. Next, having had no luck with the Government, the owners turned to the East Coast commissioner. In

695. Cecilia Edwards, ‘The Urewera District Native Reserve Act 1896: part 3, Local Government and Land Alienation under the Act’, report commissioned by the Crown Law Office, 2004 (doc D7(b)), p 61

696. Wilson and Jordan to Chief Surveyor, 1 August 1915 (SKL Campbell, comp, supporting papers to ‘Land Alienation, Consolidation and Development’, various dates (doc A55(b)), pp 24–25)

697. Richard Boast, ‘The Crown and Te Urewera in the Twentieth Century’ (doc A109), p 166

698. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 171–172

699. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 172

1951, Commissioner Jessep advised the Minister of Maori Affairs, EB Corbett, that he had been receiving 'frequent requests by the owners to facilitate the milling of the timber on the blocks.'⁷⁰⁰ The commissioner had sought information from the Rotorua conservator of forests as to whether the land could be milled, without success. Again, we have no information as to how the Government responded to this approach.⁷⁰¹

By the early 1950s, the owners had sought in 1908 to remove their land from the UDNR so that they could lease it (without a known response or any success), they had sought in 1937 a Government loan and road access for farm development (without a known response or any success), and they had sought assistance from the East Coast commissioner to mill their lands (again without a known Government response or any success). At this point, however, private milling companies became interested in the cutting rights for Manuoha and Paharakeke and it was no longer possible for the Government to ignore or sidestep the question of how the Maori owners might obtain an economic return from these lands.

16.7.3 The intersection of Maori attempts to use their lands and Pakeha fears of soil erosion and flooding

In 1954, the owners sought information from the Maori Land Court as to how to proceed with the milling of their lands. The following year, one of the leading owners, Sydney Carroll applied to the Court under the Maori Affairs Act 1953 to direct its registrar to call a meeting of assembled owners. The resolution to be put to the meeting was for the owners to incorporate in order to mill the timber and then farm the cleared land. The meeting of assembled owners was held at Wairoa in July 1955 and the resolution was passed unanimously.⁷⁰² Carroll put to the owners that their lands were under threat: 'it was a well known fact that the Government was keen to take over any land Maori or Pakeha which was lying idle.' The necessary 'safeguard' was to set up incorporations, which 'would serve to show the Government that the owners of these blocks were anxious to make the lands productive.' It would also enable them to get loan finance. Similar incorporations were said to be doing well in other areas. The management committees would be 'able to negotiate for finance if necessary', and 'if some company wanted to negotiate for timber or any other rights there would be a recognised body ready to do business.'⁷⁰³

As it turned out, the owners' concern was directed at the wrong threat: not that they might lose their lands because they were seen to be lying 'idle', but that they might lose their lands to ensure that they would *continue* lying idle. It was from 1955 that the history of Manuoha and Paharakeke became bound up with growing public concerns about erosion,

700. Jessep to Corbett, 22 March 1951 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p172)

701. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p172

702. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp172-173

703. Minutes of a meeting of assembled owners held under Part 23 of the Maori Affairs Act 1953, at Wairoa, 27 July 1955 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p173)

flooding, and preservation of native bush, which we have described in some detail in the previous section of this chapter. As Neumann observed, the 1955 resolution triggered two responses.

First, Eruera Tirikatene, as Minister of Forests, sought information from the Minister of Maori Affairs as to whether the Government intended to reserve 'any portion of these blocks for the Nation' (that is, as part of the national park), and whether or not the Crown would object to the private milling of these blocks.⁷⁰⁴

The second response came from the Forest and Bird Society. Bernard Teague, a prominent member of the Society, had tried to attend the owners' meeting at Wairoa (but was refused permission). He subsequently made submissions to both the Wairoa County Council and Corbett, warning that the blocks should not be milled, that it would result in flooding and have a serious impact upon the catchment area for the Waikaremoana hydro-electricity power stations.⁷⁰⁵ But he also urged the preservation of the 'remnant forests': '[I]n this forest,' Teague argued, there was a 'potential playground for the tens of thousands of inhabitants of New Zealand who are not yet born. . . . It has an aesthetic, almost spiritual value.'⁷⁰⁶ He told Corbett that he had been approached by one of the owners, a kaumatua named Seymour Lambert, who reportedly wanted the Crown to buy the land so that the bush could be preserved. Teague advocated that the Government add the blocks to the National Park.⁷⁰⁷

At this stage, however, neither the Lands Department nor the Forest Service supported the idea, largely because of the cost involved. A Forest Service note put a figure of £250,000 on the purchase, though no basis for this figure was given. This was evidently considered to be more than the Government could afford and the matter was not pursued.⁷⁰⁸ As we noted earlier, very little money was set aside annually for enlarging national parks. Particular purchases usually required some catalyst to give them political weight, before the Government would appropriate money for that purpose.

Later in the decade, the question was raised again. Timber companies continued to explore the possibility of obtaining cutting rights to the blocks and some owners considered undertaking milling operations themselves.⁷⁰⁹ In 1956, the possibility of the blocks being classified by the Urewera Lands Committee was raised, and rejected. The Minister decided that the work of the Committee should be confined to the 'Urewera bush lands of the

704. Tirikatene to Corbett, 10 August 1955 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p173

705. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp173–174

706. Bernard Teague, submission to Wairoa County Council, undated (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p174)

707. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p174

708. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp174–175. The Forest Service estimate was simply a marginal note on a memorandum, so its basis is unknown.

709. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p175

Tuhoe.⁷¹⁰ There was, however, growing support among the owners for the goals of Teague and the Forest and Bird Protection Society. In 1959, a meeting of owners rejected an offer from Bayten Timber Company for timber rights in Manuoha, and deferred a decision for six to twelve months. They decided that there should be strict control of cutting of timber, that the Government should purchase the area after a full appraisal of the millable timber and the land itself, and that they should be assisted to purchase land elsewhere. Again, there was little Government interest; the later response of Prime Minister Walter Nash was that ‘funds were not available at present.’⁷¹¹

In Neumann’s view, the Government’s reluctance may have been partly because of the owners’ aspiration to exchange land: ‘there was little Crown land that could have been offered to Ngati Kahungunu in exchange.’⁷¹² It should also be noted, however, that Minister of Forests Tirikatene now viewed the substantial beech forest on Manuoha as a long-term development opportunity for its owners. At the time, it was felt that beech forests – unlike podocarps – could be logged sustainably. At a meeting with Tuhoe in November 1959, he contrasted their situation with that of Manuoha and Paharakeke, arguing that their cut-over forests had little value except for protection purposes, whereas Manuoha and Paharakeke could be:

managed for perpetual supplies of split produce, fence posts, etc. and sawlogs . . . When they are opened up they might well be managed on a permanent yield basis by the Maori owners who should consider having their own young people trained as foresters by the Forest Service for this important enterprise.⁷¹³

Given the apparent lack of Crown interest in purchase, the Manuoha owners decided to resume their dealings with private sawmillers, and sought tenders from local companies through their solicitors. Despite wide circulation of the tender, only Bayten really wanted to buy the cutting rights; it already held the rights to the neighbouring Maungapohatu block, though it had yet to form an access road there.⁷¹⁴ Later the Forest Conservator (Rotorua) would point to this rather remarkable lack of interest (given the ‘exceptionally keen demand’

710. Corbett to Minister of Forests, 9 July 1956 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p175)

711. ‘Report on Visit of Prime Minister and Minister of Maori Affairs to Wairoa’, 22 May 1959 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p177)

712. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p177

713. Eruera T Tirikatene, *Urewera: Facts and Figures of the Urewera Maori Lands in Relation to the Four Catchment Areas, National Parks and State Forests, Delivered by the Honourable ET Tirikatene, Minister of Forests, at Ruatoki, 22/11/59* (Wellington: New Zealand Forest Service, 1959), p 4 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p178); also see Tamaroa Nikora, ‘Te Urewera Lands and Title Improvement Schemes’, August 2004 (doc G19), app C, p 4.

714. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp177–178

for indigenous timber supplies) as indicating the ‘unattractiveness’ of the area for milling purposes, and the ‘restricted’ timber values.⁷¹⁵

On 9 May 1960, the incorporation’s management committee, led by Turi Carroll, strongly advised a meeting of assembled owners to accept a renewed offer from Bayten that the committee had drafted in conjunction with the company. The owners voted overwhelmingly for the resolution in favour of selling the cutting rights at variable royalty (or stumpage) rates according to species. The minimum price was set at £30,000, and the term of sale was for 15 years with a right of renewal for a further 15 years. Stumpage rates were to be reviewed regularly (and were not allowed to fall below Forest Service minimum stumpages). The owners would receive a payment of half the minimum price upon confirmation of the resolution by the Maori Land Court and the Minister of Forests. The earlier Bayten offer of £80,000 for a sale of the whole block was rejected. As Neumann noted, the resolution referred only to podocarps; no price was offered for the substantial quantities of silver and red beech on Manuoha. Logging was not expected to start till the second half of the 1960s.⁷¹⁶

In the meantime, as we discussed in the previous section of this chapter, the Government had been subject to significant lobbying on the issue of logging in Te Urewera. We described how major flooding on the Rangitaiki Plains in February and December 1958, and proposals to create logging roads through the national park, prompted a 19,804-signature petition (the Rucroft petition) in 1959. This petition called for the remaining Te Urewera forests to be preserved, for the prohibition of milling of indigenous timber in all steep protective forests for the sake of soil and water conservation, and for a stay on the logging of indigenous timber until stands had been classified, followed by resumption of logging on a sustainable yield basis only. The petition also called for compensation for forest owners affected by prohibition of logging.⁷¹⁷ Detailed reports on the petition were provided by the Departments of Lands and Survey and Maori Affairs, the Forest Service and the Soil Conservation and Rivers Control Council. The Lands Committee referred the petition to government for its ‘favourable consideration.’⁷¹⁸ Cabinet considered the petition on 21 March 1960, and resolved that the petitioner be advised that action was already being taken to ‘meet the prayer of the petition.’ As we noted earlier, this was a reference to the drafting and passing of the Soil Conservation and Rivers Control Amendment Act 1959, section 34 of which provided for restrictions on milling.⁷¹⁹ As we stated earlier, the petition – numerous signed by Hawke’s

715. A P Thomson, Conservator of Forests, Rotorua, to Director-General, Wellington, 6 April 1961, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

716. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p178; AD McKinnon, Inspector-in-charge, New Zealand Forest Service, ‘Report on Proposed Purchase by Crown for a National Park: Manuoha and Paharakeke Blocks’, 18 May 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p53)

717. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp150–152

718. Tiaki Omana, 7 October 1959, NZPD, 1959, vol321, p2249 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p152)

719. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp163–164

Bay and Bay of Plenty residents – had a considerable impact on government policy.⁷²⁰ In September 1960 the Soil Conservation and Rivers Control Council agreed to issue a public notice under section 34 of the Act, covering the entire Te Urewera region (including Manuoha and Paharakeke).⁷²¹ We note that the Council had been notified in March 1960 by Forest Service Head Office that tenders had been called for cutting rights to timber on Manuoha and Paharakeke blocks; and a follow-up letter to Council on 10 August 1960 notified them of the owners' resolution to sell to the Bayten Timber Company.⁷²²

It was at this point that the Government took a new interest in the two blocks. The sale of cutting rights had to be approved by the Minister for Forests, Eruera Tirikatene, before it was confirmed by the Maori Land Court.⁷²³ The company applied for ministerial consent to undertake cutting at Manuoha on 6 September 1960, and then sent a deputation to see the Minister on 14 September. At that point, Tirikatene indicated that the Crown might withhold its consent and might wish to purchase the land in order to protect the catchment of the Wairoa and Ruakituri rivers. A committee of the owners, with their legal advisers, was due to meet the Acting Prime Minister and the Minister of Forests on 4 October, and the Minister referred the matter to Cabinet in a submission dated 23 September. He informed Cabinet that he had no option but to consent to the sale under the terms of section 218 of the Maori Affairs Act 1953.⁷²⁴

Whether or not this was a correct interpretation of his powers under the Act, Tirikatene was clearly aware of the decision of the Soil Conservation and River Control Council three days earlier to issue a section 34 notice restricting milling in Te Urewera. He sought Cabinet's advice as to whether the Council would be required to consider aspects of this alienation. He also asked whether three rounds of compensation might be required: to the owners for trees which they had already agreed to sell but had not yet felled, once the notice was issued; to the owners for the prevention of future use of their land 'because the felling of any certain trees is prevented'; and to Bayten (and the owners) because the terms of their sale agreement would be affected. On the other hand, the Minister warned that logging operations would 'cause great public alarm' and a strong reaction from the residents of Wairoa. In light of these factors, the Minister put two further alternatives to Cabinet:

720. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 151, 166

721. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 166

722. A D McKinnon, Inspector-in-charge, New Zealand Forest Service, 'Report on proposed purchase by Crown for a national park Manuoha and Paharakeke blocks', 18 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 53)

723. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 179

724. This stated in subsection 1 that: 'a contract of sale of any timber, flax, minerals, or other valuable thing attached to or forming part of any Maori land . . . or any contract, licence, or grant conferring upon any person . . . the right to enter upon any Maori land for the purpose of removing therefrom any timber . . . shall be deemed to be an alienation of that land, unless the thing so sold or agreed to be sold or authorized to be removed has been severed from the land before the contract, licence, or grant is made or granted.' The following subsections made such alienation contingent on the consent of the Minister of Forests. See Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 179.

would it consider purchasing the whole blocks at the rate of royalty agreed by the owners with Bayten; or would the owners be permitted to conclude some other kind of ‘separate arrangement’ with the Government?⁷²⁵

In the wake of Tirikatene’s submission to Cabinet, Alex Entrican, Director of Forestry, recommended Crown purchase of both blocks, and submitted a list of further recommendations to the Minister. It is significant that the letter was drafted by A D McKinnon, inspector-in-charge of the Forest Service management division, who would remain a strong and powerful advocate of purchase. It was recommended:

- ▶ That the Crown should purchase the blocks, and should do so quickly, to avoid the uncertainty that Maori owners elsewhere in Te Urewera faced because of slow Crown action.
- ▶ That acquisition be accelerated by taking the land under the Public Works Act as an addition to the National Park.
- ▶ That a down payment of 10 per cent of the value of merchantable timber, calculated at Forest Service valuation, be made immediately notice of intention of the taking was issued; an approximate estimate of value suggested that the down payment would be £20,000.
- ▶ That it was important that the Minister withhold his consent to the sale of the timber to Bayten Timber Company.⁷²⁶

Entrican thus assumed the Crown should acquire both blocks, though only the owners of Manuoha had applied for consent to mill. And as Neumann pointed out, Entrican did not consider other possibilities that had been suggested by Forest Service officers, notably allowing Maori owners to sell the timber from parts of the blocks that could be safely logged. The Gisborne District Forest Ranger, for example, was well aware of the threat of erosion. He had suggested in August 1960 that a land utilisation committee (like the Tuhoë one) be set up to classify the land, a sampling appraisal be carried out, and – if consents were obtained – the timber sold in lots of two to three million board feet. The cut-over areas should receive silvicultural treatment to promote healthy regeneration, and ‘balance areas’ should be considered for proclamation as National Park.⁷²⁷ The Assistant Conservator, Rotorua, had guessed – he called it a ‘very rough estimate’ – that at least half of Paharakeke and 30 per cent of Manuoha would be classified as category C; that is, unsafe to mill for

⁷²⁵ E Tirikatene, Cabinet submission, CP(60)722, 23 September 1960, F1 W3129, file 18/1/190 (1955–1961), Archives New Zealand, Wellington; Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p179

⁷²⁶ Director of Forestry to the Minister of Forests, 3 October 1960 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p180)

⁷²⁷ A M Moore, District Forest Ranger to Conservator of Forests, Rotorua, 15 August 1960, BAFK 1466/207f, file 18/2/228, Archives New Zealand, Auckland

protection purposes.⁷²⁸ In other words, the Urewera Land Use Committee would have restricted no more than one-third of Manuoha from milling.

In discussion with the Minister, Entrican stressed that because of ‘the serious concern of the Wairoa people’, the only alternative was to buy the blocks to incorporate them in the National Park. The Government not only knew that parts of the blocks could safely be milled, it was actively considering putting those parts into state forest and only the ‘non-merchantable’ parts into the national park. Yet, this was not considered feasible politically, both because of Wairoa public opinion and also because Maori owners might well feel aggrieved if the Crown were to buy the blocks and then mill the timber itself.⁷²⁹ And, as we discussed earlier in this chapter, the overriding concern for ministers and for officials such as Entrican was the public perception that logging these blocks risked serious erosion and flooding, regardless of the accuracy of that perception.

On 3 October 1960 (the day that Entrican’s letter was submitted to the Minister), Cabinet decided that negotiations should be opened for the purchase of both blocks for the National Park.⁷³⁰ Ministers then met the Maori owners, with their legal advisers, on 4 October. The owners were told that the Crown ‘would consider the purchase of the land and timber’ because milling would create dangers of serious erosion, and because the blocks ‘form a continuation of the Urewera National Park bush and have scenic value as well as being necessary for conservation purposes.’⁷³¹ On 6 October the management committees of Manuoha and Paharakeke advised through their solicitors that they wished to negotiate a sale of both blocks to the Crown:

We wish to advise that the Management committees of Manuoha and Paharakeke Blocks Incorporated, for whom this firm acts, are desirous of commencing immediate negotiations with the Government on the sale of both areas to the Crown.

The respective Management Committees are available to meet representatives of your Department at any time and, as advised during discussions with you, the Blocks are desirous of proceeding without any delay in this matter.⁷³²

728. Assistant Conservator to Kinloch, 11 August 1960, BAFK 1466/207f, file 18/2/228, Archives New Zealand, Auckland

729. Entrican, ‘Notes for File: Discussion with Minister at his Office, 13–10–60’, 17 October 1960, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington; Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p180

730. Director-General to Minister of Lands, 15 May 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 64); McKinnon, ‘Report on proposed purchase by Crown for a national park’, 18 May 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 53)

731. RG Gerard, Minister of Lands, submission to Cabinet, ‘Proposed purchase of Manuoha and Paharakeke blocks’, 1 August 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 46)

732. Burnard and Bull to Minister of Lands, 6 October 1960 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 82)

TE UREWERA

16.7.3

We do not have evidence that the owners knew of the Soil Conservation and Rivers Control Council's decision to issue a section 34 notice for Te Urewera; but we think, in light of the timing of their making an appointment to see ministers, that they must have known. They doubtless considered that their chances of completing the sale of their timber to Bayten were now small.

We do not know exactly what passed at the meeting between the ministers and the committee on 4 October. We must assume from its outcome that the ministers stated their preference to purchase both land and timber. That was what the owners agreed to – to proceed to negotiation. It seems from a later account by the owners' lawyers, the deputation had expected to discuss the Minister of Forests' consent to Bayten's application, and were instead told that consent would not be forthcoming and that the Crown was 'anxious' to purchase the blocks.⁷³³ From their point of view, having agreed to a sale of both blocks, they wanted it completed without any delay. In his 3 October advice to the Minister, Entrican had proposed a compulsory taking (with compensation) under the Public Works Act. He recorded a discussion with Tirikatene that took place on 13 October, after the agreement with the owners to negotiate, in which the Minister:

emphasised the necessity for making this a model for other compulsory acquisitions under the Public Works Act. He was most anxious for the goodwill and confidence of the Maori owners to be retained by expeditious, accurate and fair measurement and valuation [of the timber].⁷³⁴

It is not clear to us whether the Minister was keeping the public works legislation in reserve if the negotiations failed, or whether this shows that he actually saw the purchase as (essentially) compulsory. In any case, Tirikatene agreed with Entrican that the blocks must be acquired solely for the National Park and not partly for state forest: that was what the Maori owners had been told, and it was also in accordance with the Government's 'multiple use policy, that is, preserving the area for both recreational and soil conservation purposes'.⁷³⁵

One question for the Tribunal is whether the owners had any real alternative by this time. The Minister had still not given his consent to the resolution of 9 May 1960 to sell to Bayten, which meant that the court would not confirm it.⁷³⁶ The court had indicated it would not

733. Burnard and Bull to Minister of Lands, 8 June 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 52)

734. Entrican, 'Notes for File: Discussion with Minister at his Office, 13–10–60', 17 October 1960, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

735. Entrican, 'Notes for File: Discussion with Minister at his Office, 13–10–60', 17 October 1960, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

736. The confirmation resolution came before the land court at a hearing at Wairoa on 21 June 1961, when the Lands Department representative did not appear; he did appear on 23 June. See Wairoa Maori Land Court, minute book 65, 21 June 1961, 23 June 1961, pp 34, 59; Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 185.

make a decision until it had the approval of the Minister and a State Forest evaluation.⁷³⁷ As it turned out, however, nine months were to transpire before a section 34 notice was actually issued. Cabinet approved the section 34 notice in principle on 7 November 1960.⁷³⁸ But the Labour Government lost the election later that month and the whole matter had to be referred to the new National Government for decision. In the event, the section 34 notice was not issued until June 1961.⁷³⁹

In the meantime, to secure the 'expeditious, accurate and fair measurement and valuation' of the timber, Minister Tirikatene had instructed his department to carry out a detailed on-the-ground assessment. Alongside the change of Government at the end of November 1960, the Forest Service began this task. A full report and valuation was not completed until March 1961.⁷⁴⁰ Thus – although the Crown and the management committees had agreed in principle to a purchase, and the owners had wished to proceed immediately – no section 34 notice was issued, the assembled owners' resolution to have the timber logged by Baytens remained the official position, and no formal ministerial approval or disapproval had been given to the Bayten application. This remained the situation for many months after the 4 October 1960 meeting.

16.7.4 Were the owners willing sellers?

At this point in our discussion, we have sufficient evidence to decide the question of whether the Maori owners of Manuoha and Paharakeke were willing sellers. In essence, we have to decide this matter on the basis of fairly one-sided sources. The archival material assessed and cited by Dr Neumann gives a good insight into ministerial decision-making and official advice. The Crown, it seems, was a reluctant purchaser. As we discussed earlier in the chapter, the public perception that logging these lands would cause massive problems for low-lying Wairoa lands was the dominant impetus. At the same time, Minister Tirikatene was aware that much of the land could be safely logged, and that there was a possible future for the owners in forestry. But, having finally made the decision in October 1960, the Government was determined to press ahead – the general election and the long time it then took to get a timber valuation held up the sale for several months.

The same archival material, however, only gives us glimpses into the aspirations and intentions of the Maori owners. To determine whether or not they were willing sellers, we are forced to piece together their intentions from the nature and sequence of their actions and recorded decisions, which is inherently risky. The claimants' submissions relied on the documentary evidence: they did not provide us with oral history about the purchase, or any

737. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p180

738. Secretary of Cabinet to Minister of Lands, 10 November 1960 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p78)

739. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp168–169

740. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p181

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16.7.4

accounts from participants in the events leading up to the sale.⁷⁴¹ The evidence of Te Whanau a Kai's witness, Mr David Hawea, was focused on the traditional history of Te Whanau a Kai and on Tahora 2 (and the East Coast trust). He did not mention the Paharakeke purchase.⁷⁴² In his evidence for Ngai Tamaterangi, the late Mr Charles Manahi Cotter referred to the owners' fear that the Crown would take the blocks anyway if they did not sell. The claimants' knowledge of this, he suggested, was confirmed by the documentary research:

The Manuoha and Paharakeke block has also been researched. This land block in and around Maungapohatu comprised approximately 37,000 acres and was in Ngai Tamaterangi hands. Due to a number of circumstances including pressure from the Crown to add it to the National Park, and the fear by some of us that the Crown would take it anyway, that land was sold to the Crown.

The research makes it clear and confirms my own views that we were forced to sell. The Crown basically ripped us off by preventing us from entering into what was a lucrative milling contract for our timber. With no other options for income we were basically forced to sell.⁷⁴³

The discussion of the evidence in this section shows that by 1951 the owners had made several attempts to make use of or gain an economic benefit from their lands. It is clear from their various attempts that they had a twofold aspiration: to log the timber and then to develop the cleared land for farming. In 1908, they had wanted to lease it. In 1937, they wanted to log it and farm it themselves. By the early 1950s, they were trying to arrange for the land to be milled. From time to time, officials had questioned the quality of this land for farming, but it remained an aspiration of the owners as late as 1955. In that year, a meeting of assembled owners passed a unanimous resolution to set up incorporations for the purpose of selling the cutting rights and then farming the land.

Then, partly in response to public concern about the potential effects of indiscriminate milling, there was a crucial shift in the owners' approach to the future of their lands. According to Bernard Teague, the influential Ngati Kahungunu leader Turi Carroll agreed with him in 1958 that the forest should be preserved and the owners should sell the land to the Crown for the national park.⁷⁴⁴ Whether or not Teague's claim was correct, in 1959, without any pressure from the Government, the owners passed a resolution to defer a decision on Bayten's offer for six months to a year. In part, their new stance was a response to the Rucroft petition (see above). They resolved that any eventual cutting must be strictly controlled, that the Crown should be offered the chance to buy the land for the nation in

741. Counsel for Wai 621 Ngati Kahungunu, closing submissions (doc N1), pp 95–96, 152–154; counsel for Ngai Tamaterangi, closing submissions (doc N2), pp 50–52; counsel for Te Whanau a Kai, closing submissions (doc N5), p 42

742. David Hawea, brief of evidence, 24 November 2004 (doc 137), pp 3–23

743. Charles Manahi Cotter, brief of evidence (doc 125(a)), p 22

744. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 176

the intervening period, and that the Crown should be asked to help them use the purchase money to buy land ‘nearer Civilisation’, which we take to mean higher quality, farmable land closer to (as Dr Neumann put it) essential services.⁷⁴⁵

In a very important letter to the Minister of Maori Affairs, presented to him at a hui at Taihoa Marae on 22 May 1959, Turi Carroll explained the owners’ position:

Sir, we are aware of a petition being sponsored by the members of the Urewera National Reserve Board and others on account of erosion, flooding etc. From the national point of view, Sir, we feel that:

(a) Strict control of the cutting of timber must be adopted.

(b) The Government of the country in fairness to the Maori people should purchase the area after a full appraisal of the value of all the millable timber plus the valuation of the land has been made.

(c) With the assistance of the Government, Crown or private areas should be purchased with the funds that may be derived, to settle our people nearer civilisation.

Sir, I venture to state at this juncture that with the advice from you as our Minister and with the advice from the Minister of Forests, our people would be prepared to negotiate and finalise such an important issue.⁷⁴⁶

As noted above, the Crown refused this offer in 1959. As we have explained, the Government had several alternatives to outright purchase. After the six to twelve-month deferral had expired, therefore, the owners once again considered the option of milling the land. We have no doubt that Mr Cotter was correct, and the owners feared that the Crown might take their land anyway. This had been an underlying concern since at least 1955, when they had been told that ‘idle’ land such as theirs was a target. But their public-spirited offer in 1959, and their goal of obtaining more usable land in exchange, shows a firm intention to seek a constructive solution to the dilemma facing them. As with the Government, they were responding to the public pressure of initiatives such as the Rucroft petition. There is no suggestion that they were unwilling to make this offer or felt that they had no other choice. Rather, the Bayten Timber Company’s offer was deferred and therefore remained as a practical alternative, and they had signalled their willingness that any eventual milling would be tightly controlled. The owners still had choices in 1959 when they made their offer to the Crown. There was no section 34 notice on the horizon in April to May of that year. While they clearly felt some pressure, it was not coming from the Crown.

When the Crown declined to buy Manuoha, the management committee returned to the milling option. Rather than simply accept the out-of-date Bayten offer, however, tenders

745. Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p176, n

746. A T Carroll to Minister of Maori Affairs, 22 May 1959 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 176–177); Minister of Maori Affairs to Minister of Forests, 12 June 1959, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

were sought in March 1960 (almost one year after the April 1959 decision to defer). Turi Carroll and the management committee strongly urged Bayten's new offer at the May 1960 meeting of owners, which won 'overwhelming' support. Clearly, the owners – having made their offer to the Crown and been rejected – did not feel that they had no alternatives. It was not until September 1960, when Bayten applied to the Minister of Forests to consent to the sale of the cutting rights, that the Government had to finally make up its mind about Manuoha (and, by association, Paharakeke). As we explained, Minister Tirikatene met with the owners a week after the application and told them that the Crown might not approve it. He also told them that the new Soil Conservation and Rivers Control Council would need to be consulted. In his view, the Government should offer to buy the land if it was not prepared to allow the owners to use it. As we have seen, Cabinet then agreed to purchase the land.

We have no direct evidence of the owners' attitude to this sudden turn-around on the part of the Government, other than their solicitors' letter in response to the 4 October meeting. As we noted above, this letter expressed the owners' agreement not simply to sell the land but to 'proceeding without any delay'. Tirikatene himself seems to have thought that an element of compulsion was unavoidable by this stage. Even so, we are unable to detect any unwillingness on the part of the owners. The Manuoha owners had been willing to sell to the Crown back in 1959, and by October 1960 both management committees clearly felt that – with this option back on the table again – the sale should simply be concluded as soon as possible. The final test, of course, would be a meeting of assembled owners to vote on the terms of a concrete offer. Until that final vote was taken, the owners still had the option of testing the Crown's willingness to use the public works legislation to take such a large area of land for a national park, and the possibility of obtaining compensation under the soil conservation legislation if the Crown was not – in the end – prepared to take their land compulsorily. As we have seen, the Waikaremoana peoples successfully held out for a lease rather than sale of the lakebed a decade later but the option of a long-term lease to the Crown was not considered here. And the Bayten offer was still an active consideration, since the Minister of Forests continued to refuse to either approve or deny it. While much more constrained in 1960 and than in 1959, the owners still had some choices available to them in 1960.

In sum, we do not accept the claim that the Manuoha and Paharakeke owners were unwilling sellers in 1960.

The question remains: would the terms of the Crown's offer be fair? And would the owners be in a position to make a properly informed decision on those terms? As we have

emphasised, Minister Tirikatene – in taking the view that this purchase was akin to a compulsory purchase under the Public Works Act – maintained that ‘the goodwill and confidence of the Maori owners [must] be retained by expeditious, accurate and fair measurement and valuation [of the timber].’⁷⁴⁷ It is to the question of valuation that we turn next.

16.7.5 The ‘fair measurement and valuation’ of Manuoha and Paharakeke

The claimants had four main concerns about the valuation of Manuoha and Paharakeke. We summarise them as follows:

- ▶ First, that the Forest Service’s valuation rose from £250,000 in 1956 to £435,000 for millable timber alone in 1959, and then dropped to a range of £140,000 to £160,000 for all land and timber in 1960, after the Crown had decided to purchase the blocks;
- ▶ Secondly, that the Crown did not disclose the upper figure of this range (or that there was a range) to the owners, despite their request for full information about the valuation;
- ▶ Thirdly, that the land was under-valued; and
- ▶ Fourthly, that – as a result of all these factors – the Crown did not act in good faith or pay a fair price when it purchased these blocks in 1961.⁷⁴⁸

The Crown denied these allegations. In its view, the Forest Service made a ‘fair valuation of the timber on the two blocks’ in 1961. The reason for the drop in value was that, upon appraisal, there turned out to be ‘considerably less timber present than had been previously assumed.’⁷⁴⁹ The method used to arrive at the 1961 valuation was then explained to the blocks’ management committees, who were ‘most impressed with the appraisal report, and had no hesitation in accepting the accuracy of the figures.’⁷⁵⁰ On the advice of their solicitors and the management committees, the owners agreed to accept the Crown’s offer.⁷⁵¹ The result, in the Crown’s submission, was a ‘reasonable’ price.⁷⁵²

To a very large extent, the fairness of the purchase turns on these questions about how the land and timber were valued, and then how that valuation was communicated to the owners. We therefore discuss these matters in some depth in this section.

(1) *The special government valuation of the land is disputed*

On 11 October 1960, in the wake of the agreement between the management committees and Ministers that a purchase would take place, the Director-General of Lands ordered

747. Entrican, ‘Notes for File: Discussion with Minister at his Office, 13–10–60’, 17 October 1960 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), p 181)

748. See, for example, counsel for Ngai Tamaterangi, closing submissions (doc N2), pp 50–52; counsel for Ngai Tamaterangi, submissions in reply, 8 July 2005 (doc N23), pp 9–10.

749. Crown counsel, closing submissions (doc N20), topics 14–16, p 93

750. Burnard and Bull to Minister of Lands, 6 November 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 13)

751. Crown counsel, closing submissions (doc N20), topics 16–18, p 93; see also topic 31, pp 29–30.

752. Crown counsel, closing submissions (doc N20), topic 31, p 2

a valuation of the blocks. The Gisborne District Valuer reported back 10 days later, on 21 October 1960. He summarised his report as follows:

The vast areas involved and cover precluded a close inspection of property. Property was approached by foot on the two tracks previously mentioned, namely Hopuruahine Stream track and Bayten Timber Coy track and viewed from the vantage points gained from these routes.

We have compiled our valuation from this inspection and the use of aerial photographs and soil map.

We consider that there is somewhere in the vicinity of 8000 acres of lower, easier and stronger country carrying good bush, which if felled would not erode as readily as the balance and would lend itself to reforestation. We also are of the opinion that for various reasons already mentioned, this land has no development potential in the foreseeable future.

This is inherently poor country, and its present state of forest is undoubtedly its best use.

It is obvious that in the sale value of this property the land forms a very small portion of the total figure.

There are no improvements.

On a purely unimproved basis, we value this 37,925 acres at five thousand pounds (£5,000).⁷⁵³

The Maori Affairs Act 1953 (section 260) required this special government valuation to be the *minimum* price offered by the Crown. It was first queried in April 1961, when the Rotorua Conservator of Forests, AP Thompson, wrote a special report on the proposed purchase of the blocks. In his view, the land would have a nominal value of 5 shillings an acre, which was confirmed by the local Lands Department's field officer. This gave a figure of £9,481. A D McKinnon supported this view in his official valuation of the timber.⁷⁵⁴ These opinions were reported to the Director-General of Lands on 29 April,⁷⁵⁵ who advised his Minister in May 1961 that the special government valuation of £5,000 was 'rather low' and suggested that 5 shillings an acre be offered (£9,481).⁷⁵⁶ The Director-General suggested that this be the opening price for the land. The Minister of Lands took this proposal to Cabinet in August 1961. With the concurrence of the Director-General of Forests, the Minister told Cabinet that it would be preferable to offer 'up to 5/- an acre' which, he stated, was the approximate value at which bush land was transferred between the Lands Department and

753. District Valuer AK Ford and Valuer IW Lyall, valuation report on Paharakeke and Manuoha blocks, 21 October 1960 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 79-80)

754. McKinnon, 'Report on proposed purchase by Crown for a national park', 18 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 60)

755. McKinnon (for Director-General of Forests) to Director-General of Lands, 24 April 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 71)

756. Director-General to Minister of Lands, 15 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 65)

the New Zealand Forest Service. In other words, he signalled that the value of the land should be the higher figure of some £9,000.⁷⁵⁷

Thus, the Rotorua conservator, the Land and Surveys field officer, the Director-General of Lands, the Director-General of Forests, and the Minister of Lands all thought that the government valuation needed to be virtually doubled. It is unsurprising, therefore, that the claimants' view in our inquiry was that the land had been undervalued, when the Crown nonetheless made the original value of £5,000 the basis of its offered price.

(2) *The Forest Service appraises the timber, October 1960 to March 1961*

The valuation of Manuoha and Paharakeke has been researched by several historians, and Crown researcher Brent Parker assisted us by compiling and reviewing relevant documentation.⁷⁵⁸ Mr Parker noted that various estimates were made. In August 1959, a memorandum by Tirikatene stated that the cost to the Crown would be £275,000 and £160,000 for the millable timber on Manuoha and Paharakeke respectively, plus the value of the land and the protection forest. These figures were based on National Forest Survey reports.⁷⁵⁹ As will be recalled, the Government was unwilling to pay these kinds of prices in 1959. Once the Cabinet decision was taken in October 1960, an urgent appraisal and valuation of the timber was ordered. Forest Ranger NR Berryman then led a party of nine Forest Service personnel, which carried out a field survey of the two blocks in 'very difficult circumstances'.⁷⁶⁰ In addition to an aerial reconnaissance, this party carried out 48 days of field work on the blocks, using a methodology designed in conjunction with the Forest Research Institute (see sidebar). While the results had a margin of error of (plus or minus) 16 per cent, Berryman was satisfied that they were sufficient for the purpose of calculating the amount of merchantable and non-merchantable timber on the blocks, and their respective values.

Berryman filed a comprehensive report on 16 March 1961, which stated that there was considerably less merchantable timber on the blocks than had been previously thought.⁷⁶¹ It was this report which led to a substantial drop in the price that the Crown was prepared to offer the owners.

757. Minister of Lands, submission to Cabinet, 1 August 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 47)

758. Brent Parker, 'Report of Brent Parker in relation to the Crown Purchase of Manuoha and Paharakeke Blocks', report commissioned by the Crown Law Office, 2005 (doc M20). Parker reviewed a Lands and Survey Department file on the purchase that did not appear to have been referenced by other historians.

759. Minister of Forests to Minister of Maori Affairs, 18 August 1959 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 85–86)

760. McKinnon, 'Report on proposed purchase by Crown for a national park', 18 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 54)

761. Berryman to Conservator of Forests, Rotorua, 'Manuoha and Paharakeke Reconnaissance', F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

Berryman's Methodology

Berryman's aerial reconnaissance of the blocks on 28 October 1960 was followed by a week's ground inspection undertaken by himself and Leading Hand Ruru from 31 October. A base camp was then established at the junction of Whakarotu stream and the Ruakituri river. Most of the work was conducted in day trips from this camp. The party spent 48 days in the field between mid-November 1960 and the end of January 1961 (with a break over Christmas and New Year).

The appraisal method was determined after consultation with P McKelvey of the Forest Research Institute. It was decided to carry out a line plot assessment; McKelvey determined plot positioning and numbers required. Plots were an acre in extent (five chains by two chains), with individual plots at 2 chain intervals. Ninety-nine plots were positioned in Manuoha block and 19 in Paharakeke. This reflected the fact that only the southern portion of Paharakeke was included in the reconnaissance, because of the 'mountainous nature' of the northern area and its 'inaccessible and unmerchantable timber areas'. The merchantable timber limit was fixed at 2500 feet, and all plots were placed below this limit. (Ranges in Manuoha block rise to 4602 feet above sea level, and in Paharakeke to 4430 feet.) Berryman reported that his methodology had an 18.2 per cent margin of error for Manuoha and a 35.5 per cent margin for Paharakeke, with an overall margin of error of (plus or minus) 16 per cent. An extra 50 to 60 plots would have been required to bring the margin down to the preferred level of 10 per cent. But this was considered unnecessary given that the calculations were, in Berryman's view, 'within a reasonable margin for what is required'.

—Berryman to Conservator of Forests, Rotorua, 'Manuoha and Paharakeke Reconnaissance',
16 March 1961, F1 W3129, file 18/2/190 (1955–61), Archives New Zealand, Wellington

According to Berryman's report, there were 6720 acres of merchantable timber⁷⁶² in the Manuoha block, and only 1492 acres in the Paharakeke block. He calculated that there was 23.6 million board feet of merchantable timber on Manuoha; this was mostly podocarps (13.3 million feet) with some beech and toatoa sawlogs (six million feet) and 4.4 million feet of red beech posts.

⁷⁶² The national forest survey of 1955 stated that the term 'merchantable' as used in its report referred only to the quality of the forest (that is, it did not consider availability on legal grounds). 'Merchantable stands are those which are of sufficient extent, of sufficiently high quality, and of sufficiently high volume per acre, having regard to topography, to permit economic exploitation either immediately or within the next several decades.' See SE Masters, JT Holloway, and PJ McKelvey, *The Indigenous Forest Resources of New Zealand*, vol 1 of *The National Forest Survey of New Zealand*, 1955 (Wellington: Government Print, 1957), p 16.

For Paharakeke, there was a much smaller quantity of some 5.9 million board feet. This included 2.9 million feet of podocarps, two million feet of beech and toatoa sawlogs, and just under a million feet of red beech posts.

The two blocks had a combined area of 29,713 acres of bush-clad land on which he classed the timber as non-merchantable.⁷⁶³

These figures stand in stark contrast to Bayten Timber Company's estimates for Manuoha, following its investigation of the block in 1958. In Berryman's view, their figure of 100 to 105 million board feet of podocarps, silver and red beech was 'rather staggering'. It was obvious from the Forest Service field work, he stated, that 'it is extremely doubtful if the large volumes of reported timber available were present'. Although the Forest Service figures had a larger margin of error than he would have preferred (see sidebar), Berryman argued that his calculations were 'within a reasonable margin for what is required'.⁷⁶⁴

In Berryman's view, his findings indicated that the Bayten offer might well be uneconomic. His costings took into account the mill which Bayten intended to build at Maungapohatu. Access costs, however, were high: establishing roads throughout the Manuoha and Paharakeke blocks (requiring four major bridges) would be a 'most costly and difficult engineering venture'.⁷⁶⁵ Berryman added that the blocks had 'no scenic value', slipping was 'fairly prevalent' along the higher ridge country, and erosion could 'gain an easy foothold in a limited period of time'. It would be most unwise, he reported, to permit indiscriminate logging.⁷⁶⁶

(3) How the minimum and maximum values were calculated, April 1961 to August 1961

(a) The April–May valuations that resulted in the minimum and maximum values: Berryman's appraisal ultimately resulted in two different valuations of the land and timber, and two contradictory sets of recommendations from the Forest Service. The first valuation was carried out in early April 1961 by the Conservator of Forests (Rotorua), A P Thomson. He advised the new Director-General of Forests, A L Poole, that the Crown purchase should not proceed.⁷⁶⁷ On 18 May, however, a full report on the purchase was provided by A D McKinnon, Inspector-in-charge, from Forest Service head office. McKinnon recommended that the

763. McKinnon (for Director-General of Forests) to Director-General of Lands, 24 April 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 71)

764. Berryman to Conservator of Forests, 'Manuoha and Paharakeke Reconnaissance', 16 March 1961, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

765. Berryman to Conservator of Forests, 'Manuoha and Paharakeke Reconnaissance', 16 March 1961, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

766. Berryman to Conservator of Forests, 'Manuoha and Paharakeke Reconnaissance', 16 March 1961 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 181)

767. A P Thomson, Conservator of Forests, Rotorua, to Director-General, Wellington, 6 April 1961, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

Crown should go ahead with the purchase.⁷⁶⁸ The figures in these two reports explain the difference between the minimum and maximum valuations for land and timber on the two blocks (£140,000 and £160,000 respectively) which were put forward by the Forest Service. As noted above, the claimants' view is that the Crown never disclosed the upper figure to the Maori owners, and that they were underpaid by the difference of £20,000. The Crown's view, on the other hand, is that the £140,000 was a demonstrably 'reasonable' price.

One of the problems that we are faced with in this inquiry is the fact that the Forest Service's figures were not actually the figures used to justify the Crown's eventual offer of £140,000. We explain why later in this section.

As noted, the Forest Service valuation was carried out by Conservator Thomson in April 1961. On 6 April, he reported to the Director-General that the Minister of Forests should approve the owners' resolution to sell cutting rights to Bayten Timber Company. In his opinion, the high cost of gaining access to a relatively small amount of timber, combined with high logging and cartage costs, would make milling uneconomic. The timber company 'could quite well' abandon its intention when better informed. If logging of the millable timber below 2500 feet did eventually go ahead, strict controls would prevent any threat of erosion.⁷⁶⁹

In terms of value, Thomson suggested that the 'sale values' of the merchantable timber were lower than either 'resolution rates' (the rate at which the owners had agreed to sell to Bayten) or Forest Service minimum rates. Nonetheless, he valued the merchantable timber at 'resolution rates' for the species covered in the Bayten agreement, and at Forest Service minimum rates for the other merchantable species. He advised: 'It is unlikely that there would be any chance of negotiation to purchase the timber at less than resolution rates.' Thomson therefore valued the merchantable timber at £88,785.⁷⁷⁰

In a supplementary report on 21 April, Thomson valued about 30,000 acres of non-merchantable timber at £60,000, and the land at £9,481. Because it was higher than the government valuation, Thomson had his land valuation confirmed by the local Lands Department field officer. The non-merchantable timber was valued at Forest Service minimum stump-ages.⁷⁷¹ The suggestion of valuing it at this rate seems to have originated the year before, at a conference of officials with the Acting Prime Minister.⁷⁷²

768. A D McKinnon, Inspector-in-charge, New Zealand Forest Service, 'Report on proposed purchase by Crown for a national park: Manuoha and Paharakeke blocks', 18 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 61-62)

769. A P Thomson, Conservator of Forests, Rotorua, to Director-General, Wellington, 6 April 1961, F1 W3129, file 18/2/190 (1955-1961), Archives New Zealand, Wellington

770. A P Thomson, Conservator of Forests, Rotorua, to Director-General, Wellington, 6 April 1961, F1 W3129, file 18/2/190 (1955-1961), Archives New Zealand, Wellington

771. McKinnon, 'Report on proposed purchase by Crown for a national park', 18 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 60)

772. Entrican, 'Notes for File: Discussion with Minister at his Office, 13-10-60', 17 October 1960, F1 W3129, file 18/2/190 (1955-1961), Archives New Zealand, Wellington

Thomson's valuation was endorsed by AD McKinnon at head office on 24 April 1961. On behalf of the Forest Service, McKinnon reported Berryman's timber quantities to the Director-General of Lands, noting that they were 'approximate and provisional' until they could be thoroughly checked. What concerns us here, however, is the valuations. McKinnon advised, 'based on the values quoted in the resolution to sell to Bayten', that the value of the merchantable timber was £89,000. As we have explained, this in fact included Forest Service minimum stumpages for some species of timber. McKinnon described this as a 'provisional figure'. He then stated that the 'fair value' for the non-merchantable timber, 'based on Forest Service minimum stumpages', was £2 an acre (£59,246). And the value of the land was put at Thomson's figure of £9,481. He did not describe either of those two figures as 'provisional'.⁷⁷³

The next step was that the Director-General of Lands accepted these valuations and reported them to his Minister on 15 May 1961. The Director-General therefore put the value of merchantable timber at £89,000 and that of non-merchantable timber at £59,426. He described these figures as the 'special valuation by New Zealand Forest Service'. The government valuation of the land, he added, was only £5,000, giving a total value of £153,426. But the Director-General also followed McKinnon's (and Thomson's) view that the land value had been set too low. He recommended it be increased, giving a total value for land and timber of £158,000. The Director-General recommended his Minister 'to ask Cabinet to approve negotiations being opened for the purchase of these blocks at a price of £158,000'. The Maori owners were anxious to conclude matters with the Crown because they had 'the timber firm's counter offer' and there was 'pressure from among them to realise on their asset', while – for the Crown's part – the 'bulk of opinion in the Forest Service favours purchase rather than selective cutting'.⁷⁷⁴

Three days later, on 18 May, McKinnon wrote a detailed report for his Director-General (of Forests). It was at this point that a range in values was first suggested. As will be recalled, McKinnon had described the value of the merchantable timber as 'provisional' in his April report to the Lands Department, although the Director-General of Lands had proceeded on the basis of it. McKinnon now argued that the value of the merchantable timber could be based on:

- ▶ the value agreed for podocarps when the owners accepted Bayten's offer (£66,000); or
- ▶ Forest Service minimum stumpages for all the merchantable timber (£72,000); or
- ▶ a combination of the Bayten Timber Company's value for podocarps plus minimum Forest Service stumpage for other timber (£89,000).

In turn, these three different values gave overall values of £135,000, £141,000, or £158,000.

773. McKinnon (for Director-General of Forests) to Director-General of Lands, 24 April 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 70–71)

774. Director-General of Lands to Minister of Lands, 15 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 65–66)

In fact, however, the lowest of the three figures was irrelevant because it did not include those merchantable timber species for which there was no 'resolution value'. McKinnon was not seriously suggesting that this class of timber could simply be ignored. In essence, his position was that the Crown could either:

- ▶ pay Forest Service minimum stumpage for all the trees in the block (whether merchantable or non-merchantable); or
- ▶ pay Forest Service minimum stumpage for some species while also matching the Bayten offer for others.

This meant that his real range for the merchantable timber was the Forest Service minimum stumpages (£72,000, resulting in an overall figure of £141,000) and a mix of Forest Service and resolution values (£89,000, resulting in an overall figure of £158,000). It appears to be on *these figures* that McKinnon recommended a price range of £140,000 to £160,000.⁷⁷⁵

Like Thomson, McKinnon thought it would probably be uneconomic for Bayten to actually mill these blocks, but unlike Thomson he thought that the Crown should proceed with the purchase of both land and timber. Neither Thomson nor McKinnon considered that the practical difficulties of milling the land, or the possibility that it would be uneconomic to do so, affected the value of the timber or the price that the Crown should pay. After all, the Crown was not actually planning to mill any timber or obtain a 'sale price' for it, although the possibility was originally contemplated of putting the millable parts of the blocks into state forest, and only the non-millable areas into the national park.⁷⁷⁶ In any case, neither Thomson nor McKinnon thought that the Crown could offer less than Forest Service minimum stumpages. Also, Thomson and McKinnon agreed that the non-merchantable timber should be valued at Forest Service minimum stumpages, and that the government valuation for the land was too low. Their sole difference, in terms of the valuation, was that Thomson thought it unlikely that the Crown could get away with offering less than Bayten, while McKinnon was not convinced of that point.

The next step in this valuation saga was that Treasury queried whether it was really necessary to spend £158,000 (the Lands Department's recommendation, based on the Forest Service valuation) if the need for purchase had not been clearly established. As far as we are aware, Treasury officials had not yet seen McKinnon's 18 May report, in which he recommended a price range of £140,000 to £160,000, based on a range in values for the merchantable timber. After reviewing Conservator Thomson's material and discussions with Director-General Poole, Treasury came to the view in June that controlled logging was both a safe and a preferable option.⁷⁷⁷ This drew a strong rebuttal from the Director-General of

⁷⁷⁵ McKinnon, 'Report on proposed purchase by Crown for a national park', 18 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 59–60, 62)

⁷⁷⁶ Entrican, 'Notes for File: Discussion with Minister at his Office, 13–10–60', 17 October 1960, F1 W3129, file 18/2/190 (1955–1961), Archives New Zealand, Wellington

⁷⁷⁷ Secretary to the Treasury to Director-General of Lands, 16 June 1961, F1 W3129, file 18/2/190, pt 2, Archives New Zealand, Wellington

Lands. As we noted in section 16.6, the primacy of public opinion was stressed, in terms of the Rucroft petition, and also the majority opinion in the Forest Service that there was a credible risk of erosion, and the concerted view of the Forest Service, Lands and Surveys, and the Soil Conservation and Rivers Control Council that purchase was the best option.⁷⁷⁸ In respect of financial matters, the Director-General stressed the possibility of the Crown having to pay for ‘costly engineering works and flood damage repair’, the inevitability that the value of indigenous timber would climb over the long life of Bayten’s milling rights (30 years), and that the Crown would likely have to pay compensation for restrictions even if controlled milling was allowed.⁷⁷⁹

Here, we are particularly concerned with the question of valuation and price. Treasury bowed to a united stand from the other departments in July 1961 but it rejected the Lands proposal that ‘negotiations be opened for purchase of these two blocks at £158,000’. By this time, Treasury officials had definitely read McKinnon’s ‘long report’ of 18 May, and noted: ‘Forest Service opinion is that acquisition be negotiated at a minimum price of £140,000 and a maximum price of £160,000’. Treasury endorsed this position:

Although not convinced that some degree of logging could not be permitted Treasury considers that on balance it would be better if a major transaction such as that with the Bayten Timber Company were not sanctioned. From this it follows that the land and timber should be bought, and *Treasury supports purchase at from £140,000 to £160,000*. [Emphasis in original.]⁷⁸⁰

The Minister of Lands finally took the matter to Cabinet in August 1961, still using his Director-General’s figures of £89,000 for merchantable timber, £60,000 for non-merchantable timber, and £5,000 (plus an extra £4,000) for the land. He specifically stated that the government valuation for the land was ‘rather low’ and that it would be ‘desirable’ to offer a higher price for it. The total value of land and timber, he advised Cabinet, was approximately £158,000. The Minister did not, however, make the Director-General’s original recommendation that the purchase offer should be £158,000. Instead, he noted Treasury’s price range and recommended that Cabinet approve negotiations for purchase ‘at from £140,000

778. Director-General of Lands to the Secretary to the Treasury, 26 June 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), pp 49–50); Secretary to the Treasury to Minister of Finance, 19 July 1961, F1 W3129, file 18/2/190, pt 2, Archives New Zealand, Wellington

779. Director-General of Lands to the Secretary to the Treasury, 26 June 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), pp 49–50)

780. Secretary to the Treasury to Minister of Finance, 19 July 1961, F1 W3129, file 18/2/190, pt 2, Archives New Zealand, Wellington

to £160,000.⁷⁸¹ On the basis of this paper, Cabinet approved a purchase within that recommended range on 7 August 1961.⁷⁸²

In sum:

- ▶ Conservator Thomson valued the merchantable timber at £89,000, the non-merchantable timber at £60,000, and the land (after checking with the Lands and Surveys field officer) at £9,481
- ▶ AD McKinnon of the Forest Service head office conveyed these values to the Lands Department, but used the word ‘provisional’ to describe the value of the merchantable timber
- ▶ The Director-General of Lands then conveyed these values to his Minister, recommending purchase at £158,000
- ▶ AD McKinnon then wrote a detailed report, in which he suggested two alternative values for the merchantable timber, based on Forest Service minimum stumpages alone or a mix of resolution values and Forest Service stumpages, which supported a recommended price range of £140,000 to £160,000
- ▶ Treasury eventually agreed to the Lands Department’s proposal, accepted a valuation of £158,000, but followed McKinnon in recommending a price range of £140,000 to £160,000
- ▶ The Minister of Lands then advised Cabinet that the valuation was £158,000, that Treasury supported a price range of £140,000 to £160,000, and that the purchase should proceed within the recommended range, to which Cabinet agreed.

(b) *The dramatic change to the valuations after Cabinet approved the minimum and maximum values:* It was only after Cabinet approved the purchase that the basis of the figures underwent a dramatic change.

On 17 August 1961, the Director-General of Lands wrote to the Director-General of Forests, stating that ‘the Crown is legally bound to pay the minimum price of £89,000 for the millable timber on the blocks’. We have no information as to why or how this late discovery of the Crown’s legal obligation was made. Nonetheless, the Director-General had come to the view that the Crown had no choice but to pay what had been agreed between the owners and Bayten Timber Company for the podocarps, and also minimum Forest Service stumpage for the other millable timber.⁷⁸³ But it was this component of the purchase (along with the land value) that had created the original variation between the minimum

⁷⁸¹ Minister of Lands, submission to Cabinet, 1 August 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 47)

⁷⁸² Secretary of the Cabinet to Minister of Lands, Cabinet minute CM(61)35, 8 August 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 44)

⁷⁸³ Director-General of Lands to Director-General of Forests, 17 August 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 43)

'Value of Timber Classed as Non-merchantable'

IT IS considered that a fair value for this, based on Forest Service minimum stumpages, is £2 per acre, or £59,426 for the 29,713 acres.'

—McKinnon (for Director-General of Forests) to Director-General of Lands, 24 April 1961 (Parker, supporting papers to 'Crown purchase of Manuoha and Paharakeke blocks' (doc M20(a)) p 71)

and maximum prices. All along, the figure of some £60,000 had been quoted for the non-merchantable timber.

Now, the Director-General advised the Forest Service that the Lands Department (which was responsible for the purchase) had decided, after a telephone conversation with McKinnon, to 'use *an arbitrary figure* of £1/10 an acre for the unmillable timber as an opening figure and to adopt the Government valuation of £5,000 for the land [emphasis added]'. This brought the value of the non-merchantable timber down to £45,000 and the land down to £5,000. The Director-General ended this remarkable revaluation of land and timber with the following statement: 'If this basis of negotiation is suitable to you, please confirm the figures shown so that negotiations with the Maori owners may be commenced.'⁷⁸⁴ On 31 August, Director-General Poole confirmed the Forest Service's acceptance of these new figures 'as the basis for an opening offer by the Crown.'⁷⁸⁵

As a result, the difference between the bottom and top figures was reversed: originally, it consisted of differing values ascribed to the merchantable timber, but now it consisted of differing values ascribed to the non-merchantable timber and to the land.

These changes to the timber values are not straightforward to interpret. In McKinnon's view – based on Berryman's – 'merchantable' timber was likely uneconomic because of the factors that would make milling it difficult and expensive. What McKinnon called its 'true value', therefore, may have been significantly less than the £89,000 that the Crown found itself legally obliged to pay.⁷⁸⁶ That may explain why the Forest Service – convinced of the need to come up with a new justification for an offer of £140,000 – accepted the 'arbitrary' devaluing of the non-merchantable timber from £2 an acre to £1 10s an acre as a quid pro

⁷⁸⁴ Director-General of Lands to Director-General of Forests, 17 August 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 43)

⁷⁸⁵ Director-General of Forests to Director-General of Lands, 31 August 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 42)

⁷⁸⁶ McKinnon, 'Report on Proposed Purchase by Crown for a National Park', 18 May 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 58–61)

16.7.5

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Minimum valuation: initial version before legal obligation discovered

Millable timber	£72,000
Unmillable timber	£60,000
Land	£9,000
Total	£141,000 (minimum £140,000)

Minimum valuation: final version after legal obligation discovered

Millable timber	£89,000
Unmillable timber	£45,000
Land	£5,000
Total	£139,000 (rounded to £140,000)

Maximum valuation

Millable timber	£89,000
Unmillable timber	£60,000
Land	£9,000
Total	£158,000 (maximum £160,000)

Table 16.6: The valuations justifying the minimum and maximum price

quo. It may also explain the officials' willingness to revert to the government valuation for the land, despite so many having condemned it as too low (see above).

Nonetheless, it is difficult to escape the conclusion that the Lands Department and the Forest Service, when faced with an unexpected legal obligation, threw out what had been agreed as the appropriate values of the unmillable timber and the land (these had never varied). They did so in order to keep the Crown's offer to the approved minimum set by Cabinet. In our view, the claimants were rightly concerned about the basis on which the Crown's offer of £140,000 was made. The valuations were deliberately and arbitrarily recalculated to fit this sum, instead of dictating what the sum should have been once the Crown's legal obligation became known. Nor do we think it should have come as a great surprise, since Thomson's initial valuation had been based in part on his view that the Crown could not offer less than Bayten and expect the Maori owners to accept it.

When the Government put the revised valuations to the Maori Affairs Board, as justifying a price of £140,000, it no longer referred to the Forest Service minimum stumpage as the basis for valuing the non-merchantable timber. That had been the basis on which

McKinnon had calculated that £60,000 was a 'fair value' for it.⁷⁸⁷ Instead, the Director-General stated: 'the Crown is prepared to purchase this timber on the basis of ground cover only', giving it a value of £45,000 'as ground cover'.⁷⁸⁸

(4) *The Crown debates whether to proceed; the owners press for the sale to be completed*

In the previous section, we established that the Crown's offer to the Maori owners of £140,000 was based on a dubious, last-minute revision of values for the non-merchantable timber and the land. But the offer was nearly not made at all; there was significant pressure within the Government for the Crown to abandon the purchase, and to consent instead to the controlled milling of Manuoha. A debate took place from April to August 1961, between officials of the Forest Service, the Lands Department, and the Treasury, before the Minister of Lands finally made a decision to take to Cabinet for approval on 1 August. After all, the decision to purchase had been made by the previous Labour Government, before the special valuations of land and timber, and the new National Government had to decide whether to still proceed. This question became bound up with the issue of the section 34 notice and the whole question of how to deal with milling in Te Urewera (see chapter 18).

In February 1961, the owners' solicitors contacted the Government about the purchase, and were advised that a special appraisal of the timber would soon be available.⁷⁸⁹ In April, aware that the special appraisal had now been completed, the Maori incorporations began to put pressure on the Crown to conclude the purchase 'quickly'. Their lawyers sought a meeting with the Minister of Maori Affairs to expedite matters. The Director-General of Lands advised Maori Affairs that the valuation figures would need to be reviewed by Treasury, and that a Cabinet decision on the sale would then be necessary. But, if no 'out-right purchase' resulted, 'there was the likelihood of the Government agreeing to restricted cutting'.⁷⁹⁰ This advice represented differences of opinion among Forest Service officials, and some uncertainty in government as to whether the purchase would still proceed. In the same month, the Government was once again considering the issue of a section 34 notice and the question of timber in Te Urewera in general.

A representative of the solicitors met with the new Minister of Maori Affairs, JR Hanan, on 24 April. He expressed the management committee's anxiety over the delay. The Maori owners wanted to know where they stood: could they sell to Bayten or would the Government decide to reserve the land and timber for conservation against erosion, and

787. McKinnon (for Director-General of Forests) to Director-General of Lands, 24 April 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 71)

788. Director-General of Lands to Secretary for Maori Affairs, 4 September 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 41)

789. Director-General to Minister of Lands, 20 February 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 74)

790. Lands Department, 'Note for File: Proposed purchase of Manuoha and Paharakeke Blocks', 21 April 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 72)

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for scenic purposes? They were also concerned as to whether – in the event of the Bayten application being declined – they would at least receive compensation. Further, the solicitor asked if the Forest Service figures would be made available to the committee. At the time, he got little satisfaction; he was assured that the committee appointed by Cabinet (to consider the section 34 notice and timber in Te Urewera) would meet soon and he would be advised of any information resulting from the meeting.⁷⁹¹

After this meeting, there was a three-month delay before Cabinet was advised to proceed with the purchase. We do not need to cover the detail of the debate between (and within) the Forest Service, the Lands and Survey Department, and the Treasury during those months. Dr Neumann has provided an account in his report, and it is also fully documented in Mr Parker's collection of Lands and Survey Department papers.⁷⁹² Suffice to say that there was disagreement over whether milling by the Bayten Timber Company would ever actually happen (because it would turn out to be an uneconomic prospect), whether controlled milling below 2500 feet was actually safe in terms of erosion and regeneration, and whether the Crown really needed to spend so much money to appease the very strong public opinion against milling this land.

Ultimately, the battle was won by McKinnon (in the Forest Service) and the Director-General of Lands, with the support of Director-General Poole (Forests) and the secretary of the Soil Conservation and Rivers Control Council. Contrary views within the Forest Service and the Treasury were overcome, and, as we discussed in the previous section, Cabinet approved the purchase on 7 August 1961. This represented the victory of the view:

- ▶ that it was not actually safe to mill even the 'millable' timber in terms of the erosion risks;
- ▶ that public opinion about milling was 'a potent factor in this case';⁷⁹³
- ▶ that milling might not prove sufficiently uneconomic to deter Bayten;
- ▶ that milling might not be uneconomic at all, especially since the value of scarce indigenous timber would inevitably rise and Bayten was known to be an experienced and canny operator in the timber industry;
- ▶ that cleaning up the after-effects of erosion and flooding might prove far more expensive than the purchase price;
- ▶ that the Crown might have to compensate the Maori owners even if cutting rights were approved, because there would have to be stringent conditions;
- ▶ that no more roads should be put through the national park; and

791. 'Notes of Interview: Hon Mr JR Hanan with Mr AG McHugh, Solicitor of Gisborne', 24 April 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 68)

792. See Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 182–184; Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 45–72.

793. Director-General of Lands to Secretary to the Treasury, 26 June 1961 (Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 183)

- ▶ that the land should be added in its totality to the national park (and the millable part should not go into state forest).

Keeping faith with the Maori owners, given the Crown's September 1960 statement of intent to purchase this land, did not figure highly in the departmental debates although it carried some weight with all of them.⁷⁹⁴

(5) The Crown takes its offer of £140,000 to the owners

On 4 September 1961, the Director-General of Lands wrote to the Secretary of Maori Affairs outlining the circumstances of the purchase. He asked that the offer be placed before the Board of Maori Affairs and its approval sought for the Crown to enter negotiations with the Maori owners. He stressed that the Crown's offer matched the 'Resolution rates' for millable podocarps (that is the rates agreed between the owners and Bayten Timber Company in the 1960 resolution to sell the cutting rights). For the remaining millable timber, the offer had been set at the Forest Service minimum stumpage rates. As noted above, the same could no longer be said for the value put on the non-merchantable timber. The Director-General explained that such timber was seen as 'ground cover' (that is, vegetation preventing erosion). Its value, he advised, was 30 shillings an acre. The offer in respect of the land matched the 1960 special government valuation. On this basis, he said, the Crown was 'prepared to offer £140,000'. In other words, he put to the Board the minimum sum approved by Cabinet, for which the values had had to be revised to justify it (see above).⁷⁹⁵

In the paper put to the Board for its approval, the Board was specifically told:

A full appraisal of the timber on the Blocks has been made and Cabinet, on 8 August 1961, approved purchase by the Crown. On the basis of the valuations made the Crown is prepared to make an offer of £140,000 for the land, the millable timber, and the remaining ground cover consisting of non-merchantable timber.⁷⁹⁶

The Board was advised of the 'details of the valuations' (which were the newly revised figures), and that these 'valuations' added up to the 'Crown's offer' of £140,000.⁷⁹⁷ We think that this information was misleading at best. These were not the valuations that had been made as a result of the Forest Service's appraisal of the timber. Nor were these the valuations that had justified Cabinet's approval of the minimum price. Of course, the Board was not

794. See Neumann, 'That No Timber Whatsoever be Removed' (doc A10), pp 182–184; Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 45–72.

795. Director-General of Lands to Secretary of Maori Affairs, 4 September 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 40–41)

796. 'Board of Maori Affairs: Proposed Acquisition of Maori Land by the Crown', approved 28 September 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 32)

797. 'Board of Maori Affairs: Proposed Acquisition of Maori Land by the Crown', approved 28 September 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 32)

advised that this was a minimum price. It was led to believe that the figure of £140,000 was in fact the sum total of the valuations that had been carried out.

The Board gave its approval for the purchase at £140,000 on 28 September 1961.⁷⁹⁸ The day before, on 27 September, the Director-General of Lands advised his Minister of a recent request from the Maori owners that they be 'supplied with the figures giving quantities and values of the timber on which the Crown offer was to be based'. This was a crucial moment for the claims before us: how would the Crown choose to explain the valuation to the Maori owners? The Director-General stated: 'An opening offer of £140,000 has been submitted for the approval of the Board of Maori Affairs and *after discussion with the NZ Forest Service it is felt that the same figures furnished to the Board can safely be submitted to the solicitors for the owners*' (emphasis added). Accordingly, a letter had been prepared 'giving an outline of the basis of the Crown's offer.'⁷⁹⁹

Thus, almost a year after they had agreed to the sale on 6 October 1960, the Manuoha and Paharakeke incorporations finally received an offer from the Crown on 27 September 1961. In the meantime, the section 34 notice had finally been issued in June 1961. This was an added risk for the owners, as the Minister's letter acknowledged:

Now that the purchase has been approved by Government, the owners can be assured that the issue of the notice on 30 June 1961 bringing these blocks under the provisions of the Soil Conservation and Rivers Control Amendment Act, 1959, will not operate to their detriment.⁸⁰⁰

In his letter, the Minister of Lands stated: 'Your request to be supplied with the details of the appraisals of the land and timber carried out by officers of the Crown is agreed to. The figures are as follows'. He then set out the figures for land and timber for each of the two blocks: a total of £94,100 for Manuoha and £44,900 for Paharakeke, amounting to a total of £139,000, rounded to £140,000.⁸⁰¹

Under the heading 'Values per 100 board feet', the Minister explained these as the 'resolution rates' for rimu, miro, matai, kahikatea, and totara, as well as 'Forest Service rates' for the other species of merchantable timber. He then stated: 'Values of non-merchantable cover assessed at 30/- per acre'. While resolution and Forest Service rates were specified for the merchantable timber, no explanation of the 'values' of this non-merchantable 'cover' was provided. It is notable that, as part of the packaging of this offer, the non-merchantable timber was no longer called 'timber' but instead was referred to as 'non-merchantable cover'

798. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p184

799. Director-General of Lands to Minister of Lands, 27 September 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p35)

800. Minister of Lands to Burnard and Bulls, 27 September 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p36)

801. Minister of Lands to Burnard and Bulls, 27 September 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p36)

and ‘non-merchantable vegetation’;⁸⁰² this seems to have been part of an ongoing process of distancing this offer from the original Forest Service valuation. Next, under the heading ‘Value of Land’, the Minister gave the sum of £5,000, split between the blocks. Again, no mention was made of how this value had been calculated, although he could have mentioned the special government valuation of 1960. The total was given as £139,000, rounded up to £140,000 (thus making the offer appear more generous than it needed to be).⁸⁰³

This was the information about the valuations that was placed before the management committees for the two blocks. On 6 October 1961, these committees met and unanimously resolved that a recommendation to accept the Crown’s offer be placed before a general meeting of the owners. The committees asked to meet with the Forest Service officers who had carried out the appraisal before this took place, so that they better understood how it was carried out.⁸⁰⁴ On 9 October, their solicitors wrote to the commissioner of Crown lands, requesting ‘some explanation from the officers who carried out the appraisal as to matters arising from the appraisal by way of verification of the figures set out in the [Crown’s] offer.’⁸⁰⁵

According to the owners’ solicitors, Burnard and Bull, reporting to the Minister of Lands, they had been ‘most impressed’ with the ‘appraisal report.’⁸⁰⁶ From the context, it is clear that they were shown Berryman’s ‘appraisal’ report, and not Thomson’s and McKinnon’s valuations (which had resulted from it). Berryman’s report, it will be recalled, calculated the quantities and types of timber on the blocks, but did not ascribe monetary values to them. Thus, the committees would have obtained an understanding of why the values had dropped so considerably (because there was much less timber than previously thought), but not the basis on which the quantities of timber (or the land) had a value of £140,000 attached to it.

On 25 October, Berryman and another Forest Service officer, F A Lake, attended this joint meeting of the incorporations’ committees at Wairoa. Ten committee members attended, with their solicitor (A G McHugh) and their two accountants. Both Mr Lake and Mr Berryman (with the aid of maps and figures) spoke, and members ‘asked many questions.’ Turi Carroll, the chairman, expressed their satisfaction with the answers, and asked the two men to attend the special meeting of owners.⁸⁰⁷ Again, we think that these staff would have been able to explain how the nature and extent of timber had been calculated. But there is

802. Minister of Lands to Burnard and Bulls, 27 September 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), pp 36–37)

803. Minister of Lands to Burnard and Bulls, 27 September 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), pp 36–37)

804. Burnard and Bull to Minister of Lands, 9 October 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20), p 29)

805. Burnard and Bull to commissioner of Crown lands, 9 October 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20), p 28)

806. Burnard and Bull to Minister of Lands, 6 November 1961 (Parker, supporting papers to ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20(a)), p 13)

807. F A Lake, file note, 27 October 1961, F1 W3129, file 18/2/190, pt 2, Archives New Zealand, Wellington; Parker, ‘Crown Purchase of Manuoha and Paharakeke Blocks’ (doc M20), pp 4–5

no evidence to suggest that the committee was informed as to the values then calculated for timber and land by the Forest Service and the Lands officials, or the Minister of Land's submission to Cabinet that £158,000 was the value of the land and timber. The Gisborne commissioner of Crown lands was also present but we have no information as to what, if anything, he said about the valuation. But we think it most unlikely that officials could have said anything to undermine the Crown's offer. Short of commissioning their own valuation, the incorporation management committees had to rely on the Crown's offer as a fair one. Importantly, the Minister of Lands' explanation was that the price of £140,000 matched the valuations of land and trees. As far as we are aware, the owners had no information to the contrary.

The special general meeting of the owners was held later the same day. Lake guessed that some 200 were present; the proceedings were conducted, he said, entirely in Maori. The offer of £140,000 was accepted by the assembled owners on the committees' recommendation: separate resolutions empowering the committees of management to sign the purchase documents were passed by the owners of Manuoha, and of Paharakeke A and B blocks respectively. There was only one dissenting owner.⁸⁰⁸ The Reverend Niania stated at the meeting that he represented other, absent owners, and that they would want their interests cut out by the Maori Land Court.⁸⁰⁹ Nothing came of this.

Finally, and only after the owners had accepted the Crown's offer, the Minister of Forests formally refused confirmation of the May 1960 resolution, which had sold Bayten the cutting rights to Manuoha.⁸¹⁰ This was an important last act because the Crown had imposed a virtual monopoly in respect of Manuoha, withholding its consent to the owners' resolution for over a year while it negotiated a purchase of the block instead. As we have seen, the owners had become increasingly anxious to conclude matters, and the section 34 notice cannot have alleviated their anxiety (as the Minister's letter observed).

In their closing submissions, the parties have not raised any issues about the actual payment or the method by which it was made. We simply note, therefore, that a cash down-payment was made (£10,180 for Manuoha, £4,820 for Paharakeke). The balance was to take the form of New Zealand government stock bearing interest at 5 per cent, with a term of not

808. FA Lake, file note, 27 October 1961, F1 W3129, file 18/2/190, pt 2, Archives New Zealand, Wellington; Parker, 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20), pp 4-5

809. Commissioner of Crown Lands, Gisborne, to Director-General of Lands, 27 October 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 26)

810. Neumann, 'That No Timber Whatsoever be Removed' (doc A10), p 185

less than 10 years. The blocks were declared Crown land on 26 June 1962.⁸¹¹ And by order in council of 3 October 1962 the blocks were added to Te Urewera National Park.⁸¹²

(6) Conclusions

(a) Were the owners still 'willing sellers' by October 1961? We found above that the Maori owners were willing sellers at the point at which the initial agreement to sell was made in principle (October 1960). In effect, the Maori owners were left in limbo for a year while the Forest Service appraisal and valuation took place, and then while government departments debated whether or not to proceed with the purchase (and, if so, at what price). The section 34 notice was finally issued at the end of June 1961, but the Minister of Forests had still not made a formal decision about approving or rejecting the application to sell the cutting rights. In theory, the application could still have been approved and the milling could have proceeded under whatever controls the Minister or the Council set.

From the evidence available to us, Manuoha and Paharakeke were not core settlement lands for their Maori owners, who remained anxious to resolve matters and finally get some return for these lands. At most, they appear to have been neutral as to whether the blocks should be retained (and milled), or whether they should be sold to the Crown. Their real wish seems to have been for farmable land on which they could settle, but the idea of an exchange had been ruled out back in 1959. The management committees were unanimous and – apparently – enthusiastic supporters of the Crown's offer to buy the land. There was only one dissident at the special general meeting of the owners. From this evidence, we conclude that the Maori owners remained willing sellers when the purchase was completed in 1961.

(b) Were the Maori owners 'informed sellers' in 1961? From the evidence available to us, the owners were well informed as to why their timber was worth so much less than had seemed to be the case in 1959. They were given a copy of the Forest Service's appraisal report, and the author (Berryman) was made available to explain it and answer questions. Professional advice was available to the owners in the form of their lawyers and two accountants. For obvious reasons, the management committees could hardly ask the Bayten Timber Company to explain or justify its earlier estimates as to the quantity of millable timber on

811. 'Declaring Land to be Crown Land', 26 June 1962, *New Zealand Gazette*, 1962, no 44, p 1077 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 4); deeds of sale of Manuoha and Paharakeke A and B blocks, 25 October 1961 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), pp 18, 22)

812. 'Adding Land to the Urewera National Park', 3 October 1962, *New Zealand Gazette*, 1962, no 61, p 1614 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 2); National Parks Authority, meeting minutes, 23 August 1962 (Parker, supporting papers to 'Crown Purchase of Manuoha and Paharakeke Blocks' (doc M20(a)), p 3)

Manuoha. Expert forestry advice was likely to support the careful on-the-ground assessment made by Berryman in any case.

But the owners were given no information by the Government, as far as we can tell, as to the valuation on which the figure of £140,000 was reached. The explanation made to them was that the merchantable timber had been valued according to ‘resolution’ values and Forest Service minimum stumpages (which was true). They were also told that the non-merchantable ‘vegetation’ had been valued as ‘ground cover’. We do not consider it too strong to say that this was a fabrication. The Forest Service valuations by the Rotorua conservator and by McKinnon had valued this ‘timber’ according to Forest Service minimum stumpages, and had placed a much higher value on it. Later, an ‘arbitrary’ figure was plucked out of thin air and applied to this ‘vegetation’, based solely on a figure that was necessary to fit the £140,000 offer price. Finally, the owners were told that the value of the land came from the special government valuation (which was true but not the whole story, as we have seen). Based on this, we do not think that the owners had all the relevant information made available to them. In particular, the Forest Service special valuation should have been released alongside Berryman’s appraisal. We cannot accept, therefore, that the Maori owners were fully informed sellers in 1961.

We agree with counsel for Ngai Tamaterangi that, when the owners asked for an explanation of the appraisal so that they could verify the figures in the Crown’s offer, the Forest Service valuations should have been disclosed as part of this information.⁸¹³ Without the correct valuations, the owners could not in fact make an informed verification of the figures in the Crown’s offer. The owners did not have to accept the Crown’s first offer, of course, and if they had attempted to bargain, the Crown was prepared to pay up to £160,000. But they saw no reason to question the valuations that they had been given, and therefore considered the offer a fair one.

(c) Was the Crown’s offer fair? In our Treaty analysis section at the end of this chapter, we will evaluate the Crown’s Treaty obligations to the Maori owners of Manuoha and Paharakeke. Here, we note that we cannot accept that the Crown’s offer was fair in all the relevant circumstances.

First, there was almost unanimous agreement among officials (accepted by the Minister of Lands) that the special government valuation had undervalued the land. It was always a part of the Crown’s position that a fair price for the land was approximately £9,000, until late August when the figures had to be revised to justify the £140,000 offer. At that point, the Government reverted to using the special valuation without demur.

Secondly, it was a core part of the valuation that the non-merchantable timber was worth £60,000. Again, this was never questioned until the officials had to scramble to come up

813. Counsel for Ngai Tamaterangi, submissions in reply (doc N23), p 10

with a new justification for the £140,000 offer in late August. At that point, the valuation – based on Forest Service minimum stumpage – was abandoned, and a new figure was calculated solely on what would fit with the Crown’s proposed offer. Although officials tried to repackage this as ‘vegetation’ and ‘ground cover’, giving up the term ‘non-merchantable timber’, this cannot conceal that an unprincipled and unfair reduction of the value of this timber took place.

Thirdly, the Minister of Lands submitted to Cabinet that the value of the land and timber – based on matching Bayten’s offer for merchantable podocarps, paying Forest Service minimum stumpage for the rest of the timber, and paying a fairer price for the land – was £158,000. Cabinet then chose to make this valuation the (virtual) maximum price, and authorised a substantially lower offer. While in theory the owners could have bargained the price up, we cannot accept that the Crown made what it knew to be a fair offer. Rather, it made what it knew to be a minimum offer and, in the reasoning of the Minister of Lands, an unfair one. As we see it, this does not meet the standard set by Tirikatene in 1960, that the purchase should be based on an ‘expeditious, accurate and fair measurement and valuation’.

Fourthly, Tirikatene’s standard is particularly important because he accepted that the circumstances required a ‘model’ purchase on the part of the Crown. While the Crown did not actually decide to take the land compulsorily (which had been suggested), it gave itself an unfair advantage over the Maori owners by imposing a virtual monopoly over their dealings in these lands. The Minister of Forests withheld his approval of the owners’ resolution to sell the cutting rights to Manuoha for over a year, until the Crown’s purchase negotiations with the Maori owners were completed.

As we found in chapter 10, the Crown’s use of monopoly powers requires it to act in a scrupulously fair manner. As we saw in that chapter, Maori were often denied the higher prices that they could have obtained from private parties – virtually compelled to settle for the Crown’s minimum prices – in situations where the Crown exercised a monopoly over their lands. In the case of Manuoha and Paharakeke, the Crown unexpectedly found itself obliged to match a private offer. Even if Bayten’s offer turned out in the future to be too high (in light of costs), it was nonetheless the value set on this timber by the market after the owners had advertised for tenders. But, instead of the Maori owners being allowed to benefit from this, officials revised earlier valuations of land and non-merchantable timber so as to still be able to offer their minimum price. In our view, the Board of Maori Affairs and the Maori owners were not given the correct information as to the valuations that had resulted from the special appraisal, and were led to believe that the Crown’s price matched the sum total of those valuations (when it did not). Although they were not unwilling sellers, the owners had no real bargaining power; we are not surprised that they accepted the price that they were offered.

As noted, we will consider the Treaty implications of these findings later in the chapter.

16.8 HOW HAS THE NATIONAL PARK AFFECTED THE ABILITY OF TE UREWERA PEOPLES TO CONTINUE THEIR CUSTOMARY USES OF PARK LANDS AND THEIR EXERCISE OF KAITIAKI RESPONSIBILITIES?

Summary answer: *The creation of Te Urewera National Park brought with it a general preservationist ethos that took little account of the fact that Maori communities continued to live on or within its borders, and were dependent on its lands and resources. Although the Crown acquired title to the land in 1927, it was not until after the park was established, and a new park administration was set up, that the effect of this loss began to bite. Resident Maori communities had continued their wide ranging uses of the land's resources: gathering plants for food and medicines, flax and kiekie for weaving, hunting pigs and deer for food, and taking timber for the construction of waka and wharenuī. These were uses that were generations old; horses, dogs, pigs and deer too, had long been incorporated in everyday life. All these uses involved the preservation and transmission of knowledge about the sustainable use of natural resources. And as hapu continued to occupy and traverse their ancestral lands (even if the Crown had secured title to them), they continued to exercise their kaitiaki responsibilities for wahi tapu and ancestral taonga.*

A wide range of restrictions and controls over the use of park lands were laid down in National Parks legislation, which also established a National Parks Authority to set policy guidelines and local park boards to manage individual parks in accordance with them. The founding legislation – the National Parks Act 1952 – provided the framework in which all national parks would be administered, identifying a range of activities on park lands that a park board might undertake or authorise, and others that would be offences unless authorised by a park board. This system meant that there was some flexibility to allow for local circumstances. But the National Parks Act had the preservation of the natural environment, of native flora and fauna, and of scenery for public enjoyment as its core objective. Maori were not mentioned in the Act, and various prohibitions in effect shut out resident Maori communities who had lasting relationships with park lands – as was the case in Te Urewera – and their customary uses of that land. This was reflected in the 'offences' listed under section 54 of the Act, which included a number of Maori customary uses. On the other hand, a remarkable number of recreational activities – such as skiing and hunting – and the construction of facilities for them, were permitted in parks, reflecting the interests of groups which had influenced the design of the Act, as well as public interests. The successor to the 1952 Act, passed in 1980, did little to alter the disjunction between the interests recognised and promoted by national parks and those of Maori communities.

The key objectives of the legislation were reflected in the four General Policies developed by the National Parks Authority and its successors between 1964 and 2005. The 1983 policy was the first to recognise that Maori communities might have special associations with park lands which could be acknowledged, but they were also seen simply as one of a range of 'interest'

groups that should be consulted. At the local level, park management plans generally mirrored the focus of national policies; in fact the first Te Urewera park plan strongly stressed the wilderness character of the park, aiming to enhance the features of the park that made it appear 'unspoilt and unmodified by man'. The 1976 plan made little attempt to ameliorate the sense of alienation local Maori communities felt from the park.

Change would come, at both national and local park administration level. This was the result of several developments. International conferences during the 1970s and 1980s, attended by New Zealand officials, increasingly acknowledged the concept of 'sustainable' parks, particularly to recognise and accommodate the rights of indigenous communities that lived beside parks and continued to utilise their resources. At home there was political change, arising from protest against the monocultural nature of many institutions and the lack of Crown response to deeply held grievances. The outcome over time was recognition of Maori Treaty rights in certain legislation, the work of the Waitangi Tribunal, and court judgments which articulated and upheld Treaty rights.

But there have been limits to the change these developments brought in Te Urewera National Park. On the ground, issues that became flash points for dispute between Maori communities and park administration from the time of the creation of the park included: the use of horses for access across park lands to settlements on Maori land, and the use of horses and dogs, for hunting; the customary harvest of plants; the protection and preservation of wahi tapu and other taonga; and the presentation of the history of Te Urewera in park plans and public information. The responses of park authorities on these issues have been belated, fragmented and changeable, completely at odds with the fact that the issues are all elements of a coherent cultural system. Thus national and local park policies on plant harvesting moved –slowly – from an unwillingness to make formal provision for it (particularly the harvesting of pikopiko – an important seasonal delicacy which the park board never tried to stop) to eventual control by local communities in accordance with tikanga. The use of horses and dogs for hunting, much higher profile activities in which park visitors also had a keen interest, was harder for park authorities to handle. The Urewera National Park Board tried to accommodate local communities at the outset. But a permit system was introduced for horses from 1971, and soon extended from the Murupara ranger station across the whole park. From 1973 horses were not allowed in the Waikaremoana watershed. Pressure from visiting hunters led to their being allowed to use horses in the park for hunting with a permit (unlike recreational riders), but at the cost of recognition of Maori traditional uses. From 1989, horse use was restricted to particular parts of the park. Dogs were banned in the early 1970s, but then readmitted after pressure from a pig-hunting club, and belated recognition by authorities that pig dogs assisted control of the pig population.

Further causes of tension between local communities and park authorities have been the destructive impact of park visitors on important wahi tapu and urupa, whose taonga have

been plundered. Authorities have been considered insufficiently sensitive to the responsibilities of the peoples of Te Urewera as kaitiaki of artefacts and other historical taonga. Change came from the late 1980s, and there is now greater protection for wahi tapu (locations have been removed from the latest editions of maps, as Tuhoe wished), and consultation by DOC staff to ensure that wahi tapu are not disturbed. At Aniwanuiwa, park administrators have emphasised the participation of iwi and hapu in the storage and management of taonga, and have accepted that ownership should remain with Maori. It is not clear, however, whether these changes in respect of care of taonga apply across the park. The presentation of park history has also long remained a bone of contention between park administrators and Tuhoe leaders in particular. Park interpretations made only brief acknowledgement of a past Maori presence (initially cast in romantic terms), rather than the recognition Tuhoe sought of their own long history on park lands, and their history of strife with the Crown and of land loss (including the questionable methods by which the Crown acquired the park lands). Such recognition was clearly considered crucial by Tuhoe if their exercise of customary rights, and their marginalisation in decision-making, was to be avoided.

The key barrier to meaningful change in recognition of the customary rights of resident communities has, however, been the national parks legislation itself. The exercise of those rights in Te Urewera has long been known of by park administrators. But the parks regime, while responding in an ad hoc manner, has not tackled the systemic causes of the people's negative experiences of the park. The requirement in the Conservation Act 1987 that DOC administer that Act so as to give effect to Treaty principles has not been responsible for change to the administration of the National Parks Act 1980 of the order claimed by DOC. In the Tribunal's view, the National Parks Act is inconsistent with Treaty principles, which means that it cannot be administered so as to give effect to them. Although tangata whenua of Te Urewera are now recognised as kaitiaki of the taonga of the area, and there has been development of relationships with resident Maori communities, and better quality consultation with them, the goals of the National Parks Act remain focussed on environmental preservation and conservation, and on the recreational uses of park lands by visitors.

For this reason, the national parks model that remains in place in Te Urewera is inappropriate for its particular circumstances. Administrators at both national and local level have failed to consider how protection of the indigenous flora and fauna of the park – an aim which Maori do not dispute – can be reconciled with the ongoing customary uses of natural resources by Te Urewera resident communities on an acceptable basis. Such a basis would recognise the communities' own values of sustainable use, rather than applying rules meant to cover a range of public recreational uses, or waiving such rules informally, or creating exceptions for local circumstances which are susceptible to being overturned when challenged by groups whose interests are protected by the Act. Despite the increasing, if slow, recognition of Maori traditional uses of park lands, the cumulative experience of Maori communities has been one

of frustration with, and resentment of, the park that is their close and overbearing neighbour. This is primarily because they have been relegated to a consultative role on implementing policies that have already been decided. It is also a result of a restrictive 'permit culture' that has been widely resented by the peoples of Te Urewera. The existing model has above all failed to offer recognition of the rights of local iwi, particularly Tuhoe, to full involvement in governance and management of the park.

16.8.1 Introduction

We turn in this section from the effects of the national park on the economic opportunities of the peoples of Te Urewera to its impacts on their customary uses of, and the exercise of their kaitiaki responsibilities for, the park's land and resources. Crown ownership had not put an end to either. The Crown had no real presence in the land it was awarded in 1927 at the end of the consolidation scheme (nearly half a million acres) for over 30 years afterwards. Before the national park was created, the land acquired by the Crown in the scheme was subject to minimal regulatory control. There had been earlier attempts to restrict the taking of native plants at Waikaremoana under the Native Plants Protection Act 1934 but, according to Coombes, flora harvests within Crown conservation spaces were tolerated and often ignored in the period before the park was established.⁸¹⁴

Once the national park was established, however, and once there were tangible signs on the ground of a new regime and a new administration, this would start to change. To claimants, the park's values and their own very limited role in park administration are at odds with their dependence on ancestral lands for their way of life, and with their corresponding responsibilities as kaitiaki. National park law and policy have restricted tangata whenua in the exercise of their traditional rights to such an extent that the Crown has, in effect, forced the claimants to adjust their tikanga.⁸¹⁵

The Crown has responded, however, that park management was ahead of the National Park Authority's General Policy in taking account of tangata whenua interests. Those interests were known through the contribution of Maori park board members, and 'more informal interactions'. And since the Conservation Act 1987 was enacted, Maori interests have been formally protected in nationwide policies as well as in Te Urewera park plans.⁸¹⁶

The evidence of the claimants focused on restrictions on their traditional hunting and plant harvesting, on their views of the presentation and interpretation of their history by park management (arising from, and reinforcing, an unwillingness to recognise their continuing relationship with park lands), on its failure to protect their wahi tapu and taonga,

814. Coombes, 'Cultural Ecologies 11' (doc A133), pp 441-442

815. Counsel for Wai 36 Tuhoe, closing submissions, pt B (doc N8(a)), pp 189-190; counsel for Tuawhenua, closing submissions, 30 May 2005 (doc N9), p 293; counsel for Ngai Tamaterangi, appendix to closing submissions, undated (doc N2(a)), pp 106-107

816. Crown counsel, closing submissions (doc N20), topic 33, pp 8-11

and on its unwillingness to involve them adequately in decision-making about all these matters. That is how the claimants have long experienced the park: as an often overbearing administration, careless of their rights, even of their rights on their own lands, so close to the park. In this section we examine their strongly felt grievances.

In the last 60 years, there have been three distinct administrative regimes for New Zealand's national parks. The first regime was in force from 1952 to 1980, the second from 1981 to 1990, and the third has been in force since 1991. Each period is marked by the enactment of the statute that introduced the new regime – the National Parks Act 1952 (in force until 1980), the National Parks Act 1980, and the Conservation Law Reform Act 1990. The evidence presented to the Tribunal by claimant witnesses spanned all three periods and had a strong focus on the years before 1990. Some of the older people remembered the park being established in 1954 and had experienced all its effects on the lives of the resident communities of Te Urewera. They reminded us that during the 30 or so years that elapsed between the Urewera Consolidation Scheme and the creation of the national park, there were comparatively few restrictions imposed on the use of the lands the Crown had acquired, so customary uses of those lands continued largely unabated. The imposition of new rules from the mid-1950s and the increasing presence, over time, of Crown officers to enforce them, brought about a fundamental change in the lives of the local communities. The lands, waters, plants, and animals of the area that had always sustained them – physically and spiritually – were now available to all comers, but the uses that could be made of them were defined in ways that particularly disadvantaged Maori.

How far was the legislation, and the policies developed to meet the goals specified in the various acts, suited to the circumstances of Te Urewera National Park? We pointed out at the start of this chapter that all but one of the five principles set out in the National Parks Act 1952 to be observed by park administrators emphasised preservation – of nature, native flora and fauna, of sites and objects of historical interest, and of soil, water, and forest conservation areas. The fifth principle was public freedom of entry to national parks, and public enjoyment of them. On the face of it, it might not appear that such goals were incompatible with nearby Maori communities continuing their own ways of life. In this section, we ask why – if this was the case – reconciliation of basic park objectives with sustainable use of resources by resident communities, and preservation of wahi tapu and taonga, has proved to be an elusive goal.

We consider the following questions:

- ▶ How has the preservationist model been reflected in legislation governing national parks?
- ▶ How has the preservationist model of national parks administration been applied to Te Urewera National Park?

- ▶ To what extent has the preservationist model affected Maori customary uses of park lands and resources, and their kaitiaki responsibilities?

We begin with an overview of the legislation governing national parks, and the policies of the various national authorities which guided the local park boards; the boards were responsible, until 1980, for the operation of the individual parks.

16.8.2 How has the preservationist model been reflected in legislation governing national parks?

The statutory scheme for New Zealand's national parks, which all park administrators must comply with, has always emphasised one core principle: the preservation of unique landscapes and their flora and fauna. This principle, first established in the National Parks Act 1952, was restated in the National Parks Act 1980, which is still in force today. The 1952 Act specified that it was to have effect for the purpose:

of preserving in perpetuity as National Parks, for the benefit and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality or natural features so beautiful or unique that their preservation is in the national interest. (section 3(1))

The Crown's legislation not only set out the purposes and principles of national parks but also contained other provisions that gave direction or guidance to park board decisions. We look first at key provisions identifying activities that were prohibited or restricted in a national park – unless authorised by the National Parks Authority or a park board, or both. Section 29 was particularly important; it focused on preservation of native flora, which was clearly a prime goal. It required the National Parks Authority to give its consent before a park board authorised the cutting or destruction of any native bush in a park.

Section 54, entitled 'Offences within the Park', was also important. It made it unlawful, unless the park board had given its prior consent, for a person to conduct a large number of specified activities in a national park. Many traditional uses of the natural resources in the national park were among those activities, including cutting and removing plants, shooting an animal, using horses in the park for transport and hunting, and using dogs for pig hunting. The heavy penalties attached to the section 54 offences revealed that they were regarded very seriously by the Crown and parliament (see sidebar).

But a further set of provisions in the 1952 Act empowered a park board, the Authority, or the Minister, to allow certain activities in, or uses of, a park. The inference to be drawn from these provisions was that activities and uses that were *not* on the list should not generally be permitted and, if they were to be permitted, should be subject to strict conditions. But the range of activities, particularly recreational activities, provided for in a park was remarkably

Section 3(2) of the National Parks Act 1952 – Purpose of Administration of Parks

(2) It is hereby further declared that, having regard to the general purposes specified in subsection one of this section, National Parks shall be so administered and maintained under the provisions of this Act that—

- (a) They shall be preserved as far as possible in their natural state:
- (b) Except where the Authority otherwise determines, the native flora and fauna of the Parks shall as far as possible be preserved and the introduced flora and fauna shall as far as possible be exterminated:
- (ba) Sites and objects of archaeological and historical interest shall, as far as possible, be preserved:¹
- (c) Their value as soil, water, and forest conservation areas shall be maintained:
- (d) Subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the native flora and fauna or for the welfare in general of the Parks, the public shall have freedom of entry and access to the Parks, so that they may receive in full measure the inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, lakes, and rivers.

1. Paragraph (ba) was inserted by National Parks Amendment Act 1972

Section 54 'Offences within the Park' under the National Parks Act 1952

By way of example, section 54 of the National Parks Act 1952 made it an offence to:

- ▶ cause any cattle, sheep, horses, or other animals to trespass on the park;
- ▶ fail to remove any animal once required by the park board to do so;
- ▶ plant any plant, scatter the seed of any plant, or introduce any substance injurious to plant life;
- ▶ wilfully break, cut, injure, or remove any plant, stone, mineral, or thing;
- ▶ be in possession of a firearm;
- ▶ shoot at any bird, animal, object, or thing;
- ▶ take or destroy or wilfully injure or disturb any animal, bird, nest, or egg;
- ▶ take any bark, flax, mineral, gravel, or other substance or thing;
- ▶ use or sell any bark, flax, or other thing knowing it was removed unlawfully from a park; or
- ▶ interfere in any way with the park or damage its scenic or historic features.

Penalties for Offences Committed under the National Parks Act 1952 and its Amendments

Offences were punishable by a maximum of three months' imprisonment, or a fine of £100, or both of those penalties.

Continuing offences were punishable by a fine of up to \$10 for each day the offence continued.¹

The penalty for section 54 offences committed by individuals was amended to a maximum of three months' imprisonment, or a fine of \$2,500, or both of those, plus a further penalty of up to \$50 a day for continuing offences.²

If a company was the offender, the penalty was set at a maximum fine of \$5000, plus \$50 a day for continuing offences.³

1. National Parks Amendment Act 1967, s2

2. National Parks Amendment Act 1977, s8

3. National Parks Amendment Act 1977, s8

broad. Boards might set aside sites for park staff residences, build huts and ski tows, and create camping grounds and parking areas (see sidebar).

Boards were also empowered to make by-laws (section 38), which had to be approved by the National Parks Authority and would then be published in the *Gazette*. Purposes for which they might make by-laws included:

- ▶ The management, safety and preservation of the park, and preservation of the native flora and fauna
- ▶ Prescribing conditions on which persons should have access to or be excluded from the park.

If there was no board (as was the case in Te Urewera until 1961), the functions and powers of a park board were generally to be exercised by the Commissioner of Crown Lands of the relevant land district; except for the power of a park board to make by-laws, which was to be exercised by the National Parks Authority (section 41).

There was, however, no provision in the 1952 National Parks Act that recognised, let alone promoted, Maori relationships with, including their customary uses of, a national park. On the contrary, the offence provision (section 54) declared many 'consumptive' uses⁸¹⁷ of a national park to be offences if done without park board permission. But obtaining that permission was not an easy task when the Act was so heavily geared in favour of preservationist and recreational values and interests. As we noted above, the Act's provisions reflected the interests of the groups that had a major role in the design of the National Parks Act and

817. A term used by officials at the time, evidently to include both uses for food, and taking of plants for a wider range of uses.

Allowable Activities in Parks under the National Parks Act 1952

Under sections 28, 30, and 32 of the National Parks Act 1952, every national park board 'may ... exercise in respect of the Park under its control all or any' of a number of powers. These included the power to:

- ▶ use any portion of the park as sites for park rangers' residences;
- ▶ license a person to carry on any trade, business, or occupation in the park;
- ▶ erect or authorise the erection of:
 - huts for the use of persons engaged under lawful authority in the destruction or eradication of introduced flora and fauna in the park;
 - huts by any mountaineering, winter sports, or tramping club, or any other association, society, or body approved by the National Parks Authority; and
 - ski tows or other apparatus or works designed to facilitate tourist traffic or the enjoyment of skiing and other winter sports;
- ▶ with the prior consent of the National Parks Authority:
 - set apart any part of the park for any specified purpose of public amusement or recreation, and permit the use thereof upon such terms and conditions as the board thinks fit;
 - appropriate any part of the park for camping sites or for parking places for vehicles for the convenience of persons using or visiting the park;
 - establish accommodation houses and other facilities in the park, and lease them; and
 - grant easements over any part of the park for any public purpose, or for the utilisation of water power for the generation of electricity.

Section 29 of the National Parks Act 1952

29. Bush to be preserved—Save with the prior consent of the Authority, the Board shall not cut or destroy or authorize any person to cut or destroy any native bush in the Park.

whose nominees were guaranteed membership of the National Parks Authority, namely the Forest and Bird Society, Royal Society, and Federated Mountain Clubs.

The creation of Te Urewera National Park under the National Parks Act 1952, therefore, dramatically changed the context within which the peoples of Te Urewera exercised kaitiaki responsibilities over their ancestral lands, and used its resources, even though that land had passed into Crown ownership some years before. But compared with the public and private

interests recognised and promoted by the National Parks Act, the failure to recognise use of a park's resources by local communities in accordance with their tikanga, is on the face of it incongruous.

The 1952 Act was replaced by the National Parks Act 1980, which remains in force today. The 1980 Act is the primary legislation that governs the administration of New Zealand's national parks. With only minor changes, the 1980 Act re-enacts the purposes and principles of the earlier Act (see sidebar). The ideological underpinnings of the national park system have therefore been constant since 1952. Thus, the 1980 Act has not altered the fundamental disjunction between the interests that are recognised and promoted by national parks and the interests of Maori communities in their ancestral lands. The 'national interest' that is served by national parks has never expressly included the promotion or protection of Maori values or interests. Instead, Maori interests in national parks are submerged in the mix of preservation, conservation, scientific, and recreational user interests that must be pursued and balanced by those responsible for the parks' administration.

The stated purposes of the 1980 Act, set out in section 4(1) of the Act, are very similar to those of the 1952 Act. With the changes noted in italics, the 1980 Act is to have effect:

for the purpose of preserving in perpetuity as national parks, *for their intrinsic worth* and for the benefit, *use*, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, *ecological systems*, or natural features so beautiful, unique, or *scientifically important* that their preservation is in the national interest. [Emphasis added.]

The five principles to be applied in the administration of national parks are virtually identical to those in the 1952 Act.⁸¹⁸

The National Parks Act 1980 is more detailed than the 1952 Act in its definition of conduct that constitutes an offence or needs to be authorised. Section 5 reinforces the preservationist tone of the Act by prohibiting any interference with indigenous flora or fauna in a national park unless prior permission, in writing, has been given by the Minister.

The fact that the Minister, and Director-General, have a range of powers under the 1980 Act is because of the Act's transfer to the Department of Lands and Survey of the operational functions previously performed by park boards. The Minister and Director-General became the repositories of the operational powers previously possessed by the park boards – but, in practice, many of their powers are delegated to senior departmental staff. Since 1987, and the creation of DOC, it is the Minister and Director-General of Conservation, and their department, that administer national parks under the 1980 Act.

Sections 41 and 42 of the 1980 Act set limits to the delegations of power that can be made by the Minister and Director-General. Neither can delegate their powers to anyone outside

818. In the 1980 Act, the words 'flora and fauna' in the second and fifth principles have been changed to 'plants and animals', and the words 'seacoasts' and 'other natural features' have been added to the list in the fifth principle. See section 4(2)(a)-(e).

Section 5 of the National Parks Act 1980

5. Indigenous plants and animals to be preserved—(1) No person shall, without the prior written consent of the Minister, cut, destroy, or take, or purport to authorise any person to cut, destroy, or take, any plant or part of a plant that is indigenous to New Zealand and growing in a national park.

(2) No person shall, without the prior written consent of the Minister, disturb, trap, take, hunt, or kill, or purport to authorise any person to disturb, trap, take, hunt, or kill any animal that is indigenous to New Zealand and found within a national park.

(3) The Minister shall not give his consent under subsection (1) or subsection (2) of this section unless the act consented to is consistent with the management plan for the park.

the department, which means that responsibility for the administration of national parks is, by law, kept with DOC. This has implications for the extent to which the peoples of Te Urewera can be formally involved in the administration of the national park.

Section 60 of the 1980 Act is now the main provision that defines offences in a national park, and it continues to outlaw many ‘consumptive’ uses of park resources, unless they have been authorised by the Minister. The 1980 Act confers on the Minister a range of particular powers very similar to those previously conferred on park boards by sections 28, 30, 31, and 32 of the 1952 Act (outlined above).⁸¹⁹

From the mid-1980s, the administration of national parks was affected by a complete restructuring of New Zealand’s conservation estate. The Conservation Act 1987 created DOC to take over the conservation functions previously exercised by a number of other agencies, including the Department of Lands and Survey, the New Zealand Forest Service, and the Wildlife Service. As part of the rationalisation, the new department took over responsibility for administering the National Parks Act 1980.⁸²⁰ The primary functions of DOC under the 1987 Act centre on its advocacy and advancement of the conservation of all natural and historic resources.⁸²¹ ‘Conservation’ is defined in the Act to mean ‘the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.’⁸²²

819. National Parks Act 1980, ss 49–51

820. Conservation Act 1987, sch 1

821. Conservation Act 1987, s 6

822. Conservation Act 1987, s 2

Section 60 of the National Parks Act 1980

60. Offences in parks—(1) Every person commits an offence against this Act who, without being authorised by the Minister (the proof of which shall be on the person charged) or by any bylaw made under this Act,—

- (a) Causes or allows any animal owned by him or under his control to trespass on any park; or his control to trespass on any park; or
- (b) Takes any animal into or liberates any animal in any park; or
- (d) Removes or wilfully damages any, or any part of, any plant, stone, mineral, gravel, kauri gum, antiquity, or relic in any park; or
- (h) Takes or destroys or wilfully injures or in any manner disturbs or interferes with any native animal or the nest or eggs of any native animal in any park; or
- (k) In any way interferes with or damages the natural or historic features of any park.

(4) Every person commits an offence against this Act who, without being authorised by the Minister (the proof of which shall be on the person charged),—

- (a) Is in possession of any chainsaw or any firearm, trap, net, or other like object in a park; or
- (b) Discharges any firearm in a park; or
- (c) From outside a park, shoots at any animal or any other object or thing inside the park with any firearm.

Section 70 of the National Parks Act 1980

70. Penalty for offences—Every person who commits an offence against this Act for which no penalty is prescribed elsewhere in this Act is liable on summary conviction,—

- (a) Where the offence was committed by an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,500, and where the offence is a continuing one, to a further fine not exceeding \$250 for every day on which the offence has continued:
- (b) Where the offence was committed by a corporation, to a fine not exceeding \$25,000, and, where the offence is a continuing one to a further fine not exceeding \$2500 for every day on which the offence has continued.

The new Act was, and remains, important because of a key provision, section 4, which requires that the Act be interpreted and administered so as ‘to give effect to the principles of the Treaty of Waitangi.’ The effect of that ‘Treaty clause’ on the department’s administration of other Acts, including the National Parks Act 1980, was clarified by a 1995 decision of the Court of Appeal. It ruled that the Treaty clause in the Conservation Act requires the department to give effect to Treaty principles not only when it is administering that Act, but also when it is administering other legislation, provided that the other legislation is not itself inconsistent with Treaty principles.⁸²³ The Te Urewera park management plan 1989, released in the wake of these changes, made reference to the Treaty – though in weaker terms than the 1987 Act: DOC ‘will have full regard to the Treaty of Waitangi and the traditional rights of the tangata whenua.’⁸²⁴ But the plan invoked the Treaty and traditional rights in the same breath – a positive sign for national park administration under DOC.

In 1990, the Conservation Law Reform Act amended the Conservation Act and the National Parks Act by further rationalising the administration of the conservation estate. This time, the changes were to the statutory bodies with advisory, policy, and planning functions, and to the policy and planning framework within which they operate. The 1990 amendments did not, however, affect the purposes and principles of national parks, as prescribed by the National Parks Act 1980, or the Treaty clause in the Conservation Act 1987.

The Crown maintained that claimants have given insufficient weight to the changes introduced since 1980 (mainly by the Conservation Act 1987) by which the tangata whenua of Te Urewera are now recognised as kaitiaki of the taonga of the area and are included in park planning processes and the administration of certain initiatives. Certainly, there has been a shift in the wording of policy and planning documents – both at national level and for Te Urewera National Park – to recognise the relationship of Maori with Te Urewera National Park, and there has been more, and better quality, consultation about certain park management issues. But the changes that have accompanied the stated recognition of kaitiakitanga are essentially procedural, not substantive, because the governing legislation – the National Parks Act 1980 – has not been amended to include among its goals the protection and promotion of resident Maori communities’ interests in their ancestral lands. Instead, the Act’s goals remain focused on environmental preservation and conservation, and on the recreational uses of park lands by visitors, so that the now-recognised right of local Maori to be consulted about, and participate in, national park administration is also focused on those goals. The disjunction between national park values and Maori cultural values remains, but Maori are now included to a greater degree in the processes by which Te Urewera National Park is run. The inevitable result is that, for the resident communities, the changes in park management processes and style still do not address their fundamental concern – that their

823. *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA)

824. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999* (Rotorua: Department of Conservation, 1989), p 56 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 229)

very existence, their culture, and future welfare are not central to, or even part of, the philosophy of Te Urewera National Park. Thus, the changes that have been made to the processes and terminology employed by park management, while a welcome advance on the less inclusive practices of the past, are experienced by the peoples of Te Urewera as merely improvements in a regime that failed to consider their needs and interests.

16.8.3 How has the preservationist model of national parks administration been applied to Te Urewera National Park?

We turn here to examine the various ways that the preservationist ethos, and the legislation embodying it, has been reflected in the policies that guide the administration of parks at national and local level. We consider the ramifications of the preservationist approach for resident Maori communities, as seen in the priorities of park management plans, including the treatment of the history of Te Urewera peoples and their lands. We look briefly at the kinds of international discussions that were taking place about the impact of national parks or protected areas on indigenous peoples (which New Zealand officials were well aware of) and at their significance for policy as it developed generally in New Zealand, and specifically in Te Urewera.

(1) Policy statements and master plans

The National Parks Act 1952, as we have seen, laid out the purposes and the principles to be observed in the administration of national parks. It established a two-tier administrative framework. A central governance body – the National Parks Authority – performed advisory and policy functions relating to all parks. Until 1980 individual park boards managed and administered each park. The National Parks Authority was empowered to issue General Policy statements to guide the park boards and departmental officers with responsibilities for the park, and issued two statements, in 1964 and 1978. From 1976, park boards (and their successors) were required to issue a ‘master plan’ which identified the resources of the park and its values. Following these guidelines, three plans have been released for Te Urewera National Park, in 1976 (the Urewera National Park Board), 1989 (the East Coast National Parks and Reserves Board) and 2003 (the East Coast Bay of Plenty Conservation Board).

Although the National Parks Authority issued its first ‘General Policy’ in 1964, it was not until the second policy was issued over a decade later, in 1978, that many of the key guidelines for national parks administration were set in place. In accordance with the Act, the guidelines emphasised preservation. The 1964 statement was very brief and not directive. It covered a number of general matters about park administration (such as the type of signposting required), and set out general aspirations for park boards (for example, the destruction of noxious animals, and exotic plants), but little in the way of detail. It made no

mention at all of Maori or their customary uses of national park lands.⁸²⁵ In contrast, the 1978 statement provided more direction about how parks were to be managed. The statement emphasised the importance of preserving parks in their natural state, protecting them from ‘outside influences’, and maintaining ‘special values of quietness, isolation, natural beauty, and scenic grandeur.’⁸²⁶ Key policies were the extermination of introduced flora and fauna; giving maximum protection to native flora and fauna; promoting soil, water and forest conservation values; educating the public in these values; prosecution of those who offended against provisions of the Act; and bylaws relating to safety and preservation of flora and fauna. A further key policy focused on education: the experience of visiting a park could be ‘greatly enriched by an understanding of its natural and human history and particular character’. The Authority recommended four types of publications, among them handbooks and special publications on the biological and scientific aspects of the park’s natural history.⁸²⁷ Like its predecessor, however, the statement made no mention of Maori or their customary uses of the national park and its resources.

The 1983 General Policy statement of the new National Parks and Reserves Authority (issued after the passing of the National Parks Act 1980) was significant in a number of ways. It contained the first specific reference to the relationship of Maori with national park lands. When the statement was in its final draft stage, the Director-General of Lands had consulted three Maori leaders about it and, at their suggestion, recommended to the Minister that the National Parks and Reserves Authority make three changes to it, which were made. The amendments were concerned with fostering consultative procedures with Maori groups with historical or spiritual ties to national park land, providing for traditional uses of native plants and animals, and drawing attention in park interpretative material to historic Maori place names.⁸²⁸

The 1983 policy stated that the scope for public access would be governed by the ‘particular make-up of each park’, but pointed out that a balance should be struck between preservation of areas ‘integral to New Zealand’s heritage’ and provision of optimum public access and enjoyment.⁸²⁹ Similarly, in the section on introduced plants and animals, it was stated that commercial and recreational hunting would be encouraged by methods ‘most appropriate to the individual park or situation.’⁸³⁰ And management plans would ‘necessarily dif-

825. National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1964) (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp1249–1254)

826. National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1978), p 3.1 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1262)

827. National Parks Authority, *General Policy (1978)*, p 6.1 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1269)

828. National Parks and Reserves Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1983), pp 8, 20, 33 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp1287, 1293, 1299)

829. National Parks and Reserves Authority, *General Policy (1983)*, p 6 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1286)

830. National Parks and Reserves Authority, *General Policy (1983)*, p 23 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1294)

fer to reflect the different nature and use of the various parks.⁸³¹ There was consistent recognition, in other words, of the differences between parks, and of the need to accommodate them; one size did not fit all. This was particularly evident in the section on preparation of management plans, which specified that management objectives should ‘establish the philosophy to be adopted *in the particular park* towards balancing preservation and use’, including an explanation of the range of uses considered appropriate for the park (emphasis added).⁸³² The administrators of Te Urewera National Park might have taken from this that they could allow for the distinctive position of Maori communities living within or adjacent to the park, in particular their customary uses of park lands, without apology. But this was not so. Even if administrators had thought of making such provision in management plans, that possibility was excluded by the 1952 and 1980 Acts. The law was clear that national parks were for the preservation of everything indigenous – except people.

The provision for specific park management plans in the 1983 General Policy statement followed the requirements of the new National Parks Act 1980. Under the Act, management plans for each national park are required to set out policies on all matters affecting a park’s administration, so that the departmental officers responsible for its day-to-day running can rely on it for instruction and guidance. The concept of a park ‘master plan’ originated in the United States and was adapted to New Zealand’s circumstances. There had been no provision for individual park boards to develop major policy plans under the National Parks Act 1952. In the mid 1960s, however, the National Parks Authority decided to follow the American model requiring park boards to develop individual plans for ‘preservation and use’; two key principles which had to be balanced against each other.⁸³³ In Te Urewera, from the late 1960s, the park board worked closely with department staff and contractors on a new-style management plan for the park, which was finalised in 1976.

Although Te Urewera was not the first park to develop such a plan, its ‘master plan’ came to be seen as a ‘test case’ for park planning in New Zealand because it was developed by a professionally qualified planning team.⁸³⁴ The plan went through a number of stages of development, from 1969 – when the first ‘master planning team’ was appointed – to the final finishing touches seven years later. When the plan was finalised and approved by the

831. National Parks and Reserves Authority, *General Policy (1983)*, p 59 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1312)

832. National Parks and Reserves Authority, *General Policy (1983)*, p 61 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1313)

833. R W Cleland, ‘Master Planning for the Preservation and Use of New Zealand National Parks’, presented to the Conference of Commissioners of Crown Lands and Superintendents of Land Development, 13–15 October 1964 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 264)

834. SKL Campbell, ‘Te Urewera National Park, 1952–75’, report commissioned by the Crown Forestry Rental Trust, 1999 (doc A60), p 105; Coombes, ‘Cultural Ecologies II’ (doc A133), p 265

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National Parks Authority in 1976, it stated that it was ‘not a comprehensive blueprint for the future but a general statement of management objectives and policies.’⁸³⁵

The 1976 Master Plan’s main objectives for park management were firmly located within the National Parks Authority’s policy framework of protecting the ecology and retaining the wilderness character of the park. The plan stressed some of the defining characteristics of Te Urewera National Park: its very limited roading, relative remoteness from large urban centres, topography (‘generally steep to precipitous’), size, and the extent of its afforestation (‘approximately 90 per cent’⁸³⁶). These factors contributed to the view, expressed very strongly in the plan, that the essential character of the park is its untouched appearance. The scope of the plan was broad: it covered policies and proposals for park boundaries, access, visitor facilities, park administration, commercial operations, hydro-electric power generation, visitor safety, and research, survey, and planning data. The wilderness character of the park was stressed throughout:

Much of the Park’s present attraction lies in its size and the seemingly impenetrable wilderness of the Urewera. The fact that the visitor from either Whakatane or Wairoa has to go around the Park adds to this feeling of vastness and much would be lost if it were bisected by further roads.

It is also abundantly evident that it is this same wilderness character that takes most people to Lake Waikaremoana, the main attraction being the freedom from development, lack of commercialism, the lake’s continuous surround of native bush and its, as yet unspoilt shoreline and tranquil atmosphere making it unique among lakes of comparable size. . . . It is therefore apparent that the preservation and retention of the wilderness character of Lake Waikaremoana is of primary importance. . . . It . . . seems that much of the Park’s present attraction comes from the fact that it appears to be a vast impenetrable wilderness completely unspoilt and unmodified by man. . . .

The preservation of the Urewera’s wilderness character is a fundamental requirement for its continued use and enjoyment as an unimpaired botanical area.⁸³⁷

The park board’s use of the word ‘wilderness’ to describe the park’s character was clearly not literal: it was well aware of the Maori occupation of Te Urewera since ‘about AD 1350’ (to use its words), of the impact of engineering works and recreational use on the park’s environment, and of introduced animals and plants on the native flora and fauna.⁸³⁸ But it aimed

835. Urewera National Park Board, *Urewera National Park Management Plan* (Hamilton: Department of Lands and Survey, 1976), p 1 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 265)

836. Urewera National Park Board, *Management Plan (1976)*, p 5 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1372)

837. Urewera National Park Board, *Management Plan (1976)*, pp 10, 11, 13 (Edwards, supporting papers for ‘Selected Issues’, pp 1375, 1376, 1378)

838. Urewera National Park Board, *Management Plan (1976)*, pp 8, 13 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1373, 1378)

to enhance the features of the park that made it appear ‘unspoilt and unmodified by man’. Throughout the plan, the park’s ‘wilderness’ character was relied on to justify the board’s emphasis on preserving the ‘total environment’⁸³⁹ and limiting development to ‘essential facilities’ in a small number of locations.⁸⁴⁰

In envisaging the entire park as a wilderness area, the board was somewhat at odds with the approach of the 1952 National Parks Act, and with the National Parks Authority policy. The Act did provide for ‘wilderness areas’, but as one of two kinds of specially protected zones that could be set apart in a national park. ‘Wilderness areas’ could be designated by a park board, with the consent of the National Parks Authority and were to ‘be kept and maintained in a state of nature’. This meant that no buildings were to be erected there, no horses, other animals, or vehicles were to be taken there, and no roads, tracks, or trails were to be constructed, except for foot tracks ‘for the use of persons entering the area on foot as the Board deems necessary or desirable’ (section 34). ‘Special areas’ could also be set apart in a national park, and were protected to an even greater extent from human intervention (sections 11 and 12).

The National Parks Authority’s policy envisaged park boards preparing zoning maps that utilised up to four zones, two from the Act – scientific areas (equivalent to the Act’s ‘special areas’) and wilderness areas – and two others that the Authority added, namely, natural environment areas, and development areas. The Department of Lands and Survey’s planning team report, ‘Urewera National Park management plan’ (1970) was less than complimentary of the zoning concept, which it thought might quickly be overtaken by changing public recreational uses. And labelling an area as a ‘development area’ might encourage developers and facilities which could have taken place elsewhere, or not at all, had not the zoning suggested it. Above all, zoning seemed irrelevant in Te Urewera National Park because ‘the entire area has always been considered de facto wilderness and it is desirable that it should remain so without drawing imaginary lines of purity within the Park.’⁸⁴¹ While the 1976 plan made no explicit criticism of the Authority’s preference for zoning, it did not adopt the practice. Instead, the plan declared that the park board’s policies were ‘aimed at achieving an acceptable balance between preservation and use.’⁸⁴² The park board designated a small number of ‘facilities areas’ instead of creating zones, but strictly limited the design and number of permitted facilities.⁸⁴³

839. Urewera National Park Board, *Management Plan (1976)*, p 11 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1376)

840. Urewera National Park Board, *Management Plan (1976)*, p 22

841. Department of Lands and Survey, *Planning Team report: Urewera National Park Management Plan* (Hamilton: Department of Lands and Survey, 1970), pp 24–25 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1343–1344)

842. Urewera National Park Board, *Management Plan (1976)*, p 14 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1379)

843. Urewera National Park Board, *Management Plan (1976)*, pp 22–29

It was in fact admitted in the plan that not all the park could be retained as ‘primeval wilderness’ and that some areas must be developed ‘to obtain a reasonable level of visitor use and appreciation’. Thus further objectives were outlined for public access, recreational use, and visitor services. Included also was the goal of interpreting the Maori history of the area in order to make the significance of the park meaningful to visitors.⁸⁴⁴ No specific policies were introduced for Maori (other than the Board’s own policy of ‘maintain[ing] the closest possible liaison with the Maori communities within and bordering upon the Park’. The two exceptions related to the taking of plants for customary uses, and use of horses, which we consider below.

Overall, the 1976 plan emphasised the need to protect the ecology of the park, but balanced with the need to provide ‘sensitively’ for the large number of visitors. A closely associated concern was the permanent boundaries ‘which will ensure the independence and protection of the Park as a botanical entity, the stability of its ecosystems, the preservation of its aesthetic character and an appropriate degree of access to its users.’⁸⁴⁵ Criteria for adding land to the park included the importance of forming a more convenient or more easily administered boundary; ‘contiguous areas or enclaves’ were particularly suited to this purpose. Among lands affected by these proposals were Maori lands. (In 1970, before the Lake Waikaremoana lease was settled, the Department of Lands and Survey Planning Team report had recommended: ‘Ideally the lake bed together with all other Maori enclaves in the Park should be purchased by the Crown for inclusion in the Park but, should the owners so wish, the Crown should accept a long term lease with perpetual rights of renewal.’⁸⁴⁶)

It is easy to see why Maori communities that resided within and adjacent to the park struggled to see a place for themselves in this first plan. The heavy emphasis on the park’s wilderness character did not sit comfortably with the idea that such communities had inhabited the region for centuries and might continue to have an active and visible presence in the park. Maori customary uses of the park’s resources were not among those listed in the National Parks Act as being generally permissible in a national park, but were in fact among those listed as being generally *not* permissible.

The local peoples’ continuing uses of the ‘wilderness’ park posed a dilemma the park board and staff. Their responses were inconsistent and changeable. As we explain later in the chapter, until the 1980s, one strand of park policy reflected a view that it was inevitable, in time, that there would be a decline in Maori customary uses of the park, which would further enhance its wilderness character. This view was exemplified in the park board’s approach to the gathering of native plants, especially pikopiko and is implicit in the

844. Urewera National Park Board, *Management Plan (1976)*, pp 11–17 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1376–1382)

845. Urewera National Park Board, *Management Plan (1976)*, pp 1, 15 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1368, 1380)

846. Department of Lands and Survey, *Planning Team report*, p 16 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1339)

1976 park plan. The plan stated that ‘Today, economic pressures are forcing more and more Tuhoe to live away from their lands but the bond which has been forged by history still remains,’⁸⁴⁷ and went on to record the park board’s interest in acquiring ‘contiguous areas or enclaves’ (that is, Maori land) to add to the park. If that aim were successful, the local communities’ presence in and around the park and their uses of its resources would surely decline. At the same time, however, other strands of the park’s policies, such as recognition of Maori reliance on horses, and park staff practice, reveal that the board understood that local peoples’ uses of park resources were essential elements in their subsistence way of life, and that it was willing to facilitate their continuation.

Overall, however, the 1976 park management plan was an unfortunate document because it generally failed to take proper account of the interests of those Maori communities who were the park’s closest neighbours. It made no attempt to ameliorate the sense of alienation Maori felt from the park. And 13 years was a long time to wait for the next management plan. They were, however, years of great change in New Zealand, which saw the first real recognition of Maori rights under the Treaty. This in turn would lead to a different administrative approach to national park plans in general, and in Te Urewera specifically.

The 1989 Te Urewera management plan made more provision for the interests of Maori, particularly their historical relationship with park lands. It begins with an unedited oral history of the creation of Lake Waikaremoana, as Hau-mapuhia, punished by her father, Maahu-tapoa-nui, for her disrespect, thrashed about in the stream, calling on the gods for help. Her human form became a taniwha and as she struggled to escape to the ocean she formed the lake. Particular reference is made on the following page to the name of the park, and impending action to change its name to ‘Te Urewera National Park’, given the strong feelings of the tangata whenua to call the park ‘by its correct name.’⁸⁴⁸ (We consider the long delay before the name was changed in a sidebar below.) Submissions on the main issues of the draft plan were headed by ‘the need to recognize the cultural importance of the park and the traditional rights of the tangata whenua.’ In the Natural Resources section a subsection headed ‘Cultural Significance of Native Vegetation and Flora’ stated that Urewera forests ‘were an integral part of the traditional life and culture of the local Maori communities’, acknowledged the importance of various forest species, and concluded that ‘traditional uses of the remaining forest are still significant among the local Maori people of Te Urewera. In places they are associated with areas of the National Park.’⁸⁴⁹ Its section on ‘Relationship

847. Urewera National Park Board, *Management Plan (1976)*, p 9 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1374)

848. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999* (Wellington: Department of Conservation, 1989), pp i–ii (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1384–1385)

849. Department of Conservation, *Te Urewera National Park Management Plan (1989)*, pp iv, 17, 20 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1387, 1390, 1392)

with local communities' acknowledged the park's 'immediate neighbours', the local Maori communities adjacent to, and in the 'Maori enclaves' within, the park:

It is recognised that these communities with their distinctive lifestyle and attitudes to the forest will continue to live adjacent to the park. Their life-style and livelihood is substantially based on the Urewera forest resource . . . Consideration of local social and economic impacts is an important element in park administration. Such issues include interpretation of Maori culture, access across Maori lands, protection of archaeological and historic sites and wahi tapu, and the recognition of local life-styles and traditional activities.⁸⁵⁰

We look in a later section at how far these stated principles led to change on the ground.

The last park management plan specific to Te Urewera was issued in 2003. Its stated purpose is to 'guide the Department of Conservation in the administration and management of Te Urewera National Park in accordance with legislation.'⁸⁵¹ Preservation of 'scenery, ecological systems, native plants and animals and natural features as far as possible in their natural state' remains the first management objective, alongside preservation of 'sites and objects of archaeological and historical interest as far as possible in their existing state'. A new policy spells out the need to involve tangata whenua in managing park resources, ensuring ongoing communication and consultation with tangata whenua about park management, and recognising 'the role of tangata whenua as kaitiaki of nga taonga o Te Urewera.'⁸⁵² But despite this positive development, the Tuhoe voice that was evident in the 1989 plan has gone. Instead, the 2003 plan acknowledges in detached language that 'Te Urewera is of particular significance to tangata whenua who have a close association with the park' and that they 'are living on the boundaries of, or on privately owned enclaves surrounded by the park and retain knowledge of the area important for management of the park.'⁸⁵³

Statements such as this in the 2003 plan highlight the disjunction between the Conservation Act's requirement that DOC give effect to Treaty principles and the realities of running a national park under the National Parks Act 1980. The plan makes a number of references to the requirement to give effect to Treaty principles. But, by its policy statements, it gives a very limited interpretation to that requirement. In all but two instances, the bare message in the plan is that park staff are to consult Maori on issues of importance and develop and maintain effective relationships with them. The two exceptions relate to situations involving the protection and interpretation of sites of significance to Maori and the removal of indigenous flora for traditional purposes. In the first situation, the 2003 plan states that Maori involvement in decision-making should be sought. In the second situation,

850. Urewera National Park, *Te Urewera National Park Management Plan (1989)*, p 32 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1398)

851. Department of Conservation, *Te Urewera National Park Management Plan* (Gisborne: Department of Conservation, 2003), p 5

852. Department of Conservation, *Te Urewera National Park Management Plan 2003*, pp 32, 36–37

853. Department of Conservation, *Te Urewera National Park Management Plan 2003*, pp 31, 34

Naming the Park: From 'Urewera National Park' (1954) to 'Te Urewera National Park' (2000)

In August 1953, the National Parks Authority decided that local Maori leaders should be asked to suggest a name for the proposed national park. The Authority's chair, DM Greig (Director-General of Lands), thought that:

a tactical advantage might accrue if the question were deferred and as a gesture referred to the Maoris for an expression of opinion. Possibly the Maori people had some historical name that might be of great moment.¹

Tuhoe were consulted at Ruatahuna in March 1954 and, according to the Director-General, they decided 'to adopt the name "Urewera."² Urewera National Park was duly established in June 1954.³

In December 1973, Tamaroa Nikora, a member of the Urewera National Park Board, brought to its attention the wish of the Tuhoe-Waikaremoana Maori Trust Board that the park's name be corrected to 'Te Urewera National Park'. The board forwarded to the National Parks Authority a letter from Mr Nikora explaining the history of Te Urewera, together with a recommendation that the necessary steps be taken to adopt 'Te Urewera National Park' as the official name of the Park.⁴

Tuhoe concern about the park's name was raised again in July 1987, at a meeting between the Tuhoe-Waikaremoana Maori Trust Board and the East Coast National Parks and Reserves Board. Mr Tait, a Trust Board representative, summed up the matter: 'The name should be 'Te Urewera' – for knowledge of people, history and euphony'.⁵ The East Coast National Parks and Reserves Board supported the change and resolved to ask DOC 'to take the necessary steps' to achieve it.⁶ In the 1989–99 management plan for the national park, it is referred to as 'Te Urewera' and a statement in the plan's opening pages promises that 'action will be taken to officially change the park name . . . because the tangata whenua feel strongly about the need to call the park by its correct name'.⁷

Ten years later, in late 1999, the New Zealand Conservation Authority chairman wrote to the Minister of Conservation asking that the name of the park be changed and saying that the East Coast Hawke's Bay Conservation Board believed the time was right. The minister agreed and the change was gazetted on 1 June 2000.⁸ Coombes was unable to discover why the earlier requests had met with inaction. He commented:

Twenty seven years had passed since the UNP Board had first resolved to change the name. Two letters; nearly three decades. It should not be surprising that tangata whenua complain that structures for park administration have been alienating, imperceptive and remote.⁹

1. National Parks Authority, minutes, 19 August 1953 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 48)

2. Director General of Lands and Chairman of National Parks Authority to AG Harper, Secretary for Internal Affairs, 1/4/1954; Lake Waikaremoana Volume 2 1949–58, A60(a), p107

3. *New Zealand Gazette*, 1954/1211

4. Urewera National Park Board, minutes of board meeting on 11–12 December 1973, LS 4/4/2, Department of Conservation, Gisborne (Edwards, comp, supporting papers to 'Selected Issues: Te Urewera National Park' (doc L12(a), p 429))
5. East Coast National Parks and Reserves Board, minutes of meeting to hear submissions on the Urewera National Park Management Plan from the Tuhoë-Waikaremoana Maori Trust Board, 15–17 July 1987, NPR 1/3, Department of Conservation, Gisborne (Coombes, supporting papers to 'Cultural Ecologies' (doc A121(a)), p 253)
6. The East Coast National Parks and Reserves Board, minutes of board meeting on 17–18 September 1987, NPR 4/1/3, Department of Conservation, Gisborne (Edwards, supporting papers to 'Selected Issues: Te Urewera National Park' (doc L12(a)), p 1046)
7. Te Urewera National Park Management Plan 1989–1999 Department of Conservation, February 1989, p(ii)
8. Coombes, 'Cultural Ecologies II' (doc A133), pp 158–159
9. Coombes, 'Cultural Ecologies II' (doc A133), p 159

it is envisaged that a process involving Maori and the department may need to be established. Given that the role of Maori in park affairs has been limited to these two narrow situations, the plan's stated intention 'to recognise the role of tangata whenua as kaitiaki of nga taonga o Te Urewera' seems completely incongruous.⁸⁵⁴

Our discussion of policy statements and park plans concludes with the latest General Policy for national parks, issued by the New Zealand Conservation Authority in May 2005, having been in the final stages of preparation when the tribunal's hearings concluded. Until 2005, the 1983 General Policy had continued in force, for it was adopted by the Conservation Authority early in its existence. The new general policy is notable for including, early in the document, policies on the 'Treaty of Waitangi responsibilities' of park administrators. The introduction to the policies explains that 'Effective partnerships with tangata whenua can enhance the preservation of natural and historical and cultural heritage in national parks.' But while it then gives an account of the responsibilities of kaitiaki, it gives no explanation of the meaning of the Treaty principles. Instead, a list is given of five principles recognised by the government in 1989: the principles of Government, Self Management, Equality, Reasonable Cooperation and Redress. This is followed by a statement that can be described as opaque at its best:

The way these principles are applied will depend on the particular circumstances of each case, including the statutory conservation framework and the significance to tangata whenua of the land, resource or taonga in question.⁸⁵⁵

The 10 policies that are then stated make plain that the Treaty responsibilities of those involved in the administration of national parks centre on the need to develop and maintain

854. Department of Conservation, *Te Urewera National Park Management Plan 2003*, p 37

855. Department of Conservation, *Conservation General Policy*, May 2005, p 15

positive relationships with Maori. Some policies give guidance on how this can be done, including by forming partnerships ‘to recognise mana and to support national parks.’ Three policies direct that Maori be consulted in certain circumstances: namely, in the development of planning documents, and about proposals affecting, and public information on, ‘places or resources within national parks of spiritual or historical and cultural significance.’ One policy identifies the circumstances in which customary use of traditional materials may be allowed. The very few specific references to tangata whenua interests elsewhere in the General Policy show that the 10 policies on Treaty of Waitangi responsibilities are intended to be applied across all aspects of national park administration.

In short, while the various general policies and Te Urewera-specific national park plans have shown signs of positive development in recent times, the Treaty relationship aspired to in the Conservation Act 1987 has yet to be fulfilled.

(2) *An alternative sustainable use model: indigenous peoples and national parks – official awareness of overseas developments during the 1970s and '80s*

The general preservationist approach to national parks management adopted in the legislation, and further reflected in national policies and Te Urewera park management plans, is usefully contrasted with the way national parks administration was discussed internationally in the same period. This developing international context in part explains why attitudes to Maori relationships with park lands and resources, and Maori customary uses, had begun to change by the 1980s. New Zealand was out of step with such developments at first, but change would come both from exposure to overseas approaches, and from political responses at home to sustained Maori protest from the early 1970s against the monocultural nature of many institutions, and against the lack of Crown response to deeply held grievances. The early 1980s saw early Waitangi Tribunal reports upholding Maori rights to resources, followed by the grant of historical jurisdiction to the Tribunal by 1985, and key court judgments upholding and articulating Treaty rights.

New Zealand park administrators became aware from the mid 1970s of different approaches around the globe to recognising the relationship between indigenous peoples and park lands and resources through international exchanges between Lands and Survey staff and board members, and their overseas counterparts, notably at major conferences.⁸⁵⁶ In 1982, for instance, the Director-General of Lands, attended the World National Parks Congress to Lands and Survey offices, ranger stations, and park headquarters.⁸⁵⁷ And while park administrators emphasised Te Urewera National Park’s ‘wilderness’ character from the outset, tending to minimise the relevance of any continuing relationship between the peoples of Te Urewera and the park, overseas developments were challenging the preservation-

⁸⁵⁶. See Edwards, ‘Selected Issues’ (doc L12), pp 13–17, 31–35.

⁸⁵⁷. MJ McConnell, Department of Lands and Survey Head Office, to Commissioners of Crown Lands, 21 December 1982 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 555–571)

ist model. There was considerable recognition of its limits as a means of protecting areas in countries where there were long-established systems to manage resources on which ‘traditional peoples’ were dependant.⁸⁵⁸ At first, such debates seem not to have been considered relevant to New Zealand circumstances, but eventually they contributed to a re-evaluation of the strict preservationist policy emphasis and a move towards acceptance of some limited customary usage of park resources.

An important theme of such conferences was acknowledgement of the dependence on park resources of indigenous peoples who lived in or adjacent to protected areas in their various countries, and of indigenous rights to involvement in decision-making about such lands. Several international conferences, such as the South Pacific Conference on National Parks and Reserves in 1975 and the World National Parks Congress in 1982, made extensive recommendations and declarations about indigenous people and national parks.

The 1975 conference, held in Wellington, was attended by officials from throughout the South Pacific including New Zealand. It recommended that governments introduce mechanisms so that indigenous people might retain ownership of, and rights to, their land while bringing that land under the protection of a national park or reserve, so long as those rights were not in conflict with the purposes for which the land was reserved. And people occupying lands surrounding national parks and reserves should ‘be involved to the fullest extent possible in their establishment, protection and operation.’⁸⁵⁹ The conference, we note, included a field trip to Te Urewera National Park, singled out as retaining ‘most strongly the influence of the original Maori inhabitants.’⁸⁶⁰ This was an interesting acknowledgement, given the grudging tone of the 1976 park management plan.

The conference was notable for the keynote address by an American ecologist at the International Union for the Conservation of Nature (IUCN), Dr Raymond Dasmann, who challenged the principle that national parks and people were incompatible.⁸⁶¹ Dasmann had suggested that indigenous people were ‘ecosystem people’ in contrast to ‘biosphere people’ (that is, people whose lives ‘were tied in with the global technological civilisation’).⁸⁶² Because ecosystem people were ‘totally dependent, or largely so, on the animals and plants of a particular area [they] must learn some reasonable balance’, that is, they had learned

858. See, for instance, World National Parks Congress, recommendations, October 1982 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 571).

859. Department of Lands and Survey, *Proceedings of the South Pacific Conference on National Parks and Reserves* (Wellington: Department of Lands and Survey, 1975), pp 61–62 (Edwards, ‘Selected Issues’ (doc L12), pp 16–17)

860. Department of Lands and Survey, *Proceedings of the South Pacific Conference on National Parks and Reserves*, p v (Edwards ‘Selected Issues’ (doc L12), pp 14–15)

861. Geoff Park, ‘Effective Exclusion? – An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912–1983’, report commissioned by the Waitangi Tribunal, 2001 (Wai 262, doc K4), p 332

862. Park, ‘Effective Exclusion?’ (Wai 262, doc K4), p 332

over centuries to develop a working relationship with the species surrounding them.⁸⁶³ At the conference, Dasmann developed the point:

Biosphere people create national parks. Ecosystem people have always lived in the equivalent of a national park. It is the kind of country that ecosystem people have always protected that biosphere people want to have formally reserved and safeguarded. But, of course, first the ecosystem people must be removed – or at least that has been the prevailing custom.⁸⁶⁴

This was a direct invitation to officials to confront their own assumptions about national parks, and to understand that national parks might mean different things to different people. Wherever national parks were created, Dasmann said, their protection ‘needs to be coordinated with the people who occupy the surrounding lands. Those who are most affected by the presence of a national park must fully share in its benefits, financial or other. They must become the protectors of the park.’⁸⁶⁵ Edwards suggested that: ‘Delegates of western nations [including New Zealand] tended to favour preservation rather than use of park resources, whereas small island states acknowledged that they would have difficulties preventing local people from harvesting certain resources from their national parks.’⁸⁶⁶

In 1982, the third World National Parks Congress, held in Bali, issued a declaration calling on all governments to take ‘fundamental actions.’⁸⁶⁷ Among these actions were appeals to ‘recognise the economic, cultural and political contexts of protected areas’, and to increase local support for protected areas through a range of measures. Measures specified included ‘complementary development schemes adjacent to the protected area and, where compatible with the protected area’s objectives, access to resources.’⁸⁶⁸ The Congress also made several recommendations regarding ‘protected areas and traditional societies’; recording its acknowledgment of the ‘wise stewardship’ by traditional societies of areas and environments whose protection was now sought, and the threat of alienation of lands or resources

863. Raymond F Dasmann, *Wildlife Biology* (New York: Wiley, 1964) (Geoff Park, ‘Effective Exclusion?’ (Wai 262, doc K4), p 332)

864. Raymond F Dasmann, ‘National Parks, Nature Conservation and Future Primitive’, *Proceedings of the South Pacific Conference on National Parks and Reserves* (Wellington: Department of Lands and Survey, 1975) (Geoff Park, ‘Effective Exclusion?’ (Wai 262, doc K4), p 332)

865. Notes from Dr Raymond F Dasmann, ‘National Parks, Nature conservation and “Future Primitive”, *Proceedings of the South Pacific Conference on National Parks and Reserves* (Wellington: Department of Lands and Survey, 1975), p 95

866. Edwards, ‘Selected Issues’ (doc L12), p 15

867. Participants from 68 countries attended, as well as representatives from bodies such as the World Bank, UNESCO, and the World Wildlife Fund. See the Director-General’s report on the World National Parks Congress, November 1982 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 559).

868. Declaration of the World National Parks Congress, Bali, Indonesia, 11–22 October 1982 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 558). Note that the title of the congress (as it was ultimately called) referred to the third time the world National Parks conference had been held, not to national parks in the ‘third world’ – though Indonesia had been chosen because organisers wanted to hold the conference in a developing country.

World National Parks Congress Meeting

The World National Parks Congress Meeting in Bali, Indonesia, October 1982:

- ▶ Reaffirms the rights of traditional societies to social, economic, cultural and spiritual self-determination;
- ▶ Reaffirms further that traditional peoples everywhere have a right to participate in decisions affecting the land and the natural resources on which they depend;
- ▶ Recommends that those responsible at every level of protected area research, planning, management and education fully investigate and utilise the traditional wisdom of communities affected by conservation measures.

to outsiders which they now faced (see sidebar).⁸⁶⁹ In fact, as the Director-General of Lands recorded in his subsequent report, the third conference marked an evolution in national park themes; it saw protected areas 'as an integrated part of wise resource use in the concept of sustainable development'.⁸⁷⁰

Delegates from 'developing' nations and several prominent speakers from international conservation bodies such as the (ICUN) argued for recognising human needs, and moving away from 'strict preservation' policies to allowing some sustainable development. Delegates from the United States and Canada, however, upheld protectionist policies.⁸⁷¹ The Director-General of the New Zealand Department of Lands and Survey offered a compromise (yet within a preservationist framework) in the paper he delivered to the Congress:

while the ideal national park is one in public ownership and management with only non-consumptive uses, if that ideal is not capable of achievement, then the most constructive compromise should be sought seeking maximum preservation compatible with economic and social realities.⁸⁷²

Yet, the Director-General thought that the response of the North American delegates (preservation without development) was also appropriate for New Zealand, while the demand

869. PHC Lucas, Director-General of Lands, report on third World National Parks Congress, November 1982 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 571)

870. Director-General, report on third World National Parks Congress, November 1982 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 566)

871. Director-General, report on third World National Parks Congress, November 1982, p 2 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 561)

872. Director-General, report on third World National Parks Congress, November 1982, p 2 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 561)

for sustainable development (or at least sustainable use of some of the resources of the park) was suitable to 'third world' countries given the 'realities in their situation'.⁸⁷³

Still, the Director-General's compromise represented some movement in the New Zealand position since the mid to late 1970s. Edwards noted that New Zealand officials did not seem to regard the recommendations of the 1975 conference as applying to New Zealand, nor as a challenge to the policy framework for managing New Zealand parks.⁸⁷⁴ Rather such recommendations were considered appropriate to the specific needs of the 'developing' world, including the smaller South Pacific territories and nations, where indigenous people were struggling to survive. The priorities of New Zealand park policy-makers were underlined in 1978 at a major national gathering, the National Parks Authority Silver Jubilee Conference, held at Lincoln, to discuss possible reforms of the national park system. The relationship between Maori and parks was not included among the six major themes discussed at the conference; nor does it seem that any Maori organisations were invited.⁸⁷⁵

By 1985, when the third South Pacific National Parks and Reserves Conference was held in Apia, an explicit shift away from the strict preservationist national policy of the time had occurred. Lands and Survey staff delivered a paper at the conference on a 'New Zealand Case Study: Traditional Rights and Protected Areas' (the title itself is telling) which stressed the benefits of the Maori system of conservation through tapu and rahui. It cited with approval a 1981 paper which argued that customary ownership of resources should be seen 'not as a barrier to conservation but as a benefit'. Similarly, conservation through sustainable use of resources in a formal protected area was only a problem if a 'strict preservationist attitude' to plants and animals was adopted.⁸⁷⁶ The authors recognised the need for further development that could:

lead to greater understanding between New Zealanders of different cultural backgrounds and, in turn, could mean less resistance to the traditional Maori rights to flax, totara and other plants and animals which under strict conservation approach would be totally prohibited.⁸⁷⁷

873. Director-General, report on third World National Parks Congress, November 1982, p 3 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 562)

874. Edwards, 'Selected Issues' (doc L12), pp 16, 33

875. Government Caucus Committee Report, 'Review of the Administrative Structure of National Parks and Reserves administered by the Department of Lands and Survey', July 1979, pp 31–33 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), pp 1215–1217)

876. Department of Lands and Survey, *New Zealand Case Study: Traditional Rights and Protected Areas* (Wellington: Department of Lands and Survey, 1985) (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1144). The 1981 paper cited was by Lucas, Gorio, and Poai; it had been presented to the South Pacific Commission: see PHC Lucas, Sylvanus Gorio, and Kalati Poai, *Parks and Reserves in the South Pacific* (Noumea: South Pacific Regional Environment Programme, 1981).

877. Department of Lands and Survey, *New Zealand Case Study*, p 9 (Edwards, 'Selected Issues' (doc L12), p 35)

This was very different language, reflecting awareness both of overseas approaches to sustainable use, and of the ‘Maori renaissance’ (the authors’ term) and shifting government policy at home.

Te Urewera reappeared in the paper as an example of a more flexible approach to Maori traditional rights (including ‘usufruct’ rights). Maori had retained ownership of the lakebed of Lake Waikaremoana ‘the focal point of the Urewera National Park’, and were represented in the management of the park (and the leased lake bed) as members of the park board. ‘Historic practices’ had also been preserved in the park, where Maori were able to gather ‘succulent fronds’ of pikopiko, to use horses to access their lands within the park, and for a tourist operation (run by Te Rehuwai Safaris).⁸⁷⁸ Yet, the paper noted that further development of innovative strategies was needed ‘to recognise the traditional love the Maori peoples have for their land’ and to promote greater tolerance in the wider New Zealand public of customary usage of parks, and ‘the reliance of Maori people on conservation.’⁸⁷⁹

Officials had now come to see the exercise of traditional rights within parks as an important issue, Edwards suggested, but their thinking had ‘not yet developed beyond the mechanisms provided for under the legislation of that time.’⁸⁸⁰ The limits to change were evident also in the community-based research of Stokes, Milroy, and Melbourne at this time, which recorded widespread community dissatisfaction with the way Te Urewera National Park was being managed, including people’s alienation from the management of the park and the restrictions and general permit culture the park had imposed on their customary uses.⁸⁸¹ We turn to these matters next.

(3) Maori and the preservation of their history in a ‘wilderness’ park – a romantic past presence? – the importance of history in park administration

A major issue for the peoples of Te Urewera in respect of park administration is that their history has been misrepresented and submerged in official information about the park and the region. Some may wonder why park history became such a touchstone for conflict. Quite simply, it was because far more was involved than a recitation of historical facts. For Tuhoē in particular, the treatment of their history was of central importance for what it said, or failed to say, about recognition of their presence and rights within the park, and of their right to be represented in park administration. Underlying their push for a historical account that embodied their experience – including the questionable circumstances in

878. Department of Lands and Survey, *New Zealand Case Study*, pp 6–8 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), pp 1146–1148). During the 1975 South Pacific Conference, Matiu Rata, the Minister of Maori Affairs, had upheld the lease of the lakebed of Lake Waikaremoana as a successful example of the Government allowing indigenous people to retain ownership of their lands within a national park. See Edwards, ‘Selected Issues’ (doc L12), p 15).

879. Department of Lands and Survey, *New Zealand Case Study*, p 9 (Edwards, ‘Selected Issues’ (doc L12), p 35)

880. Edwards, ‘Selected Issues’ (doc L12), p 34

881. Evelyn Stokes, J Wharehuia Milroy, and Hirini Melbourne, *Te Urewera: Nga iwi te whenua te ngahere: People, land and forests of Te Urewera* (Hamilton: University of Waikato, 1986) (doc A111)

which the Crown acquired the lands later incorporated into the park – was a determination that their mana whenua in Te Urewera should be recognised – by both park management and visitors. Suppression of history, as the Tuhoe Maori Trust Board put it on one occasion, was a route to marginalisation of their continuing relationship with their lands, and of their meaningful involvement in decision-making.⁸⁸²

Perhaps it is easy to see why approaches to the preservation of history became contested at the outset. In 1963, the secretary to the recently established park board responded to a request from the Historic Places Trust to identify historic sites by listing the following sites that the board wished to preserve: an armed constabulary building, old soldiers' graves, and a rock on which soldiers' names were engraved.⁸⁸³ At our hearings, Hirini Paine of Waikaremoana voiced Tuhoe views about that approach to history when commenting on DOC's management of three sites associated with the colonial occupation of Te Onepoto:

Of concern is that the sites in question are immortalising through their actions dark memories around the death and destruction wrought on our peoples of Waikaremoana by the colonial forces and their descendants rather than promoting efforts to protect or remember with reverence the way of life and kainga of the peoples displaced by the colonial forces.⁸⁸⁴

The presentation of the history of park lands became an issue as park management plans were prepared, from the late 1960s on. The application of the preservationist model in Te Urewera was highlighted in the interpretation of the park's history, which at once became a bone of contention between park administrators and Maori leaders, and has long remained so. The administrators found themselves in a cleft stick, for it was difficult to ignore the Maori history of Te Urewera. But the history Tuhoe had experienced was one of colonial conflict and land loss – including the loss of the lands incorporated in the national park. It was not a history that sat easily with the image of a 'remote' wilderness. The official preference therefore was to stress the Maori association with the land as lending it romantic and picturesque interest, with the people featuring as human relics of a by-gone age rather than as vigorous, functioning communities.

Early attempts were made to incorporate Maori history into the park's character but they were not well-executed. We consider briefly two examples: the development of the historical account of the park in park management plans; and the implementation of the vision for the Aniwaniwa visitor centre, before turning to the handling of history in later park plans.

882. Tuhoe Waikaremoana-Maori Trust Board, 'In the matter of The National Parks Act 1980, Te Urewera National Park Draft Management Plan', 5 July 1987 (Coombes, comp, supporting papers to 'Cultural Ecologies of Te Urewera (111)' (doc A121(a)), p 245)

883. Coombes, 'Cultural Ecologies 11' (doc A133), p 146

884. Sidney Paine, brief of evidence, 18 October 2004 (doc H20), p 14

The process of devising the first park management plan, which began in the late 1960s, took several years. The planning team comprised the chief ranger, a Ministry of Works engineer, a forester from the New Zealand Forest Service, an architect, and a landscape architect.⁸⁸⁵ In November 1969, park board member John Rangihau asked that Tama Nikora be co-opted to the planning committee to give advice on issues relating to Maori.⁸⁸⁶ A draft park plan was prepared by 1970 that contained ‘half a page of Maori history and no analysis of how the land came to be in Crown ownership.’⁸⁸⁷ Nikora criticised the historical account on the basis that some of its details were inaccurate or biased. He later prepared his own draft, which he submitted to the board for consideration. This prompted a heated debate about historical interpretation – conducted, it must be said, at a time when the experiences of the peoples of Te Urewera were little known among non-Maori. Nikora’s version included the roles of Rua Kenana and Te Kooti, but some members of the planning team and board thought it was biased and too controversial – especially in its description of Te Kooti as a ‘patriotic nationalist.’⁸⁸⁸

Although Nikora’s account of the Maori history of the park was unanimously endorsed by the Tuhoe Maori Trust Board, it seems that little of his material was included in the redrafted version in the park plan. In 1973, Nikora, by then a member of the park board, was still trying to get a Tuhoe account of their history accepted. His protest that the draft gave the impression that the ‘Park had suddenly been created in 1952,’ testifies to Tuhoe dissatisfaction with the sanitised account the board wanted, and the depth of feelings at the refusal to acknowledge the origins of the park on their lands.⁸⁸⁹

In the final version of the management plan, the history of the park featured in two sections, entitled ‘Establishment’ and ‘History’; they amounted to less than a page (see sidebar). The section on ‘Park Interpretation’ dutifully stated that: ‘To fully appreciate the Urewera the visitor to the Park needs to be aware of its outstanding Maori history.’⁸⁹⁰ But it is evident that Mr Nikora’s efforts to convey the relationship between the land and the peoples of Te Urewera, and the peoples’ experience of colonisation had been largely in vain. And those of an American protected areas expert, Professor Wilcox, who had visited Te Urewera National Park in 1974, had fared no better. Wilcox had reported to Lands and Survey officers – with an outsider’s eye – that ‘a principal theme for interpretation at Urewera National

885. Coombes, ‘Cultural Ecologies II’ (doc A133), p 276; Campbell, ‘Te Urewera National Park’ (doc A60), p 105; Director-General of Lands to Commissioner of Works, 7 July 1969 (SKL Campbell, comp, supporting papers to ‘Te Urewera National Park, 1952–75; various dates (doc A60(b)), pp 182–183). The architect was John Scott (1924–1992) of Taranaki and Te Arawa ancestry, and designer of the Waitangi visitor centre, Futuna Chapel, and many churches.

886. Coombes, ‘Cultural Ecologies II’ (doc A133), p 277

887. Coombes, ‘Cultural Ecologies II’ (doc A133), p 288

888. T R Nikora to Secretary, Urewera National Park Board, ‘Historical section: management plan,’ 17 March 1971 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 289)

889. T R Nikora to Secretary, Urewera National Park Board, 13 December 1973 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 291)

890. Urewera National Park Board, *Urewera National Park Management Plan 1976*, p 38

Park should be Maori history and culture.⁸⁹¹ Maori influence, he wrote, 'is everywhere'.⁸⁹² Yet, he could find little evidence of Maori history in the themes of the park.

The implementation of a vision for a new principal visitor centre at Aniwanuiwa was another catalyst for discord. The 1976 park plan had laid out the board's policy 'to develop and maintain interpretation programmes', with 'interpretative themes' for each locality of the park. The theme to be developed at the visitor centre, it said:

is intended to present the Urewera as a vast, unspoilt wilderness, despite hundreds of years of human occupation, the aim being to interpret both Maori and natural history by showing how the Maori lived in almost complete balance with the ecosystems as compared with present day pollution and environmental problems resulting from a heavy emphasis on materialism.⁸⁹³

The Aniwanuiwa centre was being designed at the same time as the park board debate about the history of the park. Claimant researchers Ngahua Te Awekotuku and Linda Waimarie Nikora gave evidence of the apparently shared commitment of park management and Tuhoe leaders in the early 1970s to the unique character of the visitor centre, which was to house a museum 'concerned with Maori culture and Maori interpretation as it related to the National Park'.⁸⁹⁴ But a gulf soon emerged between their respective views of how to convey the centre's theme of centuries of Maori occupation of Te Urewera. In particular, Tuhoe offered to contribute murals, carvings, and artefacts to the centre, but this was not taken up. The researchers concluded that 'the wilderness feature became the primary emphasis of the display', overshadowing the park's history of Maori occupation. Thus when the presentation of Maori history and culture was discussed by the board's Interpretation Committee in early 1979, it was resolved that:

The first priority was to inform the public of a simple broad outline of Maori history with not too many Maori names.⁸⁹⁵

It would be difficult to diminish the relationship between the peoples of Te Urewera and their ancestral lands any more than this.

The outcome of the limited efforts made by park administrators by the mid-1970s to present the history that is integral to understanding the lands and peoples of Te Urewera, was an affront to the local Maori communities. The inadequate efforts to convey the depth of

891. Department of Lands and Survey to all Commissioners of Crown Lands, 'Visit of Professor A T Wilcox', 29 April 1974 (Coombes, 'Cultural Ecologies II' (doc A133), p 139)

892. A T Wilcox, comments on 'Te Urewere National Park', 26 December 1973 (Coombes, 'Cultural Ecologies II' (doc A133), p 139)

893. Urewera National Park Board, *Urewera National Park Management Plan 1976*, pp 38, 39

894. Urewera National Park Board, interpretation committee minutes, 2 May 1974 (Ngahua Te Awekotuku and Linda Waimarie Nikora, 'Nga Taonga o Te Urewera', August 2003 (doc B6), pp 43-44)

895. Urewera National Park Board, interpretation committee minutes, 17 January 1979 (Ngahua Te Awekotuku and Linda Waimarie Nikora, summary of 'Nga Taonga o Te Urewera' (doc J3), p 13)

Explanation of the Park's History, Urewera National Park: Management Plan 1976

'ESTABLISHMENT

'The intention to establish a National Park in the Urewera area was gradually developed from 1896 onwards.

'In June 1952, the Government announced it was negotiating for some 200,000 hectares of Urewera Crown Award to be set aside as a National Park.

'The name Urewera was adopted at a meeting with the Tuhoe people in 1954 and the nucleus of the new Park, 49,000 hectares, containing the watershed areas of Lakes Waikaremoana and Waikareiti, was gazetted on 28 July 1954.

'Further major additions were made in 1957, 1962 and 1975 which together with a number of smaller acquisitions and the lease of Lake Waikaremoana in 1971 gives the Park a total area of approximately 211,062 hectares.

'The appointment of the first Urewera National Park Board was gazetted on 16 November 1961.

'HISTORY

'The Urewera National Park abounds in history, song and legend and was the scene of feuds, intrigue and many battles. These are recorded in Elsdon Best's Tuhoe: Children of the Mist.

'The Maori inhabitants of Te Urewera comprise a host of sub-tribes which as a confederation is known as Tuhoe, one of the principal tribes of Te Ika-a-Maui (New Zealand). These people are also known as 'The Children of the Mist' which is an allusion to the mythical union of Te Maunga (the mountain) and Hine-Pokohu-Rangi (the celestial mist maiden) from which union sprang Potiki whose descendants populated Te Urewera since about AD 1350.

'The first white man to see Lake Waikaremoana and traverse the virgin forests of Te Urewera was the Rev. William Williams, who having established a mission station at Gisborne in January 1840, set out in November to visit Rotorua using a cross country route via Waikaremoana and Ruatahuna.

'Te Urewera was also the scene of hostilities in connection with European colonisation and campaigns by the Armed Constabulary which failed to confine the Maori leader and warrior, Te Kooti. Government forces succeeded eventually, however, in establishing peace amongst the turbulent Tuhoe people in the 1870's.

The early 20th century saw the rise of Rua Kenana, the prophet who established a prosperous village at Maungapohatu in the very heart of Te Urewera.

'Today economic pressures are forcing more and more Tuhoe to live away from their lands but the bond which has been forged by history remains.'

—Urewera National Park Board, *Urewera National Park Management Plan 1976*, pp 3, 8, 9
(Edwards, supporting papers to 'Selected Issues' (doc L12(a)), pp 1370, 1373, 1374)

Maori knowledge and experience of Te Urewera also contributed to the continuing ignorance of those matters on the part of most park visitors – and New Zealanders generally. Insult and ignorance do not make for a healthy relationship. It is ironic that, had the Maori history of the park been conscientiously explored as part of the park's character, the strength of the continuing relationship between the peoples and the park would also have been uncovered. As it was, when the rift over park history was combined with the other causes of local peoples' mistrust of the park's administration, discussed shortly, there was scant foundation upon which to build a cooperative relationship. Yet, park staff and management increasingly wished for such a relationship, as they came to appreciate that, despite the hardship of the local communities' circumstances, the peoples of Te Urewera would not abandon their lands or their culture for the sake of a national park.

Change did come – though not without some bumps along the way. As late as 1983 the General Policy of the National Parks and Reserves Authority, which was the first to include a section on 'Identifying persons, places, and events of national or historical significance,' did not specify Maori. One other policy on interpretative material stated only that such material should 'draw attention to historic Maori place names, especially where European names have been given subsequently.'⁸⁹⁶

Given this background it is not surprising that a substantial 400 page report, *Te Urewera: Nga Iwi te Whenua te Ngahere: People, Land and Forests of Te Urewera*, prepared by Evelyn Stokes, Wharehuia Milroy, and Hirini Melbourne in 1986, drew a remarkable response from officials. Though the report was not contracted with Te Urewera park history in mind (its purpose was much broader), it had a lengthy section on 'Crown dealings with Te Urewera lands' which put a Tuhoe view of Crown actions since the 1860s into the public arena in simple but powerful statements:

a deep-seated Tuhoe suspicion of Government motives in anything to do with Te Urewera lands, born of a long history of land dealings from the confiscations of the 1860s to the still inconclusive negotiations with the Tuhoe Trust Board over 'Maori enclaves' in the Urewera National Park.⁸⁹⁷

The past is part of the present and no good comes of pretending the past did not happen. We have endeavoured to present a concise and factual account of the main issues in what appears to local people to have been a consistent effort by the Crown to wrest the lands and forests of Te Urewera from Maori ownership and control.⁸⁹⁸

896. National Parks and Reserves Authority, *General Policy (1983)*, pp 33, 34 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), pp 1299, 1300)

897. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 46. The report was contracted by the Department of Lands and Survey and the New Zealand Forest Service at a time when restructuring of both was being considered; the authors' brief was to report on 'social, economic and cultural factors which are significant and relevant to forest management policies and need to be addressed by Crown agencies whatever administrative reorganisation may occur'. See Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p x.

898. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 5

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The report was very critical also of the presentation of history by park authorities, and assumptions that ‘Te Urewera is a scenic wilderness with a romantic Maori past’ which was stated to be ‘deeply entrenched in management policy’. This was evident in the park’s management plan and in promotional literature (which they quoted) such as the *Handbook to the Urewera National Park* (1966):

There is a natural grandeur in the Urewera National Park which will forever delight the soul of man. . . . when the history of a thousand years marches again through the tortuous valleys, and up the flanks of the mountains, and over their precipitous ridges, that the real glory of this land of primeval nature and primeval man is seen.⁸⁹⁹

There was an assumption, the report argued, that ‘Maori history is something of the past, something that is dead and gone but can be recreated with a little imagination’. The same assumption was evident in the 1983 handbook:

To the Maori of old, the mist wreathed hills and valleys held spirits and gods, and even now some strange presence seems to linger. Man, mountain and myth are blended together.⁹⁰⁰

Stokes, Milroy and Melbourne, took issue with such romantic pronouncements which, in their view, served to perpetuate a public view of Te Urewera as a ‘scenic area to visit for recreation’ rather than ‘the homeland and turangawaewae of a large number of Maori people’:

In the Tuhoe view of their forest world the only strange or foreign presence is the visitors from outside. There are no shadows of past spirits; they are still there, ancestors and present inhabitants, all part of a continuing cultural tradition in a forest homeland that is neither strange nor wild.⁹⁰¹

The responses of Crown officials to the draft report illustrate the gulf between their views and those of Tuhoe, and why the authors of the report considered it crucial to tackle such official assumptions. Those responses included criticism that the park should be shown ‘as an alienated “homeland” [sic] of the Tuhoe people’,⁹⁰² when its lands had been purchased by the Crown in what was called a willing seller–willing buyer’ situation.⁹⁰³ As we have shown in the previous chapters, this was hardly a valid characterisation of the processes by which the Crown acquired the land. Officials were also hostile to the presentation of

899. Urewera National Park Board, *Handbook to the Urewera National Park* (Hamilton: Department of Lands and Survey, 1966), p 6 (Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), pp 36–37)

900. Urewera National Park Board, *Land of the Mist: The Story of the Urewera National Park* (Wellington: Government Printer, 1983), p 18 (Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 37)

901. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), pp 37, 38

902. Department of Lands and Survey, Hamilton, ‘comments of ranger staff on Stokes et al report’, undated (Coombes, ‘Cultural Ecologies II’ (doc A133), p 347)

903. Planning officer, Hamilton, to Chief Surveyor, ‘E Stokes’ Urewera study’, 13 January 1986 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 348)

‘predominantly minority views’⁹⁰⁴ – without considering that the report was itself a reaction to the monopolisation of the airwaves by the majority Pakeha perspective. And there was disquiet at suggestions that Crown administration of park lands might favour the concerns of the local people. As one official put it:

Deerstalkers from Auckland, Rotorua, Taupo, East Coast or Hawke’s Bay have the same rights under the National Parks Act as anyone else in the National Park.⁹⁰⁵

But the report did influence the 1989 management plan for Te Urewera National Park – which, as we noted above, had a rather different tone from that of 1976. The historical section and the sections about relationships with local communities were drafted with the help of ‘specialist information’ provided by Stokes and Milroy.⁹⁰⁶ There is evidence in the plan of a greater awareness of the ‘cultural importance of the park and the traditional rights of the tangata whenua’ – matters which were identified in submissions on the draft plan as being among the main issues facing the park.⁹⁰⁷ A section on ‘Park history’ began with the heading ‘Tuhoe Maori Homeland’ and contained strong statements about the retention of control by Tuhoe ‘over their Urewera forest homeland’:

Te Urewera . . . is not just a scenic wilderness but also a tribal homeland for thousands of people who feel a very special attachment to it.⁹⁰⁸

The section on European contact referred to Tuhoe’s shelter of Te Kooti during the wars, to the resulting destruction of Tuhoe settlements by troops, to Te Kooti’s emergence as a ‘revered leader and prophet in the Eastern Bay of Plenty; and the emergence in the course of time of the Ringatu religious movement, based on his teachings. Its mention of the Urewera District Reserve Act (which ‘set up a limited form of local government for Tuhoe’) however, is brief, and is followed by a history of tourism in Te Urewera, and the start of timber milling. The Urewera Consolidation Scheme is presented – opaquely – as the result of Crown moves to acquire control of the Waikaremoana catchment for soil and water conservation purposes. But the account closes with acknowledgement of Rua Kenana’s community at Maungapohatu, his success in establishing farming there, and a brief account of the

904. Planning officer, Hamilton, to Chief Surveyor, ‘E Stokes’ Urewera study’, 13 January 1986 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 348)

905. Commissioner of Crown Lands, Gisborne, to planning officer, ‘Raukumara/Urewera study’, 20 March 1986 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 349); see also ‘Comments on People, Land and Forests of the Urewera: draft social study report by Stokes, Milroy and Melbourne, 1985’, combined response of Department of Lands and Survey officers in Gisborne, Hamilton, Rotorua, and Head Office (Coombes, ‘Cultural Ecologies II’ (doc A133), p 349).

906. Department of Conservation, *Te Urewera National Park Management Plan 1989*, p 105 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1419)

907. Department of Conservation, *Te Urewera National Park Management Plan 1989*, p iv (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1387)

908. Department of Conservation, *Te Urewera National Park Management Plan 1989*, p 29 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1396)

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outcome of the police party expedition to Maungapohatu in 1916: two local people killed, several wounded, and Rua's arrest and trial. 'This incident did not improve Tuhoe's relationship with the government.'⁹⁰⁹ Thus there is acknowledgment of key leaders and defining moments in Tuhoe history, but the fate of Tuhoe self government and of the lands of the Urewera District Native Reserve is passed over.

In fact, the interpretation of park history remains contested – despite an acknowledgment by the department in 1996 that there had been little consultation about the information provided in brochures and guides about cultural and historic sites in the park. Consultation was admitted to be overdue because of lack of resources.⁹¹⁰ And the fate of the 2003 management plan is telling. Despite the conservator's seeking advice on the historical account from 10 iwi and hapu organisations⁹¹¹ – a draft which was generally favourably received by the Ruatahuna people – the management plan excluded most of that historical material. In nearly 200 pages of information about the park and its policies, there is barely a mention of its history, before or after 1840. The circumstances of the Crown's acquisition of the park land are dealt with in this awkward sentence: 'the history of land tenure and classification in Te Urewera, and the establishment of Te Urewera National Park is extremely complex and goes back as far as the signing of the Treaty of Waitangi.'⁹¹² The reason for the plan's silence is hinted at in a statement acknowledging 'tangata whenua' disputing the means by which the Crown acquired ownership of lands with the national park, and their claim before this tribunal.⁹¹³

16.8.4 To what extent has the preservationist model affected Maori customary uses of park lands and resources, and their kaitiaki responsibilities?

Few issues aroused such strong responses in our hearings as the impact of the park on the ability of communities to use lands and resources that are now within the park, and to fulfil their kaitiaki responsibilities. The claimants spoke often about those responsibilities, which we outlined in chapter 2. Not only must the physical environment – the ecosystems and the life-forms they support – be protected, their mauri, or spiritual well-being, must also be cared for and conserved. Tikanga embodies the knowledge and rituals that regulate the relationship between tangata whenua and other living beings; a relationship founded in whakapapa and fundamental to the survival of Maori communities.

At the heart of the dilemma caused to Maori communities by the park's creation was the failure of the national parks legislation to respect and accommodate their own sustainable

909. Department of Conservation, *Te Urewera National Park Management Plan 1989*, pp 30–31

910. Coombes, 'Cultural Ecologies II' (doc A133), p 141

911. Peter Williamson, Conservator, form letter to iwi, 'Te Urewera National Park management plan review', 16 April 2000 (Coombes, 'Cultural Ecologies II' (doc A133), pp 409–410)

912. Department of Conservation, *Te Urewera National Park Management Plan 2003*, pp 5, 21

913. Department of Conservation, *Te Urewera National Park Management Plan 2003*, p 6

customary uses of park resources. Maori depended on the park lands for everyday living and for manaakitanga of visitors. But from their point of view, the underlying premise of the legislation was that customary uses were a threat and should be screened and pre-monitored for their compatibility with park values. The recreational pleasures of park visitors were evidently more important than their own long-established uses.

Crown counsel suggested that Maori were sympathetic to the way that conservation was conceived under the 1952 legislation, citing Sonny White's general support for the creation of a park from the Crown's land.⁹¹⁴ We explained earlier in the chapter that Te Urewera peoples, and Tuhoe in particular, were anxious to see the forest lands now tied up in the Crown's award given some kind of permanent protection, so long as their economic position on their remaining lands was also protected and their customary uses of the park lands respected. But there was no mention at all, then or at Tuhoe's subsequent meeting with Corbett, of the kinds of public or Maori uses that would or would not be allowed in a national park. Nevertheless, Crown counsel suggested that – in the years following the park's creation – 'tangata whenua historical connections with the park' were sufficiently acknowledged in the park's management: sites of significance to Maori communities were protected and traditional use of horses and dogs on park lands was catered for. Counsel acknowledged that these developments were not due to the legislation or the application of national policies, but rather the result of an improved relationship on the ground, stemming from 'years of interaction between tangata whenua via Board members, the Tuhoe Trust Board, honorary rangers and so on, and Park administration.'⁹¹⁵

But the inherent tension between the purposes and principles set out in the national parks legislation and the values and interests of resident Maori communities has never been resolved. Although the legislation made specific provision for recreational uses of park lands, Maori interests and customary uses were not mentioned. National policies and park management plans have begun to make provision for Maori customary uses and for kaitiaki responsibilities over time, but the monocultural focus of the legislation has not been revisited. This created problems for the Urewera National Park Board and its successors, which have had to walk a tightrope between Maori concerns, and those of recreational groups. The responses of the successive park boards varied depending on the circumstances of each case, though there was a tendency to err on the side of caution, so as to avoid being seen to 'privilege' Maori interests. In some cases, the boards made formal provision for Maori customary uses; in others, informal provision. In each case, the rules made were subject to change over time, established as they were within the parameters of legislation that made no specific provision for Maori interests.

In this section, we look at the extent to which Maori customary uses of park lands have been catered for in Te Urewera National Park, and the limits placed on these activities

914. Crown counsel. closing submissions (doc N20), topic 33, pp 4–5

915. Crown counsel. closing submissions (doc N20), topic 33, p 9

by national parks legislation. The claimants focussed on what they described as a ‘permit culture’ that was gradually put in place following the park’s creation for a variety of activities conducted on park lands. This culture – the cause of so much resentment among Te Urewera communities – applied restrictions on horse use in the park (both for access through the park to their own land and for hunting), and the use of hunting dogs. The claimants’ concerns also centred on the lack of recognition for their kaitiakitanga over their taonga – including valued plant species and their habitats – and restrictions on their customary harvesting of plants. Finally, they were troubled about the lack of protections for their wahi tapu within the park, and about provisions for care and preservation of taonga created by their tipuna.

(1) Use of horses in the park for access to Maori land and for hunting

We consider first the tension between national parks legislation and nationwide and local policies on the use of horses within park lands. The realities of the park and its boundaries meant that a range of Tuhoe settlements could only be accessed on traditional tracks through park lands. In the absence of road access, Tuhoe continued to rely on horses as they had for many generations. Horses were also relied on as crucial for hunting, which remained central to the everyday needs of communities living within or adjacent to the park.

Officials in the mid-1930s recognised the continued reliance of Maori communities on the land awarded to the Crown from the Urewera Consolidation Scheme for their sustenance, when considering how best to use that land. Introduced animals, such as wild pigs (introduced to Te Urewera in the 1840s) and deer (in the 1890s), had become important in food supplies in the traditional economy. This did not change after the park was established. The Stokes, Milroy, Melbourne report (1986) recorded that most able-bodied men in the district were involved in hunting.⁹¹⁶

Horses, pigs, deer and dogs are exotic animals and were introduced to Te Urewera in the nineteenth century. They have been incorporated into the culture and life style of Te Urewera people and by virtue of time can be included as ‘traditional’ elements of modern Te Urewera culture.⁹¹⁷

As a well-established element of the local way of life, hunting was not simply a matter of recreation. It was a matter of ‘subsistence, culture and tradition.’⁹¹⁸ Horses were an essential component of this Tuhoe culture and tradition.

But the National Parks Act 1952 made it an offence to take an animal into a park, or cause an animal to be in a park, without park board approval (section 54). The 1980 Act restated

916. Stokes, Milroy and Melbourne, *Te Urewera* (doc A111), pp149, 175, 249, 355

917. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 350

918. Coombes, ‘Cultural Ecologies II’ (doc A133), p 484

those offences, but gave the Minister the power to approve of exceptions (section 60). The policy statements of the National Parks Authority and its successors were opposed to the presence of horses in national parks because of the damage they could do to tracks, or by trampling vegetation and spreading weeds. The 1964 General Policy was to ‘discourage’ the use of horses in parks; the 1978 policy stated that domestic animals would be not permitted in parks ‘unless, in the opinion of the Authority, animals are required to be kept for security or working purposes.’⁹¹⁹ But there remained an unresolved tension in successive national policies between the use of horses in parks – which was actively discouraged – and hunting. A principle of the legislation was that introduced fauna ‘shall as far as possible be exterminated’, which supported pig and deer hunting. But customary hunting practices in Te Urewera required the use of horses.

Hunting was permitted in national parks, as long as a hunting permit had been obtained. The need for hunting permits marked the first engagement of resident communities with the ‘permit culture’. Such permits were issued at first in the name of the Commissioner of Crown Lands, Hamilton, but in practice by the Controller of Wildlife at Rotorua.⁹²⁰ But it was the first park board that engaged with iwi about hunting. The Reverend JG Laughton warned the board that a system of shooting permits was likely to be unpopular with local people, and he and two other board members held a meeting at Ruatoki to explain the need for a permit system. The people gave the board members a good hearing, and ranger staff ‘were often sympathetic’ if they caught Maori hunters without a permit; legal proceedings were at the discretion of park boards.⁹²¹ (We discuss arrangements for the issue of permits in the next section.)

Within the terms of the legislation and the guidelines established by the national authorities, the policy in Te Urewera National Park has developed over time to allow horses to be used in these circumstances:

- ▶ by land owners, for access to their lands enclosed within the park (progressively from 1971);
- ▶ by hunters, so long as they have a permit and in certain sectors of the park; and
- ▶ by park management.

Up to 1970, park management did not require a permit for a horse in Te Urewera National Park, despite the legal prohibitions. The policy of the board was to be tolerant of horses on established horse routes, and to ‘allow its rangers a wide discretion.’⁹²² This amounted to an

919. National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1964) (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1254); National Parks Authority, *General Policy* (1978), policy 4.2 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p1266)

920. Coombes, ‘Cultural Ecologies II’ (doc A133), p 474

921. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 475- 478

922. Report on uses of horses in Urewera National Park, P Fairbrother, Senior Ranger, 26 June 1971 (Coombes, ‘Cultural Ecologies II’ (doc A133)), p 509

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informal authorisation of local peoples' traditional uses of horses in the park, and others' uses that were similar.

In 1970, the park board first considered establishing a permit system for horse use. The matter was raised by the team employed to draft the first park management plan. The report of the planning team stated that:

In the Urewera both horses and dogs have been extensively used for over a hundred years . . . On the grounds that continued horse traffic will not significantly increase infestation of the Park by exotic plants, that areas of English grasses already exist and the pattern has already been established, the Urewera National Park Board may if it sees fit, approve by permit, the use of horses on established routes in that area of the Park north and west of the Pukehou and Huiarau Ranges.⁹²³

The proposal to establish a permit system for horses was included in the draft plan at the request of ranger staff, who were generally sympathetic to the need to protect Maori traditions of horse use. But the rangers also gave several reasons for allowing horses in the northern sector of the park, despite the Act's prohibition. They argued that '[n]o appreciable damage accrues on properly maintained tracks.' In addition,

A. Recognised horse routes exist throughout the Park and have been established for nearly 100 years.

B. Private land owners should be entitled to access on horse back through the Park by established custom and legal roadway.

C. Horse traffic has remained constant through the years and shows no sign of decreasing.⁹²⁴

The rangers – who had developed the closest understanding of the day-to-day realities faced by Maori communities – acknowledged the need to provide for Maori use of horses in the park, based on traditional use.

Concerns raised by a new ranger at Murupara prompted the park board to take action on the planning team's proposal. The use of horses by non-local commercial hunters in the Murupara area of the park – had increased. Hunters were reported to be straying from the established tracks, and limited grazing around huts meant that native bush was at risk of damage. But the ranger also acknowledged that Tuhoe communities at Ruatahuna, Ruatoki and Waimana had long used their horses on established routes, and that any restrictions on the use of horses would lead to strained relations 'with people whose support is vital to the

923. UNP Board, Urewera National Park Planning Team Report Hamilton, Department of Lands and Survey, 1970, p 32 (Coombes, 'Cultural Ecologies II' (doc A133), p 505)

924. Notes for master plan: domestic animals exemption, compiled by Ranger staff, n.d. (Coombes, 'Cultural Ecologies II' (doc A133), p 505)

park'. Large areas of Maori land along the traditional routes 'would also make policing any restrictions a farce.'⁹²⁵

The park board's response was to form a new 'general' policy for use of horses in the park and, in August 1971, to introduce a permit system for the use of horses in the area administered by the Murupara ranger. Park staff, according to Coombes, initially overlooked evasion of the new rules by local Maori.⁹²⁶ The new policy was reviewed in 1973 after an increase in commercial operators using horses. The park board decided that tighter control was needed over the issue of special permits to use horses, and that permits should be restricted to local residents and full time commercial meat hunters, and made valid for one month, corresponding to the owner's hunting permit. That system was soon extended across the whole park-evidently without consultation.⁹²⁷ Horses were also excluded from the Waikaremoana watershed, and the Ikawhenua and Ruakituri wilderness areas.⁹²⁸ A further review of the policy the following year persuaded the board that it was working satisfactorily and should be retained. It was recognised that the permit system had been interpreted inconsistently over the park, but in general the system meant 'a more conservative approach to horses' throughout the park, affecting Maori and Pakeha alike.⁹²⁹

Following these developments, the first park management plan (finalised in 1976) recorded the park board's policy 'to keep the number of domestic animals in the Urewera to a minimum and as far as possible to discourage the use of horses.' But it recognised:

that the local Maori people have enjoyed this right for over a hundred years and in some respects horses are part of the history and character of the Urewera. It is also clear that the right of access even by horse cannot be denied to owners of land totally surrounded by Park lands.⁹³⁰

It added that horse use for venison recovery could benefit the park by controlling noxious animals and, provided the board was satisfied there would be no detrimental effects, it 'may issue a permit to use a horse for venison recovery' in the northern and western areas of the park, 'but will not do so for the purpose of general recreation.'⁹³¹

The 1976 plan's policy was later explained by the Lands and Survey district solicitor as recognising three exemptions from the general ban on horse use:

925. Report on use of horses in [UNP], A Jones, Ranger, Murupara, 3 May 1971 (Coombes, 'Cultural Ecologies II' (doc A133), p 507)

926. Coombes, 'Cultural Ecologies II' (doc A133), p 510

927. Coombes, 'Cultural Ecologies II' (doc A133), p 510

928. The wilderness areas were flagged as such in the 1976 management plan. Shooting permits-Urewera National Park, A E Turley, chair, UNP board to all agents for issuing shooting permits in the Park, 5 May 1973, Coombes, 'Cultural Ecologies II' (doc A133), p 511

929. 'Horse Permits' - D F Bell, Chief Ranger, UNP HQ, Aniwaniwa, to Secretary, UNP Board, Hamilton, 12.2.1974 (UNP 5). (Coombes, 'Cultural Ecologies II' (doc A133), p 511)

930. Urewera National Park Board, *Urewera National Park Management Plan 1976*, pp 33, 34

931. Urewera National Park Board, *Urewera National Park Management Plan 1976*, p 34

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firstly the use of horses by local Maori people in accordance with rights they have enjoyed for the past 100 years. Secondly, access by horse to owners of land totally surrounded by park lands and thirdly, the use of horses for venison recovery.⁹³²

The first two of those exemptions applied uniquely to local Maori.

In 1983, the National Parks and Reserves Authority's new General Policy for national parks authorised specific exemptions from the general nationwide ban on horses. The new policy stated that the use of horses might be accepted:

where they have traditionally been used for management or for access to private land. Recreational use of horses by organised groups may also be permitted under strictly controlled conditions . . . In no case will use of horses be permitted unless provision has been made for such use in the management plan.⁹³³

The General Policy's recognition of recreational horse riding groups was the result of a strong lobby to the Authority, recently constituted under the National Parks Act 1980. Earlier drafts of the Policy had not acknowledged these groups specifically but had referred to 'traditional use' of horses being acceptable. On that wording the pony clubs (a wide range from the Bay of Plenty, Gisborne, Wairoa and East Coast areas) had contended that their proposed uses of park land should be recognised as 'traditional' because otherwise, Maori were getting special treatment.⁹³⁴ The final wording of the 1983 General Policy on horse use did not actually refer to the 'traditional use' of horses. It also avoided identifying only Maori uses as 'traditional', for it included park management as an activity in which horses had 'traditionally' been used.

Park authorities felt themselves vulnerable in this period to suggestions that they might be favouring Maori. The reaction of the Urewera National Park Board to a remarkable (if unusual) statement by the Rotorua branch of the Royal Forest and Bird Protection Society in 1979 in support of indigenous customary rights in the park, is telling. In the context of a public debate about incorporating Whirinaki State Forest into Te Urewera National Park, a move favoured by environmental groups to protect Whirinaki Forest, the Branch wrote:

There are very few national parks in the world that have within them an indigenous population and by one way or another in order to preserve their traditional customs depend on the understanding of Park authorities. There is only one National Park whereby legislation, extraneous to the concept of National Park, assists indigenous peoples. The rest depend on customary practice to preserve harmony. The Urewera National Park is one . . . [I]t is clear

932. District solicitor, Department of Lands and Survey, to Commissioner of Crown Lands, Gisborne, 'Urewera National Park management plan', 16 December 1983 (Coombes, 'Cultural Ecologies 11', p 511)

933. National Parks Authority, *General Policy (1983)*, p 24 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1295)

934. Coombes, 'Cultural Ecologies 11' (doc A133), p 516

that the right of access, even by horse, to land totally surrounded by Park lands cannot be denied to the owners of that land.⁹³⁵

But the park board, instead of welcoming the Society's support, decided to defend itself against any charge that Maori might be receiving preferential treatment; though the Branch's report had 'given a reasonable summary of the Park's attitude to horses', the board's chairman wrote, there was 'nothing in the policy to give a person living in proximity to the Park an advantage over an Aucklanders wishing to use horses.'⁹³⁶

It is clear that the park board's sensitivity was justified. At the time the 1983 Policy was being prepared, organised horse riding groups sought access to Te Urewera National Park 'for their own recreational and commercial projects' – on the grounds that Maori had such rights within the park. The Rotorua District Pony Club and the Murupara Pony Club both applied to the park board in 1980 for permission to ride horses through the park, and their applications were declined. The Murupara Pony Club letter referred to the fact that the Rotorua club, which had applied to both the park board and the Tuhoe-Waikaremoana Maori Trust Board, been rejected by both, and added:

The Maoris have retained the right of access – including through the Park to their own land. Does the Park Board condone apartheid?⁹³⁷

Late in 1980, the Mokoia Pony Club requested that a large number of clubs be allowed an annual permit for the Christmas holidays, to hold a trek through to Maungapohatu.⁹³⁸ The arguments of the clubs – and their claims of race-based favouritism, which at the time were bound to secure a fair amount of traction in the wider community – worried Lands and Survey staff who were supportive of local Maori rights to use horses in Te Urewera national park.⁹³⁹ They were opposed to recreational riders, however, because of the park's limited grazing and the risk of damage to its native flora and tracks. With the review of the Te Urewera park's own management plan ahead of them, park staff predicted that a refusal to allow recreational riders into the park would fuel opposition to Maori horse use, and that debate would inevitably be joined by environmentalists, who would oppose all but the most limited use of horses. The very different interests and agendas involved would create a dilemma in which, as Coombes said, the 'restrictive position' (that is, not permitting recreational riders in the park) would lead:

935. 'Report on horses, hunting and recreation in Urewera National Park, T Woods, Rotorua Branch, Royal Forest and Bird Protection Society, n.d. (Coombes, 'Cultural Ecologies II' (doc A133), p 514)

936. Coombes, 'Cultural Ecologies II' (doc A133), p 514

937. G Smith, Murupara Pony Club, to Velvin, UNP chair, 5 June 1980 (Coombes, 'Cultural Ecologies II' (doc A133), p 515)

938. Coombes, 'Cultural Ecologies II' (doc A133), p 515

939. Coombes, 'Cultural Ecologies II' (doc A133), p 515

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to the questioning of Tuhoe rights by recreational groups, but an easing of the restrictions would likely lead to environmental impact, environmentalists' objections and, in turn, a prohibition on all horse use.⁹⁴⁰

In other words, faced with the risk that public opposition to local Maori use of horses in the national park might become so strong that the National Parks and Reserves Authority, or the East Coast National Parks and Reserves Board, might ban all horse use by members of the public, park staff became focused on protecting Maori access to their own land and settlements. But in doing that, they either lost sight of or gave up on the position that horses were traditionally used for hunting as well as for transport throughout the lands that now make up the park. The East Coast National Parks and Reserves Board explained the new policy to the National Parks and Reserves Authority, as representing a 'middle path' through the various views presented to it about the permissible level of horse use in the park:

The Board sought to achieve a middle path with a policy that provides for the use of horses in the Taneatua and Murupara sections as traditional access to the enclaves of Maori land, for wild animal control and Park management. Pony trekking is not permitted.⁹⁴¹

In those circumstances – the new general policy and the pressure from recreational riders – the new park management plan that was finalised in 1989 was more restrictive of Maori horse use than the 1976 plan. The 1989 Te Urewera park plan makes no mention of traditional use of horses by tangata whenua. It is couched in these terms:

2.6.13 Horses will be allowed under permit for wild animal control. Usage will be confined to traditional horse tracks and areas of horse use as shown on [accompanying map]. Permit issue and use will be monitored to determine value to wild animal control and impact on park values.

2.10.3 Horse use will be restricted to essential park management purposes, wild animal control and as a means of direct access by landowners to their private land within the park.

2.10.4 Horse use in all circumstances shall be confined to the Murupara and Taneatua sectors of the park.⁹⁴²

Of the three permissible uses of horses there mentioned, only one is unique to Maori: horse use as a means of access to private land within the park which, the policy adds, must be 'direct'.⁹⁴³ Horses might be used for hunting with a permit. This replaced the provision in

940. Coombes, 'Cultural Ecologies II' (doc A133), p 523

941. Coombes, 'Cultural Ecologies II' (doc A133), p 524

942. Department of Conservation, Te Urewera National Park Management Plan 1989, pp 61, 63 (Campbell, 'Te Urewera National Park' (doc A60), p 178). Map 6, on page 28 of the 1989 management plan, entitled 'Traditional Horse Access Routes Through Te Urewera National Park', depicted the tracks on which horse use was permitted in the Murupara and Taneatua sectors of the park.

943. The reference to wild animal control is a reference to state programmes of control of noxious animals.

the 1976 plan for the ‘use of horses by local Maori people in accordance with rights they have enjoyed for the past 100 years.’ The 1989 plan was, therefore, more restrictive than its predecessor.

The 2003 park plan has continued this trend. Horses may be used in the park on a limited number of tracks in the Murupara and Taneatua sectors for the purposes of conservation management (that is, by park staff and their contractors) and, if a permit is obtained, for hunting. They may also be used on these tracks as a means of direct access by owners and occupiers to private land surrounded by the park, if an authorisation is obtained. Both permits and authorisations may be granted at the discretion of the Minister of Conservation⁹⁴⁴ Because authorisation is now required for Maori owners to access private land, the 2003 park plan is also more restrictive than the 1989 one. It further states that provisions relating to horse use will be monitored and, if necessary, further restricted or altered.⁹⁴⁵

The current map of tracks on which horse use is permitted in the park is very similar to the 1989 map but is considerably more limited in its coverage than was sought by submitters from Te Urewera on the draft 2003 plan. Coombes records that at consultative hui on the draft plan ‘there was a desire for more tangata whenua involvement in establishing where horses could be used.’⁹⁴⁶ A written submission from Tuhoe in September 2001 identified a number of traditional tracks that are not included in the park plan’s map of permitted horse tracks:

HORSE USE – We concur generally with the objective and associated policies . . . However we are desirous of keeping Rua’s track to Gisborne, Wharekahika to Raroa and Ruatoki, Orouamaui to Ohora and Ohane to Tauwharemanuka, Horomanga to Ohaua open to horses. There are other horse tracks that were used by our tipuna and continue to be used by Ngai Tuhoe that are not included on your map.⁹⁴⁷

The latest (2005) General Policy statement for national parks states simply that animals will not be permitted to be taken into a national park unless they have been specifically authorised by law or a park’s management plan.

By the mid-twentieth century, Tuhoe communities had well-established customs of horse use on their ancestral lands; horses are the main form of transport in the park’s rugged terrain. But given the focus of national parks legislation, it is unsurprising that the creation of a national park on those same lands has led to considerable frustration. Horse use on park lands is an offence under both the 1952 and 1980 Acts unless authorised by the park board and, later, the Minister. Yet, the thrust of the legislation and the policies of national authorities was clear: horses damaged the protected flora and so were unwelcome in national

944. Department of Conservation, *Te Urewera National Park Management Plan (2003)*, p 100

945. Department of Conservation, *Te Urewera National Park Management Plan (2003)*, p 100

946. Coombes, ‘Cultural Ecologies II’ (doc A133), p 527

947. Coombes, ‘Cultural Ecologies II’ (doc A133), p 527

parks. The circumstances in Te Urewera, however, were such that a strict application of preservationist principles was unrealistic. Park ranger staff acknowledged Maori customary uses of horses for hunting, as well as the requirements of communities to access their settlements through park lands. So did the Urewera National Park Board and its successors. These acknowledgements were enough to put the Crown on notice that the governing legislation was incompatible with the situation in Te Urewera. Instead, the park board was subject to pressure from recreational interest groups, and set in place a more restrictive policy at a time when we might have expected it to be more flexible. The changes that occurred in 1989 reflected the overriding objectives of the national parks legislation: the preservation of the natural features and native flora of national parks.

(2) Use of dogs for hunting

The use of dogs in Te Urewera National Park has been the subject of stricter regulation than the use of horses. Dogs, however, had also become a crucial part of Tuhoe hunting practices by the mid-twentieth century. The imposition of new rules under national parks legislation and policies, therefore, only posed the potential for further resentment among Maori communities living next to the park.

Under both the 1952 and 1980 national parks Acts, it is an offence to bring dogs into national parks. Accordingly, the National Parks Authority and its successors have opposed the presence of dogs in national parks, in general policy statements, including use of dogs for hunting. But the 1983 General Policy relaxed the earlier ban on the use of pig dogs by providing that trained hunting dogs could be permitted if that was provided for in a park's management plan. In 1996, the National Parks Act was amended to impose a nationwide permit and enforcement system to control the presence of dogs in national parks. Under this system, a dog control permit can be obtained from the Director-General of Conservation only where the dog is essential for a lawful activity that is proposed to be conducted in a park and that is allowed by the park's management plan.

The earliest policy on the use of hunting dogs in Te Urewera National Park was set out in a National Parks Authority by-law of 1954, which provided that no person could take a dog into the park without the written permission of the Commissioner of Crown Lands. Shooting permits issued at this time included the statement that 'no dogs are to be taken into the Park.'⁹⁴⁸ Despite this, there was little controversy about dog use. According to Coombes, the by-law was ignored by Maori. Permits for hunting were granted by park staff or by Forest Service rangers.⁹⁴⁹

Early park board policy reflected some difficulty reconciling local customs with the National Parks Authority's general policy. The Authority's 1964 national policy stated that

948. Coombes, 'Cultural Ecologies II' (doc A133), p 488

949. Coombes, 'Cultural Ecologies' (doc A133), p 489

‘THE Department of Conservation’s regulations are totally unjust to the people of Te Waimana. . . . they decided that if you wanted to take dogs into the bush you had to be a member of a pig hunting or deer hunting club, and a tag had to be worn by the dogs. Only then would you be permitted to take three dogs into the Urewera. The people of the valley were not given any exemption.’

—Colin Bruce (Pake) Te Pou, brief of evidence, 18 October 2004 (doc H40), p 5

boards were to keep to a minimum the number of domestic animals in parks.⁹⁵⁰ But that same year, on the basis that pig hunting is ‘virtually impossible . . . without suitable dogs,’⁹⁵¹ the senior Te Urewera park ranger was authorised to grant permission to ‘people he knew to be reliable’ to take pig dogs into the park.⁹⁵² The Forest Service, which was responsible for the control of noxious animals, also authorised some of its contracted hunters to use dogs. But complaints from local farmers led the park board to ban pig dogs from the Galatea region of the park in 1969, and the ban was soon extended to the Waikaremoana/Waikareiti watershed, the Ruakituri Valley, and parts of the Upper Whirinaki in 1970. The conditions for granting permits in other areas of the park were made more restrictive, with applicants needing to show ‘special circumstances’ justifying dog use. In addition, a limit of two dogs per hunter or four per party was introduced.⁹⁵³ Seasonal restrictions on hunting for the safety of other park users were first introduced in 1968, when hunting in the Waikaremoana/Waikareiti watershed was banned during the summer holiday period – from 25 December to 31 January. In 1977, the summer restrictions were extended to Waimana.⁹⁵⁴

In 1973, the park board banned pig dogs completely from the park, recording that the previous policy has been ‘misused or misinterpreted and permits had been issued much too freely in some areas.’⁹⁵⁵ Agents were instructed to issue no permits for hunters to take pig dogs into the park.⁹⁵⁶ The ban lasted for 10 years. In that time, Forest Service contractors were authorised to carry out deer control operations with dogs, which caused some

950. National Parks Authority, ‘General Policy for National Parks’, 1964, p 10 (1254)

951. Secretary, Urewera National Park Board, to KKB Ross, Wairoa, 11 December 1962 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 490)

952. Urewera National Park Board, minutes, 25 November 1964 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 491)

953. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 493–494

954. DF Bell, Chief Ranger to Secretary, UNPB, ‘Hunting restrictions, Waimana Valley’, 7 February 1977 (quoted in Coombes, ‘Cultural Ecologies II’ (doc A133), p 482)

955. Urewera National Park Board, minutes, 15 March 1973 (Coombes, ‘Cultural Ecologies II’ (doc A133), p 495)

956. Urewera National Park Board :minutes of meeting held . . . Ruatahuna . . . 15 March 1973, cited in Coombes, ‘Cultural Ecologies II’ (doc A133), p 495

ill-feeling among the local Maori community. The 1976 management plan made reference to the terms of the National Parks Act 1952, and nationwide policy against the presence of domestic animals in national parks; no exemption was provided for pig dogs.

In 1982, however, the park board relaxed the ban on dogs, on the recommendation of the Commissioner of Crown Lands, Gisborne. This was in response to a campaign by the Eastern Bay of Plenty Pighunters' Club, and research that had confirmed that pig numbers in the park had increased. It was decided to trial a six-month pig hunting season, from 1 May to 30 October, in areas of the park selected by ranger staff. Only registered pig hunting dogs were allowed, and pig hunters had to be members of a club.⁹⁵⁷ Some locals, the board recognised, had 'difficulty in accepting . . . that only registered pig hunting clubs could participate in the trial'.⁹⁵⁸ But Tuhoe formed their own hunting club, and a club was also formed, at Waikaremoana. The 1989 park management plan reiterated that recreational hunting would be 'encouraged and publicised' as an acceptable recreational activity, and for its importance in controlling wild animals. Its policy on dogs was influenced by submissions made by local hunters about their dependence on hunting for food and to supplement their income. As we have seen, it was also influenced by national political change, and a new recognition of Treaty rights. It read:

Dogs will be permitted for pig hunting under strictly controlled conditions. Tuhoe rights, under the Treaty of Waitangi, will be taken into account when conditions are set.⁹⁵⁹

The plan also stated that a permit was required to hunt with dogs, and such hunting was only allowed during 'specified winter months'.⁹⁶⁰ By 1998, the pig hunting season had been shortened to three months, but the ranger at Aniwanuiwa explained to a joint ministerial inquiry that year that 'agreement is given to tangata whenua to catch pigs outside of that season (within the Park) for important hui, or tangi'.⁹⁶¹ It appears that this informal arrangement is only in effect in the Waikaremoana area of the park.

The current Te Urewera Park Management Plan (2003) reiterates that recreational and commercial hunting has a role in introduced animal control (hunting for food supplies for resident communities is not mentioned), and recognises that dogs can be essential to pig hunting; limited use of dogs for pig hunting is allowed.⁹⁶² In a lengthy justification of the policy, it is explained that during the years when all dogs were banned from the park (stated to be 1960), pig numbers soared, so that pigs were prone to starvation and disease. Dogs

957. Coombes, 'Cultural Ecologies II' (doc A133), pp 498–499

958. Coombes, 'Cultural Ecologies II' (doc A133), p 499

959. Department of Conservation, *Te Urewera National Park Management Plan 1989*, p 61 (Coombes, 'Cultural Ecologies II' (doc A133), p 502)

960. Department of Conservation, *Te Urewera National Park Management Plan 1989*, p 27

961. G Mitchell, Department of Conservation, 'Enquiry issues', 11 March 1998 (Coombes, 'Cultural Ecologies II' (doc A133), p 486)

962. *Te Urewera National Park Management Plan, 2003*, East Coast Hawke's Bay Conservancy (2003), p 77

were thus permitted in the park again to control the pig population, so that flora and fauna (especially ground birds) in the park are protected.⁹⁶³ Permits can be issued provided that certain conditions are met, relating to dog identification, the number of dogs used, and the areas of the park, and the season, in which hunting can be undertaken.⁹⁶⁴ The periods in which dogs are permitted in the park are 1 May- 31 July in the Lake Waikaremoana Catchment, and from 1 May to the Friday before Labour Day in the rest of the park.⁹⁶⁵

The short season caused some disquiet among local people, given their economic circumstances. A 2001 submission from the Te Waimana Kaaku Tribal Executive on the 2003 draft management plan unsuccessfully requested that the hunting period ought to be extended from 31 March to 30 November 'for Ngai Tuhoe dog owners' due to 'economic hardship for local landowners within Te Urewera'.⁹⁶⁶ In 2004, concern about dogs killing several kiwi in the park caused the Department of Conservation to issue an interim policy requiring hunting dogs to have avian avoidance training and their owners to demonstrate they can control their dogs. According to the regional Conservator at the time, there was 'considerable consultation with pig hunting groups and hapu' about the interim policy and the pig hunting organisations were 'generally supportive of it'.⁹⁶⁷

The 2003 Management Plan, which undertakes to manage the park in a manner that 'gives effect to' Treaty principles, refers explicitly in this context to liaison with and consultation of tangata whenua.⁹⁶⁸ But the Treaty is not mentioned in sections on hunting.

Because dogs have been considered to cause more damage than horses to national parks, they have been subject to more restrictions. But the changing rules and regulations in respect of dog use in Te Urewera further highlight the inconsistency at the heart of the system. Dogs have been banned because of their perceived danger to ground birds; yet permitted again when soaring pig numbers have seemed a worse danger. At such a time, little account was taken of the needs and interests of local Maori communities, who relied on dogs as central to their hunting practices for generations. Although avian avoidance training has been a positive development the ebb and flow of dog regulations is further evidence of the incompatibility of the governing legislation with the situation in Te Urewera.

963. Te Urewera National Park Management Plan, East Coast Hawkes Bay Conservancy, 2003, pp 80-81

964. Peter Williamson, brief of evidence on behalf of Department of Conservation, 8 February 2005 (doc L10), pp 32-33

965. Department of Conservation/East Coast Hawke's Bay Conservancy, *Te Urewera National Park Management Plan*, 2003, section 7.3.2(b), p 82

966. Te Waimana Kaaku Submission Te Urewera Draft management plan 2001, ECHB Conservancy, 7 September 2001 (quoted in Coombes, 'Cultural Ecologies II' (doc A133), p 487

967. Williamson, brief of evidence (doc L10), p 33. See also Brett Butland, Community Relations Officer, East Coast Hawke's Bay Conservancy, to Peter Williamson, Conservator, ECHB Conservancy, 'Strategy: Dogs on Public Conservation Land' 25 August 2004 (Peter Williamson, attachments to brief of evidence, February 2005 (doc L10(a)), app S).

968. Department of Conservation/East Coast Hawke's Bay Conservancy, *Te Urewera Park Management Plan*, 2003, s 3.2, p 33

(3) Customary harvest of plants

Customary, sustainable plant gathering practices – for food, for rongoa, and for weaving – have for many generations been important in Te Urewera. Reverend John Laughton had stressed this point during the hui held at Ruatahuna in December 1953, in which the creation of the park was discussed with Minister Corbett:

They [Tuhoe] were still partially dependent on the forest fare of their ancestors – hinau bread, tawa berry conserve and the succulent heart of the mamaku fern – and their meat supply came from the hunt.⁹⁶⁹

Park restrictions on gathering plants, particularly pikopiko (the young shoots of a particular fern that taste somewhat like asparagus), were therefore greatly resented. Stokes, Milroy, and Melbourne found that in Waikaremoana ‘local people have many stories about rangers preventing them from gathering even the ubiquitous puha.’⁹⁷⁰ Nicky Kirikiri also told us that park rangers at Waikaremoana stopped Ngati Ruapani and Tuhoe from taking pikopiko, and confiscated their harvest, so that: ‘In the end we just stopped telling them we were going and just went anyway.’⁹⁷¹ The Chief Ranger, speaking in 1985, confirmed that: ‘We stop some people and take the plants if their removal is “unauthorised”.’⁹⁷²

The removal of native plants from a park, in other words, ran headlong into the legislative prohibitions of that activity without park board permission. Such activities were included among the list of offences under the National Parks Act 1954, which stated that it was an offence to ‘wilfully break, cut, injure, or remove any plant, stone, mineral, or thing’, or to ‘take any bark, flax, mineral, gravel, or other substance or thing’ (section 54). The National Parks Authority was also required to give its consent before a park board authorised the cutting or destruction of any native bush in a park (section 29). The National Parks Authority’s 1964 General Policy statement later followed this strict line, authorising boards to grant permits to take ‘specimens of flora and fauna . . . for scientific and educational purposes’ so long as such taking did not deplete any species unduly.⁹⁷³ Customary uses were, therefore, not covered by the legislation or the policy.

The consequences of the restrictions set out in the National Parks Act were soon felt on the ground in Te Urewera. In 1962, shortly after the Urewera National Park Board was established, the park ranger reported that Maori had been warned to stop taking pikopiko. He advised the board that, ‘The Maoris state they have been collecting this fern for many

969. ‘Meeting of Tuhoe Land Owners with the Hon EB Corbett, Minister of Maori Affairs and Lands at Ruatahuna on Thursday 10/12/1953’, minutes, 10 December 1953 (Neumann, ‘That No Timber Whatsoever be Removed’ (doc A10), pp 123–127)

970. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 223

971. Nicky Kirikiri, brief of evidence, 11 October 2004 (doc H59), p 10

972. D Taylor, ‘Report: Information gathered during Urewera – Raukumara study trip, 18–22 February 1985 (Coombes, ‘Cultural Ecologies II (doc A133), p 459)

973. National Parks Authority, ‘General Policy for National Parks’, 1964, p 9

years and are not very happy about the situation.⁹⁷⁴ The minutes of the board's discussion show that it understood that the ranger would be in a difficult position if he tried to prevent the practice:

Strictly speaking this practice constitutes an offence against s54[1](g) of the National Parks Act; but the Maoris have traditionally picked piko piko for many generations in parts of what is now Park land, and the picking does no harm to the fern itself.

Agreed: Further discussion with Maori leaders seems necessary before any other action is taken.⁹⁷⁵

That minute, we note, suggests that Maori were surprised that national park rules might prohibit their customary use of park resources. It also reveals the important point that park board members knew that the manner and extent of the customary pikopiko harvest did not damage the plants. Nevertheless, without prior board permission, any taking of part of a native plant was an offence under the 1952 Act.

Three days after that board meeting, Wiremu Matamua and 51 others petitioned the Minister of Lands, R G Gerard, about the matter:

We, the undersigned, as your most humble servants do pray to you grant us permission to enter the Urewera National Park and the Government Scenic Reserves from Ruatahuna to Lake Waikaremoana, and to collect that rare Maori National diet from bush known as Piko Piko or Maori asparagus.

Last week, we were told by some of the Rangers patrolling such areas, that we are no longer permitted to enter, nor to pick them. Why are we denied this rare Maori National food? This is not hurting the plants either. Will you please grant us the same privilege, and honour we all share and have enjoyed in years past.⁹⁷⁶

If, as the petition suggests, its signatories had been told they had no right to be in the national park for any purpose, then that advice was plainly wrong.

The Minister's initial reaction to the petition was negative, but advice from the park board influenced his response. The board's chair, Commissioner of Crown Lands FS Beachman, advised the Director-General of Lands (chair of the National Parks Authority) that its preferred strategy was not to prohibit pikopiko harvesting in the national park but to educate and persuade the petitioners to change their ways. That approach would cause least damage to the relationship between the board and owners of land within the park, and this

974. SB Sturm, Park Ranger, Aniwanuiwa, 'Ranger's report, period ending 22.10.62' (Coombes, 'Cultural Ecologies II' (doc A133), pp 443-444)

975. Urewera National Park Board, minutes, 1-2 November 1962 (Coombes, 'Cultural Ecologies II' (doc A133), p 444)

976. Wiremu Matamua and 51 others, 'Petition to Minister of National Parks', 5 November 1962 (Coombes, 'Cultural Ecologies II' (doc A133), pp 444-445)

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was particularly important, he added, in light of the negotiations over the lakebed of Lake Waikaremoana:

Those members of the Board who have the closest associations with the Urewera Maoris were not sure whether the practice of collecting Piko Piko is diminishing over the years, but felt that an attempt should first be made to educate and persuade them to desist from picking within the Park territory.

There is no doubt that the Maoris feel very strongly on the matter and any blunt prohibition would be likely to antagonise them. The matter is a delicate one, for it is essential that good relations be maintained between the Board and the Maoris who live in or hold interests in lands lying within the Park. It is likely that some or most of the present practitioners hold shares in the ownership of Lake Waikaremoana and to antagonise them over Piko Piko might well prejudice the negotiations to acquire the Lake, which is a matter of much greater immediate importance.⁹⁷⁷

The National Parks Authority agreed that 'by persuasion and education, the Maoris would cease picking piko piko' and suggested that 'further consultations' were needed to come to 'some satisfactory arrangement'.⁹⁷⁸

Minister Gerard's reply to Matamua in January 1963 advised that the Authority approved of the park board giving authority to its ranger to permit a limited taking of piko piko shoots but in the hope that the practice would soon stop.

The National Parks Authority realises that the local Maoris have traditionally picked piko piko on lands which comprise the Urewera National Park and does not desire to be unduly restrictive by a strict enforcement of the law. There cannot be unlimited picking but the Authority considers that a limited amount of taking of the shoots of the piko piko could be permitted and has asked the Urewera National Park Board to give authority to its park ranger to make arrangements accordingly with the local Maoris. The Authority hopes that before long the practice of collecting shoots within the confines of the park will cease.⁹⁷⁹

Despite the success achieved by Matamua and the other petitioners in gaining limited recognition of their customary use, the park board did not move in that direction. Instead, the board adopted the opposing position of educating Maori that customary use should come to an end. This position proved decisive in shaping the policy of the National Parks Authority. The 1964 General Policy statement closely mirrored the views of the park board and the minister, encouraging 'education in proper park use rather than . . . prosecution'. The taking of plants would only be permitted for scientific and education purposes; not for

977. Commissioner of Crown Lands, Hamilton, to Director-General of Lands, 23 November 1962 (Coombes, 'Cultural Ecologies I' (doc A133), p 446)

978. Director-General of Lands to Commissioner of Crown Lands, Hamilton, 23 November 1962 (Coombes, 'Cultural Ecologies I' (doc A133), p 447)

979. Minister of Lands to W Matamua, 22 January 1963 (Coombes, 'Cultural Ecologies I' (doc A133), p 447)

customary use by Maori. This outcome highlighted the fact that the national parks model was ill-suited to the unique circumstances in Te Urewera, which on this occasion had been brought directly to the Crown's attention, and by none other than the Maori community that was directly affected.

More than a decade later, in 1976, the park board restated that its policy was to allow limited customary harvest, but still based on the expectation that such practices would come to an end. In considering a written request from a Ngati Ruapani man to gather pikopiko in a particular area of the park, the board members:

saw no objection to the traditional practice of gathering piko piko for food, provided it was done on a limited scale for family needs and in view of the fact that the practice was decreasing and would eventually cease.⁹⁸⁰

It was then resolved that the Chief Ranger would call upon the applicant and explain the park board's policy about gathering plants or vegetation in the park.⁹⁸¹

The newly approved 1976 park management plan continued to reflect the disparity between the national parks legislation and the interests of Maori communities. No provision was made for customary takes of pikopiko, or of any other plant. Instead the policy stated only that:

The National Parks Act 1952 states that without the permission of the Park Board no weed, tree, shrub, fern or plant or any part of them may be removed, cut or damaged.

It is therefore the policy of the Park Board to prohibit the taking of specimens of any kind, except for essential purposes relating to rare or threatened species or for research authorised by the Park Board itself.⁹⁸²

This blanket prohibition seems rather remarkable, given that it was now 14 years since Matamua had petitioned the government. Yet, the park management plan provided the obvious reason: the National Parks Act. For the time being, therefore, local people were dependent on the discretion of particular rangers.

The informal policy adopted by the park board to allow limited customary takings of pikopiko – despite the prohibitions in the act and, later, its own management plan – applied to other native plants as well. A number of speakers at our hearings spoke of gathering plants used for rongoa, the use of fallen totara for carving and repair or construction of buildings and kie kie, used in weaving (see chapter 2). But following the creation of the national park and associated restrictions, weavers were required to apply for permission to

980. Urewera National Park Board, minutes, 9–10 September 1976 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 367)

981. Urewera National Park Board, minutes, 9–10 September 1976 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 367)

982. Urewera National Park Board, *Te Urewera National Park Management Plan 1976*, p 42 (Coombes, 'Cultural Ecologies II' (doc A133), p 464)

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collect kiekie. In December 1967, the park board agreed to a request, made through board members Nikora and Teague, for a Tuai woman to harvest kiekie from forest near Kaitawa ‘where she had always obtained it in the past, for making baskets.’⁹⁸³ Further requests from Tuai people were also supported.⁹⁸⁴ In March 1980, a written request was made to the Chief Ranger of the park on behalf of Waiputu Marae in Hastings and St Joseph’s Maori Girls College in Taradale, to gather kie kie for use in tukutuku decorations in two meeting houses. The applicant explained that the elders at Waimako marae had already been approached and that ‘they have agreed to direct us to the kie kie areas providing we first get your permission. With them guiding the way, the forest is assured of its proper protection.’⁹⁸⁵

The Chief Ranger referred the request to the park board. Noting that the plant was scarce in the park and might be more available on state forest lands, the board felt unable to make a decision without more information about the quantity of kie kie needed and the proposed collection area. Three months later, when the Ngati Kahungunu board member described to his colleagues an area adjacent to the Kaitawa power station where kiekie grew profusely, the board resolved that the Chief Ranger could authorise the gathering of kiekie for the Hawke’s Bay wharenuī, provided he was satisfied it would have no adverse environmental impacts.⁹⁸⁶

By 1983, park administrators had developed a greater understanding of Maori customary uses of plants, and signs began to emerge in favour of change. The 1983 General Policy of the National Parks and Reserves Authority made the first specific statement about traditional uses of native flora and fauna, in these terms:

Traditional uses of indigenous plants or animals by the Maori people for food or cultural purposes will be provided for in the management plan where such plant or animals are not protected under other legislation and demands are not excessive.⁹⁸⁷

The General Policy noted the prohibitions in the National Parks Act 1980 (section 60) on taking plants, but stated that the policy was a guide for the ‘interpretation and exercise of discretions’ contained in the Act. In the case of plant harvesting, therefore, the 1983 policy represented a new interpretation of what is allowable under the Act.

The 1989 Te Urewera park management plan (issued by the East Coast National Parks and Reserves Board) responded to this new national policy – and also it seems to develop-ments on the ground (see below) – with a section on ‘Traditional Uses of Native Plants’:

983. UNPB minutes of board meeting on 1 December 1967 (Edwards, supporting papers to ‘Selected Issues: Te Urewera National Park’ (doc L12(a)), p 233)

984. See Chairman, UNPB, to SRurehe, 28 May 1969 (cited in Coombes, ‘Cultural Ecologies I’ (doc A133), p 450)

985. P Matchitt to Chief Ranger, 24 March 1980 (quoted in Coombes, ‘Cultural Ecologies II’ (doc A133), p 450)

986. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 450–451

987. National Parks and Reserves Authority, *General Policy* (1983), p 21 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1293)

Traditional uses of indigenous plants by tangata whenua for food and other cultural purposes are permitted with prior approval of park management provided that the particular plant species are not rare, vulnerable, endangered or otherwise protected, and the demands are not considered excessive.⁹⁸⁸

In 2003, the East Coast Hawke's Bay Conservancy issued its management plan for Te Urewera National Park. This plan went considerably further than that of 1989 in providing for traditional uses. It did emphasise the importance of preserving the park's indigenous flora, so that it is only in 'special circumstances' that plant collection will be authorised (policy 9.5). But it recognised that 'tangata whenua may wish to collect plants for a range of uses' including kai, rongoa, fibres for kits, mats, tukutuku panels, and other crafts, and timber for carving, restoration, and construction of traditional buildings. Also, '[t]he collection of flora by tangata whenua may be ongoing' and, for that reason:

In some instances, it is appropriate for management of traditional cultural use to be undertaken through a process established between the Department and tangata whenua. This avoids the need for separate applications to be assessed for every instance of use.⁹⁸⁹

The two conditions on which non-commercial takings (only) of indigenous plants for traditional cultural uses can be permitted are then set out. They are that:

plants are not rare, vulnerable, or endangered, and the demands do not significantly impact on a population of species or other natural values;

The process is periodically reviewed by the Department in conjunction with tangata whenua to ensure that adverse effects do not occur. (policy 9.5.2 (b))⁹⁹⁰

The management plan, it seems, had caught up with local practice. Evidence indicates that from the mid-1980s, park rangers were more willing to consult with local Maori leaders about harvests. Peter Williamson, who was the Conservator of DOC's East Coast Hawke's Bay Conservancy at the time of our hearings, told us about the process agreed with the department over who could harvest pikopiko and how much. He was most likely referring to the informal understanding between the department and the Waikaremoana Maori Committee, noting it had been in place 'since at least 1986'. He explained that potential difficulties for park staff in identifying who was and who was not tangata whenua, led to the arrangement to refer requests for pikopiko to local Maori.⁹⁹¹ He did not mention any other agreement over managing cultural harvests of other plants, or indicate whether the pikopiko agreement has been extended beyond Waikaremoana.

988. Te Urewera Park Management Plan 1989–1999, p 59

989. Department of Conservation, *Te Urewera National Park Management Plan 2003*, pp 138–139

990. Department of Conservation, *Te Urewera National Park Management Plan 2003*, p 139

991. Peter Williamson, brief of evidence on behalf of the Department of Conservation, 8 February 2005 (doc L10), p 28

A process of devolution of applications for taking of rongoa species to hapu committees was also put in place by the East Coast National Parks and Reserves Board from 1986:

In most instances, requests are forwarded to appropriate runanga for advice prior to the granting of a permit. The lack of permits does not, however, reflect a lack of demand or an institutional unwillingness to grant applications. Much of the administration for rongoa species has been devolved to hapu committees, avoiding the need for repeated and time-consuming application and granting of permits. Among other things, this reflects a willingness of tangata whenua to be involved in the management of rongoa species. The conservancy has also welcomed tangata whenua interest in propagating rare rongoa plants. Fees for permit applications – which otherwise start from \$100 – are waived in the case of harvests for cultural materials: ‘Generally, no fees will be charged in the spirit of partnership.’⁹⁹²

But it had taken many years to get to this point – and in those years fierce resentment had grown. Sir Rodney Gallen stated in his affidavit sworn for the Joint Ministerial Inquiry in 1998 that:

The Local people had been accustomed for generations to take produce from the bush in the area and in particular at certain times of the year, people of rank took the pikopiko fern in small quantities for food. This was stopped by the Park authorities and the manner of stopping was such that it created a degree of resentment which lasted for many years.⁹⁹³

A Ruatahuna kuia was quoted in the *Wairoa Star* in 1979 contrasting the rules against customary plant gathering in the national park with the rules in Whirinaki State Forest. The report said:

Recently a national park ranger found her [the kuia] gathering herbs and the food plants puha and piko piko – the Maori asparagus – just inside the boundary of the nearby Urewera Park. The plants she had gathered were confiscated and the old lady was warned not to repeat the offence. ‘We are free to collect our herbs and plants on Forestry land but the Maori people at Ruatahuna – who gave their tribal lands to the National Park – are not even allowed to gather their traditional medicines and foods,’ she claims.⁹⁹⁴

Coombes recorded that the chair of the Urewera National Park Board vigorously contested this claim, explaining the park’s policy and practice to a government publicity officer in these terms:

992. Coombes, ‘Cultural Ecologies II’ (doc A133), pp 467–468, quoting Acting Director, Protected Species, to M Hosking, RC East Coast, 20 August 1996

993. Mr Justice Gallen, affidavit sworn on 9 April 1997 (appendix to ‘Joint Ministerial Inquiry – Lake Waikaremoana: Report to the Minister of Maori Affairs, Hon Tau Henare, Minister of Conservation, Hon Nick Smith’, 27 August 1998 (doc H13), app 3, p 2)

994. ‘Halt to Logging Will Sound Death Knell for Maori Way of Life’, *Wairoa Star*, 23 October 1979, pp 4–5 (quoted in Coombes, ‘Cultural Ecologies II’ (doc A133), p 457)

No National Park Ranger has prevented any Maori from gathering puha or pikopiko from Urewera National Park since the matter was first raised in the early days of the existence of the Board over 17 years ago. The first Ranger appointed to the Park had asked Maoris found gathering these natural foods to desist as the area was now to be preserved and reported the incident to the Board with a request for a policy decision. The Board decided that notwithstanding the provisions of the National Parks Act, an exception would be made to allow the indigenous people their customary practice of gathering food provided the Maori people, in consideration of others, left roadsides and tracks untouched and gathered food a little deeper in the forest. The subject has on no occasion been before the Board since.⁹⁹⁵

The kuia was right about the rules, of course, and she had clearly had a very unfortunate experience which impressed on her the power of the ranger and doubtless left her both mystified and somewhat outraged.

At our hearings, claimants also expressed their dismay and long-held hurt over the way controls both caused offence and limited important food gathering activities and flax gathering for weaving. And the impacts went further, threatening the retention and transmission of local knowledge. As Maria Waiwai told us:

The direct result of these restrictions on the collection of kiekie for weaving and bark for dyeing has been that we have lost the art of weaving with the natural materials . . .

Now, we use Pakeha materials. My kete is made from Pakeha string and wool. In the olden days, people could gather their flaxes, and people knew how to strip them and what dyes to use. The technique is there, but because of the restrictions, why bother? My children are not interested in learning the traditional ways, as they can go to the shops and get plastic strips – it's easier than getting a permit. So much has been lost.⁹⁹⁶

The most recent General Policy, of the New Zealand Conservation Authority (2005) recognises that customary uses of natural resources are not necessarily incompatible with national park purposes and principles. It defines customary use as 'Gathering and use of natural resources by tangata whenua according to tikanga' and provides that this may be allowed on a case-by-case basis where:

- i) there is an established tradition of such use;
- ii) it is consistent with all relevant Acts, regulations, and the national park management plan;
- iii) the preservation of the species involved is not adversely affected;
- iv) the effects of use on national park values are not significant; and

995. Chairman, UNPB, to Director of Publicity, Tourist and Publicity Department, 17 October 1979 (quoted in Coombes, *Cultural Ecologies II* (doc A133), pp 457–458)

996. Maria Waiwai, brief of evidence, undated (doc H18), pp 15–16

v) tangata whenua support the application. (policy 2(g))⁹⁹⁷

The policy allowed only for ‘non-commercial’ customary uses but it was amended in 2007 so that, now, any customary use, non-commercial or otherwise, may be allowed.⁹⁹⁸

We conclude, from our survey of national and local policies on hunting and plant harvesting, that the National Parks legislation which failed to make any provision for Maori customary uses of park resources alongside recreational uses, impacted particularly on resident Maori communities in Te Urewera and led to lasting tension there. That tension has arisen from the failure to recognise Maori customary uses on their own terms. Instead those communities have felt that they were regarded no differently from park visitors – a matter of considerable resentment. The symbol of this failure to respect their hunting and harvesting rights exercised for generations has been the permit or, in broader terms, the imposition of an external authority over their own tikanga – which was felt to be both unnecessary and inappropriate.

If we compare the authorities’ treatment of hunting as opposed to plant harvesting in the park, it is clear that over time, both nationwide and local park policies have moved from an unwillingness to accept and make provision for pikopiko harvesting in particular, to a readiness to provide for informal agreements and control by local committees on the ground. We might suspect that once park administrators had come to terms with the concept of sustainable use of resources in parks, and the principles of tikanga governing such uses, it was not as hard to provide for traditional plant harvesting as for traditional hunting – it was neither visible, nor damaging, and it did not arouse strong public opposition.

Harvesting was clearly understood to be contrary to the Act’s strong emphasis on preservation of indigenous plant life. The park board knew in 1962, as did the National Parks Authority, that pikopiko harvesting by local people in accordance with tikanga did not damage the plant. Yet, the Act was unable to be used to recognise customary gathering in accordance with tikanga under the authority of hapu without oversight by park staff. It did empower the Authority to approve the board granting permission to cut native plants. In other words, a formal Authority-approved park board policy might have allowed pikopiko harvesting much earlier on express conditions consistent with tikanga (detailing the season of taking, and quantities) – putting beyond doubt the rights of the peoples of Te Urewera to continue that custom. Instead, the board pinned its hopes initially on education to stop the practice. This was simply insulting to the people. The park board (with the approval of the National Authority) resolved the difficulty by permitting local people to take pikopiko and other native plants from the 1960s, subject to conditions they set, until traditional harvests were formally recognised in park policy in 1989.

997. New Zealand Conservation Authority, *General Policy for National Parks* (Wellington: Department of Conservation, 2005), pp 16, 62

998. ‘General Policy for National Parks’, Department of Conservation, <http://www.doc.govt.nz/publications/about-doc/role/policies-and-plans/general-policy-for-national-parks>, accessed 5 October 2012

The use of horses and dogs for hunting was a different proposition for the boards. As we have seen, local park authorities began by trying to accommodate the hunting traditions of local Maori communities. But because other hunters always wanted to take horses and dogs into the park, and the numbers of animals increased – raising concerns for park vegetation and ground birds – local boards found it difficult to maintain their stance. They were susceptible, as we have seen, to farming and park visitor pressure. Hunting dogs were banned (early 1970s), but then reinstated after pressure from park hunters. Horses had a somewhat different history after the creation of the park. Before 1971, Maori traditional uses were informally provided for in Te Urewera. Because of an increase in the number of non-local hunters, a permit system was introduced in the early 1970s, which recognised customary uses. But the 1989 management plan marked a turning point, as more pressure from visitors led to their accommodation by 1983 – at the cost of recognition of Maori traditional uses, and restriction of all horse users to particular parts of the park. Maori attempts to secure recognition of the right to use traditional tracks in other parts of the park went unheeded.

It is difficult to understand why there has been so little initiative shown to tackle the issue of exercise of traditional rights in parks, once its importance became clear to administrators. Above all, it seems surprising that over many years no attempt was made to effect a simple amendment of the National Parks Act, so that customary uses might have been provided for alongside recreational uses. We return to this question in our Conclusions at the end of this section.

(4) *Wahi tapu and taonga*

A further key issue for the claimants arising from the creation of the park has been the destructive impact of park visitors on important sites of cultural significance to them, both on park land and on nearby Maori-owned land. The evidence shows that during the park's lifetime, and especially in its earlier years, there have been numerous instances of interference with or damage to such sites. For example, tracks in the park have been constructed very close to (or in one case through) urupa, burial caves around the shores of Lake Waikaremoana and at Maungapohatu have been plundered for artefacts, other taonga, including moa bones and a kereru trough, have been removed from their resting places, and Rua Kenana's house at Maungapohatu has been looted, as have other whare and former pa sites, and a former wharenuī on one of the Waikaremoana reserves has been burnt down.⁹⁹⁹ In the late 1970s, local Maori became so frustrated and dismayed with the theft and vandalism of Rua's former wharenuī in Maungapohatu that they burnt it down (see sidebar).¹⁰⁰⁰

In their 1986 report, Stokes, Milroy, and Melbourne discussed the situation at Lake Waikaremoana:

999. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 223; Sidney Paine, brief of evidence, 18 October 2004 (doc H20); Coombes, 'Cultural Ecologies 11' (doc A133), pp 149–154

1000. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), pp 333–334

The Vandalism of Rua Kenana's House

After visiting Rua's second house called Maai with Reverend JG Laughton in late 1964, Peter Webster (sent by the Historic Places Trust to assess whether Rua's house and the Presbyterian Mission House should be protected) commented: 'it was clear that the place had already been ransacked. Papers and personal belongings of Rua and his relatives were lying everywhere.' He added:

Laughton was appalled, and I realised from his remarks that we had come too late. Apart from the heavy iron and brass double beds, some odd bits of furniture, and stained religious pictures on the walls, there was little left. Almost everything of value had been looted by Pakeha trampers, hunters, and casual visitors to the settlement since the recent opening of the milling road. All that was left of a personal nature were two of Rua's Bibles and a few miscellaneous papers which we placed in an old tin box from Rua's own room. We carried this away for safekeeping by Laughton.¹

1. Peter Webster, *Rua and the Maori Millennium* (Wellington: Victoria University Press, 1979) (doc K1) pp 8, 41

There are many other wahi tapu, including pa and urupa, which are not in the Maori Reserves. These are still regarded just as much wahi tapu as those that are still Maori-owned. The local people are philosophical. 'Much of the damage has already been done' in the way of plundering artefacts in particular. 'They can't do much more harm.'¹⁰⁰¹

That report also observed that because the lake provides access to so many sites of cultural significance, the issues of site protection, including what information is given to park visitors about sites, are of particular importance at Waikaremoana.¹⁰⁰²

Claimants have identified a number of factors connected to the park or its administration that have contributed to the thefts of and damage to taonga on park land and on adjacent Maori land. They include:

- ▶ that all comers have free access to the national park;
- ▶ the lack of clear signage or other means of showing the boundary between park land and private land;
- ▶ the publicity that is or has been given to certain sites in information prepared by or available from the park;
- ▶ the proximity of park tracks to some sites, which increases the risk of inadvertent damage to them;

1001. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 223

1002. Stokes, Milroy, and Melbourne, *Te Urewera* (doc A111), p 223

THE BEST SAFEGUARD for remote burial grounds is lack of publicity or publication.'

—T Nikora to E Stokes, University of Waikato, Hamilton, 21 April 1986
(Coombes 'Cultural Ecologies II' (doc A133), p 145)

- ▶ the tardiness of the park's administrators in responding to concerns from the peoples of Te Urewera about damage to significant sites on park land; and
- ▶ park administrators' lack of authority to expend resources protecting sites on Maori land, even when park visitors' actions render protection necessary.

All of those factors are apparent in the example, examined later, of the Maungapohatu Burial Reserve, which is located within the national park. In 1979, Chief Ranger Bell commented about this wahi tapu in a report about access to the park:

To the east of the Valley is the Maungapohatu Burial Reserve. A very sacred place. In spite of this it is clearly identified on maps and in Park publications. This advertising, as such, couched as it is in descriptive, decorative detail is, in itself, a major enticement to the more curious among us. This in turn leads to upsets, differences of opinion and, unfortunately, a hardening of attitudes.¹⁰⁰³

In Bell's opinion, publicising the reserve had given an incentive to park visitors to inspect the graves, despite their being on Maori-owned land and tapu, so that any intrusions are extremely offensive to the peoples of Te Urewera. Claimants share the concern that publicity about the nature of the site attracts would-be vandals and looters and, at our hearing, recommended that park maps and other information refer to it only as the 'Maungapohatu Reserve'.¹⁰⁰⁴

The question of safeguarding wahi tapu thus raises the related question of trespass by park visitors on Maori land. The public have legal access through Maori land within the park over the roadlines formed as part of the Urewera Consolidation Scheme, from Maungapohatu to the upper Waimana valley and from Ruatahuna to Ruatoki, that were promised but only partially built (see chapter 14). These roadlines now form the basis of important tracks within the park, and provide essential legal access to Maori land within it. The policies of the National Parks Authority and its successors have not addressed the issue of the public trespassing on Maori land, or any other privately owned land, within a

1003. DF Bell, Chief Ranger to Chairman Urewera National Park Board, 'Report on access to Maungapohatu', 26 July 1979 (Coombes, 'Cultural Ecologies II' (doc A133), p 134)

1004. Tamaroa Nikora, brief of evidence, 16 February 2005 (doc K14), p 8

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national park. The 1964 General Policy set down a policy ‘to ensure appropriate signposting of boundaries.’¹⁰⁰⁵ The 1978 General Policy did not include any policy specifically requiring signposting of boundaries. Instead, it mentioned that boundaries should be determined in a way that is ‘convenient’ for the ‘occupier of adjacent land’ while ensuring maximum public access to the park.¹⁰⁰⁶ Both the 1983 and 2005 general policy statements contain identical policies that park boundaries ‘may be’ signposted.¹⁰⁰⁷ Hence such signposting is optional.

The 1976 Te Urewera National Park management plan did not include any specific reference to trespass on Maori land, or to erecting appropriate signposting of the boundaries of that land. Instead, when it noted Maori land within the park, and tramping routes through it, it was in the context of the park’s need to acquire that land.¹⁰⁰⁸ The 1989 management plan was the first to mention the issue of trespass:

As Maori culture is a significant element in the park, careful and sensitive monitoring of the impacts of the park users, facilities and interpretation is needed. There are real and potential conflicts between local people and visitors. Trespassing by park visitors on private land, for example, does not contribute to good relations between local people, visitors and the Department.¹⁰⁰⁹

Recognising the tensions, it outlined policies fostering liaison ‘with adjoining landowners in an endeavour to establish or maintain where desirable controlled legal public access over private land to the park’, and to clearly define and maintain ‘[a]ccess to the park over private land’.¹⁰¹⁰ The 2003 management plan contains the same policies, though they are somewhat more extensive: DOC will clearly define boundaries with the consent of the landowners where legal access over private land has been negotiated; and DOC will ‘provide information on public access opportunities to and within the park and raise awareness of the rights and responsibilities involved when crossing private land’.¹⁰¹¹ Thus the 2003 plan is the first to include a policy which requires park administrators to provide information

1005. National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1964), p 5 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1251)

1006. National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1978), p 3.6 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1265); National Parks and Reserves Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1983), p 18 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1292)

1007. National Parks and Reserves Authority, *General Policy for National Parks* (1983), p 45 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1305); New Zealand Conservation Authority, *General Policy for National Parks* (Wellington: Department of Conservation, 2005), p 39

1008. Urewera National Park Board, *Urewera National Park Management Plan 1976*, pp 17–18

1009. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999*, p 33 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1399)

1010. Department of Conservation, *Te Urewera National Park Management Plan 1989–1999*, p 69 (Edwards, supporting papers to ‘Selected Issues’ (doc L12(a)), p 1414)

1011. Department of Conservation, *Te Urewera National Park Management Plan 2003* (Gisborne: Department of Conservation, 2003) p 92

about crossing private land *within* the park, not just clearly defining access *to* the park over adjacent private land.

Another concern about the park administration's approach is that it has been insufficiently sensitive to the responsibilities of the peoples of Te Urewera as kaitiaki of artefacts and other historic taonga. An early example relates to the National Parks Authority's advice to park boards in 1953, to budget for museums and displays of objects of local interest. The advice was elaborated in 1961, in these terms:

all park boards would be well advised to commence immediately the collection of material suitable for exhibition, with the long term object of having museums in all parks. Suitable material could cover such things as geological specimens, general historical material, historical photographs, Maori artefacts, etc.¹⁰¹²

Highlighting that policy's lack of attention to issues of ownership of Maori artefacts, Coombes described three instances where the policy was followed in Te Urewera – relating to the return of a waka that had been taken out of the park, the discovery of a waka kereru (pigeon trough) in the park by a member of the public, and the discovery of a pataka by a park ranger.¹⁰¹³ In the first two instances, local Maori were not notified at all about the discoveries and, in the third, the park board initially decided to consult with the Tuhoe Trust Board but later abandoned the idea.

A closely related issue is that, as kaitiaki, the peoples of Te Urewera may be reluctant to disclose the location of certain historic sites to outsiders, let alone permit exploration of them, for fear this will lead to the sites being harmed. One example cited by Coombes is the Tuhoe-Waikaremoana Maori Trust Board's refusal in 1984 to allow the Historic Places Trust to survey Tuhoe land in the Whakatane/Ohinemataroa and Waimana Valleys as part of its study of archaeological sites in the area. The trust board explained to the local press that it feared 'curious visitors' would not respect the land and it wanted more information about what would be done with the survey information and to whom it would be available. The Historic Places Trust's senior archaeologist was reported as saying that Tuhoe's fears were groundless, and yet a survey map of archaeological sites from the 1984 study was published in the *Whakatane Beacon* soon after its completion.¹⁰¹⁴ For these reasons, which Coombes described as insensitivity to 'cultural politics',¹⁰¹⁵ he was critical of the 1976 Te Urewera National Park Management Plan's general policy to 'keep a record of all known historic sites'

1012. DNR Webb, Director-General of Lands to Commissioner of Crown Lands, 'National Park museums', 8 November 1961 (Coombes, 'Cultural Ecologies I' (doc A133), p141)

1013. Coombes, 'Cultural Ecologies II' (doc A133), pp142-143

1014. 'Talks on surveying delayed', *Whakatane Beacon*, 20 February 1985 (Coombes, 'Cultural Ecologies II' (doc A133), p147); 'Pa sites', *Whakatane Beacon*, 15 August 1984 (Coombes, 'Cultural Ecologies I' (doc A133), p147)

1015. Coombes, 'Cultural Ecologies I' (doc A133), p139

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in the park and to 'seek professional advice as to their interpretation and preservation.'¹⁰¹⁶ That policy continues:

In the case of Maori burial grounds and similar places within the Park the Board will seek the advice and assistance of the local Maori people as how best to protect these areas and ensure they are in no way damaged by vandals and that their significance to the Tuhoe people is in no way diminished or detracted from by the Park visitor.¹⁰¹⁷

Te Awekotuku and Nikora referred to the publication, very close to the finalising of the 1976 park management plan, of an official souvenir booklet by Gallen and North,¹⁰¹⁸ two Pakeha men with strong links to Tuhoe. They describe the booklet as 'a violation of Tuhoe property rights and the sanctity of wahi tapu' because its authors:

in specific detail, identify, name and locate (with map coordinates) the very sites, including those on privately owned Tuhoe land, which a Tuhoe elder had stressed to be an exclusively Tuhoe controlled heritage.¹⁰¹⁹

The 1983 General Policy notes that in preserving sites and objects of archaeological and historic importance, it is sometimes appropriate to identify and mark them. The criteria for identifying persons, places, or events of national or historic significance are those '[p]ersons who have had a significant impact on New Zealand history and who were associated with the park,' '[e]vents which have played an important part in the history of the park,' '[p]laces which have shed light on or illustrated earlier cultures or are associated with important archaeological discoveries,' and '[s]tructures which are of particular historical importance.'¹⁰²⁰

From the late 1980s, policy has become more sensitive to Maori concerns. The 1989 management plan noted that care and sensitivity were needed regarding publicising wahi tapu sites. It acknowledged that identifying the locations of wahi tapu had contributed to vandalism of many sites within the park and the taking of artefacts, which to Maori 'represents desecration of the tapu on such places.'¹⁰²¹ Its solution was to offer policies based on 'full consultation with tribal representatives' over such matters, and to respect the wishes of Maori if release of information about the location of sites was contemplated.¹⁰²²

1016. Urewera National Park Board, *Urewera National Park Management Plan 1976*, p 40 (Coombes, 'Cultural Ecologies II' (doc A133), p 139)

1017. Urewera National Park Board, *Urewera National Park Management Plan 1976*, p 40 (Coombes, 'Cultural Ecologies II' (doc A133), p 139)

1018. Rodney Gallen and Allan North, *A Souvenir Booklet of Waikaremoana, Wairau-moana, Waikare-iti: A Concise History of the Lakes, the People and the Land* (Hamilton: Urewera National Park Board, 1977)

1019. Ngahuia Te Awekotuku and Linda Nikora, summary of 'Nga Taonga o Te Urewera', 2004 (doc J3), pp 14–15

1020. National Parks and Reserves Authority, *General Policy* (1983), p 34 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1300)

1021. Department of Conservation, *Te Urewera National Park Management Plan 1989*, pp 31–32

1022. Department of Conservation, *Te Urewera National Park Management Plan 1989*, p 57

More recently, there has also been a shift towards attempts to involve Maori, to some degree, in the decision-making about the management of wahi tapu sites.¹⁰²³ For example, the 2002 historic resources strategic work plan of the East Coast Hawke's Bay Conservancy has stated:

working with iwi is central to the conservancy's approach to managing historic heritage

[the] Conservancy is committed to iwi involvement in the decision making processes and management of historic heritage of importance to Maori. Co-operative management of all sites of cultural importance begins with protection from negative actions by the Department and the public. Interpretation of sites of significance to Maori will only be undertaken with their agreement and assistance.¹⁰²⁴

However, as DOC's draft wahi tapu policy guidelines note, the statute book limits DOC's delegation of decision-making powers – it is applicable to some classifications of sites but not others.¹⁰²⁵ Those guidelines set out that DOC ought to negotiate agreements and protocols with Maori about storing taonga, and protecting and managing wahi tapu; and recognises that wahi tapu 'can be identified or assessed only by tangata whenua and that cultural knowledge of waahi tapu is intellectual property with whanau, hapu, and iwi'.¹⁰²⁶

The draft policy suggests some practical solutions to protecting sites of cultural and spiritual significance. It suggests that local Maori have full, unrestricted access to their sites, but that DOC managers consider various measures to restrict public access to sites, namely:

- ▶ realigning tracks away from wahi tapu
- ▶ acquiring alternative access
- ▶ promoting alternative sites for recreational use
- ▶ encouraging respect for wahi tapu
- ▶ where appropriate, discouraging access through erecting discrete signs
- ▶ where appropriate, using by-laws to exclude or control public access.¹⁰²⁷

We are uncertain, from the evidence before us, how many of these suggestions have been implemented.

1023. Department of Conservation, *Te Urewera National Park Management Plan 2003*, p 65

1024. Department of Conservation, *East Coast Hawke's Bay Historic Resources Strategic Work Plan, 2001/2002–2005/2006* (Gisborne: Department of Conservation, 2002), p 6 (Peter Williamson, attachments to brief of evidence, February 2005 (doc L10(a)), attachment H)

1025. Department of Conservation, 'Waahi tapu policy guidelines – draft policy', undated, ca 2005, pp 2, 4 (Williamson, attachments to brief of evidence (doc L10(a)), attachment I). The draft policy also suggests that opportunities be given to Maori on a case-by-case basis to 'exercise an effective degree of participation and control in the protection and management of waahi tapu'.

1026. Department of Conservation, 'Waahi tapu policy guidelines – draft policy', undated, ca 2005, p 3 (Williamson, attachments to brief of evidence (doc L10(a)), attachment I)

1027. Department of Conservation, 'Waahi tapu policy guidelines – draft policy', undated, ca 2005, p 5 (Williamson, attachments to evidence (doc L10(a)), attachment I).

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Glenn Mitchell, the area manager of the Waikaremoana sector of the park, told us that when they receive requests to identify the location of pa sites from members of the public, they do not do so 'because they are culturally important to Maori, and we have been asked not to identify them.'¹⁰²⁸ They also attempt to ensure they are not disturbing wahi tapu sites during their work. They do this by examining their own confidential records of sites and asking hapu representatives who attend their planning meetings if the site is tapu or otherwise culturally significant.¹⁰²⁹ Mitchell added that: 'We are aware also and comfortable with the knowledge that hapu and iwi choose not to disclose many of the wahi tapu known to them.'¹⁰³⁰

Mitchell acknowledged the mistake of publishing maps which show the location of wahi tapu, and said DOC has taken steps to correct this, particularly by deleting these references when they reprint maps. He assured us that all references to wahi tapu will be removed in the next print run of maps.¹⁰³¹

Yet, there are other indications that problems persisted into the DOC era. As we shall see below regarding the Maungapohatu Burial Reserve, it appears that tracks have not been re-aligned away from burial caves, as claimants have requested. And Sidney Paine told us that in the mid 1990s DOC had been remiss in dealing with an issue of access to a wahi tapu. He had noted, while working in the late 1980s for the Department of Lands and Survey carrying out track maintenance, that their foreman, Te Kapua Taea, always recited a karakia when they worked 'at . . . one particular place' on the promontory east of Te Onepoto. Later Mr Paine learned that the pa sites Te Kapua referred to were Te Pou-o-Tumatawhero and Te Tukutuku-o-Heihei. (On the significance of these pa, see chapter 7) Later, in 1996, a member of the public cut a track to Tukutuku-o-Heihei pa site and erected signage indicating to the public that the (unauthorised) track led to the historic pa. Mr Paine claimed that DOC did not object to this action. Two years later, DOC ordered a tree felling gang to remove pine trees in the area, and damage to the remnants of the exposed pa site was caused.¹⁰³²

(5) *The Maungapohatu Burial Reserve*

Since the National Park has been established, there have been several recorded instances of passing trampers and others since at least the 1960s desecrating graves and burial caves on the sacred maunga of Tuhoe, Maungapohatu. A track, called 'Rua's track', passes directly below the northern and north-eastern escarpment of the maunga, and trampers often camp near its north-eastern face. In chapter 15, we have examined the Crown's failure to set aside the Maungapohatu mountain burial reserve in the 1920s, and its eventual return to Tuhoe more than 50 years later. When the Te Urewera National Park was created, the

1028. Glen Mitchell, brief of evidence, 7 February 2005 (doc L9), p 25

1029. Mitchell, brief of evidence (doc L9), p 25

1030. Mitchell, brief of evidence (doc L9), p 26

1031. Mitchell, brief of evidence (doc L9), p 26

1032. Sidney Paine, brief of evidence, 18 October 2004 (doc H20), pp 14–16, 18

THE BURIAL SITES that I have referred to are still there, unprotected, waiting for the curious and light-fingered to stumble across them.

'This is absolutely unacceptable and it needs to be addressed. We can't be everywhere to police all our waahi tapu and keep trampers out, and the number of trampers is only going to increase.

'The trampers are not our manuhiri – they are the Crown's manuhiri – and the Crown needs to take responsibility and make sure that they aren't wandering all over our waahi tapu.'

—Korotau Basil Tamiana, brief of evidence, 16 February 2005 (doc K16), p 3

reserve became an island surrounded by park lands. Soon after the public gained better access to Maungapohatu after the logging road was opened, members of the Maungapohatu Incorporation complained to the Lands and Survey Department in 1964 about interference with graves in the burial reserve.¹⁰³³ Buddy Nikora on behalf of the Tuhoe-Waikaremoana Trust Board also wrote to the secretary of the Park Board in 1982, noting further desecration of the urupa had occurred.¹⁰³⁴

Claimants submitted that the land returned in 1977 did not contain all of the urupa on the maunga. They argued that the original 1924 survey did not include all the burial grounds so neither does the land returned to them: some graves are in the National Park and, because walking tracks are close by, they risk unintentional interference from park visitors.¹⁰³⁵ In its closing submissions, Crown counsel conceded that the Urewera Commissioners did not reserve 'certain urupa at Maungapohatu'.¹⁰³⁶ Yet, the Crown denied, due to insufficient knowledge, that it had failed to ensure that all graves were included in the reserve and made no further submission on the matter.¹⁰³⁷

Claimants Korotau Basil Tamiana and Tama Nikora gave evidence on this matter. Tamiana – who worked in the 1970s for the Department of Lands and Survey – described the discovery of one gravesite:

In the late 1970s I was supervising a track maintenance gang repairing a track from Te Tii, at Maungapohatu, to Waimaha . . . We were working to the North-east of the Burial Reserve,

1033. Jonathan Easthope, 'A History of the Maungapohatu and Tauranga Blocks as Defined by the First Urewera Commission', report commissioned by the Crown Forestry Rental Trust, June 2002 (doc A23), p 255

1034. T B Nikora, Secretary, Tuhoe-Waikaremoana Maori Trust Board, 'Maungapohatu mountain burial reserve', to Secretary, East Coast National Parks and Reserves Board, 2 June 1982 (Coombes, 'Cultural Ecologies II' (doc A133), p 152)

1035. Counsel for Wai 36 Tuhoe, closing submissions, pt A (doc N8), p 77; counsel for Wai 36 Tuhoe Waikaremoana Maori Trust Board, closing submissions, pt B (doc N8(a)), pp 200, 223

1036. Crown counsel, closing submissions (doc N20), topics 18–26, p 43

1037. Crown counsel, closing submissions (doc N20), topics 18–26, p 46

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directly below Tu Te Maungaroa when we uncovered a burial site. The site was a small tomo, or cave, which contained skeletons.

The tomo was definitely outside the area marked as the Maungapohatu Burial Reserve. If you look at a map of the Reserve you will see that Tu Te Maungaroa is the North-eastern corner of the Reserve, and we were to the North-east of Tu Te Maungaroa.¹⁰³⁸

Following a number of other incidents and discussions with elders, Tamiana came to three conclusions:

Firstly, the Maungapohatu Burial Reserve doesn't contain all the burial sites at Maungapohatu. Secondly, because the locations of burial sites are always kept within the family . . . then it must be our tupuna who are buried there. Thirdly, trampers are, through no fault of their own, cooking their kai and doing other activities in the middle of our tupuna's urupa. That's offensive, even if it's not intended.¹⁰³⁹

He added:

The trampers are not our manuhiri – they are the Crown's manuhiri – and the Crown needs to take responsibility and make sure that they aren't wandered all over our wahi tapu.¹⁰⁴⁰

How could the 1924 survey have excluded a number of graves? According to Nikora, the survey plan was 'defined by triangulation and by some estimate of boundaries', and that the boundary of the north-eastern extremity of the reserve (near the area that contains the graves described by Tamiana) was based on the high point of Tu-te-Maunga-roa, as was marked on the map of the survey plan.¹⁰⁴¹ Hence Nikora believes that the burial sites below the high point, on the north-east face and slope of the maunga, are outside the reserve.

Nikora also argued that Maori were not consulted about the fixing of the boundaries of the reserve in 1924, when section 5 of the Urewera Lands Act 1921–22 required that the Urewera commissioners, while being the 'sole judges of the location and boundaries of the portions so awarded to the Crown', they 'shall, in fixing any boundary, consult so far as practicable the wishes and convenience of the [Maoris]'.¹⁰⁴²

However, in 1982, the chief ranger investigated this matter in response to concerns expressed by Buddy Nikora, on behalf of the Tuhoe-Waikaremoana Maori Trust Board, that 'some of the burial areas may not be within the Maungapohatu Mountain Burial Reserve' but 'actually in the National Park'. Buddy Nikora suggested that 'the survey lines may have

1038. Korotau Basil Tamiana, summary of evidence, 16 February 2005 (doc K16), p1

1039. Korotau Basil Tamiana, summary of evidence, 16 February 2005 (doc K16), pp 2–3

1040. Korotau Basil Tamiana, summary of evidence, 16 February 2005 (doc K16), p 3

1041. Tamaroa Nikora, brief of evidence (doc K14), pp 6, 7

1042. Urewera Lands Act 1921–22, s 5 (Tamaroa Nikora, brief of evidence (doc K14), p 7)

been incorrectly drawn.¹⁰⁴³ The park board sent the Chief Ranger (J C Blount) to 'liaise with locals about locations' and had the Senior Surveyor of the Land District investigate historical records.¹⁰⁴⁴ The chief ranger then arranged to meet Mr Tahuri, the farm lessee at Maungapohatu, for a joint inspection of the burial reserve. Tahuri lived at Maungapohatu at the time, farming the land which was leased from the Maungapohatu Incorporation, of which he had been president in 1976. He was also an original member of the Tuhoe Maori trust board. Mr Blount's later letter to Mr Tahuri states:

I am pleased that our recent inspection with you of the burial area's has satisfied you that the graves about which you were concerned are well within the protected area. Should you positively identify any further graves then we would be happy to come back for a further inspection.¹⁰⁴⁵

No further exchanges about the reserve occurred.¹⁰⁴⁶

It is unclear from the evidence presented to us whether the chief ranger checked the 1924 survey plan, or was given the plan by the senior surveyor. Furthermore, the chief ranger may have been unaware of, or could not find the exact location of, the graves uncovered by Korotau Tamiana.¹⁰⁴⁷ The 1924 survey map, although crudely drawn, shows that parts of the eastern and the north-eastern side of the mountain (marked by hachure lines to denote a steep gradient) are outside the reserve. It also shows that the north-eastern point of the reserve is the peak Tu-te-Maunga-roa, thus the parts of the maunga below this point to the north and north-east appear to be outside the reserve.¹⁰⁴⁸ Further, a Department of Lands and Survey cadastral map from 1964 even more clearly shows that the north-eastern point of the 'Maungapohatu mountain urupa' is the peak of 'Maungapohatu no. 2' (another name for Tu Te Maungaroa), and that the area to the north-east of that peak where Tamiana found an urupa near the Waingarō stream and a camping site is plainly well outside the reserve.¹⁰⁴⁹ The Maori Land Court and Lands Information New Zealand both informed us that they had no records of any survey being undertaken of the reserve since the original survey in 1924.

1043. 'Maungapohatu mountain burial reserve', T B Nikora, Secretary, Tuhoe-Waikaremoana Maori Trust Board, to Secretary, East Coast National Parks and Reserves Board, 2 June 1982 (Coombes, 'Cultural Ecologies II' (doc A133), pp 152-153)

1044. Coombes, 'Cultural Ecologies II' (doc A133), p 153

1045. J C Blount, Chief Ranger, to J Tahuri, 'Re: Inspection Maungapohatu burial reserve', 8 October 1982 (Coombes, 'Cultural Ecologies II' (doc A133), p 153)

1046. Coombes, 'Cultural Ecologies II' (doc A133), p 153

1047. Tamiana stated he did not raise concerns about the matter within Lands and Survey at the time because he wanted to retain his job and provide for his whanau. Korotau Basil Tamiana, oral evidence, Mapou Marae, Maungapohatu, 23 February 2005

1048. 'Plan of Maungapohatu Mountain Burial Reserve', Thomson and Farrer, July 1924 (Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), map 20)

1049. New Zealand Cadastral Map NZMS 177 Maungapohatu Sheet N96, Maungapohatu Reserve Kakewahine Block, LINZ: Hamilton, 1964 (Easthope, 'A History of the Maungapohatu and Tauranga Blocks' (doc A23), map 28).

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Overall it appears that the 1924 survey did not include all urupa within the reserve, and hence we recommend that this important matter be investigated. Nikora suggested to us a list of measures that would offer greater protection to this hugely important wahi tapu site for Tuhoe:

- (a) That the existing National Park track close to Maungapohatu Mountain Reserve should be closed or sited far further away from the burial sites as [a] means to dissuade visitors.
- (b) That the Crown, at its own expense correct its survey of Maungapohatu Mountain Reserve to include the burial sites. A GPS survey to be initially carried with Mr Tamiana as a guide, to check the position.
- (c) That the reference to 'Burial' in the name 'Maungapohatu Mountain Burial Reserve' be deleted from all published maps as some means not to attract vandals.¹⁰⁵⁰

Such measures offer a clear way forward.¹⁰⁵¹

(6) Care of Taonga

In respect of the care of taonga in the Park we have referred above to the tensions caused by the initial differences between Tuhoe and the park administrators over displays at the Aniwanuiwa Centre. But Te Awēkotuku and Nikora refer to a much-improved relationship between local Maori and the Aniwanuiwa Centre administration by about the mid 1980s, following the establishment of the new East Coast National Parks and Reserves Board in 1980. This administration, they suggested, had a 'new vision, a new budget, and some intriguing new directions.'¹⁰⁵² This was evident in the purchase at auction by DOC of the iconic Rua Tupua flag – a flag made by the Rongowhakaata people of Pakowhai for Rua when he went 'to meet the king'.¹⁰⁵³ They saw the repatriation of the flag as 'a beginning, a shift away from earlier practice and attitudes'.¹⁰⁵⁴

By 1999, DOC had a draft collections policy for Aniwanuiwa Museum, a policy which it abides by in the interim; it emphasises the participation of iwi and hapu in the storage and management of taonga. The policy itself is approved by DOC, the Waikaremoana Maori Committee and the Tuhoe Manawaru Tribal Executive.¹⁰⁵⁵ To give examples of how this policy works in practice, Mitchell told us that in 1994 representatives from the Waikaremoana Maori Committee worked with DOC to set up a museum and visitor centre joint review

1050. Tamaroa Nikora, brief of evidence (doc K14), p 8

1051. It is pleasing to note that the most recent topographical map (updated in 2010) displays the name 'Maungapohatu reserve': <http://www.topomap.co.nz/NZTopoMap/nz56309/Maungapohatu/Bay-of-Plenty>, accessed 12 August 2012.

1052. Ngahuia Te Awēkotuku and Linda Nikora, 'Nga Taonga o Te Urewera', August 2003 (doc B6), p 47

1053. Judith Binney, Gillian Chaplin, Craig Wallace, *Mihaia: The Prophet Rua Kenana and his Community at Maungapohatu* (Auckland: Auckland University Press, 1979), pp 27–28 (doc A112)

1054. Te Awēkotuku and Nikora, 'Nga Taonga o Te Urewera' (doc B6), p 47

1055. Department of Conservation, 'Draft Aniwanuiwa Area Office Collections Policy for Aniwanuiwa Museum', 1999 (Glen Mitchell, attachments to evidence (doc L9(a)), attachment o)

team, which redesigned the taonga gallery in Aniwanīwa, opened in 2000. The gallery was named Nga Taonga Tuku Iho by the hapu representatives. Whariki and tukutuku panels had been made by Tuai kuia Maria Waiwai and her whanau.¹⁰⁵⁶ Further, a joint DOC/hapu management team (from Waikaremoana and Ruatahuna) carry out all planning activities for the museum, including the managing of displays.¹⁰⁵⁷ An example of their collections policy in practice is the collection of Irene Paulger, the teacher and nurse at Maungapohatu, whose valuable collection (originally deposited in Taranaki Museum) was arranged to be moved to the museum in 2000:

The Department has an agreement with Tamakaimoana hapu that the collection remains in the ownership of the hapu, that it is held in safekeeping, that it is not to be displayed or loaned to any other party. The agreement expires annually and is renewed annually, so that as staff and kaumatua move on it is not lost sight of.¹⁰⁵⁸

The policy also states that acquisitions for the museum shall be made for items of historic and cultural significance to Te Urewera National Park, and to Tuhoe and Ngati Ruapani; that items are acquired with the full and equal consideration of the viewpoints and values of both DOC and Maori; that items are to remain on site if possible, and if they are removed, they ought to be returned to the original location where they were found if appropriate; and if the item cannot be returned, then it can only be acquired by consulting local Maori.¹⁰⁵⁹

But Nikora and Te Awekotuku believe that this joint arrangement is an exception and ‘probably more a reflection of particular staff and their individual relationships with Tuhoe, rather than a result of institutional will.’¹⁰⁶⁰ In any case, they point out that the vast majority of Tuhoe taonga are held in museums and private collections outside Te Urewera; consequently, Tuhoe do not have any control or say in the management of them.¹⁰⁶¹ Repatriation to Tuhoe of their taonga has only occurred on a few occasions.

Tangata whenua, as kaitiaki of their historical and cultural heritage, should be invited to participate in the identification, preservation and management of that heritage in national parks.¹⁰⁶²

(7) The park's effect on kaitiaki responsibilities – conclusions

The experience of iwi in respect of their wahi tapu and taonga since the national park was created has not been a happy one; it has put added strain on the relationship between

1056. Mitchell, brief of evidence (doc L9), p 21

1057. Mitchell, brief of evidence (doc L9), pp 24–25

1058. Mitchell, brief of evidence (doc L9), pp 24–25

1059. Department of Conservation, ‘Draft Aniwanīwa Area Office Collections Policy for Aniwanīwa Museum’, 1999 (Glen Mitchell, attachments to evidence (doc L9(a), attachment O)

1060. Te Awekotuku and Nikora, ‘Nga Taonga o Te Urewera’ (doc B6), p 89

1061. Te Awekotuku and Nikora, ‘Nga Taonga o Te Urewera’ (doc B6), pp 88–89

1062. New Zealand Conservation Authority, *General Policy (2005)*, p 29. Also see page 16.

communities and park administrators. There has been a lack of protection of sites: many taonga have been stolen, destroyed or vandalised, particularly in the early years of the park, and particularly in remote or unpopulated areas. While we recognise that it may have been very difficult for park administration to patrol sites, there seems to have been little thought given at that time to measures to protect such sites. This might seem surprising, given the number of visitors who began to come into the park. But in light of the general unwillingness of the board initially to acknowledge the long history of iwi occupation in the area, it seems less so. The sad result in any case was that major sites at Maungapohatu and Waikaremoana and elsewhere were desecrated and plundered.

Initial park policy moreover was to acquire taonga within the park with little or no regard for the iwi wishes, concerns or values. But by the 1990s, park administrators have emphasised the participation of iwi and hapu in the storage and management of taonga, and have established a joint management committee for the storage and management of taonga at Aniwanuiwa Museum. They have also accepted that ownership of taonga should remain with Maori, and acquisition only occurs with the assent of local people. Preference is given to taonga staying in situ rather than being removed. As with many of the initiatives in the Waikaremoana sector of the park, however, it appears such policies are based on the strong and sympathetic relationship of local staff and their area manager with local Maori, built up over many years, rather than a park-wide approach; we were not presented with any evidence that such a cooperative process to handling taonga exists elsewhere in Te Urewera. The loss of the museum, moreover, has dealt a real blow to this arrangement. Further, the vast majority of taonga held by museums and private collectors are outside Te Urewera.

Policies in recent years have also tried to mitigate the tension between free public access to the park, and respect for wahi tapu. While we lack evidence on how such policies are working on the ground, the results seem mixed. On the one hand, it does not appear that the walking tracks have been diverted away from the Maungapohatu burial ground, though as we noted above, the name itself has now been changed on the most recent topographical map to Maungapohatu Reserve. There remains an issue about urupa which are not included in the reserve. On the other hand, there have been some efforts for greater protection of wahi tapu by removing their locations from maps when they are republished (though unfortunately many copies of old maps, brochures, and booklets are still in circulation). There has been consultation about the location of new facilities and DOC activities in the park so that wahi tapu are not disturbed. And there is DOC respect for Maori not wanting to disclose to them the location of many wahi tapu and battle sites.

It is pleasing to note that the 2005 General Policy of the Conservation Authority gives greater effect to the Crown's duty to actively protect sites, and the need for Maori participation and consultation regarding the identification, preservation, and management of their heritage in national parks:

TE UREWERA, our church, our food basket, our home.

'You call it a National Park. You say it is for all New Zealanders to enjoy, for the good of the Nation. Well what about the Tuhoe Nation, if we are going to be fair, why don't you open up your houses and your property to Tuhoe to enjoy. Would you like it if I walked into your kitchen uninvited, made myself a baked bean sandwich and then lay on your couch watching TV? They have a word for that, it's called Home Invasion.

'Maybe after I've finished eating all your food, I would then go and sprinkle my dead auntie's ashes in your fridge and then go and mimi in your drinking water.

'My suggestions sound ridiculous, but this is what we have had to put up with, for the good of true-blue New Zealanders.'

—Te Weeti Tihi, speaking at Ruatoki. 2004

As part of its duty to actively protect the interests of tangata whenua, the Crown has responsibilities for preservation of sites of significance to them. Some sites of significance are known only to tangata whenua and are not identified publicly, in order to protect them.

16.8.5 Conclusions

Te Urewera National Park is unique in New Zealand for its intimate proximity to resident Maori communities who belong to the park lands, yet that defining feature of the park has not been recognised and provided for in national park law and policy. The evidence reveals that the experiences of the peoples of Te Urewera with the national park have been, and remain, characterised by the fundamental clash between their cultural values and those of the national parks regime. With law and policy on its side, the national park system has survived the collision largely unscathed, but also at further cost to the Crown's relationship with the peoples of Te Urewera. In a national parks system that was designed without any thought for them, the communities of Te Urewera were originally defined, by omission, as anomalies.

It is possible to see why this was the case at the outset. Te Urewera national park was – and remains – unique among New Zealand's national parks. Had there been a number of parks enclosing Maori land and abutting resident Maori communities, we might assume that the realities would have worked to produce change at national policy level. As it was, the Te Urewera park board and its successors were largely left to consider how to manage issues such as long-established customary uses of park resources themselves.

This led to a range of problems. First, the board shied away from tackling the issue head on. It seems to have taken refuge in the hope that customary uses would diminish over time; but even when it became clear that this was not happening, it did not rock the boat. Te Urewera national park's earlier administrators had two choices: to try to make the law work in the park and hope that the gap between what the law required and what local people were accustomed to doing would reduce with time; or protest that the law did not cater for the needs of the resident communities of Te Urewera and lobby for change. They went with the first option, for various reasons. First, the chairman of the board was a Crown officer who was bound, professionally, to further the Act's objectives; and a number of the other board members were environmentalists, farmers and trappers who personally supported those objectives. Secondly, members were conscious of widespread public support for national parks law. This (along with their minority membership of the board and its successors,) weakened the position of Maori park board members in particular who might have wished to press for law reform to recognise their peoples' interests in the park. A less obvious reason is their fear that a protest could backfire by drawing unwanted attention to their peoples' uses of the park, some of which had won acceptance from the park board, while others continued despite being contrary to park rules. Hence the response of a Maori member of the East Coast Parks and Reserves Board to 1987 submissions on the draft management plan from the 'young men of Tuhoe', who submitted that restrictions on hunting in the park should not apply to Tuhoe. The board and the park's draft plan, said the member, were sympathetic to Tuhoe, but care was needed not to provoke opposition from the wider public:

when you look at the draft plan, the Board has written it in a manner that the public can tolerate, if we push it too much one way there will be a reaction and it is testing how far we can go. It is not so much the Board that you need to influence but the public of New Zealand.¹⁰⁶³

And it was not only Maori park board members who felt the pressure of conflicting values systems and feared that giving publicity to Maori uses of the national park could lead to a backlash. The response by park staff and the East Coast National Parks and Reserves Board to the concerted lobby by pony clubs to be allowed to use Te Urewera national park provides a clear example.

The evidence further provides some indications of the difficult position in which Maori park board members were placed when working to further national park objectives which did not favour traditional uses of the park's resources, while knowing that their peoples' culture and livelihoods depended on the continued use of those resources.

¹⁰⁶³ Minutes of the meeting between the East Coast Parks and Reserves Board and the Young Men of Tuhoe, Murupara County Council Chambers, 17 September 1987 (Brad Coombes, comp, supporting papers to 'Cultural Ecologies of Te Urewera II' (doc A121(a)), p264)

A further outcome of the boards' failure to confront the issue before them was that customary uses were in general left to park staff to handle at their discretion. There was acceptance that ways should be found to allow people to continue such uses – but this should be done on an informal basis. The enforcement of park rules has not always been consistent. In the earlier years of the park, the park board instructed rangers to take a lenient approach to local peoples' unauthorised uses of the park, and to encourage their compliance by explaining the park rules. But this meant that people might be subjected to arbitrary decisions – and one result of that was that they ceased, in some cases, to observe the rules. Perceived inconsistencies in park staff use of their discretions to permit hunters to use dogs, and to enforce those rules, were another common cause for complaint:

The Department of Conservation's regulations are totally unjust to the people of Te Waimana. . . . they decided that if you wanted to take dogs into the bush you had to be a member of a pig hunting or deer hunting club, and a tag had to be worn by the dogs. Only then would you be permitted to take three dogs into Te Urewera. The people of the valley were not given any exemption. As an example of this, some older men were returning from pig hunting at Te Ono Putu. It became dark so they set up camp off to the side of the track. At that time dogs were prohibited, but the track they were on had been paid for through our lands. Perhaps somebody informed the Department of Conservation, but one of their rangers was sent to investigate. These men were caught because they had left the track to set up camp. They got into trouble and were penalised. On another occasion after this . . . I accompanied a Department of Conservation officer, a relation of ours, to Te Ono Putu to work on the track. When we returned we met two Pakeha and their dog and made ourselves known to them. The dog was not permitted to be in the park, but they were not evicted, and they were not penalised. I thought to myself, yes there is one law for Pakeha, and another law for Maori. From that moment I stopped accompanying our relation to help him with his work.¹⁰⁶⁴

Even in later years, when rules about customary uses were written into policy, it seems that enforcement of the park's rules has not been consistent, for reasons that include the size of the park, its proximity to Maori-owned land (where activities can be conducted – such as hunting with dogs – that would be unlawful in the park), and the discretion of park staff in dealing with individual situations.

From our earlier account of the General and park policies, it is plain that their approach to traditional uses of Te Urewera national park has not been uniform. Rather, the responses have been, variously, belated, limited, and changeable – especially in response to external pressures. Different responses have been made to what are in fact related issues of horse use for access to Maori land, horse and dog use in hunting, customary harvests, and the

1064. Colin (Pake) Te Pou, brief of evidence (doc H40), p 5

protection of sacred sites and taonga. In other words, park administrators did not see, or felt unable to deal with, the fact that the issues reflected different elements of a coherent cultural system. Instead, they treated the situation as if it presented separate problems that could fairly be dealt with according to the national parks regime's mixed (public and private interest) values and the rules derived from them.

All of this comes back to the central issue before us: why did the Crown's most senior officers involved in national park administration fail to recognise the situation in Te Urewera as raising squarely the issue of the rights and responsibilities of indigenous peoples in connection with protected lands? As we have seen, that issue was increasingly on the agenda of international conferences attended by those officers. And by the mid-late 1980s both the challenges raised at those conferences, of indigenous uses of protected lands, and the increasing recognition of Treaty rights at home led to official efforts to acknowledge Maori rights – particularly in Te Urewera.

What did not happen however was any concerted confronting of the possibility of recognising and providing for sustainable use – even development – of park resources by iwi, in parks where communities lived and were dependent on park resources. Despite the importance of this recognition in overseas parks, it seems that in New Zealand this was long regarded as too hard. Strangely, however, it is hard to see why. Hunting to control deer and pig numbers – that is, hunting on a self-balancing basis – was not just provided for in general park policies, but encouraged – as were a number of other activities which certainly left their mark on the landscape. The next step was simply to have made particular provision for resident indigenous communities – in the Act, and then in policies and plans. But it seems that park authorities had a persistent cultural blind spot. The reliance of iwi on hunting for food, and to supplement their income in an area where there were few such sources, was well known. If park policy-makers and administrators shied away from leading this kind of change, it was evidently because they feared being seen to 'favour' Maori – particularly in respect of hunting, a highly visible activity (unlike pikopiko gathering) which could arouse vocal opposition.

The national park regime has – variously – ignored, undermined, fragmented and, more recently, paid lip-service to the kaitiaki responsibilities of the peoples of Te Urewera. Some park administrators have made commendable efforts to relieve the pain and stress of the fundamental conflict between national park and Maori cultural values. But because the systemic causes of peoples' negative experiences of the park have not been tackled, those efforts have been of the band-aid variety. Informal turning of a blind eye to park rules has not legitimated customary norms; it has merely protected particular instances of them from criminal prosecution. Requiring permits for traditional uses does not legitimate them when the criteria for obtaining a permit do not accord with tikanga.

Even today, though there is a professed commitment to Maori in Te Urewera National Park as 'primary stakeholders'/kaitiaki – and improvements are apparent, the fundamental clash of park and Maori values remains. The Crown maintained that claimants have given insufficient weight to the changes introduced since 1980 (in large part because of the Conservation Act 1987) by which the tangata whenua of Te Urewera are now recognised as kaitiaki of the taonga of the area and are included in park planning processes and the administration of certain initiatives. Certainly, there has been a shift in the wording of policy and planning documents – both at national level and for Te Urewera national park – to recognise the relationship of Maori with the Park. And there has been more, and better quality, consultation about certain park management issues. But the changes that have accompanied the stated recognition of kaitiakitanga are essentially procedural, not substantive, because the governing legislation – the National Parks Act 1980 – has not been amended to include among its goals the protection and promotion of resident Maori communities' interests in their ancestral lands. Instead, the Act's goals remain focused on environmental preservation and conservation, and on the recreational uses of park lands by visitors, so that the now-recognised right of local Maori to be consulted about, and participate in, national park administration is also focused on those goals. The disjunction between national park values and Maori cultural values remains but Maori are now included to a greater degree in the processes by which Te Urewera national park is run.

The inevitable result is that, for the resident communities, the changes in park management processes and style still do not address their fundamental concern – that the existence of their communities, their culture and future welfare are not central to, or even part of, the philosophy of Te Urewera national park. Thus the changes that have been made to the processes and terminology employed by park management, while a welcome advance on the less inclusive practices of the past, are experienced by the peoples of Te Urewera as merely improvements in a regime that is essentially at odds with their needs.

The disjunction between the statutorily defined objectives of national parks and the needs of the communities of Te Urewera has placed the Department of Conservation in a difficult position as regards complying with section 4 of the Conservation Act by giving effect to the principles of the Treaty of Waitangi in its administration of Te Urewera national park. But while we acknowledge that, it is our view that, even in its efforts to make its management procedures Treaty-compliant, the department's efforts have been inadequate in two major respects. First, as we discuss in our next section, the only evidence we received of initiatives being taken by Te Urewera national park management in an effort to meet Maori concerns or to involve Maori in park administration, was confined to the Aniwanui sector, and such initiatives are not representative of a more general departmental approach to the place and role of tangata whenua. Secondly, we believe that the Treaty content of the most recent policy and planning documents issued by the statutory bodies that now have responsibilities

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for Te Urewera national park – along with many other responsibilities – is inadequate. The statements in those documents – particularly the 2005 General Policy document – about the Crown’s Treaty responsibilities to Maori in connection with national parks are, in our view, vague to the point of being unhelpful to departmental staff.

In the simplest terms, the resident communities remain very conscious that their rights in park lands have not been recognised, and the long history of ignoring their rights has fuelled a deep resentment. Te Weeti Tihi’s evidence, which we cite above, conveys something of feelings which may not often surface, and which are the product not just of feelings about the park, but of the sense of alienation that decades of Crown policies have produced. Fixing the park, however, would be some tangible move towards healing those deeper grievances. A national park, after all, offers resident communities some real advantages. As the Tribunal put it in its recent Wai 262 report considering the relationship of Maori with the conservation estate generally:

although it is owned by the Treaty partner, every inch of it is tribal territory. Landscapes and landforms evoke the old stories, and they in turn evoke whakapapa. For this reason, individual iwi and hapu relationships with conservation land remain tangible in ways not usually possible in more modified environments.¹⁰⁶⁵

Well conceived and administered, a park could be protective of Maori traditional uses, and assist people in fulfilling their kaitiaki responsibilities

The underlying problem in the park itself is that the generic National Parks Act, with its preservationist principles and policies, continues to apply in Te Urewera.

16.9 TO WHAT EXTENT HAVE THE PEOPLES OF TE UREWERA BEEN REPRESENTED OR OTHERWISE INVOLVED IN THE GOVERNANCE, MANAGEMENT, AND DAY-TO-DAY ADMINISTRATION OF TE UREWERA NATIONAL PARK?

Summary answer: *The peoples of Te Urewera have never had statutorily guaranteed membership on any of the various authorities and boards with governance and management responsibilities for Te Urewera National Park. Before 1990, there were no guaranteed places for any Maori on the central Authority responsible for National parks policy. But the main concern of the peoples of Te Urewera has been their inadequate representation on the bodies with particular responsibility for Te Urewera national park. While they have never had statutorily guaranteed membership of these bodies, they have almost always been represented on them as the result of ministerial appointment: Tuhoe have always had either one or two representatives, while Ngati Kahungunu also had a representative from 1974 to 1990, and again from 1999 until*

¹⁰⁶⁵. *Ko Aotearoa Tenei – a report into claims concerning New Zealand law and policy affecting Maori culture and identity*, Waitangi Tribunal report, p127

about 2002. The Crown has thus never formally recognised the right of iwi representatives to be on the Urewera National Park Board and its successors – despite acknowledging their continuing connections to the park lands. In any case, the Maori representatives have always been in a minority, which has meant that their interests could be ignored or sidelined when they did not align with the interests preferred by the National Parks Act.

Opportunities for involvement of the peoples of Te Urewera in park policies and plans have increased since 1976, when the first management plan was issued. But there were still few Maori submissions on the 2003 draft plan, and complaints that the time allowed by DOC for submissions was too short. There is a strong feeling among claimants that DOC is not interested in a negotiated outcome with iwi, who are disadvantaged in a process where a draft plan, prepared by the department, is the subject of numerous written submissions from groups representing environmental, recreational and other interests, which are based mostly outside Te Urewera. Although DOC sets out its Treaty responsibilities in its policy and planning documents, its interpretation of them focuses very largely on the process – not the substance – of its decision-making. That is consistent with the fact that the National Parks Act's purposes and principles do not recognise the importance of protecting the relationship of Maori communities with their ancestral lands.

Nor have Maori ever been greatly encouraged to be involved in the day to day running of the park. Until the 1980s a number of honorary rangers were appointed – a minority of whom were local Maori; thereafter the park staff became increasingly professionalised. An early experiment in local representatives issuing hunting permits was shortlived because of the fears of park staff that Maori might be privileged. There was a complete absence of involvement with local communities to address the very real problem of hunter trespass on Maori lands. The solution eventually developed in the 1970s by the Tuhoe-Waikaremoana Maori Trust Board, of appointing their own wardens, was not supported by park administrators; a recent step has been to ask park rangers to do more. In terms of general involvement in park management, the 'Aniwaniwa model' of decision-making with two local iwi committees, developed since the mid-1990s, has been much more inclusive. However, this model has not been extended throughout the park. It continues to depend on the goodwill of one area manager, with funding managed at a distance.

16.9.1 Introduction

The peoples of Te Urewera have been accorded a very limited role in the national park's governance and management. This is a source of frustration and insult to claimants, given that their communities border or are even virtually enclosed within the national park that has been established on their ancestral lands. We consider the issues raised by the claimants by examining the following three questions:

‘TUHOE have always felt that they had a marginalised influence on decision-making.’
—Aubrey Temara (quoted in Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 261)

- ▶ To what extent have Te Urewera peoples been included in the statutory bodies with governance and management roles for the park?
- ▶ What opportunities have there been for their input to park policies and plans?
- ▶ What opportunities have there been for local Maori involvement in the day-to-day running of the park?

16.9.2 To what extent have Te Urewera peoples been included in the statutory bodies with governance and management roles for the park?

The claimants and Crown agree that there has never been statutorily guaranteed membership for the peoples of Te Urewera on any of the various authorities and boards that have had governance and management responsibilities for Te Urewera National Park. They disagree, however, on the significance to be attached to that fact given that there have almost always been representatives of the peoples of Te Urewera on the original park board and its successors.

The claimants’ criticisms of the national parks regime placed comparatively little emphasis on the composition and role of the three central Authorities that, since 1952, have had policy-focused functions in relation to all national parks: the National Parks Authority (1952–80), the National Parks and Reserves Authority (1981–90), and the New Zealand Conservation Authority (since 1990). It is noteworthy, however, that the National Parks Authority, with its statutorily-defined membership dominated by senior public servants and environmental, recreational, and scientific interest group members, seems never to have had a Maori member in its nearly 30 years of existence to 1980. Only since 1990, with the creation of the 13-person New Zealand Conservation Authority, have there been any guaranteed places for Maori on the central Authority responsible for national parks policy. (The Minister of Maori Affairs nominates two members, and Te Runanga o Ngai Tahu nominates one member, to the Authority.¹⁰⁶⁶) Although the peoples of Te Urewera have not been represented on the Conservation Authority or its predecessors, their greater concern by far

¹⁰⁶⁶ Conservation Law Reform Act 1990, s 6D. The Ngai Tahu position on the Authority was created in 1998 by the Ngai Tahu Claims Settlement Act 1998.

is that they have not had sufficient representation on the statutory bodies with particular responsibilities for Te Urewera National Park.

Since Te Urewera National Park was established in 1954, there have been six bodies at park or regional level with responsibilities for its management: the South Auckland Commissioner of Crown Lands (1954–61), Te Urewera National Park Board (1961–80), the East Coast National Parks and Reserves Board (1981–90), the East Coast Conservation Board (1991–97), the East Coast Hawke’s Bay Conservation Board (1998–2009) and the East Coast Bay of Plenty Conservation Board (2009–present). Although the peoples of Te Urewera have never had statutorily guaranteed membership of any of the bodies that have existed since late 1961, they have almost always been represented on them as the result of ministerial appointment. The original nine-member park board had either one or two Tuhoe representatives at all times. Ngati Kahungunu also had a representative on the original park board from 1974 to 1990, and again from 1999 until about 2002. We have noted earlier that the seven year delay in appointing a park board was due to the Crown’s focus on purchasing adjacent Maori land to add to the park – a focus that did not fade for many years. When the Minister of Lands decided to appoint the first board for the park, he announced that it ‘should . . . contain representatives drawn from the Rotorua, Whakatane and Wairoa areas and of the Maori people.’¹⁰⁶⁷ The Minister’s appointment of Tuhoe representatives to the original board may have been inspired not only by the iwi’s historical associations with the park lands but also its ownership of adjacent land that the Crown wanted to include in the park. Certainly, as late as May 1977, when the question arose of whether to reappoint one or both of the Tuhoe park board members, the chair of the board advised the chair of the National Parks Authority in terms that emphasised the influence each member might have in smoothing the way for future acquisitions of Tuhoe land.¹⁰⁶⁸

The Tuhoe claimants contend that their ancestral associations with the lands of the park, and their ongoing responsibilities as kaitiaki, should have been recognised by a statutory guarantee of their membership of the park board and its successors.¹⁰⁶⁹ This idea was rejected twice, in 1973 and in 1980. On the first occasion, the Minister of Maori Affairs sought support from the National Parks Authority and the Urewera National Park Board to a proposal to amend the National Parks Act to guarantee Maori membership of the park board. Neither body supported the idea, on the basis that the system of ministerial

¹⁰⁶⁷ ‘Establishment of Park Boards for Westland and Urewera national parks’, press release, not dated (cited in Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 168)

¹⁰⁶⁸ RM Velvin to Chairman of the National Parks Authority, 5 May 1977 (Edwards, supporting papers to ‘Selected Issues: Te Urewera National Park’, various dates (doc L12(a)), vol 2, p 877)

¹⁰⁶⁹ Tuhoe Wai 36 closing submissions, pt B (doc N8(a)), p 190; counsel for Nga Rauru o Nga Potiki, closing submissions (doc N14), p 111

Tama Nikora informed Coombes that on the park board ‘we were outnumbered by English gentleman farmers . . . We were there, but not equal.’¹

1. TR Nikora, personal communication, not dated (cited in Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 168)

appointments worked well.¹⁰⁷⁰ In 1980, the select committee considering the National Parks Bill was advised by Lands and Survey staff that Maori membership of Te Urewera National Park board was not ‘as of right’ for, unlike Tongariro and Egmont National Parks, there was ‘no special historical significance’ in the establishment of the park.¹⁰⁷¹ Therefore, it is as a matter of practice – not of right – that representatives of the peoples of Te Urewera have continued to be appointed to the boards that have succeeded the original park board. The Crown contends that the quantity and quality of representation of the peoples of Te Urewera on the original park board was sufficient without a statutory guarantee of membership and that the Maori members were influential in bringing their peoples’ interests to the board’s attention.

In our view, the Maori board members (who were mostly two out of nine board members) faced extremely difficult challenges in representing their community’s interests – far more than were faced by other board members appointed for their special interests, namely, those representing the Royal Forest and Bird Protection Society or the Federated Mountain Clubs. Those interest groups had been influential in developing the Act and, as a result, their interests were formally recognised not only in the Act’s purposes and principles, but also in the membership of the National Parks Authority and even, in certain circumstances, in the membership of park boards.¹⁰⁷² The situation was totally different for the peoples of Te Urewera. They had not been consulted about the design of the Act and there was no statutory recognition of their interests. In fact, as we have seen, the interests preferred by the Act were opposed to extractive uses of park resources and to the presence of horses and dogs in the park, yet these are essential elements of the subsistence lifestyle of Te Urewera

1070. Edwards, ‘Selected Issues: Te Urewera National Park’ (doc L12), p 74; TR Nikora to Chairman, Urewera National Park Board, 18 June 1973 (Campbell, comp, supporting papers to ‘Te Urewera National Park’ (doc A60(b)), p 282); and National Parks Authority minutes, 26 September 1973 (cited in Campbell, ‘Te Urewera National Park’ (doc A60), p 157)

1071. ‘Membership of Urewera National Park Board’, briefing paper attached to Director-General of Lands to Minister of Lands, 30 June 1980, p 2 (Edwards, supporting papers to ‘Selected Issues: Te Urewera National Park’, various dates (doc L12(a)), p 897)

1072. There was provision for the Federated Mountain Clubs and the New Zealand Ski Association jointly to nominate a member for any park board that the National Parks Authority considered should have mountain climbers and skiers represented on it (National Parks Act 1952, s 18(3))

communities. Unlike other board members, who reported back to groups with interests aligned with the park's core preservationist values and its recreational uses, the Tuhoe and, later, Ngati Kahungunu appointees bore the brunt of mediating with their communities over the activities they carried out on park lands according to their own tikanga. The evidence shows that Maori board members found this extremely challenging and often stressful.

Since 1980, representatives of the peoples of Te Urewera have continued to be appointed to the various boards that have exercised functions in relation to Te Urewera National Park. The Crown contends that the level of representation has been adequate but compared to the pre-1980 period, the later boards' roles have changed significantly and this has reduced their collective focus on, and knowledge of, the park. The boards' territorial jurisdiction has been expanded beyond the park to other public lands so that, nowadays, the park is just one part of a far larger area of conservation lands for which the regional conservation board has responsibility. As well, the boards' functions have changed, from the original park board's hands-on management role to the current conservation board's planning and advisory role. Overall, compared with the original Urewera National Park Board, today's board has a role that is substantially diluted, both territorially and functionally. One result is that it is far more dependent on conservation department staff for information about the park and the peoples of Te Urewera. Three representatives of the peoples of Te Urewera who have served on post-1980 boards gave evidence of those boards' remoteness from the national park and the local communities. Aubrey Temara considers that an effect of the current regime is that the park is managed in isolation from its reality. In his view, a return to localised administration is needed:

Short of outright return of land in the Park to Tuhoe ownership . . . it has always been a long-held view that at least the former Te Urewera National Park Board [ought to] be re-instated so that decisions [are] for the most part localized or . . . [have] the feel of localization.¹⁰⁷³

Korotau Basil Tamiana echoed the need for local management of the national park, for the reason that the park 'is no longer a priority' in a conservancy that stretches over a large area outside Te Urewera. In his view too, the conservation focus of the department meant that the park management plan 'had been high-jacked by conservation issues rather than maintaining a management focus.'¹⁰⁷⁴ Reay Paku also criticised the remoteness from the park of a conservancy board 'which is not really conversant with the issues surrounding the lake, its lands, its histories, and its peoples.'¹⁰⁷⁵

In our view, the absence of a statutory right of membership for the peoples of Te Urewera on any of the boards that have had, and still have, responsibilities for Te Urewera National

1073. Aubrey Tokawhakea Temara, brief of evidence, 16 February 2005 (doc K15), p 8

1074. Korotau Basil Tamiana, brief of evidence, 21 June 2004 (doc E11), p 5

1075. Reay Paku, brief of evidence, 22 November 2004 (doc I35), para 4.7

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Park reflects badly on the Crown's awareness of the history of the park lands and of the peoples' continuing connections to them. It is an insult to the peoples of Te Urewera not to be recognised, formally, as having the right to be represented on those boards. It may also have put the Maori appointees at a disadvantage, for other board members might have responded more favourably to the Maori members' concerns had their appointment been guaranteed by statute.

But those matters do not get to the heart of the issues raised by the claimants. As we see it, even had their membership of the various boards been provided for by statute, the representatives of the peoples of Te Urewera would still have been in a minority at the board table. Therefore their interests could still be ignored or only partly recognised whenever they did not align with the interests preferred by the National Parks Act. And this takes us to the central issue. There can be no doubt that the National Parks Act is not geared to embrace the use of national parks by resident Maori communities in accordance with their tikanga. In fact, the Act's purposes and principles are in many respects inimical to the purposes for which, and the principles by which, the peoples of Te Urewera have traditionally used, and continue to use, the park's resources. In these circumstances, we believe that the relationship between the park's administrators and the peoples of Te Urewera would not have been significantly affected had the peoples' representation on the boards been guaranteed by statute.

16.9.3 What opportunities have there been for input to park policies and plans?

The same reasoning applies to the claimants' complaint that they have had very few other opportunities to influence policy for, and management of Te Urewera National Park while other groups, particularly environmental and recreational groups, have been heavily involved in the development of policy and plans and have had their views favoured because of the weight of their apparent numbers. Yet, the Crown's response is that there is no evidence that other groups' views have been preferred at the expense of local communities and that, since 1980, there have been increased opportunities for the peoples of Te Urewera to have input to park policy and planning. It also says that the 2003 park management plan accords primacy to 'the relationship with the key "stakeholder" group in the Park, tangata whenua (ahead of State agencies and groups/individuals).'¹⁰⁷⁶

It is true that the opportunities for Maori input to the development of the park's management plan have increased substantially since the first plan was issued in 1976. At that time, there was no effort made by the board or Lands and Survey staff to secure input from Maori groups although, at the urging of board member John Rangihau, Mr Tamaroa Nikora was

1076. Crown counsel, closing submissions, June 2005 (doc N20), topic 33, p10

General Policy for National Parks

2. PUBLIC PARTICIPATION AND COMMUNICATION

Policy

- 2.1 Public participation will be encouraged in major policy issues, extending where appropriate beyond the statutory requirements, and relevant information will be made available to facilitate public input into policy decisions.
- 2.2 Interested individuals and organisations will where appropriate be approached directly for their views on specific proposals. In particular consultative procedures with local Maori groups which have historical or spiritual ties to land in national parks will be fostered, and the views of such groups will be fully considered in formulating management policies.

—National Parks and Reserves Authority, General Policy for National Parks,
Department of Lands and Survey, Wellington, 1983, p 8.

added to the planning team to give advice on issues relating to Maori.¹⁰⁷⁷ In that position, as we have seen, Nikora challenged the park board's awareness of the history of Te Urewera.

By the time the 1976 park plan was reviewed in the 1980s, the National Parks Act 1980 prescribed the process to be followed. It included advertising in newspapers for written submissions at two stages in the process – at the outset, and once a draft plan existed – and providing an oral hearing, if requested, to those who made written submissions on the draft plan. By this time too, the National Parks and Reserves Authority's 1983 General Policy included a new statement that emphasised the importance in park management planning of consulting Maori groups with historical or spiritual ties to national park lands (see sidebar, policy 2.2).

That policy statement had been added at the final stages of the General Policy's development, after 90 written submissions had been received and eight groups had spoken to their submissions. None of the submitters represented Maori interests and the Director-General of Lands, when reviewing the draft policy, consulted three Maori leaders about its content. In response to their concerns, the Director-General recommended three changes to the draft General Policy, which the Minister asked the Authority to agree to, and it did.¹⁰⁷⁸

While the process by which the Te Urewera National Park management plan 1989 was developed complied with the statutory requirements, we are sure that it did not satisfy the General Policy's directive to foster consultative procedures with local Maori groups.

1077. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), pp 270–277

1078. Edwards, 'Selected Issues: Te Urewera National Park' (doc L12), pp 55–56

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No targeted efforts were made to encourage Maori groups to have input to the park plan. Out of 50 written submissions made at the first stage of the process, only two were from Maori groups, and of 96 written submissions on the draft plan, again just two were from Maori groups.¹⁰⁷⁹ Both of the latter groups were heard on marae, after they insisted that should happen, and changes were made to the draft plan as a result.¹⁰⁸⁰ By that time, the Conservation Act 1987, with its Treaty clause, had been enacted and the first policy in the 1989 park management plan reads: ‘The Department of Conservation in the management of the park will have full regard to the Treaty of Waitangi and the traditional rights of the tangata whenua.’

The development of the 2003 Te Urewera National Park management plan included a substantial programme of tangata whenua consultation, which in turn resulted in a larger number of Maori submissions.¹⁰⁸¹ Maori were identified as the principal ‘stakeholder’ in Te Urewera and the department actively sought input from a broad range of tangata whenua groups. The newly appointed Kaupapa Atawhai Manager played a vital role in leading this process, identifying 27 Maori groups who were sent a briefing paper about the plan development process and, later, received a copy of the draft plan free of charge. Nine hui were held before the draft plan was written. Of the 121 written submissions received on the draft plan, seven were from Maori.¹⁰⁸² The department received a number of complaints about the short time span available for submissions, one noting the ‘frustration and anger within Tuhoe people for the continued lack of consultation by government agencies and in this case [DOC],’¹⁰⁸³

Aubrey Temara told us that the process is poor because it is not based on true engagement in which an outcome can be negotiated between the department and iwi which reflects ‘the hopes and aspirations of both parties’. He believes that the many submissions from ‘tauiwi groups’ are given more consideration than the ‘collective tangata whenua representations and the place of iwi in accordance with the treaty’:

The process by which the plan was developed leaves a lot to be desired. The process is still typified by the one way method of producing a draft and inviting public submissions. The process is dominated by the persuasive sway of public opinion based on multiple public submissions leveraged against the few tangata whenua submissions.¹⁰⁸⁴

The 2003 Te Urewera National Park plan was issued before the New Zealand Conservation Authority issued the latest General Policy for National Parks in 2005. Until 2005, the 1983

1079. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), pp 369, 375, 380–381

1080. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 382

1081. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 262

1082. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), pp 228, 400–401, 415

1083. T P Heurea to Minister of Conservation, 4 September 201 (quoted in Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 417)

1084. Aubrey Tokawhakaia Temara, brief of evidence, 16 February 2005 (doc K15), p 9

General Policy had continued in force, having been adopted by the Conservation Authority soon after its creation in 1990. The new general policy is notable for including, early in the document, policies on the ‘Treaty of Waitangi Responsibilities’ of park administrators. The introduction to the policies explains that ‘Effective partnerships with tangata whenua can enhance the preservation of natural and historical and cultural heritage in national parks.’ It continues by giving an informed account of the responsibilities of kaitiaki but provides no explanation of the meaning of the Treaty of Waitangi. Instead, five principles that were recognised by the Government in 1989 are listed, without any information about them being provided (the principles of Government, Self Management, Equality, Reasonable Cooperation and Redress), followed by this oblique statement:

The way these principles are applied will depend on the particular circumstances of each case, including the statutory conservation framework and the significance to tangata whenua of the land, resource or taonga in question.¹⁰⁸⁵

The 10 policies that are then stated make plain that the Treaty responsibilities of those involved in the administration of national parks centre on the need to develop and maintain positive relationships with tangata whenua. Some policies give guidance on how this can be done, including by forming partnerships, ‘to recognise mana and to support national parks’. Three policies direct that tangata whenua be consulted in certain circumstances, namely, in the development of planning documents, and about proposals affecting, and public information on, ‘places or resources within national parks of spiritual or historical and cultural significance’. One policy identifies the circumstances in which customary use of traditional materials may be allowed. The very few references to tangata whenua interests elsewhere in the General Policy show that the ten policies on Treaty of Waitangi responsibilities are intended to be applied across all aspects of national park administration.

The General Policy’s description of DOC’s Treaty responsibilities has a procedural focus: the primary message is that, in the course of the department’s administration of a national park, it should adopt a process of involving local Maori through consultation and other means by which their cooperation in the park’s administration may be obtained. No attempt is made to describe a range of matters of unique importance to local Maori, let alone to require their advice or more active involvement to be obtained. Only two such matters are mentioned – dealings with places or resources of significance, and permitting the customary use of traditional materials – and the most that is required of tangata whenua in connection with these matters is that they ‘support’ any instance of customary use that might be allowed. This limited interpretation of the department’s Treaty responsibilities would seem to be consistent with the fact that the National Parks Act’s purposes and principles expressly promote a range of interests other than the interests of Maori in their ancestral lands. The

¹⁰⁸⁵. New Zealand Conservation Authority, *General Policy for National Parks* (Wellington: Department of Conservation, April 2005), p 15

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16.9.3

specific statutory context, in other words, allows a limited interpretation to be given to the department's 'Treaty responsibilities' in the administration of national parks.

Some claimants have criticised the consultation engaged in by DOC for the purposes of developing or reviewing policy and plans affecting Te Urewera National Park, on the basis that the department has not been open to discussion about the park's ownership or other models for its governance and management.¹⁰⁸⁶ In our view, the department's stance is unsurprising in all the circumstances. It has been aware of the tribunal's inquiry into the manner of the Crown's acquisition of the lands that make up the national park, and that the Crown's concessions of Treaty breach have been limited. It is administering a national park which, the governing statute says, is to exist 'in perpetuity'. Both the National Parks Act and Conservation Act forbid the department from delegating its powers and duties under those Acts to anyone outside the department. In light of those matters, it is understandable that department staff would regard it as unsafe, or futile, or as raising false hopes, to discuss with the peoples of Te Urewera the possibility of their having a substantial role in the governance and management of the national park.

Claimants have also criticised the department's consultation for not taking account of the concerns raised by Te Urewera communities about the environmental state of the park and the negative effects upon them of park rules. It is our strong impression that the peoples of Te Urewera have raised the same sorts of concerns about the park's management for many years now, whenever the opportunity has arisen. As we have seen those concerns have been, and remain, focused on the constraints that the park imposes on their traditional lifestyle and kaitiakitanga, as well as on their opportunities to use their remaining lands to obtain economic benefit. The complaints made in 1998 to the Joint Ministerial inquiry into Lake Waikaremoana, for example (see below) were repeated to us, six or seven years later, almost verbatim, together with the criticism that the department had done very little meantime to implement the inquiry's recommendations. The department, however, considers that its responses to the recommendations have been supported by local Maori leaders and that its consultation on the 2003 park management plan – and other initiatives involving local Maori – have been successful. There are many factors at work in this situation, including the different views held in local communities about how to bring about change that will be for the good of the park, and how fair are the funding and other decisions made by ministers and senior departmental officers that limit the work that can be done to repair environmental damage in Te Urewera National Park.

But the primary factor, we consider, is – again – that the National Parks Act is based in an ideology that is in many ways at odds with local communities' need to continue their traditional uses of the park's resources. This means that the department and the peoples of Te Urewera will be talking past each other much of the time. Not even the best consultative

1086. Aubrey Tokawhakaia Temara, brief of evidence, 16 February 2005 (doc K15), p 9

processes can solve that problem. While department staff's understanding of the local peoples' situation may persuade them to modify, or make an exception to, a park rule that promotes national park values, their responsibilities to administer the law will prevent them from abandoning the rule and replacing it with one that promotes different values. All the factors identified here help explain why the department's interpretation of its Treaty responsibilities to the peoples of Te Urewera is focused very largely on the process of decision making, rather than on its outcome. That is very clear from the 2005 General Policy for national parks, and from the evidence of the department's general approach to management in Te Urewera National Park. For the department, its Treaty obligations are met if it consults with local people in the process by which it reaches its decisions. For some local people, however, the department has a reputation for making decisions that do not address the concerns raised with it in consultation, and that makes the 'consultation' a waste of their time.

16.9.4 What opportunities have there been for Maori involvement in the day-to-day running of the park?

The unique feature of Te Urewera National Park – the presence beside and within it of Maori communities living on their remaining ancestral lands – is a very good reason for local people to be involved in its day-to-day administration. Their deep knowledge of the park lands and resources, the fact that issues arise because of the number of park visitors tramping and hunting so close to Maori land, and the relative lack of employment opportunities to sustain local communities, are further important reasons for their involvement. As we have seen, however, the park has been a limited source of paid employment for local people. This has meant that, for the most part, the support of local people for the park's objectives, and the application of their knowledge and experience for its benefit, have had to be won by unpaid means.

The appointment of individual Maori as unpaid honorary rangers, the involvement of some Te Urewera leaders in issuing permits to hunt in the national park, and Tuhoe's own initiative to appoint wardens to prevent park visitors trespassing on their lands, were all efforts to this end. But they provided only occasional experience of aspects of the park's operations; they did not secure neighbouring Maori communities' participation in the park's administration in any systematic way. Regrettably, the evidence shows that, with one notable exception (the management model introduced in the Aniwaniwa sector of the park from the mid-1990s), the efforts made by park administrators to involve local Maori in its day-to-day running have been limited.

(1) Honorary rangers

Before 1969, honorary rangers were not mentioned in the National Parks Act. But from the very beginnings of Te Urewera National Park, when there were few employed park rangers, it was the practice – of the Commissioner of Crown Lands and, from 1962, the park board – to appoint honorary rangers.¹⁰⁸⁷ Although they had no formal status or powers until 1969, honorary rangers could, for example – and it seems that these were their main tasks in Te Urewera – inform park users about the park’s rules and report any observations of misconduct to the park’s administrators. In 1955, the Commissioner was advised by the Director-General of Lands, endorsing a suggestion from the National Parks Authority, that it would be ‘politic to appoint more people of Maori blood as Honorary Park Rangers’ in Te Urewera National Park.¹⁰⁸⁸ By 1962, when the first park board was appointed, 32 honorary rangers had been appointed, seven of whom (some 19 per cent) were Maori who lived in or around the park.¹⁰⁸⁹ At that time, the National Parks Authority praised their contribution to the park’s operations, saying that ‘their keenness and alertness have assisted in protecting and improving the Park, particularly in the absence of any permanent ranger staff’.¹⁰⁹⁰ Appointments increased after the establishment of the park board.¹⁰⁹¹ The General Policy of the National Parks Authority, issued in 1964, stated that it would approve recommendations for appointment of honorary rangers ‘only where those recommended take an active interest in the park’ and that appointees would be asked to make annual reports to their boards.¹⁰⁹²

In 1969, an amendment to the National Parks Act made permanent rangers employees of the Department of Lands and Survey and provided that a park board could appoint honorary rangers with the same powers as permanent rangers.¹⁰⁹³ The only powers of permanent rangers that were spelled out in the Act were their ‘policing’ powers, which needed to be authorised by statute because of their intrusive nature. Section 52 of the Act provided that permanent rangers could ‘interfere’ summarily (without a warrant) ‘to prevent any actual or attempted breach’ of the Act or any regulation or bylaw. From 1969, if a park board chose to do so, it could confer those powers on any honorary rangers it appointed.

1087. Edwards, ‘Selected Issues: Te Urewera National Park’ (doc L12), p 77

1088. Director-General of Lands to Commissioner of Crown Lands, 28 April 1955 (Edwards, supporting papers to ‘Selected Issues: Te Urewera National Park’, various dates (doc L12(a)), p 1109)

1089. Edwards, ‘Selected Issues: Te Urewera National Park’ (doc L12), pp 77–78. By November 1962, the NPA appointed several more honorary rangers, among them Paitawa Miki, John Temara, and R J Biddle: National Parks Authority, ‘Minutes of Meeting’, 29 November 1962 (Campbell, supporting papers to ‘Te Urewera National Park 1952–75’, various dates (doc A60(b)), p 259)

1090. National Parks Authority, ‘Visit to the Urewera National Park by the National Parks Authority 11 and 12 March 1961’ (supporting papers to Walzl, ‘Waikaremoana’ (doc A73(a)), p 612)

1091. Minutes from meeting of National Parks Authority, Wellington, 29 November 1962 (Campbell, supporting papers to ‘Te Urewera National Park 1952–75’ (doc A60(b)), p 259)

1092. National Parks Authority, ‘The General Policy of the National Parks Authority of New Zealand’ (Wellington: Department of Lands and Survey, 1964), pp 6–7 (Edwards, supporting papers to ‘Selected Issues: Te Urewera National Park’, various dates (doc L12(a)), p 1252)

1093. National Parks Act 1952, ss 27A, 27B

By 1973, some 36 per cent of all honorary rangers in Te Urewera were Maori. While there were 87 people listed as honorary rangers at that time, eight of these were park board members, 11 were officers of the New Zealand Forest Service, eight were officers of the Wildlife Division of Internal Affairs, and seven were staff appointed by the park board or the Department of Lands and Survey.¹⁰⁹⁴ Of the 'true' complement of honorary rangers (53), Edwards concludes that '19 people [36 per cent] are identifiable as Maori from Te Urewera.'¹⁰⁹⁵

Coombes has noted that the appointment of tangata whenua to the positions of ranger or honorary ranger 'provided the opportunity to foster partnership relations'. In his view, however, this was an opportunity that was largely mishandled, because the park board's idea was that Tuhoe honorary rangers would 'police their people'.¹⁰⁹⁶ While Coombes concedes that it was a reasonable expectation of the Board that honorary rangers should enforce park rules, he argues that their potential to add knowledge and liaison between the park and the local people was underestimated.¹⁰⁹⁷ Edwards, on the other hand, suggests that Maori honorary rangers were, like Maori board members, 'cultural ambassadors, raising some matters of concern to their communities with the park board, and in turn raising matters of concern to the park board with their communities.'¹⁰⁹⁸

We do not have sufficient evidence to resolve the point but note that by the early 1980s, the role of the honorary ranger in improving the relationship between park users and rangers, in addition to 'policing', was being encouraged.¹⁰⁹⁹ Some sources suggest that this change was aimed primarily at promoting park values or 'winning' Maori over. The chief ranger, for example, proposed that honorary rangers act as 'public relations officers whose function is to promote Park philosophies and ideals (ie win friends and influence people)'.¹¹⁰⁰ Other sources suggest a more mutual, two-way exchange. In 1984, for example, senior ranger AJ Ure described the work done by kaumatua and honorary ranger Sam Rurehe in the following way:

Mr Rurehe is active in interpreting Maori history to visiting school groups and adult organisations. He has acted as tour leader, guide and interpreter with Maori visitors to Park

1094. Edwards, 'Selected Issues: Te Urewera National Park' (doc L12), p 79

1095. Edwards, 'Selected Issues: Te Urewera National Park' (doc L12), pp 79–80. Coombes, by contrast, said that of the 81 honorary rangers, there were only 12 with 'obviously Maori first or surnames.' As Coombes acknowledged that this methodology is fraught, we have preferred Edwards' analysis. See Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 174.

1096. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 172. Emphasis author's own.

1097. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 173

1098. Edwards, 'Selected Issues: Te Urewera National Park' (doc L12), p 107

1099. Edwards, 'Selected Issues: Te Urewera National Park' (doc L12), p 80; Draft report to the NPRA, 'Review of policy on administration of the honorary ranger system and the training of honorary rangers' [1983], p 3 (Edwards, supporting papers to 'Selected Issues: Te Urewera National Park', various dates (doc L12(a)), p 1132)

1100. Chief Ranger to Commissioner of Crown Lands, 22 July 1983 (Edwards, supporting papers to 'Selected Issues: Te Urewera National Park', various dates (doc L12(a)), p 1128)

Headquarters doing good work for the Park and its historical values. His advice and knowledge is sometimes also sought by ourselves from time to time . . . [such as in relation to] use of the Park and enclaves by the Tuhoe.¹¹⁰¹

An affidavit supplied to the 1998 inquiry into DOC's management of Lake Waikaremoana similarly stated that the honorary ranger scheme, and its employment of local Maori, had helped to improve the historically unhappy relationship between the national park board and local people.¹¹⁰² However, when the management of the park became more professionalised in the 1980s, with a larger number of permanent staff, the practice of making honorary appointments declined.¹¹⁰³ The National Parks Act 1980 does make provision for the Minister to appoint honorary rangers but it does not confer any specific powers on them.¹¹⁰⁴ One consequence is that honorary rangers no longer have statutory authority to exercise 'policing' powers. While that fact may not deter DOC from appointing honorary rangers, the very fact that they are not officers of the department who are trained and paid to do DOC's work on its terms could well act as a deterrent.

(2) *Hunting permits*

Another initiative early in the park board's life – although of very limited effect – involved local people issuing permits to hunt in the national park. Such permits were required once the park was created; and as soon as the park board was established it took up the issue with local people. At the 1962 hui with board members local hunters made it clear that having to travel a long distance to an issuing station deterred them from obtaining permits. An honorary ranger (Pakitu Wharekiri) proposed that he become an issuing agent at Ruatahuna but this was rejected by the Conservator of Forests, who was responsible for noxious animal control.¹¹⁰⁵ Instead, on the recommendation of the park board, board member TC (Charlie) Nikora was selected as a 'suitable person' for the position at Ruatoki.¹¹⁰⁶ In 1965, the Senior Ranger at Aniwanuiwa criticised Nikora's successor for being selective in issuing permits only to local Maori. The Board agreed, and decided that the soon-to-be appointed ranger at Ruatoki would take over issuing responsibilities.¹¹⁰⁷

1101. Senior Ranger to Chief Ranger, 17 May 1984 (Edwards, supporting papers to 'Selected Issues: Te Urewera National Park', various dates (doc L12(a)), p 1137)

1102. Mr Justice Gallen, affidavit sworn on 9 April 1997, p 2 ('Joint Ministerial Inquiry – Lake Waikaremoana: Report to the Minister of Maori Affairs, Hon Tau Henare, Minister of Conservation, Hon Dr Nick Smith', 27 August 1998 (doc H13), app 3)

1103. Edwards, 'Selected Issues: Te Urewera National Park' (doc L12), p 80; Draft report to the NPRA, 'Review of policy on administration of the honorary ranger system and the training of honorary rangers' [1983], p 2 (Edwards, supporting papers to 'Selected Issues: Te Urewera National Park', various dates (doc L12(a)), p 1131)

1104. National Parks Act 1980, s 40(2)

1105. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), pp 478–479

1106. Conservator of Forests to Secretary UNP Board, 19 June 1962 (Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 479)

1107. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 479

Three years later, in 1968, the Eastern Tuhoe Tribal executive requested, and was granted, the right for one of its representatives to issue hunting permits at the Waimana entry to the park. The Ranger at the northern end of the park endorsed the executive's request in a submission to the Board that emphasised customary rights and the problems of accessibility of permits for local people.¹¹⁰⁸ In 1975, however, the park board rejected the executive's request that another of its representatives be allowed to issue permits. The Chief Ranger based at Aniwanuiwa opposed another permit book becoming operational: 'We have too many now and I fear the permit system is far too weak as a result.'¹¹⁰⁹ Instead, he recommended – contradicting his own statement that too many permit books were in operation – that a Pakeha honorary ranger based at Whakatane be granted a permit book at Ruatoki, and this was later accepted. Coombes considers the real reason behind the situation was that Pakeha hunters claimed they were being denied shooting permits by the Eastern Tuhoe agent.¹¹¹⁰ At the time there were about eight stations issuing hunting permits for the park. The fact that just one was in local Maori control (Ruatoki until 1965 and Waimana from 1968) suggests that Tuhoe were not trusted by the park board as administrators.¹¹¹¹ We received no evidence of similar experiments regarding hunting permits being undertaken elsewhere in the inquiry district in this period, and are unaware how long the Waimana arrangement lasted beyond 1975.

(3) *Tuhoe Wardens*

We have discussed earlier the serious problems caused by park visitors trespassing, intentionally or otherwise, on Maori land, and the unwillingness of park authorities for many years to take any action beyond erecting park boundary signposts and providing boundary information notices in park huts. The extent and continuing nature of the problems caused to Maori owners by 'the Crown's manuhiri', coupled with the park authorities' position that issues concerning non-park land were not their responsibility, did not help relationships between park staff and local people.¹¹¹² Yet, as local people observed at the time, the close links between the matters of hunting permits for the park and trespass on Maori land suggest that had local Maori been allowed greater control over the issuing of hunting permits, the incidence of trespass on their lands could well have been reduced. As things stood, however, Tuhoe were left to come up with their own solution to a problem caused by the 'omnipresence' of the park.

From the early 1970s, Maori landowners increasingly attempted to manage the situation, appointing their own wardens to patrol their land and closing several access routes through

1108. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 480

1109. DF Bell Chief Ranger to Secretary UNP Board, 7 March 1975 (quoted in Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 481n)

1110. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 481n

1111. Coombes, 'Cultural Ecologies of Te Urewera II' (doc A133), p 479.

1112. Korotau Tamiana, summary of evidence, 16 February 2005 (doc K16), p 3

it. This caused public resentment and met with disapproval by park staff. One ranger reported that Tuhoe wardens were carrying firearms as well as taking dogs into the park; the Secretary of the park board reported complaints also from hunters who had been ‘physically stopped.’¹¹¹³ In December 1973, Tama Nikora explained to park rangers the purpose of the wardens – they were appointed by the Tuhoe-Waikaremoana Maori Trust Board to police Maori lands under the Trespass Act 1968. The Trust Board was contemplating a permit system of its own and sought cooperation between the park board and the Tuhoe rangers. Nikora’s idea of a joint meeting received the support of the board and the chief ranger. The meeting was held in June 1974 and was reported to be a success. Tolerance was asked for on both sides, but nothing substantial was done to assist in the protection of Maori lands.¹¹¹⁴ It is only in recent years that steps have been taken in that direction and park staff are now directed to ‘keep an eye’ on boundaries.¹¹¹⁵

The evidence establishes that the early experiences of the peoples of Te Urewera with park management and staff were not characterised by high levels of trust, nor by a strong sense of common purpose. The claimants argued that the situation has not changed markedly with the advent of DOC in 1987 and the merger of the national park regime with the broader conservation land management system that was introduced in 1990. They say there is a shortfall between the stated intentions of the Conservation Act, the policy statements of the Department, and actual practice. Coombes supported this view, especially of early DOC operations. He cited the Northern Te Urewera Ecological Restoration Project, which was established in 1996 to restore the habitat of kokako in four core areas, primarily near the Waimana valley, as a case in point: lip-service was paid to the idea of creating a close relationship with tangata whenua and respect for matauranga but without practical steps being taken to realise those goals.¹¹¹⁶

(4) *The ‘Aniwaniwa model’*

In 1994, the Aniwaniwa Area Office was prompted by one of its Maori staff members (Neuton Lambert) with the support of Glenn Mitchell (the Area Manager) to establish an informal collaborative process designed to overcome the ‘them and us’ attitude they perceived as existing between the Department and local people. The ‘working party’ initiative established what DOC referred to as a ‘continuous programme of consultation with Tangata Whenua’ through representatives of the Waikaremoana Maori Committee and the Tuhoe Manawaru Tribal Executive who were involved in the day-to-day work and planning of the

1113. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p126; Secretary UNPB to Chief Surveyor, 19 October 1973 (quoted in Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p126)

1114. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), pp127–128

1115. UNPB, minutes of meeting, 7 March 1974 (Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p127)

1116. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), pp236–240

department.¹¹¹⁷ According to Glenn Mitchell, this process is intended to provide an opportunity for tangata whenua to have an ‘equal say’ in the management of the Aniwaniwa area of the park.¹¹¹⁸ Hapu representatives attend the annual business planning process which looks at the allocation of finance for the area, as well as bi-monthly project planning meetings.¹¹¹⁹ Though falling short of true co-management, this step towards inclusion was welcomed by tangata whenua. Yet, concerns remained that it depends on the goodwill of a particular Area Manager and at the lack of local influence over funding and strategic decisions being made at a national, regional or park-wide level rather than by those directly affected. This was seen as limiting the capacity to effect changes of importance to the peoples of Te Urewera in the care and management of the park.¹¹²⁰ Indeed, between 1997 and 1999, the Maori representatives to the Aniwaniwa planning and management meetings withdrew in protest at the lack of local Maori input to the decision-making process.¹¹²¹

(5) Protest at Waikaremoana

The withdrawal of support for the Aniwaniwa model was part of a more public protest by a group of some 50 local Maori (both Ngati Ruapani and Tuhoe) and their supporters, naming themselves Nga Tamariki o Te Kohu (The Children of the Mist). In November 1997, the group occupied an area of the shore near Home Bay that had been exposed by the lowering of the lake level. They protested alleged breaches of both the Treaty of Waitangi and the 1971 lakebed lease, citing DOC mismanagement of the local environment as their principal grievance (see sidebar).¹¹²² There was also dissatisfaction with the conduct of the Tuhoe-Waikaremoana Maori Trust board, which was perceived as not representing the interests of the real owners of Lake Waikaremoana and the surrounding area, and as being complicit in a number of unpopular DOC decisions.

After 66 days, the protesters reached an agreement with the Ministers of Maori Affairs and Conservation that, in return for ending the occupation, an inquiry would be held into their grievances.¹¹²³ The inquiry received 69 written submissions and 20 oral submissions and DOC was given the right to respond. In general, the department defended its actions by reference to its governing legislation and submitted that it had complied, as required, with

1117. Department of Conservation submission to the Lake Waikaremoana Inquiry, 18 May 1998; ‘Partnership in Practice: the Aniwaniwa Area Office and Tuhoe’, DoC File note, not dated (Coombes, ‘Cultural Ecologies 11’ (doc A133), p 244)

1118. G Mitchell to V Seaton, 12 March 2002 (Coombes, ‘Cultural Ecologies 11’ (doc A133), p 244)

1119. Glenn Mitchell, brief of evidence, 7 February 2005 (doc L9), p 30

1120. Coombes, ‘Cultural Ecologies 11’ (doc A133), pp 246–247

1121. ‘Joint Ministerial Inquiry – Lake Waikaremoana: Report to the Minister of Maori Affairs, Hon Tau Henare, Minister of Conservation, Hon Dr Nick Smith’, 27 August 1998 (doc H13), p 17. The joint management model was back in “full operation” by June 1999. Coombes, ‘Cultural Ecologies 11’ (doc A133), p 256

1122. Coombes, ‘Cultural Ecologies of Te Urewera 11’ (doc A133), pp 247–248. The group had been formed in 1985 during the struggle to oppose the cutting of native bush on the ‘sacred maunga Taiarahia’. Tame Iti, brief of evidence, 10 January 2005 (doc J22), p 11

1123. Anaru Paine, brief of evidence, 18 October 2004 (doc H39), p 11

'We Were Sick and Tired of the Crown Bodies Polluting . . . Our Beautiful Lake'

Claimant witness, Joseph Takuta Moses, summarised the reasons for the occupation of Lake Waikaremoana. In the protesters' view, the Crown and more particularly the Department of Conservation had failed to protect the lake, at the same time, making it impossible for them to fulfil their own obligations of kaitiakitanga.

We contended that the following actions were damaging our relationship with our lake:

- ▶ The use of poison to eradicate pests;
- ▶ Our mahinga kai were being polluted with human waste and refuse and as a result of roading and other developments around the lake;
- ▶ The lowering of the lake and the unnatural lake level fluctuations caused by the hydro were eroding the edges of the lake;
- ▶ The Crown was not protecting our native forest and logging was occurring that was stripping the bush of trees that were up to 400 years old;
- ▶ The Crown had allowed the infection and spread of giardia through the lake;
- ▶ The Crown was failing to protect kiwi, the wildlife of Waikaremoana;
- ▶ We, the Tangata Whenua were being denied customary rights as Trust Boards were spoken to instead of us;
- ▶ The lease of the lake was being breached;
- ▶ The building of a bridge near the Wiotukupuna Stream was desecrating one of our urupa and in an area of spiritual importance to Maori;
- ▶ The Trust Board was allowing the erection of a satellite bowl by Telecom on Te Maara A Te Atua;
- ▶ The Department of Conservation encouraged the public to trespass on Mokau Pa, which is private land;
- ▶ Department of Conservation officers violated an urupa at Mokau;
- ▶ The Crown was allowing sewage to leak into the lake;
- ▶ The Department of Conservation inappropriately renamed sites around Lake Waikaremoana; and
- ▶ Those from outside the region were being preferentially employed by the Department of Conservation.¹

1. Joseph Takuta Moses, brief of evidence, 18 October 2004 (doc H15), pp 6-7

‘transparent, and consultative processes for drawing up plans for management of Urewera National Park, as for any other National Park.’¹¹²⁴ Its submission concluded:

The Department is proud of the special links it has with Tangata Whenua in this conservancy, and the process for on-going input into management, which are at the leading edge of iwi involvement in conservation management.¹¹²⁵

The Inquiry accepted many of DOC’s explanations but stated that ‘more can be done to better achieve respect for the culture and values of the tangata whenua’ in its management of the Lake Waikaremoana area.¹¹²⁶ It urged DOC to be innovative in adopting more cooperative, community-based, approaches to management of the leased lakebed area and recommended that a formal agreement with tangata whenua be reached about the future approach.¹¹²⁷

The allegations made to the Ministerial Inquiry in 1998 were largely repeated to this Tribunal in 2004 and 2005. Several claimant witnesses gave evidence that the Inquiry’s recommendations had produced only limited results.¹¹²⁸ James Waiwai told us that local hapu, the two Trust Boards and DOC did get together to discuss the matter of a formal agreement about the management of the lake and the surrounding lands, but the relationship soon broke down. In his view, DOC’s approach aggravated existing tensions between the Trust Boards and the local hapu.¹¹²⁹ Coombes criticised DOC’s response to the inquiry for lacking vigour: ‘Essentially, the Conservancy argued that the *status quo* process functioned well, so there was no need for change.’¹¹³⁰ The Conservator at the time of our inquiry told us that the department had not pursued a formal agreement about the management of the lake because of the ‘expressed satisfaction’ of the local people with the status quo.¹¹³¹ He referred to the Aniwaniwa management model, which was re-established in 1999, is informally-based, and involves the Waikaremoana Maori Committee and the Ruatahuna Tribal Committee in business planning, as having given effect to the ministerial inquiry’s recommendation that the department enter into an agreement with tangata whenua.¹¹³² But criticisms frequently voiced by claimants were that the Aniwaniwa model is not in place else-

1124. Department of Conservation, submission to the Lake Waikaremoana inquiry, 18 May 1998, p 7 (Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 249)

1125. Department of Conservation, submission to the Lake Waikaremoana inquiry, 18 May 1998, p 28 (Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 250)

1126. ‘Joint Ministerial Inquiry – Lake Waikaremoana: Report to the Minister of Maori Affairs, Hon Tau Henare, Minister of Conservation, Hon Dr Nick Smith’, 27 August 1998 (doc H13), p 18

1127. ‘Joint Ministerial Inquiry – Lake Waikaremoana: Report to the Minister of Maori Affairs, Hon Tau Henare, Minister of Conservation, Hon Dr Nick Smith’, 27 August 1998 (doc H13), p 19

1128. See for example James Anthony Waiwai, brief of evidence, not dated (doc H14), pp 22–23; Tahuri O Te Rangi Trainor Tait, brief of evidence, 18 October 2004 (doc H29), pp 20–21

1129. James Anthony Waiwai, brief of evidence, not dated (doc H14), p 23

1130. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), pp 252, 253

1131. Peter Williamson, brief of evidence, 8 February 2005 (doc L10), p 18

1132. Peter Williamson, brief of evidence, 8 February 2005 (doc L10), p 18

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where in the national park and that it is not a true example of co-management. The chair of the Tuhoe-Waikaremoana Maori Trust Board told us:

To the credit of the Area Manager, a co-operative management committee (as I call it) was established in Waikaremoana Area. This committee comprises of tangata whenua from Ruatahuna and Waikaremoana to assist the Area Manager by way of advice. However no other arrangements have been made for other parts of the Park notably the northern end where considerable friction and tension with tangata whenua has occurred from time to time. As laudable as DOC might consider its response to be, the initiative falls far short of real shared decision making relationships with tangata whenua.¹¹³³

Since the lakebed inquiry, the Kiwi Restoration Project has become a cooperative venture between DOC and the Lake Waikaremoana Hapu Restoration Trust after Landcare Research completed its involvement in the project in 2002. Trust chair James Waiwai told us that the trust has been included in, and had satisfactory input into, bi-monthly planning sessions for the project together with DOC.¹¹³⁴ He added, however, that DOC's approach in the Waikaremoana area of the park is unique:

Our involvement . . . came down to the personal commitment of the DOC staff here in Waikaremoana. We were lucky, because the manager at the time, Glenn Mitchell (and luckily he's still there today) really wanted to get us involved at a more meaningful level. I know this, as outside of the Kiwi Recovery Programme, when I meet with other DOC staff in other capacities, they are really hesitant about giving tangata whenua as much involvement as we have in this area.¹¹³⁵

The Conservator at the time of our inquiry confirmed that DOC's management at Aniwaniwa is 'outside common departmental practice', explaining that:

The Area Manager was prepared to be flexible, completely open and to accommodate a style of working that recognised the wishes, aspirations and principles of the tangata whenua.¹¹³⁶

The evidence is unclear as to why the Aniwaniwa model has not been adopted in other parts of the national park. In 1999, the idea of extending it to the western areas of the park was mooted, but this had not occurred by the time of our inquiry.¹¹³⁷

1133. Aubrey Tokawhakaia Temara, brief of evidence, 16 February 2005 (doc K15), p 10

1134. James Waiwai, brief of evidence, not dated (doc H14), p 14

1135. James Waiwai, brief of evidence, not dated (doc H14), p 14

1136. 'Partnership in Practice: The Aniwaniwa Area Office and Tuhoe', not dated, pp 2-3 (Brad Coombes, comp, supporting papers to 'Cultural Ecologies of Te Urewera 111', various dates (doc A121(a)), pp 272-273)

1137. 'Te Urewera National Park management plan review meeting', 26 March 1999 (cited in Coombes, 'Cultural Ecologies of Te Urewera 11' (doc A133), p 258)

16.9.5 Conclusions

Despite the close proximity of resident Maori communities to Te Urewera National Park, the park board and its successors seem to have been unwilling to consider how to make local involvement in governance, management, and day to day running of the park work on any sustained basis. Indeed it is an indictment of both the legislation and the successive national-level policy bodies that they gave no lead on these crucial matters. Rather, the unique situation in Te Urewera was not seen to pose a serious challenge to the Crown's objectives for national parks, that were – and remain – largely antithetical to Maori interests in their ancestral lands. Had the situation in Te Urewera been fully understood, it would have taken legislative change to free it from the strictures of the national parks system. The advent of the Conservation Act 1987, with its Treaty clause, was insufficient to bridge the gulf between the National Parks Act's ideology and the Crown's responsibilities to the peoples of Te Urewera. Faced with the challenge of giving some meaning to the clause, the Conservation Department and the current statutory advisory bodies have, for the most part, interpreted it as requiring Maori involvement in departmental processes. Only occasionally, when national park and Maori objectives coincide, is the clause interpreted to give Maori a more active role in policy or decision making.

The ministerial decision to appoint a Tuhoe representative to the park board at the outset, and later to add a Ngati Kahungunu representative, despite the lack of requirement in the parks legislation, is telling. Clearly the Crown considered there was good reason for such appointments in the case of Te Urewera National Park; which makes it even more surprising that no legislative provision was made in 1980 for them. But, as indicated above, more radical change would have been needed, in our view, to put iwi representation on a Te Urewera park board on an acceptable footing. While the objectives of the national parks system remained unchanged, formal representation of the peoples of Te Urewera on the park board, even in greater numbers than has ever been the case, would not solve the fundamental problem of their interests being outweighed by those that are preferred by the governing legislation.

From 1969, the one formal opportunity for involvement of local communities in park management was as honorary rangers. That is, local people might be employed in unpaid positions. Over time, many such rangers were appointed, but although the number of Maori included in the scheme increased marginally in the 1970s, they remained a minority. From the limited evidence presented to us, it appears that the appointment of honorary rangers, while representing an opportunity to improve relations between communities and the park board and staff, was ultimately an opportunity not taken, and that these relationships continued to be defined by poor communication on the part of the park board, and, perhaps, mutual lack of trust. After 1980, when the powers of honorary rangers were far

more limited, and professional staff were more numerous, appointments of honorary rangers declined, further weakening their role.

On one further matter of considerable significance to local communities, because of their dependence on hunting – the issue of hunting permits – it is also striking that local park management was unable to reach any long-term mutually acceptable agreement with the people. The involvement of local Maori representatives was short-term, despite there being very practical reasons why the board should have persisted to make it work. It would have assisted local communities not only in their daily lives, but in a matter which was a constant irritation to them – the trespass of visiting hunters on their land. Had they had more control over the issue of permits, they might also have impressed on hunters the importance of not trespassing on Maori land. Visiting hunters, however, felt that such a system of issuing permits favoured Maori. It seems that the park board was concerned to preserve its relations with visiting hunters, than to establish trust and goodwill with its Maori neighbours.

More recently, the Aniwaniwa management model, which does involve local iwi committees in decision-making on day-to-day matters, has been a very welcome development. But it has been the result of the initiative of one area manager and his staff, in one part of the park. There is a local fear, therefore, that such an arrangement might yet prove simply a short-lived experiment.

Overall, the record of involvement of local iwi in governance, management, and everyday running of a park – which is the most dominant feature in their landscape, created on their ancestral lands, with which they retain strong associations, and administered in ways which affect their lives so closely – is not impressive. In over fifty years of park administration, the Crown made little effort to ensure the active participation of local iwi, particularly Tuhoe. The challenge to the Crown now is to heed recent positive developments and how they have been achieved, and to work with iwi leaders to implement real change.

16.10 TREATY ANALYSIS AND FINDINGS

16.10.1 The origins of a national park

(1) *The Treaty context*

The origins of the national park lie in the Crown's broken promises to the peoples of Te Urewera:

- ▶ its undermining of the UDNRA and its promise to give effect to Maori autonomy;
- ▶ its defeat of tribal opposition to sales by purchasing individual interests in breach of its promise only to buy land from the tribal collective;

- ▶ its acquisition of just over half of their Reserve by means of unfair, predatory, and at times illegal purchases, followed by a consolidation scheme in which it acquired yet more land (a further 20 per cent of the Reserve), all in serious breach of Treaty principles.

This was the land that was later set aside as a national park, for water and soil conservation and to preserve its ‘wilderness’ landscape for the nation. Tuhoe cannot get past these facts, while other New Zealanders are simply unaware of them. In 1986, a Lands and Surveys official commented:

It would be reasonable to assume that at the time of purchase a state of ‘willing-seller-willing-buyer’ existed and that a fair price was paid for the purchase of the land . . . The argument for the retention of the Tuhoe areas as ‘homeland’ surely loses weight when this part of the Urewera history is considered.¹¹³⁸

This is a myth that has long dominated New Zealanders’ view of Te Urewera and the origins of the national park. For so long as this myth survives, there can be no informed appraisal of the national park and its place in the life of the nation. We hope that our report has finally laid this myth to rest forever.

The Crown acknowledged in our inquiry that most of the lands that comprise the national park were acquired by it in breach of Treaty principles. This point is no longer in doubt. As we have seen in previous chapters, the lands were promised by the Crown – and legislated – to be a Native Reserve. Within a remarkably short time, however, the Crown reneged on its obligations with regard to the Reserve and embarked on a completely different plan for much of the land – purchase and pastoral development by settlers. That involved surveying out the Crown’s wrongfully acquired portion of the land from the land that remained in Maori ownership (the Urewera consolidation scheme). Having ‘sold’ the new plan to the Maori landowners by promises of surveys, registrable titles, roads and other benefits, the Crown reneged on that arrangement too, leaving the owners with far less land than they had started with, and without compensating advantages.

We concluded in chapter 13 that, by its wrongful conduct in undermining the Urewera District Native Reserve and creating the impetus for the Urewera Consolidation Scheme, the Crown’s Treaty duties to the Maori owners in relation to the UCS were that much greater. We concluded in chapter 14 that, by failing to deliver the promised benefits of the UCS, the Crown breached its heightened Treaty obligations to the Maori owners, causing them further prejudice. Both sets of Treaty breaches were of a very serious nature. As a result of them, the owners of some 656,000 acres of Native Reserve in 1896 were left with around 164,000 acres (including Manuoha and Paharakeke, and the Ruatoki blocks) in 1927. We have examined the impacts of this on the Maori communities of Te Urewera in chapter

1138. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), p 348

15. The Crown's next dealings with the peoples of Te Urewera must be assessed against that grim backdrop.

The Crown was now required to take particular care to protect the peoples' interests in their remaining lands. The Crown's Treaty duties – including the duties of active protection and acting with utmost good faith towards its partner – applied with heightened intensity because of its two previous sets of broken promises.

(2) *The Maori context*

In the decades immediately following the consolidation scheme, the peoples of Te Urewera continued their customary way of life as far as they were able. They ranged across Crown and Maori forests to hunt, fish, and collect valued plants for food, for rongoa, and for weaving. Alongside that, they attempted to have land milled and then farmed (which was largely blocked by the Crown) and to establish farming on already-cleared land. During the 1930s and 1940s, the Crown-assisted farm development schemes were essential in enabling Maori communities to survive. Outside of those schemes, Maori struggled to farm their scattered, isolated, and too-small blocks of remaining land.

It was only the development of a timber industry to the south-west after the Second World War, based at Minginui and Murupara, that created significant employment in our inquiry district. At the time of the establishment of the national park in 1954, the local Maori communities were dependent on the park lands for subsistence, dependent on a single industry for what employment was available, and dependent on the logging and development of their land if there was to be a non-welfare-based future, utilising instead the economic resources of their turangawaewae, their ancestral land. While many individuals had to leave in search of employment, the tribes needed to maintain a cultural, social, and economic base in their 'homeland' for their continued survival as tribes in their ancestral rohe and for the future of their peoples. From the 1950s to the present day, the Maori communities of Te Urewera have suffered endemic and long-term deprivation: low income levels, high unemployment, and poor quality housing and health relative to the rest of New Zealand, including most other Maori.

This was the situation of the local Maori communities when the park was established on their doorstep in 1954, taking in their lake and the Ruapani reserves. From 1957, they have found themselves on isolated 'enclaves' inside or adjacent to the national park. The creation of the park posed new threats to their survival in their rohe. Before 1954, they had been able to continue their customary relationships with their forests (even though the ownership lay with the Crown), to use those forests for food supplies and to supplement their incomes, and to control and conserve the resources, largely without interference. In 1953, their new understanding with Maori Affairs Minister Corbett meant that they could finally

begin milling their more accessible lands, with a view to future development in farming or exotic forestry.

If they were to continue living on their turangawaewae, Maori communities in Te Urewera needed to be able to continue the customary food-gathering and other practices that had sustained them for generations, and to use their remaining lands to secure an ongoing economic benefit. The question facing them was: what effect would the establishment of a national park have on their cultural, social, and economic situation, and on their ability to exercise tino rangatiratanga over their remaining ancestral lands?

(3) *The national interest context*

In the ‘national interest’, as it was defined in the 1950s, the watersheds of Te Urewera needed to be preserved so as to protect the lower lying farmlands of the Bay of Plenty and Hawkes Bay from flooding, and to protect the electricity-generating capacity of Lake Waikaremoana. At the time, this could have been done by means of a forest park or even a state forest, in which a combination of controlled logging and pest control protected enough forest to prevent erosion and flooding, while still allowing public access for a range of activities. Coombes argued – and we agree – that the Maori customary economy operated more easily in forest parks than in a national park.¹¹³⁹ But there was also a national interest in preserving unique landscapes, scenery, and indigenous flora and fauna. In the 1950s, the highest form of protection that could be given – where the Crown did not perceive a conflict with other matters of national interest such as the farming economy – was as a national park. In 1954 and 1957, the Crown took the view that these matters of national interest coalesced: the utmost protection would be accorded to valuable low lying farmland, by at the same time protecting a unique ‘wilderness’ in a country where few such landscapes remained.

(4) *A clash of interests; a clash of opportunities*

In his evidence for DOC, Peter Williamson told us that the overriding concern is to ‘restore the dawn chorus’. The claimants were not unsympathetic to this view. Indeed, they too wished to preserve their taonga – the forests, the birds, and the landscape of their ancestors – but the key question was: what price was to be paid for this preservation, and who was to pay it? Were the farmers of the Bay of Plenty and Hawkes Bay to pay the price? Were the consumers of Waikaremoana electricity to pay the price? Or were the tangata whenua living adjacent to or inside the park to pay the price? Whose economic interests and opportunities were being protected by the establishment of the park? Whose interests were benefitted? And whose economic interests and opportunities were being foreclosed by the creation of the park?

1139. Coombes, ‘Cultural Ecologies of Te Urewera II’ (doc A133), pp 326, 454–463, 483, 521–523

Seen in those terms, we can only conclude that the park was established to protect the economic and social interests of the communities of the Bay of Plenty and Wairoa/Hawkes Bay. But there was more to it than that. As we have seen, the degree of protection provided by a national park was significantly higher than strictly necessary to prevent erosion and flooding. This was principally because Corbett and many others saw the entire nation as having an interest in the preservation of this 'remnant' ancient landscape of New Zealand. In the 1890s, the 'remnant' landscape was Maori land, and so interests were seen to dovetail in a 'native' reserve. In the 1950s, there was not merely a remnant landscape but also now a remnant of Maori land, and the interests no longer dovetailed; hence there was a 'national' and not a 'native' reserve. At that time (as now), the legal principle in New Zealand is that if private land is needed for a public work then compensation is paid. But private Maori land was effectively reserved alongside Crown land in Te Urewera for the benefit of the nation in 1954 and 1957, and in breach of that principle of compensation.

So, in the interest and for the benefit of the nation, a national park was established to protect and preserve the indigenous forests of Te Urewera. The nation benefitted; Maori paid the price. Their interests were overlooked, inadequately provided for, or ignored. This pattern was established at the very inception of the park by a failure to consult with those who would be most affected by it.

(5) Consultation: an opportunity and a breach

At the beginning, in 1954 and 1957, there was a unique opportunity for a unique circumstance. No other national park was designed to enclose significant Maori communities and Maori land within its borders. The fundamental needs of those communities – ongoing customary use of the natural resources of the area and ongoing economic benefit from their remaining lands – were utterly contradicted by the Crown's plan to create a national park. New Zealand's national parks were designed for recreational use, including tourism and the infrastructure that would modify parts of the parks to support tourism. But their rationale did not include Maori customary uses of natural resources, let alone Maori actually living on or using their own lands inside a park. Either the Crown's plan carried with it the inevitable consequence that the park was to replace or oust the Maori communities, or the plan had to be modified to take account of their presence and their interests.

As we see it, it was not beyond the capacity of the Crown to have redesigned the national park schema to fit the unique circumstances of Te Urewera. After all, that was what national parks were supposedly all about: preserving unique landscapes and environments, over and above lesser-status reserves that served a variety of purposes.

In 1950, Tipi Ropiha advised his Minister that the Crown needed to develop a comprehensive plan for Te Urewera, that would balance long-term forest protection with Maori being able to retain (and benefit from) their last pieces of ancestral land. The Crown, he

noted, had a special duty in this respect. Indeed, the Crown set up a system to classify potential uses of Maori land at Ruatahuna, and relaxed its restrictions from 1953 to permit milling on some of the more accessible Maori land. This was very promising. It could reasonably have been expected that the Crown would consult with Maori communities about how the values of a national park might be made consistent with a Maori people living on (and using) their ancestral lands. This was especially necessary in 1957, when the park was extended to neighbour almost all the remaining Maori land (and to enclose some of it altogether); a challenge that remains today.

Over and above any Treaty duty to Maori, there was also what Tama Nikora called a 'local' duty. We find it difficult to believe that the Crown would have enclosed Pakeha communities inside a national park in the 1950s – even in the national interest – without consulting them and considering their interests. It had such a duty, whether the local community was Maori or non-Maori (or both). And, as we have said, it had Treaty duties to the peoples of Te Urewera that made this responsibility all the greater.

The Crown argued in our inquiry that it had no statutory obligation to consult 'with Urewera Maori concerning its incorporation [of Crown land] in a National Park':

On the other hand, even in the context of the time, it was an appropriate course to consult adjacent land owners. This was particularly so, given the Maori-owned land that did not form part of the Park was likely to be affected by such decisions. This consultation occurred.¹¹⁴⁰

As we found in section 16.5, this supposed consultation was not in reality about the establishment of the park. There was no meaningful consultation on that point, either in 1953–54 or in 1957. The Government was already committed to a large park by 1953, and in that sense the die was cast before it held its first discussions with Tuhoe. In 1955 and in 1957, when the Government made decisions about reviving its attempt to buy Maori land, there was little evidence of concern for the plight of Tuhoe. There was no discussion of alternatives to a massively increased national park – such as a smaller increase, or a forest park – or even how to accommodate their traditional uses, let alone provide for an economic base. In the discussions that did take place, the Crown referred to the park not so as to discuss its implications for the local communities, but to counter their suspicion that the Crown wanted more Maori land in order to mill the timber on it. Ultimately, the only genuine question asked of Tuhoe was what the park should be called. And even that, the Crown got wrong.

The Treaty principle of partnership requires the Crown to act in the utmost good faith, and to make fully informed decisions where Maori interests are at stake. Where the interest is large and the possible effects significant, the Crown is required to consult. The Crown is also required actively to protect Maori interests in their lands and waters, to the fullest

1140. Crown counsel, closing submissions, June 2005 (doc N20), topic 33, p 4

extent reasonably practicable. In order to do so, it is required to consult Maori and work in partnership with them, certainly where the interests are so central to Maori as to involve the entire fate of their remaining ancestral lands. The Crown admits that, by the standards of the time, it had a duty to consult the park's prospective neighbours, whose interests would be affected by its establishment.

There is no disguising the fact that the Crown knew serious Maori interests were at stake. The dependence of Maori on customary resources for food and survival was well known (indeed, until 1945 welfare benefits were calculated at a lower rate because of their 'communal lifestyle'). And the Minister was well aware of the need for Maori to mill their lands. He had just agreed to a land-use classification exercise and to relax previous restrictions on milling. We see no reason why the Crown could not have extended the work of (and the Maori representation on) the Urewera Land Use committee to the whole district. Its results could then have been used to determine the reasonable size and scope of the park, and how its effects on Maori economic opportunities could be managed so as to protect their interests while still providing for the 'national interest', as it was then defined. We also see no reason why the national park philosophy, which permitted or even encouraged recreational uses of national parks, could not have been tailored to foster ongoing Maori uses of the park. Subsequent events showed that conflict between preservation and Maori customary uses can be reconciled where there is the will to do so. Also, we see no reason why Maori could not have been consulted about their representation and role in the park's management, as Ngati Tuwharetoa had been with regard to Tongariro National Park. None of these things was impossible; all of them, by Treaty standards, were reasonable.

Why did these things not happen? Quite simply, because the Crown came to the view in the mid-1950s that Maori would have to sell all their land and move away from the park. Maori were not consulted about this view, nor did they agree with it.

The establishment of the park in 1954, and its massive expansion in 1957, were thus conducted in a manner inconsistent with the Crown's Treaty duty to consult local Maori communities and actively protect their interests. A differently sized, differently designed, and differently governed park was by no means impossible in the circumstances of the time. The Crown's failures were in breach of Treaty principles. And from this defective foundation, an edifice was constructed with an inbuilt or structural tendency to protect what was perceived as the national interest at the price of Maori interests.

(6) A national park need not breach the Treaty

We see no necessary inconsistency between the establishment of a national park, in the national interest, and the active protection of Maori interests in their ancestral lands and waters. Both interests could have been provided for; both peoples could have been provided for. Maybe a forest park would have better protected the interests of all. But there

was, as the Crown pointed out, much Maori support for the idea of conserving the forest resource. First, if they had they been fully consulted; secondly, if the park had been modified in its design and operations by a full accounting of their needs; thirdly, if they had been included in the proposed management structure; and, fourthly, if their agreement had been obtained; there would have been no breach in establishing a national park. Whatever the Crown did with these lands, they were going to remain an ongoing source of grievance to the peoples of Te Urewera because of past Treaty breaches, unless meaningful redress was provided and development opportunities fostered. Much of the anger that is directed at the national park has its roots here, and, in our view, some of it has little to do with the national park itself.

16.10.2 The prejudicial impacts of the national park

The park was established in 1954, and expanded in 1957, without taking the various needs of Maori communities into account. Inevitably, therefore, an ‘unreconstructed’ park was going to have some negative impacts on Maori interests. It was designed to accommodate tourists and recreational users but not permanent residents inside its borders or its self-appointed buffer zones.

(1) The impacts of the park on the economic opportunities of its unwilling neighbours and residents

As we discussed in section 16.6, the park’s establishment embodied and gave a specific shape to the Crown’s forest preservation policies. It is undoubtedly the case that these were more extreme than would otherwise have been necessary to prevent erosion and flooding. The goal became to prevent what were seen as incompatible land-uses, including timber milling, deer farming, and exotic forest plantation, on Maori land inside the park or in the ‘buffer zones’ abutting it. Alongside this concern was a more pervasive public fear that any milling at all on Maori land in Te Urewera might threaten the lower lying farmlands of the Bay of Plenty and Wairoa. By 1959, this was already known within Government to be an unreasonable fear. Yet, public concern on this point – and opinion about any milling in or close to a national park – resulted in policies which greatly restricted the ability of Maori landowners to use their remaining lands and timber resources from 1960 onwards. In practical terms, milling continued where consent had been obtained before 1960, and consent to controlled milling could still be obtained afterwards, but on the whole Maori were denied the economic use of their forest lands from the 1960s. Instead, the Crown pressed to buy those lands for the park.

As Crown counsel pointed out, the Crown only succeeded in buying some 38,000 acres – the Manuoha and Paharakeke blocks – from their incorporated owners. In the Crown’s

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view, its lack of success means that its attempts could not have been in breach of the Treaty. We disagree. Its duty, as so aptly outlined by Ropiha in 1950, was to balance the need for forest protection against the need of Maori to retain and benefit from their last pieces of ancestral land. The Crown breached this duty. There is little comfort in its lack of completed purchases, which can be explained by the very limited funds provided for expanding national parks, the lack of political will to provide more, and the steadfast refusal of owners to sell. The cheapest option for the Crown was simply to prevent Maori from using their lands. The issue of a section 34 notice in 1961 required the payment of compensation for specific refusals of the right to mill. But the Government itself noted that ‘many’ applications in Te Urewera were never even lodged because it was not worth the timber companies’ while when refusal seemed certain. Promising initiatives in the 1950s – relaxation of milling restrictions and a principle of compensating where new restrictions were imposed – thus came to an end in the 1960s. For a time, pre-approved milling on the more accessible land, and jobs in the forestry industry to the south-west, cushioned the effect of a growing stranglehold on the ability of Maori communities to develop and use their lands.

The Crown’s policy in the 1960s and 1970s was to secure a mass-surrender of all Maori land in or adjacent to the park. It had its greatest success in the Waikaremoana district, where it obtained the bed of Lake Waikaremoana in 1971 and succeeded in locking up the Ruapani reserves as permanent historic/scenic reserves in 1972. It also had some success in the east of the inquiry district, where, as noted, it obtained the Manuoha and Paharakeke blocks. By the early 1970s, Tuhoe leaders were so anxious about the economic prospects of their communities that they were prepared to negotiate a long-term lease of all their lands to the park, in exchange for farm or forestry (Crown) lands elsewhere in their rohe. Lease/exchange negotiations ultimately failed after more than a decade, because Tuhoe leaders were concerned that the proposed basis of exchange was inequitable, while the Tuhoe people generally were not prepared to relinquish yet more ancestral land, even to get other land in exchange. For the Crown’s part, the cessation of logging on Maori land in the 1970s meant that it no longer needed to worry. As the commissioner of Crown lands stated in 1984, Tuhoe lands were ‘when all is said and done, protected as virtual national park’. This outcome, so inimical to the social and economic interests of Maori communities, could have been avoided. Instead, the Crown welcomed it and had done much actively to bring it about.

Thus, while the Crown’s efforts did not secure it much in the way of actual purchases, it succeeded in significantly limiting what the Maori owners could do with their land. Yet, they refused to leave their rohe. In 1971, Tuhoe leaders told Minister of Maori Affairs

Duncan MacIntyre: ‘There is not much Tuhoe land left . . . We believe, Sir, that we would find no peace in heaven if we suffer these remnants to be alienated.’¹¹⁴¹

Aside from the farm development schemes, farming was not a great success on the small, scattered, already-cleared lands. It was inhibited by the problems of multiple ownership, lack of access to development finance, and – for some – poor quality land. Planting for exotic forestry faced some of the same obstacles. If economic use of the remaining land was to have any hope of succeeding, more land needed to be cleared, and use of the newly cleared land needed to overcome the obstacles of title and finance. It seems plain from the evidence that such clearance and development could have been monitored and controlled so as to prevent erosion or flooding, despite the active opposition of their ‘good neighbour’, the national park.

As we shall explore later in the report, Tuhoe tried to overcome all of these problems by amalgamating their titles and engaging with the Crown in the 1970s to lease or exchange land, but that engagement ended with their lands still tied up as ‘virtual park’. We cannot say with certainty that farming or exotic forestry would have succeeded but the possibility was effectively foreclosed by the Crown. We find the Crown in breach of the plain meaning of article 2 and of the Treaty principle of active protection for thus restricting ownership rights and land development without sufficient cause.

(a) Specific breaches – Lake Waikaremoana: Lake Waikaremoana had been included in the park in 1954 without discussion or agreement, despite the fact that the Crown finally acknowledged Maori ownership of the lakebed in that year. The park then had use of the lake, the jewel in its Crown, even though all visitors were known to be trespassing on Maori land (first to get to the lake and then by boating on the lake itself). After a series of abortive negotiations from 1961 to 1971, the Crown was finally driven to reach agreement by the fact that Maori landowners could legally stop all public access to the lake if they chose. Backdated to 1967, the Crown agreed to lease the lakebed for an annual rental. We will consider specific claims about these negotiations and the lease later in this report. Here, we note that it was the needs of the park that finally pushed an unwilling Crown to accept that Maori should obtain an economic return from their ‘asset’. We agree with the claimants, however, that the rent should have been backdated to (at least) 1954, when the Crown accepted Maori ownership of the lake yet began using it in the national park without permission or recompense. The Crown breached article 2 rights by appropriating Maori property for its park without agreement or payment.

1141. Sonny White, presenting the submissions of the Tuhoe Maori Trust Board to the Hon Duncan MacIntyre, ‘Nga Take a Ngai-Tuhoe’, 23 April 1971 (Bassett and Kay, supporting papers to ‘Ruatahuna Land Ownership and Administration’ (doc A20(c)), p 298)

(b) *Specific breaches – the Ruapani reserves:* The history of Ngati Ruapani and their lands has been outlined in earlier chapters of this report. Their lands had been stripped from them in breach of the Treaty in the four southern blocks (see chapter 7), the Waipaoa block (see chapter 10), and finally in the Waikaremoana block (see chapter 14). Their desperate attempts to increase their farmable land during the Urewera consolidation scheme had resulted in yet more broken promises. Apart from the dubious benefit of the Waikaremoana debentures, Ngati Ruapani were left with their share of two tiny reserves from the four southern blocks, and just 607 acres in 14 reserves on the northern shores of Lake Waikaremoana. Then, from 1954, central and local government worked in tandem with the park authorities to prevent Ruapani from making any economic use of their reserves, and even from living on them. It is a testament to the great value of this last remnant of ancestral land to its Maori owners that they resisted pressure on them for outright sale of these reserves to the Crown. Finally, a compromise in 1972 saw these 14 pieces of land made historic and scenic reserves under the Maori Affairs Act. Maori ownership was retained but the land continued (as it had been since 1954) as ‘virtual park’. The same ends could have been achieved by leasing this land for the park, as with the lakebed the year before, and paying an annual rental. This option was not chosen by the Crown.

In our view, this is the most serious of the specific Treaty breaches in respect of the national park. The Crown refused to allow Ngati Ruapani larger reserves in the Urewera consolidation scheme, broke its promise to provide them with farmable land south of the lake, deprived them of virtually any benefit from their debentures, and then – the last in a long line of injuries – refused to allow them to use the reserves that they did get. Ngati Ruapani were significantly prejudiced; this was the last remnant of their ancestral estate, put permanently beyond their reach in the national park.

(c) *Specific breaches – Manuoha and Paharakeke:* We agree with the Crown that the Maori owners of Manuoha and Paharakeke were willing sellers. We do not, however, agree that they were enabled to make an informed choice. They requested the necessary information to verify the figures in the Crown’s purchase offer, but were not supplied with the valuations. Had they received full information, they would have discovered that their land and timber had been valued at £158,000, and that the value had been adjusted downwards to fit a minimum price of £140,000. The original basis for this minimum price was a suggestion from AD McKinnon of the Forest Service that the merchantable timber could either be valued purely at Forest Service minimum stumpage (£72,000) or to take into account the values agreed between the Maori owners and Bayten Timber Company (£89,000). The non-merchantable timber was valued at £60,000 and the land at £9,000. It was generally agreed within Government that the 1960 government valuation of the land (at £5,000) was too low. But when it was discovered that the Government was legally obliged to match the Bayten’s

valuation of £89,000 for the merchantable timber, the Lands and Forests officials agreed to a new, 'arbitrary' figure of £45,000 for the non-merchantable timber, and to bring the land value back down to £5,000. The Maori owners were then told that the merchantable timber was worth £89,000, the non-merchantable timber was worth £45,000, and the land was worth £5,000. Unaware that this was not the actual valuation put forward by the Forest Service, the owners agreed to sell their land at that price.

The purchase of Manuoha and Paharakeke was not a purely commercial arrangement. The Crown had an unfair advantage because it had imposed a virtual monopoly, withholding consent to the timber cutting application so that the owners could make no other use of their land. This does not mean that the Maori owners were unwilling sellers, but it did put them in a disadvantageous bargaining position. The Minister of Forests in 1960, Tirikatene, was well aware of this and stated that this purchase had to be a 'model' purchase, and it had to be based on an 'accurate and fair measurement and valuation'. That being the case, the Crown should have offered what the Minister of Lands reported to Cabinet in 1961 was the value of the land and timber: £158,000. We have no quarrel with the 'measurement' part (Berryman's work) but the valuations were reinvented after the Cabinet meeting to match a minimum price (which became the offer price) of £140,000. The valuation should have been disclosed, and – in our view – the offer should have matched the value as reported by the Minister of Lands to Cabinet. We think that the Crown's conduct of the purchase did not live up to Tirikatene's standard, nor was it consistent with the Crown's Treaty duty of active protection. The Maori owners of Manuoha and Paharakeke were prejudiced by this Treaty breach, having been short-changed by £18,000, a substantial figure at the time.

(2) *The economic opportunities provided by the park*

Maori do derive some economic benefit from having a national park as their neighbour. The primary benefit in the past has been the opportunity to derive some income from pest control, particularly trapping possums and hunting deer. Commercial trapping and hunting has been restricted in recent years, due to:

- ▶ the decision to use a cheaper, poison-based method of pest control; and
- ▶ the permission for use of helicopters in deer hunting, a form of hunting that is mostly beyond the claimants' means and which often strays on to their lands.

In 1994, the Conservation Authority found that trapping and hunting are just as effective as poison (in accessible areas), and that 1080 should not be used on a long-term footing. The need to consider Maori interests in pest control policies has been made clear to park authorities but the outcomes were not clear to us.

The second benefit for the park's neighbours has been the opportunity to develop tourism ventures on their own (and possibly park) land. We agree with Professor Murton's judgement that the Crown's failure to build roads (see chapter 14) has significantly affected

tourism opportunities. The park is too remote and isolated to attract mass tourism, which dovetails well with the park's recent view that 'authentic' Tuhoe cultural experiences should be fostered. Lack of finance, business skills, and infrastructure has inhibited local people in their attempts to take advantage of tourism opportunities. Te Rehuwai Safaris and Ivan White's Waiiau valley operation seem to have been rare successes. More needs to be done to foster tourism opportunities for local park communities.

The third benefit for the park's neighbours has been the opportunity for paid employment in the park. Maori have mostly been casual employees (especially in the 1980s). We lack the evidence to say whether or not there could have been more employment opportunities for local Maori. It is our view, in light of past Treaty breaches and the desperate state of Maori communities in Te Urewera, that local applicants should be favoured where there are matching qualifications. DOC accepts that the make-up of its workforce does not adequately represent the local population, but says that 'development' opportunities are necessary before that 'ideal' can be realised. On this matter, we agree with the 1998 ministerial inquiry into the Nga Tamariki o Te Kohu protest and occupation at Lake Waikaremoana, which found that DOC should closely consider the social conditions in Te Urewera when making decisions that affect the lives of local people, including the provision of employment and training opportunities.

In sum, Maori have derived some economic benefit from the presence of the park but not as much as they could have done (and could still do), and not enough to make up for its stifling of their other economic opportunities. We do not think a finding of Treaty breach is appropriate here. We do, however, state the Crown's Treaty duty so that future breaches may be avoided: consistently with its Treaty duties to redress past grievances and actively to protect Maori interests, the Crown should take the necessary steps to ensure that the park becomes an economic boon for its Maori neighbours, to the fullest extent reasonably practicable.

(3) *The impacts of the park on Maori traditional uses and the ability of Maori to exercise kaitiakitanga*

We have said earlier that we see no necessary inconsistency between the establishment of a national park, and the active protection of Maori interests in their ancestral lands and waters. Both interests could have been provided for. But the National Parks Acts made no provision for Maori interests, and identified a number of traditional uses as offences (unless permission was obtained from the park board, in 1952, or the minister, in 1980). Maori interests were not protected by the legislation at all. We find the national parks legislation therefore in breach of Treaty principles.

Yet, it need not have been. Its emphasis on preservation need not have been incompatible with Maori sustainable uses of resources. In fact, as we have shown, the Act allowed

for a number of public recreational uses that had impacts on the natural environment. The Authority addressed the compatibility of preservation and use directly in its 1978 policy, stating that:

The principles of preservation in perpetuity and use by the public need not be in conflict.¹¹⁴²

The Act also provided for the extermination of introduced flora and fauna (unless the Authority should determine otherwise), and hunting was encouraged in national policies and in Te Urewera park management plans. The need to keep pig and deer numbers under control outweighed the potentially negative effects of dogs, as authorities later conceded. Thus there were long-term benefits to park flora and fauna to be derived from providing for Maori traditional uses, as the people themselves were well aware.

It is difficult also to see why provision could not have been made in the Act for Maori customary gathering of plants such as kiekie, pikopiko and rongoa species, which had for generations been taken in accordance with tikanga. Park visitors were unlikely to raid them.

There was from the outset, however, a cultural blind spot in respect of Maori sustainable uses of resources. It was evident when New Zealand officials began attending international conferences on national parks from the mid-1970s. It took them some time to see the point; discussions of indigenous rights to use the resources of parks or protected areas in Pacific or developing countries seemed not to be directly relevant to New Zealand. But over time they came to be well acquainted with such debates, and to present papers which drew on New Zealand (in fact Te Urewera) examples. Better official understandings arising from such discussions, and from the political changes here in the 1980s as Maori Treaty rights were recognised in some legislation and in the courts, were evident in both national park policy statements and Te Urewera management plans. But the national parks legislation itself was not amended. Perhaps it was considered that when, from 1987, parks came under the administration of the Conservation Act, the Treaty protections in that Act would be adequate. But, as we have seen, they were not. They have led to park authorities improving their processes, their consultation, and their relationships with Te Urewera communities. But they did not overcome the strong feelings within those communities that they have been marginalised in their own ancestral lands, with which their links have never been severed; that their rights and interests are accorded no more recognition than those of park visitors.

We are at a loss to account for the Crown's failure over time to amend the national parks legislation to accord recognition and standing to Maori communities' responsibilities as kaitiaki, and their sustainable resource use. In part, the explanation must be that the Crown expected Maori to leave the park, and that their traditional practices would then die out. It was not until the 1980s that officials began to accept that Maori communities would not

¹¹⁴². National Parks Authority, *General Policy for National Parks* (Wellington: Department of Lands and Survey, 1978), policy 3.1 (Edwards, supporting papers to 'Selected Issues' (doc L12(a)), p 1262)

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– and did not need to – move away from the park. The result has been ad hoc and fragmented attempts by park authorities to tackle particular ‘problems’, such as:

- ▶ the gathering of the fronds of pikopiko, and of other plants, when taking of native plants from a park was an offence; and
- ▶ the traditional use of horses and dogs for hunting (because other park users, such as the Eastern Bay of Plenty Pig Hunters’ Club, had a strong vested interest as well and could influence policy in favour of their own use of horses and dogs).

The eventual result in respect of hunting was that all hunters were put on the same footing (as when pig dogs were banned completely from the park from 1973, for ten years). Hunting with the use of dogs was then reinstated, but pig hunters had to be members of a club. One incongruous result was that iwi hunters would have to belong to a pig hunting club. They responded by forming their own. Pig-hunting seasons became shorter – over the years. When Tuhoe sought a longer season in 2001, because of their dependence on hunting for their communities, authorities were unwilling to agree to them hunting on a different basis from recreational hunters. And though special permission was given by the late 1990s for catching pigs out of season for hui or tangi, this too was an informal arrangement, evidently introduced by a ranger in the Waikaremoana area of the park.

The impact of the park regime over decades has indisputably been the continuing toll it has taken on the relationship of the peoples of Te Urewera, particularly Tuhoe and Ruapani, with the Crown. Resentment was early ingrained, and had no single cause. Park authorities were slow at the beginning to consider the likely results of numbers of park visitors travelling through a district filled with sites of importance to iwi; there is no evidence that they discussed this with local leaders or considered how to protect such sites. Destruction and looting of taonga followed. Major sites at Maungapohatu (graves and burial caves) and Waikaremoana and elsewhere were desecrated and plundered. Park staff, initially, acquired taonga with little regard for iwi wishes. There was little thought given to ensuring that local families or hapu could be supported in the exercise of kaitiakitanga in greatly changed circumstances.

In all these respects, considerable progress has been made in working with local hapu and iwi. Sites of wahi tapu have been removed from maps, as Tuhoe wished, and there has been consultation regarding new facilities and DOC activities in the park to ensure that wahi tapu are not disturbed. And, at Aniwanui, park administrators have emphasised the participation of iwi and hapu in the storage and management of taonga, and have accepted that ownership should remain with Maori. But, as with some of the more promising developments of recent years, these advances seem restricted to the Waikaremoana district.

There has been long-standing resentment too of the need to have permits for activities which for generations needed none. The basis of the strong feelings, which we were very

conscious of during our hearings, was expressed on one occasion by Tuhoe leader Tamati Kruger. Listening to people at Ruatahuna talk about taking food from the bush and the rivers, he spoke of the significance of their korero about harvesting, hunting, and fishing:

that is the face of Mana Motuhake . . . That is its awakening in the morning, knowing that you have the mana. It belongs to your family, it belongs to your sub-tribe, it belongs to your tribe. You don't have to go somewhere to beg to ask permission to pick food from a place, [or] if you are allowed to get medicine from the bush. (Koina te kanohi o te Mana Motuhake . . . Koina te ohonga mai i te ata i runga i te mohio kai a koe te mana. Kai tou whanau, kai tou hapu, kai tou iwi. Kare koe e haere ke ki te inoi, ki te patai, tena, ka ahei koe ki te haere ki te tango kai main tetahi wahi. Tena ka ahei koe, a, ki te haere ki te tiki rongoa mai te ngahere.)¹¹⁴³

Mana motuhake, freedom to take resources according to tikanga within one's rohe, came from the rights (and the responsibilities) passed down from the tipuna. As the Tribunal put it in its recent Wai 262 report, to understand the voice of matauranga Maori in environmental issues is to understand the deep values of whanaungatanga or kinship, the core belief of the relationship of people and the environment. Kaitiakitanga is 'really a product of whanaungatanga . . . an intergenerational obligation that arises by virtue of the kin relationship.'¹¹⁴⁴

A statement such as Mr Kruger's is implicitly a challenge to the basis of the view that Maori felt underpinned a national park ethos based in preservation: that it was a superior ethos, and that there was no room beside it for the sustainable use in which their own respect for the environment and for living things was rooted. The failure of the legislation over the years to acknowledge explicitly their own principles and values has not diminished that suspicion. Such recognition would have provided the basis, too, for full representation of the peoples of Te Urewera in the governance and management of Te Urewera Park. That is, implicit in active use and stewardship must be some power of decision-making. And such representation would also reflect their rights in the park lands, their history on those lands and the usurping of their rights in the Crown's illegal acquisition of the land, a history for which they have long attempted to secure recognition by park authorities.

Overall, our view is that the park legislation and national policies have not accorded adequate (sometimes any) recognition of Maori traditional uses, practices, and kaitiaki responsibilities, even after the Conservation Act 1987. The Treaty clause in that Act (section 4) requires the Act to be administered so as to give effect to Treaty principles. Significantly, the Court of Appeal held in 1995 that the Treaty clause in the Conservation Act also

1143. Tamati Kruger, brief of evidence (in Te Reo Maori), 15 May 2004 (doc D 44(a)), p1; Kruger, brief of evidence (in English), 15 May 2004 (doc D44), p2

1144. Waitangi Tribunal, *Ko Aotearoa Tenei: a report into claims concerning New Zealand law and policy affecting Maori culture and identity: taumata tuatahi* (Wellington: Legislation Direct, 2011), p105

operates to require DOC to give effect to Treaty principles when it is administering other legislation for which it is responsible, provided the other legislation is not itself inconsistent with Treaty principles. Our finding that the National Parks Act 1952 was, and the National Parks Act 1980 is, inconsistent with the principles of the Treaty means that the claimants' argument that the Conservation Act requires DOC to give effect to Treaty principles when administering Te Urewera National Park, and the Crown's argument that DOC does in fact do that, are both misplaced. In our view, the Treaty clause in the Conservation Act cannot operate to require DOC to give effect to Treaty principles when administering the National Parks Act 1980 because, quite simply, that is impossible when the National Parks Act itself is inconsistent with Treaty principles. While that result helps explain the difficulties that have characterised the relationship between DOC and the peoples of Te Urewera in matters connected with the national park, in our view it does not justify the Crown's failure over many years to identify and solve the underlying problem of the inconsistency between the National Parks legislation and the Crown's Treaty responsibilities to Maori.

As we have seen, for many years there was a cultural blind spot in the Crown's conception of national parks, that allowed the parks' use and modification for recreational purposes (and even for commercial purposes such as hunting and tourism), and insisted that such use and modification must be done on exactly the same basis for all users. What this approach failed to take into account was that the needs and rights of Maori communities adjacent to the park were not identical to those of other users. Pony clubs and pig hunting clubs were advanced as the reason why the tangata whenua, who were dependent on the park for food and other resources, could not get 'special' treatment. But underlying this theoretically colour blind approach was the Crown's expectation for many years that Maori communities simply could not continue to live in the midst, as it were, of a national park. The 'national' interest trumped their 'local' interest, and their interest as Treaty partners.

Yet, Maori needs were not necessarily incompatible with a park ethos of preservation. Their communities were accustomed to sustainable use of resources; introduced animal populations had to be constantly controlled. The evidence shows clearly that Maori needs and interests were known to park authorities. The national parks legislation should have been amended to meet those needs.

16.10.3 The governance and management of the park

In 1953, Tuhoe met with Minister Corbett. They reminded him of Donald McLean's promises (unfulfilled), and of Carroll and Seddon's promises (unfulfilled). Tuhoe were still waiting, they said, for past promises to be carried out. As we have seen in earlier chapters, a key element of those promises was for the peoples of Te Urewera to be self-governing within the New Zealand state. Tuhoe spoke to us of their mana motuhake, their ancestral authority

to determine their own destinies and to manage their own affairs. In the early twentieth century, despite the solemn pledges embodied by the UDNR Act, the Crown broke the collective strength and authority of Te Urewera tribes. The repeal of the Act coincided with a consolidation scheme that left them minority owners with too little land. But Tuhoe as a people remained. Their tribal structures and leadership functioned as best they could without legally-recognised powers. So there they still were in the 1950s when Corbett made the contradictory decisions to allow 'safe' milling and to lock up the whole district as a national park. The peoples of Te Urewera are still living with the consequences of that contradiction today.

Here, we are concerned with the effect of introducing what was effectively a new system of local government to control and manage most of the claimants' rohe. In brief, the Crown's land was controlled and managed (with a light hand) by the Forest Service until 1954. Then, the commissioner of Crown lands became a virtual ruler of the district, with powers, duties and responsibilities prescribed by the national parks legislation. In 1961, his authority was transferred to a local park board, which managed the park until 1980. Working within the prescriptions of the legislation and national policy, the board was both a decision-making and management body specifically for Te Urewera National Park. Then, from 1980, policy-setting and direction became the role of a series of regional bodies, while management of the park (and advice to those bodies) was transferred first to Lands and Surveys and then to DOC. Inevitably, the decision-making and policies of this species of 'local government' exercised authority over the peoples of Te Urewera, both on park land itself and for those communities whose lands had become 'virtual park'.

What is the Treaty standard? For the Crown to have protected the tino rangatiratanga or mana motuhake of the peoples of Te Urewera, it had to provide for them to participate fully in the governance and management of the park (and of the buffer zones that had become 'virtual park'). Their authority to manage their own affairs had to be respected. The authority of the kawanatanga also had to be respected. Where the two overlapped – as they inevitably did in a park set aside in the national interest which was nonetheless the claimants' turangawaewae – partnership institutions were required to give effect to article 1 and article 2 Treaty rights.

The Crown argued in our inquiry that Maori authority in respect of the park, prior to the Conservation Act 1987, was given effect to the extent possible in the circumstances of an earlier time. We do not agree. Tuhoe explained their circumstances and aspirations to Corbett in 1953. They explained their circumstances and aspirations to MacIntyre in 1971. They reminded Ministers and officials, as the opportunity arose, of the promises of McLean and Seddon, and the circumstances by which they had been reduced to small and impoverished landowners in their own rohe. Tuhoe also pressed for formal representation on the

park board in 1973 and again in the 1980s. The Minister of Maori Affairs backed their 1973 request but without success. Astonishingly, the Lands and Survey Department advised a select committee in 1980 that Maori had no 'right' to membership of the park board because, unlike Tongariro and Egmont national parks, there was 'no special historical significance' in the establishment of Te Urewera National Park.¹¹⁴⁵

In 1954, and more so in 1957 when the park was expanded to engulf or abut so much of the remaining Maori land in Te Urewera, the Minister could have sought an amendment to the national parks legislation to include the park's Maori residents in its governance arrangements. This option was always open to the Crown. It actively chose not to adopt it in 1973 and again in the 1980s.

Instead, from 1954 to 1961 local Maori communities had no voice at all in decisions about or management of the park. Then, from 1961 to 1980, there were always one or two Tuhoe representatives on the park board, although – as the claimants emphasised – not 'as of right'. From 1974, the Minister also appointed a Ngati Kahungunu member to the board. In the claimants' view, these arrangements were insufficient to give effect to their Treaty rights and authority. In terms of principle, they had no guaranteed membership of the board. In terms of practicalities, this had the effect of making them less secure and less influential. Given that they were always a minority and could be outvoted by the other members of the board – the majority of whom Mr Nikora described as 'gentleman farmers' – their membership lacked the power or influence to be described as a genuine partnership.

We agree up to a point. Maori members of the board worked hard for their people and did exercise influence, but they were too few to have real power, especially when the board had to carry out nationally-set policies under an Act that was not designed to accommodate Maori interests very easily in a national park model.

In the claimants' view, their influence through this mechanism was further diluted after 1980, when the park board was replaced by a regional body with a less direct role in running the park, which became the responsibility of government departments. We accept that that was the case.

In fact the main way in which local Maori leaders influenced or contributed to the management of the park before the 1980s appears to have been as unpaid honorary rangers. While that position has since fallen into disuse, there have been some promising on-the-ground initiatives with DOC since it assumed day-to-day management of the park. We are thinking here mostly of the 'Aniwaniwa model' introduced in the mid 1990s in that part of the park, where local iwi committees work in partnership with DOC officials. While the claimants hailed this as something of a break-through, they were concerned that it had no structural guarantee and depended entirely on local relationships and initiatives of particular DOC staff. The 1998 ministerial inquiry into the Waikaremoana occupation endorsed

1145. Briefing paper attached to 'Director-General of Lands to Minister of Lands', 30 June 1980 (Edwards, comp, supporting papers to 'Selected Issues: Te Urewera National Park' (doc L12(a)), pp 896–897)

that concern, finding that the local Maori communities had too little say in the running of a park that had such a dominant influence in their lives. It urged DOC to be innovative in adopting more cooperative, community-based, approaches to management of the leased lakebed area and recommended that a formal agreement with tangata whenua be reached about the future approach. The Aniwaniwa model was re-established in 1999 but remains an informal and therefore insecure base on which to build a partnership.

As with our discussion of customary uses and how those have been accommodated (or not) over the years, Maori input to the management of the park has therefore been mostly ad hoc or informal. Honorary rangers, minority (and not guaranteed) representation on the park board at the discretion of the Minister, and formal consultation about management plans; these are the ways in which policy and legislation have allowed local Maori a say in the running and management of the park. Since 1987, the park has been managed by a Crown agency with a statutory requirement to give effect to Treaty principles when administering its governing Act, a requirement that DOC believes also applies, and which it has met, when administering Te Urewera National Park. As has been explained, we disagree. The overwhelming fact remains, however, that for nearly 150 years before 1987, the Crown was bound by Treaty principles and yet, as will be very clear from our report, the essential context for the creation and management of the national park was a long history of broken promises and Treaty breaches. Though reminded from time to time, Ministers and officials took too little account of this inconvenient history.

For the period before 1987, we find that the Crown did make some efforts to involve local Maori in the decision-making and management of the park, but, within the context of a national park based on principles that took no account of their Treaty rights, those efforts could not meet Treaty standards. As we see it, it was clear to Ministers and officials that Te Urewera was a unique case. No other national park had Maori communities living inside it. The restriction of their role to honorary rangers and an informal, minority representation on the decision-making body was very far from being a fair or adequate recognition of their mana motuhake or their Treaty right to self-government. If Pakeha settlements had likewise been made into enclaves or buffer zones in a national park, they would not have tolerated either the lack of compensating benefits or such a small say in the running of its affairs. Others were predominant on the park board. Others were predominant in the park's day-to-day management. Tuhoē lived there.

Thus, the Crown had effectively established a unique system of 'local government' in Te Urewera which was not elected and in which the local residents had no rights of representation. This situation was unique to Te Urewera, as no other national park had residents to be thus excluded from local self-government. Technically, of course, private Maori land is not subject to this unelected government but in reality, we say, it has been in many respects.

In more recent times, the system of 'local government' that prevails in the park and the adjacent lands caught up in its sway, has become more open to Maori involvement. In

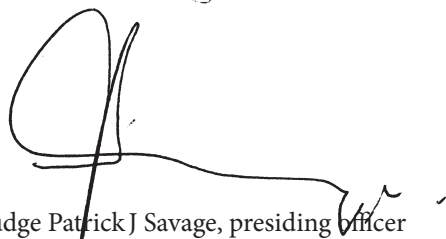
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particular, the Aniwaniwa model is promising, but it is neither secure nor sufficient, including in its coverage of land in and bordering the park. There has also been formal and informal consultation on management plans but broadly speaking, the evidence supports the claimants' contention that they have been one group of submitters among many. They have not been decision-makers; the cultural harvest arrangements in Aniwaniwa are the closest that local people have been allowed to get to shared control of any issue. This falls short of the principle of partnership. We agree with the Wai 262 Tribunal that the Treaty requires partnership institutions in general, and a consideration of local circumstances to determine whether kaitiaki should have (a) sole control, (b) joint control with the Crown, or (c) merely influence over the decisions that are made. We also note that Tribunal's statement that title-return and joint management arrangements have been carried out successfully for national parks in Australia, and could also be carried out here in appropriate situations.¹¹⁴⁶ We can think of no more appropriate situation than that of Te Urewera National Park.

1146. Waitangi Tribunal, *Ko Aotearoa Tenei*, pp 143–145

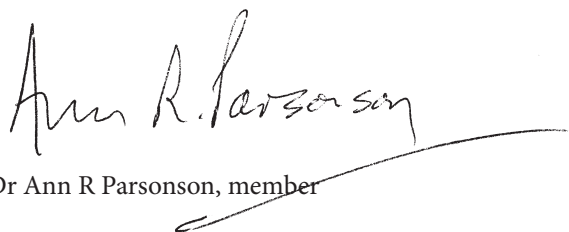
Dated at Wellington this 18th day of October 2012



Judge Patrick J Savage, presiding officer



Joanne R Morris OBE, member



Dr Ann R Parsonson, member



APPENDIX I

CLAIMS BY WAI NUMBER

Not included in this part

APPENDIX II

THE UREWERA DISTRICT NATIVE RESERVE ACT 1896

ANALYSIS

Title	13. Particulars to be recorded on certificates of ownership.
Preamble	14. Governor may confer jurisdiction on Native Land Court.
1. Short Title.	15. Orders of Native Land Court to be registered.
2. Urewera District declared a Native reserve.	16. Local Committees to be appointed.
3. Acts suspended.	17. Duration of office of provisional Committees.
4. Governor in Council may appoint Commissioners.	18. Election of General Committee.
5. Powers and functions thereof.	19. Decisions thereof binding on owners.
6. Procedure of Commissioners.	20. Powers of Local and General Committees.
7. Ownership to be investigated on sketch-plan.	21. Power of General Committee to alienate.
8. Particulars to be stated in orders made.	22. Governor may lay out roads and landing-places.
9. Orders to be published.	23. May take land for accommodation-houses.
10. Person aggrieved may appeal to Minister of Native Affairs.	24. Governor in Council may make regulations.
11. Registration of orders when confirmed.	25. Payment of expenses.
12. Order may be sent to Native Land Court to deal with.	Schedules.

1896, No 27.

AN ACT to make Provision as to the Ownership and Local Government of the Native Lands in the Urewera District. Title.

[12th October, 1896]

WHEREAS it is desirable in the interests of the Native race that the Native ownership of the Native lands constituting the Urewera District should be ascertained in such manner, not inconsistent with Native customs and usages, as will meet the views of the Native owners generally and the equities of each particular case, and also that provision should be made for the local government of the said district: Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

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Aprii

- Short Title. 1. The Short Title of this Act is ‘The Urewera District Native Reserve Act, 1896.’
- Urewera District declared a Native reserve. 2. The Native lands constituting the Urewera District, the area and boundaries whereof are approximately set forth in the First Schedule hereto, are hereby declared to be a Native reserve, subject to the provisions of this Act.
- Acts suspended. 3. Neither ‘The Native Reserves Act, 1882,’ nor ‘The Native Land Court Act, 1894,’ shall have any operation within the said district except in so far as is expressly provided by this Act or by regulations made hereunder.
- Governor in Council may appoint Commissioners. 4. For the purposes of this Act the Governor may by Order in Council appoint seven persons to be Commissioners, of whom two shall be Europeans, and the remainder Natives of the Tuhoe Tribe.
- Powers and Functions thereof. 5. Subject to the provisions of this Act, the Commissioners shall have such powers and functions as the Governor in Council prescribes.
- Procedure of Commissioners. 6. The Commissioners shall divide the said district into blocks, and shall, with due regard to Native customs and usages, investigate the ownership of each block, adopting as far as possible hapu boundaries, in such manner as in their opinion will enable them to arrive at a just and equitable decision in each case.
- Ownership to be investigated on sketch-plan. 7. The ownership of any particular block may be investigated and determined on a sketch-plan prepared and approved by the Surveyor-General as approximately correct. The cost of any such sketch-plan shall be borne by the Government.
- Particulars to be stated in orders made. 8. The Commissioners shall make an order in the prescribed form in respect of each block, declaring with respect to such block—
(1.) The names of the owners of the block, grouping families together, but specifying the name of each member of each family;
(2.) The relative share of the block to which each family is entitled;
(3.) The relative share to which each member of the family is entitled in such family’s share of the block;
(4.) Such other particulars as are prescribed.
- Orders to be published. 9. Every order made by the Commissioners shall be published in the *Kahiti* in Maori and English, and, if no appeal as hereinafter provided is lodged against the same within the period

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of twelve months from the date of such publication, the same shall thereupon be confirmed by the Governor.

10. Any person feeling aggrieved by any order made by the Commissioners may, in the prescribed manner, appeal to the Minister of Native Affairs, who may direct such expert inquiry and report as he thinks fit, and, after considering such report, may confirm the original order unaltered or with such modification or variance as he deems equitable. His decision shall be final.

Person aggrieved may appeal to Minister of Native Affairs.

11. Every order confirmed by the Governor or the Minister of Native Affairs shall be registered in the prescribed manner, and shall thereupon operate as a certificate of ownership under this Act.

Registration orders when confirmed.

12. In lieu of himself confirming any such order the Minister may refer it to the Governor in Council, who may confer jurisdiction on the Native Land Court to deal therewith under the provisions in that behalf hereinafter contained.

Order may be sent to Native Land Court to deal with.

13. There shall be recorded on each certificate of ownership, in the prescribed manner,—

Particulars to be recorded on certificates of ownership.

- (1.) The names of the Local Committee for the block comprised in the certificate, and of the General Committee, and particulars of every change in the membership thereof respectively:
- (2.) Every dealing with the block or any portion thereof:
- (3.) Every change of ownership in the block:
- (4.) Such other particulars as are prescribed.

14. The Governor, by Order in Council, may from time to time confer jurisdiction on the Native Land Court to determine succession claims, or for any other specific purpose relating to the said district.

Governor may confer jurisdiction on Native Land Court.

15. Any order made by the Native Land Court under the provisions of the last-preceding section hereof may, if the Minister of Native Affairs so directs, be registered as a certificate of ownership under this Act, or be recorded on a certificate of ownership and entitled to registration, as provided in regulations under this Act.

Orders of Native Land Court to be registered.

16. (1.) From the owners of each block a provisional Local Committee of not less than five nor more than seven members shall in the first instance be appointed by the Commissioners in the prescribed manner.

Local Committees to be appointed.

- (2.) Members of the provisional Local Committee may be removed from office by the Governor, and vacancies may be filled up in the prescribed manner.

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- Duration of office of provisional Committees. **17.** Subject as last aforesaid, the provisional Local Committee shall hold office until the election of a permanent Local Committee by the owners of the block.
Such election shall be held at such time and in such manner as the Governor prescribes.
- Election of General Committee. **18.** Each Local Committee shall, in the prescribed manner, elect one of its members to be a member of a General Committee to deal with all questions affecting the reserve as a whole, or affecting any portion thereof in relation to other persons than the owners thereof.
- Decisions thereof binding on owners. **19.** Subject to prescribed regulations, all decision or undertakings by the General Committee shall be binding on all the owners.
- Powers of Local and General Committees. **20.** The Local Committee and the General Committee shall have such powers and functions as are prescribed by the Governor in Council: Provided that the powers and functions of the Local Committee of each block shall be confined to the internal affairs of the block.
- Power of General Committee to alienate. **21.** The General Committee shall have power to alienate any portion of the district to Her Majesty, either absolutely or for any lesser estate, or by way of cession for mining purposes.
- Governor may lay out roads and landing-places. **22.** (1.) The Governor may from time to time lay out roads and landing-places in the said district according to plans to be prepared by the Surveyor-General.
(2.) All such roads and landing-places shall be deemed to be public roads and public landing-places, and shall vest in Her Majesty the Queen.
- May take land for accommodation-houses. **23.** The Governor may also from time to time take land for accommodation-houses and camping-grounds for stock and other purposes of public utility under the provisions of 'The Public Works Act, 1894,' relating to the taking of land for a public work:
Provided that, except with the consent of the General Committee, the total area of the land to be so taken shall not exceed four hundred acres.
- Governor in Council may make regulations. **24.** The Governor in Council may from time to time make such regulations as he thinks necessary for the following purposes:—
(1.) The mode of election of members of the Local Committees and the General Committee, and fixing their term of office:
(2.) Giving effect to anything which by this Act is expressed to be prescribed:
(3.) Any other purpose for which regulations are contemplated by this Act, or which he deems necessary in order to give full effect to this Act: and also
(4.) For giving effect to a certain memorandum from the Honourable Richard John Seddon, Premier of the Colony, addressed to the representatives of the Tuhoe people, bearing

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date the twenty-fifth day of September, one thousand eight hundred and ninety-five, a copy whereof is set forth in the Second Schedule hereto.

25. All expenses incurred by the Government under this Act shall be paid out of moneys to be appropriated by Parliament.

Payment of expenses.

SCHEDULES

Schedules.

FIRST SCHEDULE

ALL that area in the Auckland and Hawke's Bay Land Districts, containing by admeasurement 656,000 acres, more or less. Bounded towards the north by the Confiscation Boundary-line; towards the east generally by the Waimana and Tahora, No 2 Blocks; towards the south-east by the Waipaoa Block, the Waikaremoana Lake, by Forest Reserve, Educational Reserve, Block v, Waiiau Survey District, and Section No 1, Block VIII, Mangahopai Survey District; towards the south-west by the Waiiau River to the northernmost corner of Maungataniwha Block; thence by a right line to the Trig Station on Maungataniwha, and thence by Heruiwi No 4 Block; and towards the west generally by Whirinaki, Kuhawaea No 1, Waiohau Nos 1B, 1A, and 2, and Tuararangaia Blocks to the Confiscation Boundary-line at Tapapa-kiekie.

SECOND SCHEDULE

Premier's Office, Wellington, 25th September, 1895.

To the persons who came hither to represent Tuhoe, and who have addressed me with reference to certain matters affecting the tribe.

FRIENDS,—

Salutations! In response to your application that I should give you an answer to the matters brought before me, and acquaint you with the decision of the Government thereon, in fulfillment of my promise I now address this communication to you. In the first place, you ask that the *rohe-potae* of the Tuhoe land—that is to say, the country known as that of the Urewera-be permanently determined; and, in order to do this, that a Commissioner be appointed to define the boundary known as the *rohe-potae*. I do not see why this cannot be done. I have no objection to that. The boundaries of these lands can be determined by the trig stations that have been erected. You ask also that a Commissioner be appointed to inquire into the title of the persons owning land within the said *rohe-potae*, and to determine the boundaries of land belonging to hapus and persons who consider that the land is theirs, his decision to be set down in writing; the Commissioner also to make a sketch-plan of the country, to be approved by the Surveyor-General, the boundaries of the land belonging to the hapus being determined by landmarks where possible to do so; if not, then to be surveyed with the concurrence of the owners of the

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land. In coming to such a decision the Commissioner must pay due consideration to Native manners and customs, and, where it is possible to do so, he must follow the boundaries of the several hapus, each block to be dealt with in a clear and proper manner.

In dealing with the title of a person and his family they must be deemed to be joint tenants. When the Commissioner has concluded his investigation into the title of the several blocks, then the Maoris who are in a block of land belonging to a hapu may elect a Local Committee, the members of which must not exceed seven in number. This Committee to be an administrative one, to act for the owners of the land for the period for which they were elected. The number of these Local Committees should be determined by the number of the hapus and the owners of the blocks of land.

You ask further that a General Committee be appointed to deal with the tribal lands generally, and that the decisions and proceedings of the said Committee be binding on the Local Committees and hapus; its proceedings to be conducted in accordance with Maori manners and customs. I think that such a Committee should be appointed, and, in order to give effect to this, I agree that each Local Committee or hapu should elect one of their number to be a member of the General Committee, all the decisions of the General Committee to be communicated to the Local Committees for their guidance.

The regulations for the appointment of a Commissioner, and for the election of members of Local Committees and of the General Committee, will be communicated later on, after an Act has been passed giving effect to what is here set forth, which will be explained by the Hon Mr Carroll and Wi Pere, member for the Eastern Maori Electoral District, to Tuhoe.

You also remind me of the promise that I made when I visited you a short time back with reference to the establishment of schools at some of your principal kaingas. As I feel that the education of your children will give you pleasure, and that the children will benefit thereby in the time to come, the erection of school-buildings will be proceeded with forthwith. I regret very much that this has not been proceeded with sooner, but I will give instructions to have it done forthwith.

You refer to the road works in your district, and ask that certain sections be given for the Maoris to do, and that when the roads are finished that certain portions be given to the Maoris to maintain. These requests are reasonable, and will be given effect to.

As you feel that it would be desirable to provide an additional attraction to European tourists, and at the same time provide you with additional sources of food, you have asked that arrangements may be made for the introduction of English birds, and by stocking the rivers with English fish. By such means you Maoris will be benefited, and the rest of the colony as well. I will place myself in communication with the Curator of the fish-ponds at Masterton, and ascertain whether there are any English trout that can be supplied to you this year; and I will also ask to be furnished with full directions to be furnished to you, so that you may know which are the most

suitable places in which to place the fish in the rivers and lakes of your country, and how to look after them.

With regard to your request that your forests and birds should be suitably protected, it gives me much pleasure to assent to this request of yours. I am also very much pleased to learn from you that you have opened your land to tourists, who will now have an opportunity of seeing the wonders of your country, and the extent of your forests, with its lakes and its rivers. It is a cause of gratification to the Governor, and to me also, to hear that you acknowledge that the Queen's mana is over all, and that you will honour and obey her laws.

With regard to prospecting for gold, I told you that the Government gave a reward to anyone discovering gold in new country, and that much money had been paid away in that manner, the amount paid being in proportion to the number of people employed in digging gold in such localities, and the quantity of gold procured. The Government have received many applications to grant licenses for prospecting for gold, but I have not granted them. I consider that any rewards for the discovery of gold should be paid to the Maori owners of the land who prospect for and find gold. If you wish to prospect for and find gold, and it is proved to be of value, the Government will authorise a mining expert to go with the Maoris and teach them how to look for gold and other minerals, and the Government will pay a portion of the expenses of such a prospector according to the scale laid down in the regulations for gold-prospecting on Crown lands. I think, too, that should gold be found in your land the benefit accruing therefrom should be participated in by the hapu owning the land where the gold is discovered; and before the goldfield is opened arrangements should be made between the Government and the Maoris upon which the field is to be worked, either by payment of a royalty per pound or per ounce of the amount received from the working to the owners of the land, or that the balance, after paying the expenses of administration of the goldfield, and the balance on the issue of licenses and miners' rights to miners, be paid to the owners of the land. The question of general administration can be arranged with the chiefs or the persons selected to represent each hapu, or with the hapu owning the land in which gold is found. I also think that you can settle the arrangements for prospecting for gold. This is an important matter, and one that I think might be left for one person to decide; should there be no difference of opinion amongst you on this point it will not cause surprise, and there will be no trouble or heartburning.

From your loving friend,

R J SEDDON,

Premier, and Minister of Native Affairs.

APPENDIX III

**THE FIRST COMMISSION'S HEARINGS
AND THE RESULTS OF ITS WORK**

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Block Number	Block Name	Area (acres) 'more or less'	Shares	Hapu	Number of families	Number of individuals	Commissioners	Appeals per block
1	Hikurangi-Horomanga	56,000	2,759	Patuheuheu Ngati Haka Ngati Hiki	138	374	D Scannell (chair) WJ Butler Te Pou Hurua Puketapu	11
2	Ierenui-Ohaia	5,540	3,865	Ngati Rongo Ngati Rakei	153	401	D Scannell (chair) WJ Butler Hurua Puketapu Te Pou	6
3	Kohuru-Tukuroa	8,224	4,139	Ngati Rongo Ngati Tamariwai Ngati Korokaipapa	139	377	D Scannell (chair) WJ Butler Te Pou Hurua Puketapu	4
4	Karioi	2,420	2,733	Ngamaithi	112	285	D Scannell (chair) WJ Butler Numia Kereru Hurua Puketapu Mehaka Tokopounamu	2
5	Maraetahia	5,512	1,401	Ngai Tawha	125	252	D Scannell (chair) WJ Butler Numia Kereru Te Pou	(Maraetahia and Otairi 6)
6	Maungapohatu	53,696	6,531	Tamakaimoana Ngapotiki Ngai Tumatawha Ngai Tatura N Maru N Te Ao N Pou (Eria's list)	336	919	D Scannell (chair) WJ Butler Te Pou Hurua Puketapu Mehaka Tokopounamu	10 (Maungapohatu and Tauranga 6)

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7	Te Wairiko	2240	2155	Te Aitanga o Tanemoeahi	75	238	D Scannell (chair) WJ Butler Te Pou Hurao Puketapu	2
8	Te Poroporo	2470	1080	N Maruhakapua	80	237	D Scannell (chair) WJ Butler Hurao Puketapu Numia Kereru	1
9	Te Tapatahi	462	1223	N Takiri	54	132	D Scannell (chair) WJ Butler Numia Kereru Hurao Puketapu	3
10	Te Waipotiki	8200	4076	N Rongo Mahurehure	202	527	D Scannell (chair) WJ Butler Hurao Puketapu Numia Kereru Mehaka Tokopounamu	6
11	Otara	2680	2830	Ngai Turanga	89	253	D Scannell (chair) WJ Butler Hurao Puketapu Mehaka Tokopounamu Numia Kereru	3
12	Whaitiripapa	167	2834	Te Urewera	111	289	D Scannell (chair) WJ Butler Hurao Puketapu Te Pou	1
13	Ruatoki South	6020	2201	N Muriwai	98	280	D Scannell (chair) WJ Butler Hurao Puketapu Te Pou	6

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Number	Block Name	Area (acres) 'more or less'	Shares	Hapu	Number of families	Number of individuals	Commissioners	Appeals per block
14	Waikarewhenua	12,500	5168	Ngaitama	173	505	D Scannell (chair) WJ Butler Hurae Puketapu Te Pou Mehaka Tokopounamu	5
15	Te Tuahu	6300	3379	Hamua	112	351	D Scannell (chair) WJ Butler Hurae Puketapu Te Pou Numia Kereru	3
16	Tauwharemanuka	28,860	1404	Whakatane N Tokotuai N Tamariwai	124	339	D Scannell (chair) WJ Butler Mehaka Tokopounamu Te Pou	4
17	Ohiorangī	1190	4606	Ngai Tama	134	413	D Scannell (chair) WJ Butler Hurae Puketapu Numia Kereru	4
18	Te Purenga	5680	1737	N Koura	104	297	D Scannell (chair) WJ Butler Te Pou Hurae Puketapu Numia Kereru	4

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Block Number	Block Name	Area (acres) 'more or less'	Shares	Hapu	Number of families	Number of individuals	Commissioners	Appeals per block
20	Tauranga	51,000	4272	N Maihi N Te Kahu N Tamaroki	201	547	D Scannell (chair) WJ Butler Mehaka Tokopounamu Numia Kereru Hurae Puketapu	5 (Maungapohatu and Tauranga 6)
21	Taneatua	17,200	5536	N Whakateke Manutohikura Te Urewera Ruatahuna N Ha Tokotuwai N Tamakaimoana	316	911	D Scannell (chair) WJ Butler Te Pou Hurae Puketapu	2
22	Waikaremoana	68,260	6612	Tuhoe Ruapani	290	729	D Scannell (chair) WJ Butler Te Pou Mehaka Tokopounamu	6
23	Pukepohatu	7488	607	N Tokotuai	25	44	D Scannell (chair) WJ Butler Te Pou Hurae Puketapu Numia Kereru	6
24	Paraoanui	8910	821	N Taumata	43	115	D Scannell (chair) WJ Butler Mehaka Tokopounamu Tutakangahau	6

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Block Number	Block Name	Area (acres) 'more or less'	Shares	Hapu	Number of families	Number of individuals	Commissioners	Appeals per block
26	Ruatahuna	63,230	4045	Te Urewera N Te Riu N Kuri N Tu N Manunui N Kahutapiki N Ruatahuna	324	884	D Scannell (chair) WJ Butler Te Pou	15
27	Omahuru	6600	2271	Ngai Tautua	87	237	D Scannell (chair) WJ Butler Mehaka Tokopounamu Te Pou Hurae Puketapu	6
28	Te Ranga-a-Ruanuku	16,288	6117	N Ha	191	563	D Scannell (chair) WJ Butler Te Pou Hurae Puketapu	5
29	Tarapounamu— Matawhero	65,984	3950	N Tawhaki N Te Wehi	320	883	D Scannell (chair) WJ Butler Hurae Puketapu Te Pou Numia Kereru	14

THE FIRST COMMISSION'S HEARINGS AND THE RESULTS OF ITS WORK
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30	Otairi	8670	1118	Ngai te Au	52	133	D Scannell (chair) WJ Butler Numia Kereru Te Pou	3 (Maraetahia and Otairi 6)
31	Te Whaiti-nui-a-Toi	72,970	3242	Tuhoe N Whare N Manawa	217	424	D Scannell (chair) WJ Butler Numia Kereru Te Pou	19
32	Parekohe	20,900	6132	N Turanga Te Urewera N Te Kapo	261	703	D Scannell (chair) WJ Butler Hurae Puketapu	10
33	Ruatoki 1	8735	3832		195	497	WJ Butler (chair) Gilbert Mair Hurae Puketapu	17
34	Ruatoki 2	5910	4167		214	558	WJ Butler (chair) Gilbert Mair Hurae Puketapu	16
35	Ruatoki 3	6800	4382		222	603	WJ Butler (chair) Gilbert Mair Hurae Puketapu	16

Sources: Cecilia Edwards, 'Urewera District Native Reserve Act 1896, pt 2' (doc D7), apps A, B (Edwards' cited source is 'Commissioners' Orders under "The Urewera District Native Reserve Act 1896"', AJHR, 1903, G-6). The hapu names that Edwards lists were recorded by the Urewera commission in 1902: see Urewera minute book 7, pp 42-45.

APPENDIX IV

OUTCOMES OF THE CONSOLIDATION PROCESS IN THE UDNR

This appendix illustrates the outcomes of the consolidation process in 13 different parts of the former Reserve. For the purposes of our analysis of the issues relating to the Urewera Consolidation Scheme, we found it necessary to establish how far the division of the land in the scheme was decided at the Tauarau hui and how far those decisions were subsequently changed at the hands of the consolidation commissioners (see section 14.5.2.2). This required a comparison of the location of Maori owners' interests at three points in time: first, in July 1921, when Crown purchasing had nominally come to an end; secondly, in October 1921, after the provisional division of the land had been negotiated at the Tauarau hui (as recorded in the consolidation scheme report); and thirdly, in February 1925, when the consolidation commissioners had finalised the location of all 183 Maori-owned blocks.

We began by grouping the former Reserve blocks into 13 areas, ranging in size from 2490 acres to 106,790 acres, with 35,506 acres as the median and averaging approximately 40,000 acres each. These roughly corresponded to the nine 'series' of blocks into which Maori land was organised during the implementation of the scheme. We also included four more pools of Maori owner shares which were recognised in the consolidation scheme report: shares in suspense (for which owners had as yet no location); shares destined for Crown land in Whirinaki; shares destined for Crown land in Hereheretau B2; and the Tuhoe allocation of shares in the Waikaremoana block, which were destined to be redistributed throughout the rest of the UCS. The Crown's purchasing figures allowed us to establish how much it had acquired in each of these 13 areas by July 1921, in the form of undivided interests. We compared the remaining Maori interests in the 13 groups of former Reserve blocks with the provisional division of the land negotiated at the Tauarau hui. The consolidation scheme report organised consolidation groups according to former UDNR blocks, thus allowing for an easy point of comparison. We then compared the provisional division of Maori interests negotiated at Tauarau with the final distribution of interests among the UCS blocks (before the deductions were made to account for survey and roading costs), as recorded in the consolidation commissioners' minute books and depicted in the survey plans for the Maori-owned blocks. Because the consolidated blocks did not match the boundaries of the old Reserve blocks, we used maps of the UCS and Reserve block boundaries where the two were

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UDNR blocks	Original area (acres)	July 1921			October 1921	
		Value of Maori owner interests (£)	Equivalent acreage	Percentage of original area	Value of Maori owner interests (£)	Equivalent acreage
Parekohe, Ruatoki South, Waipotiki, and Te Wairiko	37,420	9,945	12,162	32.5	17,787	25,079
Otara, Omahuru	9,280	628	628	6.8	1,457	1,457
Paraoanui North and Paraoanui South	8,910	358	409	4.6	1,183	1,352
Tauranga and Tauwharemanuka	75,668	4,849	9,128	12.1	2,553	4,443
Maungapohatu	28,462	6,121	10,202	35.8	6,253	10,422
Paraeroa, Paraeroa B, Taneatua, Karioi, and Te Poroporo	35,506	7,814	15,627	44	5,732	11,464
Te Tuahu and Te Purenga	11,980	878	1,756	14.7	0	0
Waikarewhenua, Te Ranga-a-Ruanuku, Ierenui-Ohau, Tarapounamu- Matawhero, and Kohuru-Tukuroa	106,790	18,403	43,549	40.8	16,456	40,068
Ohiorangi and Tauwhare	2,490	441	882	35.4	0	0
Ruatahuna	57,823	14,360	42,123	72.8	18,003	54,677
Hikurangi-Horomanga	55,174	6,923	21,096	38.2	6,177	19,006
Otairi, Maraetahia, and Tawhiuau	17,486	669	3,254	18.6	0	0
Te Whaiti 1 and 2	71,340	7,091	12,437	17.4	7,191	15,422
Sub-total of blocks subject to Crown purchase to 1921	518,329	78,480	173,253	33.4	82,792	183,390
Shares in suspense (under negotiation)	na	na	na		2,135	na
Waikaremoana (interests not exchanged for debentures)	29,060	8,696	29,060	100	868	na
Whirinaki	na	na	na		713	na
Hereheretau B2	na	na	na		300	na
Total	na	87,176 *	202,313		86,808	183,390

* Approximate

Table IV.1: The outcomes of the division of the land between Maori owners and the Crown at the Taurau hui (as set out in the October 1921 consolidation scheme report) compared with the February 1925 final awards

Sources: July 1921 figures are taken from Tamaroa Nikora, 'The Urewera Consolidation Scheme (1921-1926): An Analysis', June 2004' (doc E7), tbl A. October 1921 figures are taken from RJ Knight, H Carr, and HRH Balneavis, 'Urewera Lands Consolidation Scheme', 31 October 1921, AJHR, 1921, G-7, pp 9-14. February 1925 figures are compiled from Nikora, 'The Urewera Consolidation Scheme' (doc E7), tbl D; Urewera minute book 1 (doc M29), p 292; Urewera minute book 2A (doc M30), pp 60, 68, 203-218; and Urewera Consolidation Block Orders (docs M12(c), (d)). Block valuations are from Stephen Robertson, 'Te Urewera Surveys: Survey Costs and Land Valuations in the Urewera Consolidation Scheme, 1921-22' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2003) (doc A120), pp 38, 60; Cecilia Edwards, 'The Urewera District Native Reserve Act 1986, Part 3: Local Government and Land Alienation under the Act' (commissioned research report, Wellington: Crown Law Office, 2004) (doc D7(b)), pp 114, 176-177; and Nikora, 'The Urewera Consolidation Scheme' (doc E7), tbl A.

OUTCOMES OF THE CONSOLIDATION PROCESS IN THE UDNR

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February 1925					Acreage change from October 1921 to February 1925	Change as percentage of original area
Percentage of original area	Value of Maori owner interests (£)	Equivalent acreage	Percentage of original area	Reserves (not from shares)		
67.0	16,689	21,495	57.4	17	- 3,584	- 9.6
15.7	3,060	3,181	34.3	0	+ 1,724	+ 28.6
15.2	535	611	6.9	0	- 741	- 8.3
5.9	2,852	5,051	6.7	1	+ 608	+ 0.8
36.6	6,768	11,280	39.6	3	+ 858	+ 3.0
32.3	10,302	17,632	49.7	0	+ 6,168	+ 17.4
0.0	0	0	0.0	0		na
37.5	17,944	43,421	40.7	19	+ 3,353	+ 3.2
0.0	0	0	0.0	0	na	
94.6	14,965	39,968	69.1	14	- 14,709	- 25.5
34.4	5,994	17,903	32.4	0	- 1,103	- 2.0
0.0	0	0	0.0	0	na	
21.6	7,523	15,688	22.0	36	+ 266	+ 0.4
35.4	86,632	176,230	34.0	90	- 7,160	- 1.4
na	na	na	na	na	na	
0.0	0	0	0.0	na	0	
	111	na		na	na	
	300	256		na	na	
	87,043	176,486		90	- 7,160	

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superimposed to assign the various UCS blocks (or, in rare cases, the separate parts of the UCS blocks) into one of the 13 groups of Reserve blocks.¹

Table 1V.1 records the outcomes of this exercise. Most notably, by comparing the provisional division of the land at the Taurarau hui with the final awards, we were able to establish that the consolidation commissioners authorised the movement of interests equating to a total of 33,114 acres – or 18 per cent of the 183,390 acres that were earmarked for award to Maori owners at the hui. As noted in chapter 14, this analysis does not take into account the small-scale changes of boundaries when surveying took place on the ground. Yet, it is sufficient to show where the total allocation of land to Maori owners increased or decreased. In short, this analysis demonstrates the importance of the outcomes of the Taurarau hui for the division of the land between the Crown and Maori owners: of the land that was apportioned variously to the Crown or Maori owners at the hui, only one-fifth of the decisions underwent substantial change during the implementation phase; four-fifths remained substantially the same.

The changes made during the implementation of the scheme varied from area to area. As negotiated at the Taurarau hui, the amount of land earmarked for award to Maori owners in the 13 areas averaged approximately 14,100 acres. The changes made to these areas averaged 2775 acres, either as a reduction or an addition – ranging from a reduction of 14,709 acres (in the former Ruatahuna blocks) to an addition 6168 acres (in what became the Ruatoki series), with a median of no change. These changes had consequences for the overall amount of land that the Maori owners were awarded from the scheme, which was reduced by 7160 acres from what was negotiated in 1921, largely as a consequence of owners moving their interests from land with a low value into land with a high value. We explained the reasons behind these changes in section 14.5.2.4.

The table also takes into account the inclusion of the interests of Tuhoe owners of the Waikaremoana block in the scheme. These interests were equivalent to 29,060 acres in the Waikaremoana block. When seen alongside the blocks in which the Crown had purchased interests, this addition took the total pre-consolidation interests of Maori owners to the equivalent of 202,313 acres. This figure was never recorded in the consolidation scheme report (which only gave the total pre-consolidation interests of Maori owners in blocks the Crown had purchased in – 173,252 acres, valued at £78,479 15s), even though the additional interests were included in the lists of consolidation groups in schedule 2 of the report. But after they were added to the interests of Maori owners within the scheme, and those owners took up more and more land at the Taurarau hui at a higher value, the outcome was only a marginal increase on the total landholding (the equivalent of 173,253 acres in July 1921 to 183,390 acres in October 1921). As we explained in section 14.5.2.3, this process in part explains how the Crown acquired what Steven Webster initially claimed was a ‘windfall’

1. ‘Te Urewera Inquiry District Overview Map Book, Part 3’, August 2003 (doc A132)

OUTCOMES OF THE CONSOLIDATION PROCESS IN THE UDNR

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to the Crown of 45,000 acres, but was in fact merely the process of transferring interests between land of different values.

APPENDIX V

THE UREWERA LANDS ACT 1921–22

ANALYSIS

- | | |
|------------------------------------|---|
| Title. | 11. Outside lands affected. |
| Preamble. | 12. Appointment of trustee for person under disability. |
| 1. Short Title. | 13. Scheme may be modified. |
| 2. Confirming dealings. | 14. Amendment after orders made. |
| 3. Vesting in Crown. | 15. Orders to be final. |
| 4. Commissioners appointed. | 16. Rates deferred. |
| 5. Crown awards. | 17. Crown to survey. |
| 6. Crown exchanges. | 18. Transfer of powers to Court. |
| 7. Native awards. | 19. Operation of past orders. |
| 8. Operation of orders. | 20. Repeals. |
| 9. Exchanging Crown land. | Schedules. |
| 10. Payment in cash or debentures. | |

1921–22, No 55.

AN ACT to facilitate the Settlement of the Lands in the Urewera District.

Title.

[11th February, 1922.]

WHEREAS the Native lands within the district referred to in the First Schedule to this Act have for a number of years been under special administration, and it is now desirable to apply the ordinary law thereto: And whereas during such administration the Crown, pursuant to powers in that behalf, has purported to deal with certain portions of the said lands, and arrangements have been entered into between representatives of the Crown and of the Natives interested in such lands for the consolidation and location of interests in such lands and in certain lands outside such district, and it is desirable that such arrangements should be carried into effect:

Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Urewera Lands Act, 1921–22.

Short Title.

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Confirming dealings.

2. All purchases of land purporting to have been made by the Crown within the district mentioned in the First Schedule hereto shall, subject as hereinafter mentioned, be deemed to have been valid and effective, and the general committee and the individual Natives concerned shall be deemed to have been duly authorized to execute all transfers and other instruments for the purposes of completing any such purchase. Any transaction so entered into in good faith shall be sufficient authority for making orders in favour of the Crown as hereinafter mentioned.

Vesting in Crown.

3. Upon any such order being made the land to which the order relates shall, subject to the terms of the order, absolutely vest in His Majesty the King free from all right, title, estate, or interests (whether customary or otherwise) of the Natives interested in such land, and such land may thereupon be proclaimed to be Crown land in the same manner and with the same effect as if it had been Native freehold land acquired by the Crown under the authority of the Native Land Act, 1909, and its amendments.

Commissioners appointed.

4. (1.) For the purpose of carrying into effect the scheme of consolidation referred to in parliamentary paper G-7, 1921 (hereinafter called the said scheme), with regard to the lands within the district comprised in the First Schedule hereto and such other lands as may be affected, the Governor General shall appoint two Commissioners, to be known as the Urewera Consolidation Commissioners (hereinafter called the Commissioners).

(2.) If for any reason either of the said Commissioners shall be unable or unwilling or shall neglect to act, the Native Minister may appoint a deputy, being an officer in the service of the Crown, to act in the place of such Commissioner; and, while the appointment remains unrevoked, the deputy so appointed shall have and may exercise all the powers and functions of the Commissioner whose deputy he is.

(3.) The fact of a person appointed as aforesaid acting as a deputy shall be conclusive proof of his authority so to act, and no appointment of such deputy shall be questioned on the ground that the occasion for making the same may not have arisen or had ceased, or that the Commissioner whose deputy he is may be deceased, nor shall the authority or act of any Commissioner be questioned in any proceedings on the ground that a deputy of that Commissioner was in office at the time when that authority was exercised or that act was done.

(4.) If any difference shall arise between the Commissioners the matter in dispute may be referred to the Chief Judge of the Native Land Court, whose ruling shall be binding on the Commissioners.

(5.) It shall not be necessary for the Commissioners while acting under this Act to hold formal sittings or act judicially in any matter.

Crown awards.

5. (1.) The Commissioners shall with all convenient speed proceed to inquire as to what interests in the said lands are alleged to have been sold to the Crown, and shall for that purpose have

power to inquire into any objections to such sales that do not arise from any alleged defect in the title or power to sell. The Commissioners shall allot to the Crown portions of the lands in accordance with the said scheme, including in such allotment land to the value of forty thousand dollars given by the Natives for roading purposes and a further area of land to represent the probable cost of surveys of Natives portions, and shall make one or more orders defining the Crown's interest and allotting to His Majesty the King the area to which it is found the Crown is entitled, whether it represents the block or blocks referred to in the instruments of alienation or not.

(2.) Subject to the foregoing provisions of this section, the Commissioners shall be the sole judges of the location and boundaries of the portions so awarded to the Crown, but shall, in fixing any boundary, consult so far as practicable the wishes and convenience of the Natives.

(3.) The Commissioners may include in any such order such portion of the Waikaremoana Block mentioned in paragraph 12 of the said scheme as they deem fit in accordance with the scheme, although no instrument of alienation to the Crown may have been executed by the Natives affected or interested.

6. Where the land to be awarded to the Crown is land not situate within the district set out in the First Schedule the Commissioners shall make an order vesting such land in His Majesty the King by way of exchange, and thereupon the land shall vest and all proceedings shall be taken as if it were an order for exchange in favour of the Crown made by the Court under the Native Land Act, 1909.

Crown exchanges.

7. (1.) After providing for the portion of land to be allotted to the Crown, the Commissioners shall make and issue orders, as near as may be in accordance with the said scheme, with respect to the balance of the land in the district described in the First Schedule hereto and affected by the scheme, and shall allot to persons to be named in such orders the portions to which they are entitled after making adjustments for the area taken for roads and surveys.

Native awards.

(2.) The allotment may be of any land within the district mentioned in the First Schedule, notwithstanding that it may not be the portion originally intended to be awarded to such persons or not.

(3.) The Commissioners shall fix the boundaries of the land contained in each such order, and may give to the respective blocks such names as they think fit irrespective of the original names of such blocks.

(4.) The Commissioners are authorized to ascertain, so far as possible, if any of the persons whose names appear on the lists attached to the said scheme are deceased, and in such cases to substitute, when practicable, the names of living successors in the shares to which they would be entitled. The fact that the name of any person that is deceased remains in any order shall not invalidate it, but the interest of such deceased person shall enure for the benefit of such persons as would be entitled to succeed on the intestacy of such person if he had died immediately after the order takes effect.

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Operation of orders.

8. (1.) Any order made as aforesaid shall be drawn up in duplicate and dated as of the day of the making thereof.

(2.) The order as so drawn up shall have endorsed thereon or annexed thereto a plan sufficient for the purposes of the Land Transfer Act, 1915, or a compiled plan certified by the Chief Surveyor as sufficiently accurate for the purpose and shall be authenticated by the signature of at least one Commissioner, and countersigned by the Chief Judge of the Native Land Court, and sealed with the seal of that Court.

(3.) The order as so drawn up and perfected shall relate back to the day of the date thereof, and be deemed, subject to subsection four hereof, to have taken effect in all respects according to the tenor thereof as from the commencement of that day, and the validity and operation of all intermediate orders, instruments, proceedings, and transactions shall be determined accordingly.

(4.) Until the order is drawn up and perfected, the date of which shall be noted after the Chief Judge's countersignature, no Native beneficially interested thereunder shall be capable of making any alienation (except by will) of his beneficial interest, except to the Crown.

(5.) Any order made as aforesaid shall have the effect of vesting the land comprised in it in the persons named therein for an estate of feesimple in possession, and, if there are more than one, as tenants in common. A duplicate of such order or a copy thereof certified by the Chief Judge maybe forwarded to the District Land Registrar, who shall embody the order in the provisional register. No warrant other than this Act shall be necessary for the issue of a certificate of title, but the District Land Registrar may, at his discretion, retain the title on the provisional register so long as the number of owners named in such title exceeds ten.

(6.) All land comprised in any order as aforesaid, other than an order made in favour of the Crown, shall be deemed to be Native freehold land within the meaning of the Native Land Act, 1909.

(7.) All orders made under the authority of this Act shall be forwarded to the Registrar of the Native Land Court of the district wherein the land affected is situated, by whom they shall be recorded, and when perfected such orders shall be deemed to be and be treated as orders of the Native Land Court made in its ordinary jurisdiction, and shall take effect accordingly.

Exchanging Crown land.

9. (1.) If the Commissioners in the course of any proceedings or inquiry deem it necessary or expedient for the purpose of consolidating interests as referred to in the said scheme to deal with Crown lands situate outside the district referred to in the First Schedule, they shall certify to the Minister of Lands that in their opinion the Natives mentioned in such certificate are entitled or ought to have vested in them the Crown lands or portions of or interests in Crown lands therein named, and the Governor General may, by Warrant under his hand, direct the District Land Registrar to issue a certificate of title in lieu of grant to the persons named in such Warrant for any such land accordingly. No assurance or other fees shall be payable in respect of the issue of

such title. All lands so granted shall be deemed to be Native freehold land, and a memorial to that effect shall be endorsed on any certificate of title issued in accordance with such Warrant.

(2.) The Minister of Lands is hereby authorized, out of any fund available for the purchase or acquisition of Native land, to acquire on behalf of the Crown from Europeans or others any land that may be necessary to give effect to the said scheme, which land may be treated as if it were land already owned by the Crown, and may, subject to the foregoing provisions of this section, be awarded by the Commissioners to Natives, and titles therefor issued accordingly.

(3.) The Commissioners may, subject to the approval of the Minister of Lands, vest any portion of land vested in His Majesty, and notwithstanding such land may form part of any reserve, in any Native whom the Commissioners find entitled thereto, and no warrant other than this Act shall be necessary for the issue of a certificate of title therefor.

10. (1.) If the Commissioners find that any sum of money ought in equity to be paid to any person in connection with the consolidation or exchanges required to carry out the said scheme, the Commissioners, under the hand of at least one of them, shall certify to the Minister of Lands the respective sum and the person to whom it is to be paid. The Minister of Finance may from time to time, without further appropriation than this Act, pay all such moneys as are so certified out of any funds that may be available under any Act for the purchase or acquisition of Native lands.

Payment in cash or debentures.

(2.) If instead of payment in cash the Commissioners think that the amount of any payment required for the purposes of the said scheme should be paid in debentures they shall certify accordingly, and shall in such certificate specify the amount of the debentures required and the names of the proposed beneficial owners thereof. The Minister of Finance may thereupon issue debentures accordingly to the Native Trustee, who shall hold the same on behalf of the beneficiaries so certified to be entitled thereto.

(3.) Any money payable under this section and the money or investment represented by the debentures issued as aforesaid shall, until payment or maturity, be deemed to be a trust fund within the meaning of section four hundred and twentyfour of the Native Land Act, 1909, as if the money or investment was in the hands of the Native Trustee, and all the provisions of that section shall apply accordingly.

11. (1.) If the Commissioners in carrying out the said scheme think it necessary or expedient to deal with or affect lands owned by Natives, whether such lands are situate within or outside the district referred to in the First Schedule, they may make and issue orders by way of exchange vesting the interests of the owners referred to either in the Crown or in any other persons. The provisions of section eight hereof, as to making and perfecting of orders, shall apply there to, except that a plan shall not be necessary; and, when perfected, such order shall take effect and

Outside lands affected.

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may be registered as if it were an order of exchange made by the Court under the Native Land Act, 1909.

(2.) If, instead of going through the formality of making an exchange order, the Commissioners think the title affected might be more conveniently dealt with by way of amendment, they may certify to the Chief Judge what amendment in their opinion is necessary, and the Chief Judge, on being satisfied that the amendment is one that may properly be made, is hereby authorized to make such amendment. The provisions of section twentyseven of the Native Land Act, 1909 (as to the effect and recording of such amendment), shall apply to any amendment so made.

Appointment of trustee for person under disability.

12. If any person found by the Commissioners to be entitled to any land, money, or debentures is a person under disability, the Commissioners may make an order appointing a trustee or trustees for such person, and any order so made shall be countersigned by a Judge of the Native Land Court, and shall have the same effect as an order of the Court under Part 10 of the Native Land Act, 1909, and may be dealt with and registered accordingly.

Scheme may be modified.

13. While observing generally the terms of the said scheme, the Commissioners may make such alterations in the details thereof as may, in their opinion, be necessary for giving effect to the general purpose and intent of the scheme.

Amendment after orders made.

14. Where by reason of any mistake of law or of fact, or of any error or omission, the Commissioners by their order have in effect done or left undone anything which they did not actually intend to do or leave undone, or would not, but for such mistake, error, or omission, have done or left undone, the Chief Judge of the Native Land Court may at any time (whether the title is in the District Land Registry or not) make such order in the matter for the purpose of remedying the same or the effect thereof as the nature of the case may require, and may, when he deems it necessary, vary or annul the actual or intended decision of the Commissioners, but no such amendment shall prejudicially affect the rights of any person claiming bona fide under any lawful alienation.

Orders to be final.

15. Subject to the powers of amendment set forth in the last preceding section, all orders made by the Commissioners shall be final and conclusive, and there shall be no appeal therefrom.

Rates deferred.

16. The land within the district described in the First Schedule shall, so far as it is not awarded to the Crown, be deemed to be excepted from the term rateable property as defined by the Rating Powers Act, 1988, unless and until a notice is signed by the Native Minister and published in the *Gazette* that the land named therein shall cease to be so excepted. Such notification shall not be made with respect to any area of land until the expiry of at least twelve months after the order relating thereto shall have been countersigned by the Chief Judge.

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17. The Crown shall, on the requisition of any Commissioner or of a Judge of the Native Land Court, undertake all surveys required for the completion of any order under this Act. Any requisition heretofore made in anticipation of this Act coming into force shall be deemed to have been made under this Act. Any plan prepared may be approved by a Commissioner or Judge, and the provisions of Part 21 of the Native Land Act, 1909, shall apply in all other respects as if the requisition for survey had been made under that Act. Where the Commissioners think it expedient they may authorize any surveyor to undertake a survey required for the purposes of this Act.

Crown to survey.

18. The Governor General, if he deems it expedient, may by Order in Council appoint the Native Land Court to exercise the duties or powers conferred on the said Commissioners, and thereupon any Judge of the Native Land Court may exercise all the powers, functions, and authorities of both Commissioners conferred on them by this Act, with power to adopt any act, matter, or decision of the Commissioners as if it were his own, and to make and complete any order accordingly.

Transfer of powers to Court.

19. (1.) Any order purporting to be made under the provision or authority of the Urewera District Native Reserve Act, 1896, may be countersigned by the Chief Judge, and may thereupon be recorded and shall take effect as an order on investigation of title or a freehold order under the Native Land Acts, as the case may require, and may be dealt with and registered accordingly.

Operation of past orders.

(2.) Any partition, succession, or exchange orders under the said Act, so far as they are not superseded by orders under this Act, shall be deemed to be valid and within the jurisdiction of the Native Land Court, notwithstanding any defect in the original order, or the exercise of the Court's jurisdiction, or that any portion of the land included in them may not have been investigated under the Urewera District Native Reserve Act, 1896, or its amendments, and any such order shall have effect and may be dealt with and registered accordingly.

(3.) Any land within the said district not affected by orders under this Act, or by any order as in this section mentioned, may be dealt with as customary land within the ordinary jurisdiction of the Native Land Court.

(4.) The Chief Judge may, on the application of any of the parties interested, exercise with respect to any orders purporting to have been made under the said Urewera District Native Reserve Act, 1896, the same powers of amendment as are conferred on him by section fourteen hereof with respect to orders made by the Commissioners, but there shall be no appeal against the Chief Judge's exercise or refusal to exercise such powers.

20. The Acts or portions of Acts referred to in the Second Schedule hereto are hereby repealed.

Repeals.

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Schedules.

SCHEDULES

FIRST SCHEDULE

ALL that area in the Auckland and Hawke's Bay Land Districts, containing by admeasurement 656,000 acres, more or less: bounded towards the north by the Confiscation Boundary-line; towards the east generally by the Waimana and Tahora, No 2 Blocks; towards the south-east by the Waipaoa Block, the Waikaremoana Lake, by forest reserve, educational reserve, Block v, Waiau Survey District, and Section No 1, Block VIII, Mangahopai Survey District; towards the south-west by the Waiau River to the northernmost corner of Maungataniwha Block, thence by a right line to the trig station on Maungataniwha, and thence by Heruiwi No 4 Block; and towards the west generally by Whirinaki, Kuhawaea No 1, Waiohau Nos 1B, 1A, and 2, and Tuararangaia Blocks to the Confiscation Boundary-line at Tapapa-Kiekie.

SECOND SCHEDULE

1896, No 27.—The Urewera District Native Reserve Act, 1896.

1900, No 66.—The Urewera District Native Reserve Act Amendment Act, 1900.

1907, No 76.—The Maori Land Claims Adjustment and Laws Amendment Act, 1907:

Section 7.

1908, No 253.—The Maori Land Laws Amendment Act, 1908: Sections 21 and 22.

1909, No 24.—The Urewera District Native Reserve Amendment Act, 1909.

1910, No 31 (Local).—The Urewera District Native Reserve Amendment Act, 1910.

1911, No 35.—The Native Land Claims Adjustment Act, 1911, section 12.

1913, No 58.—The Native Land Amendment Act, 1913: The words 'The Urewera District Native Reserve Act, 1896,' in section 117.

1916, No 12.—The Native Land Amendment and Native Land Claims Adjustment Act, 1916: Section 4.