

CHAPTER 11

HE KŌRERO WHAKAMUTUNGA

11.1 GENERAL CONCLUSIONS

This report has looked at issues arising in the 120 years between 1886 and 2006. Much of it therefore focuses on the twentieth century, which spans the bulk of that timeframe and which was an era that brought significant change in the Tauranga region, not least because of the impact of urbanisation. Nevertheless, it is important not to lose sight of the closing years of the nineteenth century. In some respects the changes wrought in that period were even greater, because they involved Māori coming to terms with a sudden and massive shift in population balance and the accompanying encroachment of Pākehā culture on their way of life. Further, the land loss of Tauranga Māori in the late nineteenth century was considerable. Added to the effects of the raupatu, that loss forms a critical backdrop to understanding the impact of Crown policies and practices in the century or so that followed.

11.1.1 The situation at 1886

At the end of the stage 1 inquiry, which considered the period up to 1886, the Tribunal concluded that Tauranga Māori had done nothing to justify the Crown confiscating land from them, and that the Crown had arbitrarily chosen what land it would take, without consultation with those Māori affected. Moreover, it found, the Crown's purchase of the large tract of valuable land comprised within the Te Puna–Katikati block was carried out without the free and willing consent of most of the owners affected. The ensuing process of allocating reserves in both the confiscated block and the Te Puna–Katikati block left much to be desired. In the Tribunal's view, hapū of Ngāti Ranginui were particularly disadvantaged, losing a higher proportion of their customary land than did Ngāi Te Rangi. On top of that, all land that was given back to Tauranga Māori, across the district, was returned under an individualised form of tenure, without the recipients having any choice in the matter, and a significant proportion of that land was then alienated prior to 1886. The Tribunal thus concluded that the Crown had 'failed to ensure that the hapu of Tauranga were left with a sufficient endowment of quality land to provide for their needs.' Further, said the Tribunal, to compound the disadvantage to Tauranga Māori, the Crown had failed to ensure they had

a sufficiency of skills and capital with which to develop lands left to them.¹ We would also note here that, in depriving Tauranga Māori of some of their potentially most economically productive lands (including the area that was later to become the Athenree Forest), the Crown had inflicted a significant opportunity cost on Tauranga iwi and hapū in terms of their future land development options.

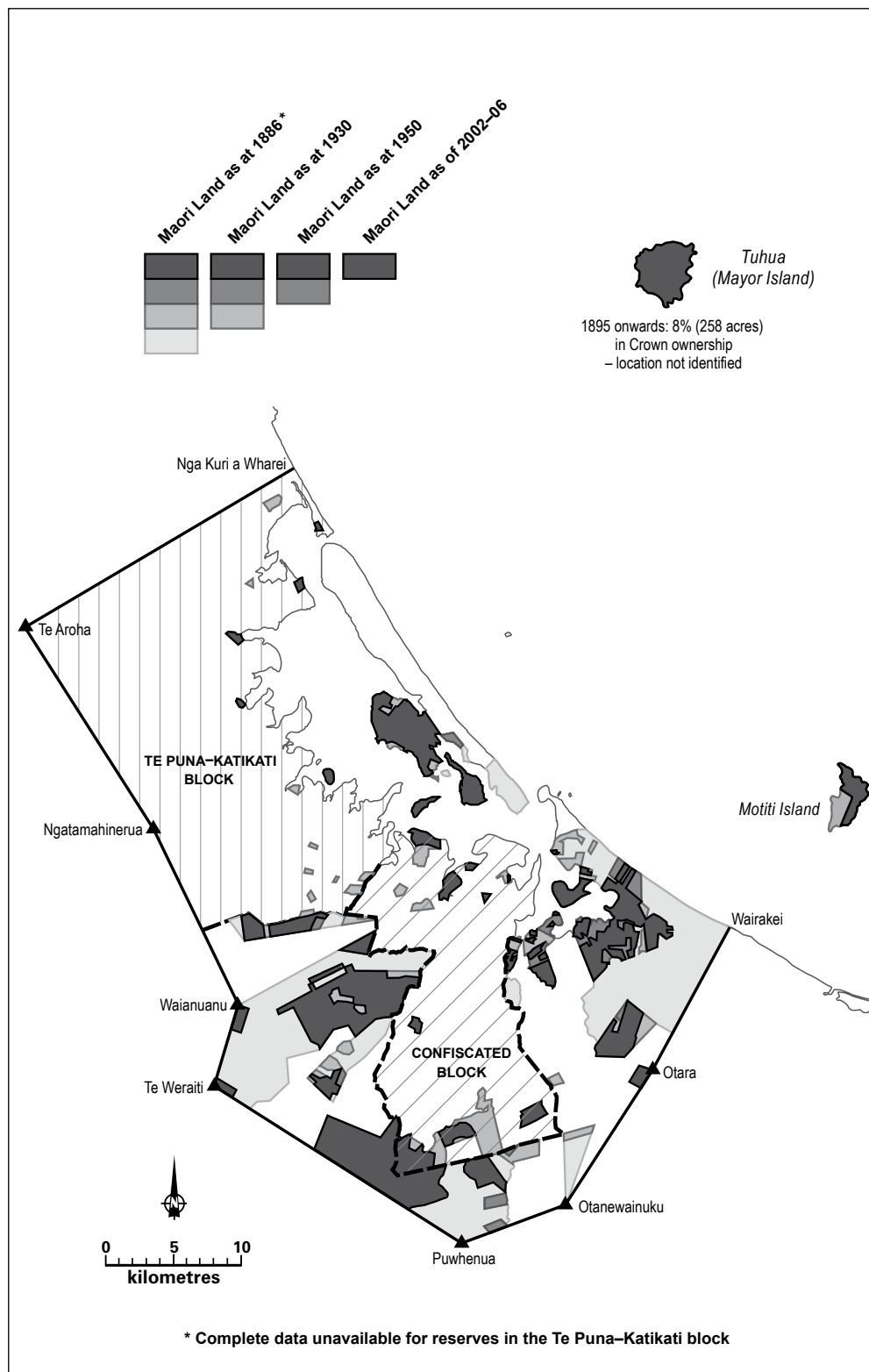
11.1.2 Further land loss

In our present report, chapter 2 has shown how the closing years of the century then saw the loss of yet more large tracts of land – some 34,368 acres (13,908 ha) in the 1890s alone, with almost three-quarters of that being purchased by the Crown. In some instances, the Crown, by its own admission, capitalised on situations of hardship where Māori were forced into selling as a result of crop failure and lack of food (see sec 2.3.5). By the turn of the nineteenth century an already insufficient area had been further diminished, to a significant degree – a situation in which the Crown was directly involved. Further, as we saw in chapter 9, despite the Crown making provision for South Island ‘landless Natives’, it gave no assistance to Tauranga hapū such as Ngāi Tamarāwaho and Ngāti Hangarau who found themselves similarly impoverished.

Māori land loss in the Tauranga area would never again reach the heights of the late nineteenth century, but in the twentieth century other pressures arose. Māori Land Court judges (and later the Māori Trustee) were tasked with identifying ‘idle’ Māori land suitable for settlement by Pākehā (see secs 2.5.1, 2.11.1). Public works takings nibbled away at remaining land, resulting in a total loss of around 4960 acres (2008 ha) between 1886 and 2006 (see ch 4) – and we note that, in a number of cases, more land appears to have been taken than was strictly necessary. Alongside that, concern about actual and potential Māori rates debt caused both local and central government to press for development and subdivision. For a range of reasons, that process then led to more land being alienated (see chs 5, 6).

Often it was a combination of factors that resulted in the loss. For instance, when Whareroa Māori faced pressures on their land in the mid-twentieth century, they decided that their best hope was to rationalise their landholding around the eastern end of the harbour and to focus their attention principally on Matapihi instead. The plan was to subdivide their Whareroa land and retain some sections there, but to use the proceeds from selling the remainder to pay off rates debt and improve conditions at Matapihi. But then the port and airport developments resulted in much of their Whareroa land being lost to public works, with only limited compensation – and it is relevant to note here that the Crown in fact took far more land than it needed and sold off the excess for considerable profit. For the Māori of Whareroa, the situation on Matapihi has not been without its difficulties, either.

1. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), pp 400–401



Map 11.1: Alienation sequence

11.1.3

Strategically located between Tauranga and Mount Maunganui, the area has been eyed by central and local government for a range of development and infrastructure projects. Although plans for a technical institute, a hospital, and an oil-fired power station did not eventuate, it has been estimated that in total they lost almost 10 per cent of the peninsula to public works of various kinds. In effect, it soon became a ‘service corridor’ between the two urban centres, and Māori have had to fight to minimise the impact of road, rail, electricity, water, and sewerage networks over their land. Of particular note in this context is that for many years they received no direct benefit from some of these services, because their homes, being on land zoned ‘rural’, were not reticulated to the networks in question. Further details on land issues at Whareroa and Matapihi are to be found at sections 3.6.2, 4.3.2, 5.7.2, and 6.3 of this report.

Similarly, Māori in Maungatapu and Hairini have been affected by a range of local and central government measures. In the first half of the twentieth century, legislative provisions aimed at guarding against *individual* landlessness were not always well suited to protecting a collective Ngāti Hē and Ngāi Te Ahi landbase in the area (see secs 2.5, 2.6). That said, the 30 or so hectares (around 75 acres) lost from various Maungatapu and Hairini blocks prior to 1950 pale into insignificance against the losses in the second half of the twentieth century – and particularly in the 1960s and 1970s. Construction of a major state highway along the length of the peninsula, linking Tauranga to Mount Maunganui by way of Matapihi, coupled with pressures on Māori to subdivide and sell in order to meet actual and potential rates debt, saw most of the rest of Maungatapu and Hairini pass out of Māori hands by the 1980s.²

11.1.3 Land development constraints

Meanwhile, throughout the period covered by our stage 2 report, attempts by Tauranga Māori to farm or otherwise develop their dwindling landbase often suffered from a range of hurdles and handicaps (see ch 3). During the economic downturn of the 1880s and 1890s, tangata whenua saw a one-third reduction in their total cultivated land in the space of about 10 years, and stock numbers also fell significantly. It was not for want of effort: Robert Stout, in his subsequent investigation of Māori land around New Zealand, reported Tauranga Māori as being ‘exceedingly industrious’. When he and Apirana Ngata reported to Parliament in 1908, they advised that Māori in the Tauranga area needed to retain the great majority of their remaining lands, noting that they estimated European landholding in Tauranga as ‘at least three times as great [per head] as that left to the Maoris’. Stout and Ngata also recommended that the Government provide agricultural training for Māori,

2. Michael Belgrave, Grant Young, Adam Heinz, and David Belgrave, ‘Tauranga Maori Land Alienation: A Quantitative Overview, 1886–2006’ (commissioned research report, Wellington: Waitangi Tribunal, 2006) (doc T16(a)), pp 40–43, 59–67

such as cadetships at the Government's recently established experimental fruit farm (see sec 3.3). But, despite the disadvantage under which local Māori were operating, Crown assistance to them was minimal compared with that given to European farmers: a proactive programme of loans at low interest to help finance farm development, for example, was aimed entirely at Pākehā (again, see sec 3.3). Nor could Māori turn to the private sector, because the multiple title in which their land was held rendered it almost impossible to obtain credit from private institutions. And there is no evidence that any agricultural education was provided to adult Tauranga Māori in these early years: all that was offered, it seems, was some basic agricultural instruction to young Māori boys attending native schools such as the one at Maungatapu (see sec 9.4.2). As to other assistance, while it is true that, from 1906, Māori incorporations could be set up which did have some access to State funding (tightly controlled through the Public Trustee), we are not aware of any having been established in the Tauranga region at that time. In this context, we note the central North Island Tribunal's conclusion that incorporations were expensive to establish and operate, had only limited access to lending finance, and required owners to relinquish direct involvement in their land.³

Matters began to improve somewhat from the late 1920s with the introduction of a national programme of Māori land development schemes. Four such schemes were established in the Tauranga area, and almost immediately became the primary vehicle for channelling unemployment relief funds to Māori during the Depression. In terms of farming, two of the schemes (Mangatawa and Poripori) were clearly successful examples of land development. In all cases, however, control of the land was taken out of the hands of Māori, and it was difficult for them to feel any sense of ownership or even participation. Certainly some tangata whenua were employed as day labourers, but few had any role as managers, few were given training in the new farming techniques necessary for success, and only later did the Crown promote the formation of owners' advisory committees. Further, even with the two most successful schemes, the financial benefit took time to filter through to owners. That said, the schemes represent a genuine effort by the Crown to try to find some way of overcoming the disadvantage created by the title system it had introduced, in order to enable Māori land to become more productive.

In the post-war period, even greater pressure began to be exerted for Māori land to be used productively, but a 'small-farm scheme' promoted by the Government in the early 1950s, and aimed at assisting Tauranga Māori to develop smallholdings for market gardening and horticulture, did not live up to its early promise. In part this was because it clashed with other local and central government plans to improve infrastructure – projects which all required land – and in part because of encroaching urbanisation. A 1961 Ministry of Works survey of Māori land also identified some familiar problems: multiple title,

3. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 3, pp 979–980, 984

insufficient capital, and lack of training (see sec 3.6). In 1971, a report produced by the Bay of Plenty Agricultural Development Committee estimated that, by then, Māori farmers had fallen behind by about 10 to 20 years in their farming practices (see sec 3.6.2). Meanwhile, attempts at consolidating interests to form more workable areas of land, for example at Matapihi and on Matakana Island, had not met with success. (In the case of Matapihi, the proposal was opposed by the county council who saw the area as more suited to urban development – again see section 3.6.2.) The Department of Māori Affairs seems thereafter to have abandoned attempts at consolidation in the Tauranga area.

In the 1960s and 1970s, as urbanisation on the one hand and a booming kiwifruit industry on the other pushed land valuations higher and higher, central and local government tried to solve the likelihood of increasing rates debt by encouraging many Māori, especially on the urban fringes, to subdivide their land and sell (see secs 5.3.4 and 5.7.2). It was a period when moving to town and working on the wharf was seen as a better option for Māori than remaining on the land and trying to overcome the cumulative disadvantage – and some Māori certainly shared this view. Others, such as the Tauranga Māori Executive, tried to battle on, seeking assistance from the Department of Māori Affairs to undertake a ‘stock-take’ of what land remained in Māori ownership. Their request was declined on the grounds of cost. A later request to the department, to assist with the mechanics and cost of incorporating land in the Kaimai area, was also turned down (see sec 3.6.2).

The picture with respect to land trusts, however, is more encouraging. With the introduction of section 438 trusts under the Māori Affairs Act 1953 and then, in 1965, reduced security requirements for section 460 lending, the use of trusts to assist landholding and development increased. While there were still occasional setbacks and difficulties, a number of trusts set up in the late 1960s and the 1970s have survived and done very well. Some of them, for instance, established successful horticulture ventures and, in the process, have offered a useful opportunity for Māori to learn new skills (including in management). They have also generated funding for community purposes such as education scholarships and marae grants. That said, we note that in many cases the problem of multiple ownership merely shifted from the land title deed to the trust shareholder list, and it continues to cause administrative headaches. We also note that, since the 1980s, the Department of Māori Affairs (now Te Puni Kōkiri) has lost the power to provide development finance, and little new commercial development of Māori land has been possible in the Tauranga area. Of particular concern, in our view, are small remnants of land that, on their own, do not lend themselves well to large-scale agricultural or commercial development but which may be of significant importance, as the last vestiges of traditional land holdings, to the Tauranga whānau and hapū that own them. One such example drawn to our attention was a small part of Pāpāmoa 4B, under threat from adjacent developers (see sec 2.9.4). At the time of our hearings, the Ngāti Kāhu owners were trying valiantly to find some viable way to retain it, but faced with high rates, a lack of access to finance, and the seeming impossibility of

finding a joint venture partner willing for them to retain ownership, we have to say that their chances of success appeared slim.

11.1.4 Access to natural resources

Also affected by Crown policy and practice has been iwi and hapū interaction with the natural environment of Tauranga Moana (see ch 7). We have noted how, traditionally, each hapū in the district tended to have customary use rights in both inland and coastal areas so that they could access (and care for) a range of different resources.

However, such usage patterns were disrupted by the confiscation which deprived many Tauranga Māori of access to at least some of their traditional areas. Their reduced landholding also pushed them towards a greater reliance on marine and river resources. But the Crown's encouragement of European settlement and European-style land development then created competition for the more easily farmable coastal lands, and for coastal resources in general. One result was that some Tauranga Māori alienated inland blocks to generate cash to help them hold on to coastal interests. However, even where this tactic was successful, they could no longer take for granted their customary access to marine resources: since the Crown did not recognise Māori ownership of the foreshore and seabed, hapū with coastal interests were completely powerless to prevent others encroaching on their traditional food-gathering places in, for example, saltwater marshes, sand flats, or fisheries within the harbour. And although various statutory provisions have existed since the beginning of the twentieth century for the creation of customary fishing areas, Māori efforts to establish such zones have tended, for various reasons, to be blocked by either central or local government agencies. Under the current legislation the tally of fishing reserves for Tauranga Māori stands at one mātaītai reserve, and no taiāpure. Nor has the legislation controlling commercial and recreational fishing been entirely successful at maintaining fish stocks in the harbour. As to rivers, customary title there was deemed extinguished by the raupatu confiscation, so the tangata whenua could only access freshwater resources if they managed to secure legal title to riparian land.

11.1.5 Environmental impacts

Reduced access to resources has not been the only problem for Tauranga Māori: they have also seen the degradation of some ecosystems (again, see ch 7). In line with official thinking of the time, wetlands and tidal areas were persistently seen by early central and local government as 'swamps' and 'mudflats' that needed 'improving' in order to increase agricultural production, and those attitudes changed only slowly over the decades. We note that Environment Bay of Plenty estimates that some 1000 hectares of wetland have been drained and reclaimed in the Tauranga Harbour area alone (see sec 7.5.1). Indigenous forests have

also been felled, notably in the Kaimai area and in the hills between Katikati and Waihi, and often replaced by exotic forests – one such example being the Athenree Forest. Such activity was encouraged by the Crown, but has affected biodiversity and also the availability of some natural resources formerly used by Māori on a regular basis for food or medicine. In some areas, too, the harbour board for several decades tacitly allowed the dumping of mill waste on the foreshore. As to the port, its development has been a major plank in central and local government plans for the region, but associated works such as dredging and reclamation have often had a negative effect on marine ecology and have destroyed seafood beds. Indeed, we understand that even parts of the mātaimai reserve, mentioned above, may be currently under threat from proposed dredging to improve port access. Further along the coast, on the eastern edge of our inquiry district, reclamation and urban development have resulted in the loss of the Wairākei Stream. In its place is a stormwater drain.

Since the early twentieth century, pollution has also increasingly affected marine and freshwater environments. Agricultural runoff, industrial discharges, and rubbish-tip seepage have affected rivers and streams and ultimately found their way to the sea, while raw sewage was permitted to discharge into the harbour. Such problems were clearly evident in Tauranga Moana throughout much of the twentieth century, and the legislation passed has been insufficient to control them. Meanwhile, air quality has been affected by a range of pollutants including noise from the airport, odours from the fertiliser works, and chemicals from crop spraying.

At the same time, however, it must be noted that both the port and the timber industry have provided jobs for Tauranga Māori, and exotic forestry has enabled a financial return on some land (including Māori land) less suited to farming.

11.1.6 Loss of cultural heritage

The coastal Bay of Plenty, including the Tauranga area, is significant for Māori as one of the first parts of New Zealand to be settled by their ancestors. As such, as we discussed in chapter 8, the landscape of Tauranga Moana is rich with sites that are of cultural, spiritual, and historical importance to Tauranga Māori. Yet, until the 1950s, the Crown made no legislative provision to help protect places that Māori regarded as culturally significant. Even since that time, the emphasis has often been on ‘rescue archaeology’, to help record archaeological information about a site before its modification or destruction, rather than on preserving places intact (some of which, such as special springs or hills, may have no archaeological remains in any case). Further, local bodies have all too often failed to accord any great importance to the preservation of Māori heritage. Sometimes it has been possible to achieve protection of a particular site, but there is rarely any protection for the wider area surrounding the site, which may also be of cultural significance, or for sites without archaeological remains. The fringes of the harbour and the Bay of Plenty coastline are a

particular worry in this respect, as can be seen from the case studies in chapter 8. The apparent lack of any great commitment on the part of central and local government to solve these problems concerns Tauranga Māori greatly because, given the amount of land alienation that has occurred in the district, much of their cultural heritage lies on land that now belongs to others. Unable in most cases to exercise rangatiratanga or kaitiakitanga over sites, areas, and taonga of importance to them, Māori of Tauranga Moana have had to sit by and watch their heritage dwindling away.

11.1.7 The socioeconomic position of Tauranga Māori

Many factors have affected the socioeconomic position of Tauranga Māori, not all of them the result of Crown action or inaction. As noted in the stage 1 report, contact with Europeans, and the new infectious diseases they carried with them, brought a general decline in the New Zealand Māori population during the nineteenth century, which appears to have been echoed in the Tauranga district.⁴ Although immunity to diseases gradually increased, and population numbers began to pick up again not long before the beginning of the twentieth century, poor standards of health persisted. While it must be acknowledged that many Māori remained wary of European medical services (and more particularly hospitals) in these early years, official attitudes towards Māori were often not helpful either: the local Tauranga charitable aid board was frequently reluctant to assist ailing Māori, and central government support for Māori health care was patchy. There was, for example, little Government funding for medical officers in the area or Government assistance for hospital care for Tauranga Māori. On the other hand, the native health nurses and district nurses made a valuable contribution. With generally better health-care provision from around the middle of the century, the situation improved: tuberculosis rates, for example, dropped considerably in the space of about 10 years (see sec 9.6.1). In particular, since the 1970s there have been encouraging signs of more Māori-oriented health care services. Even now, however, Tauranga Māori have worse health statistics than their Pākehā counterparts.

Extensive land loss, particularly through raupatu and in the late nineteenth century, almost certainly had a significant impact, and not least in terms of the dislocation caused. For example, when Ngāi Tamarāwaho had to move from their confiscated lands, many went to a remnant allocated to them at Hūria (Judea). The area was not large, and the soil was of poor quality. The result was a reliance on gumdigging and whatever work could be got around town (see sec 9.3.3). Low incomes meant poor living conditions. Fifty or so years later, a Ngāi Tamarāwaho community of about 275 people was divided between Hūria and nearby Te Reti and Matahoroa (see sec 9.4.3), and still living in poor conditions. Housing at Hūria, in particular, was dilapidated and overcrowded, and the hapū was again faced with

4. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 56

some of their number having to move. On this occasion, encouraged by the Department of Māori Affairs and by the provision of some loan assistance, the best option for many was to try to purchase a section in one of the new residential suburbs of Ōtūmoetai and Greerton. Over the ensuing years, many other rural Māori, too, were encouraged and assisted to move to the city.

Urban living was a new experience for most Tauranga Māori at that time. By 1956, there were still only 195 Māori living within the boundaries of Tauranga borough (again see section 9.3.3). From mid-century onwards, however, many Māori became urban dwellers. It was not necessarily by choice. Those living in rural settlements on the outskirts of Tauranga and Mount Maunganui, for instance, found the town arriving uninvited on their doorsteps, and it was not long before urban boundaries completely engulfed them. The accompanying pressures took their toll, including public works takings for infrastructure, environmental pollution, loss of customary food sources, and skyrocketing valuations (with the increased risk of rates arrears). For many, the result was a complete transformation of their lifestyle in the space of a generation. Not everyone saw the change as negative, of course, and many Māori appreciated the new opportunities that urbanisation brought. The problem was how well they were equipped to seize them.

For most of the period covered by this report, the education received by Tauranga Māori did not take large numbers of them into higher-paid employment. There was a concerted attempt in native schools to give Māori children fluency in English (often to the detriment of te reo Māori), but a strong emphasis on teaching practical skills rather than academic subjects. Meanwhile, at Education Board schools, only a small proportion of Māori children managed to reach the upper standards, or succeed there. In all, few Māori children progressed to secondary level via either route. That said, the dedicated work of many individual teachers must not go without comment and it is likely that, assisted by their efforts, some young Tauranga Māori did manage to gain admission to boarding schools such as Te Aute, Wesley College, and (for the girls) Hukarere, where there was a greater emphasis on academic achievement and leadership. As expectations changed (on both sides), more Māori children stayed on for secondary education – a situation fostered by Government raising the school-leaving age for all New Zealand children (initially to 15, in 1944, and then higher still in later years). Some Māori students also continued to tertiary level. Even today, however, a significant disparity exists between Tauranga Māori and the general Tauranga population in terms of the percentage achieving higher qualifications.

There is also a disparity in the area of employment, with Māori being over-represented in lower-paid work such as labouring, plant and machinery operating, and assembly work, and under-represented in professional occupations. In terms of unemployment, we note the disproportionately large impact on Māori of the 1989 port restructuring exercise, when a high number of Māori staff were among those laid off. We also note that, in 1991, Māori made up 25 per cent of the registered unemployed in the Western Bay of Plenty and Tauranga

districts, despite constituting only 14 per cent of the working-age population. Not surprisingly, these outcomes impact on overall socioeconomic status, with a disproportionately high number of Māori living in the most socially and economically deprived areas of the inquiry district (see sec 9.2).

11.1.8 Planning constraints

Town planning legislation has existed in New Zealand since the 1920s, but town and country planning policies really only began to gain traction in the 1970s. As we saw in chapter 5, Tauranga Māori have in some respects fared better than Māori elsewhere in that, from the mid-1970s, the Tauranga County Council saw fit to establish marae community zones, so that community facilities such as sports grounds, and limited housing, could be built near marae – initially only in rural areas but later for urban marae as well. This initiative appears to have been in advance of any central government move to promote marae community development. Nevertheless, district planning overall has often failed to prioritise Māori concerns and aspirations, and in the past consultation has been unsatisfactory. Of recent years the situation has improved but, as we noted in relation to cultural heritage, Māori needs and wishes still tend to receive less consideration than those of the general population. In part, this reflects the primacy given to urbanisation and economic development: local authorities often come under considerable pressure from developers to make land available for residential or commercial purposes, and infrastructure needs have to be catered for if economic growth is to be fostered. This emphasis on urbanisation and economic growth is generally supported by central government in the interests of the national economy (including job creation). However, it can relegate to second place local Māori concerns about, for instance, the preservation of natural resources and cultural heritage, and militate against hapū aspirations for maintaining and promoting a community lifestyle. That said, Māori are not unmindful of the better amenities that tend to come with urbanisation. Māori from Bethlehem and Matapihi, for example, are among those who have recognised the tension between trying to retain a rural zoning and community lifestyle, while making provision for a reasonable level of community services and facilities for their hapū.

11.1.9 Political representation issues

Among the problems for Māori over the years has been a lack of representation on various bodies and at various levels. As we saw in chapter 5, Māori formed the larger part of the New Zealand population until around 1858, but had little voice in terms of formal representation in government. Relative population numbers changed rapidly. By 1871, there were around seven times more Pākehā in New Zealand than Māori, yet Pākehā held 19 times as many seats in the House of Representatives. And while four specifically Māori seats had

been created in 1868, no person who was more than half Māori could stand for election in a general seat before 1967.

At local government level the situation was, for decades, far worse. There were occasional examples of Māori being elected to general seats on local bodies, but these were a rare occurrence: in our inquiry district we have seen reference to only two instances. Not until 1977 did the Crown make any legislative provision for specifically Māori representation on local bodies, and then only to regional planning committees, not the councils themselves. By the late 1990s there were still only 39 Māori elected members in local government throughout New Zealand, being a mere 3.5 per cent of the total 1123 elected members on 86 different councils (see sec 5.10.2). Finally, in 2001, the Bay of Plenty District Council (later Environment Bay of Plenty) – embracing a region where 28 per cent of electors identified as Māori – took the initiative of preparing a local and private Bill seeking approval for Māori constituencies. Parliament passed the Bay of Plenty (Māori Constituency Empowering) Act in October 2001, making provision for Māori wards as of right. Also in 2001, a Local Electoral Act made provision for other local authorities to have Māori wards and Māori electoral rolls if they so wished (see ch 6). So far, the Tauranga City Council and the Western Bay of Plenty District Council have not taken up this option.

Since 2002, the Crown, through its legislation, has encouraged councils to facilitate Māori participation in local government consultation processes and, in our inquiry district, claimants have been appreciative of the efforts of Tauranga City Council and Environment Bay of Plenty in this regard. That said, participation in local government processes often constitutes a significant drain on the resources of hapū and iwi in that much of it takes place on a voluntary and unpaid basis. Some Tauranga Māori are also concerned that the practical outcomes – particularly in terms of protection of their cultural heritage, and of resources and environments important to them – still leave something to be desired (see chs 7, 8).

11.1.10 The situation in 2006

By the time of our stage 2 hearings, Tauranga Māori had lost over 75 per cent of the land returned and reserved after the raupatu, and more than 50 per cent of the amount recommended for their retention by Stout and Ngata in 1908. Land still in Māori title currently constitutes around 11 per cent of land within the inquiry district – although we acknowledge that many Tauranga Māori also hold land in general title.

Under particular pressure are tribal lands that are threatened by urbanisation. Here we again note the concerns of Matapihi Māori about how long they can continue to hold on to their land on the Matapihi Peninsula. Many of them are part of the same wider tribal group, Ngāi Te Rangi, who earlier lost almost all their land at Whareroa – at one time the largest Māori settlement in the whole inquiry district, chosen, as we saw in chapter 2, as the site of

the important 1885 meeting that Tauranga Māori had with Ballance. At Whareroa, Ngāi Te Rangi now have little more than a marae, some kaumātua housing, and an urupā, and these are completely surrounded by the port, airport, and commercial and industrial sites.

As to other kin groups, many of Ngāi Tamarāwaho, it would seem, are now living in suburbs like Greerton and Otumoetai rather than near their marae at Hūria (still less in their wider pre-raupatu rohe). Meanwhile, many of Ngāti Hē have, through the process of subdivision, lost their land interests at Maungatapu and had to move elsewhere. The same is true of a number of Tauwhao Te Ngare who, deprived of their legal rights in land on Rangiwaea Island through the Crown's 'uneconomic interests' provisions, now live in places like Bowentown and Katikati or even further afield. And at Pāpāmoa, district planning provisions, heritage legislation, and Māori land laws have proved insufficient to protect Māori land there from developers. The result is that along that stretch of coastline, most sites of significance to iwi and hapū – for example to Ngā Pōtiki and their hapū Ngāti Kāhu – are now being irremediably damaged or destroyed by the unrelenting advance of coastal subdivisions.

These are but snapshots, illustrative of the kind of situations faced by Tauranga iwi and hapū today. More broadly, we have noted that health, education, and employment statistics are still worse for Māori than for the general Tauranga population, and that Māori are proportionally over-represented in the most socially and economically deprived areas of the inquiry district.

In short, though we have had to break up our discussion of issues into a series of chapters looking at specific topics – and though clearly not all negative outcomes should be attributed solely and directly to Crown actions or omissions – the cumulative and interlinked effects of different Government processes and legislative provisions still add up, in our view, to a considerable degree of prejudice.

11.1.11 The Impact of the Crown's landbanking policy

One step towards remedying that prejudice would be to return as much land as possible to Tauranga Māori. However, since 2005, the Crown has been implementing a policy which has resulted in less protection of Tauranga claimants' interests for more claimant effort. Prior to the change of policy, all Crown lands and properties located in raupatu areas and deemed surplus to Crown requirements were automatically landbanked, for potential use in Treaty settlements. Under the new policy, such land and property is only *considered* for landbanking, and claimants are strongly advised to submit supporting applications. Further, claimants are required to participate in a review of all already-landbanked properties, with a view to some being sold off (see ch 10).

11.2 FINDINGS ON TREATY BREACH

Having considered all the evidence on these various issues, we made a number of findings relating to Treaty breach.⁵ These are given at the end of the various chapters, but here we draw them all together before going on to make our recommendations.

11.2.1 Land alienation

In chapter 2, our analysis led us to conclude that the individualisation of land tenure, freed of communal controls, meant that Tauranga iwi and hapū were not able to exercise collective tino rangatiratanga over their remaining land. This was in breach of article 2 of the Treaty. In relation to the extensive land alienation that took place in the Tauranga area in the late nineteenth century, we found that the Crown breached the principle of active protection. Its overriding concern was to open up land for settlement, to the detriment of Māori interests and of their tino rangatiratanga over their lands and resources. In this context, we particularly note the lack of Crown assistance to hapū like Ngāi Tamarāwaho and Ngāti Hangarau who found themselves with little or no land. The inadequate efforts of the Crown to investigate grievances, even when promises to do so were made by senior Ministers, fell short of what was required and breached the principle of good faith.

In the early twentieth century, the 1909 Native Land Act's provisions to permit the validation of documents such as court orders and confirmations of alienation, even where it could be shown there had been irregularities, failed to observe the basic requirements of good governance. They also breached the Crown's Treaty obligation to act reasonably and in good faith. Later, legislative provisions that placed Māori Land Court judges, and the Māori Trustee, in a position where there was potential for a conflict of interest, similarly failed to observe the basic requirements of good governance and breached the Crown's Treaty obligation to act reasonably and in good faith (see secs 2.5.1, 2.11.1). Furthermore, measures which allowed alienation restrictions to be removed at the request of a minority of owners breached the duty of active protection.

In keeping with the Crown's duty of active protection and the Māori Treaty right of development, the Crown ought to have ensured that Tauranga iwi and hapū retained a sufficient land and resource base for their foreseeable needs. A number of different Government-sponsored commissions repeatedly found that Māori needed to retain land and, irrespective of any Treaty argument, it is reasonable to expect that the Crown should heed the findings of its own commissions of inquiry. Instead, land loss continued to occur.

In terms of policy and legislation later in the twentieth century, we welcome the Crown's concession that the compulsory acquisition of 'uneconomic' shares by the Māori Trustee breached the Treaty and its principles.

5. The various Treaty principles are set out and discussed at a broad level in chapter 1.

Overall, the principle of redress demands that the Crown provide ample compensation for the above-mentioned Treaty breaches.

11.2.2 Land development

The Crown has the ability to foster land development through legislation and policy and, at a practical level, through the provision of finance and training. The terms and principles of the Treaty oblige the Crown to provide Tauranga Māori with assistance that is at least equal to that provided to the general community. Furthermore, where the Crown has created impediments to Māori land development, we are of the view that such assistance may need to be greater than that provided to the general community.

The Crown's land development schemes between 1929 and 1975 were a commendable if belated effort to enable some Tauranga Māori to develop their land. However, these efforts did not, in the main, succeed in overcoming the competitive disadvantages faced by Māori land in multiple ownership. We also note that the schemes often excluded the owners from any meaningful involvement in managing their lands. Further, in the case of the Kaitimako and Ngāpeke schemes, the owners saw very little financial return – not only for the duration of the schemes but, because of the long-term leases put in place, for many years afterwards. These two schemes were carried out on the last substantial landholdings of the respective owners.

Since 1975, the Crown's responses to problems of Māori land development have focused on encouraging the establishment of trusts and incorporations, to facilitate access to private finance. Other than a brief period when loans were provided by the Department of Māori Affairs, the Crown has provided only limited public finance. At the same time, it is clear that difficulties in accessing private finance persist, especially for 'newer players' who as yet have no track record of credit-worthiness they can point to. If Tauranga Māori do not gain better access to finance, they are in danger of losing more land. To avoid breaching the principles of active protection, mutual benefit, and equity, the Crown needs to find some way of assisting Tauranga Māori to realise their aspirations for holding on to their remaining land and developing it.

11.2.3 Public works

The earliest public works legislation was introduced into New Zealand at a time when Māori, although still far outnumbering Pākehā, had little or no power via the ballot box, and consultation with them about public works provisions was minimal. As far as we are aware, the 1885 discussion at Whareroa about rates to pay for roading (see secs 5.4.2 and 5.10.1) was the only early face-to-face conversation with Tauranga tangata whenua about anything relating to public works. Certain legislative provisions that were later introduced, such as centre-line

proclamations for railways and motorways, and the procedures for electricity infrastructure, were particularly harsh. We find that discriminatory procedures for notification, objection, and compensation were in breach of the Treaty principle that the Crown should act fairly as between Pākehā and Māori. Such procedures were frequently used in Tauranga and affected much Māori land. Right through until the later twentieth century, Māori land had fewer protections under the legislation than general land (see ch 4).

The expansion of Tauranga City to the east was done without consideration for the history of raupatu in the region: the eastern end of the harbour was precisely where much of the remaining Māori land was situated. Māori were not involved in key public works and planning decisions in Tauranga, and their interests and concerns were not protected. The result was that, from 1886 to 2006, at least 4961 acres of Māori land was taken for public works in Tauranga. This was a substantial part of their remaining estate, the loss of which they could ill-afford and it caused them serious prejudice. Further, many wāhi tapu of Tauranga Māori have been effectively destroyed by public works, and marae and urupā have been adversely affected, having a detrimental effect on Māori community life.

In order to fulfil the Treaty's guarantees, the Crown should have restricted the compulsory acquisition of Māori land to exceptional circumstances, in the last resort and in the national interest, as found by the Waitangi Tribunal in earlier reports.⁶ Instead, for most of the twentieth century, compulsory acquisition was used for a very broad range of works, sometimes taking more land than strictly necessary, leading to unnecessary loss of Māori land. In sum, the Crown's public works policy and legislation have not protected Māori in accordance with the Treaty of Waitangi.

11.2.4 Local government issues, including rating, valuation, and district planning

In terms of political representation, we find that the Crown has breached the Treaty in not providing for equitable levels of Māori representation at central and local government levels. This undermined the ability of Māori to defend their own rights and interests. At central government level, Māori do at least have the guarantee of some representation, even if the numbers have, until recently, been small. Environment Bay of Plenty, under its own empowering legislation passed in 2001, has more recently made provision for Māori electoral wards and has guaranteed Māori seats on its council. It stands alone in that. Under the Local Electoral Act 2001 and its Amendment Act in 2002, all local authorities have the option of establishing Māori wards, as Environment Bay of Plenty did, but none has done so. The legislation does not provide for Māori themselves to decide whether they wish to

6. See, for example: Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report 1990*, 2nd ed (Wellington: GP Publications, 1996), pp 46–48; Waitangi Tribunal, *Te Maunga Railways Land Report*, 2nd ed (Wellington: GP Publications, 1996), p 71; Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995*, 2nd ed (Wellington: GP Publications, 1997), p 11; Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), pp 285–286.

be represented as Māori, in accordance with the principal of options. Yet guaranteed Māori representation at local government is a logical extension of guaranteed representation at central government level. Further, we believe that the Crown has a partnership obligation to ensure that Māori have the opportunity to have dedicated Māori seats on local bodies. Alongside this, we note that on the administrative side of local government, Māori can still face an uphill struggle in getting their views heard, still less accepted, by advisory panels, consent authorities, or as local body employees.

Local authorities are not agents of the Crown. However, the Crown retains an overall duty of active protection towards Māori interests. This translates into a duty to monitor local government policies and practices to ensure that they are Treaty-compliant. Those policies and practices have been improving since 1988, especially at the operational level, but often still fall short of meeting Treaty standards.

In chapters 5 and 6, we also looked at the question of rating and valuation. On the Crown's own admission, valuation legislation (which in turn impacted on rating) did not, prior to 1997, take due account of the particular nature of Māori land and the tenure system under which it is held. The current legislation governing the office and functions of the Valuer-General is still deficient. In particular, the Valuer-General has no clear direction from the Crown to act in a manner which is consistent with the Treaty of Waitangi, or to recognise the relationships between Māori and their lands, waters, and wāhi tapu.

In the early years, the Crown exercised a measure of active protection in adopting a gradual approach to the rating of Māori land, but it was insufficient given the degree of Māori disadvantage. Under the terms of article 2, which guaranteed to Māori the full, exclusive, and undisturbed possession of their lands for as long as they wished to retain them, any forced taking of Tauranga Māori land for rates debt was unjustifiable and, indeed, egregious in light of the amount of land already taken from them under the raupatu. Further, in failing to mitigate rating pressures that resulted in, or contributed to, sales, the Crown was in breach of its duty of active protection.

Where land was retained, Māori aspirations for using it have often not been well accommodated by the Crown's rating regime, which aimed to foster best economic usage as its primary concern. We see this as a breach of the Crown's duty of active protection. In particular, in the context of increasing urbanisation, the Crown has often failed to uphold the Treaty principle of options for Tauranga Māori in the use of their land. That failure is all the more disappointing in light of the Crown's earlier role in the raupatu of Tauranga land. We also note that the current criteria for the remission or postponement of rates are not well adapted to providing relief for those Māori living in urban or peri-urban areas. Further, we are of the view that charges such as the uniform annual general charge are not an equitable way of taxing those in low-cost housing such as the units provided in papakāinga developments.

A large part of the rationale for charging rates is, of course, to provide services and

amenities, and the claimants alleged that, in some instances, the level of provision to Māori has been lower than to other sectors of the population. The evidence presented to us was insufficient to come to a definitive view on this matter, and we make no formal finding as to whether there was Treaty breach. However, the principle of equity would clearly demand that Māori receive no lesser provision of amenities than fellow citizens residing in like areas.

Another function of local government that has developed over the decades is district planning. In the period to 1977, we find the Crown to have been in breach of the Treaty in respect of its town and country planning legislation, which offered no specific protections around Māori land or Māori interests. Nevertheless, we note instances where despite (rather than because of) the Crown's planning and rating regimes, Tauranga County Council took some commendably proactive steps to address Māori concerns. We would cite, in particular, the appointment of a Māori Rates Officer in the late 1950s, and planning provision, from 1976 onwards, for marae community zones. We note, however, that Tauranga Māori are still in general under-resourced to participate in local government processes such as those relating to district planning, resource consents, and heritage protection.

11.2.5 Environmental issues

The Treaty guaranteed to Tauranga Māori their rangatiratanga over their lands, forests, fisheries, and other taonga. They thus have an obligation to guard and care for those taonga as kaitiaki. Where Tauranga Māori have lost ownership of taonga against their will, and in breach of the principles of the Treaty, they may retain Treaty rights to exercise rangatiratanga and kaitiakitanga over those taonga. As we were told, the taonga of Tauranga Māori include the harbour, Tauranga Moana, significant waterways, and the native forests of the Kaimai Range.

Prior to 1991, the Crown consistently failed to recognise and provide for rangatiratanga and kaitiakitanga of Tauranga Māori over their moana, waterways, forests, and fisheries, in breach of the plain meaning of article 2, and of the principle of partnership and the duty of active protection. Furthermore, the Crown permitted the pollution of waterways, and the destruction of forests and fisheries, to an extent that left Tauranga Māori unable to sustain their traditional way of life, and unable to utilise their taonga as a base for economic development. In leaving the claimants in this position, the Crown breached the principle of options, and its duty of active protection, and has failed to provide adequate redress.

Since 1991, the Crown has provided mechanisms through which the claimants can potentially exercise rangatiratanga and kaitiakitanga over customary fisheries, waterways, and forests, but they are not always working well in practice. Some councils have been slow, for example, in coming to terms with requirements to engage with Māori in their planning processes. Likewise, provisions exist for local bodies to transfer, delegate, or share authority with Māori in the management of resources, but little has so far happened. And although

iwi management plans can be a powerful tool, there has often been inadequate resourcing – in terms of both funding and training – for iwi to be able to produce them. Much more active Crown involvement is required to avoid further breaches of the principle of partnership and the duty of active protection.

11.2.6 Cultural heritage

The Treaty protects the rights of Tauranga Māori to exercise rangatiratanga (that is, authority and control) over the taonga of their cultural heritage, and to have that heritage treated equitably with Pākehā heritage.

Throughout the period from 1886 to 1990, the Crown did not adequately provide for Tauranga Māori to exercise rangatiratanga over their cultural heritage. The Crown thereby breached the principle of partnership and the duty of active protection. Also throughout the period from 1886 to 1990, the Crown provided Māori heritage with less protection than Pākehā heritage. The Crown's comparative disregard for the taonga of Māori culture was a sustained breach of the principle of equity and the duty of active protection.

Current legislation now provides some mechanisms for the expression of Māori rangatiratanga and kaitiakitanga over cultural heritage, but all too often these prove to be dead letters. There is, for example, the potential for Māori corporate bodies – such as iwi authorities, or Māori trusts or incorporations – to become heritage protection authorities, able to issue heritage protection orders. However, the risks and hurdles are such that, to date, nationwide, only five corporate bodies of any kind have been constituted heritage protection authorities – none of them Māori. Nor have many power-sharing arrangements between Māori and local authorities resulted, anywhere in the country, from the legislation as it currently stands. Without stronger support from the Crown, Tauranga Māori will not be in a position to exercise rangatiratanga and kaitiakitanga over their cultural heritage, and we find that the Crown has yet to properly meet its duty of active protection in this regard.

Until the passing of the Protected Objects Act 2006, the Crown's provisions for Māori to claim and care for their taonga tūturu (objects of material culture) were inadequate, and in breach of the duty of active protection. We are not able to determine the extent to which the 2006 Act is resolving this issue, since it falls outside the period covered by the evidence presented to us, but we remind the Crown that these processes will need active commitment and resources.

Overall, the current legislative regime is not providing adequate protection to the cultural heritage of Tauranga Māori, which continues to be lost at an alarming rate. The framework for protection is distributed across a number of poorly linked Acts, resulting in scattered information about cultural heritage, and poorly integrated efforts to protect it. The Crown's continuing failures are a breach of its duty of active protection and of the principle of equity.

11.2.7 Socioeconomic issues

Analysis of the census data for 2001 shows that Tauranga Māori are significantly disadvantaged, in relation to the non-Māori population of the inquiry district, across a wide range of socioeconomic indicators. As always with socioeconomic outcomes, numerous factors are involved, not all of them controllable by the Crown and its agents. For that reason, we make few findings of Treaty breach in relation to socioeconomic issues. Nevertheless, we make a number of observations which we trust the Crown will take into account in considering prejudice.

The enormous loss of land before 1886, and ongoing land loss almost to the present, contributed to the economic and social marginalisation of Māori in the Tauranga district, and reduced the ability of Tauranga hapū to share in the economic and social benefits of regional progress. All hapū were affected by ongoing land loss, and some were left with little or no land at all. Although the plight of the latter was repeatedly brought to the attention of the Crown, almost no effective action was taken: instead, any landlessness provisions were focused on individuals. Through its acts and omissions, the Crown is heavily implicated in land loss and the resulting prejudicial impacts. To the extent that the Crown has thereby contributed to the marginalisation of Tauranga Māori, we find it in breach of the principles of mutual benefit and equity.

Turning to consider the key socioeconomic indicators, we note that health services were provided for Māori in Tauranga from an early date, but they were patchy for many years. Services, including those targeted at Māori, were greatly expanded in the 1920s and afterwards, and financial barriers were eased by the Social Security Act in 1938 (although little acknowledgement of the need for culturally appropriate services was made until recent decades). With better Government-funded health services, the health status of Māori in Tauranga improved enormously during the twentieth century, but still lags behind that of non-Māori.

In terms of housing, we have seen that the Crown was slow to address the needs of Māori, even though those needs were clearly evident and poor housing was obviously having a negative effect on health. Even today, Māori housing standards in Tauranga are not equal to those of non-Māori. Loan assistance was provided by legislation from 1935, but it was many years before it was widely available. And although considerable rehousing was achieved in the 1950s and 1960s, much of it involved relocating to new urban subdivisions. Some Māori welcomed that; others did not, and would have preferred to have been rehoused on their traditional lands. Lack of Crown support meant that Māori were deprived of options, in breach of the Treaty. Today, too, Māori continue to face problems in building on multiply owned ancestral land, despite many recent efforts to resolve the legal, rating, planning, and financial issues involved. This impacts negatively on the aspirations of a number of Tauranga hapū to foster and promote a marae-centred community life.

Māori children in Tauranga Moana had access to State primary schools and a number of native schools throughout the period, and later were able to attend secondary schools. But for many years the Crown's expectations for Māori educational achievement were not high. There appears to be a relationship between this history and the over-representation of Māori workers among the unemployed and in unskilled or lower paid-employment. We also note the decline of te reo Māori and the Crown's policies concerning Māori language use in schools.

11.2.8 Landbanking

In terms of landbanked properties for possible use in Treaty settlements, we find that no Treaty breach attaches to the Crown's disposal of surplus land and property not actually required for the settlement of Treaty claims. However, the landbanking of surplus Crown land and property for potential use as redress is clearly of particular importance in an area such as Tauranga where there is comparatively little land available for Treaty settlements, and we believe that the bar for deciding that a particular land or property is 'not required' must accordingly be set very high.

The Crown's revised policy on landbanking incorporates a number of changes which, taken together, result in less protection of claimants' interests for more claimant effort. In particular, there is potential for prejudice if tangata whenua either do not undertake the new application process or fail to fulfil the Crown's demands to the satisfaction of Crown officials.

The Crown's consultation process, prior to introducing the revised policy, was inadequate. We acknowledge that the Crown's partnership duty to consult is not absolute in all circumstances, but we uphold the view that there should be full and meaningful consultation on all matters of importance to Māori. There is no doubt about the importance of land to settling the claims of Tauranga Māori: the Tauranga raupatu district is more highly urbanised than any other raupatu district and Tauranga Māori have little chance of recouping much of what they lost. We accordingly find the Crown in breach of its Treaty duty in this matter.

Further, the Crown's requirement for claimants to review the Tauranga properties already held in the landbank represents a substantial burden of work, with no Crown assistance (other than information) being offered to help them complete the task. We find this to be a breach of the Crown's duty of active protection.

Overall, we find that Wai 1328, filed by Ngā Pōtiki in respect of the Crown's landbanking policy, is well founded and that there is the potential for prejudice not only to Ngā Pōtiki but to all Tauranga Māori.

11.3 RECOMMENDATIONS

A number of the issues investigated in this inquiry have been raised repeatedly by Tauranga iwi and hapū throughout the period from 1886 to 2006, at hui with central and local government, and by petitions, letters, submissions, and protests. As a general point, we urge the Crown to address the claims of Tauranga iwi and hapū as a matter of high priority. A failure to do so risks adding to long-held and deeply felt grievances that have rankled since the nineteenth century.

Also as a general point, we recommend greater collaboration and information flow between the various arms of government. In the course of examining the mountain of evidence presented in this inquiry, we have become aware of numerous situations where the actions of one government department or agency have cut across those of another, often to the detriment of Māori aspirations to hold, care for, and – where appropriate – develop their land and resources. We are firmly of the view that better coordination, and the sharing of information, might have averted some of the negative outcomes.

Our more specific recommendations follow.

11.3.1 The return of land

Given the high level of land loss by Tauranga Māori, we reiterate the recommendation of the stage 1 report – namely, that the Crown make available for the settlement of claims in the Tauranga district as much land as it possibly can. In this context, we recommend that, pending settlement, the Crown revert to its earlier policy of automatically landbanking all surplus Crown land in the Tauranga area, irrespective of whether a supporting application has been made by Tauranga Māori. Further, noting that the current list of landbanked properties in the Tauranga region appears somewhat limited in terms of type and number,⁷ we particularly recommend that the Crown carry out or facilitate research to investigate the fate of all land originally set aside as reserves for Tauranga hapū, especially in the area that now forms part of Tauranga City, with a view to returning as much of that land as may be viable. As in the stage 1 report, we do not make recommendations about which land should be returned to which iwi or hapū as we believe that is a matter for negotiation between claimants and the Crown.

11.3.2 Land development

We begin by reiterating our view that, prior to 1886, the Crown had already, in depriving Tauranga Māori of some of their potentially most economically productive lands (including the area that was later to become the Athenree Forest), inflicted a significant opportunity

7. 'Properties Managed by OTs April 2010', <http://www.ots.govt.nz/> (accessed 30 May 2010)

cost on Tauranga iwi and hapū in terms of their future land development options. We are further of the view that early hurdles and handicaps experienced by Māori in the development of their remaining land, particularly in the period prior to 1929, often came as a direct result of Crown policy and legislation. This led to competitive disadvantage and, in some cases, the complete loss of an income stream: Māori were not competing on a level playing field and, where this resulted in their ventures failing and their land being lost, they lost with it any hope of trying new land-based development ventures in the future. We believe that Tauranga Māori suffered ongoing prejudice as a result and we recommend generous compensation, along with extra assistance to help restore them to a sound economic footing.

We also recommend that the Crown consider new ways of assisting Tauranga Māori to retain their remaining land (and develop it, where such is their wish), and that particular attention be paid to assisting owners of multiply owned land (especially smaller pieces of land) in urban or peri-urban areas, where rates and pressure from private developers are both likely to be high.

11.3.3 Public works

We note that the *Wairarapa ki Tararua Report* recently summarised the recommendations of previous Tribunals in relation to public works, and further expanded on them. We urge that the Crown move without delay to adopt the various recommendations for legislative amendment set out in that report.⁸

For our own part, we particularly recommend a review of the public works compensation regime and the establishment of a compensation system that is properly in keeping with Treaty principles. We are of the view that Māori have had little influence on the current regime, with the consequence that there has been no formal consideration of how Māori values and interests might be valued for compensation purposes. We strongly urge, for instance, that where owners are required to give up the very last of their ancestral lands for public works, the compensation offered should recognise this fact. We believe that the compensation regime assumes particular importance in an urbanised district such as Tauranga, where the majority of Māori ancestral land has now been lost and where it is increasingly unlikely that equivalent lands will be found for exchange within the area.

Lastly, but by no means least, we urge that as part of the general redress recommended at the end of this report, the Crown endeavour to resolve as many as possible of the individual grievances raised in relation to public works issues in the Tauranga area, and to return land wherever practicable – noting that, although the areas of land involved are sometimes small, they are often of great importance to the whānau and hapū most directly affected. Where such a return of land does prove possible, we also suggest that the Crown might actively

8. Waitangi Tribunal, *The Wairarapa ki Tararua Report* 3 vols (Wellington: Legislation Direct, 2010), vol 2, ch 8

11.3.4

assist Tauranga Māori to find ways of holding on to it and developing it, to prevent future loss.

11.3.4 Local government issues, rating, valuation, and district planning

To ensure that Māori have an opportunity to be heard and to exert influence at the local level, we urge the Crown to find ways of achieving better representation of Māori, and particularly tangata whenua, at all levels of local government – at the council table, on council staff, on advisory panels, and as voters. We note that this recommendation accords with the view of the Wairarapa ki Tararua Tribunal as expressed in their recent report.⁹ We also recommend that central government directly contribute to enabling the tangata whenua to participate in local government processes relating to, for example, district planning, resource consents, and heritage protection. This includes the Crown being willing to assist with funding and training.

With respect to rating, we support the recommendations of the Local Government Rates inquiry panel ('the rates panel'). One of those recommendations was that the Government 'collaborate in a joint exercise with the local government in developing a coordinated and consistent approach to rates remission policies for Māori land'. Such an approach, they said, would include:

- ▶ use of a register or remission list
- ▶ opportunity to remit up to 100% of rates
- ▶ full recognition of the factors/criteria to be used
 - unoccupied and unutilised
 - landlocked
 - fragmented ownership
 - conservation value
 - unsecured legal title
 - isolated and marginal land capability
 - a lack of management structures
 - service provided (or not provided)
 - a proactive approach rather than councils receiving applications from landowners
 - use of liaison offices to work with Māori landowners
 - the inclusion of land that was Māori land but transferred to general land through the 1967 amendment
 - a proactive approach linking land development and rates remission
 - regular inspections to ensure land complies with the policy

9. Waitangi Tribunal, *Wairarapa ki Tararua Report*, vol 3, pp1062–1062

- specific reference to the matters listed in Schedule 11 of the Local Government Act 2002.¹⁰

Where Māori land is in multiple ownership *and* non-occupied *and* non-productive, we would go further than the rates panel and recommend total exemption from rates. Also, we note that the existing rating exemption for land used for the purposes of a marae or meeting place or burial ground applies only to areas of two hectares or less: we recommend the removal of that limit.¹¹ We note that exempting these categories of land would reduce the administrative burden of trying to collect rates on land unable to sustain such charges, and thus reduce local authority overheads. However, to obviate any residual disadvantage to local government, with possible repercussions for general ratepayers, we recommend that central government consider providing local government with some form of funding or targeted assistance. This would accord with the central government agency assistance already provided to areas such as Westland, which have a high percentage of non-rateable Department of Conservation land.¹²

Again in relation to multiply owned land, we note that where no management structure (such as a trust or incorporation) is in place, and the names and addresses of only one or two owners are known to the local authority, those owners may find themselves liable for all the rates on the land in question. We believe this is unfair and inequitable. We recommend that the rates liability of any individual owner be capped at an amount reflecting his or her percentage ownership or usage of the block (whichever is greater). We also recommend that the Māori Land Court be given a role in helping local authorities to establish better processes for identifying owners and occupiers, so that the rates burden may be distributed more equitably.

We see that the rates panel also recommended that:

a new basis for valuing Māori land for rating purposes be established that explicitly recognises the cultural context of Māori land, the objectives of Te Ture Whenua Māori Act 1993, and the inappropriateness of valuations for rating purposes being based on the 'market value' of Māori land . . .¹³

We agree, noting again that rating and valuation legislation are currently not well aligned. We recommend the introduction of new valuation legislation consistent with the Treaty of Waitangi and recognising the relationships between Māori and their lands, waters, and wāhi tapu.

10. Local Government Rates Inquiry Panel, *Funding Local Government: Report of the Local Government Rates Inquiry* (Wellington: Department of Internal Affairs, 2007), pp 224–225

11. Local Government (Rating) Act 2002, sch 1, pt 1, ss 10(b), 12(a)

12. West Coast Regional Council, 'Submission to Local Government Rating Inquiry' (submission no 575), West Coast Regional Council, pp 1–9; <http://district-plan.westland.govt.nz/LTCCP/financial/summaryassump.html> (accessed on 5 April 2010)

13. Local Government Rates Inquiry Panel, *Funding Local Government*, pp 14, 24, 224, 225

On the subject of district planning and local government legislation, we note that the Crown requires the local authority to monitor ‘community outcomes’, and the Auditor-General then checks that such monitoring has taken place. There is no check at any point, however, on how well those community outcomes measure up against the Treaty. We recommend that the Crown assign to Te Puni Kōkiri, or some other government agency, a role in ensuring that such a check is carried out at appropriate intervals.

11.3.5 Environmental management

We have noted that, since 1991, the regime for managing natural resources has become much more Treaty-compliant, but the provisions for Māori participation are not yet working well in practice. We recommend that the Crown actively investigate ways, on the one hand, of encouraging local authorities to better engage with the tangata whenua in their planning processes and in the management of natural resources and, on the other hand, of contributing funding and training, as needed, to enable tangata whenua to make the most of the legislative provisions available. Where the wider public also have a strong interest in taonga, as is the case with the harbour, significant waterways, and the native forests of the Kaimai Range, we recommend that the Crown explore possibilities for joint management between local government and Māori.

We are also concerned at the evidence of resource loss and environmental degradation, particularly in relation to the harbour and waterways. We therefore recommend that the Crown, in conjunction with the tangata whenua, investigate the possibilities for remedial action, and that the Crown contribute towards the cost of any projects identified.

11.3.6 Cultural heritage

The current division of roles and responsibilities under the historic places and resource management legislation is not working well in Tauranga Moana. Clearer assignment of responsibility for gathering information, and for administering protections, is needed. We recommend that the Crown give oversight of gathering of all information about heritage places, under the Historic Places Act, to the Historic Places Trust and the Māori Heritage Council (which is part of the trust). Complementary to that, we recommend that oversight of the protection mechanisms for those sites, under the Resource Management Act, be given to the territorial authorities.

We also urge that the Historic Places Trust be properly resourced to meet its existing statutory obligations to gather information on heritage sites. In particular, we believe that the Māori Heritage Council needs better resourcing to carry out its work, and that its role should be strengthened. For example, where development projects involve Māori cultural

heritage sites, the Māori Heritage Council could usefully have a role in organising the vetting of any archaeological reports submitted by the developer concerned.

In terms of future directions, we recommend that the Crown issue a national policy statement on heritage. This statement would give definitive guidance for local authorities in drafting objectives, policies, and rules for the protection of cultural heritage sites and items. As part of that work, the Māori Heritage Council should be given responsibility for drafting the national policy statement on Māori heritage. We also recommend that the Crown consider how more tangata whenua might be assisted to train as conservators of their taonga tūturu (objects of material culture).

More immediately, we recommend a major overhaul of the historic places register so that it is properly representative of Māori cultural heritage (not just buildings and archaeological sites). We also recommend that all items on the register be automatically included as scheduled items in the district plans of the relevant local authority. Once Māori sites have been scheduled and included in a district plan, the relevant iwi authorities should have a role in considering and deciding any applications for resource consents affecting those sites. That role should include the opportunity to contest any archaeological reports submitted by the developer. This is particularly important where a development project might involve the modification or destruction of a site.

Further, we recommend that the Crown investigate ways of improving the standard of archaeological advice available to local bodies and developers, particularly in respect of Māori sites. In New Zealand, a whole range of professionals – from accountants to veterinarians – are required, by law, to register with a professional body before being allowed to practise.¹⁴ There is no such requirement for archaeologists, and in some cases this may lead to reliance being placed on opinions that are less than authoritative. All archaeological advice submitted in support of development applications affecting Māori sites should be contestable.

11.4 REDRESS

We have now come to the end of stage 2 of the Tauranga inquiry and we do not anticipate any further inquiry being necessary (although the possibility of a remedies hearing remains open to the parties if required). In its stage 1 report, the Tribunal wrote:

We consider that a generous and expeditious remedy is required for Tauranga Maori for the prejudice suffered by them as a result of Crown laws, actions, and omissions. Such

14. Immigration New Zealand, 'Occupational Registration', Immigration New Zealand, <http://www.immigration.govt.nz/migrant/stream/work/skilledmigrant/LinkAdministration/ToolboxLinks/occupationalregistration.htm> (accessed 25 May 2010)

reparation is necessary not only to restore the honour of the Crown in its relationship with Tauranga Maori but also to establish an economic base from which Tauranga hapu can pursue their future aspirations. As we have continually emphasised in this report, Crown Treaty breaches mainly impacted on hapu and, given that, the ultimate settlement aim should be to restore the economic and social foundation of Tauranga hapu.¹⁵

We reiterate that view. Moreover, we believe that the prejudice identified in the stage 1 report has been significantly compounded by the further prejudice arising out of the Treaty breaches identified in our present report. Accordingly, the total amount of redress made to Tauranga hapū should be substantial and meaningful. We expect that it would include as much former reserve land as possible, particularly within the Tauranga city boundary. If the return of such land is not possible, additional monetary compensation will be necessary. Redress should also take account of the lost opportunity costs resulting from the economic marginalisation of Tauranga Māori over earlier decades. Nothing less is due to the iwi and hapū of Tauranga Moana, if they are to climb back to a point of substantive equality from which they can exercise a real degree of tino rangatiratanga over their lives and resources, pursue their aspirations, and realise their full potential to contribute to the well-being of the region and the nation as a whole.

15. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 409