

THE PUBLIC WORKS ACTS AND RELATED LEGISLATION, 1928–1981

The Public Works Act 1928 became the principal Public Works Act, although with numerous amendments, for over half a century, until revised and replaced by a new Public Works Act in 1981. The 1928 Act continued most of the principles and policies developed in previous years, including many of the inheritances of the 1882 Act regarding Maori land. The 1928 Act was passed without debate and in fact the Minister of Public Works described it at the time as ‘entirely a consolidating measure’.¹ The Act was also arranged into by now traditional divisions, including separate parts for general land takings and for takings of Maori land.

While the 1928 Act was the main Public Works Act, Parliament also continued the legislative tradition of passing numerous other Acts that contained land taking powers for specific purposes or types of organisation. As previously, these Acts could incorporate provisions from the 1928 Act and could also include new or extended powers or amended provisions according to the requirements of the particular work or authority they empowered. Local and special Acts also often incorporated land taking powers.

The inclusion of significant public works provisions continued in general Acts such as Finance Acts, Reserves and Domains Acts, and various Land Acts. Public works provisions specifically related to Maori land also continued to appear in other general Maori Affairs-related legislation, either in general terms or relating to specific blocks of land, especially in Maori Purposes Acts, land laws, and Claim Adjustment Acts, and Maori Affairs and Maori Trustee Acts. From the 1940s, town planning legislation also had an important impact on public works provisions, including land takings.

Although the Public Works Act 1928 was a consolidation of previous legislation, a summary of provisions as they had developed to this date is useful, because the assumptions and most of the general principles in this Act remained relevant for many years. There were also a very large number of amendments in succeeding years, often at the rate of more than one a year. Only a brief overview of what appear to be some of the most important amendments is attempted here.

The 1928 Act was divided into 14 parts, many similar to earlier years including, for example, separate parts concerned with general takings of land for public works purposes (Part 2), compensation (Part 3), taking of native lands (Part 4), surveys (Part 5), roads and rivers (Part 6), railways (Part 7), defence (Part 9), and drainage,

1. NZPD, 1928, vol 219, p 651

irrigation, water supplies and water power, and electrical energy (Parts 10–13). In general, the provisions specifically concerned with land required for public purposes covered the power to take land, land-taking methods and procedures, compensation, and the disposal of surplus land acquired for public works.

The 1928 definition of ‘native land’ also continued to mean land held by natives under their customs and usages (s 2), or Maori customary land. The 1928 Act continued the tradition begun in 1882 of separate treatment for Maori land including generally lesser protections, especially for customary land. Maori freehold land was included under general takings but even so, some lesser protections still applied. This continuation of separate provisions for taking Maori land helped shape attitudes of taking authorities for almost another 50 years and was not finally abolished until 1974.²

In terms of taking powers, the 1928 Act confirmed that both the Crown and local authorities had the power to take land for public purposes. This included Maori land, whatever title it was held by. It was also a well-accepted principle by now that public works takings had to be based on some statutory authority or that Parliament had already appropriated money for the work. The definition of ‘public work’ was similar to previous public works legislation and included any survey, railway, tramway, road, street, gravel pit, quarry, bridge, drain, harbour, dock, canal, river-work, water-work, and mining and associated work. It also included electric telegraph, fortification, rifle range, artillery range, lighthouse, or any building or structure required for any public purpose or use including lands necessary for the use convenience or enjoyment of the same. The definition also included buildings and associated lands used for mental health and educational purposes and all ministerial and other public buildings and associated land (s 2). The various other separate parts of the Act relating to particular types of works, surveys, roads and rivers, railways, defence, drainage, irrigation, water supply for mining districts, and water power and electrical energy also had particular provisions and powers relevant to those types of works.

In later years, the definition of ‘public work’ continued to be widely extended as the need arose. Just a few examples include aerodromes owned by the Crown or local authorities (ss 2–4, Public Works Amendment Act 1935), local body provision of recreational and associated social facilities (Physical Welfare and Recreation Act 1937), river and soil control works undertaken by a Council or Catchment Board (Soil Conservation and Rivers Control Act 1941), housing improvement, safety, and associated land subdivision and development work (1945 Finance Act (no 2)), motorways (Public Works Amendment Act 1947), geothermal works (Geothermal Steam Act 1952), various local authority powers (Housing Improvement Act 1945, Municipal Corporations Act 1954 and Counties Act 1956), noxious weeds (Noxious Weeds Act 1950), works associated with town and country planning (Town and Country Planning Act 1953), and reserves (Reserves Act 1977). As well as general powers, special taking powers were also enacted in special circumstances, for example the 1944 powers to take land for the removal of Tokaanu township and other settlements affected by the control of Lake Taupo

2. Section 12 of the Maori Purposes Act 1974

(section 33 of Finance Act 1944 (no 3)). Amendments and revisions were also made to legislation concerning long-standing public works concerns such as mining, harbours, and national parks.

In the 1928 Act, the Governor or a local authority also had taking powers regarding any land, whether private, native, or otherwise, required for forest plantation purposes, recreation grounds, or for agricultural show grounds or for paddocking driven cattle as if such purpose were a public work (s 15). However no native land (customary Maori land) could be taken under this section without the consent of the Native Minister. Local authorities could also take land and carry out works necessary for the provision of public swimming baths (s 16). The Crown could take land for a quarry or gravel pit required for the construction of public works or take materials such as stone or gravel from land under certain conditions including 24 hours notice and on paying reasonable compensation (s 17). In general, mines and minerals were excluded from land taken (s 19).

In Part 5 of the 1928 Act, concerning surveys, the right to enter any land not used for a garden, or similar thing, to remove gravel and similar material after 24 hours notice, was extended to customary native lands which had not been partitioned and to any land that was unfenced, uncultivated, unoccupied, and the owner of which was unknown or difficult to find (s 122). Compensation was payable. In the case of native land, it was sufficient to post a notice signed by the appropriate officials at or near the place where the material was to be taken (s 122). A purchaser of Crown land where there was no access could also require the Crown to have access provided either through Crown land or other land under certain conditions (s 124).

As the variety and scope of public works increased during the twentieth century, the definition of public works also continued to expand. For example, by 1945, land could be taken for subdivision, development, improvement, provision, or preservation of amenities, public safety in respect of any public work and for ‘regrouping or better utilisation’.³ Just in case, the Governor-General also had the power under the same Act, to declare by Order in Council that any work or undertaking was a public work for the purposes of the Act (s 29).

The Public Works Act 1928 also continued the general tradition of enabling land required for public works purposes to be acquired either by agreement or by compulsory taking. However this did not apply to all Maori land. The possibility of acquisition by agreement, as provided in Part 2 of the Act, only applied to Maori land where title was derived from the Crown. Customary Maori land was excluded from this provision until 1962, by which time of course there was very little customary land left to reach agreement about.⁴

The provisions concerning acquisition by agreement were contained in Part 2 of the 1928 Act in section 32 and enabled the Minister or local authority to enter into an agreement for the taking or purchase with the person owning or having an interest in the land required for public works. In such cases the normal provisions requiring notice and objections were not applicable. Compensation in such cases could also be determined by either agreement or by leaving it to the determination

3. Section 30 of the Finance Act 1945 (no 2)

4. Section 6 of the Public Works Amendment Act 1962

of the Compensation Court under Part 3 of the Act. On being satisfied that the agreement was sufficient, the Governor-General could go ahead and issue a proclamation taking the land, also without complying with normal requirements. Land taken by agreement was to be deemed land ‘taken’ under the Public Works Act, but normal provisions regarding compensation did not apply unless specially provided for (s 32).

There were some changes to these provisions in later years. For example, in 1948, compensation certificates were introduced. These were to be registered and included details of the agreement and the amount of compensation.⁵ When Maori customary land was finally brought under the provisions concerning agreements in 1962, the procedures were slightly different. Instead of section 32(4) applying (regarding the issuing of a taking proclamation) in the case of an agreement regarding customary Maori land, the Crown or local authority had to apply to the Native Land Court for compensation to be assessed and an Order in Council taking the land was issued under section 103(1)(a)(ii) as for compulsory takings of customary land. The 1962 Amendment also gave the Maori Trustee responsibility for claiming compensation for Maori land in multiple ownership. However the Maori Trustee only had authority to enter agreements for the taking of Maori land where he owned an interest in the land, he had no authority to enter taking agreements on behalf of Maori owners.⁶

It is unfortunate that a lack of data means it is impossible at present to draw any accurate conclusions about the impact of provisions where public works land takings could be made by agreement. It is not clear, for example, whether most general public works takings were by agreement, although the impressions of experienced legal practitioners in this area indicate that this may well be so.⁷ It is also not clear whether takings of Crown-granted Maori land followed a similar pattern or for example whether most were taken by compulsion. Until 1962 of course, provisions concerning customary Maori land only catered for takings by compulsion. Even after that, it may well be difficult to identify takings of customary land by agreement as the procedures were the same as for ordinary takings.

The other method of acquiring land required for public purposes was by compulsory taking. The 1928 provisions regarding compulsory land taking were again very similar to previous legislation with separate taking provisions for Maori land. In general, land taking provisions were divided into those where normal protections applied and those with fewer protections. Maori customary land was included in this latter class. However even for Crown-granted Maori land, where for the most part normal protections applied, there were some significant differences that resulted in lesser protections.

In terms of taking procedures, Part 2 of the Act covered general takings of land. These procedures included all the normal protections by now associated with public works land takings, in particular the right to receive notice and the right to object to takings. These provisions covered European-owned land in general and Crown-

5. Section 17 of the Public Works Amendment Act 1948

6. Section 6 of the Public Works Amendment Act 1962

7. For example, see R I Barker, ‘Private Right vs Public Interest – Compulsory Acquisition and Compensation under Public Works Act 1928’, *New Zealand Law Journal*, vol 4, 1969, p 253

granted Maori land by virtue of section 103(2). There were some significant exclusions from these general protections however. Most were for particular works purposes. These were railways and defence, and roads in connection with such purposes, and water power and irrigation purposes (s 10). Middle line proclamations for the purposes of constructing roads over land not previously acquired or set apart for the purpose were also excluded (s 30(1)). However, in addition, all native land (customary Maori land) was also excluded from Part 2 protections (s 10). In 1947 land required for motorways was added to the list of exclusions.⁸ The term ‘water power’ was replaced by ‘electricity generation’ in 1970 and ‘all purposes under the Electricity Act 1968’ in 1975.⁹ The exclusion of customary Maori land from Part 2 protections was not remedied until 1974.¹⁰

In general, the compulsory taking procedures in Part 2 of the 1928 Act required the Minister or local body to have a survey made and a plan prepared showing the lands to be taken with the names of the owners and occupiers. The plan had to be lodged for inspection in the relevant district in some convenient place. A notice had to be published in the *New Zealand Gazette* and twice in local newspapers stating where the plan was open for inspection, with a general description of the proposed works and of the lands to be taken. Notice also had to be served on all persons having an interest in the land. All persons affected could make ‘well grounded’ objections in writing within 40 days from the first publication of the notice. The objector could be heard by the Minister or local authority and could present supporting evidence (s 22).

If no objections were made, or if after due consideration of objections, the Minister or local authority was still of the opinion that it was ‘expedient’ to go ahead with the proposed works and that no private injury would be done whereby compensation was not available under the Act, then after completing certain formalities the Governor-General could issue a taking proclamation. Once registered, this proclamation vested the land in the Crown or local authority discharged from all claims or interests for the public use named in the proclamation (s 23).

Other provisions under Part 2 included that a taking proclamation for a local body work was not to be issued until the Governor-General was satisfied that the local body had made sufficient provision for the payment of likely compensation (s 24). A proclamation was also not to take effect until it had been gazetted. A proclamation could be revoked after land was taken but before compensation was awarded, if the land or part of it was found to be no longer required for the work (s 27). An owner could require severed land to be taken or added to adjoining land in certain circumstances (s 31) and a copy of every taking proclamation and map had to be deposited in the relevant land district registry office (s 28). Land could also be taken in some cases where it was found necessary after the work had been constructed, or where it would be desirable for the use, convenience, or enjoyment of any public work (s 34).

8. Public Works Amendment Act 1947

9. Public Works Amendment Acts 1970 and 1975

10. Section 12 of the Maori Purposes Act 1974

There were numerous later amendments to the 1928 Part 2 compulsory taking procedures. For example, improvements included a 1952 amendment that if a notice of intention to take land was not followed up by confirmation within a specified time (generally from nine months to one year) the notice of intent would cease to have effect. A notice of intent could also be withdrawn at any time by notice or a letter to the owners and occupiers.¹¹ Further improvements were made after increasing criticism in the 1960s. In response to criticism that the hearing process allowed taking authorities to be judges in their own cause and that objectors were disadvantaged in not having sufficient information or opportunity to present an adequate case at hearings, for example, a 1973 Public Works amendment transferred the right of objection away from the taking authority (Crown or local authority) to an independent Planning Appeal Board.¹²

In general, Crown-granted Maori land came under the general provisions of Part 2. However even then there were some important differences. For example, where Maori owned or had interests in land required that was not registered under the Land Transfer Act, the provisions in section 22 requiring the names of owners and occupiers to be shown on the plan and requiring copies of the notice and description to be served on owners and occupiers did not apply. Instead, the 1928 Act required a notice to be published in the *Kahiti*, although no proceedings would be invalidated if there was any failure to do this (s 22(4)). Later changes were made to this. When publication of the *Kahiti* stopped, publication of a notice in the *Gazette* was taken as equivalent.¹³ Later it was decided that notice in the Maori Land Court panui was sufficient and likely to reach more Maori, and the *Gazette* requirement was dropped altogether. The practical effect of the provisions regarding notice was that for a large proportion of even Crown-granted Maori land, notification procedures were much less effective than for non-Maori land and this of course had a large bearing on the ability to make objections. Even in 1959, it was acknowledged that there was still a large proportion of Maori land where title was not surveyed and therefore not on the Land Transfer register.¹⁴

General notice rights for owners of Maori freehold land in multiple ownership were not improved until 1974 when an effort was made to provide for ‘more effective and direct representation of the owners of Maori land in multiple ownership’.¹⁵ The 1974 Act provided for notice to be served on a registrar of the relevant Maori Land Court. A meeting of owners was to be summoned or in cases of urgency agents or trustees could be appointed to negotiate and otherwise act on behalf of landowners.

The 1928 Act also continued the general protections developed in earlier legislation concerning entry onto land required for public purposes. In most cases, the prior written consent of the owner was required before any stone or other material could be taken from a quarry, brickfield, or similar, used for commercial

11. Section 3 of the Public Works Amendment Act 1952

12. Section 6 of the Public Works Amendment Act 1973

13. Section 47 of the Finance Act 1931 (no 2)

14. For example, memo from Secretary of Maori Affairs to Solicitor General, 1 April 1959, MA 38/1/1 vol 1, accn 2490

15. Maori Affairs Amendment Act 1974 pt 9

purposes. The prior written consent of the owner or the Governor in Council was required before any land could be taken occupied by any building, yard, garden, orchard, or vineyard, or used as an ornamental park or pleasure ground (s 18). This section was contained in Part 2 of the Act and presumably also therefore applied to Crown-granted Maori land even though the exemptions were eurocentric. In a belated correction in 1948, the words ‘cemetery, burial ground’ were added after ‘yard’ in section 18 of Part 2.¹⁶ Again Maori customary land was excluded from Part 2 provisions and therefore no exemptions at all applied.

The land takings excluded from Part 2 of the 1928 Act had their own taking procedures, and in general these offered fewer protections than applied under Part 2. For example, taking procedures for railways (and later motorway) purposes were contained in Part 7 of the Act. The Governor-General could issue a middle line proclamation for a railway, issue plans showing the land through which it passed and at any time after the publication of the proclamation enter and construct the railway, including all necessary works involved. The gazetted proclamation was sufficient proof that the land now vested in the Crown. The Crown had to give notice to owners describing the land taken so that applications for compensation could be made, but the usual rights of notice, objection, and formalities regarding taking proclamations did not apply (s 216). Similar provisions applied for land required for defence purposes (pt 9, s 254). ‘Native land’ or customary Maori land was also excluded from Part 2. Apart from native land required for railways and defence where those particular taking procedures applied, takings of native land were covered by Part 4 of the 1928 Act.

Where the title to Maori land was not derived from the Crown a map of the lands to be taken had to be prepared by an authorised surveyor accurately showing the position and extent of the lands to be taken. At any time afterwards the Governor by Order in Council could declare the lands deemed taken for public works purposes. The lands then vested in the taking authority as from the date named in the Order in Council, unless revoked in the meantime. This date had to be at least one month after the *Gazette* notice. A record of the taking was to be shown on the maps of the district in the office of the Surveyor General (s 103).

Apart from the gazetting, there was no other provision for notifying owners of customary Maori land when land was required for public works. In addition there was no provision for objecting to *any* takings of customary land and of course all takes were assumed to be compulsory as there was no similar provision to that in Part 2 for agreements over acquiring such land. While Part 2 provisions also placed some restrictions on entering and taking land occupied by such things as gardens, there were also no similar exemptions for customary Maori land.

These provisions were not improved until 1962 when sections 104 to 106 of the 1928 Act dealing with Maori customary land were repealed and replaced (s 6). The new section 104 applied the provisions of section 32 (enabling willing agreements to be entered into for land required) and Part 3 (compensation) as though customary land were European land. In 1974, the distinctions in taking provisions between Maori and European-owned land were finally removed by omitting all references to

16. Section 14 of the Public Works Amendment Act 1948

Maori land in the relevant provisions. For example, Maori land was removed from the exclusions to Part 2 in section 10. Sections 102 to 104 of the 1928 Act and their various amendments were also finally repealed.¹⁷

In terms of compensation, the 1928 Act again contained similar provisions to previous legislation, including significantly different compensation provisions applying to Maori land. Once again there was an excluded class of land takings where compensation provisions were quite different from those applying generally. The general compensation provisions were contained in Part 3 of the 1928 Act. These continued the general principle that full compensation was payable for any person with an interest or estate in land taken for a public work, injuriously affected by the work or suffering any damage from the exercise of powers under the Act. The only exceptions were for Crown lands and for lands where the Crown right to take land for a road or railway without compensation had not yet lapsed or become barred (s 42). The general time limit for making a claim for compensation was five years from the date of the proclamation taking the land. In the case of a claim for damage it was 12 months from the execution of the works in respect of which the claim arose (s 45).

A number of later amendments were made to this general time limit in response to circumstances arising from particular works and where more flexible limits seemed necessary. For example, time limits were amended in relation to airport requirements in 1935,¹⁸ and in 1939 the Supreme Court was also allowed to extend the time limit for damages on application to not more than five years.¹⁹ Various types of work also had altered claim time limits, for example irrigation works (s 30, Finance Act 1944 (no 3)) and limited access roads (s 4, Public Works Amendment Act 1963).

In general, where land was acquired by the Crown, the 1928 provisions required the Minister to offer such sums in compensation as he thought fit. If that offer was not accepted, compensation was to be determined by the Compensation Court (s 46). A local authority, or the Crown, could make an offer of compensation after a copy of a compensation claim had been received. A 1952 Amendment provided for the accelerated hearing of compensation claims in certain circumstances.²⁰

The general procedures for obtaining compensation in 1928 were that the claimant had to complete certain specified forms giving full details of the land taken or damaged, the nature and particulars of the claimant's interest in the land, full details of the basis for the claim, and the nature, extent, and amount of the claim. The total amount claimed and separate details of each item claimed had to be listed separately. The claim had to be served on the Minister or the local authority concerned (s 51).

There were a number of other procedural requirements for submitting and responding to a claim. The claim was heard by the Compensation Court and Part 3 also contained detailed provisions concerning the hearing of compensation claims by the court. In the case of native reserves, a claim for compensation for lands taken

17. Section 12 of the Maori Purposes Act 1974

18. Sections 4–5 of the Public Works Amendment Act 1935

19. Section 63 of the Statutes Amendment Act 1939

20. Section 7 of the Public Works Amendment Act 1952

was to be made by the Native Trustee on behalf of those interested in the reserve (s 48). In making payment or other satisfaction of compensation, the Minister or the Compensation Court could grant easements in lieu of compensation or the Governor-General could grant surplus land in lieu of compensation (ss 97–99).

In later amendments the Compensation Court was replaced by the Land Valuation Court from 1948²¹ and this later became the Land Valuation Tribunal.

The 1928 Act also contained some variations from the general compensation provisions. Again Maori land was treated separately in this regard. All Maori land, whether customary or Crown-granted, and regardless of who held an interest in the land, was covered by separate compensation provisions. The Compensation Court was barred from hearing such claims and they were all to be heard instead by the Native Land Court. The procedure for making claims for Maori land taken was that the Minister ‘may at any time’ in the case of a Government work, and the local authority ‘shall not later than six months after the gazetting of the Order in Council or Proclamation taking the land’ in the case of a local work, cause application to be made to the Native Land Court (later the Maori Land Court) to ascertain the amount of compensation to be paid, and the persons entitled. On hearing evidence produced and any other evidence thought necessary, the court could make orders as it saw fit (s 104).

This put the legal onus for making a claim on the taking authority rather than the owner as for general claims. The Minister also appeared to have discretion in the case of Crown takings about making a claim at all. Where Maori land was taken by the Crown there was also no time limit on the Minister in making an application.

The Maori Land Court had the full authority and jurisdiction of the Compensation Court in compensation matters, and the amount of its award was to be regarded as final. Every sitting of the court for compensation matters was to be notified in the *Gazette* and *Kahiti*, although the lack of notification was not to stop any hearing applied for (s 104). Presumably this meant the Maori Land Court also had powers to grant easements in lieu of compensation although more research is required to determine this and if such powers were used. More research is also required to determine whether the Minister’s and Governor-General’s powers to grant easements and surplus land in lieu of compensation applied to Maori land, and if they did, to what extent they were used.

The requirements for notice concerning compensation hearings were similar to those concerning notice of land takings. The requirement for notice in the *Kahiti* was also dropped in 1931.²² The requirement for notice in the *Gazette* was also dropped in 1955 as it was felt that inclusion of notices in the Maori Land Court panui gave sufficient notification.²³

The Maori Land Court could pay the whole or part of any compensation awarded to one or more owners to the exclusion or partial exclusion of the others. This could be made retrospective on orders already made by the court and the court could amend or vary title accordingly (s 105). Notwithstanding anything else in the Act,

21. Land Valuation Court Act 1948

22. Section 47 of the Finance Act 1931 (no 2)

23. See internal Maori Affairs memo, December 1955, MA 1, 38/1/1, accn 2490, and section 4, Public Works Amendment Act 1955

appeals could be made to the Native Appellate Court from any final order of the court both regarding the amount of compensation and the right or title of any person to be paid such compensation (s 106).

Later amendments were made to compensation provisions. A 1953 amendment provided that compensation could also be paid in whole or part to the Maori Trustee (s 47). The Finance Act 1944 (no 3) also provided for a special compensation court to hear Maori and European claims arising out of control of Lake Taupo (s 34).

In summary, all takings of Maori land whether customary or Crown-granted were covered by these compensation provisions and there were some significant differences when compared to general compensation provisions. For example, when Maori land was taken, it was up to the taking authority, not the owner, to make application for compensation. Compensation was also heard by a different court, the Maori Land Court, instead of the Land Valuation Court. The court was very powerful in making decisions not only on compensation but on persons entitled, although an appeal to the appellate court was reinstated in 1927. As noted in the previous chapter, the expertise of the court in assessing valuations was a matter of concern for some time, although in later years the court's more protective attitude and better understanding of Maori land issues was also appreciated by many Maori. For different reasons both Maori and the Crown were concerned about the court assessing compensation and a right of appeal was eventually reinstated and confirmed in 1928 because the Crown was concerned that assessments might be too high. The lack of expertise of the court in assessing compensation became an issue again as compensation law became increasingly complex and again there were concerns that Maori land might be suffering a disability as a result. More documentation of the officials' debate on this issue can be found on the relevant Maori Affairs department files.²⁴

Major changes to these compensation provisions were finally made in 1962 when a new section 104 was enacted.²⁵ Under this amendment, the provisions regarding compensation for European land (Part 3) and the provision regarding purchase by agreement (s 32) were to apply to Maori land (s 104(1)). This in effect meant that the Maori Land Court no longer assessed compensation but claims were now heard by the Land Valuation Court as for European-owned land. The Maori Trustee was also required to negotiate compensation on behalf of owners of Maori land held in multiple ownership. For Maori land held by a single owner or body corporate however, the Maori Trustee still had to be appointed by the owners to act for them. The Maori Trustee could also only act after the land had been taken and only act in respect of the freehold interest in the land.

The amendment was interpreted to mean that as the Maori Trustee could only act when land was taken, then the Trustee had no power to enter into agreements or negotiations regarding the taking or purchase of land. There was also no power to enter negotiations for compensation prior to the land being taken (which was the most common practice for takings of non-Maori land), unless the trustee owned the land. Notice of the taking was to be served on the Maori Trustee by the taking

24. MA1, 38/1/1, vol 1, accn 2490

25. Section 6 of the Public Works Amendment Act 1962

authority. Where the Maori Trustee did act, compensation money was paid to that office for distribution to the persons entitled to it. The Maori Trustee could apply to the Maori Land Court to determine to whom and in what proportions compensation or purchase money should be paid. The court was to make an order based on what it considered just and equitable in the circumstances and the Maori Trustee was to distribute according to the award. The decisions of the Maori Trustee in these responsibilities were binding and not subject to legal action. These provisions came into effect on 1 April 1963.

There were some later amendments to the powers of the Maori Trustee when technical problems became apparent. For example a 1964 amendment (section 104 (2))²⁶ slightly altered the Maori Trustee's powers regarding compensation and a 1967 amendment remedied the problem whereby it was found that the Maori Trustee had no power to act if one of the owners in a block was European.²⁷ In 1974, under the Maori Purposes Act of that year, the Maori Trustee's responsibilities for negotiating compensation continued for land taken prior to 1975 but ceased after that (s 12).

The whole issue of assessment of compensation is very complicated and quickly became the subject of a large body of case law. It is beyond the scope of this report to go into this in any great detail. (A useful summary of general compensation principles is provided in S L Speedy, *Compensation for Land Taken and Severed*.) The following is a very brief summary of some of the most important rules applied to the assessment of compensation, as these appear to have had a significant impact on compensation for Maori land. There is no doubt that there were problems and criticisms of compensation provisions for all public works land takings. However even so, compensation provisions appear to have had a relatively harsher impact on Maori land taken for public works purposes and this is another issue requiring further research.

Under 1928 provisions regarding the assessment of compensation, the Compensation Court and the Maori Land Court initially had to take into account the value of the land or interests in the land taken, including riparian rights and any injurious affection either by severance or the nature of the works. The courts were also required to deduct from compensation any increase in value or 'betterment' as a result of the works (s 79). The value of the land was to be assessed for compensation as at the time it was first entered (s 80). If the claimant's acts made the execution of the work more costly the court was entitled to take this into account (s 81). There were also provisions about assessing costs and the formal notice of the award, and about assessing compensation in special circumstances such as in the case of limited interests.

The subject of compensation assessment not unnaturally became subject to a large amount of case law. In 1941, the courts described their interpretation of the legislation concerned with compensation assessment as being based on the underlying principle that all the court was concerned with was:

26. Section 2 of the Public Works Amendment Act 1964

27. Maori Trustee to Minister of Maori Affairs, 12 July 1967, MA 1, 54/19

to do justice according to the law and to the best of its ability by making an award which shall be just to both parties. On the one hand the respondent must not be required to pay more than the land is worth on a fair consideration of all the evidence before the Court, while, on the other, the Court must see that the claimant receives the fair value of the property taken. In other words anything in the nature of confiscation must be avoided.²⁸

Further research is required on the application of these principles to compensation for Maori land takings.

The 1928 provisions for assessing compensation were repealed and replaced in 1936 in section 28 of the Finance Act 1936 (no 2) and again in 1944 by way of section 20 of the Finance Act 1944 (no 3). The rules laid down in 1944 lasted in essence for many years. These required the Compensation Court (later the Land Valuation Court) and the Maori Land Court to take into account the following considerations when assessing compensation:

- (a) no allowance was to be made on account of the taking of any land being compulsory (prior to this the court could add up to 10 percent because the taking was compulsory);
- (b) in general, the value of land was to be taken as the amount that a willing seller might be expected to realise if the land was sold on the open market on the specified date;
- (c) the special suitability or adaptability of the land for any purpose was not to be taken into account if that purpose was one that only applied in the pursuit of statutory powers, or for which there was no market apart from the special needs of a particular purchaser or the requirements of the Crown or any local or public authority;
- (d) where the value of the land taken had on or before the specified date, been increased or reduced by the work or the prospect of the work, the amount of the increase or reduction was not to be taken into account; and
- (e) where the work or prospect of the work increased the value of the land or any other land in which the claimant had an interest or the land injuriously affected, this increase was to be deducted from the amount of compensation awarded. In other words, a deduction had to be made for any betterment caused to remaining land by the public work.

The definition of ‘specified date’ was exhaustively defined and, in general, it was either the date on which the land by proclamation became vested in the taking authority or the date on which the land was first entered for construction purposes or injuriously affected, whichever was the earliest. The taking authority had to have publicly notified details of the work before the assessment rules regarding compensation applied.

These general rules were still subject to interpretation through case law. In addition, some statutory provisions specifically amended assessment provisions. For example, the Public Works Act 1928 provision regarding the setting back of certain frontages on narrow streets had specific requirements concerning the

28. *Napier Harbour Board v Minister of Public Works* (1941) NZLR 186

assessment of compensation (s 128(5)). The Soil Conservation and Rivers Control Act 1941 also had qualifications on compensation assessed for land taken or damaged for purposes of flood control (s 22(4)). Increasingly complicated case law also developed about the taking into account of elements in assessing compensation such as costs and fencing.

According to Barker, the whole principle of full compensation and equivalent value for land taken was gradually whittled down not only by numerous legislative amendments but also by case law.²⁹ After increasingly strong criticism in 1960s, more liberal general compensation provisions were made during the 1970s. These included compensation provisions inserted in 1970 concerning the acquisition of designated land, additional compensation to assist in the purchase of a dwelling, the refund of expenses in compensation negotiations, and compensation for the tenants of residential and business premises (s 6, Public Works Amendment Act 1970). The 1975 and 1976 Public Works amendments also added more liberal provisions, for example assistance in the purchase of farms, commercial, and industrial property 1975 (s 30).

The 1928 Act also continued provisions developed in earlier legislation for the disposal of land taken for a public work and then found to be not required. Many of these were based on ancient English principles. For example, the very old tradition of offering surplus land back to the original owner was continued. Where land had been taken and was then found to be surplus it was to be valued and then first offered back to the original owners and then adjacent owners at the valuation price. If these offers were not taken up, the land could then be sold at public auction. The exception was that surplus land could be sold to education boards without going through this procedure. In addition the Governor-General had the alternative of declaring such land Crown land subject to various land Acts and it could then be administered and disposed of under those Acts (s 35). Surplus land resulting from stopped or altered roads could also be treated in the same way. The Governor-General could also revoke the proclamation taking the land and re-vest it in the owner if the land or part of it not required for the purpose for which it was taken and if no award or payment of compensation had been made (s 27). In later years many legislative exclusions were made to the offer-back provisions. In 1945, for example, land required for housing subdivisions and associated developments and improvements was excluded from these provisions.³⁰

As in previous public works legislation, the 1928 Act provided that lands taken but not required immediately for a public work could be leased (s 39). The Crown or a local authority, with the Minister's consent, could also grant easements over land taken for public works and impose conditions on this including rental requirements, subject to revocation when the land was required for public purposes or for a breach of any conditions imposed (s 41).

Another ancient principle was also recognised in the 1928 Act whereby there was at least some obligation that land taken by compulsion should be used for the

29. For more detail see Barker, 'Private Right vs Public Interest', and S L Speedy, *Compensation for Land Taken and Severed*, no 13 occasional pamphlet, Auckland, Legal Research Foundation Inc, School of Law, 1978

30. Sections 17, 21 of the Housing Improvement Act 1945, and section 30 of the Finance Act 1945 (no 2)

purpose for which it was taken. This presumption was carried into early New Zealand public works legislation. For example, the Public Works Act 1894 provided that lands proclaimed taken for public works became vested in fee simple in the Crown or local authority free of all claims and charges ‘for the public use named in the said Proclamation’ (s 18(4)). A similar provision was carried into the 1928 Act. Once a taking proclamation was made, the land became vested in the taking authority free of charges claims or interests of any kind ‘for the public use named in the proclamation’ (s 23).

Later legislative amendments diluted this principle. A 1948 amendment provided that land taken for a public work could be used for secondary purposes under certain conditions.³¹ The Crown was also able to use land for purposes other than those for which it was originally taken, by having surplus land declared Crown land under various Land Acts and then using it for other purposes or disposing of it. There were stricter requirements for local bodies who wished to change the use of the land from the purpose for which it was originally taken. A 1952 amendment allowed local authorities to change the purpose from the one the land was initially acquired under but they had to follow certain formalities first. They had to gazette and publicly notify the intention to change the use of the land from the original purpose twice. There was also provision for hearing written objections to the proposed change. On a statutory declaration from the responsible local authority officer that these requirements had been complied with, a proclamation could then be made changing the public purpose to which the land could be put.³²

In 1954 the whole of section 35 of the 1928 Act was repealed and new provisions substituted.³³ Under these provisions the taking authority was required to provide the Governor-General with a map of the surplus land and the reasons for the proposed disposal. Then the authority could sell the land either by private contract to the owner of any adjacent lands at a price fixed by an independent valuer, or by public auction or public tender. Notice of the proposed public sale had to be publicly notified and served on adjacent owners as far as they could be ascertained before the sale took place.

The Governor-General could still sell land to an education board without going through this process, or by notice in the *Gazette* declare the land to be Crown land subject to the Land Act. In addition, if land had been acquired for a local work and was not required, ‘or if for any other reason the Minister and the local authority agree that it is expedient to do so’, the Governor-General could, without complying with any of the other requirements, declare the land Crown land subject to the Land Act by proclamation. This effectively abolished the old right of offerback to the original owner unless, presumably, that owner still held adjacent lands.

Various amendments were also made concerning the disposal of land held for a work of national and local importance where the Crown and one or more local authorities agreed to combine to carry out the work.³⁴ Any land taken, acquired or used for any such work where such an agreement was made could be transferred,

31. Section 37 of the Public Works Amendment Act 1948

32. Section 20 of the Public Works Amendment Act 1952

33. Section 4(1) of the Public Works Amendment Act 1954

34. For example, section 31 of the Finance Act 1944 (no 3)

leased to any party by agreement, or sold or otherwise disposed of and the proceeds shared or distributed in accordance with provisions of agreement.³⁵ It was not until 1981 that some effort was made to restore and strengthen the original principles concerning offerback and the use to which taken land could be put.

The situation regarding the control and disposal of Maori land taken for public works and then no longer required also requires further research. The provisions concerning offerback were contained in Part 2 of the 1928 Act and presumably therefore did not apply to Maori customary land. Crown-granted Maori land was presumably covered by the provisions in theory but in practice, as taken land became European or general land, it was very difficult in practical terms to re-vest land as Maori freehold land. It is questionable, given the lack of provision for meeting such difficulties, whether legislators contemplated returning much Maori land anyway. There was also always the alternative of avoiding offerbacks altogether by having the land proclaimed Crown land. Again there are unfortunately no statistics available for comparing offerback rates of Maori and non-Maori land.

Attempts were made to return some taken land to Maori ownership but for many years these required special Acts of Parliament before title could be returned. The difficulties associated with this (which did not generally occur in returns of non-Maori land) may have also simply encouraged authorities to dispose of the land by other means.

Prior to 1928 it had already become clear that many re-vestings of Maori land would require special parliamentary authority. Sometimes this was done by special Act and sometimes by clauses contained in various Native Land Claim Adjustment Acts or Reserves Disposal Acts. Examples given in the previous chapter include the Waipuka Block Road Re-vesting Act 1908 and the various blocks re-vested in the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1910. The Native Land Amendment And Native Land Claims Adjustment Act 1920 enabled the Native Land Court to re-vest land taken for roads in the former owners as Maori freehold title (s 7).

The re-vesting problems continued for many years until eventually the Native Purposes Act 1943 did away with the need for special legislation in individual cases where land was to be re-vested in the original owners (s 7). By this time however the rights of previous owners were well down the list of priorities for disposal. The 1943 provision provided that land taken, purchased, set aside, or acquired by way of gift or otherwise for a public work and no longer required for that work or 'for any other public purpose' could be returned or re-vested in the native owners by the Native Land Court where it was 'deemed expedient' to do so. The application for return also had to be made by the taking or controlling authority. Application could be made to the court notwithstanding provisions of any other Act to which the land was subject or to any terms or conditions imposed by any Act on the sale or disposal of the land. The court could make any orders it saw fit or amend any other order or partition to include the returned land. The land was to be deemed freehold Maori land unless otherwise expressly ordered by the court (s 7).

35. Section 9 of the Public Works Amendment Act 1962

A similar provision was continued into the Maori Affairs Act 1953 concerning any land owned by Maori and taken for public works purposes (s 436, Maori Affairs Act 1953). The Minister of Works or other minister in charge of the land could apply to the Maori Land Court to have the land revested. The Minister or other applicant could also nominate the person or persons in whom the land should be vested, and could stipulate the price to be paid for the land, the terms and conditions of payment, and any other conditions to be attached to the revesting, or all such matters could be left to the discretion of the court. The court had freedom to determine the way the land would be vested and whether any existing title should be amended instead. Land revested in this manner became Maori freehold land unless the court expressly ordered otherwise.

By the 1960s there was increasing criticism of public works provisions in general, as it was felt that taking authorities had accumulated too much power at the expense of landowners and the general public. To some extent criticisms were fuelled by environmental concerns and also works such as motorways began to affect a lot more people with compulsory takings. A review of provisions was carried out by an interdepartmental committee and, following its report in 1969, extensive amendments were made in 1970 in the way of liberalised compensation payments for land taken. These included the possibility of additional compensation to assist in the purchase of another dwelling and compensation for tenants. These were reviewed and extended in 1975, and in 1976 provision was made for granting a home for a home, a business for a business, and a farm for a farm.

Further reviews of public works provisions were carried out in the 1970s. In 1976 another interdepartmental committee, led by a retired office solicitor of the Ministry of Works and Development, investigated the need for further improvements and reported to the Government in 1977. This eight-person committee was made up of two Ministry of Works representatives, including the chairman, three local authority representatives and a surveyor, lawyer, and accountant. The accountant was H K Ngata of Gisborne, who presumably could give some Maori input, but the findings of the committee reflected a strong emphasis on the viewpoint of taking authorities.

The committee recommended a number of improvements, including compensation and objection provisions. The committee also recommended updating procedures for certain works such as electricity generation where no right of objection was possible. The committee felt that these special exemptions were no longer required. It was also agreed that delays in the payment of compensation were unfair and caused hardship.

The review committee received public submissions from the New Zealand Maori Council and the Maori Affairs department on the issue of the offerback of surplus land to the original Maori owners or their heirs. If this could not be done, then it was submitted that the land should be offered to other Maori or sold and the profits distributed to the original owners or their heirs. The committee felt this was impractical but agreed that more information should be made available about disposals and the Governor-General should be able to impose conditions in cases where this was thought advisable. The committee also agreed that there should be some possibility of profits from sales going to the original owner or heirs. The committee rejected suggestions of any legislative restrictions on compulsory land

takings as at times these were required to overcome title problems, but suggested instead that the Government could control compulsory takings by policy directions to ministers and departments. The committee was silent on how this would affect the takings by local authorities.

The New Zealand Maori Council also submitted that no Maori land or interest in Maori land should be taken except with the consent of the Minister of Maori Affairs, much the same as provisions in the Reserves Act 1977 in respect of land taken for a reserve. The committee also rejected this suggestion on the grounds that the Town and Country Planning Act 1977 placed restrictions on where public works could be placed and ample provision was available for bodies such as the New Zealand Maori Council to object and appeal against the designation under that Act. Accordingly, 'insistence on the consent of the Minister of Maori Affairs could not be justified'. The committee was also concerned about the possibility of delays if such a requirement were included in the Public Works Act and the committee took into account the 'close liaison' between the Ministers of Works and Maori Affairs where Maori land was to be taken.³⁶

Public works provisions were eventually consolidated and in some cases revised in the Public Works Act 1981. Following improvements made in earlier amendments, the new 1981 Act no longer contained a separate part dealing with the takings of Maori land. Improvements to requirements such as notification for Maori owners were also continued into the new Act (s 17). Other provisions specifically dealing with Maori land followed the general trend of the 1981 Act for all takings. For example, the new Act gave greater emphasis to making agreements for purchase, and in the case of Maori land in multiple ownership the Minister had to apply to the Maori Land Court to supervise such negotiations for purchase agreements (s 17). The Act also strengthened the principle that where compulsory takings were possible for essential works, the taking authority still had to try and reach agreement first. In the case of Maori land such acquisition also had to be under the supervision of the Maori Land Court (s 18). General offerback provisions for surplus land taken for public works were also strengthened, including for Maori land (s 41).

The major changes in the 1981 Act actually took place in response to criticisms about general land takings in an effort to strengthen the protections for landowners and requirements for taking authorities. In many respects the changes reflected concerns that traditional protections and balances had been eroded over the years and no longer provided sufficient protection. In doing so they also moved towards addressing some of the major concerns of Maori landowners with public works taking provisions. However there were still no specific requirements to take account of Maori interests or Treaty considerations when land taking, control, and disposal decisions were made. The Public Works Act 1981 has been analysed in detail by Peter Salmon.³⁷ Therefore this report contains only a brief overview of the most important changes.

36. Copy of report of Public Works Act Review Committee 1977, MA 1, 19/1/441, accn 2459

37. P Salmon, *The Compulsory Acquisition of Land in New Zealand*, Wellington, Butterworths, 1982

A major change in the 1981 legislation was the requirement that land could only be taken compulsorily for an ‘essential work’ (s 22). This was an attempt to reintroduce some standard of necessity before compulsory provisions could be used. If a work was not ‘essential’ then the taking authority had to negotiate a purchase in the ordinary way and could not force an acquisition. This had long been a concern of Maori owners where land of great importance to Maori could be taken for something such as a camping ground or works depot that could easily have been located elsewhere.

There was some debate about the workability of this concept at the time. It was pointed out that the same thing might happen as had happened with the definition of public works previously. That definition had been broadened so much it eventually included almost anything. The 1981 Act itself also offered an escape clause in that the Governor-General could declare any specific public work to be an ‘essential work’ for the purposes of the Act (s 3). The concept did not last long and was repealed in a 1987 amendment.³⁸ Although an improvement, the concept of essential work also did not specifically address Maori concerns.

The other major change was an improvement in the offerback provisions by reintroducing and strengthening the concept of the first right of pre-emption or repurchase by the original owner. The original owner was to have the first opportunity to buy back land no longer required for a public work, unless it would be clearly impracticable, unreasonable, or unfair to do so. The offerback also applied to former Maori land (ss 40–41). The 1981 Act required the land to be offered back at the current market value, although a 1982 amendment introduced a discretion whereby the Commissioner of Lands or a local authority could offer back at a lower price if it felt it was reasonable to do so. It is not clear how this discretion has been used in practice and there appears to be no specific requirement to take Maori concerns into account.

By 1981 there were strong links between town planning legislation and public works provisions. The 1981 Act assumed, for example, that the planning processes would give adequate public notice of proposed public works, although this was not essential, and that good town planning would ensure that appropriate provision was made for public purposes in district schemes. The 1981 Act also improved both the initial planning scheme designation and subsequent land acquisition objection rights to include a mandatory assessment by the Planning Tribunal of such factors as ‘the extent to which adequate consideration has been given to alternative sites, routes, or other methods of achieving the objectives of the Minister of local authority’ (s 24). Although presumably the relationship of Maori people to their land could be regarded as a relevant factor in this assessment, there was no specific requirement to take this into account.

When the 1981 Bill was introduced in Parliament, the Minister of Works and Development described the introduction of the concept of essential works as perhaps the ‘most significant’ provision in the Bill. Improvements had also been made to protect landowners in provisions concerning entry onto land and in compensation provisions. In particular, compensation was to be made far more

38. Public Works Amendment Act 1987 (no 2)

flexible to suit individual circumstances than had previously been the case. Compensation was also to be available where substantial injurious affection had been caused, although no land was taken and compensation was to be available for equivalent reinstatement for special purposes such as churches.

In debate on the Bill, the concept of essential works was attacked by opposition members as being basically inflexible and probably unworkable. It was pointed out that extra works had been added to the list during committee hearings and this process was likely to continue weakening any proposed safeguards. In addition there was the major loophole that the Government could, by passing Orders in Council declaring works to be essential, bypass Parliament and remove at any time the safeguards the public thought it had against the compulsory taking of land.

The parliamentary opposition referred to recommendations of the review committee that rather than limiting compulsory provisions by legislation, the Government should control their use through policy directions to ministers and departments. The opposition also referred to submissions on the Bill that had opposed the concept of restricting takings to essential works. The opposition claimed there had been no complaints or evidence of abuse of public works powers by taking authorities. It was also suggested that the time and place for considering the merits or problems with takings was with the Planning Tribunal hearing and deciding on objections.

While there was a great deal of debate about whether local authorities would be unnecessarily restricted by the new provisions, there was very little debate about Maori interests with regard to compulsory takings. The general assumption was in fact that there were few complaints about the use of compulsory takings provisions and even fewer of abuse of such powers. This of course was not the case at all as far as Maori owners at least were concerned. Although the Minister claimed that provisions in the Bill gave extra protection to ‘our Maori friends’, there was in fact remarkably little recognition of Maori concerns over issues that had been the cause of so much distress and resentment. Passing reference was made to Bastion Point and Wetere referred to submissions by the New Zealand Maori Council and the Maori Affairs department. However, he also felt that there had not been nearly enough consultation with a wide range of Maori groups on what was probably one of ‘the most controversial pieces of legislation’ to affect Maori people for many years. He also indicated that there was concern with compulsory taking provisions for Maori land at all and instead there was support for developments such as the leasing of the Ohaaki power station. However, these issues were not picked up in debate on the Bill.³⁹

More research is required on the impact of the 1981 legislation, although the absence of any specific requirements to consider Maori interests is of concern given the past history of public works takings. There were also provisions requiring the Planning Tribunal to take account of alternative sites when considering objections to public works takings for example, and these obviously had potential for considering Maori interests, although this was not specifically required. In 1985, for example, the Planning Tribunal refused to approve a designation of land for

39. NZPD, 1981, pp 1478–1487, 3165–3182, 5920–5923

cemetery purposes where Maori fishing was likely to be detrimentally affected and alternative site investigations were inadequate.⁴⁰

Nevertheless the lack of any specific requirement to take account of Maori interests in the 1981 Act appears to have created some problems. In a 1980 case the Planning Tribunal found that a district planning scheme could not prevent the exercise of statutory powers such as in the Public Works Act. Therefore the appellants in the case could not protect their lease against all comers. This followed the agreement with the Ministry of Energy over leasing instead of taking land for the Ohaaki power station.⁴¹

The assumption that Cabinet policy directives could adequately control compulsory land takings has been shown to be false historically. This was confirmed again as late as 1981, when the High Court found that there was no residual discretion under the old Public Works Act 1928 for Cabinet to refuse to issue a proclamation taking land (in this case Maori land was required for a rubbish dump) upon the broader political view that it would be undesirable to take such land.⁴² It seems as though this lack of discretion also continued into the 1981 Act.

As well as the provisions in the main public works Acts and their numerous amendments, many other Acts passed between 1928 and 1981 contained or incorporated land taking and associated provisions. This followed the trend set in the previous century and included a wide variety of types of legislation as well as numerous amendments to take account of new needs, often as circumstances arose. Maori land is specifically mentioned in some of these provisions but in many cases the legislation simply incorporates provisions of the Public Works Act and Maori land is included by virtue of this, whether it is specifically mentioned or not. It is beyond the scope of this report to analyse all the legislation between these years. However general trends can be identified. Maori land was also taken for other purposes during this time – such as because of uneconomic interests and the compulsory designation of Maori land as European land under certain circumstances. The right of Maori to control and use their own land or exert rangatiratanga over it also became an important issue during this time. However this report concentrates on land takings for public works purposes.

As in earlier years, a variety of general legislation continued to contain either general taking provisions or provisions related to specific districts, projects, or blocks of land. This continued to include a variety of Maori land legislation, as well as legislation such as the reserves and domains Acts, land Acts, and finance Acts, which all continued to contain provisions related to either specific or general public works takings. The practice also continued of special Acts for particular purposes, many of which contained taking powers. For example, the Invercargill Licensing Trust Act 1944 contained land-taking powers under the Public Works Act, although the land taken was to vest in the Trust (s 16).

The scope and powers of public works authorities also continued to be extended through a variety of legislation for most of this time. Public works concerns

40. *Abbot v Lower Hutt City* (1985) 11 NZTPA 65

41. *Maori Land Trust v Ministry of Works and Development* (1980) 7 NZPTA 108

42. *Dannevirke Borough Council v Governor-General* (1981) 1 NZLR 129

continued in many now-traditional areas such as roads, land development, railways, telegraph and electric lines, defence, irrigation, drainage, and national parks and scenic reserves. Traditional industries such as forestry, mining, and tourism also continued to be important.

With railways legislation, the tradition also continued of separate legislative provisions as well as the main railways provisions within the Public Works Act. Specific railways also continued to be authorised in numerous railways authorisation Acts, such as the Railways Authorisation Acts of 1929 and 1936. Individual railways were also authorised by numerous finance Acts such as the Finance Act 1946 (no 2) and the Finance Act 1950. There were also general railways Acts such as the Government Railways Act 1949. This contained extra land-taking powers for the purposes of railways, housing, and transport, and associated railways requirements such as water supplies.

The issues raised by the exploitation of natural resources require a separate research paper. However, where rights were acquired to take, use, or prospect on land, public works taking provisions were also often involved. The development of Crown policy in areas such as mining and the acquisition of natural resources also appears to have followed a similar history to that involved in compulsory land taking. Initially it appears as though the Crown agreed to respect Maori ownership rights on customary land. As a result, in the early years of settlement, the Crown agreed to abide by Treaty guarantees by making agreements over cessions of Maori land for mining purposes. No Maori-owned land was therefore declared a mining area unless the Crown and iwi had made agreements which were recorded and often validated by later legislation. Examples are the agreements over land cessions for goldmining purposes in the Coromandel and Hauraki districts and later validations such as the Auckland Goldfields Proclamations Validation Act 1869 and the Ohinemuri Goldfields Agricultural Leases Validation Act 1876. As seems to have been common at the time, the agreements were often ambiguous and interpreted quite differently by Maori and the Crown. The result was often numerous petitions and complaints from Maori owners. However, in spite of the problems, the cessions did acknowledge Maori customary rights. Early mining legislation reflected this. The Mining Act 1878 for example appeared to assume Maori land had already been ceded for mining and was concerned more with the operations and working of goldfields. The Act also provided the Maori Land Court with a method of dealing with ceded Maori land.

The later Mining Act 1926 also provided for negotiations between the Crown and Maori over cessions. The Maori Land Court could declare any Maori land to be open for prospecting or ceded for mining purposes on such terms and conditions as were agreed between the majority of Maori owners and the Governor-General (s 30). All fees, royalties, and rents from Maori ceded lands were to be payable by the Crown to the Maori owners (s 33). The Act did have problems. It provided for licences which in effect granted virtually perpetual licences for nominal rent (s 34). There were also discriminatory provisions as anyone mining on Maori land or Maori ceded land without authority was liable to a fine of £50 (s 35) whereas the same acts on Crown land were liable to fine of £200 plus £5 per day for each day the offence continued (s 431). In addition the Crown did not properly carry out the

payment of rentals and royalties to Maori owners. An inquiry into revenues from the ceded lands revealed that the Crown was unable to give any satisfactory account of the revenue received and expended for example.⁴³

The 1926 provisions remained law for many years but were apparently rarely used. Instead legislation was increasingly passed that vested rights in the Crown with little regard for Maori rights. For example, in the 1950s, an attempt was made to use the 1926 provisions with regard to the Taharoa ironsands. After preliminary meetings with the Maori owners, the Minister lodged an application with the Maori Land Court to have an order made opening the area and for a cession by agreement. At the same time the owners formed themselves into an incorporation and appointed a management committee to facilitate the negotiations. However the Iron and Steel Industry Act 1959 declared iron sand areas and within them the Crown was given the sole right to prospect and mine for iron sand. The Minister of Mines was also given the power to give mining rights to others.

A similar Act intended to circumvent the 1926 provisions was the Bauxite Act 1959 which also excluded bauxite areas from the cession provisions. Mining Acts and amendments continued to be passed into the 1970s affecting rights of Maori landowners. For example the Mining Act 1971 required the consent of owners before Maori land could be used for mining and prospecting. However the land could legally be declared open for such purposes upon a refusal if it was held to be in the national interest (s 7).

The Crown passed similar legislation acquiring other disputed resources and areas such as beds of rivers. Many of these were subsequently subject to public works provisions. The Petroleum Act 1937, for example, was intended to open the way for large-scale prospecting just before the war. The Act declared that all petroleum in a natural condition on or below the surface of any land in New Zealand was the property of the Crown and any royalties payable became payable to the Crown. The landowner or occupier was only protected by compensation for damages to the surface of any land. There were some protections for Maori landowners. The licensee had to give the land court 28 days notice before entering Maori land (s 24) and the Maori Trustee could represent owners concerning consents and agreements (s 30).

In parliamentary debates, the Bill was strongly criticised by Ngata as an attack on the protections in the Treaty and as a confiscation. The Government argued however that the discovery of oil was of national importance, and if it was discovered, Maori and Pakeha would benefit equally. Ngata's main concern was over royalties. Ngata invited the Minister of Mines, Webb, to the East Coast to talk about the issue but the trip was cancelled because of flooding. Instead Ngata translated the now famous haka especially composed for the occasion to the House. The Bill was given urgency and passed on the understanding that later in the session the House would be given the opportunity to discuss the question of royalties including a proposed sharing with Maori. In March 1938 the House discussed the royalty question. Ngata traced the history of oil exploration on the East Coast. In 1881 when the Southern Cross Petroleum Company was established, he claimed

43. AJHR, 1940, G-6A, and MA 19/10/3, AAMK, 869/704h

that searches were already underway for oil in the area. The Southern Cross Company failed and others began to take an interest with options secured over large amounts of land and a royalty of 5 percent agreed for the owners. In 1938, an amendment was proposed that would have allowed sharing oil royalties with landowners but this was defeated.⁴⁴

The Coal Mines Act 1925 was a consolidation of previous legislation and confirmed that the beds of navigable rivers and the rights to minerals under them were considered to be vested in the Crown (s 206). This continued the major disputes with Wanganui Maori for example, and remains an issue to this day. The Coal Act 1948 vested coal in the Crown with a short time period for claiming compensation. This immediately brought protests from Waikato leaders such as Te Puea. In response to urgent telegrams criticising the proposed confiscation, Peter Fraser assured them he would consider their concerns. A later 1950 amendment under a new Government re-vested coal in landowners. Other legislation such as the Maori Purposes Act 1952 reserved the Crown right to all minerals, with a right of entry on to land, to mine and to erect all necessary buildings and equipment (s 8(4)).

Maori rights regarding minerals and natural resources on customary land were gradually rolled back or even rejected during these years. However in some circumstances remnants of earlier rights lingered on. For many years for example, the Maori Land Court routinely exempted all mineral rights when approving leases of Maori land. Later the matter became the subject of debate between land court judges and Lands department solicitors as to the existence of mineral rights on customary Maori land.

Public Works provisions were also often used in conjunction with special legislation to reject customary Maori land rights. For example the Napier Harbour Board Empowering Act 1932–1933 was passed to facilitate the compulsory acquisition of what had been islands in the Napier inner harbour after the land was raised during the 1931 earthquake.

Legislation, including land entry and taking provisions, also often accompanied new developments in the exploitation of natural resources. Throughout the 1940s there were investigations into thermal power and work at Wairakei began in the 1950s. The Geothermal Steam Act 1952 vested the rights to such energy in the Crown (s 3). Provisions also included the power to enter land and make surveys and construct bores (s 5) and to take land under the Public Works Act as for a water power work (s 6). There were also compensation provisions as under the Public Works Act (s 9). The development of natural gas also began in the 1950s.

Land development and improving farm land in particular, continued to be an important concern in the years after 1928. Many of these concerns involved drainage and river control. By the 1920s there were a variety of river control schemes in place throughout New Zealand. The Soil Conservation and Water Control Act 1941 and subsequent amendments brought together soil conservation, river control, and drainage under one unified system of administration. The Act also contained taking provisions including for native lands. Other provisions concerned the construction of works (s 131), notice (s 137), compensation (ss 145–148), and

44. NZPD, 1937, vol 249, pp 1037–1075, 1174–1175, 1230–1236, and MA 19/10/3, AAMK, 869/704h

supervision of local body drainage and river works (s 143). In 1966 the National Water and Soil Conservation authority was also established. Provisions for farm improvements were also made in legislation such as the Statutes Amendment Act 1939 that enabled improvement works by arrangement with owners as well as powers to take or purchase land on payment of compensation for damages and loss of land (ss 60–64). The various land Acts such as the Land Act 1948 also continued to make provisions for land settlement, including land taking as well as provisions for the control and disposal of surplus land no longer required for public purposes.

Legislation was also often passed covering public works land taking for specific projects or districts. For example section 30 of the Finance Act 1936 (no 2) contained provisions regarding drainage and reclamation in connection with Lake Ellesmere. Similarly the Finance Act 1944 (no 3) contained provisions concerning the power to take land for the removal of Tokaanu and other settlements affected by control of the levels of Lake Taupo. Special compensation provisions were also made for Maori and European claims in relation to this. The Finance Act 1950 also contained provisions concerning the control of the Kawerau Falls dam (s 45).

As had happened after the First World War, after the Second World War, programmes were established for servicemen's resettlement on the assumption that most would want farms. The Servicemen's Settlement and Land Sales Act 1943 for example, and a later 1950 enactment, included compulsory acquisition of land for the purpose. More research is required but it appears as though Maori land could only be purchased under these Acts and Maori land was separately acquired for Maori servicemen's resettlement.

Some programmes and provisions were aimed specifically at Maori land. By 1929 for example, Sir Apirana Ngata was establishing the first programmes aimed at developing Maori land for Maori farmers. These land settlement programmes involved much consolidation and reorganisation of titles and have their own issues. They are only referred to in this report as they are directly involved in public works takings. Some legislation, while not specifically taking Maori land outright, provided for the removal of effective control if land was not used 'properly'. The Maori Purposes Act 1950 for example contained provisions on idle and unoccupied Maori lands. In such cases and under certain conditions Maori land could be compulsorily leased by the Maori Trustee (Part 3).

Local authorities also continued to acquire extended powers concerning land improvement and other general public purposes. Their powers of land taking, as for central government, also became increasingly general and all-purpose. As well as general powers in the main public works legislation and a variety of local authority legislation such as the Municipal Corporations Act 1954, local authorities also gained extra powers such as under the Noxious Weeds Act 1950, where land could be taken and disposed of by a local authority for the purpose of controlling noxious weeds (s 27). Traditional concerns such as the provision of amenities including camping grounds, rubbish dumps, and recreation reserves accounted for many land takings. Taking powers were also expanded in legislation such as the Physical Welfare and Recreation Act 1937 that enabled local authorities to provide relevant facilities and associated social facilities and included land-taking powers (s 12).

Local authorities were also given increased responsibilities through the Housing Improvement Act 1945 and the Subdivision in Counties Act 1961 for example.

Some non-territorial local authorities such as harbour boards also had expanded powers through special Acts such as particular vesting and empowering Acts and the Harbours Act 1950. These provisions also had a significant impact on Maori land.

In many respects local authorities worked closely with central government land-taking authorities. In many cases, as for aerodromes and many roads, the Public Works department was responsible for the initial location of suitable land and the construction of the work, and then the local body took over control and ownership. Legislation often encouraged close cooperation, such as the Finance Act 1944 (no 3), where the Government and local authorities could combine for certain works. Central government also had considerable supervision and funding controls over local authorities, also ensuring some influence. For example, roading funding and Ministry of Works supervision of soil and river conservation, administration of town planning, and roading works. In this way, and by having central government agencies take land for them, local authorities also effectively increased their powers.

A variety of legislation that included land-taking powers for public purposes was also passed in response to new developments and new public requirements. For example with the development of the motorcar, roading became increasingly important once more and began to eclipse railways construction from the 1920s. As well as the construction of new roads, the heavier vehicles and faster speeds meant existing roads also had to be improved with land required for numerous realignments, widenings, and road straightenings. In addition, land and materials such as gravel quarries were taken for associated road construction work. The first stretch of motorway was built in the 1950s and the great era of motorway building took place in the 1960s.

The Government recognised the need for establishing aerodromes in the 1930s and the Public Works Amendment Act 1935 contained provisions concerned with the development and control of aerodromes, including land-taking powers and the control of land in the vicinity of aerodromes for the safe use of airfields (ss 2–6). The 1930s also saw the use of public works projects as a means of countering unemployment during the depression, many of which involved land drainage and reclamation works and other public works involving land takings. With the new Labour Government, works projects also became larger scale and increasingly mechanised, allowing land not previously suitable to be brought into use.

During wartime, public works again turned to defence requirements. In March 1942 a Defence Construction Council was established to assist with emergency defence construction. Normal protections for public works land takings such as notification and objections, were often abandoned during this time, in case the process gave vital information to the enemy. However promises were made that proper remedies would be undertaken after the war. Special emergency needs also saw an increase in the number of certain types of works, for example airfields.

After the war, the major public works activities were hydro works, housing, and other construction work such as schools, hospitals, and universities, and highways construction.

Hydro works had been undertaken from early in the century but assumed increasing importance from the 1920s and boomed from the 1940s. Earlier legislation such as the Water Act 1903, the Electric Lines Act 1884 and the Electrical Motive Power Act 1896 had vested water power rights in the Crown. Large undertakings such as the Waikato power developments were built between the 1940s and 1960s. These involved taking land for construction needs as well as when land was flooded as a result of works. By the 1950s, intensive investigations were being made for further sources of hydro power. Preliminary investigations for the large Tongariro power scheme for example began in the mid-1950s. Various general taking provisions were included in the Public Works and Electricity Acts. Special legislation dealing with particular projects was also often passed such as the Manapouri Te Anau Development Act 1963 and the Turangi Township Act 1964. Land was also often taken for the townships and associated facilities built in association with some of the big hydro projects and for other industries such as forestry.

The provision of state housing was fairly small scale before the war but became increasingly important from the 1940s. By the 1960s the serviced land in cities and boroughs was increasingly exhausted and it became Works department policy to acquire large areas of undeveloped land. In some cases, such as at Porirua, extensive earthworks were also required to make suitable housing sites. Various finance Acts in the 1940s gave land-taking powers for the purposes of housing and subdivision. For example, Part 4 of the Finance Act 1945 (no 2) allowed for the acquisition of land for subdivision and similar purposes (ss 28, 30–35). The Housing Improvement Act 1945 also allowed local bodies to take land for slum clearance activities. Many of the taking provisions of the Public Works Act were incorporated in this Act, although some compensation provisions were more directly related to housing removal.

In the 1970s, there was another burst of ‘Think Big’ construction projects with associated legislation such as the National Development Act 1979. Other traditional concerns were continued in the Historic Places Act 1980, which continued protection for archeological sites. The Act recognised the need to consult with Maori in investigating Maori sites, although the Minister could override the decision of the Trust or Maori Council (ss 2, 41–44, 46). The Act also recognised the desirability of protection through district planning schemes (s 50). The Reserves Act 1977 also continued to provide for compulsory acquisition of Maori land for reserves but required the prior consent of the Minister of Maori Affairs (s 12).

Town planning legislation also appears to have had a significant impact on Maori land, including land takings for public purposes. It is clear that planning legislation became increasingly important in decisions on the taking, control, and use of land for public purposes. Processes such as designated uses, zoning, subdivision requirements, and public reserves contributions all had a significant impact on Maori land. Planning processes also affected harbours, waterways, and fisheries. Many of the detrimental results for Maori land did not begin to be addressed until

the 1970s. This whole area requires a great deal more research, and only a brief outline and what appear to be some of the major issues are covered in this report.

As seen in previous chapters, some legislation concerned with what was later termed town planning was enacted from the very early years of settlement. This was generally through municipal corporations legislation and all local authorities had Acts of this type by 1866. Municipal corporation legislation enacted by both provincial and central government was generally concerned with such things as the width and protection of streets, the provision of sewerage, lighting, water supplies, and fire prevention and amenities such as markets, community buildings and reserves. Gradually these powers began to include land-taking powers for such purposes, including Maori land takings. Limited attempts to provide for town planning continued in legislation before 1928 such as the Plans for Towns Regulations 1875 and the Town Planning Act 1926.

Both before and after 1928, various Maori land legislation also provided for some planning purposes specifically concerned with Maori land, for example, for roading provisions in various Maori purposes Acts. The Maori Social and Economic Advancement Act 1945, for example, also provided for the taking of easements over Maori land, and over European land with consent, for the purposes of providing facilities such as water and sewerage in Maori communities.

More far-reaching town planning legislation began to be enacted from the 1940s. The Finance Act 1944 (no 3) provided for the Ministry of Works or local authority to prepare or promulgate schemes of development or reconstruction for specified areas. At the same time the Ministry of Works acquired a planning division including a town planning section with advisory powers. The Housing Improvement Act 1945 contained slum clearance provisions. The Land Subdivision in Counties Act 1946 contained provisions enabling substantial suburban development in the post-war years and this Act and numerous amendments had a profound effect on town and country planning. This type of legislation began to have an impact on Maori land through the requirements for waterfront reserves for example. At first in the 1946 Act, Maori land received some protection by being exempt at the discretion of the Minister, but this protection did not last.

The Town Planning Amendment Act 1948 removed the responsibility for the administration of town planning from the Department of Internal Affairs to the Ministry of Works, and the Town Planning Act 1953 consolidated and revised previous legislation. The 1953 Act and its numerous amendments also had a profound impact on Maori land. The Town Planning Act 1953 contained no special acknowledgement of Maori interests. The application of the Act to public works provisions was also limited because the Crown was not bound by the Act and could therefore build national works such as motorways without following normal requirements such as designation, notification, and appeal procedures.

The Maori Affairs Amendment Act 1967 also made the partition of Maori land in counties subject to county council approval. In addition to the need to comply with strict zoning requirements, counties could require a 10 percent reserve contribution and a 20-metre reserve where land fronted a lake or waterway. The local body use of zoning and reserves designations was often cited as a major new source of Maori land loss, and brought strong criticism from Maori leaders and

eventually Government agencies. According to Walker, the reserve contributions appeared to many Maori to prejudice land rights and to amount to an unfair acquisition of land for public use contrary to Treaty promises.⁴⁵

According to Tamihere, Government legislation such as the Public Works Act, in conjunction with planning legislation and regulations, effectively enabled the removal of much remaining Maori land, that was often by now concentrated in coastal areas and the marginal strips of lakes and rivers, out of the control, and at times ownership, of Maori people. Tamihere gives an example where, in 1974, the Whangarei City Council announced its proposed reviewed district planning scheme. The scheme rezoned all remaining Ngati Wai coastal lands as proposed public reserve and open space. In the Ngati Wai tribal area, seven-eighths of the coastal strip was owned by Pakeha but of the land zoned for public reserve and open space, only 800 acres was Pakeha land and over 5500 acres were demanded from Maori, including the Whangaruru Marae and ancestral burial grounds. In contrast, 2000 acres of land owned by New Zealand breweries and an American-owned island in the area were not subject to the designation.⁴⁶

The proposed reserves around Lake Taupo raised similar Maori concerns and in many cases it seems as though local authorities were using town planning processes to continue the attack on remaining Maori land begun through the use of scenic reserve takings in earlier years. Town planning also affected the control and management powers or rangatiratanga of Maori over their own land by limiting the uses to which the land could be put. In many cases for example, subdivision rules in rural areas prevented Maori from building near marae or using plots of land of less than 5 acres for building a family home on remaining ancestral land. The value of the land could also be affected by measures such as zoning. According to Salmon, by the 1980s it had become recognised that there was an increasing tendency to zone land to restrict its use to some nominated or indicated purposes regarded as beneficial to the public. A common example was the zoning of privately owned land for recreational or educational purposes.⁴⁷ This had the advantage for local authorities that land was kept available and the price of acquisition was reduced. However, it often had severe effects on the landowners.

The planning aspects of other legislation such as the Water and Soil Conservation Act 1967 also contained no specific requirements to take Maori interests and concerns into account when applying for water rights for example. Thus public works projects could be undertaken that took no particular account of the discharge of effluent onto Maori fisheries or the offence caused by the pollution of significant waterways.

Legislation was also passed concerned with planning provisions for particular areas such as harbours. The Harbours Act 1950 for example, applied to all tidal lands, and the bed and waters of any harbour, sea, navigable lake, or river. Control of those resources was vested in either a harbour board or a local authority. The Minister of Transport could approve plans for works such as harbour works and

45. See R Walker, *Nga Tau Tohetohe: Years of Anger*, Penguin, 1987, pp 57–58

46. J Tamihere, 'Te Take Maori – A Maori Perspective of Legislation and Its Interpretations with an Emphasis on Planning Law', (1984) 5 AULR 137, p 139

47. Salmon, p 7

pipelines where they were required in tidal lands, harbour beds, or navigable lakes or rivers, if the Minister was satisfied they would not unduly interfere with or adversely affect the public interest. The Minister's discretion was very broad and comments on proposals were generally only sought from the local authority, the harbour board, and technical advisers. Harbour boards were not only responsible for administering the Harbours Act but were later also the maritime planning authorities under the town planning Acts. According to Kenderdine, there was 'little doubt' that as a result they could sometimes become 'a vehicle for vested development interests to the exclusion of other interests.'⁴⁸

Town planning matters and public works provisions were also more closely linked when the Public Works Amendment Act 1973 made the Planning Appeal Board the authority for hearing objections to public works land takings in an effort to improve hearings and stop the previous position of taking authorities being the judges of their own cause.

By the 1970s, as a result of a change in general public opinion, the success of Maori protests such as the Maori Land March, and a more sympathetic Government, legislation finally began to take some account of Maori interests. The Town and Country Planning Act 1977 and regulations required that some account be taken of Maori concerns when making town planning decisions including for public purposes, although this too provided only a partial remedy. Following submissions from the New Zealand Maori Council, the Act gave legislative recognition to Maori interests and attempted to remedy the lack of communication between Maori people and the planning authorities. Included in matters of national importance to be 'recognised and provided for' (s 3) were 'the relationship of the Maori people and their culture and traditions with their ancestral land' (s 3(1)). Cultural factors were to be taken into account in planning (s 4) and regional authorities had discretion to coopt a Maori representative on to their committees where there were 'significant' Maori land holdings in the region (s 6(2)(e),(3)). In addition, in the first schedule dealing with regional schemes, provision was made to indicate the needs for 'marae and ancillary uses, urupa reserves, pa, and other traditional and cultural Maori uses' (clause 9(d)). The second schedule dealing with district schemes referred to the need to plan for the interests of minority groups (clause 1) and for 'provision for marae and ancillary uses, urupa reserves, pa, and other traditional and cultural Maori uses' (clause 3). The 1978 regulations stated that the local district Maori council concerned was to be notified should a planning scheme affect any known Maori land in a district.

Other legislation involving public works and land takings was also made subject to planning provisions. For example the Mining Amendment Act 1981 made matters of national importance in section 3 relevant to the assessment of exploration, prospecting, or mineral licence applications, where an objection was made to the Planning Tribunal. The National Development Act 1979 also gave some status to environmental impact reports in the planning process. One of the major environmental impact reports concerning issues arising from Maori land

48. S E Kenderdine, 'Statutory Separateness (1): Maaori Issues in the Planning Process and the Social Responsibility of Industry', *New Zealand Law Journal*, 249, 1985, p 256

taking was the report on the Ohaaki geothermal power station in 1978, where the commission preferred leasing to acquisition of land by the Crown. This was then adopted as the policy of the Ministry of Energy. The environmental impact report on the synthetic fuels petrol plant at Motunui in 1981 also provided data useful for the Planning Tribunal hearing on the discharge of effluent. Audits on the New Zealand steel expansion at Glenbrook in 1982 and the Kaituna River pipeline also took into account Maori spiritual values about the mixing of river waters, and Maori concerns about the protection of traditional fisheries and burial grounds. The impact reports however only had the status of recommendations.

There were also criticisms of the Town Planning Act itself, including concerns that many protective requirements were not strong enough and too ambiguous. This became clear when local authorities and the Planning Tribunal began interpreting some of the provisions. Some inconsistencies also occurred in decisions as to the weight that ought to be given to the need to take Maori interests into account. For example there was some uncertainty over the meaning of ‘significant’ land holdings before a Maori representative needed to be appointed and whether ‘significant’ meant quantity only or importance to Maori as well. This was amended in 1978 when a right to representation was provided.

By the late 1970s, some town planning cases began to recognise the importance of Maori interests in planning decisions. For example, a 1977 Appeal Board case recognised the cultural needs of Maori people to possibly live on a marae as being relevant to a town planning decision.⁴⁹ Another case applied section 3(1)(g) of the Town Planning Act 1977 to prevent the acquisition of remaining Maori ancestral land for a public esplanade.⁵⁰ However it was also established that section 3 did not apply where land had passed from Maori ownership, thus greatly limiting the definition of ‘ancestral land’ to only that still in Maori ownership.⁵¹ It was not until 1987 that the High Court found the Planning Tribunal had erred in limiting ancestral land to land remaining in Maori tenure or ownership. However the court found that it was not sufficient to claim the whole of New Zealand as ancestral land. There had to be some ‘factor or nexus’ linking the people to the land.⁵²

Some discrepancies also became obvious, where for example, the Town Planning Act required district planning authorities to take account of principles and objectives of the Water and Soil Conservation Act 1967 (s 4(3)) but that Act did not refer to Maori interests at all. In 1982, Mrs Minhinnick objected to a water right for the Glenbrook steel mill to discharge into the Manukau as offensive to Maori spiritual beliefs and as pollution of shellfish beds. The tribunal rejected the concerns as purely ‘metaphysical’ and of no greater relevance than the spiritual views of the community at large.⁵³ The issue arose again in the Motunui petroleum discharge rights involving Court of Appeal approval of the Planning Tribunal decision in granting water rights. This was later rejected by the Waitangi Tribunal and

49. *Morris v Hawkes Bay County Council* (1977) 6 NZTPA 219

50. *Knuckey v Taranaki County Council* (1978) 6 NZTPA 609

51. *Quilter v Mangonui County Council* (1978) and later *In Re Application by NZ Synthetic Fuels Corp Ltd* (1981) 8 NZTPA 138, p 157

52. *Royal Forest and Bird Protection Society Inc v W A Habgood Ltd* (1987) 12 NZTPA 76

53. *Minhinnick v Auckland Regional Water Board* (1982) NZ Recent Law 190

subsequently altered by legislative action. Eventually a High Court ruling in 1987 found that the Minhinnick decisions were incorrect and that Maori spiritual values were important in assessing water right applications.⁵⁴

Town planning legislation therefore did include some requirements to take Maori interests into account by the late 1970s. While it is clear that town planning processes did have a significant impact on public works planning and land takings, more research is required as to how effective these were in actually protecting Maori interests when public works takings were made. As already seen, the new Public Works Act 1981 itself contained no specific requirements concerning adequate consideration of, or active protection of, Maori interests.

54. *Huakina Development Trust v Waikato Valley Authority* (1987) 12 NZPTA 129

