

CHAPTER 4

MINERALS AND MAORI LAND IN THE TWENTIETH CENTURY

4.1 MINING LEGISLATION, 1898 TO 1930

A further consolidating measure was passed in 1898. The issue of mining on Maori land was not debated, but the Act was significant in providing, more fully, for the Native Land Court as a mechanism of opening land to mining operations. Section 28 enabled the Maori Land Court to declare Maori land to be open for prospecting, or to be ceded to the Crown for mining purposes on such terms as were agreed by the majority of Maori owners and the Governor General. Section 25 provided that all fees, rents, and royalties should be payable by the Crown to Maori or their trustees.

Although the flurry of mining legislative activity continued into the first two decades of the twentieth century, provisions relating to Maori land remained largely unchanged, except for an amendment in 1910, which quietly dropped the requirement for consent of a majority of Maori to the opening of their lands. Section 19 of the Mining Amendment Act 1910 stated that the words ‘and with the written or verbal consent of a majority of Native owners’ would be omitted from section 28(1) of the principal Act of 1908, empowering the Native Land Court to declare land ceded for mining purposes. In contrast to 1892, when a similar move had been thwarted by strong opposition within the House, the 1910 amendment provoked no comment or objection.

4.2 GOLDFIELD REVENUES, 1900 TO 1928

In 1900, Treasury decided to alter the system by which revenues would be paid out. Previously, the whole amount generated on lands subject to the original cessions was remitted to the paying officer, who allocated those moneys according to the current ownership. Now, the amount considered to be owing to local authorities was remitted to them, directly. Subsequently, some suspicion attached to this decision since it was not possible to say for certain whether payments made to such bodies came entirely from lands the freehold of which had been acquired by the Government.¹ With the fragmentation of holdings, and the much reduced returns on goldfield lands still in Maori hands, distribution of revenues broke down. By 1917,

1. See NZPD, vol 373, 1971, p 2526

a large amount – some £1400 – was unclaimed and repaid to the Treasury from the Imprest Account. In that year, the Imprest Account was closed. Payments were then made through the Post Office on the certificate of the paying officer. Treasury officials later admitted that this was a ‘retrograde step’ for Maori, as Postmasters returned most vouchers to the paying officer, having been unable to trace the person entitled to receive payment. As a result, only those owners who applied to that officer were actually paid.²

4.3 HAURAKI GOLDFIELD PETITIONS

Hauraki lay quiescent on goldfield matters for some 15 years. In 1919, however, Maori interest in the goldfield arrangements rekindled, sparked initially by queries into the fate of revenues on adjacent blocks at Thames (Te Pohau 3 and Kapua 2). When questioned on the matter, the receiver of the goldfield revenues, based in Waihi, which was now the main centre of mining activity, complained that the system was unsatisfactory. None of the Maori concerned lived at Waihi; the lack of business knowledge on the part of Maori made it almost impossible to deal with them, without an interpreter; and the office was not kept up to date with successions and other circumstances to do with title so that the lists of owners were ‘quite unreliable’.³ The registrar of the land court subsequently admitted that incorrect information had been supplied, and it was ascertained that a sum of £32 was owing.⁴ Further queries regarding Te Uriwha A and B revealed that other amounts were outstanding. It was suggested by Treasury that the distribution of those moneys should be taken over by the Maori Land Board from the Mining Registrar and the Receiver of Gold Revenues.⁵ In the meantime, the books at Waihi were examined by an official of the Native Land Court, revealing that although the amounts owed on each individual block were often small, in total, as much as £1282 was outstanding. Stubbings reported that the books were a ‘disgrace’; that wrong blocks and wrong amounts had been credited, amounts omitted altogether or entered at random in the accounts, while some block ledgers had been closed by payments, not to the beneficiaries but to the Public Account to be used for general purposes. The figures for closed accounts were not included in Stubbings’ estimates which meant that the full extent of revenues owing was still not known.⁶

Again, one branch of Government – in this instance, Treasury – sought to place the burden of administration on Maori. The Paymaster General refused to reimburse Stubbings for travel expenses as ‘only being concerned with payment of revenues to natives’, and suggested that the amount be deducted from the first distribution made by officers of the land court.⁷ This assessment of responsibility

2. ‘Hauraki Goldfields Native Revenues: Treasury Statement relative to the Petitions’, MA 13/35C

3. Wilson to Warden, 8 November 1919, MA 1 19/1/193, vol 1

4. Registrar of Native Land Court to Under-Secretary, Native Department, 12 September 1923, MA 1 19/1/193, vol 1

5. Under-Secretary of Native Department to Registrar of Native Land Court, 19 June 1928, MA 1 19/1/193, vol 1

6. Stubbings to Under-Secretary, Native Department, 6 September 1928, MA 1 19/1/193, vol 1

was initially adopted when the Waikato Maori Land Board demanded a 5 percent commission on revenues collected, but the Crown Law Office advised, subsequently, that there ‘could be no complete discharge for Treasury until the money actually reached the natives entitled’ and that ‘any expenses incurred . . . could not be thrown upon the native owner’.⁸ The money was duly paid over to the Waikato–Maniapoto Maori Land Board for distribution. In 1935, further investigation of ‘unclaimed balances’ which had been paid to the Public Account revealed that another £1030 was owing to Maori.⁹ At a meeting of the Hauraki tribes, it was decided that this amount should be held as a fund for the benefit of all, rather than being disbursed in trivial, individual amounts, and that a body be established by Act to administer those funds.¹⁰ Government decided that the money should be kept intact, until the question of its ultimate disposal was settled. It was held in the interim by the Waikato–Maniapoto Land Board which paid the same interest on the amount, as it did to beneficiaries under section 281 of the Native Land Act 1931.¹¹ Section 17 of the Native Purposes Act 1938 authorised the application of that goldfield revenue to the general purposes of Ngati Maru and associated tribes. The outstanding amount was declared a common fund to be held and administered by a committee of six to 10 members to be appointed by the court. The committee was empowered, on approval of the court, to:

expend the moneys in the fund for any purpose having for its object the advancement of the interests and general welfare, or for the general benefit of one or more of the said tribes [Ngati Maru, Ngati Whanaunga, Ngati Tamatera, and associated tribes] or section . . . of the said tribes.

4.4 THE MACCORMICK COMMISSION

4.4.1 The Hauraki claim

In the meantime, Hauraki Maori had begun, once again, to petition about the conduct of the Government with reference to the goldfield lands and agreements. Three petitions were referred to the Native Land Court for inquiry and report under section 22 of the Native Purposes Act 1935: petition 23 of 1931 from Rihitoto and 83 others asking for the payment of revenues from mining rights for the lands from Moehau to Te Aroha; petition 139 of 1931 from Merea Wikirihi and 22 others from Ngati Tamatera alleging that revenues had been paid into the Consolidated Fund and asking for more information; and no 196/1935 from Hoani Te Anini and 501 others. The Native Affairs Committee of that year also recommended inquiry into a second petition from Rihototo (petition 347 of 1935).

7. Paymaster General to Under-Secretary, Native Department, 16 August 1928, MA 1 19/1/193, vol 1

8. A M Currie to Secretary to Treasury, 1 October 1928, MA 1 19/1/193, vol 1

9. Registrar to Paymaster General, 20 September 1935, MA 1 19/1/193, vol 1

10. Nikora, Paraone and 3 others to Native Minister, 17 October 1935, MA 1 19/1/193, vol 1

11. Registrar to Under-Secretary of Native Department, 19 December 1935. This sum was paid on 25 May 1936. See Secretary to Treasury to Native Under-Secretary, 14 February 1938, MA 1 19/1/193, vol 1.

The Hauraki petitioners were inspired by a general sense of grievance at the apparent lack of benefit from the mining, the subsequent loss of their lands, and the failure to include all within allocations of land and resources. They lacked, however, specific knowledge of the details of transactions which had taken place 50 years ago. Hori Watene addressed the Native Affairs Committee in terms that stressed the current landlessness of, and lack of attention paid to the Hauraki people. In an allegorical statement, Watene suggested that the first carcass of gold had been scarcely eaten before the ravens flew to a second, comprising the rich Hauraki Plains which he had seen ‘devoured and traversed by the wheels of Industry and Progress’ in his own lifetime. Despite all these ‘developments’ he could ‘safely say that all the Maori farmers operating in the Hauraki District today’ could be ‘counted on the tips of his fingers’. A third carcass comprised the Hauraki Gulf and its fishing rights on which Maori in the district were now largely reliant. In Watene’s view, the Hauraki people now needed recognition of their ownership of other resources to allow them to participate fully in the twentieth century economy:

But in the advanced days of education, citizenship and progress, the Maori people of Hauraki cannot hope to keep up the pace with the Pakehas, or with their more fortunate brothers of Waikato, Rotorua, East Coast and Ngapuhi, who are being assisted according to their needs of today.¹²

He told the committee:

The purpose, then, of our mission here today may be summed up in this manner. We have come to search for the remnants of the missing carcasses of our natural resources, in this instance – the Hauraki Maoris Gold Revenues Claim.¹³

The matter having been referred to the inquiry of the Maori Land Court, a number of adjournments were required to allow for the clarification of the petitioners’ claim and for the preparation of the case on both sides. It was clear, however, that the claimants faced a task well beyond their resources. MacCormick, the chief judge of the Maori Land Court, who presided over the commission, informed the Native Department that Maori would require ‘competent assistance in an inquiry which apparently will be far-reaching and complicated’.¹⁴ Officials were, however, reluctant, to allow claimants access to the records on which their claim would necessarily be based. Both the judge and departmental officials insisted that the petitioners should supply ‘definite information as to the nature of their claims or allegations . . .’ and to name particular blocks to be investigated. At a meeting between seven Hauraki representatives and two officials from the Lands and the Native Departments, presided over by MacCormick in January 1937, it was decided that Ohinemuri, Moehau, Waikawau and Omahu West should be looked at more fully.¹⁵ The Native Department and Crown Law Office advised, however,

12. ‘Copy of Minutes Taken for the Representatives of Ngati Maru Present at the Second Hearing of the Petition of Rihototo Mataia’, 6 March 1935, app A in ‘Hauraki Goldfields Native Revenue, Treasury Statement relative to Petitions’, MA 13/35C

13. Ibid

14. C MacCormick to Under-Secretary, Native Department, 29 August 1939, MA 1 19/1/193, vol 1

against fulfilling a request from claimant counsel to view Government files, arguing that it was undesirable 'to allow the natives access to records which will enable them to frame the more direct allegations which they have been asked to make and have not yet done'. According to the Crown solicitor, J Prenderville, the records were liable to misinterpretation, and such an inspection 'might seriously embarrass the Crown in its answer to the Petitions and give rise to a lot of allegations that might be fanciful but very difficult to answer'. Permission was denied, accordingly, by the Native Minister.¹⁶

The focus of the inquiry was gradually defined. Early Hauraki requests to include issues of foreshore and adequacy of the consideration for lands in the district were rejected; the one, because the question was held to be settled by the common law; the other, because the Native Department thought it unreasonable to reopen the question of purchase money after 70 years had lapsed.¹⁷ Hauraki complaint as presented before MacCormick concentrated on two different aspects of its relationship with the Crown; the payment of revenues under the goldfield agreements, and the transfer of the freehold of the goldfield blocks into the hands of the Government.

Maori were expected to prove illegal doing on the part of the Government, being precluded by the state of legal understandings at that time, from arguing their case on grounds based on Treaty rights of rangatiratanga, partnership, consultation, and mutual benefit. An argument that Maori had owned the gold itself was, thus, not central to their case as presented in the 1930s. It was their contention, none the less, that Maori had possessed 'everything there was to possess in connection with the soil', and that the English rule regarding 'royal metals' should not apply:

It has been held in certain cases in Victoria that that is the law in Australia, but we maintain, although it is not absolutely necessary for our case, we maintain the position in New Zealand was different – that the natives under the Treaty of Waitangi retained for themselves everything except the 'kawanatanga' . . . and that the very fact that the Crown subsequently entered into agreements with the natives relative to the gold shows that at that early stage the rights of the natives were recognised. It is interesting . . . to look at some of those old agreements and see that those old Native Chiefs clearly separated in their minds the gold from the land.¹⁸

Argument developed along two distinct branches; that under the deeds of cession, the whole of the goldfield revenue belonged to Maori and did not pass with the freehold in sales to the Crown and settlers; and secondly, that the Government occupied a fiduciary position as a consequence of those deeds. As part of the first line of argument, counsel for the Hauraki petitioners pointed to the wording of the

15. 'Hauraki Goldfields Petitions: Notes taken by Shepherd at Conference . . .', 22 January 1937, MA 1 19/1/193, vol 1

16. Crown Solicitor to Sullivan and Winter, 18 June 1937 and memo, 22 June 1837; Crown Solicitor to Under-Secretary, Native Department, 3 February 1938. For denial of access, see Native Under-Secretary to Crown Solicitor, 14 February 1938, MA 1 19/1/193, vol 2.

17. 'Hauraki Goldfields Petitions: Notes taken by Shepherd at Conference . . .', 22 January 1937, MA 1 19/1/193, vol 1

18. 'Notes of continuation of Inquiry of January 1938', 6 March 1939, B 9, MA 13/35C

deeds of cession, guaranteeing revenues to the signatories and their 'heirs', and to various statutes preserving those agreements. In the second line of attack, counsel argued that the deeds had created a fiduciary obligation in which the Crown had failed. The first aspect of that failure was with regard to the gold revenues and timber royalties generated by the lands subject to those deeds. Counsel pointed to the regularity of complaint about maladministration, and to the debits from the account to pay for the services of inspection and distribution. It was submitted further, that the Crown had breached that trust, also, by the fraudulent purchase of those lands. Counsel suggested that some of the purchase moneys had not been paid, prices were inadequate, deeds defective, and that advances had been made on lands prior to title investigation and definition of the extent of the share belonging to the recipient. Underlying this line of attack, was the argument that the Crown as trustee for Maori under the deeds of cession should have observed the principle that a trustee was not entitled to purchase for his own benefit, any of the property included in the trust. Counsel drew the particular attention of the court to the circumstances under which the Ohinemuri goldfield had been purchased and queried references in the record, to £15,000 that had had to be paid back to the Government out of mining revenues in that block.¹⁹

The Government strongly defended the past actions of the Crown. Norman Smith of the Maori Affairs Department prepared a statement of the circumstances surrounding the purchase of the blocks chosen for investigation, while Dunstan, from Treasury, drew up a year by year statement from account books and ledgers, of the goldfield revenues received and the amounts paid out. Details of payments were incomplete, however, because many of the old records had been destroyed. In particular, transactions in the Miners' Rights Deposit Account could not be found with the result that it was not possible to ascertain to whom payments had gone.²⁰ It is this same fact which makes it impossible for historians to trace where revenues went, and to say definitively whether Maori received all moneys to which they were entitled under cession agreements and subsequent legislation, or how much of that money was charged to expenses of administration or distributed to others.

The report from Treasury upheld the past activities of Crown agents, pointing out that the early petitions of the Hauraki people in the 1870s and early 1880s had not been supported by the Native Affairs Committee. In Treasury's opinion, the correspondence surrounding those petitions 'indicated very forcibly the unsupported and exorbitant demands made by Natives'. Citing documents that suggested that allegations of neglect and corruption on the part of the Inspector of Miners' Rights in those years were false, Treasury argued further, that payment of such an official to oversee the practical administration of the cession agreements, by Maori themselves, was fair and acceptable. It was emphasised that adequate scrutiny had been made of the system during the nineteenth century, and that any past problems in the payment of revenues under the agreements (the failure to make early payments at Coromandel, the temporary borrowing from the account in 1868

19. For a more detailed discussion regarding the lease and alienation of Ohinemuri, see Wai 100, 'Historical Overview' report.

20. Crown Solicitor to Under-Secretary, Native Department, 3 February 1938; Secretary of Treasury to Crown Solicitor, 21 February 1938, MA 1 19/1/193, vol 2

to 1869, and the accumulation of unclaimed funds in the early twentieth century) had been corrected ultimately.²¹ The frequent doubts expressed by Native Department officials as to the equity of charging Maori for the administration of revenues were not mentioned; nor the criticisms of administrative failure contained in the Mines Department record (included among the list of files examined by Treasury for its submission). It is apparent, too, that the strong criticisms on file from the Government's officer, Wilkinson, on the impact of legislation on the understandings contained in the deeds of cession and on 'native revenues', were considered to fall outside the scope of Treasury's report. Nor could Treasury records address the question of whether all those entitled to revenues had received them. It was clear, however, from the little evidence available that distribution in the most lucrative years of the Thames and Coromandel fields had been left to the discretion of a limited number of chiefs, some of whom were noted for their adoption of the Victorian trappings of leisured status as well as more traditional forms of displays of mana. At the time, these persons were pointed to as examples of successful Maori adoption of English modes of gentility and acceptance of a new order. In the twentieth century, this fact was regretted but seen as typical of the times and outside the responsibility of the current Government.

Counsel for the Crown outlined the history of payments to Europeans and local bodies, resulting from the transfer of freehold, discussed the intent of mining statutes dealing with ceded lands, and argued against any interpretation of the deeds as creating a trust, seeing them as merely 'a bargain for a right or easement . . . a profit a prendre that created no trust'.²² The Crown in its defence, was concerned not with the tactics employed by its agents, in particular, the deliberate undermining of tribal tenure to force open land, which strategy had been noted by Smith in his internal reports – but rather, with a strict accounting of payments to individuals in the purchase of the freehold of those goldfield blocks under particular scrutiny.

4.5 FINDING OF THE COMMISSION

The court found the Crown's evidence to be satisfactory in that it could demonstrate the disbursement of goldfield revenues, and payment for land when the freehold was purchased. MacCormick could not support the legal arguments of the claimants, pointing out that it had been conceded by their counsel that there was no case enforceable under law. MacCormick found, 'with doubt and hesitation', that it had not been shown, affirmatively, that the true intent and meaning of the deeds of cession was that the mining revenues should go to the Maori owners notwithstanding the extinguishment of their title to the land. He conceded, however, there may have been some doubt as to whether this point had been fully explained to the vendors.²³ The statutes cited by claimant counsel in support of their

21. 'Hauraki Goldfields Native Revenue, Treasury Statement relative to petitions', MA 13/35C

22. 'Notes of Hauraki Goldfields Inquiry', 6 March 1939, H8–H9, J5, MA 13/35C

23. 'The Native Purposes Act, 1935, Report and Recommendation . . .', AJHR, 1940, G-6A, p 5

contention that successive governments had intended to preserve the payment of revenues to Maori, were, in fact, intended to ensure that no rights of the Crown were prejudicially affected by any subsequent change in title. Nor, in the court's opinion, had governments of the past breached any legal trust in the land itself. The Crown had become a fiduciary agent merely responsible to Maori for 'its actions in regard to mining rights and the revenues collected, but not further or otherwise'.²⁴ The court did not see anything sufficient to support the contention that the Crown had intended to keep alive the rights of Maori even though the land had been sold, and thus, a claim to revenues that had been paid over to local bodies and private individuals (assessed at £24,717 10s 11d). MacCormick pointed out that the Crown had amply demonstrated its intentions by immediately ceasing to pay out revenues on the purchase of the freehold, and that there had been long acquiescence, by Maori, in that understanding.

On the other hand, the Crown could not render any complete or satisfactory account of the revenue received and expended by it, firstly, because the long delay had made it impossible to inspect many former records, and secondly, owing to the methods adopted for distribution of revenues due to Maori. It was not possible to say definitely, whether accounts faithfully reflected the numbers on the field, all fees, and revenues, nor, whether all right-holders received their due. Since the turn of the century, Treasury records had not distinguished between payments to Maori and others, so it was impossible to tell, also, 'whether the very large payments made to local bodies came entirely from lands the freehold of which had been acquired by the Crown'.²⁵

The court found no legal wrong-doing on the part of the Crown and its agents, being satisfied by the accounts produced by Treasury, but did express some unease about the nature of the goldfield transactions. MacCormick had told the petitioners that it was not within the compass of the court to deal with the general moral questions they had raised regarding the loss of their tribal lands and resources, and regarding the Crown's role in that process.²⁶ In his view, however, Maori had made 'very bad bargains', and '[h]ad the transactions been subject to judicial review it [was] unlikely that they would have been approved, at all events without modification'. On the other hand, MacCormick thought that any grievance of Hauraki was lessened by the similar character of other transactions in the nineteenth century, and because it did not necessarily follow that it was such a bad bargain in light of the knowledge available at the time.²⁷ The court recommended, none the less, that the Government make a limited payment to the Hauraki tribes, in view of the fact that most Maori in the district were now 'badly off', and found themselves, 'mainly by reason of their selling their lands . . . in a position where they [had] only small areas of land suitable for development or farming remaining to them':

24. *Ibid*, p 7

25. *Ibid*, p 4

26. 'Notes of Hauraki Goldfields Inquiry', 6 March 1939, pp G1–G3, MA 13/35C

27. *Ibid*, p 7

That in view of the very large sums of money received by the Crown by reason of its purchases of the freehold of land previously ceded to it for mining purposes, and the doubt whether the Natives fully appreciated the effect of their sales, and the further doubt as to the proper distribution to the Natives of the moneys they were entitled to, the advisers of the Crown might well consider favourably the making of an ex gratia payment for the benefit of the Natives whom the petitioners represent.²⁸

MacCormick suggested that a ‘substantial’ sum to the extent of £30,000 to £40,000 would be necessary to be of any use and that a fund should be created for general purposes, to be administered by a board or committee under the supervision of the court, or the Native Minister. The implementation of his recommendations was, however, left entirely to the goodwill of the Crown.

4.6 GOVERNMENT RESPONSE TO MACCORMICK FINDINGS

The Native Affairs Committee referred the court’s report to the Government for consideration, but no action was taken. For the next 50 years, Hauraki attempted, without success, to win Government acknowledgement of MacCormick’s recommendation, being thwarted by political turnings, narrow official construction of responsibility, reluctance to admit liability for nineteenth century transactions, and opposition from Treasury. The tone of MacCormick’s report was strongly coloured by the outbreak of World War II. He suggested that the time was inopportune to decide on any payment and that the question might be considered later when the circumstances were better. The Government immediately distanced itself from any obligation to act on the court’s recommendations. MacCormick’s suggestion that any payment ‘out of the bounty and grace of the Crown’ could be deferred, was endorsed by Campbell, the Under-Secretary of Native Affairs. Langstone minuted Campbell’s report, in November 1940, ‘No action should be taken in the meantime’; and that, it appeared to him, ‘[i]n fact . . . that the Natives [were] indebted to the Crown’.²⁹ That decision was affirmed in March 1941, and approved by Cabinet in August of that year.

It is apparent that there was as little official will, when the war ended, to give substance to the court’s recommendation. In 1946, Shepherd, reluctant to open the door to similar claims based on inequities in early contracts between Maori and the Crown, advised his minister (H G R Mason) that the recommended award was not ‘referable to any certain loss or definite injustice suffered’, and incorrectly surmising a former absence of complaint, suggested that the doctrine of estoppel applied.³⁰ Mason noted his opinion that the claim was weak, but that it could be marked down for provisional inclusion in a proposed commission on outstanding Maori claims. The view that the goldfield claim was inconclusive, was also taken by Ropiha, Shepherd’s successor as under-secretary, who argued that Hauraki had given up their claim to mineral and lands sold in the nineteenth century: ‘Law,

28. Ibid, p 8

29. See ‘Memo for Native Minister’, 11 November 1940, MA 1 19/1/193, vol 2

30. ‘Memo for Native Minister’, 30 April 1946, MA 1 19/1/193, vol 2

equity, and commonsense alike discourage stale demands where a party has slept upon his rights and acquiesced for a great length of time'.³¹

When the war ended, Hauraki raised the question of the award proposed by the court, hoping to use that sum to promote the general benefit of their people. At a meeting held at Thames, a motion by Tukukino was carried unanimously, that:

The sum of £30,000 or £40,000 granted by the Government to them be accepted, so as to enable them to raise the general standard of living amongst the people as a whole, who are interested in the claim, and to aid them in farming purposes etc, and the amenities of education and rehabilitation of returned servicemen of the tribe.³²

A representation asking for a monetary settlement to be spent for the general benefit of Maori in the district, was repeated to Prime Minister Fraser, in November 1947. A number of points were emphasised: that the areas concerned included some of the most valuable mining areas; that Maori had been incapable of appreciating the value of their lands and had been reliant on the advice of Crown agents, while successive Governments had pushed inexorably towards acquisition of the freehold of those areas; and that Hauraki were 'practically landless' that day, as a result. With reference to the goldfield revenues, there was also strong doubt as to the correct distribution.³³ At a meeting held two years later, in Rotorua, which was attended by the four Maori members of Parliament, and Maori Affairs' officials, the Hauraki delegation asked for a cash payment in settlement, of £40,000, or £1600 annually, again proposing that such money be spent for the general benefit of Maori in the district. Fraser was sympathetic, informing Hauraki representatives that he was personally inclined towards a solution along the lines proposed, although he could not give a definite answer until Cabinet had considered the matter.³⁴ The election intervened, resulting in a change of Government before the matter was addressed. A year later, Hauraki claimants visited E C Corbett, the new Minister of Maori Affairs. Recognising that the court's findings, followed by Fraser's statement 'really constituted an understanding which could hardly be disregarded now', Corbett instructed that a submission be presented to Treasury and Cabinet, recommending a settlement of £30,000. At the same time, he stressed to the claimants that, 'whatever was done would be above the legal rights'.³⁵ The proposal ran into strong opposition from Treasury, on the grounds that there was no claim enforceable under law. The Government remained reluctant to admit an historical claim that might open the doors to many similar complaints regarding the equity of early transactions. Adopting Treasury's view, Cabinet took note that:

When these rights were acquired in 1867, 1868 and 1875, payment was then made in all good faith, and that the Court which considered the claim had not found any

31. 'Memo for Minister of Maori Affairs', 2 September 1949, MA 1 19/1/193, vol 3

32. Mahutu Makiwhara to Maori Welfare Officer, 17 May 1947, MA 1 19/1/193, vol 3

33. 'Notes of Representations made to Native Minister . . .', 12 November 1947, MA 1 19/1/193, vol 3

34. Ibid

35. 'Notes of Representations to Hon Minister of Maori Affairs', and 'Memo for Under-Secretary', 6 December 1950, MA 1 19/1/193, vol 3

grounds, or indeed made recommendation, which would provide a reasonable basis for a special payment at this distance of time.³⁶

Further petitions were lodged in 1953, one from Puti Tipene Watene, Barney Raukopa and 30 others from Marutuahu, and from Ngati Porou whose lands at Haratunga had also been opened by cession agreement as a result of Mackay's negotiations for the western side of the peninsula in the late 1860s, and another from Ngati Porou alone, led by Ahiwera Awatere. Both petitions prayed that the House would give effect to MacCormick's recommendation. These requests were repeated and, in 1959, the Maori Affairs Committee finally recommended the petition of Raukopa, Watene, and 106 others (petition 29 of 1958), for 'favourable consideration'. The issue was picked up by the Nash Government in the following year. In a written representation, Hauraki emphasised the commitments they understood to have been given, stating that they were 'victims of the most cruel fraud perpetrated', if the intention of the first Labour Government had not been to settle, and that 'these people today are still suffering under the handicaps of those land purchase days and are the most landless and the most backward of all Maori Tribes'.³⁷ Treasury again reported adversely on the claim, adding to reasoning already stated in previous deliberations, the argument that the Petitions Committee had only called for 'favourable' rather than 'most favourable' consideration.³⁸ J K Hunn, as Acting Secretary for Maori Affairs, recommended, however, that the claim be satisfied in view of the 'moral effect' of a former chief judge's finding which had failed to rule categorically, that the grievance was unfounded. In Hunn's view, it was not possible to refuse satisfaction since successive Governments had treated the claim 'with respect and some degree of sympathy'. He pointed out that:

Although the adverse Treasury report is no doubt fully justified in law, and perhaps even in equity, nevertheless it is difficult to see how the Government, at this late stage in the history of the petitions can rely on legal defences to deny the claim.³⁹

Nash endorsed this view and concluded that the claim 'warrant[ed] settlement', to be considered in the following year. Again, the Government fell before any action was taken. His successor, as Minister of Maori Affairs, J R Hanan, resubmitted the matter for Cabinet consideration, arguing that past demonstrations of sympathy, the likelihood of continuing complaint, and the recent recommendation by the Petitions Committee, all pointed to the need for settlement. Treasury officials immediately expressed concern, that 'the case perhaps could open the way for a revival of the claims on the sale of Horowhenua, Wanganui and Wellington and New Plymouth' and asked that the question be reconsidered.⁴⁰ Hunn, when applied to, repeated his earlier advice, that 'morally, if not legally' the claim should be settled, stating that the question of future claims was beyond his

36. 'Secretary to Treasury to Minister of Finance', 9 April 1951, and 'Secretary of Cabinet to Minister of Maori Affairs', 24 May 1951, MA 1 19/1/193, vol 3

37. 'Hauraki Goldfields Claim', undated, MA 1/19/193, vol 4

38. Secretary to Treasury to Minister of Finance, 15 October 1959, MA 1/19/193, vol 4

39. J K Hunn to Minister of Maori Affairs, 30 June 1960, MA 1/19/193, vol 4

40. 'Memo to McKay', 7 June 1861, MA 1/19/193, vol 4

control. Hanan, however, minuted Hunn's letter, 'At present no action, bring up in May 1962', and the matter was let drop, subsequently.⁴¹ When the Labour Government came into power under Norman Kirk, in late 1972, MacCormick's recommendation was resubmitted by the Minister of Maori Affairs (M Rata) for the Cabinet to consider. Election defeat again intervened before any action was taken.

4.7 MINING AND MAORI LAND AFTER WORLD WAR II

In the 1890s, Hauraki Maori had protested strongly against the warden's exercise of powers, under mining legislation, over their lands. This issue resurfaced some 30 years later, over the granting of resident site licences on Maori ceded lands. Resident site licences were originally intended to provide housing for miners in townships such as Shortland (Thames), Coromandel, and Te Aroha. Since the land belonged to Maori not the Crown, the rents for sites held under such licences went to them until they sold the properties concerned. Those rents were, however, set at artificially low levels, while the decline of mining in much of the region meant that site licences were being issued for purposes totally unconnected with the original intent behind the legislation which had created them. Under section 103 of the 1926 Act, which represented a legislative reiteration of rules established in the late nineteenth century, the warden granted a number of resident and business site licences in the Thames and Coromandel areas, those sites being used later by the licensees to run stock, for holidays, and to build motel units.

In 1948, the Department of Maori Affairs objected when the Mines Department contemplated the issue of a site licence over part of Hape North block. G P Shepherd, the Under-Secretary of Maori Affairs, pointed out that section 32 of the Mining Act preserved the limitations contained in the original deeds of cession, and that, he could not agree that the mining warden had any power to make such a grant, more especially since the licence itself stated that the land was no longer required for mining purposes.⁴² In the same month, Judge Beechey of the Auckland District Maori Land Court also drew the attention to the inequitable imposition of resident site licences on Hauraki lands; he had recently come across a case in Thames, in which only 5 shillings per annum rent was received in comparison to an 'adequate' rent of £5 or more. The term of that lease was 42 years, with a right of renewal, while the owners were prohibited from an alienation of more than 50 years. Beechey recommended that the cessions be terminated in areas where mining had ceased, pointing out:

This is only one instance, but will serve as an example of what has happened to Maori lands in the ceded areas and in the Thames Borough.

It is difficult to imagine that when the lands were ceded for goldmining the Maori owners contemplated that the provisions of the Mining Act would apply so as to give anyone the right to obtain occupation of Maori lands in this way. In any event it is not

41. J K Hunn to Minister of Maori Affairs, 3 July 1961 and J R Hanan minute, 5 July 1861, MA 1/19/193, vol 4

42. Shepherd to Under-Secretary, Mines Department, 8 September 1948, AAMK 869/202A

fair to the Maori owners that lands once required for residence sites in connection with mining should now be retained for residence sites for use apart altogether from mining.⁴³

In all, 51 licences were identified as operating on Maori ceded lands, at Te Kapua, and Te Kapua 4, Pohaua 2B2 and 3, Te Kopi 1 and 2; Tutukaka, Te Onepu 1, Te Puru 4B1, Ngaromaki 2A, Te Hape North 2 and Te Horo; and in Coromandel, Moehau 4A1, 2A2B, 2B4C2B2 and Harautauga East 2A.

Tirakatene, as Minister of Maori Affairs, asked that no more licences be issued. His counterpart, for Mines, only reluctantly agreed, arguing that there would be no nett increase in revenues for the owners if the system was altered.⁴⁴ The policy was not given legislative effect until four years later, under section 6 of the Mining Amendment Act 1953. Prompted by the doubt that had been raised about the legality of the warden's past grant of such licences, an effort was made, in the Mining Titles Registration Bill, to address the issue of the nominal rents being received under them. Provision was made initially, for an increase in rent of 5 percent of the unimproved value as fixed by the Land Settlement Board on the second renewal after the legislation came into force. This limited provision was, however, dropped from the subsequent draft of the Bill, in 1962, as a result of objections from the South Auckland District Law Society that the existing rights of licencees should not be interfered with.⁴⁵ J K Hunn, as Secretary for Maori Affairs, objected that if the licences were invalid licencees 'should, at least, be prepared to concede that the . . . rent should be fixed by reference to the present value of the land'.⁴⁶ Officials in the Justice Department disagreed. In their view, the licences had been issued in good faith, and even if it was proved on investigation of every individual case, that some had been granted without authority, 'no remedial action in consequence could with any justification take the form of an increase of the license fee'.⁴⁷ Hunn was persuaded by this view, informing his Minister that:

If the licences were not properly issued, any rights which the Maori owners might have could really be exercised only as against the Crown and not against the licencees. The substantial question would be one of compensation.⁴⁸

The matter rested there until Ivor Prichard, a retired chief judge of the Maori Land Court, looked into the goldfield claim for the Holyoake Government in 1968. He did not support Hauraki, in that instance, but reported:

There has, however, during my investigations, come to my notice that the Maori owners of some small part of the lands in question have a definite grievance which sooner or later will probably be the subject of a meritorious claim. It seems proper that I should mention it to you but that it should not be included in my report and this

43. 'Memo for Under-Secretary, Dept Maori Affairs', 28 September 1948, AAMK 869/202A

44. Minister of Mines to Minister of Maori Affairs, 6 December 1948, and Tirakatene to Minister of Mines, 14 May 1949, AAMK 869/202A

45. Secretary to Minister of Maori Affairs re Mining Tenures Registration Bill, not dated, AAMK 869/202A

46. J K Hunn to Secretary for Justice, 11 July 1962, AAMK 869/202A

47. C B Cutler for Secretary for Justice to Secretary for Maori Affairs, 2 August 1962, AAMK 869/202A

48. J K Hunn to Minister of Maori Affairs, 1 November 1962, AAMK 869/202A

letter should not go on the claim file. No claim has been raised in respect of the matter I now mention.⁴⁹

Prichard described the grant of residential rights over Maori land as providing, on the payment of a rent of 50 cents to \$2 per annum, a perpetual right to occupy a section, to build on it, and to assign those rights. A quick search of the Hamilton Land Office had located 38 mining residential site licences on Maori land, 35 of which had also been located in the valuation rolls. According to Prichard's calculations, the unimproved value (the most Maori could own), totalled \$14,770. A rent calculated at 5 percent of that value would amount to \$738.50 whereas the most Maori could receive under the current system would be \$70 per annum.⁵⁰ Further investigation showed that there were 52 such licences in existence, covering sections with a total unimproved value of \$20,000 for which a total rental of \$81.50 was being paid. In one case, 50 cents per annum rent was being received for a property with an unimproved value of \$2000.⁵¹

By the 1960s, there was a growing awareness amongst Government officials that mining legislation required an overhaul, particularly with reference to Maori land. The residence site licences represented the most serious ramification of outmoded legislation which also preserved a number of inconsistencies with regard to Maori goldfield land. During the nineteenth century a complicated set of differentials had developed in the rules regarding the fees and rents to be paid on Maori as opposed to Pakeha-owned land within mining districts. These had survived in twentieth-century legislation. The major general mining statute of the first half of the century, the Mining Act 1926, provided, for example, that rent payable on 'special' or extended claims would be one shilling per acre per annum on Maori land, provided that miners' rights were held by the licensee and his employees and on other lands, 2s 6d per annum for the first six months, five shillings per acre for the ensuing year, and 7s 6d per acre thereafter. The latter scale could be applied on Maori land with the written consent of a majority of owners. Section 34 provided that the fees for residence and business sites, set out by an initial deed of cession would apply, rather than those set out by statute. If, however, the statutory scale was higher, the differential would be paid to local bodies rather than to Maori owners. Under sections 64(h) and 65, the fee for a miner's right on non-Maori land was set at five shillings, as opposed to the 10 to 20 shillings agreed to be paid to Maori owners. Local authorities were, however, able to request the Minister of Finance to reduce the fee for a miner's right to five shillings. Where that was done, Maori were entitled to be paid the amount remitted out of the goldfield revenue before it was apportioned amongst the local bodies. Under section 35, any person found mining on Maori land without proper authority was liable to a fine of £50, whereas section 431 provided for a fine of £200, with an additional £5 for each day that the offence continued, in the case of European land.

There was also growing awareness amongst officials that the continuing designation of remaining Maori lands on the peninsula as subject to mining

49. Ivor Prichard to Minister of Maori Affairs, 22 April 1968, AAMK 869/202A

50. Ibid

51. B E Souter, Deputy Secretary to Minister of Maori Affairs, 1 July 1968, AAMK 869/202A

legislation, as a result of cession agreements signed one hundred years ago, was no longer appropriate. That perception was grounded partly in the fact that mining had largely ceased on the Thames–Coromandel field, and partly in the belief that the cession agreements were ‘superfluous’ and a ‘dead letter’ since the Government had the power to deal with minerals by legislation.⁵² At a meeting of departmental officers in July 1968, it was decided that the Crown should, with certain exceptions, renounce any rights under the deeds of cession.⁵³ Those exceptions included, however, all rights and titles granted by the Crown under the cession agreements. The committee, comprising representatives of Maori and Islands Affairs, Treasury, Lands and Survey, State Forests and Mines, could not agree on a proposal that the Crown should purchase Maori interests in the properties concerned. The view prevailed that the Government should take no action since the Maori owners had failed to make any representation on the matter.⁵⁴

While the Government saw the remedy in terms of legislative prevention of further inequities, and the acquisition of interests which were ‘uneconomic’ because of the impediment on title, Maori sought the return of their lands, unencumbered by mining grant or legislation. In 1967, a request from the chairman of the Hauraki Goldfield Trust Committee, Barney raukopa, for information on the licenses was reluctantly complied with.⁵⁵ In the meantime, Raukopa assured the registrar of the Hamilton Maori Land Court, that any attempt on the part of the Maori Trustee to acquire those interests would be strongly resisted.⁵⁶ A formal request was made to the Commissioner of Crown Lands, in May, for the return of the properties concerned.⁵⁷ In 1970, Ngati Tamatera, Ngati Whanaunga, and Ngati Maru, through the locally-organised Maori Ceded Lands Committee, made further representation to the Parliamentary Committee examining the Mining Bill, protesting that the draft legislation preserved an inequitable arrangement that was being exploited for purposes that had nothing to do with those for which land had originally been ceded. They argued that the Crown had ‘failed lamentably in the responsibility it assumed to the . . . owners through neglecting to revise the rentals at suitable intervals’, and that it was, now, ‘the duty of the Crown to ensure that the land [was] returned free of any equitable claims and certainly free of any so unjustly created’.⁵⁸

The Government did not respond immediately to these concerns. The Mining Act 1971, in section 34, renounced the Crown’s rights under deed of cession, but preserved the arrangements established under them. The legislation was seen as placing Maori, substantially, on the same footing as Pakeha with regard to mining on their land, except as to mechanisms of consent which, in the case of Maori, could involve the intervention of the land court. Section 37 established procedures

52. Draft of suggested amendments to the Mining Act 1926, AAMK 869/704H

53. E W Williams, for Secretary for Maori and Islands Affairs to Under-Secretary for Mines, 31 July 1968. AAMK 869/202A

54. J M McEwen, 13 August 1968, in AAMK 869/202A

55. B Raukopa to Minister of Maori Affairs, 12 March 1969, AAMK 869/202A

56. I D Bell to Head Office, 2 July 1869, AAMK 869/202 A

57. See Phillips and Powell to Minister of Lands, 14 October 1970, AAMK 869/202A

58. Before the Labour and Mining Committee, 12 March 1970, AAMK 869/202A

for declaring land open despite the refusal of owners except in cases where land was within 100 feet of a burial ground, or was set apart as a Maori reserve under section 439 of the Maori Affairs Act 1953. Where, for practical reasons, general provisions were unworkable, the Act adopted the necessary machinery from Maori land legislation, providing for consents and agreements, either by signed agreements in writing, or by a meeting of the owners. Moneys payable to owners were to be distributed under the Maori Trustee.⁵⁹

A settlement was reached, subsequently, with regard to lands held under resident site licences, which had been left untouched by the Government's renunciation of rights under the nineteenth century deeds. In 1972, D MacIntyre, of the Marshall Ministry, indicated that the Government was willing to open negotiations on the matter, conducted on the Hauraki side, by the New Zealand Insurance Company with nominees of the owners as advisory trustees. The Government eventually agreed to buy out lessees on sites where there were no buildings in order to return that land, or, make exchange for sites, owned by the Crown, elsewhere. In order to overcome problems in working out these arrangements, the Government also offered monetary compensation which took into account the value of the sites, and inadequate rentals, plus offered a solatium for the fact that owners had been placed in a situation in which they had little alternative but to agree to being purchased out. A trust was set up to administer those moneys. A number of sites in 'Irishtown' remain the subject of ongoing negotiation between Hauraki claimants and the Government.⁶⁰

In general, the trend of legislation in the twentieth century was away from any differentiation in the way Maori and Pakeha landowners were treated with reference to gold and minerals. The complicated set of rules and fees pertaining to Maori land were swept away, while at the same time, access to it was placed on the same footing as that of Pakeha. The Government was eventually prepared to satisfy the more obvious Maori grievances – the lapse of goldfield payments at the turn of the century and the continuing application of the warden's powers with reference to resident site licences – provided remedies did not infringe on private interests. Successive governments have been less willing, however, to admit any fault in the application of legislative powers, or to reopen query into the correctness of early transactions with reference to mining on Maori lands, focusing on the honesty of accounting rather than the equity of the bargains struck.

59. J M McEwen to Minister of Maori Affairs, 21 August 1969 and 29 June 1970, AAMK 869/202A

60. My thanks to Hauraki claimants for this information.