

# The Taranaki Report - Kaupapa Tuatahi

## CHAPTER 9

### 'RECONSTRUCTION'

You have come here to arrange about a better law. The law that we think would be a good one is for the land to be returned to us - that is, to allow us to deal with our lands . . . that the Public Trustee should have nothing more to do with them . . . Ngarangi to Premier John Ballance, 1892

I have a question to put to you. What about the Crown grants that were given to us by a former Government? We have Crown grants that entitle us to these lands - that is, the people. I want to know if these Crown grants were wrongly issued to us in the first instance. Are they worthless? Shall we burn them in the fire? This is my question to you. Kauika to Premier John Ballance, 1892

#### 9.1 INTRODUCTION

This chapter describes how the Government eventually reconstructed Maori matters after the wars and the sacking of Parihaka. It did this by returning land to Maori while keeping total control over its use and alienation. The final land returns came after more than 15 years' waiting, by which time Maori could only accept what they were given. When debating the confiscation laws of 1863, the Secretary of State for the Colonies had cautioned that an impartial court should decide on land returns so that Maori would not be at the Government's mercy. The Compensation Court was a failure, however, and the return of land, long after it was due, came to depend on a single politician, sitting as the West Coast Commission. The commission finalised the land returns at 201,395 acres for 5289 persons, an average of 38 acres each. (Another 13,280 acres were later added.)

Consideration is also given to how the land return policy was fashioned. It was designed not really to secure land for Maori but to promote further European settlement. The land returned was only part of that which should have been given; and most of it was leased to settlers on perpetual leases and other advantageous terms. As at 1912, the reserves totalled 193,966 acres, of which 120,110 acres were held by Europeans under perpetual leases, 18,400 acres by Europeans under 30-year leases, a mere 24,800 acres by Maori under occupation licences, and 25,798 acres as 'papakainga or commonages'.

#### 9.2 THE WEST COAST COMMISSIONS AND FINAL LAND RETURNS

##### 9.2.1 West Coast Commissions established

The Confiscated Lands Inquiry and Maori Prisoners' Trials Act 1879 was enacted to manage the incarceration of the ploughmen, to control future disturbances, and to provide for an inquiry into the trouble and Maori allegations of unfulfilled promises. Maori claimed that there was a litter of undertakings to give land made by Ministers and officials within and outside the Compensation Court process but none had been honoured. On 20 January 1880, the Government appointed Sir William Fox, Sir Francis Bell, and Hone Tawhai as a commission ('the first West Coast Commission') to inquire into those promises and consider what should be done. As discussed in the previous chapter, Tawhai resigned in protest over the alleged bias of his fellow commissioners.

The first West Coast Commission completed three reports, ending in August 1880. Some of its conclusions have already been considered. The nub of the problem was said to be the Government's failure, over numerous years, to set aside Maori reserves. The commission described the reserves it thought were needed and recommended that a second commission be set up as soon as possible to create those reserves. The Government agreed and promptly enacted the necessary legislation - the West Coast Settlement (North Island) Act 1880. This enabled the Governor to settle every claim arising from any past award, promise, or engagement in accordance with the first commission's reports. The Governor was to issue Crown grants and provide for reserves, and the reserves were to be administered by some yet to be disclosed scheme, pursuant to an Act that had still to be passed. This was to be the West Coast Settlement Reserves Act 1881, an Act drafted by the commission, which provided that the reserves would be managed by the Public Trustee, who could lease them to Europeans.

On 23 December 1880, Fox and Bell were appointed as the second West Coast Commission to perform the Governor's duties for him. Bell withdrew to become a diplomat and Fox was left in sole charge. The commission was empowered not only to make grants of land but to determine the owners and their shareholdings. For these purposes it could take evidence. It could also engage staff, including surveyors. In effect, it was to do the task of the Native Land Court, but without the court's duty to hold hearings or its liability to appeals.

When the second commission finally reported in 1884, it had made sufficient reserves to cover most of the Compensation Court awards and other promises. As reserves were made, however, the titles were individualised, and the management of the reserves was then vested in the Public Trustee.

### **9.2.2 The commission's failure to protect Parihaka**

It should not be overlooked that the first West Coast Commission was sitting during the protests of the ploughmen and fencers and that the second commission was operating when Parihaka was invaded. Since the first commission was to report on the cause of the trouble, it naturally sought to maintain the status quo until it had done so; but nothing could constrain the Native Minister, who would not wait and had sent surveyors, road makers, and the Armed Constabulary into the field to survey and sell land and, if need be, teach Maori a lesson. The constabulary's provocations, however, failed to elicit a Maori response that could justify war against them. In the result, despite the Native Minister's attempts to have the matter resolved by arms, armed

conflict had still not occurred when the commission reported. The commission urged that nothing more be done to survey and sell land until Maori reserves, particularly the Parihaka reserve, had been surveyed and identified on the ground. Despite that recommendation, the Government's acceptance of it in the West Coast Settlement (North Island) Act 1880, and the Government's appointment of the second commission to give effect to it, the Native Minister ignored the recommendation and carried on as before with the survey and sale of the coastal aspects of the Parihaka block. When land was sold, the Maori reserves had still to be defined and Maori had no way of knowing where they could cultivate or live or, indeed, if they were to have anything.

The second commission pulled back from its earlier position, capitulating to the bullying tactics of the Native Minister and allowing him to carry on. The commission did not move to survey the Parihaka reserve, as it had recommended, but, turning a blind eye to Parihaka, sent its surveyors to work in the south, or anywhere but Parihaka, succumbing to the Native Minister's intentions. Accordingly, no Parihaka reserves had been made when, in November 1881, Parihaka was invaded on the pretext of ending Maori resistance. In our view, the second commission was as responsible for that invasion as the Native Minister, despite its protestations that it had no part in it.

### **9.2.3 The commissions' bias to European settlement**

The impartiality of the commissions was always in question. By today's standards, Fox's appointment was unusual. As the Native Minister, he had introduced the confiscation legislation and he had later been the leader of the Opposition. He did not contest the next elections, which saw a new Government of his former party colleagues under John Hall. He was appointed by the Hall Government to an inquiry that would question his actions and those of his political colleagues. Though he reentered politics and returned to the House in May 1880, Fox also continued as a commissioner and was appointed to the second West Coast Commission. Accordingly, throughout most of the relevant times, Fox was both a commissioner and a member of the General Assembly. Similarly, as mentioned in chapter 8 (see sec 8.16), Sir Francis Bell had been a legislative councillor and, like Fox, had supported the confiscation policy and legislation. On that basis, the third commissioner, Hone Tawhai, had resigned, alleging bias.

The first commission's predisposition was open and apparent. It was scathing of the practices of the chairman's political rivals, especially Native Minister John Sheehan, loud in praise of the chairman's own policies as Minister, and anxious to blame local agents for dubious purchases made when the chairman had ministerial responsibility. The commission's opinion that the trouble arose from the failure to provide reserves was the charge its chairman had made against the Grey Government when he was the leader of the Opposition.

More seriously, behind the rhetoric of how Maori were misled by unfulfilled promises or duped by Crown agents was a larger deception: the commission's display of concern while it in fact promoted more European settlement at Maori expense. Any analysis of the commission's reports cannot fail to expose the consequential inconsistencies and omissions. The commission so stressed the abandonment of the

central Taranaki confiscations that it was critical of the Compensation Court for hearing claims there. Yet, in contradiction, it blithely assumed that the Government could take most of and the best of the land there, without any payment, so long as Maori reserves were first created. Maori acquiescence was also assumed but not established. In fact, the matter was not squarely put to them, and Te Whiti, who is unlikely to have agreed, was avoided. Te Whiti invited the commission to meet with him but the invitation was declined. Indicative of the commission's lack of independence is that it declined the invitations on the Government's recommendation that it should do so. Then, without talking to Te Whiti, it presumed that a reserve was all he would have wanted.

To further illustrate the inconsistencies, the commission was concerned that no land of the loyal Nga Mahanga and Ngati Haumiti should be touched. Having pronounced that charitable concern, however, it then took seven miles of their territory in a Government reserve around the summit of Taranaki mountain. Their acquiescence was again assumed. Further, the commission expressed concern that Maori should have their own reserves, where they might 'live in peace', but it then denied peaceful possession by individualising all titles so that reserve interests could be sold to settlers. By passing the reserves to a trustee with power to lease, this could even be done without consent.

Furthermore, although it was hardest to deliver on unfulfilled promises in the north and south, the commission gave scant attention to those districts. It focused instead on the centre, where, for lack of European settlement, the promises were not a problem. It is patently obvious that this distortion was for no reason other than that the commission desired to secure the centre for European settlement. Accordingly, with regard to the north, the commission noted with concern the plight of the loyal Ngati Rahiri, who could not recover their lands; the shortage of land for compensation awards; the paucity of rebel reserves; and the landlessness of Ngati Tama and Ngati Mutunga returnees; but when it reported in 1880, it proposed no answers. In the south, the commission noted the insufficiency of land for Pakakohi but suggested nothing specific.

Instead, the commission concentrated on making reserves for the centre so that the Government could take the balance. This motive was not expressly stated but can be clearly inferred from particular phrases and from the report as a whole. It was said, for example, that, unless reserves were made, 'We may find that we can get neither Parihaka nor the plains except at the price of a struggle' and 'We have to do justice to the natives, but we have also to go on with the European settlement of the country'; and all this while the promotion of European settlement was outside the commission's terms of reference.

The second commission maintained this subliminal preference for European settlement. In its last report of 1884, the commission congratulated itself on its achievements, commented on the construction of roads through the 'unsettled' districts, observed with satisfaction the survey and sale of the remaining confiscated land, and eulogised:

the settlement of the country by Europeans . . . which is fast converting a wilderness, which five years ago was a home only to pigs and wild cattle, into cultivated farms,

interspersed with numerous villages, and traversed in numerous directions by excellent roads.

The commission omitted to mention that the largest cultivator in Taranaki had been Te Whiti.

#### **9.2.4 The commissions' limited scope of inquiry**

In all, the first commission did not take seriously the unfulfilled promises in the north and south, nor did it examine what Maori were actually saying in the centre. It grossly understated Te Whiti's position, which was that the validity of the central confiscation was in question, that the justice of the confiscations as a whole needed debating, and that Maori authority and status should be respected and arrangements with them negotiated. Earlier, we opined it was legally too late to take any part of the centre for settlement. Significantly, when the lawyers before it sought to address the legality of the confiscations, the commission expressly forbade them from doing so.

Likewise, the second commission could not determine the justice of the confiscations or the amount that each hapu ought fairly to receive. Its function was simply to give effect to the unfulfilled promises in the way that the first commission had recommended. More particularly, it was required to fulfil, on behalf of the Governor, the Governor's obligations in terms of section 3 of the West Coast Settlement (North Island) Act 1880. That section empowered the Governor:

In such manner as he shall think fit to make a final settlement of every claim or grievance . . . arising out of any award, promise, or engagement how so ever made, by or on behalf of the government of the colony, in respect of land situated within the confiscated territory, to do so in accordance with the [commission's earlier] reports, and to issue crown grants in fulfilment of such awards, promises, and engagements.

#### **9.2.5 Commission fails to fulfill promises**

Despite the statute, the second commission did not in fact provide reserves in accordance with the first commission's reports. With regard to the Parihaka block of 58,000 acres, the first commission recommended an inland reserve of 25,000 acres be made and 10,000 acres on the seaward side of the coast road be provided for Compensation Court determinations. It was bad enough that no reason was given as to why Maori should not receive the whole block, the more so since the local hapu had not taken up arms, Te Whiti expressly pursuing peace and keeping his 'turbulent people' from warfare, as the commission acknowledged. It was even worse, however, that the second commission actually reduced the Parihaka reserve by 5000 acres to only 20,000 acres and then did not provide anything near to the 10,000 acres on the coastal side for Compensation Court entitlements. It gave only a smattering of small sections to a favoured few.

On the Waimate Plains, a 'continuous reserve' was proposed, being a belt of 25,000 acres from the Oeo River to the Waingongoro River. Later, as was hinted at in the first report, this was broken up to restrict the ability of the inhabitants to disappear 'into the reserves of the forest', and the area for Maori was again reduced. Despite the

commission's scathing criticism of previous governments' failures to keep their promises, the commission failed to keep its own promises.

In addition, there were ominous signs in the commission's reports of 1880 that its promise that Maori would be left in peace would not in fact be respected. First, it did not consider Maori capable of developing the land themselves - though Tohu and Te Whiti had done that with success; secondly, to break the power of the chiefs, the commission considered the titles to all reserves should be individualised as soon as the people were 'ripe for it'; and, thirdly, it was thought most of the land should be leased to settlers.

With some irony, in view of later events, the first commission concluded its report by quoting from the British House of Commons debate on the Habeas Corpus Suspension Bill for Ireland that 'there is no statesmanship merely in acts of force and acts of repression'. Fifteen months after receiving the commission's report, the Government invaded and sacked Parihaka.

### **9.2.6 The second West Coast Commission: final land returns**

As mentioned, between 1882 and 1884 the second West Coast Commission arranged Crown grants for 201,395 acres, which were awarded to 5289 persons, an average of 38 acres each. Later, a further 13,280 acres were added - mainly to complete the Governor's promise to provide lands in the north and centre to certain absentees -

Figure 15 - West Coast Commission reserves

making 214,675 acres returned in all. The area awarded by the second commission is depicted in figure 15. Most of the Compensation Court entitlements and, it appears, nearly all the reserves previously created, other than those sold and other than pre-war purchase reserves, were included in the reserves formalised by the commission. Of the 79,238 acres recommended by the Compensation Court, the commission claimed that 12,608 acres had been provided for and that the balance had been 'merged' in its reserves.

The northern area received the least, with only 39,265 acres divided among a mere 1467 grantees. The land consisted of the 37,200 acres that the Compensation Court had awarded for loyals alone, with some additional amounts for absentees, incongruously based on the arithmetic that had been used by the court in the south. Later, 7000 acres were set aside for further Ngati Tama and Ngati Mutunga absentees, but this land was well in the bush. Thus, in the north there were no discretionary hapu reserves without distinction as to loyals or rebels, as there were in the centre and south, and most of the land that was given was in small sections susceptible to sale. It was felt little more could be done because the available land between the bush and the sea had mainly been taken up. Thus, with regard to the most northerly portion, it was stated:

As regards Division I, between Waipingao and Titoki, the difficulty was not so great, consisting chiefly in the fact that the land available within the defined limits was almost entirely bush, the open country between it and the sea having been entirely appropriated to Pukearuhe military settlers, and having by them been subsequently

sold to Europeans. The Commissioner cannot help thinking that it was not fair towards the Loyal Natives, who were entitled by law to have their lands returned to them, that they should have been thrust back into the bush and away from the sea frontage in favour of military settlers who never settled, but who received their land merely as so much pay for services, and sold it as soon afterwards as they could to some Europeans, all of whom disposed of their interest to a single European, who now occupies it to the entire exclusion of the original loyal Native owners. But the wrong is past repair, and the Commissioner could only meet these claims out of such lands within the district between Waipingao and Titoki as remained at his disposal.

In divisions II and III, awardees received only one-fourth of their awards in open land, the remainder being in the bush, owing again to the unavailability of clear land. The commission commented, 'the bush portions are very rough, and were surveyed with great difficulty'. It was explained:

In allocating the awards the following method was adopted: Tickets were numbered consecutively with the numbers attached to the awardees on page 17 of Appendix B, G2, 1880. These were then put in a bag, and drawn out by an impartial person. As the numbers were taken from the bag, the order of drawing was placed opposite each awardee's name, and the Chief Surveyor allocated the sections as nearly as possible in the order of drawing from a given starting point.

Where new awards were provided - to accommodate absentees, for example - the allowance per person was particularly small. One block of 789 acres was awarded to 68 persons, another of 589 acres was awarded to 64 grantees, and, as a further example, the allowance of 576 acres for the Ngati Tama hapu was vested in 50 persons. There was no hope that any of this could provide for the future development of the people.

In the southern district, 43,609 acres were granted and apportioned between 1967 grantees. It appears that here the commission did little more than survey the perimeters and internal divisions of blocks that had been set aside long ago by the Government. Compensation Court awards were finalised, but nearly all of them had previously been sold. Then, acting like the Native Land Court, the commission compiled lists of owners and divided the reserves between them. Nearly all the reserves were vested in individuals, save only for some small sections, representing sacred sites, eeling villages, or the like, vested in trustees for named hapu.

In the centre, 118,520 acres were distributed among 1855 grantees. Here the reserves were larger but were none the less scaled down from what they should have been. The Stoney River block was to have been kept whole for the local hapu, on account of their loyalty, but was in fact reduced by seven miles from the summit of Taranaki mountain. The same applied to the Opunake block, where again the local people had not taken up arms. Not only were their lands taken around the mountain, however, but a further part was excised for the Opunake township, although no formal transfer of that land had been effected. Reserves were then provided at Parihaka and on the Waimate Plains, as is referred to below. In both cases, however, the greater part of the blocks passed for European settlement. Further reserves were set apart in this area for the hapu of Hone Pihama and Manaia, who had been loyal, with reserves for fishing

stations, sacred sites, and special cultivations. Again, however, it was not the whole of the land of the loyal hapu that was reserved.

The commission thus clarified the lands that finally returned to Maori. The main effect, however, was not to advance Maori interests but once more to limit them. Most especially, being limited to the consideration of unfulfilled promises, the commission precluded the inquiry that was needed into the full justice of the confiscations and the adequacy of lands provided for Maori. That was the real heart of the problem. In the north, the commission did little more than give effect to outstanding Compensation Court awards and promises of the Governor to provide for absentees. In this respect, its provisions were most limited. The commission admitted the difficulty it had in providing much more, owing to the unavailability of open land, but it did not take the opportunity that was available to it to provide additional land in the bush or to increase the bush awards to compensate for comparative value losses. In the south, the commission largely formalised the reserves that earlier governments had arranged but without acknowledging the role those earlier governments had played in doing so. In the centre, it restricted Maori in order to advance settlement, when the real unfulfilled promise to Maori, as the commission initially admitted, was that the whole of the confiscation in the centre had been abandoned.

A further effect was to ensure that the greater length of the coastline, being the most productive land, was held by settlers, with Maori pushed inland. Indeed, the commission admitted that, for example, three-quarters of the reserves between Parininihi and Waitara were in bush. Ironically, this land was later to be valuable for timber, but it was the lessees of that land who obtained the benefit.

### **9.2.7 The second West Coast Commission: powers assumed**

The second West Coast Commission assumed wider powers than it possessed. It not only created reserves but also reduced them. We have seen that, out of the 58,000-acre Parihaka block, the first commission had proposed to reserve 25,000 acres. It was also proposed that this reserve be cut out and secured before anything was done towards the settlement of the rest. Instead, the second commission held off surveying the reserve while the Native Minister took what he wanted for settlement, which included the most fertile coastal land and the Maori cultivations, pushing Maori to the interior. Then, 5000 acres were deducted from the reserve proposed by the first commission on account of the trouble and expense Te Whiti had caused the Government in obliging the Government to invade him. Finally, the original proposal that 10,000 acres of the arable coastal lands be held for Compensation Court entitlements was not given full effect.

Effectively, the second commission assumed the authority to impose a punishment. We are of the opinion that it had no power to do so and that it acted unlawfully. The West Coast Settlement (North Island) Act 1880 required that matters be done in accordance with the first commission's reports, and the first commission was to do no more than give effect to promises. The grant for Parihaka was not in accordance with the first commission's report, with the result that the Governor did not lawfully discharge his duties under the statute.

The same applied to the continuous reserve proposed for the Waimate Plains. That, too, was reduced by 5000 acres, owing to the alleged complicity of the local hapu, and Titokowaru especially, in Parihaka affairs. The record of this reserve also illustrates how the original proposal became eroded over time and how the fighting pa of Titokowaru, Te Ngutu-o-te-manu, which could not be taken in war, was finally taken by the pen.

In 1880, the first commission proposed a continuous belt of reserve from the Oeo River to the Waingongoro River, to encompass an area of about 25,000 acres. The commission depicted this in a plan, roughly along the lines of map (a) in figure 16. The following year, the second commission produced a further plan of the area. As if concerned that Maori might develop notions of managing their own territory on such a large reserve, pockets of 'government land' were interspersed in the reserve

Figure 16 - The fragmentation of the "continuous reserve"

for the purpose of intermixing European settlement as a 'guarantee of peace' (approximately as shown in map (b) in figure 16), and at the same time Te Ngutu-o-te-manu was included in the Government's territory. The reserve as finally granted was reduced still further by some 5000 acres. As illustrated in map © in figure 16, it had none of the character of the continuous reserve the first commission had recommended.

The further and more devastating result of the commission's assumed powers was that it individualised titles. All the lands were vested in individuals outright, save for 18 grants totalling 991 acres, or 0.5 percent, which went to individuals in trust for hapu. These lands were mainly fishing stations, eeling villages, and sacred sites, not development lands, and even these were later to be individualised by the Native Land Court. Although the commission had proposed the reserves as a permanent estate for Taranaki Maori of some 200,000 acres, only some 3725 acres had been made absolutely inalienable, and by the end of the century, all restrictions on the alienation of lands in Crown grants had been removed by statute. Also, although most of the Crown grants had been made inalienable except by lease for terms not exceeding 21 years, most were to be leased perpetually as a result of the commission's own arrangements.

Not only were titles individualised for nearly the whole of the lands, but each reserve was subdivided into several allotments for that purpose. The result was the fragmentation of both ownership and titles. The commission openly supported the division of tribal authority in this way. In so doing, it was addressing the needs of European settlement, not those of Maori. The commission supported the individualisation of land tenure to break the power of the chiefs. Although it was not expressly stated, the same policy in turn facilitated European acquisitions. Moreover, the whole of this individualisation programme was effected by a single commissioner, operating as though he were the Native Land Court but without the usual rights of open hearing and appeal. There is also some evidence that the commission favoured particular individuals, especially half-castes.

In an equally dramatic assumption of power, the commission drafted a new Act for the administration of the reserves by the Public Trustee and through a scheme by

which most of the reserves would be leased to Europeans on perpetual terms. This is addressed in section 9.3.

### **9.2.8 The West Coast Commission: conclusion**

The Treaty required that, in its dealings with Maori, the Government should act with honesty and integrity and should protect Maori interests. Though the post-war circumstances obviously required a full inquiry into the justice of the confiscations and the equitable recovery of land for Maori, the commission's inquiry was too limited in scope and insufficiently independent to be anything near to adequate. The result was an inquiry more bent on promoting European settlement than protecting Maori. The commission could and should have been a body bringing justice and relief to a sorely oppressed people. It was in fact part of the Government's machine to ensure their further dismemberment.

More particularly, the programme for the return of land, which was crucial to Maori survival, came to depend upon partial and political considerations. The prejudice lay mainly in settling the centre without inquiring into the legal or moral basis for so doing; in contributing to the Parihaka invasion by not providing the reserves that could and should have been provided beforehand; in giving less land of good quality than should have been returned; in failing properly to inquire into the land needs of Maori, especially in the north; in punishing certain hapu for supporting Te Whiti by reducing their land awards; in individualising titles; and in denying the authority of Maori to manage their lands themselves. As a consequence, Maori suffered grievous and irreparable loss.

## **9.3 PERPETUAL LEASES**

### **9.3.1 Overview of perpetual lease problem**

The main legacy of the West Coast Commission has been that most of the lands meant for Maori were given over for settler use and occupation. These have remained in their use and occupation to this day as a result of sales and perpetual leases. The leasing was 'the most unkindest cut of all', for it ensured that the fact of dispossession would be personally conveyed to the children of every succeeding generation. Today as Maori of Taranaki seek jobs for their children, which they say is increasingly difficult, and ponder upon the many who have 'disappeared' in search of work, they reflect with bitterness on how their own lands are worked by Europeans. They consider the sort of infrastructures and experience needed to develop primary and secondary industries, and they ruminate on the opportunities lost over the last 100 years to develop the experience and infrastructures themselves. Since the age-old prejudice that Maori could not work the land anyhow survives, they look back to Parihaka for proof of their capabilities, only to be reminded again of how they as a people were marginalised in their own country. With deep emotion and hurt, older Maori recall the drunkenness and despair that followed land loss and they recall the people's degradation. The irony is that the West Coast Commission was established to deliver on land promises to Maori, but then, abetted by special legislation, it devised a programme that ensured that the promised land was not to be theirs to cultivate and live upon. In the final analysis, the conquest came by the pen, not the sword, and thus

they say 'te muru me te raupatu' when talking of the confiscations and perpetual leases.

The dispossession of Maori of their post-confiscation reserves by the imposition of perpetual leases is a major topic, normally deserving an exhaustive report on all aspects. Because the Government has now resolved to terminate the perpetual leases, however, our discussion is limited to an overview. This is followed by a consideration of the appropriate time-scale for the phasing out of perpetual leases and a discussion of an important issue left unresolved by the Government - compensation to Maori for low rents and loss of possession from 1881 to the date of termination.

### **9.3.2 Perpetual leases begin with the West Coast Commission**

The overview must begin again with the West Coast Commission. Throughout its inquiries and in its several reports, the commission saw no conflict between protecting Maori interests and promoting European settlement, for any tension was simply resolved by putting European interests first. That conflict was transferred without thought to the statute that was to govern the administration of the Maori reserves. The West Coast Settlement Reserves Act 1881 was drafted by the West Coast Commission. It vested the management of the reserves in the Public Trustee, empowered the trustee to lease the reserves, and yet required, in section 8, that the trustee act for the benefit of 'the natives to whom such reserves belong' on the one hand and for 'the promotion of settlement' on the other. From that day forward, the Public Trustee was required to promote two goals inherently in conflict. Like the West Coast Commission, the trustee was to favour European settlement. As one commission of inquiry put it in 1913:

it is unfortunate that while a trustee for the Natives he should have had to consider the question of settlement by Europeans, and take up a position antagonistic to his beneficiaries.

In any event, by drafting this special legislation, the West Coast Commission arranged for the management and administration of all the reserves it created to be vested in the Public Trustee, who would allocate to Maori such land as was thought necessary for their own occupation and lease the balance to Europeans generally on perpetual terms. The trustee was now the rangatira. Traditionally, it had been the function of the hapu, through the kahui rangatira, to arrange all land allocations themselves.

To illustrate the extent of leasing, when a review was made in 1912, 193,996 acres remained as Taranaki Maori reserves. Of that, 120,110 acres were held by Europeans under perpetual leases, 18,400 acres were held by Europeans under 30-year leases, 24,800 acres were held by Maori under occupation licences, 25,798 acres were held as 'papakaingas or commonages', and 4890 acres were in various tenures. The main concerns for Maori have been, first, that the leases were mainly perpetual; secondly, that the conditions of lease were seen as advantageous to the lessees; thirdly, that Maori did not administer the lands, the leases, or the rents; fourthly, that Europeans had long-term leases on which they could borrow but Maori had only occupation licences terminable at will or for terms of up to 7 years; and, finally, that Maori had not agreed to any of the proposals and had never consented to the leases.

### 9.3.3 The legislation and inquiries

The founding statute was the West Coast Settlement Reserves Act 1881, which vested the management of all the reserves in the Public Trustee. The Act is to be read with the various amendments of 1883, 1884, 1885, 1887, and 1889 and, most especially, with the associated regulations. Because the legality of the regulations and the leases became questionable, and because it was desired to change the lease terms to make them more consistent, the law governing the Taranaki reserve leases was rewritten as the West Coast Settlement Reserves Act 1892. This in turn is to be read with the amendments of 1893, 1895, 1900, 1902, 1913, 1914, 1915, 1923, 1948, and 1951 and with some related provisions in the Native Reserves Act Amendment Act 1895; the Reserves, Endowments, and Crown and Native Lands Exchange, Sale, Disposal, and Enabling Act 1898; the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1912; the Native Land Amendment and Native Land Claims Adjustment Act 1916; the Native Trustee Amendment Act 1922; the Native Purposes Act 1933; the Native Purposes Act 1935; and the Maori Purposes Act 1949.

All of the above legislation was replaced by the Maori Reserved Land Act 1955, which did not substantially alter the 1892 leases but sought consistency for Maori reserve leases throughout the country, there being several other places where Maori reserves had been compulsorily leased (for example, in Rotorua, Palmerston North, Wellington, Nelson, and the West Coast of the South Island). It was only in Taranaki, however, that the reserves followed upon the confiscation of the land. The Maori Reserved Land Act 1955 is still current. It in turn has been affected by the Maori Purposes Act 1962 and the Maori Affairs Amendment Act 1967.

A picture of the reserves administration may be obtained from the reports of the many inquiries made at the behest of aggrieved Maori. We particularly refer to reports of the following, which either dealt with the perpetual leases specifically or included them in reports on Maori land generally: the Joint Committee upon the West Coast Settlement Reserves 1890 ('the Stevens committee'), the Native Land Laws Commission 1891 ('the Rees commission'), the Joint West Coast Settlement Reserves Committee 1891 ('the second Stevens committee'), the Royal Commission on Complaints against the Public Trustee in Connection with the Administration of the West Coast Settlement Reserves 1906 ('the Seth-Smith commission'), the Royal Commission of Inquiry into the Alleged Usury on Loans to Maoris 1906 ('the second Seth-Smith commission'), the West Coast Settlement Reserves (North Island) Commission 1912 ('the McArthur commission'), the Commission to Inquire into the Working of the Public Trust Office 1913 ('the MacIntosh commission'), the Royal Commission to Inquire into Confiscations of Native Land and other Grievances Alleged by Natives 1927 ('the Sim commission'), the Commission to Inquire into and Report upon the Departments of Government concerned with the Administration of Native Affairs 1934 ('the Smith commission'), the Royal Commission to Inquire into the Operation of the Law relating to the Assessment of Rentals under Leases of the West Coast Settlement Reserves 1948 ('the Myers commission'), the Committee of Inquiry into Maori Land 1965 ('the Pritchard committee'), and the Commission of Inquiry into Maori Reserved Land 1975 ('the Sheehan commission'). Reference may also be made to the reports of the parliamentary native affairs committees, especially those of 1884, 1887, 1893, 1904, and 1923.

### 9.3.4 Initial legislation and opposition

Having regard to the legislation as a whole to 1955, and the official documentary evidence as compiled for the claims, we have drawn some preliminary conclusions. It is obvious, for example, that the regular Maori claim that they never consented to the leases is only too true and correct. The proposal to vest the reserves in the Public Trustee and the terms and conditions of the leases were unilaterally imposed by statute. Although the 1881 Act directed the Public Trustee to consult with those Maori whom the trustee thought might be necessary and to act in accordance with Maori wishes, too much was left to the trustee's discretion. He was also required to promote European settlement, and Maori, having lost their rights of control, were merely respondents to Government initiatives. Moreover, where the Act did allow Maori a say, as upon lease surrenders or renewals, and when Maori in fact intervened and opposed renewals, their power of intervention was taken away by statutory amendment. In those cases, the statute provided for arbitrators to decide for Maori. Further, the Act did not provide for the hapu to consent to the policy of leasing, as custom would have required, nor did it stipulate for the consent of each individual owner in accordance with Western legal standards. Such individual consents as may have been given were later negated by unilateral statutory changes.

The greater evidence is of Maori objections. Those aligned with Tohu and Te Whiti especially refused to have anything to do with the Public Trustee and the leases, believing that Maori had the right to manage their own lands. For many years, several refused to receive rents. Maori objections were made known to the Government from at least the moment the first legislation was introduced. H Tomoana (the member for Eastern Maori), H K Taiaroa (Southern Maori), and Major W Te Wheoro (Western Maori) raised strong objections to the Bill that gave rise to the 1881 Act. As Major Te Wheoro said, 'the hand of the Government should not interfere in any way with such lands as were given back to the Natives . . . The Natives are quite able to deal with their own lands.'

Criticism also came from Maori outside the Government. As early as June 1882, Uru Te Angina and 14 other 'chiefs' on the west coast petitioned the Government, praying that 'the Act appointing a trustee to manage Native reserves on the West Coast be not acted upon'; but the Native Affairs Committee recommended little more than that steps be taken to ensure that Maori understood the Act's provisions.

Also without Maori consent, the lease terms were regularly changed to accommodate the lessees. There were dramatic changes from the beginning. Rents under the first leases were based upon the improved value of the land, but when these were too much for the lessees, the Public Trustee was authorised to remit arrears at his discretion and later the law was changed to effect a substantial drop in rents by basing them on the unimproved value. Later still, the definition of improvements was changed to reduce rents further. For a period, the term of years was changed from 21 to 30 years without perpetual renewal, and it was then changed back to 21 years, on the reduced rent formula and with rights of perpetual renewal. Further, provision was introduced for the lessees to be compensated for their improvements.

The altered terms and conditions of the leases were harshly criticised by the first commission of inquiry, the 1890 Stevens committee, referred to above. It described

the Maori interests as having been reduced to the right to receive an annuity - an annuity that was based on the unimproved value of the land and was reviewable only every 21 years. The committee considered that the Maori interests in the improvements had been confiscated.

The situation led to Maori receiving little or no rent. It appears that, in addition to the low rents, Maori were charged for bushfelling, surveying, roading, and administration. Indeed, in the first four years, more money was expended than was received in rents. On occasions, the cost of uplifting the rent payment from the Public Trustee exceeded the rent payment itself. The Rees commission of 1891 added:

The Maoris' rights were confiscated by one dash of the pen, and, at greatly-reduced rentals, new leases for thirty years were given to the lessees . . . the Maoris were plundered. The evidence given . . . in September, 1890, shows that twenty-six European lessees obtained new leases for terms of thirty years of nearly 18,000 acres of land, and that the value of the improvements taken from the Maori owners by the 7th section of the Act of 1887 in those lands alone amounted to £19,821 . . . In one extreme instance the rent was reduced from £358 per annum to £80. It would be difficult to imagine a more flagrant case of legislative robbery.

The fact that the leases were imposed and unilaterally changed to accommodate the lessees has significance for the arguments that followed. It was often contended that because contracts are sacred covenants between parties they cannot be broken. There was nothing sacred about these contracts, however, at least as between the owners and the lessee, because they were not effected by the parties and the terms were not agreed between them. The lease terms were effected by statute.

Also, from the outset the leases were capable of being made perpetual. Some research advice has assumed that the perpetually renewable leases dated from the 1892 Act. While the Act of 1881 did not spell out the perpetual nature of the leases, the form of the leases was given in the fourth schedule to the 1883 regulations, and a basis for perpetuity was introduced in clause 5. We consider those regulations were *ultra vires* the Act, but the leases were given out none the less and were capable of permanently denying possession to Maori owners.

Maori opposition had developed substantially by 1887, when a Bill of that year proposed further changes to the leases. A petition to Parliament claimed that Maori had insufficient land for their own occupation and asked that the land return to them on expiry of the current lease periods that they might lease it or use it themselves. When the Bill was enacted none the less, Maori began court actions, claiming, among other things, that the leases were unlawful as being pursuant to regulations that were *ultra vires* the Act. The Government responded with an amendment of 1889 to freeze all leases and court actions for a year until validating legislation could be passed. It also established the Stevens committee, which reported in 1890. The committee noted the perpetual nature of the leases, considered that the regulations were indeed unlawful and *ultra vires* the Act, and recommended legislation to legalise new, but terminating, leases. The committee proposed 15 years of low rent on unimproved value and 15 years of full rent on improved value, the leases then to terminate without compensation for improvements. Maori were critical of the committee, but had they

known what was in store for them, they may have seized upon the committee's recommendations with alacrity.

### **9.3.5 1892 legislation, inquiries, court actions, and Government validations**

The Government validated the leases by rewriting the law in 1892 and changing the lease terms. Far from creating terminating leases, however, in terms of the committee's recommendations, the West Coast Settlement Reserves Act 1892 expressly provided for perpetually renewable leases. Meanwhile, as the freeze on legal actions had been lifted, Maori pressed on with court actions, introducing for that purpose a further cause of action. The Crown grants or titles for the reserves had generally issued with the restriction that the lands in the grants would not be alienated except by lease, and then for terms not exceeding 21 years. In the case then before the court, the lands had been leased for a term of 30 years. Maori succeeded in the Court of Appeal on the ground, among others, that the leases could not deviate from the terms of the Crown grant. It was also found that the 1883 regulations were *ultra vires* the Act, except so far as they were sanctioned by section 7 of the 1881 Act. In addition, passages in the decision were highly critical of the Government's policy and legislation. The decision was nullified by the 1892 Act, however, which provided that the alienation restrictions in Crown grants were deemed not to exist.

The 1892 Act re-established the perpetual lease regime along the lines more regularly known today of 21-year perpetually renewable leases, with rents based on the unimproved value. Later amendments adjusted the detail but did not substantially affect the structure. The definition of 'improvements', for example, was changed in 1893 to reduce rents further.

Those with leases under the old Act could also convert them to the more favourable terms of the 1892 Act. By special legislation in the Native Reserves Act Amendment Act 1895 and the Reserves, Endowments, and Crown and Native Lands Exchange, Sale, Disposal, and Enabling Act 1898, the Government later provided the lessees with two further chances to convert those leases to perpetual leases. Most of the lessees did convert their leases, save for a group which prevaricated and continued to hold to their 30-year term leases on 18,400 acres.

Maori complaints continued. James Carroll, later Sir James, told the General Assembly that the 1892 Act was passed:

against the will of the Natives. They had petitions from Natives in all parts of the colony . . . protesting against the House in any way interfering with their rights in the West Coast reserves. But the House, seeing the condition their minds were in, seeing they were not responsible for their actions and for their deeds at the time, seeing them in that pitiable state, passed such legislation as the House thought was for their good, despite all their protestations.

Kuini Wi Rangipupu petitioned that 'by education and experience' she was more than capable of administering:

her own estate, whether occupied by a European leaseholder or by herself, and that [she] . . . would be increasingly encouraged to improve such estate by building and planting if the management was in her own hands, safe from all interference and free from annoying and costly imposts.

Given this state of affairs, she asked the House of Representatives to legislate so that she could:

alone administer her lands, to the great saving of expense, to the evolution of a better home, and to the general improvement of the lands which have been her ancestor's for numberless years.

Maori voiced numerous complaints about the extent of the powers given to the Public Trustee and other matters relating to administration, and the Government responded with several commissions of inquiry. The West Coast Settlement Reserves (North Island) Commission of 1912 was concerned to note that Maori were largely uninformed of the provisions of the 1881 and 1892 Acts. Maui Pomare, later Sir Maui, gave evidence to that commission. He thought that if Maori had known the lands were to be leased for all time, 'they would have been fighting still'.

Also, over the late 1890s and early 1900s, Maori had made a number of allegations that persons were lending money to Maori at exorbitant interest rates through an assignment of rents and that this was leaving them impoverished. In 1895, Tutangi Waionui and others petitioned that the Public Trustee be empowered to advance money to them on mortgage.

The 1906 Royal Commission of Inquiry into the Alleged Usury on Loans to Maoris conclusively found that money had been lent to Maori at usurious rates of interest that were impoverishing them. It recommended that the Public Trustee be empowered, by statute if necessary, to guarantee the debts incurred by Maori for necessities, to pay the amounts so guaranteed, and to deduct them from rents as and when they became payable. This would remove the tradesmen's objections to giving credit to Maori and at the same time would destroy the use of the rents as loan security.

Meanwhile, under the leadership of Maui Pomare, soon to be the member for Western Maori, and Robert Tahupotiki Haddon, a clergyman of the Methodist Church, a union emerged to unite Maori in securing those reserves that were not under perpetually renewable leases and that would revert to Maori at the expiry of their terms. The union was formed at Taiporohenui in 1909 with Kahu Pukoro as president and Wiremu Hipango as chairman. Then, a deputation of 72 union members under Pomare met with the Prime Minister, the Native Minister, the Public Trustee, and others to request the repeal of the 1892 Act as 'a violation of the Treaty', claiming:

Further, that iniquitous and cruel Act vested our lands in the Public Trustee for ever as if he were the absolute owner . . . It empowered the Public Trustee to arbitrarily lease our lands for all time, regardless of whether we have sufficient for our maintenance or not . . . And now we pray that no further leasing of our lands be continued by the Public Trustee . . . and that you, Sir Joseph, and the Ministers of your Cabinet, will seek some road by which our lands leased by the Public Trustee for all time be returned to us . . .

There was no positive outcome but the 30-year leases were again the subject of debate before the McArthur-Kerr commission of inquiry of 1912. The commission noted many Maori complaints, including that rents continued to be reduced by amendments to the 1892 Act, that interest had been reduced on outstanding payments, and that the Public Trustee, in the complainant's opinion, consistently failed to press the lessees for rent arrears. Counsel for Maori advised the commission that his clients were anxious to bid for the 30-year leases for 18,400 acres once the terms expired. Previously, Maori had not been able to bid for the leasing of their own lands, he said, and the Maori occupants of the reserved lands did not have the advantage of the sorts of lease the Europeans had. Maori had only short-term licences to occupy and these were not acceptable as security for loans.

The Public Trustee was opposed to Maori leasing the 18,400 acres. In the trustee's view, a Maori was not 'as a rule . . . qualified to be a successful occupant of a highly improved farm'. The trustee sought a recommendation that those Europeans who had not yet converted their 30-year leases into perpetual leases be given a further opportunity to do so.

The commission considered that two things were self evident:

The first is, that every legislative measure has been in favour of the lessees; and the second, that on no occasion has the Native owner been consulted in reference to any fresh legislation.

The commission noted that Maori were interested in dairy farming and considered that they should be able to compete with the Europeans for leases. After examining the background, it concluded that the lessees of those leases about to expire should not have a further opportunity to convert them.

The Government response was to move in precisely the opposite direction. Despite the objections of the Maori members in the House, the West Coast Settlement Reserves Amendment Act 1913 was passed to extend the 30-year leases for another 10 years. The Act actually went further, however, enabling the Government to buy the freehold from the Maori owners wishing to sell and permitting its on-sale to the lessees during those 10 years. By the end of that term, 6400 acres had been purchased from Maori. By a further amendment of 1923, the lease terms were then extended for another five years in respect of the remaining 12,000 acres, though on that occasion it was because the accumulated rents in a sinking fund were insufficient to compensate the improvements. The same amending Act, however, allowed Maori to convert their licences to occupy into proper long-term leases.

Maori dissatisfaction with the low rents came to a head in 1934. That year, the arbitration system resulted in a reduction of all rents, when, it seems, everyone had expected a large increase. Maori successfully pursued the matter in court, the Supreme Court holding that the valuation had wrongly included improvements effected prior to the last term. The lessees threatened an appeal but the matter was settled by legislation. Once more, the Government sided with the lessees, overturning the Supreme Court decision and backdating improvements to when the leases first started.

Maori dissatisfaction was rife and resulted in a royal commission on rentals under Sir Michael Myers in 1948. There were also further complaints concerning the Public Trustee's performance in collecting unpaid rent. A petition of Rangihuna Pire and others summed up the criticism:

the West Coast rents were not being paid to the Maoris, partly because lessees were in arrear owing to the slump and partly because of mal-administration by the Department.

The Myers commission reported that Maori had 'suffered grave injustice' in the reduction of their rents since 1934. It recommended that the Maori beneficial owners be compensated by a payment of £30,000 from accumulated profits in the Native Trustee's account, the administration of the leases having been transferred to the Native Trustee in 1920. We find it hard to understand why the Native Trustee was expected to pay, when any rent shortfall had properly to be met from Government funds or by the lessees. The commission had a number of recommendations for the assessment of rentals in future, however, and these were given effect to by the West Coast Settlements Reserves Amendment Act 1948.

The 1948 Act affected 474 leases covering 71,643 acres of reserves. The leases were to be cancelled from 1 January 1948 and replaced with new leases - for 21 years and perpetually renewable - with a new system of valuation. The rentals were to be 5 percent of the unimproved value of the land, with the valuation determined by a committee of three, one each nominated by the Valuer-General, the Maori Trustee, and the West Coast Settlement Reserves Lessees Association.

### **9.3.6 1955 legislation, fragmentation, amalgamation, and incorporation**

A variety of laws for the leasing of Maori reserves, some 43 statutes in all, covering, in addition to Taranaki, reserves in Palmerston North, Wellington, Nelson, Westland, and elsewhere, were brought together under the Maori Reserved Land Act 1955. The Act had two main purposes: to standardise the leases of Maori reserves on a national basis and to deal with rapidly fragmenting beneficial interests. Rentals were fixed at 5 percent of the unimproved value with perpetually renewable terms of 21 years, and the Act gave the Maori Trustee authority to convert any outstanding term leases to leases in perpetuity.

By this time, the owners, now dispossessed of their lands for nearly a century, had grown dramatically in number. Just one owner in a 30- or 40-acre allotment, which was the average allotment at the time that the reserves were created, could now have more than a hundred descendants, and most of these were likely to be living outside Taranaki. In the result, there were many whose shares in land had become exceedingly small through the compounding of Native Land Court successions over the years. The following perspective was given in the House when the 1955 Act was passed:

Many of these minor amounts are so small that they are not worth collecting. Another factor is that the original beneficiaries were small in number and in a confined area. Over the years such tribes as the Taranaki and Ngaitahu, which hold reserves, have spread out over New Zealand, and their members have gone into the cities and taken

up other interests. They have practically no knowledge of their Maori Land interests and they just do not care.

The continuing disassociation of Maori from their ancestral land finally became memorialised in 1963, when the interests of all owners in every revenue producing reserve from the north to the south of Taranaki became pooled in one grand amalgamation. Following a report on the state of Maori land in 1960, and pursuant to a statutory direction in the Maori Purposes Act 1962, in 1963 the Maori Land Court amalgamated the owners into one title, which it called the Parinihi-ki-Waitotara reserve. The title comprised the remaining 71,969 acres of perpetual lease land. No doubt the amalgamation was administratively convenient owing to the many owners and their dispersal, but it had nothing to do with the customary preference of Maori. Every person in every hapu who had inherited land no longer held that interest in their home area but had an interest instead in every reserve throughout Taranaki, irrespective of their hapu affiliations. It underlined that in effect the owners' interests were no longer interests in land; they amounted to no more than a right to share in rents according to the vagaries of share devolutions.

The Government then addressed the issue of the small, fragmented shares. By sections 3 and 7 of the Maori Purposes Act 1962, shares worth less than \$20 were vested in the Taranaki Maori Trust Board for a Taranaki education trust. As at 1975, the board held 5956 shares of the 1,280,418 shares in the amalgamation.

The process of assuming uneconomic shares for general purposes has the potential to restore hapu ownership as interests continue to fragment over generations. In this case, however, the uneconomic shares vested not in the hapu traditionally associated with the land but in a regional body.

Allied to the growing severance of Maori from their land were land sales. The Maori Reserved Land Act 1955 enabled the Maori Trustee to purchase lands for on-sale to lessees. The Maori Affairs Amendment Act 1967 gave direction to the Maori Trustee to buy what lands the trustee could for the benefit of the lessees. Sections 155 and 156 of that Act enabled the lessees to buy the freehold of their leases. The Maori Trustee was authorised to sell to the lessees, at 10 percent of the unimproved value, if the owners were 'willing to sell and in sufficient numbers'. The amalgamation order facilitated sales, enabling the Maori Trustee to canvass and to aggregate individual sellers in order to sell blocks, even if the former owners of those blocks were opposed to selling. Between 1968 and 1974, 16,325 acres were sold from out of the amalgamated title, representing about 22.78 percent of the reserves as held at 1948. The power of sale was repealed in 1975.

The Maori Affairs Amendment Act 1967, with the wide power of sale that it gave to the Maori Trustee, stimulated Maori to renew the pressure to recover the control of their lands. Owners formed the West Coast Settlement Reserves Advisory Committee to establish an incorporation to wrest control from the Maori Trustee. At public meetings at Manukohiri Marae in 1969 and Hawera in 1974, owners voted strongly in support of an incorporation. With pressure from the advisory committee and groups in other places affected by reserved land leases, the Government established the Commission of Inquiry into Maori Reserved Land ('the Sheehan commission').

The task of the Sheehan commission was to review the Maori reserved land leases nationally. It held one sitting in Taranaki and considered 396 leases of 58,249 acres. Like its predecessors, this commission was also highly critical of the perpetual leases. In reporting in 1975, it noted:

There are in fact four distinct parties concerned. These are the Legislature, the Maori Trustee, the lessee, and the beneficial owners who are represented by the Maori Trustee . . . The beneficial owners are not a contracting party and their role is a completely passive one. They are treated as children or persons under disability. They are not well informed upon the law or the facts concerning the lands in which they have an interest. They are not adequately consulted either . . . or indeed capable of being consulted, even when major changes in the law or the leases which affect their interests are contemplated. Even on occasions when they have expressed views on these matters their representations have not carried weight.

It continued:

in reality the parties who alone are free to determine the nature and terms of the leases are Parliament, ie, the Crown and the lessees . . .

and concluded:

to call the Maori Trustee a free, responsible, and informed person entering freely into a contract on behalf of those whom he represents, is completely unreal and indeed to call it absurd would not be too harsh a term.

In what were then dramatic proposals in the light of the preceding centuries' norms, the commission recommended five-year rent reviews, the indexation of rentals, a basic rent of one percent above that for Government stock, and the administration of the leases by the owners through representative organisations; but the commission fell short of recommending that the leases be terminated. Most of the commission's proposals were not implemented, save that relating to the request of the advisory committee that the administration of the reserves should pass to an incorporated body of owners.

Maori incorporations owe their origins to policies developed by Maori leaders last century, essentially as a land management device. As further provided for under Part IV of the Maori Affairs Amendment Act 1967, an incorporation allowed Maori landowners to manage their lands through a collectively elected committee. In this case, the whole of the perpetual lease reserves would be vested in an incorporation of the owners, and every owner would receive shares equal to the value of their previous land interest. The owners would become as equity shareholders in an incorporated company, having shares but no direct interest in a particular block of land.

The Sheehan commission outlined the advantages and disadvantages of incorporation: it may cause owners to lose some identification with their lands, (although in this case, that had already happened as a result of the amalgamation); succession to incorporation shares was determined by legislation, not Maori custom (although Maori custom had become largely meaningless in Maori land law in any event); and the lands would still be subject to the statutory leases whether or not an incorporation

were formed. On the other hand, an incorporation would mean that the owners could now manage the leases themselves; it would dispense with the need for expensive meetings of owners, which might not reach the necessary quorum; it could more easily purchase the interests of anxious sellers for the benefit of Maori, not lessees; it could readily speak for the owners as a whole; and an incorporation could address the problem of share fractionation through more effective management of uneconomic interests.

Counsel for the advisory committee contended that, although it would be impossible to know whether a majority in share value supported its proposal, it had nevertheless obtained 2500 signatures in favour out of some 5000 traceable owners. On that basis, the commission recommended in favour of an incorporation.

As a result, the Parininihi-ki-Waitotara Incorporation ('the PKW Incorporation') was established by an Order in Council of 16 February 1976. It was to receive 55,137 acres from the Maori Trustee to manage, being the balance lease land then remaining, and it would administer the leases and rents, subject to the provisions of Part IV of the Maori Affairs Amendment Act 1967. It was obliged, however, to carry as well a \$400,000 debt from the previous administration, although this could be represented in an arrangement for 25 percent of the incorporation's shares to be held by the Government. On 16 July 1976, the Maori Land Court appointed a committee of management of seven. The court rejected submissions that the committee include an appointee from each of the main hapu groupings on the ground that the committee should act in the interests of all beneficiaries irrespective of tribal affiliations. It represented yet one further step away from any accountability to hapu.

The formation of the incorporation completed the process of divorcing the owners from their traditional lands, for the owners no longer had an interest in any land but they did have a right to receive a rent. It was an ever-diminishing rent as land interests fragmented by succession over time. The structure, the incorporation of amalgamated owners, gave rise to serious anomalies. For example, we were advised that, after a long struggle, the family of owners previously associated with one block was able to purchase the freehold of that block. After more than a century, there was the prospect that the land that had been promised to their forebears by the West Coast Commission might be regained for their descendants' own use and occupation. To their way of thinking, the leasehold and freehold interests had merged with the purchase and they had become, at long last, the absolute owners. In fact, they are only tenants. They are only tenants because the land is owned by the PKW Incorporation. They must pay rent to the incorporation or they must now purchase the freehold.

We have not investigated the particular case. We have not examined whether the shares in the incorporation could be offset against any purchase price. The incorporation, although a claimant, gave no submissions, response, or information on this and similar concerns. We understood from those making the claim that a practical solution has not been found, that there is now a tension between the incorporation and this group, and that, as far as the group is concerned, it is paying rent for its own land. There were several calls that the PKW Incorporation should be broken up for each hapu to administer the leases in its own area.

Accordingly, arguments still abound as to whether the decision to incorporate was good or bad, and accusations of error are still made against one or other person. We consider no person was to blame, only the system that took the control of land from Maori in the first place and vested it in courts, officials, and 'professionals'. The fault was with the Government - the enforced change of land tenure, the confiscation of control and possession, the imposed perpetual leases, the statutory direction for amalgamation, the vesting of uneconomic interests in a regional board, and the making of a situation where a regional incorporation, which was contrary to hapu interests, was the only viable option if Maori were to rescue the last vestiges of something to administer.

While it may have seemed the administration could do no more than supervise leases and collect rents, there was also the prospect that rents might be accumulated, that the shares of missing owners might be pooled, that the income accruing to uneconomic shares might be retained, and that the whole might be utilised to buy up leaseholds. There was a good precedent for such an approach from the strategies adopted by the adjoining peoples of Atihau-Whanganui.

In fact, we understand the PKW Incorporation has embarked on a programme of selling land, about 20 percent having been sold between 1976 and 1990, representing 10,669 acres of the 55,137 acres vested in it at the time of incorporation. Apparently, the policy was to:

increase the rate of return to the shareholders through investments in other areas and thereby to make the incorporation an attractive proposition not only to leave money in, but ultimately to attract shareholders to take up more shares.

The option of buying out lessees was not supported by the incorporation because 'its return would only marginally improve'.

Again, it seems to us that things had progressed so far that certain other options were no longer available. It was too late to break the incorporation into several hapu units, for example. The amalgamation order had been made more than a decade previously, and because lands had since been sold, it could not be canceled. The lands were sold not because the former owners of the affected blocks had agreed but because an aggregate of sellers in the amalgamation had sufficient shares for the blocks excised. Accordingly, it may be too late to turn back the clock, but it must be noted none the less that several who appeared before us were incensed over the incorporation's sale of land, the inability of hapu groups to recover their ancestral land even after buying out the leases, and the inability of hapu to control their own lands in their areas.

Thus, it cannot be assumed that the interests of the shareholders are no different from those in any public company, where the only concern is to make the most money. Presumably the incorporation's shareholders are now in several categories. There could be some who joined to become investors. They may be satisfied with the incorporation's policy, but we were not informed that there was anyone in that category. There may be many who, following the sale of their traditional lands, would now prefer to have their money and not be locked into something that they might see as no more than an investment company. There could be others again, however, who would see in the incorporation a chance to re-establish tribal enterprises. That would

require some major reconstruction. Then, we are informed there are those who want their land back. This last group and the incorporation appear to be in mortal conflict. On these matters, it seems to us, the incorporation's Maori policy is far more important than those dictated solely by commercial imperatives, but if the incorporation does have a Maori policy, it has not been made known to us.

### **9.3.7 Termination and the Waitangi Tribunal**

The movement to terminate the leases made no progress for another 15 years, when in 1991 the Waitangi Tribunal reported on the perpetual leases of some 5900 acres of reserved land on the West Coast of the South Island. These lands had also fallen under the Maori Reserved Land Act 1955. As the issue was generic to several places, the PKW Incorporation made submissions on the perpetual leases under that Act to the Tribunal hearing the Ngai Tahu claims. The Tribunal found the legislation imposing a perpetual right of renewal to be in breach of rights of Maori to the protection of their property under article 2 of the Treaty. It recommended that the leases be converted to terminating leases after 42 years, but with market rents to apply and five-year rent reviews for rural land and with lessees to be compensated by the Government for their losses. The Government replied in September 1991 by appointing a review team under Steve Marshall to consider the position generally in light of the recommendations of both the Sheehan commission and the Waitangi Tribunal. The review team came to similar conclusions: that all leases under the Act should terminate on the expiry of their current terms plus 21 years, with compensation to be paid to lessees.

In 1993, the Government published alternative proposals as a basis for negotiations between Maori and lessees. Among other things, it suggested that the leases should terminate on the expiry of their current terms plus 42 years, but without compensation being paid to lessees. This would allow existing lessees a further tenure of 42 to 63 years, according to the current status of the lease terms. The Minister of Maori Affairs then established the Reserved Lands Panel 1993, under a former Waitangi Tribunal member, Judge Trapski, to consult with all interested persons and report upon their comments. The panel reported in January 1994.

In January 1995, the Minister of Maori Affairs announced by media release that:

The Government will end perpetually renewable Maori reserved land leases and move them to market rents . . . [and] compensation based on a percentage of the unimproved value of the land will be paid to lessees for the loss of perpetual rights of renewal.

The Government also announced that legislation would be passed and the rents would change to market rates in three years. It was also advised that compensation paid to lessees would not be offset against funds set aside for the settlement of Maori claims. It was added that the issue of any compensation to Maori for past losses would be considered through the Treaty of Waitangi claims process.

The Minister of Maori Affairs then established a consultative working group under George McMillan to advise on a number of technical issues to be resolved before the introduction of the necessary legislation. The group reported in August 1995 and a Maori Reserved Land Amendment Bill is currently being drafted.

### **9.3.8 Reserves administration: conclusions and settlement perspectives**

In general, at the time they were created, the Maori reserves were the least desirable lands for farming. They included a significant proportion of bush requiring clearing and grassing. Initially, the reserves totalled 214,675 acres. They were passed to the Public Trustee for administration, and by 1912, 138,510 acres had been leased to settlers, most on perpetually renewable terms. Only 24,800 acres were farmed by Maori. Many of the original reserves that were not leased were too small to be economic and were sold, or they became too small as a result of successions and partitions. Between 1911 and 1976, about 63 percent of the Maori reserves was purchased by the Crown, most of that being on-sold to lessees. In 1976, about 25 percent of the reserved land, being the whole of the leased land remaining, was passed to Maori management through the PKW Incorporation. Some 20 percent of that has since been sold by the incorporation. Less than 5 percent (itself a small part of the confiscated lands) is owned, without hindrance, by Maori people today as Maori freehold land.

Our preliminary opinions follow. By the terms of the Treaty, Maori were solemnly guaranteed not merely the ownership of their lands but the control and possession of them. Emphasis is given to this position when the English and Maori texts of article 2 are read concurrently. The transfer of the administration of the reserves to Government-appointed trustees, the imposition of lease terms, the regular and unilateral amendment of the terms, and leases in perpetuity were all contrary to the Treaty's terms and principles. They were also inconsistent with specific promises that Maori would be allowed to live in peace on their reserves, which would be theirs forever. They were contrary to the promises in the Crown grants that the lands could not be leased beyond 21 years. The principles of the Treaty of Waitangi were thus subsumed by alternative and racist assumptions that Maori were unable to manage their own lands and that Maori land could be given for European possession without Maori consent. The subservient relationship thus created is especially apparent when one considers that Maori had to apply for the trustee's consent and show their farming ability in order to occupy their own property.

The West Coast Settlement Reserves Act 1881 and its amendments and regulations, the West Coast Settlement Reserves Act 1892 and its amendments, and the Maori Reserved Land Act 1955, with those associated statutes earlier referred to, were all contrary to the principles of the Treaty of Waitangi by denying Maori that possession and control of their lands that the Treaty had guaranteed to them. The sales and leases, being made without effective Maori control of the situation or consent, were invalid in Treaty terms.

In the management regime that the Government created, Maori and the lessees were not treated equally. Not only were the initial lease terms set by the Government, but the lease terms were changed regularly without Maori approval and dramatically to their detriment. The lessees' position was regularly improved and relief was readily given to obviate unexpected changes of circumstance. That was not so for Maori when rents were eroded by inflation and frequent rent reviews were needed.

Settlers had long-term leases. Maori had unbankable licences to occupy. Despite this insecure tenure, more frequent rent reviews meant Maori were liable for more rent for these licences than the lessees were bound to pay for their long-term leases.

Maori interests were not protected. Nearly every legislative measure was in favour of the lessees, and on no occasions were Maori consulted on the legislative proposals. There were no initiatives to promote Maori interests by accumulating and investing rents to buy out leaseholds, by assisting Maori into farming activities, or by providing development assistance for lands not subject to leases.

It was contrary to Treaty principles, and the promise in the preamble that Maori would have the protection of the law, when the Government passed special legislation that overrode court decisions unfavourable to the lessees, prevented Maori from continuing with court actions, or extended the terms of terminating leases. It was inconsistent with its Treaty obligations when the Government ignored those many commissions of inquiry that criticised Government policy and sought a better deal for Maori.

Once the Government transferred the management of the reserves to officials, there was no direct contractual relationship between Maori and the lessees. The lease terms were set, and amended, by the Government. No question arises of disturbing the sanctity of private agreements in seeking to amend those terms now. There is nothing sacred about those contracts. They are entirely profane. The position is rather that the Government has created not a contractual relationship, nor even a situation of private competing equities, but two groups, each with valid, mutually exclusive, and distinct claims against the Government. Both have suffered damage and each is as innocent as the other. It was recently expected that Maori and the lessees might settle matters between them, but neither has truck with the other and each is bound to look to the Government for satisfaction.

For most of this century it appears to have been assumed that Maori would eventually accept that their lands had passed from their control, use, and occupancy forever. The resilience of ancestral land associations was not, however, appreciated. Maori would have trespassed to have walked on their own properties and though many sold out when traditional constraints were made irrelevant, for others the relationship to their ancestral land is as significant today as it was formerly and might even be heightened through being threatened. The first steps to disassociate the people from their land began with the confiscation of most of it and the imposition of individual ownership for the balance. That in turn ushered in title and share fragmentation. Fragmentation and the countervailing constructs of amalgamation, incorporation, and the conversion of uneconomic interests are all the result of cultural impositions. Contrary to popular beliefs, the current Maori land problems were made by Europeans, not Maori. Amalgamation was forced upon the people by circumstance and statute and was not freely agreed to.

Today, those who administer the amalgamated reserves are unlikely to know most of the shareholders: who they are, where they live, or how they fit into any family of interests. Most entitled to succeed will know nothing of the kinship bonds that determined their inheritance. Amalgamation and associated laws encouraged yet further land sales. The significance of the land was diminished for all except those

few who still lived in the district and were trained in ancestral history, and the ownership of land became almost entirely divorced from the value systems of the culture.

The Government now proposes to terminate the Maori reserved land leases in perpetuity by legislation. We are unaware of the legislative proposals but assume that, in accordance with the Government's 1994 published proposals, all such leases will terminate at the end of the current term plus two further periods of 21 years. This could mean that, in the case of a lease renewed within a year prior to the passage of the legislation, it might not terminate for some 62 years.

In all the circumstances, such a lengthy delay in termination can be only excessive and unacceptable. No less than the immediate termination of the leases would be just in light of the claimants' history. In view of the competing equities, however, we would endorse the proposal in the *Ngai Tahu Report 1991* that all such leases in perpetuity should convert to term leasehold over two 21-year lease periods so that no termination should take effect later than 42 years from the enactment of the necessary legislation. It also appears to us there should be rent reviews at least every five years.

The Government noted in its 1994 decision that the issue of compensating owners for past losses may be considered through the Treaty of Waitangi process. It is readily apparent that Maori are entitled to compensation for loss of possession, loss of control, loss of land, and loss of rents through disadvantageous perpetual lease terms. We have made no assessment of the rent loss. Although the PKW Incorporation is a claimant in this inquiry, and although members of its committee of management attended hearings in a personal capacity, the incorporation made no submissions. The 1975 commission of inquiry made it clear, however, that rents were unrealistically low and rests between rent reviews unduly long. The Government formula meant conservative rents at the beginning of the 21-year period and minuscule rents at the end of it. To compensate for loss of rents from the 1960s alone could require some millions of dollars.

The loss was larger, however, than the loss of rent, and to say there was a grave injustice would be an understatement. The reserve administration was an overt exercise in cultural displacement and racial subjugation. A vibrant Maori society was broken. People were deprived of farming opportunities and the chance to grow with and be a part of the local economy. Investment opportunities were lost as well, along with the chance to develop new ventures from borrowing against the land. The business expertise and infrastructure that might otherwise have grown did not develop. The social cost has also to be considered. Kin group structures based on ancestral land interests were set asunder. People were forced from their land and the district with only the prospect of labouring for a living. The control of the reserves and the perpetual lease programme were forms of confiscation, forced removal, and social control by administrative stealth. The loss of rent is as nothing, too, when compared with the damage to race relations. Perpetual leasing was the unkindest blow, for it visited upon succeeding generations the pain of knowing the family lands were held by another people; and as parents were forced to send their children away for work, they did so knowing how their own lands were worked by others.

If, as we believe, compensation is due for loss of rents or loss of use of the greater part of the reserves, then the question is: to whom is the compensation due, the shareholders in the PKW Incorporation or the affected hapu or both? The answer, in Maori terms, can favour only the hapu. Had matters gone the Maori way from the beginning, nothing would have passed directly to the individual as of right, for by Maori law, the individual's benefit equates to the individual's value to the group. Had Maori law prevailed, as it should have, all reserves would have been held for the benefit of the hapu. How could individuals be further compensated now, when they were not directly entitled in the first instance?

In any event, it is group compensation that is most needed for future cultural survival, with compensation to be held for the general purposes of those who belong to the hapu. It is the group, not the individual, to whom the land belonged; it is the group, not the individual, that has been most deprived of benefit; and the Maori loss has been the loss of the society that the group represents. To dissipate such moneys that may be available for the settlement of these claims by benefiting anonymous shareholders now scattered to the world would merely add to past injustice. The money should stay where the land is, for the people belong to the land, not the land to the people.

As a supplementary point, were compensation for loss of rents paid to shareholders, on the principles of English law instead of those of Maori, one would still need to establish those who were owners at the time the losses occurred. They are not the current owners. It would be necessary to bring back in for their share those who are no longer owners but were owners at the relevant time. This could represent the greater number. It would also be necessary to exclude any who only recently came in.