

CHAPTER 11

POLICIES AND PROCEDURES, 1928–1981

It seems clear that the relatively harsh impact of legislative provisions concerning public works takings of Maori land were also reflected in the administrative procedures and policies of taking authorities between 1928 and 1981. This chapter provides an overview of what appear to be the main developments in policies and procedures and the major issues arising from these, based on preliminary research. Unfortunately Public Works policy files were not made available by National Archives when this research was undertaken and the chapter has therefore been based on a sample of a few hundred Maori Affairs department general and case files on public works takings of Maori land. More detailed research is still required on these issues.

The framework of this chapter follows the same pattern as the major legislative concerns associated with public works takings. Major issues and developments have been summarised according to land-taking decisions and taking procedures, compensation issues, and issues relating to the control and disposal of land no longer required for public purposes.

In general, many issues of this period, such as the low priority given to Maori interests, were already apparent in earlier years and this chapter therefore traces the continuation of these issues. It is also clear that many of the issues arising from taking policies and procedures were universal for all landowners, for example, the delays in the payment of compensation. However it still seems apparent that policies and procedures seemed to have resulted in relatively harsher treatment for owners of Maori land. This is apparent over all areas associated with public works provisions from the initial decision making to the disposal of land no longer required. From the 1940s especially, the application of town planning processes also appear to have had a significant impact on Maori land. At the same time, until in relatively recent years, taking authorities typically attached little weight to concerns of special importance to Maori, such as the continued taking of remaining ancestral land or wahi tapu.

One of the main features of this period appears to be the continuation of the development of policies and procedures almost solely from the viewpoint of their impact on general or European land takings. As a result many issues relating to Maori land takings arise from this specific lack of consideration of the impact of policies and procedures on Maori land. For example, protections that may have been adequate where individual title was the norm, proved to be less effective for owners where land was held in multiple ownership, as was common for most Maori land. Taking authorities also appear to have followed legislative assumptions that

administrative difficulties were a justification for abandoning even normal protections for Maori land and that no alternative accommodations were required to take account of the special features of Maori title.

The development and application of taking policies and procedures also reflected the general marginalisation of Maori caused by other Crown policies. Maori were less likely than general landowners to challenge decisions or procedures through official or legal processes. Maori also had generally less effective political power or influence at either local or central government level, such as through access to networks such as powerful interest or lobby groups, the media, or influential members of Parliament. This often meant that Maori land was easier to take and that protections and compensation could be more easily avoided.

Maori also had special interests, such as the need to preserve remaining ancestral land and the system of Maori freehold title itself, as well as sites of special importance such as urupa and wahi tapu. The separation of Maori and Pakeha communities and the lack of adequate communication in the taking process often meant that Pakeha planners and engineers did not know of or understand many of these concerns. Even when they were acknowledged, in the absence of any special legislative requirements, they simply tended to be accorded a lower priority than other concerns.

Because taking authorities generally regarded public works takings from the viewpoint of their impact on general or European land, their generalisations on how well their procedures and policies were working and what effects they were having have to be treated with some care where Maori land takings are concerned. It appears as though takings of Maori land were often regarded as being in the category of ‘difficult’ cases or ‘anomalies’ to the general pattern. As a result, particular problems associated with takings of Maori land such as those caused by multiple ownership, or the special concerns of Maori such as for preservation of wahi tapu, also often appear to have been treated as matters of relatively little importance when compared to the need for a particular public work.

There is evidence of political concern at times during these years, about issues such as the effect compulsory taking provisions were having on remaining Maori land. In the absence of legislative requirements, however, the concerns of political leaders appear to have had little effective impact on the entrenched attitudes of taking authorities. Increasing awareness and consideration of Maori interests also often happened slowly and unevenly. For example, sometimes there were improvements in communications with Maori owners where large projects or particularly sensitive issues were involved, but these were often abandoned for much smaller works, where other imperatives took priority. Even into the 1970s, there were still many criticisms of the impact of taking policies and procedures on Maori land for works such as road realignments, while in other areas such as town planning the Ministry of Works was beginning to take a much more responsive attitude. A more flexible policy approach was also sometimes evident at central government level where leasing for example was at times used as an alternative to taking Maori land. This was less evident at a local authority level however.

11.1 LAND-TAKING DECISIONS AND THE APPLICATION OF TAKING PROCEDURES

The Public Works department (later the Ministry of Works) continued to be the main Government department responsible for public works takings in the years between 1928 and 1981. For the sake of brevity this agency is simply termed ‘Works’ throughout this chapter. To a lesser extent the Lands and Survey department was involved in takings, where it had administrative responsibility for the public use required of the land, such as for scenic reserves. The Lands and Survey department also had responsibility for the control and disposal of a large proportion of land taken for public purposes and then declared to be Crown land for the purpose of disposal.

Although many Government departments were interested in acquiring land for public purposes, Works increasingly exercised a centralised role on behalf of most of them. The major exception was Railways, which largely handled land acquisition for itself and other business-oriented departments such as State Coal. In times of special needs such as wartime, organisations such as the defence forces also seem to have taken a larger role in finding suitable land and negotiating acquisition, although Works often undertook the final legal formalities. Agencies sometimes differed as to when Works was called in. For example, some departments favoured locating the land and negotiating for it first. However, Works increasingly gained Government support to take over the whole process of acquisition from the initial land investigation to the final taking or purchase.

A 1946 memorandum from Works to all Government departments set out land-taking policy for public purposes and requested that departments hand the whole process over to Works as soon as possible, rather than conducting land acquisitions on their own. According to the memo, such independent action had led to many problems in the past and had at times necessitated special legislation to complete or validate what should have been simple transactions.¹ Cabinet decisions and public service instructions in later years continued to support this policy. A 1950 public service circular instructed Works to obtain financial approvals and settle payments directly with landowners where it was acquiring land or settling compensation on behalf of other departments. This was to avoid delays and duplication in referring settlements to other departments, as these had been a fruitful source of criticism by lawyers, landowners, and other interested parties. The same circular also concentrated taking responsibility in the Works and Lands and Survey departments.²

A 1961 Cabinet decision approved a similar policy to improve the coordination of the acquisition, control, and disposal of land for Crown purposes. This was again intended to meet public dissatisfaction with delays. The acquisition of most land was to be controlled by the Works and Lands departments. The exceptions were the business-oriented departments: Railways, State Coalmines, Government Life, and State Fire Insurance, as well as State Advances for some house properties. Railways

1. Memo from Public Works to all Government departments, 4 September 1946, MA 1, 19/1/441

2. In PSC 20/0/21, 21 August 1950, s 18(b), MA 19/1/441

had its own statutory powers to acquire land for rail lines, transport services, housing, and for works associated with railways such as for water rights. State Coal Mines also had powers to acquire land and mining rights. Other businesses such as State Fire tended to purchase their own properties, and the Department of Maori Affairs had special powers for land purchase, consolidation, and development schemes.

Otherwise, land acquisition responsibilities were divided between Works and Lands, roughly along the lines that Works was involved where the acquisition of land involved construction and the settlement of compensation claims, the acquisition of land for state housing and subdivision, and the acquisition of land for most other Government departments. Lands and Survey was involved where land was acquired for farm settlement, or farm development under the various Land Acts, where rural land was purchased by agreement for agriculture or forestry or for any purpose other than a public work. Most long-term leasing was also controlled by Lands and Survey. When land was no longer required for the public work for which it was acquired, the first priority was to circularise other departments likely to be interested, then to transfer the land to Lands and Survey for disposal.³ In effect this meant that there was at least some centralised control and coordination of policies and procedures for Government land takings and that those developed by Works were likely to have a significant impact on all Crown takings.

The other major players in public works land takings were local authorities. These were naturally much more independent in setting policies and procedures but the links with central government remained quite close. Works exercised significant influence through such factors as the control of funding for many projects such as roads, and through legislative responsibilities such as a supervisory role over road boards and requirements in some circumstances to cooperate on certain public projects. However although local bodies were given increasing land-taking powers, there was apparently little effort made to require them to take Maori interests into consideration when exercising these powers. At the same time, there is ample evidence of central government refusing to ‘interfere’ even when ministers were advised of Maori concern and accepted the validity of that concern by directing Government departments not to become involved in the taking. The end result however, was often that the local authority simply went ahead and took the land on its own.

As legislative powers increased, the only real restrictions on taking authorities were that they required legislative authority or prior appropriation of funding by Parliament before land could be taken for a public purpose. No real distinction was made between the relative importance of various works or where land was required for a work such as a works depot where the siting of the work was not crucial or that required for a major works project of obvious public benefit where there were strict engineering requirements as to the location required. There were differences in opportunities for objection signifying some level of importance. Takings of land for works of ‘national importance’ such as railways and motorways afforded no right

3. Cabinet Office decision, 21 August 1961, in Cabinet Office Circular CO (61) 31 August 1961, and Cabinet Minute CM (61) 37, MA 1, 19/1/441

of objection while lesser works did. However in practice this distinction often meant little, particularly while taking authorities remained the judges of objections and in the case of Maori land, opportunities for objections were even weaker. The actual administrative response to this situation was summarised in the 1946 Public Works department memo, that ‘Practically every purpose for which a Government department requires land is a public work’.⁴

Taking authorities therefore had wide powers and very few legal requirements affecting their decision making in choosing land to be taken for public works. Evidence suggests that the combination of weaker legal protections, the absence of any legal requirements to actively protect Maori interests, the special features of Maori title and the general marginalisation of Maori by this time all produced a climate where it was simply easier for taking authorities to decide to take Maori land.

It is often not enough to simply assume that land-taking policies for public purposes were always based on objective criteria such as engineering requirements. There is ample evidence that other factors such as entrenched attitudes, financial and administrative imperatives, sector interests, and the relative political clout of those landowners likely to be affected were often just as important. Political motives such as the need to provide employment in a particular area or the ambitions and rivalries of particular authorities also continued to be significant. This was particularly true of many public works where engineering considerations were not so vital to the choice of land, for example for public buildings, works depots, quarries, camping grounds, and rubbish dumps. These factors influenced all land-taking decisions but features such as the marginalisation of Maori and the difficulties associated with Maori title appear to have resulted in a significantly harsher impact on Maori land.

Other factors also caused Maori land to be a prime target for takings. Many of these were the result of other Crown policies. As already seen by this time, Maori were generally economically and politically marginalised, without the same means to challenge unacceptable takings as were generally available to Pakeha landowners. The increasing separation of Maori and Pakeha communities meant that Maori concerns could go unheeded or unknown and engineers found it easier to identify with Pakeha interests. In many cases Maori interests were also often more in conflict with public works projects than was the case in the general community, but Maori protests could be more easily ignored. Drainage operations to improve farmland or reclamation works for example, might raise few complaints from the general community but might in the process destroy traditional Maori food sources and fisheries.

Another important factor influencing decision making was the enormous fragmentation of Maori title developed by the Crown-created Maori Land Court. Maori title was an alternative system of land holding guaranteed in the Treaty and in theory entitled to the same respect as the general land holding system. However, in the absence of any provisions to overcome the problems associated with fragmented title for most of this time, taking authorities were able to simply

4. Memo from Public Works to all Government departments, 4 September 1946, MA 1, 19/1/441

abandon the procedures routinely applied for general land. They could move straight to applying compulsory provisions for Maori land on the grounds that procedures such as negotiation and notification were ‘too difficult’ where there were multiple owners. This in effect made Maori land taking much easier and the fact that taking authorities could use this justification so easily, appears to have been an influence in their decision making.

Where compulsory powers could be so easily justified, and opposition was also likely to be ineffective, the climate was established where takings could take place for a variety of less acceptable motives such as racism, private profit, or the advantage of a particular interest group. The normal tendency of taking officials to avoid legal and administrative requirements and to place all their energies into construction of the work was often easier to get away with for Maori land takings. Relevant data is unfortunately not available but it seems apparent from official documents that relatively more Maori land was taken for public purposes for most of this time and the required procedures and protections were less likely to be properly carried out. Other imperatives, such as administrative and financial concerns, simply took precedence over Maori landowners’ rights.

Fragmentation of title also caused problems for Maori in the use and development of their land. Capital for development was often very difficult to obtain for land held by multiple ownership and this hindered efforts to use the land effectively. This often resulted in land that lay ‘idle’ and unproductive, regarded by Pakeha as an ‘eyesore’ and therefore a tempting target for taking authorities looking for land for public purposes. This attitude to Maori land became entrenched and often appears to have prevailed even when land was being used constructively or when attempts were being made to enable it to be farmed or otherwise developed. Takings were also tempting because Maori land often meant less compensation had to be paid. Title problems causing land to be idle or underutilised also often meant it was worth less than similar land nearby. It was therefore also easier to avoid compensation costs, as will be seen later in the chapter.

It is very common to find documentation of attitudes that Maori land could be taken because it obviously was not being used properly or the owners did not really care about it and it was of little ‘value’ or not ‘needed’ anyway. The reasoning for this was that the land was often overgrown, and apparently neglected. There were also sometimes cultural differences, for example in the treatment of burial grounds, where Maori often deliberately left them overgrown and unmarked to prevent desecration, but Pakeha took this as a sign they were not cared about or not used, or even did not exist. Although it appears that Maori attachment to ancestral land was well known, this too was often disregarded as grounds for objection.

The problems caused by the Maori land title system were also often used as a positive reason for taking. It was often reasoned, for example, that Maori owners were likely to have interests elsewhere so the particular piece of land required was not ‘needed’ and taking the land would positively ‘free it’ for some more useful purpose. It is also common to find some implication that ‘most’ of the owners really agreed to the taking and was therefore only required to get around legal title difficulties. This was in spite of an equally firm resistance to contacting owners to

ascertain their views because the same title problems made such action ‘too difficult’.

The fact that much Maori land was also effectively controlled by impersonal organisations such as the Maori Trustee or Maori Land Boards may have also made the concerns of Maori owners seem less visible. Various legislative requirements on Maori reserved and leased land, while intended to provide some protections, may also have prompted many compulsory takes in an effort to shortcut the legal processes involved in transferring title in these situations. There are also many comments on file complaining that Works had developed an attitude that Maori land was simply another type of public land available for public purposes use when required.⁵

It seems clear from the many examples of decision making on files, that in the absence of any Crown-imposed restrictions or protections to counteract these attitudes and difficulties, the interests of Maori owners were often overridden by other priorities and this is also reflected in the treatment of their objections to takings. Takings were commonly made from the majority Pakeha viewpoint without taking into account the special problems and concerns of Maori. This included the concern that the remaining land held by Maori title was already very small by 1928 and was still under threat of alienation, mainly through pressures to sell and through other legislative activity such as the Maori Affairs Amendment Act 1967 that made for much easier alienation of Maori land.

Accurate statistics concerning Maori land are notoriously difficult to calculate accurately. The total land area of New Zealand is about 66 million acres or almost 27 million hectares. By 1891 Maori freehold land was estimated at some 10,829,486 acres of Maori land remaining in the North Island, while the amount left in the South Island was ‘very small’. By 1911 the remaining Maori land had already dropped to just over seven million acres (just under three million hectares) or about 11 percent of the total. By 1920 this was further reduced to about 4.7 million acres. Of this, nearly three-quarters of a million acres were leased to Europeans, including perpetual long-term leases. Much of the remaining land was marginal and difficult to farm or use productively. In the years since 1920, the rate of loss slowed but Maori land continued to diminish steadily. In 1955 there were estimated to be 3,872,359 acres of Maori land in the North Island and only about 200,000 acres in the South Island (roughly 1.6 million hectares), or about 6 percent of the total area. By 1987 the total amount of Maori land was estimated to be just under three million acres (1.3 million hectares) or about 5 percent of the total.⁶

By 1980 there was also virtually no customary Maori land left.⁷ It is not clear exactly when this happened but there was certainly more freehold land than customary land by the turn of the century. According to reports there may still be

5. For example, Maori Affairs department complaint in submission on public works provisions in MA 22/2, AAMK 869/739c

6. Sources: Asher and Naulls, *Maori Land*, New Zealand Planning Council, Planning paper no 29, March 1987, p 41; Hunn, ‘Report on Department of Maori Affairs 1961’, AJHR, 1961, G-10, p 58; Statistics Department, *1990 Yearbook*, p 417

7. Asher and Naulls, p 49

tiny pockets of customary land left. However, even by the 1950s, official reports confirmed that Maori customary land had ‘virtually’ disappeared.⁸

It can be seen therefore that during the period between 1928 and 1981 the total amount of Maori freehold land left was less than 10 percent and steadily diminishing. This was a factor that made the compulsory loss of remaining Maori freehold land of even more concern to Maori. This concern increased when Government policies and major reports in the 1960s such as the Hunn and Prichard–Waetford reports, assumed Maori freehold title would and probably should eventually be extinguished. This concern by Maori led to increasing assertiveness by the 1960s in demanding land in exchange for land taken, and to the land protests of the 1970s including concerns about public works and town planning provisions. Public works takings were probably not the major cause of Maori land loss for most of this time. However they were a constant source of concern as they continued to encroach on remaining Maori land, especially as other protections such as the prevention of alienation through sales of leasehold land, for example, could be overturned through compulsory public works provisions. In addition many of the reasons for taking remaining land, such as for rubbish dumps, sewerage facilities, or camping grounds, seemed to be only adding insult to injury.

In addition, Maori often complained that public works takings not only diminished the total amount of Maori freehold left but also contributed to or caused the loss of the remaining ancestral land of an iwi or hapu or family group. This was a continuing issue of concern, especially as a stake in Maori land was culturally, politically, and socially important in Maori society as a source of turangawaewae or rights to speak on a marae, and as Treaty guarantees and the initial instructions by the British Crown required that Maori were not left landless. When the Crown was purchasing Maori land there was a requirement in the Native Land Acts and similar legislation (for example section 373 of the Native Land Act 1909) that Maori not be left landless, but there were no such requirements for public works takings of Maori land.

Some land taken also contained wahi tapu, including urupa, that were of special significance to Maori. Protections for these were non-existent or often ineffective and were commonly simply given a lower priority than other concerns. In addition, many public works projects caused flow-on problems for Maori rights that were also rarely considered. In fact in some areas such as rights to traditional fisheries, public works seem to have been a very convenient method of destroying the whole problem. Many of these issues, and the practices and policies of taking authorities concerning decision making on land required for public purposes are demonstrated in the case files concerning Maori land takings.

There are many documented cases, for example, of the low priority given to Maori landowners’ interests by taking authorities when decisions on land takings were made. Typically other interests, such as the possible needs of other Government agencies, were given more weight than the interests of Maori owners. For example, in 1950, Works took 27 acres of Maori land on the banks of the

8. For example, memo from Under-Secretary of Maori Affairs to Crown Law Office, on advice of Chief Judge of the Maori Land Court, 1 April 1959, MA 1, 38/1/1, pt 1

Wanganui River for river diversion work. The work was undertaken but formal surveys and the official taking proclamation were delayed because Works officials felt that the State Forest Service and Railways might be interested in some of the land and they did not want to make a final decision on the amount to be taken until the other departments had decided if they needed any. This was in spite of the fact that the Maori owner was suffering hardship because compensation could not be assessed until a formal proclamation was made. In addition, Works told the owner that an application could not be made to the Maori Land Court to assess compensation as the land was not yet surveyed nor taken by proclamation.

The land court was powerless to act until a formal taking was made. However Judge Beechey was quoted as describing the situation as ‘monstrous’. He asked that the practice where ‘The department takes land before survey and before proclamation and pleads its own wrongdoing as the reason for non-assessment of compensation’ be reported to the Minister and stopped. The judge also observed that even if Works would consult with the owners before doing such things it would not be so bad, ‘. . . as it is we might as well live in Russia’.⁹

Works also often used the excuse that normal procedures and care did not have to be taken where the land seemed to be poorly used. In the 1950s for example, the Ministry apparently accidentally included about three acres of Maori land in a sports field at Mana College in Porirua. The boundary was not properly surveyed when the land was included and according to Works this was partly because the land was unoccupied, unfenced, and heavily gorse covered.¹⁰

It is clear that local authorities also often made taking decisions with more regard for the local non-Maori community and for financial advantage than for the concerns of Maori landowners. For example, there is evidence that local bodies used land-taking powers for public purposes for a variety of reasons often quite different to those stated in the taking proclamations. This practice was not confined to Maori land and was frowned on by the courts.¹¹ However there were no real legal restrictions on this and it seems to have been that much easier to get away with where Maori land was concerned. This was apparently because Maori were more likely to lack the means to pursue legal action and were less able to put political pressure on taking authorities. Fragmentation of title and notice problems also often meant owners could be unaware of the taking until it was safely made.

In 1963 for example, the Wairoa Borough Council issued a taking proclamation with the stated purpose being ‘to execute a certain Public Work – namely a Borough Depot and yard. . . .’ However the Maori Affairs department office in Gisborne was informed that:

9. Auckland office of Maori Affairs to Head Office, 15 February 1950, MA 1, 38/2, pt 1

10. See correspondence in MA 1, 5/5/59, vol 3

11. For example, in *The Compulsory Acquisition of land in New Zealand*, P Salmon quotes *Melanesian Trust Board v Tamaki Road Board* (1925) NZLR 415, where taking powers have been used for purposes other than for which the legislation has given the taking power, and *Adams v Hutt County* (1957) NZLR 772 and *Bartrum v Manurewa Borough* (1962) NZLR 415, where power given for the public interest has been used to promote private benefit.

Although not officially stated by the Council . . . the probable intentions of the Council are to use this strip as a road to open up back land when this becomes necessary.¹²

Accusations were often made by Maori owners that local authorities sometimes used public works provisions to simply shift them out of town. There is some evidence to support this. For example, in Kaikohe in 1947, Maori owners complained that a proposed taking for a hospital site would leave them virtually landless and deprived of the only suitable house sites they had for themselves and their families. The Maori owners believed that the proposed land taking was part of a policy of Pakeha local body politicians to instigate the taking of Maori land for public purposes in order to eliminate all Maori land from the new borough area of Kaikohe. The Maori Affairs department land consolidation officers believed that there was some truth in this claim and pointed to the fact that there was ample European-owned land in the town more suitable for the purpose.¹³ In the Otorohanga native township in the 1950s, Maori owners also complained that they were being asked to move to sections more than a mile out of town when they owned land within 500 yards of the main street, which the council wanted subdivided and sold on the open market.¹⁴

The attitude that Maori land was there for the taking continued into the 1970s in some cases, and this was often associated with a belief that where land was easy to take, there was little to stop taking authorities taking much more than was really necessary for the public purposes involved. In many cases the organisations brought in to improve matters, such as the Maori Trustee, were appalled at the attitudes they encountered. In 1973 an Auckland officer inspected Maori land taken by the Auckland Regional Authority. The authority had taken land for a recreation reserve in a new subdivision developed by the Maori Trustee and had then taken another 294 acres of the hinterland. The officer complained that:

I have viewed the property personally and cannot understand their reasons for having taken the land. I cannot help but feel that it was taken because it was Maori land and there would probably be less public outcry.¹⁵

The pressure from local interest groups was often also more compelling than the concerns of landowners. In Dannevirke for example, some Maori land was rented by private operators as an airfield carrying out mostly topdressing work for local farms. When the lease was about to come due in the late 1940s, the local authorities and aviation interests in the area pressured Civil Aviation and the Government to ‘protect’ the lease or acquire the land. The department of Maori Affairs was brought in and explained that it could not try and influence the proprietor on how to deal with his own property, but ‘if he should ask’ officials promised to suggest that the

12. Memo to Head Office, 21 August 1963, MA 1, 54/19

13. Memo and enclosure from Under-Secretary for Maori Affairs to the Under-Secretary of the Public Works department, 29 September 1947, MA 1, 38/2, pt 1

14. Notes of meeting, October 1961, MA 1, 54/16/5

15. Memo from Hamilton district office to Head office, 26 September 1973, MA 1, 38/2, vol 6

lease be renewed or the land sold to the borough. The concerned owner however required the land for her grown up family to farm and wrote to the Minister asking for assistance.

The owner complained that the local borough and county councils wanted to purchase the land for an airfield, not for their needs, but to keep it in use for top dressing farms in the surrounding district. This view was apparently correct as it was not challenged. The owner reminded the Minister that public works takings were supposed to be for the public benefit but in this case it was local farmers and not the general public who stood to gain. The Government apparently had some sympathy for the owners' viewpoint and directed Government departments not to invoke the Public Works Act to acquire the land in this case. The Minister even wrote to the owner to assure her that the Government had no intention of taking her land. However, as happened so often in these cases, the Government also made no attempt to influence the local authorities. Within three months of the Minister's assurance as to central government intentions, the local county council had issued a notice of intention to take the land under the Public Works Act and the Local Authorities Empowering (Aviation Encouragement) Act 1929.

The Minister's only response to claims that the taking was not really for a public purpose was to express his regret that 'neither I nor the Government has any legal power to intervene'. The county council acted within its powers and these 'sometimes bear hardly on the individual, as in your case, but were created to serve the general welfare'. His only suggestion was for her to object and try and find neighbours and others 'who would join in the objection to the location of the aerodrome'. This hardly seemed realistic if, as she claimed, it was the neighbouring farmers who stood to benefit from continued topdressing.¹⁶

Official documents also reveal the influence non-Maori were able to bring to bear on Government compared with many Maori owners. For example, in the 1940s a group of Pakeha farmers formed a company and successfully applied for a mining licence over Maori land in order to obtain lime for their farms. The licence was granted on the basis that the land was within Maori land ceded to the Government many years previously for goldmining purposes. The Maori owners were not informed of the application and only found out about it after it had been granted and mining equipment was set up on their land. As it happened, they had also been intending to set up a quarry and it was only after they pursued the matter themselves that officials decided the licence was invalid because the cession only referred to goldmining. The company refused to surrender the licence on the grounds that it had already set up equipment and buildings and spent money on the business.

Crown legal advice was to do nothing to rectify the matter for the owners but to leave them to take court action to have the company removed, even though the licence had originally been issued by a Government official. The owners were not in a position to take the matter to court and appealed to the Government for help. Finally Peter Fraser intervened because he felt it was unfair that the Maori owners were obliged to begin costly court action to enforce rights which were violated by an error of the Crown, 'This appears to be most inequitable'.

16. Correspondence 1948–1955, MA 1, 5/5/111

In the meantime, the company was able to exert considerable pressure to try and have the land taken for public purposes because of the ‘national importance’ of farming. The file contains evidence of pressure on their local member of Parliament and various Government officials and ministers, although the farmers remained very reluctant to talk to the Maori owners. The farmers also managed to arrange supporting letters from a variety of sources to the Government, including the local branch of Federated Farmers and the Aid for Britain National Council, all arguing that the proposed supply of lime was vital in the interests of farming and the country. The department of Maori Affairs and Mines department officials also set about trying to persuade the Maori owners to agree to the company going ahead.

In this case however, Fraser refused to involve the Government in a compulsory land taking, insisting that the land was the private property of the owners and they had the right to decide what to do with it. However departmental officials continued to apply pressure to get the owners to agree to the company having the licence. As it turned out, when Fraser had an independent investigation done, the owners’ proposition was unlikely to be economic. However officials had not even been willing to consider it and were scathing that the Maori owners could even think of going into such a business. One official described the idea as ‘fantastic’ even though the owners claimed they had sought expert advice and had arranged the necessary capital. The attitude of officials so annoyed the owners that in turn they refused to consider the company proposals for some time. Finally, in 1950, the owners agreed to allow the company to continue with a licence.¹⁷

There are cases where taking authorities also appear to have used taking powers to ensure the acquisition of land where purchasing on the open market may have meant the authority failed to acquire the land or had to pay too high a price (or a true market price). This approach may have been reasonable where important public interests were at stake. However it seems to have been commonly used for much lesser matters, thereby depriving Maori owners of the opportunity of taking advantage of market prices even if they did decide to sell.

In the 1960s the Raglan County Council wanted to acquire some Maori land to give access to the beach at Manu Bay. The public was already allowed to use the beach by the owners, but the council wanted to improve road access and provide more public facilities. The council was not the only party interested in buying the land; the owners were approached at about the same time by other private interests to lease or buy the land. At a meeting of owners, all the proposals were rejected. Some owners were concerned to ensure continued access to fishing and others considered the prices offered too low anyway. The council then pressured the Government to acquire the land for it. This was apparently because it was under the mistaken impression that it required permission to have the land taken, although ministerial consent was only required for customary land. A deputation was sent to the Minister of Maori Affairs. As a result Maori Affairs department officials were instructed to find out the views of owners and when the purchase proposal was rejected to seek another meeting to see if the owners would change their minds.

17. Correspondence, MA 1, 19/1/650

Following this, some owners suggested a sale might be considered for £1500 compared with a special valuation of the land of £940. The council was outraged that ‘an area of land such as this should be denied to the people of New Zealand, both Maori and Pakeha because Council is not in a position to pay such an exorbitant figure for this section of land’.¹⁸ This was in spite of the fact that there was obviously some competition for the land pushing up prices and the public already had access. The council appeared to make no real attempt to meet owners’ concerns regarding fishing but seemed confident that an appeal to take the land because the price was too high would succeed. In this case, however, the Minister replied that unless the council could persuade the owners to sell the land, he was unable to assist further.¹⁹

Taking authorities also often seemed unconcerned that their interests might conflict with long-standing Maori attempts to develop the land required. The army had a long-standing interest in land in the central volcanic plateau area for training purposes. The land was of interest precisely because it was sparsely populated and underdeveloped and it was mostly held in Crown and Maori title with little European interests. The army gained Maori owners’ agreements to shooting rights over a large area of the Maori land in the 1920s. The army then claimed that it could not afford to purchase the land and that it wanted a chance to see if the area was really suitable. As a result it sought continuing restrictions on alienations of the land into the 1930s.

By the 1930s, however, with increasing forestry development and the implementation of Maori land development schemes in the area, the army became concerned about its continued free access to large areas of the land. In 1933 the Minister of Defence asked the Native Minister to come up with some alternative to his farm development schemes in the area which ‘while satisfying the requirements of the Native Land department, would, at the same time, not interfere with the use of the land for artillery shooting’. In reply, Ngata pointed out that if the Defence requirements were insisted upon it would mean the halting of any further development of 14,000 acres of Maori land. He explained that it was misleading to simply suggest that there was plenty of Maori land elsewhere to develop. In fact particular tribes in the area had vested land specifically for development purposes and that was what the department was required to do. Government funding had also been provided to assist with the development work and spending so far would be wasted if the development was not completed. The developments were also providing important employment opportunities for unemployed Maori. Ngata also reminded the Defence Minister that the Maori owners had every right to develop their own lands, especially as the Government had provided them with the necessary assistance.

Officials of both Maori Affairs and the Defence departments took part in negotiations over possible accommodations but these failed at first when Defence department officials refused to compromise. The Defence department only required shooting rights to practice a few times a year but the interests of Maori owners in

18. County Clerk to Minister of Maori Affairs, 25 August 1964, MA 1, 5/3/8

19. Correspondence, MA 1, 5/3/8

developing their land did not seem to make much difference. It seems it was only because of Ngata's firm resistance and his political influence at the time that the Defence department was forced to take a more reasonable position. Eventually it was agreed that both departments could cooperate with roads and fencing built to accommodate both needs and the army would advise owners to move stock before shooting took place.

The conflicts did not end there however. Later, after Ngata had left the political scene, the army again began to push for the compulsory acquisition of land in the area for a rifle range while the owners wanted to develop the same land for a dairy factory and farming.²⁰ In the 1950s the Defence department also began new attempts to acquire land for extensions to Waiouru camp. Once again Defence wanted to take the simplest way out and simply have the land taken by proclamation. Even the alternatives of gaining a licence to shoot at various times or an easement over the land were thought to be too difficult.²¹

Land development schemes also took second place to the railway constructed for the Murupara project. Works decided to change the railway route without consulting or giving much consideration to the effect this would have on the local farm development scheme. According to the local office of Maori Affairs, this meant the railway would now go through the best farming land in the scheme, disrupting the work programme already in place. As a result work on the scheme would have to be reconsidered and probably kept to a bare minimum while a decision was made on the exact land to be taken.²²

Sometimes planning simply failed to take account of community needs, and lack of consultation in the planning process meant this was more likely to happen. In the 1940s a proposed highway deviation at Hicks Bay and closure of the old road brought complaints from the local Maori community that their interests had not been properly considered when the proposal was planned. While the new deviation would benefit users of the main highway, it would only cause problems for the local community. The old road which was to be closed was the quickest route to the school, post office, stores, and wharf, as well as to other parts of their land. Without it they would have to make a much longer journey and ford the creek at its deepest part. The locals asked for assistance in having the old road retained and legalised if the deviation went ahead.²³

It is very common to find taking decisions justified on the basis that land was not properly kept and therefore probably of little concern to the owners. In addition, the land required was not 'needed' because the owners had an interest in land elsewhere. For example, in the 1950s, Maori owners objected to the compulsory taking of their land for a postmaster's residence in Tokomaru Bay. The objections included that it was the last remaining link to the area for the family and that it was lived in by a family member and used for cultivating food crops. The objectors asked the taking authority to consider using other Crown land in the area instead. The Director-General of the Post Office advised that the objections should be

20. Correspondence, including between Ministers in 1933, MA 1, 5/5/8

21. MA 1, 5/5/72

22. Memo from Rotorua District office of 19 August 1953, MA 1, 5/10/120

23. Correspondence, 1941, MA 1, 38/2, pt 1

rejected on the grounds that he was ‘informed’ that all the objectors had farms of their own in other parts of the East Coast and made ‘very little use of the area under notice’. The section was at present ‘neglected’ and last season was covered in long grass and the hedges grew wild. The land left after the taking ‘should be sufficient’ for the owners’ requirements and furthermore the local postmaster had been told by some of the objectors that they would sell. All suggested alternatives were unsuitable and ‘. . . It appears in the circumstances that the objections are not well founded and that little hardship would be caused by the taking of the land’.²⁴ Such conflicting accounts were rarely investigated further and the objections were commonly disregarded.

Similar reasons were given when it was proposed to take Maori land for Kaihu Public School after the owners had rejected an offer to purchase. The report for the Minister of Education for Cabinet consideration in November 1951 explained that no suitable European-owned land was available, the land required was used for some grazing but was ‘mostly idle’ and:

Compulsory acquisition would not devolve any hardship on the owners as there is apparently no occupation of the property in the sense that any return is being obtained from the land, nor does anyone live on the property.

In addition, it was understood the owners possessed alternative land elsewhere.²⁵

Even when the attachment of Maori to ancestral land was acknowledged, it was rarely treated as an important ground for objection. This was the case even where the public work involved seemed relatively mundane. For example, a workman’s cottage was proposed for a site at Te Kaha where the owners complained that other acquisitions had already greatly diminished the amount of their ancestral land.²⁶

Public works takings involving wahi tapu and urupa in particular appear to have been a major source of Maori concern and resentment. Such takings were regularly brought to the attention of Parliament by Maori members well before the turn of the century and continued to be of concern through the time under consideration. Maori concern was widely acknowledged although for a long time there were no particular legislative protections, as there were for ornamental gardens or orchards.

This was one of many issues where Maori owners consistently expressed great concern and evidence points to continued problems, but Works insisted that it had a policy in place to meet concerns and it knew of no problems with it being carried out. In this case Works had a long-standing policy of making inquiries about the existence of possible burial sites on land it proposed to take. In practice, this almost always meant contacting the department of Maori Affairs to see if it knew of sites, rather than the owners or other Maori leaders in the locality. It often turned out that the department did not always know of urupa sites. There was a procedure for having burial grounds gazetted as reserves but not all burial grounds were reserved and Maori were often reluctant to reveal their location to avoid looting and desecration. This was a very old custom but Pakeha desecration of graves only

24. Correspondence in 1950s, MA 1, 38/2, pt 1

25. Report on proposed school site referred to Cabinet, 5 November 1951, MA 1, 38/2, pt 2

26. T Wi Repa to Prime Minister, and associated correspondence, 17 August 1948, MA 1, 38/2, pt 1

served to confirm it. This reluctance was well known and at times encouraged. For example in 1948 Prime Minister Peter Fraser, in response to concern about milling on an ancient burial site, advised the owners that:

So long as the presence of the relics is unknown, they will probably remain undisturbed, but if their location is known they may be the object of sacrilege by some unsympathetic pakeha.²⁷

Maori also often followed a custom of not marking graves and allowing urupa sites to grow wild, again to prevent desecration. However this was often taken by Pakeha engineers to mean that the site was uncared for or forgotten about and therefore a taking would cause no harm. Once again the lack of communication meant engineers were not fully informed on these matters. There is evidence that in some cases engineers did consult properly. An example is a case in the Christchurch district in the 1930s where the Works engineer consulted with the local runanga over burial sites.²⁸ However there is much more evidence that Works failed to even follow its own policy consistently. In many cases adherence to the policy relied on the goodwill of local engineers and it is apparent that often other imperatives such as time constraints, simply took priority. There are numerous cases where even the Maori Affairs department was not informed, including even cases where burial reserves were properly gazetted. In addition, Works was not the only taking authority and many local authorities seem to have rejected even the idea of making inquiries about possible burial sites.

Maori concern about the treatment of urupa continued in spite of Works' protests. As a result of continued pressure the words 'cemetery and burial ground' were finally added to the types of land protected from takings without consent, in a 1948 amendment. In agreeing to this the Minister of Works conceded that it seemed reasonable 'to accord cemeteries and burial grounds similar consideration as gardens and orchards when land is being acquired for a public work'. This amendment, because it was in Part 2 of the Act, still did not apply to customary Maori land. Even while agreeing to the amendment, the Minister still insisted that officials always made specific inquiries about possible burial grounds. 'While this is not a statutory obligation it is standard practice and has been found to operate satisfactorily and without detriment to the proper treatment of burial places'.²⁹

In spite of that claim and the amendment, there still appear to have been continued incidents where taking authorities used every means possible to evade their responsibilities to protect urupa, or simply afforded their protection a much lower priority than other concerns. An example is a burial ground on the Kaihu block, which according to local Maori had been used as an important burial site for centuries. According to Maori custom, the whole site was used for burials but graves were not neatly kept or marked. Instead the dead were often scattered and the exact whereabouts only known to a few in order to prevent desecration. As a result the whole area was considered tapu. In this case an earlier proposal to take

27. MA 1, 5/5/36

28. MA 1, 21/1/1

29. Minister of Works to Minister of Maori Affairs, 8 February 1948, MA 1, 38/2/2

some of the land for a railway had been dropped in response to Maori concerns about the importance of the site. However later, part of the land was taken for a street with no notice given to the owners. The owners applied for the land to be made a burial reserve but the Maori Land Court refused while the local body decided what land it needed for the street. The Maori Land Court itself had no information on the burial ground and had no record of any burials on the actual land required for the street, so did not oppose the taking. The owners did protest, and even offered alternative land at no cost and offered to fence it themselves, but this was rejected.

An engineer's report of 1952 revealed that the land had indeed been used for burials and evidence of graves was found. However the report was inconclusive about the particular piece of land required for the street:

As permanent markings over the graves does not appear to be customary, it is not possible to state definitely whether graves exist on the area proposed for street or not. None however are plainly visible and no record of burials on this land are kept by the local authority.

It was of course most unlikely that records would have been held by the local body and the difficulty in finding graves was a normal feature of such urupa. However although the owners' claims that it was a burial site could no longer be denied, the taking authorities used the inconclusive findings in the report to insist that the land required for the street could still be taken. By 1953 the land was vested in the borough council and the taking could not be revoked unless the council formally applied for this to be done. A petition from the owners was again rejected based on the inconclusive findings of the report.³⁰

Taking authorities often also used legal technicalities to avoid requirements concerning burial sites. In the 1960s the Taranaki County Council wanted to take some Maori land for a sewage treatment station. The block concerned was known to have graves on it and had been used until quite recently for burials. The owners were very concerned to stop the taking or to have the graves located and removed. As was usual, however, it was very difficult to establish where exactly all the graves might be. The council lawyers appeared to be unsympathetic to these concerns and maintained that if there was no record of any order in council creating a Maori reserve for a burial ground over the land, then they had met their statutory obligations and were required to do no more. The Maori Affairs department could do little to assist, as the taking proclamation had already been made before they were informed of the matter. They could only suggest that the council lawyers be asked to have the earth works held over until something could be done to locate the graves.³¹

The taking of burial grounds was also often associated with other issues of special concern, such as the loss of the last remaining land and cultural conflicts. The Taiwhakaea people of Paroa in the Bay of Plenty had already lost most of their ancestral land in the confiscations following the New Zealand wars. They had been

30. MA 1, 38/2/2

31. Correspondence, August to October 1968, MA 1, 38/2, vol 4

left with only about 300 acres from the thousands they had previously claimed. In the 1960s, the Whakatane County Council decided it wanted more land for a cemetery and the most suitable area appeared to be 40 acres of Maori land, including an already existing Maori cemetery of about 15 acres. According to the council, this was because the Maori land had suitable access and was not useful agricultural land. The Maori cemetery was still being used for burials as the department of Maori Affairs found out to its surprise. Although the owners were under the impression that it had been set apart as a burial reserve by the Maori Land Court many years before, in fact it had never legally been designated a burial reserve.

In 1969 the council decided to take the land and issued the notices of intention. The matter only received major attention because a local Pakeha journalist happened to be the son of a lessee of the land and had married into the hapu. Through him and his newspaper articles it became clear that the Maori community was very unhappy about the taking. It was not only encroaching on their last remaining land while thousands of acres of Crown land confiscated from them lay just over the road. The people were also unhappy about the incorporation of their cemetery into a council one, as it would then be subject to council bylaws that were in many cases considered offensive to the religious beliefs and customs of the local Maori.³²

Critics of the proposal claimed that apart from sounding out possible opposition, the council had done its best to bypass Maori concerns. As the burial ground was not officially registered, the council had also told local Maori that it could do what it liked with it. Council protests that there were too many owners to consult and therefore the land should be taken, were also criticised in such a small community where it was not hard to discover the right people to contact. After considerable local publicity, mainly through the local journalist, the Maori members of Parliament became involved and a local councillor also began to oppose the taking. At this point the council reluctantly began further attempts to find an alternative site.³³

Maori reserved land was also another special issue of concern to Maori. It had often been reserved for Maori in an effort to prevent landlessness, or in an attempt to correct past injustice. Reserves had also often been chosen out of sales because of their special significance or because they were, or provided access to, traditionally rich sources of food or resources. In many cases reserves had also often been granted precisely because at the time they were not useful farm land and were only of value to Maori. However, apart from those destroyed or made useless by farm improvement operations such as drainage, in later years many of the reserves that had been confined to inaccessible or marginal areas became the subject of public purpose proposals because of their scenic or recreational value. Compulsory taking provisions also meant that many of the supposed ‘protections’ given to such reserves could easily be overturned. As a result, although there were areas protected from alienation by sale, they could simply be acquired by public works taking

32. Correspondence and newspaper clippings, May to June 1969, MA 1, 38/2, vol 4

33. Correspondence and newspaper clippings, June 1969, MA 1, 38/2, vol 5

provisions. Once again the special nature of the reserve and the fact that it might be the last remaining link to ancestral land or traditional food sources rarely appears to have been taken into account in decision making. Protections for the most part appear to have been ineffective. At the same time the marginal nature of the land and the low value for farming purposes, even though this was not what the land was required for, was often used as a reason to pay low or nil compensation.

In the 1930s, the Clutha County Council wanted to acquire some Maori land at Kaka Point, as it was becoming a popular summer holiday area. This area had been made a native reserve originally because it had been a favoured living area for many generations and local Maori had close ancestral affiliations with the area. It had coastal access which was valuable to Maori but was poor farm land and not of much concern to the local Pakeha community until the beach became a favoured recreation spot. The usual processes had occurred with the land including fragmented title and most of the owners having to move away to earn a living. Before long the land became the target of scenic and recreation purposes.

In 1909, 122 acres of mostly bush land were taken for a scenic reserve. Compensation was assessed on the basis that road access would be made to the sea but this was never done. In 1939, as the beach became more popular, the county council sought to have the beach included in the scenic reserve as well. Although it was willing to pay rent in the short term, the council wanted the land made public so it could provide facilities on the beach. The justification for the taking was that the land was not good grazing land. The council already owned a reserve of 559 acres in the locality which had been leased out for grazing, and it was intended to put the considerable revenue earned from this towards improving the new domain. There was no suggestion that there might be an exchange of land. The new proposal would have left the Maori owners with a small strip between the bush and the beach without access to the sea.

At this point the council discovered that the 1910 requirement to make a road had never been carried out, and agreed to undertake this as part of the new taking. The department of Maori Affairs was informed of the proposal but was under a considerable handicap because at the time it had no officers in the South Island and therefore no access to local knowledge and contacts among South Island Maori communities. When they went to notify owners, officials found that most of those listed were deceased and the process of obtaining successions would take too long and cause too many problems. They therefore abandoned the attempt to notify owners and find out their views and instead the council went ahead and successfully obtained the Minister's approval for the taking.

The Maori Land Court assessed compensation in 1941 with no owners or representatives of owners present. It is not clear why, or even if the owners had been properly contacted. The judge simply observed that it was unfortunate the owners were not there to make their views known. The court was asked to accept the valuation of the taking authority as the only one presented. The judge did so, but was concerned that it was not clear what the valuation was based on, whether as farm land or popular seaside sections for example.

The remaining reserve continued to be a target for public purpose requirements. In 1946 a local residents' improvement society sought to obtain more of the land,

again for recreation. The society claimed the area required was ‘more or less waste land’ and it wanted to make it a beauty spot and build recreational facilities. The society approached the Government in an effort to ‘secure control’ over the area. It claimed there were not more than four natives left in the area as the rest had moved away with descendants scattered all over New Zealand and ‘It is therefore not possible to negotiate with the owners’. The society had also approached the Lands department and received a favourable response because the land was ‘of no grazing value’. It was only when one of the local owners tried to have the taking stopped that the society proposed to at least meet the local owners to discuss the matter with them.

The first documented views of the Maori owners were received at this time in a letter from one young woman to her local member of Parliament, Tirikatene, asking for help to oppose the proposed taking. She had discovered the intentions of the society from the local paper. There were only two Maori families still living in the area and they were concerned that the Pakeha were again trying to take their remaining land. Officials at least now knew of opposition from owners. The department of Maori Affairs seemed unable to provide much assistance however and simply got tangled up in the old problems of whether to try and have a meeting of owners given the problems of lack of successions, the fragmentation of title, and the expense scattered owners would be put to in attending a meeting. The alternatives of long-term leasing or exchange of land were apparently not considered.³⁴

This file is also an example of the practical exclusion of Maori from the Pakeha community and the whole objections process for land takings. Although the owners were apparently upset over previous takings, the first documented views of their concerns only reached officials in 1946 when a young woman was literate enough to read about Pakeha intentions in her local paper and familiar enough with political and official processes to write to her local member of Parliament for assistance. The ‘protections’ offered by the public works provisions had clearly been ineffective for these owners.

Another area of special concern to Maori was where the taking of land and the construction of works projects resulted in the loss or infringement of other Treaty rights such as to traditional fisheries. It is clear, for example, that many coastal takings for purposes such as scenic reserves and recreation areas resulted in the destruction or loss of access to important fisheries. Construction of works such as sewerage plants could also destroy fisheries, and river and drainage works often destroyed traditional food traps such as eel weirs. Other takings could result in the destruction of wahi tapu and important natural resources. Flooding from hydro works for example could destroy important hot springs or ancient urupa. Careless land takings could also have a significant impact in other not so obvious ways, for example by causing remaining land to become landlocked so that access to it could be effectively denied. Many of these problems were foreseeable, it was simply that public works decision making did not have to take them into account.

34. Correspondence, MA 1, 5/5/38

Many of these losses could not be compensated for even if it was possible to do so. However even where compensation may have helped, the legal principles and rules relating to damages and injurious effect were applied very narrowly and generally failed to take this type of concern into account.

It was very common, for example, for harbour boards to have vesting Acts which gave them land around harbours and powers to reclaim and take land and carry out construction works. In addition the Crown could continue to take land and construct public works on harbour board land. Such works rarely took account of Maori interests and even where they did, in earlier years there was a significant move to retract previous protections in the years under consideration. For example, early Whangarei Harbour Board vesting legislation did make some acknowledgement of customary Maori fishing rights. The Vesting Act 1917 protected any customary native land and any native fishing grounds and fisheries from harbour board rights. The vesting Act did however allow the Crown the right to take and proclaim unoccupied land for railways or roads without paying compensation. The vestings were also not meant to interfere with riparian rights. The protections were gradually whittled away in later Acts while the public works undertaken helped to ensure there was little left to protect. The Whangarei Harbour Board Vesting and Empowering Act 1923 retained the exception for native land but the fishing protection now referred to reserves set apart for the purposes of native fishing grounds or fisheries. This was quite different as the existence of such fisheries were now dependent on the existence of reserves. A similar vesting Act was passed in 1927.

By the late 1940s, the harbour board began to pressure the Government to remove any title restrictions in an effort to encourage industrial development at the port. It was claimed that by this time Maori had few rights left in the harbour worth protecting. There was apparently no customary land left, and as no fishing reserves had ever been made for Maori, it was claimed none existed and the provisions of the 1923 and 1927 Acts were therefore not required. Developments in case law were also relied on to declare that any land below highwater mark ‘could not be Maori land’ and that exclusive sea fishing rights could only be conferred by legislation.³⁵

Previous public works had also been a major contributor to the loss of Maori fishing rights. Extensive reclamation works and land takings for road and railway lines along the foreshore had effectively extinguished riparian rights and construction and reclamation work had also destroyed any inshore fisheries such as shellfish beds. As a result, on the basis that in effect few rights now existed, approval was sought for the Whangarei Harbour Board Vesting Amendment Bill 1951, which specifically removed all the clauses and references relating to the protections for Maori contained in previous vesting Acts.³⁶

The powers given to other harbour boards resulted in similar concerns. In the 1920s and 1930s, Maori complained about the powers over harbour land given to the Whakatane Harbour Board and proposals to extend these further. The board’s actions as a result of these powers including reclamation and harbour works were

35. For example, *Waipapakura v Hempton* (1914) 17 GLR 82

36. MA 1, 5/13/223

threatening access to fishing grounds from a reserve set aside to provide access to traditional fisheries near Whareoteroa pa. The works were beginning to effectively extinguish Maori riparian rights and continued access to fishing also seemed to be under threat. In 1933 when another Bill was being considered to vest even more land in the board, local Maori asked Ngata for assistance in defending their rights. They pointed out that continued fishing was an essential means of providing a livelihood for many, especially in times of economic depression.³⁷

The reclamation of mudflat areas through public works projects also raised issues of riparian rights, access to, and loss of fisheries, and ownership of the reclaimed land and foreshore land in general. During the 1930s and 1940s for example, the Marine department undertook the reclamation of mudflat areas in the Hokianga. Maori claimed that they had never given up rights to the mudflat areas but when reclamations took place they were normally offered to the nearest, often Pakeha, farmer while the small Maori communities in the area missed out. Reclaimed land was also used for public purposes such as airfields and recreation areas also without consultation. The reclamation work itself could not only destroy shellfish beds, but Maori were also concerned that the transfer of reclaimed areas to private farms meant access to fisheries could be lost. The response of officials to these concerns was mixed. At times Maori fishing rights were acknowledged. For example some mudflats were apparently left unreclaimed to protect fisheries after Maori protests. The attitude to rights to fisheries as such was also confusing. A 1940 letter from the Native Minister to a local Maori owner read in part, ‘As to fishing rights within the Hokianga Harbour being reserved solely to the Natives, it does appear reasonable that this should be agreed to’. However the draft of this letter had completely the opposite meaning in that it read that it ‘. . . does not appear reasonable.’³⁸ The issue of foreshore land was generally not admitted but some acknowledgement was made that Maori communities were at a disadvantage through the system of allocation of reclaimed land. Maori viewed the reclamation and disposal of the land as a taking and public works issues were involved, although the foreshore ownership issue itself is a separate research issue.

During discussions of a possible housing development in Porirua, the issue of the destruction of shellfish beds along the foreshore as the result of public works takings for rail and road construction was raised as a major concern, and a reason for a reluctance to agree to further public works projects. In this case, in the 1950s the Crown refused to admit any liability for the destruction of the fisheries or any Maori rights to fisheries at all. An official report declared that Maori had ‘. . . no greater rights to fish in the harbour than any other members of the public’ and the Crown could not recognise such a claim unless the loss was so great as to ‘shock the conscience’. Nevertheless, without admitting any liability it was suggested that the Crown could use pending improvements to housing as a means of settling complaints about the loss of fisheries.³⁹

37. MA 1, 5/13/46

38. Native Minister to E Wikitahi Omanaia, 25 July 1940, MA 1, 19/1/217

39. MA 1, 5/5/59

Other resources could also be lost or destroyed through land takings and subsequent works construction. Wahi tapu and urupa sites also often fared badly through this process. The flooding of rivers in the course of hydro projects for example, often caused damage and loss. Sometimes these were unavoidable but often much of the distress and resentment caused could have been avoided by a process of prior communication. In some cases losses or damage may well have been avoided altogether if concerns had been seriously considered at the planning stage. In other cases it was the arrogance of the actions and apparent lack of concern for the importance of the loss that appeared to cause the most anger and concern.

When the Karapiro Dam was flooded an important ancient burial site that had already been designated a burial reserve was flooded. In response to criticism the Electricity department initially claimed it had made a few inquiries among local Maori, but none knew of any important sites. In addition, although they were aware the burial ground was gazetted, they did not see any evidence of graves so decided there was no problem. When the owners challenged the department to produce the names of those they had contacted, as they found it hard to believe local Maori would not have known about such an important site, the department backed down and a consensus emerged that the flooding took place without any real attempt to notify or consult with the owners. The first the owners knew of the situation was when the flooding occurred.

Afterwards the Electricity and Works departments showed no particular concern or regret for the action. Work involving the blocks was taking place when Maori complained in 1947. The Works district engineer did not get around to informing Maori Affairs of the flooding until 1949, when it was belatedly decided to take the already submerged land and ask if the department knew of any objections to it. The department replied that as the land was already under water, it seemed 'pointless to raise any objection to the taking of it'.⁴⁰

Another less obvious way in which public works takings contributed to interference with other Maori rights was the situation where careless takings resulted in remaining Maori land being landlocked. Takings for public purposes were not the only cause of this situation but were apparently a significant contributor. The Maori Land Court had some rights of making legal access to Maori land but these had certain time limitations. Local bodies refused to use the Public Works Act to take land to provide access because they insisted that the Act could not be used to take land for private benefit. Negotiations over access also often failed because surrounding landowners had free use of the landlocked land or could use the situation to force a cheap sale. In the 1970s it was admitted that the Public Works Act could be used to take land for access because powers existed to declare any work a public work if money was appropriated for the purpose by Parliament. There were also powers to declare a road a public work by Order in Council. However, it was decided 'those courses seem scarcely supportable' and other legislative measures had to be considered.⁴¹

40. MA 1, 5/13/200

41. Maori Affairs to Departments of Lands and Survey and Works, 17 March 1972, MA 22/2

Agencies such as the department of Maori Affairs, the Maori Land Court, the Maori or Public Trustee and Maori Land Boards often became involved in takings of Maori land for public purposes. Sometimes this was in an effort to assist Maori landowners in an informal way and was also often because of legislative requirements and responsibilities concerning the management and control of Maori land. In some cases these agencies did provide real assistance to owners and tended to take a more protective attitude in later years. However there are some issues that appear to arise when the attitudes and actions of these agencies appear to have been more in tune with the concerns of taking authorities than the owners.

There is some evidence for example that the Public Trustee had a very narrow view of the interests of Maori owners in reserve land he was responsible for. In one case, where Works department wanted to take some South Island tenths land for example, the Public Trustee took the attitude that as the land was perpetually leased, the Maori owners' interests in the land were minimal and the lessees who had perpetual rights of renewal 'will to all intents and purposes be in much the same position as a freehold. Their interest will be paramount'.⁴²

In 1937 when the Nelson City Council began renting Maori reserve land for basketball courts it was informed that the land was in perpetual lease and there was no right of acquiring the freehold. The council had the benefit of cheap rentals for many years but when the lease came due for renewal in 1963, it put pressure on the Government to have the land taken as it did not want to pay higher rents. The council also complained that the recreational zoning meant it could not use the land for commercial purposes. This was in spite of the fact that it was the first time in years the owners could expect something like an economic return on rents. The reasoning convinced both the Minister and the Maori Trustee however. The Minister expressed regret that legislation prevented the Maori Trustee from selling the land to the council. Therefore it was 'necessary' for the council to take the land. He assured the council that the Maori Trustee would not object to the taking because the land was being used for non-profit sporting activities, but would wait until the land was taken and then negotiate compensation. The interests of the owners and the reasons why the reserves were protected from sales in the first place do not appear to have been considered.⁴³

In an effort to stop public works encroachment on Maori land and to avoid the situation where it was very difficult to regain land no longer required for public purposes, Maori owners made determined efforts to persuade the Government and taking authorities to consider alternatives to taking land when they were making decisions on land required for public purposes. However, for many years even when the special problems and concerns of Maori were admitted, taking authorities rejected these possibilities simply as a matter of policy.

In many cases this was because the process was simply considered too difficult or inconvenient. In the 1950s, for example, in the case cited earlier where the Army was considering a proposed extension to the Waiouru army camp, it refused to consider compromises such as licences to shoot over the land at certain times or

42. Memo from deputy Maori Trustee, 18 July 1972, MA 1, 38/2, vol 6

43. Minister to Town Clerk, Nelson, 9 April 1963, MA 1, 54/19/13

easements which would still have left the ownership of the land with Maori. Instead it argued that in view of the ‘procedural and practical difficulties’ in obtaining some form of licence or easement to shoot over the land at intervals, administratively the easiest course of action would be to simply take the land.⁴⁴

In 1945 the Soil Conservation and Rivers Control Council wanted to acquire areas of land in the Maungapohatu north block for soil and river control purposes. The Maori owners agreed to bush areas along the river being made reserves but wanted the exchange of land with an important burial site in return for other land. The council refused as it wanted full control of all the land.⁴⁵ In this case, as the owners only wanted to reclaim an ancient urupa rather than use the land, it seems as though some kind of compromise agreement should have been possible, but this was apparently not considered. There were many other cases, such as land taken for scenic reserves where long-term leasing may have been an acceptable compromise. However, it was only from the 1970s that in some circumstances taking authorities showed some willingness to consider this a viable possibility instead of simply insisting on taking the land.

In the 1940s, political leaders such as Peter Fraser were in many respects more responsive to Maori concerns. As well as attempting to finally settle old grievances he was also sympathetic to Maori concerns about the use of compulsory public works provisions and that land taking for public purposes was steadily encroaching on remaining Maori land. In the 1940s Peter Fraser informed departments that he was very reluctant to take Maori land by compulsion. Instead he preferred meeting Maori leaders face to face and negotiating arrangements. He was also sympathetic to proposals to exchange land if land had to be taken. For example he held meetings with the Ngati Manawa people over the proposed Murupara mill site in the 1940s. The terms of the agreement included that land for farming would be provided in exchange for land taken for those who wanted it, and that the Crown would meet reasonable costs for valuations for compensation assessment. Following this the new National Government promised to honour the agreements made when it gained office in 1949. Sites would also be made available to owners who wished to live in the new town.⁴⁶

Mason, the Native Minister of the time, also had sympathy with concerns about the loss of Maori freehold land through public works provisions. In response to Maori complaints that Hastings Borough Council wanted to take Maori land for an airport he informed Government departments that might be involved that:

it would appear that the time has arrived, if it is not already overdue, when the Crown should not take any further Native lands for public purposes except in cases of strict necessity. . . . In Hawkes Bay there is ample European and Crown land available for the purposes of an aerodrome every whit as suitable as these Karamu sections . . .⁴⁷

44. MA 1, 5/5/68

45. MA 1, 5/5/36

46. For example, memo listing terms of agreement, 24 August 1953; and letter from Corbett to lawyers for owners, 9 October 1951, MA 1, 5/10/120

47. Mason to Ministers in charge of Civil Aviation and Works, 22 June 1944, MA 1, 19/1/506

In 1959 Walter Nash made efforts to avoid compulsory takings and to offer land in exchange where takings seemed unavoidable:

With the great diminution in the area of land owned by the Maori people I am anxious that all possible avenues are explored before agreeing to any further depletion particularly as in this case where some of the leading owners have asked for their interests, if taken, to be compensated for in Crown lands which they could farm.

In the end he was persuaded however that the taking was necessary and no land was available to exchange. He had to be content with insisting that notices of intention to take were issued as widely as possible to give owners a better chance to object if they wished.⁴⁸

The idea of land in exchange for land taken was considered as a serious possibility by some politicians but in many cases the more entrenched attitudes of departmental officials seem to have prevailed. In many cases ministers were persuaded there was simply no land available to exchange. However an investigation of file documents reveals that this was often because in considering possible uses for such land, offering any to Maori was simply given the lowest possible priority. When Walter Nash requested that land be sought in exchange for land proposed taken for defence purposes in the 1950s for example, none suitable could be found. This was because the department of Lands and Survey regarded almost any other use as more important. All available Crown land in the area was required for general farm development schemes, or for the prison farm, or for forestry, or army training, or public amenities such as camping areas, or for subdividing for holiday homes, or it was too rough to be usable at all. Although the owners suggested they would consider rougher land suitable for forestry this was apparently not taken up by the department.⁴⁹

More research is required into how effectively the concerns of ministers that remaining Maori land should be protected except in cases of ‘strict necessity’, were translated into practice. Preliminary research suggests political concern alone was largely ineffective without legislation to back it up as the entrenched attitudes of taking authorities often prevailed. Governments were also traditionally very reluctant to interfere in takings by local authorities, even where, as in the case of the Karamu sections, the Minister clearly felt the taking would do an injustice to Maori interests. There are many documented cases where although ministers agreed that taking decisions were having a detrimental effect on Maori interests and they directed Government departments not to become involved, they still refused to interfere if local authorities were taking the land. For example in the Dannevirke airfield case already cited, Minister Corbett typically refused to interfere, ‘... neither I nor the Government has the legal power to intervene’.⁵⁰

By the 1960s, Maori owners were becoming more assertive in demanding land in exchange for land taken as a way of avoiding overall losses of Maori land and by

48. Nash to Minister of Defence, 16 June 1959, MA 1, 5/5/68

49. MA 1, 5/5/68

50. MA 1, 5/5/111

the 1970s Government agencies and ministers were becoming more responsive to the idea that land could be used for public purposes without having to take the actual ownership. For example, special legislation was passed enabling the Mercury Islands and Alderman Islands to be used for scenic and wildlife reserves but on certain terms written into the legislation, including that the land would revert to Maori ownership if it was no longer required for such purposes.⁵¹ In addition, in 1978 the Electricity department adopted a policy of leasing rather than taking land required for the Ohaaki geothermal power station.

By the 1970s the Government was also willing in some instances to negotiate long-term leases for scenic reserves required and to include representatives of Maori owners on the boards of management. For example, the Acting Minister of Lands described his views on the proposed scenic reserve for Lake Tarawera and Mount Tarawera in 1974:

I do not consider that it is necessary for the Government to purchase the Maori land as I consider it should be left in Maori ownership and leased in perpetuity as a reserve.⁵²

Without legal requirements, however, this change in attitude was often inconsistent and haphazard. As had been the case historically, the Government also continued to find that its influence on the decision-making policy of taking authorities was also limited without legislative backup. As late as 1981, in the case already cited, the High Court found that there was no legislative discretion for Cabinet to refuse to issue a taking proclamation on the grounds of policy that public works takings of Maori land should be more restricted.⁵³

The Public Works Acts allowed ‘takings’ by agreement and purchase, as well as by compulsion. Works consistently claimed that it had adopted a policy of negotiating with owners to reach agreement before land was taken. Land-taking procedures were simply used to simplify matters especially where there might be complicated legal transfers. Works claimed in the 1946 memo already cited for example, that contrary to popular notion, most land acquired under the Public Works Act was not acquired by compulsion. The Act allowed a ‘take’ by proclamation either by agreement or compulsory transfer and also gave power to purchase by transfer. ‘Taking’ by proclamation by agreement with the landowner was the most common procedure and was the most preferred by the department. This was because it was usually less expensive, it conferred an indefeasible title on the Crown whatever the defects in the former owner’s title, and it gave a right of possession before payment was made and automatically freed the land from all encumbrances. In some cases the proprietor did not have clear authority to sell and in those cases also it was necessary to take by agreement or by compulsion to overcome the lack of authority to sell. The clear implication was that the department gained a willing agreement from a landowner but went through the process of

51. Letter from Secretary of Maori Affairs, 6 June 1972, MA 19/1/759, vol 1, AAMK 869/683a

52. Acting Minister of Lands to P B Reweti MP, 8 March 1974, MA 1, 19/1/759, vol 2

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

taking by proclamation in order to avoid administrative and legal difficulties and to avoid extra expense.

The term ‘willing agreement’ in itself needs to be treated with care. Experienced lawyers such as Barker have shown how even in the context of general public works takings, section 32 agreements were often heavily influenced by the perceived lack of real alternatives. Where there was no right of objection for example, anything other than an ‘agreement’ could well have been regarded as pointless. Delays and uncertainty in the objection process as well as the powerful position of taking authorities with a consequent delay in compensation could also be a factor in deciding owners to enter an agreement. Finally, the taking authority had the backup of using compulsory provisions and the possibility that this might leave an owner even worse off may well have contributed significantly to decisions to enter agreements. All taking ‘agreements’ therefore need to be treated with some care and it cannot be automatically assumed that they were made on a truly willing basis.⁵⁴

These factors applied to Maori owners, as well as to general landowners, in cases where Maori owners were in a position to make agreements. There is ample documentary evidence that Maori were told in many cases that if they did not agree to a purchase, then the land would be taken. For example, the owners of Whataroa Maori reserve were called to a meeting to discuss a Crown proposal to buy the land. When one of the owners asked if they were obliged to sell they were told, ‘No, but the Government can place a proclamation over the land and take it . . .’⁵⁵ It seems that Maori may also have been at a disadvantage because of the lack of informal opportunities to negotiate and discuss options as compared with general landowners. In addition the extra problems with compensation faced by Maori owners may have decided some to take the possibly better option of a sale.

It seems clear that the Crown was also willing to apply pressure to reach an ‘agreement’ or ‘settlement’. This could take the form of Government officials and agents pressuring individual landowners or the use of the powerful position of the Crown to invoke measures intended to apply pressure to force an agreement. In addition, although Crown officials at times agreed to terms in order to effect an agreement and these were entered into in good faith by Maori owners, the Crown was noticeably reluctant to uphold the terms once the work had been constructed and the land acquired.

In 1947 the owner of the majority of interests in some Maori land in Te Kuiti received formal notice that the Public Works department needed to use her land as access to a nearby quarry. The concerned owner was then infuriated to find that the department took more than just access. Fences were cut, letting out stock, and a stone crusher began operating on her land. As a result she decided to prevent trucks from crossing the land. In an effort to calm things down the land court judge was approached and a native interpreter and native agent were sent with the works engineer to have a conference with her after which a ‘settlement’ was reached. In an unofficial note that was filed anyway, the native agent reported that the

54. R I Barker, ‘Private Right vs Public Interest – Compulsory Acquisition and Compensation Under Public Works Act 1928’, *New Zealand Law Journal*, vol 45, 1969, p 253

55. MA 1, 5/5/86

conference actually consisted of three hours of ‘explanation and persuasion’ as she raised all kinds of barriers ‘one by one of which we managed to break down’. After this and another two-hour session the next day, she finally agreed to sign the agreement ‘dictated to us over the phone from Wellington’.

The ‘settlement’ gave Works officials rights of entry and use of the property in return for an agreed payment, part of which was paid immediately and the balance was to be paid as soon as possible. Four months later the land court judge had to request some action from the department himself as the balance was still unpaid. He noted that it was not fair to delay the payment and the delay might also imperil the settlement as ‘Te Tau is difficult to control when she feels she is not being treated fairly and she seems to have justification here’.⁵⁶

The Crown could also use legislative powers to try and force agreements. In the 1950s, the Maori owners of the Rotorua Runanga 202A block agreed to sell the timber on it to private interests or to the New Zealand Forest Service, whoever offered the best price. The Lands and Survey department also wanted the block for a scenic reserve and offered to buy the land for the combined value of the land and timber. The land itself was worth about £55 while the millable timber was worth nearly £2000. By selling the timber the owners earned much-needed income but retained their land. The owners therefore refused to sell. Under the Forests Act 1949 however, the Minister’s consent was required for the sale of the timber. In 1953 the Lands and Survey department requested the Minister to refuse approval to the sale as ‘Refusal of consent would permit the re-opening of negotiations to purchase by the Crown’. The department kept arranging meetings of owners in an attempt to gain agreement to a sale and the owners just as determinedly refused to attend the meetings or opposed the proposal. In one case the department had to send cars to pick up two owners to get the necessary quorum for a meeting. In 1954 the department was still trying to have fresh meetings called and in the meantime the position was described as ‘. . . while the Maoris will not sell the land to the Crown for a scenic reserve, the Minister of Forests will not permit the sale of the timber’.⁵⁷

The Crown could also place restrictions on the alienation of land to ensure competition from other buyers did not push prices too high. In the 1960s owners of land near Lake Taupo were warned off making private deals over land the Crown wanted for reserves. The owners were warned of the restrictions and the penalties for breaching them.⁵⁸ Similarly, in the 1920s and 1930s the Defence department kept applying to have restrictions rolled over on about 22,000 acres of Maori land that it wanted to use but could not afford to buy.⁵⁹

However the opportunity for agreements before land was taken appear to have been much more limited for Maori land than for general land. This was simply because the ‘problems’ of multiple ownership of Maori land seem to have resulted in a widely used policy that contacting and negotiating with Maori owners was too difficult and therefore in the case of Maori land a taking authority could move straight to compulsory provisions.

56. Correspondence, MA 1, 21/2/6

57. Correspondence, 1953–1954, MA 5/5/91

58. MA 1, 5/5/1

59. MA 1, 5/5/8

It is undoubtedly true that contacting owners of freehold Maori land was often different to and could be more difficult than contacting owners of general land. However instead of making accommodations to meet this problem while still maintaining owners' rights, until relatively recently it seems to have been much more convenient to simply use this as a convenient excuse to go straight to compulsory provisions. In these cases legal protections were even weaker for Maori land and it seems likely therefore that Maori owners were much more commonly effectively denied this important protection afforded to owners of general land. In terms of the principles of Treaty partnership, this lack of effort or evasion of responsibility to make prior contact was also of immense concern to Maori owners. The general assumptions in the legislative provisions that Maori land could be subject to weaker protections for administrative convenience were therefore also reflected in administrative practice.

The policy of evading contact with Maori owners also had other implications. For example, where taking authorities could move to compulsory procedures so easily and the possibility of protracted negotiations could therefore be evaded, once again Maori land became a prime target for takings. The use of compulsory provisions also meant that in combination with the effect of other provisions, the protections concerning notice and compensation could also be more ineffective. In some cases, for example the bigger works projects, Works at least did communicate more with Maori owners about major proposals. However even into the 1970s, on projects considered too small to worry about it, was quite common for Works to ignore all the normal protections under the guise of it being 'necessary' to use compulsory provisions because of multiple ownership.

Crown officials also at times entered agreements with owners that involved terms imposed by owners, but although they were entered into in good faith, Maori owners were often unaware that the subsequent 'taking' procedure meant the Crown did not legally have to honour them and was often reluctant to admit any moral obligation. In these cases, it is clear that the use of the taking procedure was more important than simply an administrative device to shortcut difficult title problems.

It is often difficult to research these claims as there is often no record, apart from the owners' claims, that such agreements were made. Because the taking procedure vested the land without any conditions, even if such agreements were recorded, as the terms had no legal status, they were often not treated with the same care as the legal record of the taking and many apparently did not survive.

There is some documentation however that shows such agreements were made. One of the most well known is probably that concerning Maori land acquired for Raglan airport during the Second World War. In the mid-1930s the Air department made an effort to locate emergency landing grounds for the use of light aircraft on the main air routes. It was the duty of Mr Edmond Gibson, who was a senior official at the time, to locate possible sites. In February 1936 he found one near Raglan but was told by locals that it was Maori land and they would never agree to the use of it as it had important historical links and was the site of important burial grounds. By chance, Gibson met two local Maori men who confirmed that any agreement would be most unlikely. However, he persevered in trying to explain to them why

the land was needed, that it might be a Maori pilot who needed to use the field and that it was only required for emergencies and would be returned after the war. One of the men was a returned serviceman from the First World War and both became more sympathetic after listening to Gibson. They asked for a request to be sent to local elders and promised they would support the request on the understanding that, as promised, the land would only be used as an emergency airfield and it would be returned when it was no longer needed. Gibson reported back to his superiors on the deal and heard later that an agreement had been reached on the terms suggested.

Whatever records were made of such an agreement were later lost, possibly as the result of a series of restructurings of what was then the Air department. The land was taken for an aerodrome on 2 October 1941 and compensation awarded by the Maori Land Court. Part of the terms were that the Works department was to move the meeting house and associated buildings and re-erect them at another site. In 1953 this still had not happened so the court revised the compensation award and ordered a cash payment towards a new meeting house. The land stopped being used as a landing field about 1953. The aviation authorities began leasing the land but in 1969 decided to have it declared Crown land to be disposed of by the department of Lands and Survey. The land was then vested in the local county under the Reserves and Domains Act as an aerodrome reserve. The county leased the land to the local golf club on a long-term lease with rights of renewal. The lease did not exclude urupa and no requirement was made for their protection. The golf club also refused requests to fence urupa off. The lease itself also turned out to be invalid. The lease effectively took the land out of the owners' control, in spite of requests to have the land returned. The owners pursued the issue and it became one of the best-known cases of the land protests of the 1970s.

As it turned out, when Gibson read of the continuing dispute in 1979 he contacted the Government to confirm the owners' claims that the original agreement was subject to the return of the land. He also swore an affidavit to that effect in an attempt to uphold the honour of the Crown. He was a reputable man and the Government was obliged to take notice of him. He had been Director of Civil Aviation in 1949 and was held in high community regard. Eventually the Government did decide to uphold the terms of the agreement, although there were still differences over the payment required for the land for some time.⁶⁰

Other similar agreements were also made. Waharoa aerodrome was also established for emergency use during the war. In this case the Air department was not certain that it wanted the land and decided to rent it, although it initially took some effort by the owners and the Maori Land Court to ensure the rent was paid. It was also agreed that the land would be returned after the war. It was apparently put to the owners that the land was required because of the war emergency and would be returned after the emergency was over. The owners agreed because as one later put it, ' . . . if the Germans came and overran the land, it would be of no use to me. That is why I agreed'. If there was ever a written record of this agreement it was lost as early as 1944. However, the land court judge had been present when the matter was being discussed, although not in a formal role.

60. Correspondence, MA 19/1/671, AAMK 869/678a

In 1944 the Air department informed the Native Minister that it would not require the land for airforce or civil purposes after the war. However the local bodies and aero clubs in the area began to apply intensive pressure to have the field retained. By 1946 the now Civil Aviation department had been influenced by this and argued that the land should not be returned unless there was no reasonable possibility that anyone else might want it:

From the viewpoint of this department, the fact that an eminently suitable airfield has been developed at Waharoa at public expense makes it most undesirable that the land (or any portion of it) comprising the runways should be released until it has been definitely established that there is no reasonable demand for it as an aerodrome.⁶¹

The upholding of the agreement was clearly not a major priority.

This was a contravention of the terms of the agreement as the judge understood them, and in 1946 he wrote a memo outlining his understanding of the agreement. This was that if the land was no longer required for war purposes it would be returned to the owners. If the land was wanted for other flying purposes then he felt that should be a separate matter between those authorities and the owners:

It would I think be a breach of faith with the owners for the Government to take any step other than to carry out the bargain to reinstate and return the land.⁶²

Matters were delayed throughout 1947 in order to give aviation interests time to consider various proposals. The position was summarised in a 1947 Maori Affairs report. The National Airways Corporation, which was responsible for initiating and operating commercial air services throughout the country after the war, did not consider Waharoa would ever be used for commercial services and it was not required as an alternative or emergency field. However there was a strong local demand for the retention of Waharoa ‘firstly for club and training purposes and secondly in the hope that at a later date, it may be used by commercial services’. The report recommended that any further negotiations should be left to local authorities.⁶³

At this point it may have been expected that central government would return the land as agreed and allow local authorities or others to begin their own negotiations for the purchase of the field. However this was not the case. Intensive lobbying from local authorities, chambers of commerce, and aero clubs resulted in continued Civil Aviation support for retaining the land. The National Airways Corporation was also persuaded to agree that the aerodrome ‘may be useful as an alternate to Rotorua’ and that at a much later date ‘it might be of some value to serve feeder and sub feeder services’. The Maori Affairs department was also persuaded by mid-1947 that commitments to Maori were now having to be balanced by matters of ‘national

61. Acting Controller of Civil Aviation to Secretary of Native department, 9 September 1946, MA 1, 19/1/610, vol 1

62. Correspondence, MA 1, 19/1/610, vol 1

63. Maori Affairs to Prime Minister, 29 January 1947, MA 1, 19/1/610, vol 2

importance'. Although the department was concerned that the Crown was obliged in good faith to return the land and then seek fresh negotiations, it was persuaded that because runways and fences had already been constructed, then the owners could be approached with new proposals without first handing the land back:

While seeking to fulfil the promises made to the Maori owners, we must, on the other hand, give full consideration to the country's future air services . . . as the matter has now assumed what might be described as national importance . . .⁶⁴

The department therefore continued to discuss possible proposals with other departments. Civil Aviation continued involvement on behalf of aviation interests and Works began making plans for a smaller local airfield.

Civil Aviation was also responsible for establishing a committee to consider future civilian airport needs. In spite of a less than enthusiastic commitment from NAC, the committee decided on 23 January 1948 that the Waharoa aerodrome with shortened airstrips would be maintained as a civil aerodrome and requested that negotiations begin with the Maori owners for the acquisition of the land required. The first formal meeting with the original Maori owners was called just five days later on 28 January. Although the meeting was described as a consultation, it was clear that the decision to acquire the land was not a matter for discussion. Notes of the meeting show that the owners were completely opposed to the taking and wanted the land returned as originally agreed. They referred to the original agreement and the promise that the land would be returned when the emergency was over. As the emergency no longer existed, they wanted the land back. They also pointed out that the land had important ancestral links and burial sites. However, at the beginning of the meeting, a Works land purchase officer told them that it was his duty to inform them that 'the land is to be taken permanently for an aerodrome'. The Government was agreeable to giving some other land in compensation but 'the Government is definitely going to take the land'. Therefore discussion would only be accepted on the matter of compensation.⁶⁵ The owners were later described as 'satisfied' once the proposals concerning compensation including exchange of land were explained to them, although this was clearly not the case.

The airport was already a going concern and as so often happened the tidying up of details such as the actual formal taking of the land and the exact compensation details including the land to be included was a long drawn-out process. The transfer of land in compensation appears to have caused major problems and at one stage owners even threatened direct action to move matters along. The processes of finalising the formal taking and compensation details were still taking place in 1953.⁶⁶

In other cases, the Crown agreed to terms requested by owners when land was taken, where it felt the intent of owners could easily be avoided. In 1948 the Crown offered to purchase land from Maori owners required as an addition to a local park and school playground. The owners were willing to gift the land on condition that

64. Maori Affairs to Civil Aviation, 9 October 1947, MA 1, 19/1/610

65. Notes of meeting held at Waharoa, 28 January 1948, MA 1, 19/1/610, vol 2

66. Correspondence, MA 1, 19/1/610, vol 3

members of the original owners' families were included on the Domain Board administering the park. The department of Lands and Survey agreed because the terms in reality meant little. The department explained that Maori members would actually be appointed to the Domain Committee not to the more powerful Domain Board.⁶⁷

Crown policy in other areas also often influenced agreements so the intentions of Maori were undermined. In Porirua, in the case already cited, the Government proposed taking undeveloped land behind the pa for a housing development. The whole area was badly serviced, largely as a result of antagonism between the county council and Maori over payment of rates. Fragmentation of title was behind many problems, including the issue of paying rates and in effectively using the land. The land also needed extensive earthworks to be made suitable for housing and this was beyond the investment capacity of the Maori owners. The Government proposed to solve these problems by developing the land itself. The problems of poor services such as roading and water supplies would be improved for the whole area and it was promised that the Maori township at the front of the area would be improved at the same time. It was also decided to take the land under the Public Works Act to circumvent all the title problems. By the 1950s it was Government policy to try and reach agreement with owners before taking any land, especially where big projects were concerned. In this case, meetings were held at the pa, including with the Ministers of Maori Affairs and Works. At the same time, any new housing mortgages were denied for the land, effectively preventing the building or improvement of new homes while attempts were made to gain agreement to the proposal. It was also proposed that the expected improvements could be considered a means of remedying claims arising from the destruction of fisheries through other public works activities in the area.

The Maori owners were generally supportive of plans to redevelop and improve their land and to provide extra housing. However they were less enthusiastic about the compulsory taking of land. They made it clear that the land was important as a last remnant of ancestral land and that they wanted any housing to go to Maori needs in the area. Government officials rejected this however. A report claimed that 'It is questionable whether this proposition has much to commend it' while noting that the pa area itself was not a 'striking example of planned subdivision'. In addition, it was decided that '. . . The aggregation of further Maori families in or about the Pa area is really against policy' and it was better to 'avoid undue concentrations of Maori in the area. . . .' It was decided instead that the land would be taken to overcome title problems and would be used for mixed housing. An equivalent number of other sections would be made available to Maori throughout the various state housing areas in Wellington to make up for the ones used for non-Maori housing in the block.⁶⁸

In many cases where Maori land was taken, it seems clear that compulsory provisions were used because it was simply considered too difficult or too time consuming to contact owners. The habit of moving straight to compulsory

67. MA 1, 5/5/52

68. MA 1, 5/5/59, vol 3

provisions where Maori land was concerned apparently became part of the entrenched attitudes of taking officials. For example, when Works was brought in to help acquire a new school site on Maori land in Pipiriki township, the response from the local engineer was:

to follow the usual practise where Maori land is involved and take the land under the Public Works Act 1928, leaving the Court to make an award as to compensation.⁶⁹

In the case cited where the army wanted extra Maori land at Waiouru camp, the same attitude prevailed:

In view of the multiplicity of owners and the number of blocks of land involved it has proved difficult to make much headway in negotiations for the acquisition of this land. The most satisfactory course in the circumstances appears to be to take the Maori land by proclamation under the Public Works Act . . .⁷⁰

Other departments, such as Lands and Survey, and local authorities also seem to have adopted similar attitudes. For example, when the Lands and Survey department wanted land for a proposed scenic reserve and discovered it was held by a considerable number of Maori owners, the automatic response was that ‘probably it will be advisable to take the land under the Public Works Act’.⁷¹

As noted in previous chapters, Works did have methods available for contacting Maori owners such as those involving calling of meetings of owners used when purchasing land. These were developed well before this time period. For example, section 370 of the Native Land Act 1909 contained this kind of provision. The difficulties of contacting all owners were also recognised by rules that only required a quorum of owners to attend and enabled majority decisions to be made. No doubt there were some flaws in this process but at least it provided a means of contact with owners. However, taking authorities appear to have been very reluctant to use it. There is evidence that the Maori Affairs department tried to use such meetings for land takings right through this period and at times it was successful in informing owners of proposals, but except for big projects and takings requiring some cooperation, taking authorities appear to have given little support to such meetings. It was also often possible to contact leaders among landowners and hold useful talks with them. This was a traditional and acceptable means of contact for many Maori but again taking authorities were reluctant to even do this.

Instead Works often insisted on very technical formalities that almost ensured agreements would be impossible. For many years for example, Works insisted on the need to obtain ‘proper’ consents from all owners, even though this wasn’t even required for a Crown purchase. For example, in 1955 when land was required for Meremere power station the District Commissioner of Works requested the names and addresses of owners and informed the registrar of the land court that:

69. District Commissioner of Works Wanganui to Registrar Maori Land Court Wanganui, 9 February 1953, MA 1, 5/5/78

70. Maori Affairs to Army department, 6 September 1950, MA 1, 5/5/72

71. Lands and Survey to Maori Affairs, 27 September 1938, MA 1, 19/1/151

If however it is not possible to obtain properly attested and certified consents from the owners or if there is doubt as to the Maoris now entitled to the land, or numerous Maoris affected, it will be necessary to take the land under the compulsory provisions of the Public Works Act.⁷²

For many years the department of Maori Affairs also followed a similar although not so inflexible policy and agonised about calling meetings of large numbers of owners who might have to travel long distances to discuss land of very little value. At the same time the department neglected to consult those owners in the locality for even an indication of opinion. By the 1950s however, the department was beginning to advise taking authorities to at least contact owners in the locality for their views. When the Wairarapa South County Council wanted to take land for a road deviation it asked the department and the Minister for assistance because it felt that there were too many owners to contact itself. The department replied that at least the council could contact owners living in the locality for their views.⁷³

Works did have some genuine concerns about the process of calling meetings of owners. The process of calling such meetings was often complicated and subject to delays, especially if successions had to be decided first. Works also complained that the relative lack of land value meant the landowners were being put to more expense in attending a meeting than the land was worth. However these were problems imposed on Maori owners by the system developed by the land court. They were now being used to deny Maori normal rights in the taking process. Costs for such expenses as attending meetings were difficult to extract from taking authorities for all landowners and proper recognition of this problem was not made until legislative changes in the 1970s. However it is clear again that this problem fell relatively more heavily on Maori owners because of extra costs where title was so fragmented and owners with interests could be scattered over a wide distance. Sometimes, especially where big projects were involved, departments assisted with the costs of attending meetings, but this was apparently not a common occurrence.

Taking authorities also had the expertise of the Maori Land Court in assisting with determinations of ownership. Although this was used more often in later years, again most authorities were reluctant to get into the complexities involved. They were, however, noticeably keen to leave the same complexities to the court when compensation had to be paid out. In fact there is a noticeable reluctance for taking authorities to come to terms with the Maori land title system at all, even though in theory it should have treated it with equal respect to the general land system. This reluctance and unfamiliarity may have caused further problems for Maori landowners and certainly helped convince taking authorities to rely on compulsory provisions.

In Napier in the 1950s for example, the District Commissioner of Works informed the registrar of the Maori Land Court that on investigation of land required for a post office site, a search in the Napier Land Transfer Office had shown no title to the land 'and accordingly it appears that procedure under the

72. District Commissioner of Works to Registrar Waikato Maniapoto Maori Land Court, 22 August 1955, MA 38/2, pt 3

73. Correspondence, 1953, MA 1, 38/2, vol 2

Public Works Act 1928 is the only convenient method of acquisition'.⁷⁴ In 1975, following improved notice provisions, it was realised that Works had previously failed in practice to treat the Maori Land Court title records with the same importance as those in the main land transfer system. This may well have caused problems to landowners when taking notices were issued as well as causing difficulties when compensation was awarded. A Maori Affairs department solicitor noted that Works should have ascertained the correct descriptions of Maori land taken, by referring both to the land transfer system and the Maori Land Court title records, but in most cases they had completely failed to have any regard to the Maori Land Court title system.⁷⁵

In later years, it became policy for Works to attempt to purchase Maori land before resorting to taking, but issues arise of how effective this policy was when moving to compulsory provisions because of title difficulties was so easy. There were also other attempted improvements. It was policy for many years to contact the department of Maori Affairs for advice and assistance and the Maori Land Court was also contacted for names and addresses of owners. Again issues arise of how effective these policies were and how well they were followed and this requires more extensive research. Preliminary research indicates, for example, that the department of Maori Affairs and the Maori Trustee had great difficulty in persuading Works to keep to its policy of informing them about every proposed taking of Maori land.

For example, the Works and Maori Affairs departments appear to have made regular formal agreements for Maori Affairs to be notified of all proposed takings of Maori land. However, just as regularly Maori Affairs appears to have been forced to complain that the policy was obviously not being followed. In 1947, for example, just such an agreement was made between the under-secretaries of the two departments. It was intended that the Under-Secretary of Maori Affairs would then inform the registrar of the appropriate Maori Land Court to see if there were any objections to the takings as a matter of policy or expediency. For example the land might contain burial sites or there might be some blocks which the Maori owners considered reserves or papakainga, but which had not been officially gazetted as such. There might also be reasons why certain owners or certain land should not be the subject of a taking. 'Generally speaking' the under-secretary did not feel there was a need to contact owners about the information as they would have the statutory 40 days to make their own objections. However, where leading owners could easily be contacted, he thought it may be as well to discuss the information with them before passing on any views.⁷⁶

By 1948 Maori Affairs was complaining that the policy clearly was not being followed. The under-secretary pointed out that if Works would cooperate they might well save themselves considerable embarrassment by obtaining information they might be unaware of, such as the existence of important burial sites. They might also avoid unnecessary delays caused by aggrieved Maori.⁷⁷ This pattern of

74. District Commissioner of Works Napier to Registrar Maori Land Court, 4 April 1952, MA 1, 38/2, pt 2

75. Internal Maori Affairs memo, 26 February 1975; and other correspondence, MA 1, 38/2, vol 7

76. Under-Secretary Maori Affairs to all Maori Land Court Registrars, 11 September 1947, MA 1, 38/2, vol 3

77. Maori Affairs to Commissioner of Works, 15 December 1948, MA 1, 38/2, pt 1

making agreements and then complaints that they were not being properly kept to appeared to continue until legislative changes in the 1970s required proper notification.

Works often did routinely contact Maori Affairs about takings, but the policy relied largely on the goodwill of local district commissioners. While the policy was often adhered to for big projects, it was often overlooked for many smaller takings. The policy also needs to be treated with some care, as in many instances Works appears to have used a routine contact with Maori Affairs as a replacement for trying to contact the actual owners. While the department of Maori Affairs obviously felt its role in advising of possible problems was clearly separate from the requirements to notify owners, it seems that in many cases Works regarded the notification as a reasonable alternative and no objections therefore meant agreement. When the Maori Trustee was given the responsibility of negotiating compensation in 1962, Works was required to notify that office so it knew of upcoming compensation claims. The district offices of Maori Affairs noted at the time that Works appeared to feel that this was an adequate substitute for giving notice to owners.⁷⁸

While the department of Maori Affairs was often helpful in assisting owners, there were other cases where it seemed more concerned with smoothing the way of the taking authority than advocating owners' concerns and interests. The department was concerned to avoid unnecessary delays in takings and to help taking authorities to avoid embarrassment, but the readiness with which it often accepted takings and held meetings to change owners' minds or to persuade them to accept proposals often caused resentment. For example, in the case already cited, concerning a group of farmers and their invalid licence to mine limestone on Maori land, it is obvious that the initial failure of officials to properly challenge the licence and then their determination in trying to persuade the owners to agree to ratifying it, only made the owners more 'desperate' and resentful that the department was more interested in the plight of the farmers than the interests of the owners.⁷⁹

In addition, the department often did not have enough information to adequately answer owners' queries when meetings of owners were called to discuss proposed purchases of land required for public purposes. For example, when Maori land was required for a school site in Pipiriki the department called a meeting of owners to discuss a possible purchase. Departmental officials were unable to answer owners' questions and could not properly explain the reasons why the Education Board wanted all the land required, or why other Crown land in the area could not be used. In addition, although they were authorised to offer up to £30 they only offered £10. As a result, opposition to the proposal was so strong the chairman of the meeting decided the opposition was obvious and declared the motion lost. Works was then brought in and advised taking the land under the Public Works Act.⁸⁰

There were other attempts to improve takings procedures when it came to Maori land. It is clear that attempts were made to improve communications between

78. Wanganui District Office memo, 17 July 1964, MA 1, 54/19

79. MA 1, 19/1/650

80. MA 1, 5/5/78

departments, and that at times politicians insisted that compulsory takings of Maori land required Cabinet approval, particularly where the Maori Affairs department objected to the taking. For example, in 1952 Works reiterated the policy of contacting Maori Affairs. In a memo it was noted that it was customary to notify the department of proposals to take Maori land and this was done partly out of courtesy and partly in case the department had any knowledge of possible objections to the taking apart from any objections the owners themselves might want to make.⁸¹ In 1952 the Education department also reported to Cabinet seeking approval for a proposal to take some Maori land for a school.⁸² However more research is required into how effective these measures were. There is ample documentation for example that appears to reveal that Works officials could be quite haphazard in their notifications and communications with the Maori Affairs department. The issue also arises of how adequate a substitute notifying the department was as a means of improving communication with owners.

It seems clear that in spite of a general government policy by the 1950s to attempt to acquire land by agreement before any compulsory provisions were used, it was often simply too easy to go straight to compulsory provisions as being more 'expeditious' where Maori title was concerned. Documents also often leave the impression that this was an easy way out of what might prove to be 'protracted' negotiations over agreements, particularly in later years when Maori were more assertive in requiring land for land and in cases where Maori were in a position to hire expert assistance in negotiations. For example in the Murupara project concerning negotiations over the acquisition of land for a rail transfer unit in 1953, officials were clearly concerned when the owners hired a Queen's Counsel and an expert valuer to assist them.

The big projects such as Tongariro also require their own research. It is clear even from preliminary research that the initial goodwill and attempts to properly inform and negotiate with owners often simply got overrun by other imperatives once the land was in use and new needs became evident. The complicated nature of the issues involved often means that owners often appear sidelined by the enormous number of officials, valuers, lawyers, and others who become involved in such projects. The whole process appeared to become very complicated, bureaucratic, and paternalistic.⁸³

However, in spite of the good intentions of the Works policy statements it seems clear that right into the 1960s and 1970s, it was still common for Works to undertake smaller public works projects such as road alignments without bothering to inform either the department or the owners. It was often not until agencies were given legislative responsibility to improve matters that the scope of some of these problems became apparent in official documentation.

In the 1960s the Maori Trustee was legislatively required to negotiate compensation for Maori land taken for public works that was held in multiple ownership. As a result, the Maori Affairs department made yet another effort to

81. Memo from Works to Maori Affairs, 13 March 1952, MA 1, 38/2, pt 2

82. Cabinet papers 1951–52 re Kaihu school, MA 1, 38/2, vol 2

83. For example, MA 1, 54/19/24/1

ensure it was being notified of all takings so that it could alert the Maori Trustee and maintain accurate records of proposed takings. The department requested information from its district offices as to whether such notifications were being made available and the results were revealing. The Rotorua district office replied that:

The main problem in dealing with the Ministry of Works seems to be that they will go ahead and do the job and leave the formalities of proclamation etc to be followed up years later after the job has been completed. . . . We have one case in the Matahina dam area where the Ministry of Works just went ahead and helped themselves to the use of Maori land and we did not hear about this until one of the owners complained. Our impression is that the technical staff in the Ministry of Works goes ahead and gets a job done without regard to ‘administrative niceties’.⁸⁴

The district officer in Gisborne also commented that the majority of cases concerned land taken some years ago for road straightening or widening purposes where Works in the past overlooked the necessity of proclaiming the land, not to mention the assessment of compensation as required previously through the Maori Land Court.⁸⁵

The Auckland office did not have problems with notifications but was concerned at the ready use of compulsory provisions for Maori land. The office had recently tried to persuade the Ministry to negotiate with the owners first (there were only six owners in each of two recent cases of Maori land required). However, the Ministry seemed to take the view that the Public Works Amendment Act 1962 absolved them of any obligation to deal with owners and that settlement of any claim for compensation would be with the Maori Trustee. The office told Works that it should only be called upon in matters of dispute and that where it was convenient to deal with a small number of owners it should do so and acquire the land by transfer. The office had offered to cooperate fully in assisting Works to do this but had not received a reply and asked for further advice.⁸⁶

The Maori Trustee responded that while it was desirable for the taking authority to negotiate, it was not obliged to do so and in some cases where there were large numbers of owners, negotiations were ‘out of the question’. The Maori Trustee could not ‘thrust negotiation down the throat of the taking authority’. At best it could only make a suggestion that negotiations were tried where there were few owners and they lived within reach. The Trustee also had no legal authority to conduct negotiations for an agreement to take land unless he was an owner.⁸⁷ The Maori Trustee also informed local authorities of the new responsibilities for negotiating compensation and asked that the authorities also notify him of any intentions to take land.⁸⁸ It is not clear from preliminary research how well local authorities followed up on this request.

84. District Officer Rotorua to Maori Affairs Head Office, 5 June 1964, MA 1, 54/19

85. Memo, 25 May 1964, MA 1, 54/19

86. Memo from District Office Auckland, 29 May 1964, MA 1, 54/19

87. Memo, 25 June 1964, MA 1, 54/19

88. Letter to New Zealand Counties Association, 26 June 1964, MA 1, 54/19

The continuing delays in notices and formal proclamations also prompted the New Zealand Maori Council in 1965 to seek an amendment to the Maori Affairs Act 1953 on the basis that any taking authority should have to state the legal basis for any occupation of Maori land and if this was not forthcoming within 30 days then the Maori Trustee should be able to sue. This suggestion was rejected by the Under-Secretary of Maori Affairs as not being ‘appropriate’, as if taking authorities exceeded their rights of entry, then anyone who had suffered could seek a legal remedy for trespass.⁸⁹ In 1969 the department was still trying to seek ways to overcome lack of notification problems.⁹⁰ It was also realised that the past failures of Works to refer to Maori Land Court titles properly in making land-taking proclamations may also have caused problems in proper notifications and in payment of compensation where, for example, partitions had not been properly taken into account.⁹¹

As late as 1974 there was still evidence of failures by Works to properly notify owners of Maori land for works such as road realignments. The Hamilton district office complained for example, that in one case road widening had been carried out and was in use for a number of years before Works got around to giving notice of intention to take the land for a road and for better utilisation. The office complained that this practice made:

a farce of the whole statutory procedure which gives the owners the right to object. . . . A lot of ill feeling has arisen amongst Maoris in this district over what they have regarded as the unfair proportion of Maori land being taken for public works etc and the sort of situation that has arisen in this case does nothing to improve their temper.⁹²

In the 1960s public works takings attracted increasing criticism. There was a less uncritical acceptance of the need for more big hydro projects for example, and opposition to takings for a proposed hydro dam on the Wanganui River resulted in an early alliance between Maori and environmentalists.⁹³ This kind of pressure and a renewed call to allow the public more input into decision making caused the Government and Works to begin re-examining some of their taking policies. With more takings affecting relatively more people, as the result of works such as motorways, there was also pressure to strengthen the procedural protections for landowners. General improvements were made in response to this, such as the removal of hearings of objections to the planning process in 1973. At the same time, the discriminatory effects of many of the applications of the provisions such as those concerning notice for Maori land, were recognised and improved in the 1970s and these improvements were continued into the 1981 Act.

89. Correspondence, May 1965, MA 1, 54/19

90. Correspondence, 1969, MA 1, 54/19

91. For example see memo of 14 November 1974, MA 1, 38/2, vol 7

92. Memo, 1 October 1974, MA 1, 38/2, vol 7

93. MA 1, 19/1/39, vol 1, AAMK, 869/657d

11.2 COMPENSATION – POLICIES AND PROCEDURES

As already seen, the ancient principles of public works land takings assumed that full and prompt payment of compensation was the vital balance that prevented such takings from being no more than outright confiscations. Similar principles were described in the New Zealand courts in 1941. The aim of awarding compensation was to do justice to both the taking authority and the landowner in order that ‘anything in the nature of confiscation must be avoided’.⁹⁴

There is no doubt that many issues arising from the application of compensation provisions affected owners of all land taken for public purposes. In practice, as Barker and others have shown, the principles of full and equivalent compensation were whittled away to a large extent in New Zealand by legislative rules and case law and this applied generally to all land takings for public purposes. Eventually, increasingly stringent criticism by the 1960s produced some redress in various amendments in the 1970s. For example, the reinstatement of equivalent compensation in the concept of a business for a business or a house for a house. It seems however from even preliminary research that in many cases, compensation provisions were generally even more ineffective when applied to Maori land takings than to land takings in general.

For example, the harsher treatment of Maori land takings when it came to compensation, often stemmed from discriminatory legal requirements. These included generally weaker notification provisions that also affected the owners’ ability to seek proper compensation. The fact that compensation hearings had to be heard by the Maori Land Court for much of this time may also have worked to the detriment of Maori interests in receiving proper compensation. The requirement that for Maori land takings, the taking authority had to make the application for compensation, also appears to have caused enormous problems in practice.

In addition, many rules and provisions concerned with compensation in general appear to have operated less effectively or in a more detrimental fashion when applied to Maori land takings. This was often again because proper allowance was not made for the problems of land held in multiple ownership. For example, the same difficulties taking authorities complained of in finding all owners to notify when a taking was proposed, were also present when compensation had to be paid out. In addition while an individual owner of general land might complain compensation was inadequate to buy equivalent land, an owner in Maori land held by multiple ownership was much less likely to gain a payment that was enough to buy other land once compensation had been divided up to pay all owners their shares. Many case files illustrate these issues. For example, when Puketapu E block was taken for New Plymouth airport in 1968, there were over 200 beneficial owners with interests in the land and compensation worked out at less than 20 cents per share.⁹⁵

The special significance of Maori land was also not recognised in compensation provisions. This was especially important when the payment of compensation was

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

95. Letter from Maori Trustee Wanganui, 25 July 1968, MA 1, 54/19/6

used to reject any continuing concerns Maori might have about the land and its ultimate return. It is very common to see comments in official documentation that Maori land was taken but compensation was awarded so there could be no grievance, or that it was proposed to take land and have compensation awarded so objections could safely be overruled. The assumption that because compensation was awarded the issue was solved needs to be treated with some care, especially where Maori land is involved. When land was only assumed to have a commercial value, it was common to assume that if compensation was paid then the former owners had no further interest in the land. However this took no account of other values such as the emotional and cultural attachment to land that meant an interest remained for Maori, regardless of the present legal ownership.

Compensation payments for Maori land also often reflected the marginal economic position of Maori and problems with the fragmentation of Maori title. It seems to have become an entrenched attitude that Maori land was rarely worth much compensation or any improvements would automatically outweigh any possible compensation. The relative powerlessness and poverty of Maori compared to general landowners also appears to have made evasion and delays in paying compensation that much easier for taking authorities.

The whole issue of assessment of compensation is extremely complicated and subject to a great deal of often intricate case law, and it is well beyond the scope of this report to go into this in any detail. In many cases, it is also probably impossible to go back and determine whether compensation was assessed fairly at the time for an individual case. In addition, the valuation of land is not an exact science and is influenced by attitudes, experience, and who the valuer is working for, as well as more objective criteria. However, there are indications that assessments need to be treated with some care and that Maori land takings could have suffered in the applications of various rules in comparison to the situation with general land.

Maori land often appears to have been valued at very low rates for compensation purposes. This is no doubt partly because Maori land was often marginal and had often been allowed to revert or was never developed because of the problems of title fragmentation. In addition there are other factors that may have had an influence. In spite of denials it seems to have been common for example to view Maori title as an obstacle which once removed almost automatically increased the value of the land. In addition taking authorities often had the means to provide valuations which supported their position in court while Maori owners were not in a position to produce opposing evidence. For example it seems to have been common for taking authorities to value beach land and sandhills as poor farmland when in fact they were required for camping grounds and they had been used by Maori as access to fisheries and traditional food sources, not as farmland.

There were also problems with Maori owners even knowing the land was taken and compensation awarded. It was quite possible for owners not to be represented when awards were determined and for them not to realise compensation had been paid. Often compensation only worked out at a few pennies or cents for an individual and this could be added to other moneys being distributed for leased land for example, without any indication that compensation was included. It is common to read of complaints from Maori that they were unaware of the land being taken

and compensation made and this could easily happen. It is not surprising then, that many Maori felt that public works takings were little different from confiscations.

There appear to have been a number of other issues arising from the special problems of valuing Maori land for compensation. For example, valuations were often based on other sales in the area and the assumption that land was being bought and sold on the open market. However this was often not the case with Maori land. Maori land often by definition had been kept out of the open market. The Government valuation of land might therefore have been well out of date or not particularly useful at all when land was taken. Special Government valuations were often made to get a better market value but these were often inadequate and difficult to calculate. Issues also arose of whether to use a Government agency to make the special valuation when it was the Crown often involved in the taking. When the Maori Trustee became involved in negotiating compensation in the 1960s for example, accusations of possible collusion convinced the office to abandon having special Government valuations. Instead it was decided to go for an outside valuer in principle in cases where there were ‘big issues’ or where the going was likely to be ‘sticky’.⁹⁶

Incidents such as negotiations over the Hairini blocks taken for motorway land near Tauranga also caused the Maori Trustee some concern that Works and the Valuation department were colluding to manipulate figures. The Trustee questioned for example how valuations could be agreed at \$29,000 for one block and \$5000 for another but then a joint valuation for both could be \$30,500. The Maori Trustee was also concerned by the Works threat that the office should reconsider going to court because it would incur costs if it lost.⁹⁷

Issues also often arose from the Maori Land Court jurisdiction over compensation for Maori land while compensation for general land was awarded by a Land Valuation Court run by experts and specialists in compensation law familiar with the latest developments in the area. There was some concern for example, that the Maori Land Court may not have picked up on trends in awarding compensation or on case law where an apparently unjust rule was avoided by judges of the Land Valuation Court. There was also some debate about the application of compensation provisions concerning Maori land. Sometimes issues arose of whether general legislative amendments to compensation rules were also meant to apply to the section 104 concerning compensation for Maori land and over the exact jurisdiction of the Maori Land Court.⁹⁸

In addition there were concerns that while the Crown was able to appeal Maori Land Court decisions it felt were too generous, Maori owners did not generally have the means to contest awards that they felt were too low. This provided an uneven result and may also have swayed the court to make awards on the low side. The whole area of assessment was very complex and often required court litigation. It appeared to assume that landowners had sufficient means to protect their interests

96. Letter, July 1965, MA 1, 54/19

97. File note, 21 March 1972, MA 1, 38/2, vol 6

98. For example, see issues raised in 1959–1961, MA 1, 38/1/1, vol 1

but this was rarely the case with Maori owners and much more difficult with fragmented title.

The issue of the basis of compensation awards by the Maori Land Court also needs more research. It seems clear that many awards were made to take into account some future benefit the taking authority assured the court would happen, but there was apparently little supervision of whether this did in fact occur. For example, compensation for land taken for roads was often very low or nil because the taking authority argued the road would provide improved access to remaining land. However, besides the fact that Maori may not have wanted to subdivide or lacked the capital to do so, subsequent zoning restrictions and often later takings could also prevent any subdivisions actually taking place. The supposed advantage, taken into account in determining compensation, therefore never materialised. For example in a case in Gisborne, the court awarded no compensation on the basis that the road being built would open up other land for profitable subdivision. The council then later tried to take the other land for a rubbish dump, preventing subdivision anyway.⁹⁹

Sometimes the court also appears to have made awards on the understanding that the taking authority would carry out certain arrangements. Again these were often not undertaken and there seems to have been little supervision over this. An example of this is the Kaka Point case already cited. In that case a 1910 compensation award had been made on the basis that road access would be made to the beach. When the county went to take more land in 1939, it was discovered that the road had never been formed. Maori rarely had the means to go to court to ensure these kinds of terms were upheld.

In 1962, possibly in response to these issues, and also to simplify the administration of the compensation process, the Maori Trustee was made the mandatory agent for negotiating compensations for Maori land taken that was in multiple ownership. Even this agency found difficulties with the complexity of much of the law surrounding assessments. At this time the jurisdiction over compensation awards was also moved from the Maori Land Court to the Land Valuation Court.

It was in the interests of taking authorities such as Works to minimise the costs of compensation. They became very adept at taking advantage of all technicalities and in challenging all efforts to gain compensation. In many cases the only remedy was in going to court, but Maori owners were often not in a position to do this. Even agencies such as the Maori Land Boards had great trouble in dealing with the intricacies of compensation rules and their application by Works often seemed to produce unfair results. If these agencies wilted in challenging the powerful Works department it is not surprising that Maori owners found it difficult to challenge the practices of taking authorities on their own.

An example of this type of difficulty is illustrated in the experience of the Wanganui Maori Land Board in 1932. At this time Works decided that it wanted to remove metal from Maori land that was leased under the control of the Maori Land Board. Works issued a proclamation taking the land and made a routine application

99. MA 1, 38/2/1

to the Maori Land Court for compensation. It then moved on to the land and helped itself to 10,000 cubic yards of metal. Having achieved this, it then revoked the proclamation and asked the court to dismiss the compensation application on the basis of the revocation.

The Maori Land Board queried this and asked Works to at least pay a royalty for the metal taken. The board reminded Works that although the board controlled the lease, there were actually the interests of beneficial Maori owners to be taken into account. Works assumed a totally uncompromising attitude and refused to consider any compensation. In a series of letters, Works claimed on the one hand that it had caused betterment to the land worth more than any compensation due, as it had built a road to the quarry and had developed the quarry and left it as a going concern for someone else to take on. On the other hand, Works refused to pay royalties on the metal because it claimed there was no market for the metal other than itself. Therefore the metal had absolutely no commercial value and no compensation could therefore be due. In addition Works claimed that the royalty rate claimed by the board was outrageous.

The Maori Land Board persisted, pointing out that the rate had been suggested as the going rate in the area and that as Works had not consulted before taking the metal there had been no opportunity to discuss payments. In addition the land was leased so the advantage of any betterment (which was challenged by the lessee) would go to the lessee not to the beneficial owners. Works remained adamant and insisted that betterment meant no compensation was payable and that anyway the application was for land taken, not damages. When the board appeared likely to take the matter to court, Works resorted to a common tactic in threatening that it would insist on costs if the board lost. This was quite serious as the actions of Government, funded agencies were not well received if they incurred costs losing court cases. At this point the bemused board sought the assistance of Maori Affairs Head Office but apparently the matter was not pursued further.¹⁰⁰

The issue of royalties for material taken from land illustrates the way in which compensation assessment rules often appeared to apply harshly to Maori landowners. The general rule in assessing compensation for material was that compensation was payable if there was a ready market for the material outside the taking authority and therefore the landowner was losing out from such a taking. An example would be the taking of an already established metal quarry. In a case where there was no other market than the taking authority however, it was held that a landowner should not be able to take advantage of the situation and make a gain that would not otherwise have been possible. This seemed reasonable, but the application of this rule often appeared to penalise Maori owners unduly.

Part of the problem was that Maori owners were often not in a position to develop a commercial quarry because of a lack of capital and because of title problems. It was often therefore more open to question whether their metal had a market or not. There were also issues of the interpretation of a market. Even if two or more local bodies and Works were interested in metal for example, Works insisted this was one Crown market because it provided roading funding to the local authorities. In

100. Correspondence, MA 1, 21/2/5

addition Maori owners already struggling financially often suffered more from the loss of royalties and were less able to challenge a taking authority over payments. Sometimes the legislative requirements concerning Maori land also hindered the development of such business opportunities. Initially the Maori Land Court seems to have simply accepted the viewpoint of taking authorities on these issues but as more cases of apparent injustice arose the court began taking a more assertive role from about the 1940s and began investigating the existence of a market itself.

A good example of this issue is the case of a proposed quarry on Maori land in the Waimaha development scheme in the 1940s. A private roading contractor had run out of metal at his previous quarry and approached the Maori owners to lease some of their land to open a new quarry. He was willing to pay a reasonable rental and to put in all necessary roads and bridges and maintain them while he used the site. He was also willing to employ returned Maori servicemen on the work. It seemed an ideal situation to the owners who badly needed the royalty payments to help meet land development costs. The land would also remain theirs and the roading would be useful for the development scheme.

Because the land came under Part 1 of the Native Land Amendment Act 1936, the owners were also required to gain the consent of the Board of Native Affairs before the agreement could be finalised. The board approved the owners' request subject to Works approving the proposed royalty rate. At this stage, Works did not know of the existence of the metal. However the local engineer, in spite of being given samples of metal, refused to consider the request until he had seen the quarry. The owners allowed him to enter the land on condition he did nothing to jeopardise their interests. The Works engineer then told the contractor that the department was not interested in metal from the site and it would not be suitable for Government road and railways work.

The contractor had already also shown samples to two local bodies however and they had shown an interest in the metal so he decided to go ahead and develop the quarry. As a consequence he again had to ask Works for approval for the royalty rate so his agreement with the owners could go ahead. On finding out the quarry was to go ahead anyway, the Works official then set in motion procedures to have the land taken under the Public Works Act. The owners and the contractor complained and the matter was put to Native Affairs Minister Mason. He did not favour a compulsory taking in the circumstances, as he felt any saving in royalty to the Crown would be at the expense of the Maori owners and he informed the Minister of Works of this.

In response however, Works expressed concern about saving taxpayers' money and claimed the land had to be taken as the metal was 'essential in the public interest' as it was required for road construction works. However it seems obvious that gravel would have been available elsewhere, it may just have been more expensive or difficult to obtain. Works also objected to a private contractor having a 'monopoly' over the metal. The 'only satisfactory method' in such cases was to acquire the land and pay compensation in accordance with the Public Works Act. In this case compensation would have been tiny as only the land would have been involved. Works also insisted that the 'Crown', including the two local authorities was the only market. On the other hand, under the agreement with the contractor,

the owners stood to gain royalties, improvements such as roads, and to keep their land.

Works insisted that it was policy not to pay royalties for both European and Maori land and that if the Maori owners received more in royalty than in compensation then they would have received a payment out of public funds to which they were not entitled ‘either by law or by true principles of compensation for their loss’. It was simply following policy and ‘This department has for many years endeavoured to combat the payment of royalty for metal on account of the unjustifiable expenditure of both Government and local body funds involved’.

Mason continued to object to the taking however and argued that the original agreement should be allowed to stand. He relied on his own previous experience in contracting to agree that the proposed royalty was reasonable. He also rejected the claims of monopoly. If Works was prepared to offer the same terms, the Maori owners were quite prepared to deal direct with it instead of the contractor. In the end, Prime Minister Fraser agreed to allow the taking to go ahead and to have the Maori Land Court assess compensation. At that time the Maori Land Court was involved in cases where it had become more assertive in determining such compensation, although the Crown was also appealing awards it considered too high.¹⁰¹

The larger works projects have even more complicated issues arising from compensation assessment. Examples are contained on the files dealing with land taken for New Plymouth airport for example and big projects such as the Tongariro power project.¹⁰² These often involve very complicated assessments with large numbers of valuers and others involved. One major feature seems to be that the concerns of Maori owners rarely appear in all the paperwork coordinating and paying numerous valuers, lawyers, and other experts, as well as all the Government officials involved from a variety of agencies. The actual concerns of owners, for example, that they receive land instead of money, are often treated as simply a nuisance or as an attempt to ‘muscle in on the Crown land’.¹⁰³

The issue of land instead of cash in compensation also needs more research. As already seen, political leaders were often much more sympathetic to this than Government officials. Although it was possible to offer land, it appears to have been very difficult in practice, not only because departments could always find a better use for almost any Crown land but in the mechanics of vesting. The Maori Trustee appears to have also had some difficulty with the concept when the office was required to negotiate compensation after 1962. As late as 1966, for example, the office debated over whether ‘compensation’ could mean land as well as cash and whether a land offer from a local authority as opposed to the Crown was covered by the office’s powers of negotiation.¹⁰⁴ The fact that the Maori Trustee had no power of negotiation before land was formally taken also possibly prevented opportunities for making more flexible compensation deals in negotiations before taking, as was

101. Correspondence, MA 1, 21/2/5

102. MA 1, 54/19/6; MA 1, 54/19/24/1, vols 1–4; and general compensation files such as MA 1, 38/1/1

103. As described in Maori Affairs memo to District Office Wanganui, 18 March 1965, MA 1, 54/19/24/1, vol 1

104. District Office Hamilton memo, 23 March 1966, MA 1, 54/19

apparently more common with other land. Informal negotiations may have also resulted in more acceptable amendments to takings.¹⁰⁵

Works continued to be reluctant to deal with Maori owners and to become familiar with Maori land titles. As already seen this may also have had an impact on whether compensation was properly awarded. Works also continued to only register compensation certificates against title in the District Land Registry but not in the Maori Land Court. This meant the Maori Trustee continued to have problems in chasing up compensation and in knowing about agreements, and the Maori Land Court also lacked proper records making it much more difficult to establish for example whether the terms of compensation awards were properly carried out.

It is clear that when owners were in a generally poor position to enforce proper compensation, then evasion was easier. There are many recorded instances of compensation evaded or not properly paid to the actual Maori owners. For example, irregularities were discovered in Otorohanga township when titles were investigated when lessees wanted to gain the freehold. In one case the local council came to an agreement over compensation with the lessee and also paid the compensation to the lessee on the promise that the lessee would forward an unstipulated amount to the actual owners. This of course was illegal and there was no record of the owners receiving anything.¹⁰⁶ As already seen, proper compensation could also be avoided by making promises such as road access which were never implemented.

Documents also reveal an apparently widespread use of legal technicalities to avoid paying compensation. One of the most common was to carry out work or take material but not actually take land, and until land was formally taken, compensation could not be assessed. For example river and drainage boards had extensive powers to carry out major works. However if they did not actually take land they did not have to undertake any associated requirements such as giving notice or paying compensation. Some compensation might be due for damages but this was very difficult to prove as the boards insisted any work was a betterment, even if it was unwanted by the actual owners or damaged food traps or burial sites the owners were concerned about. In 1970 a local drainage and river board entered Maori land near Morrinsville in this way and carried out extensive works, including the construction of a large dam and extensive stopbanks and river diversion channels. The view of the local office of Works was that the land should have been taken. However the board insisted it had sufficient powers to carry out the works without any takings.¹⁰⁷

Sometimes special circumstances also meant that ordinary notice and compensation provisions for all land takings did not apply. For example, during the war it was decided that normal procedures might provide important information to the enemy. Action was taken to ensure that the Minister could delay formal takings and applications for assessment of compensation in order to prevent important information being made public. The Government also took steps to ensure that the

105. Letter written by J E Cater for Maori Trustee, 7 December 1965, MA 1, 54/19

106. MA 1, 54/16/5

107. MA 1, 38/2, vol 5

Maori Land Court would not accept independent applications from owners or initiate action itself. Assurances were made that ‘at the proper time’ action would be taken to address these matters and have them properly remedied. More research is required as to whether these assurances were carried out.¹⁰⁸

Issues also arise out of the actions and attitudes of Government agencies legislatively imposed in positions of responsibility regarding Maori land. These responsibilities included the negotiation of compensation for land taken or damage caused. In many cases the agencies were helpful and were often more powerful in negotiations and pursuing matters in court. However, there are also occasions, particularly in earlier years, when they appear to have failed to adequately pursue proper compensation for Maori owners. There were times when agencies failed to pursue compensation within the specified time limits especially if taking notices were not properly issued, but also if files were lost or new officers were unfamiliar with requirements. The Maori Trustee was also often paternalistic and conservative in compensation negotiations. Maori owners themselves often appear to have been regarded as a nuisance if they tried to ‘interfere’ in negotiations and in many cases there was a marked reluctance to seek their views. For example in the 1960s, after explaining all the technical problems in negotiating compensation with Works, an official complained that the owners had not as yet been consulted because they would want the ‘the Maori Trustee to claim the moon whereas the Maori Trustee should claim only such amount as he can substantiate in court’.¹⁰⁹

Nevertheless it was often only when the Maori Trustee became involved, that many of the compensation practices of taking authorities really came to light. For example an official was appalled at the actions of the Auckland Regional Authority in the 1970s in taking land for a recreation reserve. The compensation offered was described as a ‘public scandal’ and the ‘impertinence’ of any public authority in offering it ‘an outrage and something should be done about it’.¹¹⁰ The Maori Trustee did at times become outraged enough to threaten to take, and in some cases to pursue, compensation cases through the courts, much to the fury of taking authorities. Although early compensation awards are very brief where owners had no assistance, after the Maori Trustee became involved, the files are full of the intricacies and protracted negotiations of the office in compensation negotiations.¹¹¹

However the old problem also remained that in many cases the owners and the Maori Trustee simply never knew of takings until well after they occurred. The same problems already referred to in the lack of notification for many takings also had an impact on compensation as both the Maori Trustee and owners had to know about a taking before seeking compensation, and assessment of compensation could not even begin until a formal taking was made. It is clear that in many cases where the Works department was taking often small pieces of land for road widenings and realignments for example, it simply assumed that compensation applications were not worth the effort and expense. While the department claimed this saved the

108. For example, memo sent to all Maori Land Court registrars, 23 June 1942, MA 1, 38/1/1, vol 1

109. Memo from District office Rotorua, 5 June 1964, MA 1, 54/19/14

110. Memo from District Office Hamilton, 26 September 1973 in MA 1, 38/2, vol 6

111. For example, see MA 1, 38/2, vols 5–6, and MA 1, 38/1/1

taxpayer the cost of the process, it did nothing to show respect for Maori rights or to allay Maori resentment of the whole process.

As late as the 1970s this attitude appears to have still been firmly entrenched. For example in 1974 a district office of Maori Affairs was still complaining that where Works took land for a road and felt the betterment far outweighed the value, it was still in the habit of taking the land and doing work without notifying the owners or going through any of the legal processes until well after the work was carried out or until complaints started being made.¹¹²

The attitude of Works is also likely to have influenced local authorities. Not only did Works have influence through the provision and supervision of funding for example, but it seems as though Works could act on behalf of local authorities and was used on occasions as an agent to negotiate compensation for local bodies with the Maori Trustee.¹¹³ Although Works often claimed that with European land, in perhaps the majority of cases the question of compensation was settled by agreement with no necessity to go to court, the situation was quite different for Maori land. There was much less opportunity for informal discussions, and agreements and compensation had to be determined by the Maori Land Court for many years, thus ensuring a more protracted and adversarial situation.¹¹⁴ If, as Works claimed, the majority of European land takings did not need to go to court, it was even more unfair as it appears Maori land cases generally did have to. Again many Maori owners simply were not in a position to bear the legal costs involved.

Perhaps the major and certainly the most common issue arising in documentation of compensation for public works land takings, is the long delays that occurred before compensation was paid. This was a common criticism all landowners by not just owners of Maori land, but even given this, the delays with Maori land seem to have often been inordinately long and protracted.

There are numerous examples of these long delays on files. In many cases there are often delays between beginning a work and in making the formal taking, before which compensation could not be assessed. After this, in the case of Maori land there could also be delays or failures to make applications for compensation by the taking authority and then delays or failures to prosecute the applications for compensation once they were made. Even when compensation was awarded there were often further difficulties in having the taking authority pay out. There were also cases where the delay in compensation seemed to result in clear financial advantage to the Crown. For example, when land was taken in 1949 in connection with hydroelectric work at Maraetai and for roading access, compensation was delayed but at the same time the Crown sub-leased and derived a profit from the land taken. Compensation was only eventually awarded in 1955.¹¹⁵

The delays in compensation were often the subject of complaints to ministers. For example, in 1950 the then Minister of Maori Affairs, Corbett, attended a meeting at Te Kuiti concerning delays by the public works department in paying compensation. He was told of instances where the Crown or local bodies had taken

112. For example, letter of 26 June 1974, MA 1, 38/2, vol 7

113. For example, memo from District Office Hamilton, 11 August 1970, MA 1, 38/2, vol 5

114. Maori Affairs to Works, 1961, MA 1, 38/1/1, vol 1

115. Newspaper clipping, 6 January 1956, MA 1, 38/1/1, vol 1

Maori land and worked it for years without Maori people receiving any compensation. It was suggested that applications should have to be lodged and compensation assessed before land could be taken. Works rejected this and declared that the idea of assessing compensation and paying it before the taking authority took possession was ‘quite impracticable’. Works claimed that it would mean that no work could be carried out on road deviations until a survey was done, title acquired by proclamation and compensation assessed by the Maori Land Court and paid. The delay in obtaining survey plans alone ‘would probably delay the project for several years’ and it would in fact be ‘almost impossible’ to work to any construction programme.¹¹⁶

After the Maori Trustee became involved the district offices of Maori Affairs often reported that delays were common. In the 1960s, for example, Works realigned the state highway near Rotorua. One realignment cut through a Maori development scheme. The local officer noted that ‘The area taken has not yet been surveyed, nor has the proclamation been gazetted, and our experience is that the Ministry of Works will take its time over this’.¹¹⁷

In work on the Tauranga–Te Maunga highway, Works entered land in the Hairini blocks at various times between 1959 and 1966. The formal takings were not formally gazetted until December 1971 in one case and February 1972 in another. In 1973 the Maori Trustee responded to criticism of long delays in negotiating compensation by reminding owners that it had only been involved since the formal takings in 1971, not since 1966 as was assumed. Negotiations were also made more protracted by all the issues such as interest that arose from the long delays. In addition, Works had promised in 1971 that every effort would be made to effect an early settlement or make a substantial advance payment. However there had been long delays and no offers of advance payments.¹¹⁸

Entry was made into the Hairini A2 block in 1959 to construct a temporary deviation that at the time was considered to be needed for about three years. However, occupation continued and in 1971 it was decided the land would be taken permanently. Even after the formal taking there were protracted negotiations over issues caused by the delay, such as interest payments and the time the valuation should be taken from. It appears that progress was only made in pushing things along when the local school teacher and social worker wrote to the Minister to see if anything could be done about the hardship suffered by the owners. In this case the owners lost their ancestral land and the family home was demolished and they were still waiting for compensation after more than 10 years.¹¹⁹

This case also illustrated that as well as delays being an injustice in themselves, they caused further problems in assessing compensation as some account had to be taken of the effect of the delay. This often resulted in even further protracted negotiations. Many details including interest, the date at which compensation was to be assessed, lost rentals, and what date betterment was to be calculated from, all had to be included in negotiations following long delays. The original

116. Memo from Works, 19 April 1950, MA 1, 19/1/441

117. Memo from Rotorua District Office, 5 June 1964, MA 1, 54/19/14

118. Correspondence, 1972–73, MA 1, 38/2, vol 6

119. MA 1, 38/2, vol 6

compensation provisions also did not take the results of inflation into account but this could also prove enormously damaging to owners where long delays were involved. Maori Affairs department officers felt the Hairini case illustrated the ‘rank injustice’ of the whole procedure where delays had become commonplace. In addition, ‘This is not an isolated case and approaches to the Ministry of Works on the subject are simply brushed aside’.¹²⁰

In 1962 a proclamation was made defining the middle line of a northern motorway through Maori land in Christchurch. In 1969 the Ministry of Works notified the Christchurch office of Maori Affairs that it intended to enter the land and begin construction. As was usual no formal procedures were carried out until the land was surveyed and the exact land required was known. However, in 1974 the Ministry still had not completed the survey. (In 1981 when the new Public Works Bill was debated, work still had not begun on the motorway.) Maori Affairs department officials noted that this was very hard on the owners and the delays would cause even more protracted negotiations over compensation when the land was finally taken.¹²¹

Although the taking authority had to make the application for compensation when Maori land was taken, there are also many examples of cases where Works made no attempt to start proceedings until or even when pressured by owners and lawyers. For example the Ministry only made an application for compensation in 1954 for a block of land taken for works in connection with the Karapiro Dam in 1950, and only after lawyers began to apply pressure on Works and on the Minister for information. Even then, Works made no reply to initial requests until several letters had been written and the Minister approached.¹²²

A major part of this problem appears to have been the provisions that required the taking authority to make the application for compensation when Maori land was taken. This may have appeared reasonable in overcoming title problems, but in practice this requirement clearly worked against the interests of Maori owners. The main reason for this was that the requirement clearly set up a conflict of interest for taking authorities. They were interested in saving money and once land was available for use, their main concern became the construction of the work. There was very little incentive for them to initiate proceedings that required going back to all the paperwork involved in compensation. In fact there were obvious disincentives because compensation was likely to cost money, not to mention all the time and paperwork involved. It is not surprising that taking authorities were in no hurry to initiate compensation and routinely comment that compensation procedures were ‘overlooked’ at the time.

At various times the issue was raised as to whether the Maori Land Court or the owners could also initiate compensation applications if the taking authority failed to do so. However this possibility was generally rejected by the Crown. In 1942, a Maori Land Court judge argued, for instance, that as section 104 applications only referred to land takings then the court could initiate proceedings for compensation

120. Memo in reply to ministerial regarding takings in Tauranga area, 20 October 1972, MA 38/2, vol 6

121. Secretary Maori Affairs to Minister, 12 June 1974, MA 1, 38/2, vol 7

122. MA 1, 5/13/200

for damages or for material taken from the land and should not have to wait until Works saw fit to act in the matter. However Crown law opinion firmly rejected this and the Crown solicitor argued that the proper course would be for owners to seek a writ compelling the authority to take action to make an application. He also argued that the Maori Land Court had no authority to compel a taking authority. Its jurisdiction to assess compensation arose only when an application for compensation was before it and the application had to be one such as section 104 described, that is, the application of a public authority:

The application of a native owner or, say, the registrar of the Court acting on the judge's direction, would not be an application of the kind necessary to confer jurisdiction.¹²³

The requirement to go to court to force a taking authority to even make an application was clearly unfair and a burden not faced by general landowners. Most Maori owners were also not in a position to do this. In spite of the difficulties raised, no remedying legislative amendments were made for many years.

In later years Works claimed that it did have a policy of making a routine application for compensation as soon as Maori land was taken. It is questionable how well that policy was followed given the file documentation. Even so, another issue then arose as to the prosecution of the application after it had been made. While Works agreed it would make routine applications, it then refused to take responsibility to prosecute them in court. Again Maori owners were left in a legal loophole. The courts clearly expected the applicant to make the prosecution for compensation and often delayed cases if there was no representative of the taking authority to make the case. However Works insisted that the owners and especially their counsel were responsible for seeing a case was heard. Possibly this was because Works was used to such procedures for general land takings but it neglected to take account of the difficulties Maori owners faced with this. It also placed Works in a relative position of power in negotiating compensation because if the owners agreed to its view then it would take steps to ensure the application was properly pursued, but if they did not, then it could delay the process as long as possible. In effect, Maori owners were being asked to hire lawyers to put pressure on taking authorities to prosecute applications.

The refusal of taking authorities to make proper applications and then to prosecute them was often an issue of contention between the departments of Maori Affairs and Works. For example, the matter was raised by the Under-Secretary for Maori Affairs in 1953 after a series of complaints about long delays. He noted that while there was a time limit on local authorities making an application for compensation, the Minister could make application at any time. Problems were being caused by long delays in making applications and in prosecuting them. It was not uncommon for applications to remain pending for many years and this was most unfair on the owners. They already resented compulsory takings and then they had to wait indefinitely for the payment of compensation. In effect they were being

123. Crown solicitor legal opinion for Assistant Under-Secretary, Public Works department, 30 March 1942, 38/1/1, vol 1

denied compensation for lengthy periods and as a result ‘. . . they are liable to show a distinct and increasing lack of enthusiasm towards the whole subject of public works’. The under-secretary gave examples such as the Pouakani block where the Crown took the freehold interest in some land and rented other land in 1949 and 1950 in connection with the Maraetai hydro scheme. Applications for compensation were lodged reasonably promptly but since then no move had been made to prosecute them. In the meantime the Crown was receiving rental from subleasing the land taken. All this hardly reflected on the honour of the Crown, which according to the old maxim was supposed to prefer honour to profit and convenience. The under-secretary was also concerned that the Maori Affairs department was taking a lot of the resentment caused by the delays by Works.

The under-secretary knew there were possible ways around the situation. For example the Maori Land Court could go ahead without representation from the Crown, or the Maori owners could seek to force the Works to act. However the court was naturally reluctant to proceed without representation from the Crown and the legal proceedings would be expensive for the owners. He believed that the real problem was the fact that it was the Crown or debtor who was legally required to initiate the matter instead of the true creditor or claimant. The under-secretary felt that legislative action was required to make it clear that the action for settling compensation was not dependant on the action of Works. A suggested amendment was to have a time limit as for local bodies after which the owners could ask the court to make an assessment without further ado.¹²⁴

Works flatly rejected the idea of any legislative changes. The Works under-secretary insisted that applications for compensation were routinely made in every land taking. While there were sometimes delays in prosecuting the applications, he claimed that there were usually very good reasons for this. Some years ago the Maori Land Court had instituted a policy of requiring Maori owners to be represented by counsel in all cases except where very small amounts were involved. Works supported this policy and had adopted a policy of negotiating with counsel for Maori owners in an endeavour to reach agreement for submission to the court for approval. If negotiations were unsuccessful then counsel could bring the case for hearing at any time. It was up to counsel to come to an agreement with the department about the time for a hearing and it was considered improper to prosecute an application without the agreement of counsel for the owners. In the case of the Pouakani block and the Maraetai hydro scheme it was up to counsel for the owners to press negotiations or to arrange for a hearing at court. There were also delays due to the illness of the district valuer and the ‘pressure of work’. In small cases Works did not see the need for an officer to attend the court hearing and would prefer an arrangement with the judge to submit evidence without having to attend. The under-secretary also claimed that delays were caused when Maori owners did not attend.¹²⁵ The Department of Maori Affairs failed to get the suggested amendment in the 1953 Bill and was forced instead to continue to try and persuade Works that it had a significant responsibility in making and prosecuting applications.¹²⁶

124. Maori Affairs to Works, 9 April 1953, MA 1, 38/1/1, vol 1

125. Works to Maori Affairs, 15 May 1953, MA 1,38/1/1, vol 1

Failures to make applications for compensation for Maori land taken, or even to issue formal notices of takings and then failure to prosecute applications, continued to be a major issue right into the 1970s. In spite of the long-standing claim by Works that delays were the fault of lawyers in not pressing the issue, after the Maori Trustee became involved and did just that, there were still enormous difficulties in negotiating compensation.

In 1974 the Christchurch office asked for assistance from the head office in negotiating a compensation case because of the difficulties in getting any response from Works. Maori land had been taken for road widening in Nelson in 1972 but Works would not even respond to letters in the two years since then, let alone discuss compensation. It took from December 1972 until September 1973 for Works to even reply to a letter requesting a beginning to negotiations about compensation. Works claimed there were delays with valuations, but from September 1973 until July 1974, in spite of further attempts at correspondence from Maori Affairs, there was no further response from Works. The office asked for the matter to be taken up at a higher level with Works head office as they needed to be informed that:

delays of this sort make it difficult for the Government to refute the charge that taking authorities are prepared to ride rough shod over the rights of individuals and, it is often alleged, especially over Maori individuals.¹²⁷

In 1975 when the matter had still not been taken up, the district office complained that it was enough to:

shock the public conscience and raise serious doubts in the minds of the owners as to the sincerity of the Crown in its desire to bring the matter to a conclusion. It is perhaps just as well for everybody that few, if any, of the Maori owners know anything about it.

The office felt that the situation was likely to be very different if, as recently recommended, control of the South Island tenths is handed over to trustees.¹²⁸

The Christchurch office of Maori Affairs also complained about delays after land was taken for state highway roading in Marlborough county in 1971 and early 1972. Taking procedures began as early as March 1968 and in 1971 the owners were told by Works that when land was formally taken, compensation would be the responsibility of the Maori Trustee to settle on behalf of the owners. When the *Gazette* notices appeared taking the land, the district office went to a great deal of trouble finding out exactly what land was involved and in having it valued for compensation. It then sought negotiations as soon as possible and entered a claim in August 1972. Since then it had not been able to get an adequate response from Works. One letter of 8 June 1973 from Works had stated that they were still trying to get sufficient information on the land and a valuation. Nothing had been received

126. Correspondence, November 1953, MA 1,38/1/1, vol 1

127. Memo from District Office Christchurch, 25 March 1974, MA 1, 38/2, vol 7

128. Memo, 17 June 1975, MA 1, 38/2, vol 7

in the following six months. Again it was requested that the matter be taken up at a higher level to avoid blame falling on the Maori Trustee.¹²⁹

However there were some improvements by the 1970s as Works began to respond to changes in public opinion and to complaints from Maori leaders. In 1973 for example Works decided that in a case where the land had been entered in 1955 but not taken until 1967, instead of insisting on the date of entry as it had previously done when assessing compensation, it would recognise the problems of legal representation resulting from multiple ownership, and the long delays that had occurred, and agree to take the date of the formal taking proclamation as the basis for assessing compensation. Works still blamed legal counsel for allowing the matter to lapse since 1967 but agreed it was not the fault of the owners.¹³⁰

11.3 THE APPLICATION OF PROVISIONS CONCERNING THE CONTROL AND DISPOSAL OF LAND NO LONGER REQUIRED FOR PUBLIC PURPOSES

As already seen, traditional disposal principles such as the right of first purchase for the original owners and an assumption that land should only be used for the purpose for which it was taken, were gradually weakened in subsequent legislative developments. The 1981 Act strengthened offerback provisions but these still did not meet all Maori concerns. Maori have consistently required land to be returned if it was no longer needed for the original purpose for which it was required. This was partly because of traditional concepts that place more value on land than simply a commercial value that can be compensated for in equivalent cash. In addition, as Maori land has steadily diminished any possible returns of land to Maori freehold title were considered crucially important.

Even in terms of general land takings, Barker pointed out in his criticisms of the Public Works Act in 1969, that resentment against public works takings was most likely to occur at the lesser level of public works and where the land was taken for a vague purpose such as ‘subdivision development or regrouping’ and then sold on at a considerable profit.¹³¹ Although there was no legal sanction to ensure that a taking authority used the land for the purposes for which it was taken and the only requirement really was compensation, there was still a widespread public feeling that not to do so was morally wrong. Barker referred to a 1968 case where the Upper Hutt borough acquired some general land and then several years later sold it at large profit. The previous owner petitioned Parliament and the select committee found that while legally right, it was ‘morally wrong’.¹³²

The criticisms about lack of accountability in the use and disposal of land taken for public purposes applied to all land taken, but once again it appears as though in many cases the application of these provisions often posed relatively greater problems for owners of Maori land. Many of the reasons for this have already been

129. Memo, 29 January 1974, MA 1, 38/2, vol 6

130. Works letter to Secretary Opawa–Rangitoto Incorporated, 13 March 1973, MA 1, 38/2, vol 7

131. Barker, p 253

132. NZPD, 1968, pp 1743, 1748; and Barker, p 258

covered. For most of this time Maori were generally less able to challenge disposal decisions for example, or proposed changes in the public use of land taken. As has been seen in previous examples from files, Maori interests were also generally given a very low priority when it came to deciding alternative uses for surplus land. It was generally only after all other departments had been approached and all other possible public purposes were considered, that reversioning in the original Maori owners was considered.

In addition, in practical terms it was also simply a much more difficult process for many years, to return land or reversion land in Maori owners than it was to return general land. The adoption of policies that required offerbacks to be made at market prices without considering mitigating factors also resulted in a greater barrier to return, given the lower general economic position of many Maori.

In the absence of relevant data it is difficult to compare returns of Maori land with returns of general land. However, from preliminary research it seems as though reversionings were generally limited to areas still largely in Maori ownership such as when a road was rerouted and the old road reversioned. At times, it was agreed that a sufficient case had been made for reversioning land of special value such as an urupa, although even this was by no means assured. In many cases reversionings also only seemed to be considered when an authority such as a Maori Land Court judge became interested and began advocating on behalf of what was considered a particularly meritorious case.

There appears to have been no particular legislative or policy requirements to give reversionings priority for land of special value to Maori such as urupa that had been lost by a public works taking or through some oversight. For example in one case, Maori owners found that a burial ground had not been excluded from a sale as agreed when legal documents were drawn up, although it was shown as a reserve on some maps. The other part of the burial ground was then taken for road purposes. When the owners asked for at least the road land to be reversioned, their request was refused as the land might be required for future roading needs and the interests of the local authority came first, ‘Any such return would seriously embarrass the local authority’. In spite of the owners’ protests, the official attitude was that because the land had either been sold or taken, ‘The Natives therefore have now no interest in the land’. The best they could expect was to be allowed to remove any remains they might find.¹³³

The financial gain or the administrative convenience of the taking authority was also commonly given priority over Maori interests when decisions were being made on land taken for public purposes but no longer required for the original purpose. For example, in the Gisborne district, the Uawa County Council had taken Maori land in 1918 and 1931. The land was close to the inlet of Tolaga Bay and it was taken as a sanitary reserve for the town of Tolaga for the dumping of nightsoil. The land was taken under compulsory provisions but the owners had apparently consented because the reserve was to be used for the general well being of the community. There had also been public works takings of other Maori land in the vicinity, for example by the Tolaga Bay Harbour Board.

133. MA 1, 21/1/6

The reserve was not used for nightsoil for many years and then in 1954, as legally required, the local council gave notice of intent to change the public purpose to one of recreation reserve. At the time, the council chairman openly admitted that the real intention was then to declare the land not in the meantime required as a recreation reserve and to lease it to private individuals to set up a motor camp. The East Coast Commissioner, who was legally responsible for Maori land in the area, objected to the proposed change and the attempt was abandoned. In late 1955, the council then issued a new notice of intention to change the reserve to one of ‘general county purposes’ under the Public Works Amendment Act 1952. Once again the council openly admitted it really intended to lease the land for a motor camp. The commissioner objected again and after a hearing the objection was rejected. The commissioner then approached the Minister for assistance and informed him of the same objections. The objections were based on the claim that the proposed use was not a bona fide ‘general county purpose’ as the intention was to allow the land to be used by private individuals for personal profit. The commissioner argued that instead the land would be better used being farmed as part of the Maori owners’ adjoining farm. The owners wanted the opportunity to have the land offered back to them first and were prepared to pay a reasonable price for it. When the Minister of Maori Affairs approached the Minister of Works about this, no assistance was forthcoming. He was told that the council was acting legally under the provisions of the Public Works Act and that:

It is only in extreme cases that interference with the statutory powers of a local authority is warranted, and in this instance it is noted that the only objectors appear to be the owners from whom the Council acquired the land . . .¹³⁴

In many cases disposals were also made where it was simply administratively easier to ignore the interests of the original Maori owners. The Hawke’s Bay River Board decided to dispose of some land taken in 1938 and no longer required for river control. The land had originally been taken from Maori owners using compulsory provisions and compensation had been paid. Within a few years the taking authority had found it did not need all the land taken and in 1944 sold the surplus land to the man who had been lessee of the land at the time without offering it back to the original owners. In 1973 the original owners were still seeking to have the matter properly investigated. They sought a remedy or at least a provision preventing similar actions in future. On investigation, officials decided that the main reason the land was sold without being offered back was that it had been the easiest solution at the time. The land had been severed from the original owners’ land at the time and therefore lacked legal access. The person it was sold to had adjoining lands and the sale was therefore the easiest solution. In reply to continued complaints in 1974 it was acknowledged that ‘It does seem that the element of practicality over-rode all other considerations at the time . . .’ and it was decided no further action was required.¹³⁵

134. Lawyers to Minister of Maori Affairs, 28 February 1956; and Minister of Works to Minister of Maori Affairs, 28 March 1956, and associated correspondence, MA 1, 38/2, pt 3

135. Draft letter replying to 1974 complaint, MA 1, 38/2, vol 6

In many respects it was also much more difficult, complicated, and time consuming to return or revest Maori land and this may also have been a factor in deciding taking and controlling authorities not to bother. When Crown-granted Maori land was first included under the provisions relating to the return of surplus general land back to the original owners, no special allowances were made for the fact that such land would be returned as European or general land and this would create difficulties in joining it with what was still Maori freehold land. In cases of trusts or incorporations it also seems as though their powers only extended to Maori land therefore a return under general title also posed considerable problems. It has already been shown in the legislative overview that it required special legislation to correct this, a much more prolonged matter than was involved in offering back general land. General legislative provision was not made for most proposed revestings of Maori land until 1943. This only appears to have been made after Maori Land Court judges complained of the difficulties encountered when they had to create partitions and when they were dealing with two classes of land. In many cases in early years, these difficulties resulted in the land having to be declared Crown land and sold under the Land Act rather than being revested in the original Maori owners.¹³⁶

Other difficulties also often made it easier to dispose of surplus land to almost anyone other than the original Maori owners. For example the legal and administrative restrictions covering a great deal of Maori land often made disposal that much more complicated. In numerous cases the Government responded to pressure to make Maori land easier to alienate. However there was little legislative encouragement to make returns of surplus land back to the original Maori owners any easier, even when problems became apparent.

The problems concerning native township land provide a good example of this. The native townships were originally established on Maori land. The Government soon responded to pressure from lessees however, with a 1910 amendment that enabled the Crown to assist lessees in gaining freehold title. When it seemed some reserve land might be revested in the original Maori owners all sorts of legal difficulties were discovered. It seems that it was much easier to dispose of such land to lessees than to the original Maori owners.

In Pipiriki native township in 1897, for example, two sections were originally set aside as municipal reserves. In fact they were never used for this purposes, but came under the control of the Lands and Survey department as reserves. This department then leased them out to local businesses in the town and took the rentals. In 1937 the local Maori Land Board discovered this and tried to have the rent paid to the native owners. The Lands department refused on the grounds that under the reserves and domains legislation there was no provision to credit revenue to anywhere other than the consolidated fund. The department continued to take the rentals paid.¹³⁷

When moves were made by the department of Maori Affairs to have surplus sections returned to Maori owners in later years all sorts of difficulties arose. The Minister of Education took a personal interest in the use of an old school site as a

136. For example, comments regarding Whakapau block, MA 1, 5/13/154

137. Correspondence, MA 1, 21/3/46

community centre and directed that this use was not to be ‘disturbed by any action designed to return back the site to its former owners’. Officials were also directed to inform the Minister ‘immediately if there is any move to restore the site to its former owners’.

When it came to re-vesting sections originally set aside for public purposes a debate immediately began as to the exact legal situation and the legal difficulties that might arise. It was not clear for example, whether the reserves came under the Maori Affairs Act 1953 as Maori reserved land or whether they were Crown reserves covered by domains and reserves legislation. Although this decision had not been a problem when the Lands department had refused to turn over rentals it was agonised over for some time by officials of the Maori Land Court and the Lands and Survey department, as were the consequent problems of re-vesting under various title. It was then discovered that two of the sections under consideration had been sold to the business leasing the land and then to the local county council apparently without difficulty. It was therefore now privately owned European land and unavailable for return. The arguments about how to re-vest continued with the remaining sections until 1965 when the Commissioner of Lands decided not to go ahead anyway as the land might be required for the proposed Wanganui River hydro scheme.¹³⁸

Another major barrier to returning the land was the adoption of a policy of requiring the land to be offered at the current market price. Particularly in years of high inflation and given the often many years between the original taking and the final decision to offer back this price was often impossibly high for many former Maori owners. The land also often had a non-commercial value to Maori so could not be regarded as a commodity owners were likely to realise a profit on in later years. While the land may have realised a low compensation in the first place it could also often greatly increase in value over the intervening years. In some cases, incorporations were in a position to pay market value but often low income families struggling to regain ancestral land were in a very difficult position. At times this was allowed for by making repayments easier or offering low interest loans. In some cases the market value was also backdated to when the public use actually ceased, although this could have been years before the actual return. However the requirement to buy back the land still often appears to have posed the final barrier to the return of land.

This was not only a problem for owners of Maori land although it may have occurred more often given the generally low economic position of Maori. As the scope and extent of public works widened and as more generations of Pakeha had links with family land, the problems of offerbacks at market values were also recognised for general landowners. In his 1969 article, one of Barker’s suggested improvements was an independent authority that would oversee disposal decisions and have the flexibility to be able to take into account differing circumstances of the landowner. For example, whether the land had a value apart from a pure commercial investment, such as a family home for example, and taking into account the circumstances of the acquisition, the authority would have the flexibility to

138. Correspondence, MA 1, 5/5/78

recommend a figure somewhere between the original amount of compensation and the current market value.¹³⁹

The Public Works Act 1981, while it required land to be offered back to the original owners unless it was clearly impracticable, unreasonable, or unfair to do so, initially required land to be offered back at current market value. A 1982 amendment however introduced a discretion whereby the Commissioner of Lands or a local authority could offer back at a lower price if it was felt reasonable to do so. It is not clear how this discretion has worked in practice and whether specific consideration is required of Maori interests.

A possible precedent is the Raglan golf course case where it was recognised that requiring the former Maori owners to pay the current market value for the land placed an unfair burden on them. Suggestions were made that it was possibly fairer to calculate a price based on 1953 values when the land should have been returned. However, eventually it was agreed in 1987 that in view of all the circumstances, the land could be returned without requiring payment.¹⁴⁰

Given the difficulties in having land returned, it is not surprising that Maori owners have tried very hard to have alternatives considered seriously, whereby the land is made available for public purpose uses, but the title stays in Maori hands. As seen in previous examples, such as the Ohaaki power station, this process has been found to be quite feasible in many cases once taking authorities began to take a more flexible view of the issue. The recent *Te Maunga Report* has also referred to the possibility of taking compulsory use rights for public purposes rather than the Maori freehold.

11.4 THE APPLICATION OF TOWN PLANNING PROCESSES

The final group of issues associated with the taking and use of Maori land for public purposes are those arising from the administration and application of town planning processes. This whole area probably requires a separate research paper but a brief overview reveals some of the main issues.

Town planning processes are often bound up with other issues but the application of planning designations and processes such as zoning and reserves requirements appears to have had a detrimental impact on Maori land both in affecting rangatiratanga over Maori land and in the further loss of such land for public purposes. In more recent years, town planning processes have also become more closely linked to public works provisions, for example since 1973, through the process of hearing objections to land takings.

Some of the major issues for Maori arising from town planning processes have already been briefly touched on in the overview of town planning legislation. The designation of Maori land for public purposes such as recreation reserves and rubbish dumps for example, have clearly had a significant impact on the use and acquisition of Maori land for public purposes.

139. Barker, p 259

140. MA 19/1/671, AAMK 869/678a

Many town planning hearings also reveal that the hearing process itself has often been a difficult and expensive barrier for Maori. In addition, it is clear that there was often a lack of communication between Maori and Government agencies in the whole process. For example, as late as 1982, in a hearing involving the building of oxidation ponds for a sewage scheme on an environmentally sensitive headland of a coastal area that was also an ancient pa site, the Planning Tribunal noted that the Board of Health, the local council, the Historic Places Trust, and the Ministries of Works and Transport had all been involved, but none had consulted directly with the local Maori people.¹⁴¹

Maori Affairs case files also reveal some of the problems encountered in the use of the planning process. An example is the Karamu blocks of Maori land on the outskirts of Hastings. These were the subject of numerous attempts by local authorities to acquire the land for public purposes. In the 1940s, the blocks of about 200 acres were the last remaining land of what had once been extensive ancestral lands and local Maori decided to try and keep them in Maori title as a heritage for future generations. The land was very good horticultural land and was used for market gardening and to provide a livelihood for many families. There were also some family homes on the land.

In the 1940s the then Hastings Borough Council made strenuous efforts to have the land taken for an aerodrome. The proposal was resisted by Maori at the time. They claimed that the proposed airport was not really needed as there were already sufficient airports in the district, but was prompted by local rivalry with Napier. They also pointed out that the land was first-class horticultural land wasted on an airport and ‘These lands are our inheritance . . . and of great sentimental value to us’. They had the support of Native Affairs Minister Mason who agreed that local rivalry was a probable cause behind the proposed taking and he recognised the concern about remaining ancestral land. He instructed Government agencies not to become involved in the taking although the local body remained interested. The proposal was shelved during the war and then appears to have been finally abandoned.¹⁴²

A few years later, the Maori Affairs department was interested in developing a small subdivision in the area to make properly planned housing for the local Maori families there. The borough council strongly objected to the proposal on the grounds that housing would mean taking some of the best horticultural lands on the plains and the proposal was abandoned. In the mid-1950s the City of Hastings then applied to have the land included in the urban boundaries of the city. The Maori owners protested strongly, complaining that this was likely to destroy their own plans for a special settlement. In spite of their objections, the land was included in the city. The Maori owners were concerned that being included in the city offered them no advantage but that higher rates would force them to sell some of the land and continued horticulture would become uneconomic. In addition they were concerned that the city already had proposals to develop the land for housing and

141. *Adamson Taipa Limited v Mongonui County* (1982) 8 NZTPA 379

142. Correspondence, MA 1, 19/1/506

subdivision. They asked the Minister for assistance in staying out of the urban area but were told that the Minister could not interfere.¹⁴³

In another case in 1970, the Gisborne City Council wanted to acquire some 321 acres of the Paokahu blocks of Maori land on the outskirts of the city. The land was between the main road and the beach and the council announced that it intended to have all the land designated as a refuse tip and then to take it for that purpose under the Public Works Act. It also announced that the ultimate intention was to use the land as a recreation area for a boating and rowing lagoon, golf courses and camping sites. It is not clear from file documents, but there is some indication that it was thought that because the land was swampy in parts and partly sand-dunes, it did not comply with requirements for takings under scenic or recreation purposes, and hence the tip zoning.

The Maori owners called a meeting at which strong objection was made to the plan and arrangements were made to have trustees appointed to represent their interests. The Mangatu Incorporation had some interests in the land and also acted on the request of owners who wished to see the land remain in Maori ownership. On behalf of owners, the incorporation complained to the Minister about the council proposal. The incorporation also suspected that the council wanted to designate the area as a tip in order to depress the value of the land for compensation. It was obvious the tip was not intended to be more than a temporary use and the quantity of land involved was much more than would normally be required for a tip. The owners also informed the Minister that there was very little Maori land remaining in and around Gisborne and they asked for assistance in opposing the designation and the taking. They also offered to lease the land the council actually required for a tip.¹⁴⁴

Maori Affairs officials held a meeting with council and reported that they had informed them it 'was extremely bad tactics' for the council to publicise the fact that they intended to take the land so early and before having a meeting with owners. The Maori owners were now so 'emotionally upset' over the publicity about using the Public Works Act that it was unlikely a meeting of owners would ever agree to a sale. Officials were also surprised that the council wanted a tip site so close to the city and beach and suggested leasing the land if it was the only possible site. The council informed the officials that it wanted the land in public ownership for eventual recreational purposes and that the extra land was required so it could lease the land not in immediate use to help offset the outlay required in establishing the tip. The council wanted ownership rather than a lease so it could have the 'required freedom of action in effectively using the land for rubbish tip purposes'.¹⁴⁵

The Minister agreed to ask Government departments to take no action that would prejudice the position of the Maori owners. However there was not much he could do regarding the council. The proposal to designate the land as a rubbish tip however still had to go through the normal planning processes.

143. Correspondence, November 1956, MA 1, 38/2, vol 3

144. Letter to Minister, 27 November 1970, MA 1, 32/2/1, vol 1

145. District Office Gisborne to Maori Affairs Head Office, 7 December 1970, MA 1, 32/2/1, vol 1

Lawyers for the incorporation described many of the problems Maori had with the town planning process. The blocks in question were near the beach and what was happening to them was also happening to similar Maori land through the use of town planning processes throughout the district. For a variety of reasons Maori still owned coastal areas in the district in an unimproved state. Their land was now almost the only land left in favoured areas that was not already subdivided or used for holiday homes. It had therefore become a prime target for planners for reserves or proposed reserves. The incorporation had some beautiful bays which would make ideal coastal townships and be of great value if subdivided but they were being covered by designations for carparks and proposed reserves and no compensation was payable for proposed reserves. The blocks under consideration at present would have been desirable subdivisions by now if they were not owned by Maori because they were so close to the city and the beach. However they were now part of an area proposed for recreational use. This was a classic example of what town planners and local bodies were doing to remaining Maori land. According to the lawyers, the situation was becoming a worse ‘land grab’ than in the old days. They complained that the situation was beginning to cause rumblings among Maori and with good reason.¹⁴⁶ The Minister agreed that town planning issues were having an adverse impact on Maori land and he was concerned at the absence of ‘real consultation and communication between those concerned’.¹⁴⁷

The council continued in its efforts to have the land taken. In a deputation to the Minister in 1971 the mayor also confirmed that the council needed the freehold of the land because it planned to develop the whole foreshore. The council claimed the Maori owners had shown little interest in the land and it had been on a long lease not due to end until 1984 at a small rental so they were receiving very little from the land anyway. The council was also emphatic that it would not consider a lease or spend money on the land if it then had to return it to the Maori owners at a later date.¹⁴⁸

In the meantime the Maori owners did make an effort to compromise by offering to lease the land needed for a tip including an offer to lease the land rent free for up to 10 years if it was returned in a reasonable state and a strip was reserved near the beach for residential sites. The owners then began to reconsider this when they learned that recent planning rulings suggested that if even a small part was leased, this could open the way for the whole area to be designated for a tip on the grounds of predominant use. The owners then decided to wait until the question of zoning was settled at a planning hearing.

The council up to this time had been adamant that leasing was unacceptable but then used the delay to insist that the taking had to go ahead. The change in public attitude by the 1970s appears to have had some impact on the issue. The Maori Affairs department officials for example, became very concerned about a ‘very serious’ public uproar and tried hard to persuade the council and the owners to reach agreement over the use of the land for a tip at least. The Maori members of

146. Letter to Minister, 8 April 1971, MA 1, 32/2/1, vol 1

147. Letter of Minister, 1 June 1971, MA 1, 32/2/1, vol 1

148. Notes of deputation to Minister by Mayor and others, 7 August 1971, MA 1, 32/2/1, vol 1

Parliament also became involved and gained press coverage over the issue highlighting the fact that there were possible alternatives to public works land takings.

The Gisborne City Council applied to the Cook County Council for planning permission to zone the whole area as a rubbish tip. As a result of a defect in the initial application the city council then changed the application to one for a specified departure. Hearings began in 1972, when submissions were heard by a number of parties opposed to the zoning of the land for a rubbish dump.

During the process of preparing objections for the hearing, other issues of concern to Maori also became apparent. There was concern that public works takings had already encroached on Maori land in the area. In 1944 the Cook County Council had taken adjoining land under the Public Works Act for what was now Centennial Drive road. No compensation had been awarded because the council had persuaded the court that the road would provide protection and open up access to other Maori land that could in the future be developed as seaside allotments. Much of that subdividable land was now required for the rubbish tip site and the owners wanted at least protection for a strip of land near the beach for future residential development if the council went ahead with the rubbish tip site. The owners protested that the land taken for a road and now this proposal amounted to a massive land grab of remaining Maori land in the area. In a later newspaper report, councillors were reported as rejecting this proposal and as believing the proposed site would annoy the fewest possible people and that it was 'Maori land, useless for production and an objection would therefore be unreasonable'.

Other Maori concerns also became evident. The area had previously been an important pa site, with burial sites and other important wahi tapu because it had been an important food-gathering area and was closely settled. There was already a grievance about the nearby Awapuni lagoon where the Crown had reclaimed land without consulting the people and without compensation and the lagoon had been destroyed. There were objections that such an historically important area including wahi tapu was now going to be turned into a rubbish dump. There were also complaints that over 300 acres was a massive land grab when no more than 50 acres would suffice for a rubbish tip for many years. Besides being an offensive use of the land there would also be very little remaining land left to the owners. There were also objections that the proposed tip would cause pollution to the streams and beach nearby and would cause inconvenience to nearby residents.

The Cook County Council eventually approved the zoning of 50 acres of Maori land at the rear of the blocks for a dump. In addition a strip of sand-dune at the front was set aside as a future reserve and was not to be used as cover for the rubbish dump. The hearing was apparently more concerned with environmental aspects and public reserves needs than Maori concerns. The argument of other suitable alternatives also carried little legal weight at that time. The Gisborne City Council then appealed the decision to the Planning Appeal Board in an attempt to have the whole 321 acres including the front strip included in the zoning.

The Town and Country Planning Appeal Board eventually dismissed the city council appeal in 1973. Once again the reasoning was more concerned with environmental and recreational concerns than with Maori interests. In its decision

the board said that the sand dunes were an important recreational and environmental resource and it was desirable that they were preserved.

The Maori owners then asked the council that the land taken for a road in 1944 but not required when the road was built be re-vested in them. The extra land was closed as a road in 1972 and the Cook County Council approached the Commissioner of Crown Lands to have it declared part of an adjoining domain. The Maori owners approached the Minister for assistance in having the land re-vested. They were willing to allow the public to use the land but were concerned that it be returned to Maori ownership. They were also willing to give the council a formal lease so it could provide public amenities on the land but they wanted to retain as much land as possible in Maori ownership. In 1973, Maori Affairs Minister Rata decided to have the land re-vested under section 436 of the Maori Affairs Act 1953. The delighted owners promised to continue negotiations over the lease of the land for a domain.

The matter did not end there however. In 1973 the council was still approaching ministers in an effort to gain more land for the dump and eventually recreation purposes. In a deputation early in 1973 the mayor and city engineer claimed that the present rental the Maori owners received from the land was very small anyway and that a lease in perpetuity might be an option. The council mentioned that it always had the Public Works Act as a last resort but claimed it was now reluctant to use it. The Minister, Rata, emphasised his reluctance to see land taken under the Act and suggested alternatives were preferable. In November 1973 when this file ends there was still uncertainty over whether the council would use its taking powers under the Act.¹⁴⁹

Even when Maori needed to sell land, town planning provisions could cause problems. When a block of land was vested in the Maori Trustee for a sale on behalf of the owners, it was then found that a proposed motorway cut through the block with land on one side zoned residential and on the other side rural. This made it very difficult to sell the land and before long rates demands began to equal a significant proportion of the land value. The Maori Trustee asked Works to take the land and pay compensation but this was refused as the National Roads Board did not have the money, and actual construction of the proposed motorway was many years off. Works suggested that the trustee use the provisions of the Town and Country Planning Act 1953 to apply for the designation to be lifted or alternatively to require the National Roads Board to buy the land. This was attempted but it was then found that the motorway was a 'requirement' not a 'designation', and the provisions only allowed for the forcible removal of a designation. In the meantime, the Maori Trustee could not find a buyer and rates continued to accumulate. The trustee then found that the local airport committee had been in a similar position and had reached a satisfactory compensation agreement with Works. The Maori Trustee approached Works again to reconsider the matter in view of the airport committee precedent. The trustee was told the case might be reconsidered if overwhelming hardship was involved. The Trustee made a case pointing out that a buyer could not

149. Correspondence and papers, MA 1, 32/2/1, vol 1

be found because of the designation and in the meantime owners were suffering from growing rates requirements. The application was turned down.¹⁵⁰

Other town planning issues were also of concern to Maori. One of the submissions to the review committee of 1976 to 1977 on the Public Works Act by the department of Maori Affairs for example, concerned the power of local bodies and roads boards under an amendment to the Public Works Act to declare limited access roads that were clearly detrimental to the owners of Maori land. In the submission and further reports the department described the ‘obnoxious legislation’ as meaning such roads could only be used for through traffic and provided no legal access and no crossings. This was yet another obstacle in the way of Maori owners who wanted to utilise their land as it was impossible to subdivide individual lots if there was no authorised crossing place for each lot. By this means legal access could be taken away without any right of objection. The department also complained of the cavalier attitude of the Ministry of Works in using this provision.¹⁵¹

While Maori found planning processes were often working to their detriment they also appeared to have enormous difficulty in having local bodies respond to their planning needs. The problem appears to have been particularly acute when it came to proper provision of roading. Councils were notoriously reluctant to take responsibility for roads servicing Maori-owned areas, partly as a result of old antagonisms over rating. In many cases Maori landowners had to seek assistance from the Maori Affairs department and the Maori Land Court to try and force councils to take some responsibility.¹⁵²

There have been improvements in the use of planning processes in more recent years particularly after requirements to take Maori interests into consideration were included in the 1977 Act as discussed in the overview of legislation. The planning division of Works in particular became much more responsive to Maori concerns in its later years. An example is the perceptive report produced by Ree Anderson in 1983.¹⁵³

It has often been assumed, particularly after the requirements enacted in the 1977 legislation to take Maori concerns into account, that the hearing process will act as an acceptable substitute for the lack of specific requirements in the main Public Works Act. This was the view of the committee reviewing the public works legislation in 1976 and 1977. This requires more research but it is not clear that this will always provide an adequate check on takings for public purposes. Maori owners face barriers in going through the objection process, for example as identified by the Waitangi Tribunal in the *Mangonui Report*. It is also not clear that planning processes in the end can entirely control the use of public works taking provisions. In the case concerning the protection of the lease for the Ohaaki power station for example, the Planning Tribunal found that a planning scheme could not prevent the exercise of statutory powers by another Act of Parliament.¹⁵⁴

150. Correspondence, early 1970s, MA 1, 38/2, vol 7

151. MA 22/2, AAMK 869/739c

152. For example see MA 1, 22/1/1

153. R Anderson, *Planning For Maori Needs*, Auckland, Town and Country Planning Division, Ministry of Works and Development, 1983

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

In summary, preliminary research indicates that the application of public works land taking policies and procedures and associated town planning processes, may have impacted relatively more harshly on Maori land. This was the result of the application of often discriminatory legal provisions as well as the apparent failure to actively accommodate the special problems arising from the nature of Maori title and the special concerns and interests of Maori with regard to their land as guaranteed by the acknowledged principles of the Treaty of Waitangi. This perceived failure has resulted in the continued alienation of Maori opinion and contributed towards the still evidently strongly held belief among many Maori that public works takings of Maori land are a continuation of wartime confiscations with all the sense of bitterness and injustice that this implies.

