

TE
WHANGANUI A TARA
ME ONA TAKIWA

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ME ONA TAKIWA

REPORT ON THE
WELLINGTON DISTRICT

WAI 145

WAITANGI TRIBUNAL REPORT 2003



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds in a pattern not yet completely known

A Waitangi Tribunal report

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The Honourable Parekura Horomia
Minister of Maori Affairs
Parliament Buildings
WELLINGTON



The Waitangi Tribunal
110 Featherston Street
WELLINGTON

16 May 2003

Te Minita Māori

Tēna koe e te rangatira e noho mai nā i runga i tēna taumata whakahirahira, e whakaututuki nei i ngā kaupapa me ngā moemoeā a te iwi Māori. Tēna hoki koe e whai ake ana i ngā tapuwae o te hunga rongonui i mua atu i a koe. Arā hoki ko Tā Te Rangihīroa, Tā Maui Pomare, Tā Timi Kara, te matua i a Tā Apirana Ngata me ngā mea o muri ake nei i a Matiu Rata, a Koro Wetere me ētahi atu.

He mihi he tangi anō hoki ki te hunga kua mene atu ki te pō otirā kua huri atu ki tua o te arai. Haere atu rā, haere atu rā, e moe i te moengaroa. Kati ka hoki mai ki a tātou o te ao tangata e takatū nei i roto i te ao hurihuri – tēna tātou katoa.

I te tīmatanga i tipu ake tēnei pūrongo i ngā tonono a ngā uri o ngā hapū o Te Ātiawa, o Taranaki me Ngāti Ruanui. No muri tata mai i whakatakotoria anō hoki ētahi atu iwi o rātou ake tonono i mua i te aroaro o te Taraipiunara. Ko ngā iwi nei ko Rangitāne, Muaupoko, Ngāti Toa, Ngāti Tama, Ngāti Rangatahi, me Ngāti Mutunga hoki.

This report concerns claims made by various Maori iwi in respect of the district surrounding Wellington Harbour (Te Whanganui a Tara) and extending to Heretaunga (the Hutt Valley) and the southwest coast. The district, frequently referred to in the 1840s as the Port Nicholson block, encompassed some 209,247 acres.

The Wellington Tenths Trust and Palmerston North Reserves Trust, predominantly representing certain hapu of Te Ātiawa, Taranaki, and Ngāti Ruanui, was the original claimant. However, over a period of years, further claims were brought on behalf of Rangitane, Muaupoko, Ngāti Toa, Ngāti Tama, Ngāti Rangatahi, and Ngāti Mutunga. These also became part of our inquiry.

In 1839, the New Zealand Company, by a deed of purchase which the Tribunal has found to be invalid, purported to purchase lands in the district under review from some of the Maori chiefs residing at or near the harbour. In reliance on the so-called deed, the company brought to Wellington several thousand settlers who proceeded to occupy, notwithstanding the objections of Maori owners, many of the desirable parts of the district. In

1840, following the arrival of Lieutenant-Governor Hobson and the signing of the Treaty of Waitangi, the Crown assumed responsibility for the government of the country.

In the executive summary which follows this letter, we note the salient features of our report. These include the failure by the Crown, in numerous instances, to ensure that the Treaty rights of the Maori owners were adequately protected. As a consequence, Maori were wrongly deprived of some 120,000 acres of land which they never consented to surrender and for which they were never paid. They also lost valuable sites in the heart of the capital city. In addition, Maori suffered losses arising from Crown acts or omissions relating to the town belt land, the administration of the Wellington tenths reserves, and the perpetual leasing statutory regime imposed on those reserves.

In chapter 19, we have recorded our findings of Treaty breaches by the Crown on a wide range of claims by various of the parties. Apart from a few recommendations made in chapter 19, we recommend that, given the relative complexity of the issues and the inter-relationships of Maori groups affected by Treaty breach findings, the parties should enter into negotiations with the Crown. We consider an important element in remedies granted by the Crown should be the return of land in Wellington city.

Before we were able to release this report, the Tribunal lost its long-standing member, Bishop Manu Bennett. Fortunately, the substantive writing of the report had been completed prior to his death. Bishop Bennett was closely involved in the writing process, to which he made an invaluable contribution. This was especially so in respect of those chapters which concern the customary rights of Maori as at 1840 or acquired shortly thereafter. But his contribution to the remainder of the report was also of material significance. His colleagues on this Tribunal greatly valued Bishop Bennett's wise and constructive contribution to the many hearings held by us and to this report. We deeply regret that he did not live to join us in signing it.

Heoi ano

LIST OF ABBREVIATIONS

AC	<i>Law Reports, Appeal Cases</i> (England)
ACJ	acting chief justice (when used after a surname)
AJHR	<i>Appendix to the Journal of the House of Representatives</i>
AJLC	<i>Appendix to the Journal of the Legislative Council</i>
app	appendix
ATL	Alexander Turnbull Library
BPP	<i>British Parliamentary Papers : Colonies New Zealand</i> (17 vols, Shannon: Irish University Press, 1968–69)
c	circa
CA	Court of Appeal
ch	chapter
CLR	<i>Commonwealth Law Reports</i>
DNZB	<i>The Dictionary of New Zealand Biography</i> (5 vols, Wellington: Department of Internal Affairs, 1990–2000)
doc	document
DSIR	Department of Scientific and Industrial Research
ed	edition, editor
fn	footnote
fol	folio
GPS	Government Property Services Limited
IA	Internal Affairs file
inc	incorporated
J	justice (when used after a surname)
KB	<i>Law Reports, King's Bench Division</i> (England)
l	pounds sterling
ltd	limited
NA	National Archives
NZ ConvC	<i>New Zealand Conveyancing Cases</i>
NZLR	<i>New Zealand Law Reports</i>
NZMC	New Zealand Maori Council
NZPD	<i>New Zealand Parliamentary Debates</i>
OR	<i>Ontario Reports</i>
P	president of the Court of Appeal (when used after a surname)
p, pp	page, pages
para	paragraph
pl	plate
PRNZ	<i>Procedure Reports of New Zealand</i>
ROI	record of inquiry
s, ss	section, sections
SCR	<i>Supreme Court Reports</i> (Canada)
vol	volume

'Wai' is a prefix used with Waitangi Tribunal claim numbers

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The Tribunal gratefully acknowledges the assistance of a wide variety of conscientious staff who have assisted at various stages throughout our many hearings and more recently during our report writing: Phyllis Ferguson, Jane Lee, and Mata Moke (administrative and word-processing support); Lyn Fussell, Jeanette Henry, Moana Murray, Hemi Pou, Midge Te Kani, Turei Thompson, and Pam Wiki (claims administration); Rose Daamen, Penny Ehrhardt, Keith Pickens, and Ben White (claims facilitation and research); Campbell Duncan, Janine Hayward, Ewan Morris, and Kate Riddell (report writing); Dominic Hurley (typography and production); Noel Harris and Max Oulton (map production).

EXECUTIVE SUMMARY

This is a report on 13 claims relating to the area covered by the New Zealand Company's 1839 Port Nicholson deed of purchase, as extended in 1844 to the south-west coast. The inquiry area consists of the takiwa (district, or environs) of Te Whanganui a Tara (Wellington Harbour or Port Nicholson), including Heretaunga (the Hutt Valley), and is now the site of Wellington city. The claims in this inquiry were heard by the Tribunal between 1991 and 1999.

The area which became the Port Nicholson block had been occupied for centuries by various Maori groups. Those in occupation immediately prior to the 1820s were Ngati Ira and related peoples who shared a common descent from the early explorer Whatonga. Rangitane and Muaupoko were also among these 'Whatonga-descent peoples' who had connections with Te Whanganui a Tara and its environs. From the 1820s, a series of migrations from the north progressively pushed out these earlier inhabitants. The migrants included Ngati Toa from Kawhia, Ngati Rangatahi from near Taumarunui, and several groups from Taranaki: Te Atiawa, Ngati Tama, Ngati Mutunga, Taranaki, and Ngati Ruanui. By the late 1830s, Ngati Ira and related groups had largely been driven out of the Port Nicholson block, and one of the migrant tribes (Ngati Mutunga) had also left the area, moving to the Chatham Islands. We consider that, at 1840, the groups holding customary rights within the Port Nicholson block were Te Atiawa, Taranaki, Ngati Ruanui, Ngati Tama, and Ngati Toa. These rights had been established through conquest, occupation, and use of resources.

In September 1839, Colonel William Wakefield arrived at Te Whanganui a Tara to purchase land from Maori on behalf of the New Zealand Company. The land acquired from Maori was to be sold by the company to British settlers. At Port Nicholson, Wakefield set about negotiating the purchase of some 160,000 acres of land, and on 27 September 1839 a deed of purchase was signed by 16 local chiefs. The deed, written in English, described the boundaries of the purchase, albeit inadequately, and provided for one-tenth of the land purchased to be reserved for the signatory chiefs and their families. The boundaries of the purchase were not delineated on a map.

The company's purported purchase of the Port Nicholson area was flawed in a number of respects. The explanation of the transaction to Maori and the delineation of the boundaries of the purchase were completely inadequate. No proper explanation was given to Maori of the 'tenths' reserve scheme, nor were they made aware that the deed of purchase made no provision for the retention by Maori of their pa, cultivations, and burial grounds. The signatories were therefore in no position to understand what they were supposedly selling. In fact, the very concept of 'a sale' was foreign to Te Whanganui a Tara Maori, and they could have

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had no conception of the scale of settlement envisaged by the company. A further problem with the transaction was that the signatories did not represent all Maori having customary rights in the area covered by the deed. For these reasons, we have found that the deed was invalid and conferred no rights on the New Zealand Company or its settlers.

In April 1840, the Treaty of Waitangi was signed at Port Nicholson. The following month, Lieutenant-Governor William Hobson proclaimed British sovereignty over New Zealand. Hobson had already announced in January 1840 that pre-Treaty land purchases would be considered valid only if confirmed by the Crown. This meant that, until the New Zealand Company's purported purchase of Port Nicholson was investigated and confirmed by a Crown grant if found to be valid, the company and its settlers had no legal rights to the land which they claimed to have purchased. Nevertheless, the company began surveying sections at Port Nicholson, and company settlers began arriving in January 1840. Although a tenth of the sections in the new town of Wellington were reserved for Maori (as provided for in the deed of purchase), disputes between Maori and settlers quickly developed because settlers had been allowed to purchase sections which were the sites of Maori pa and cultivations.

In November 1840, the British Government and the New Zealand Company reached an agreement concerning the company's claims in New Zealand. The agreement provided that an assessment was to be made of the amount spent by the company in colonisation and that the company was to be granted four acres of land for every pound of expenditure. Under this agreement, the Crown also took over responsibility for fulfilling the company's promise to reserve for Maori a tenth of the land acquired by the company. The November 1840 agreement was, however, still subject to an investigation of the company's claims by a land claims commissioner. Land was to be granted to the company only if Maori title to that land had first been validly extinguished.

With the question of the company's title to land at Port Nicholson still unresolved, in 1841 the Crown itself took land for public reserves within the area of the company's purported purchase without properly acquiring it from Maori. Governor Hobson issued a proclamation stating that certain public reserves shown on the company's town plan, together with several promontories around the harbour, were reserved by the Crown for public purposes. The largest area acquired under this proclamation was the town belt – some 1500 acres surrounding the town. At around the same time, the Crown also assumed the ownership of the two small islands in the harbour known to Maori as Matiu and Makoro (Somes and Ward Islands). Maori did not consent to the acquisition of these islands or of the various public reserves taken by the Crown. Nor was there any consultation with, or payment made to, the Maori owners.

The land claims commissioner appointed to investigate the New Zealand Company's claims was William Spain, who began his inquiry into the Port Nicholson deed in May 1842. Spain's inquiry led him to form the opinion (expressed in a preliminary report of September 1843) that most of the land claimed by the company at Port Nicholson had not been validly

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purchased from Maori. However, Spain never completed his investigation – following lengthy negotiations between the Crown and the company, it was replaced by a process of arbitration. In February 1844, Colonel Wakefield agreed on behalf of the company to pay £1500 ‘compensation’ to Maori for some 67,000 acres within the Port Nicholson block. The land for which this money was to be paid was set out in a schedule, and consisted of sections which had already been surveyed by the company, together with sections being surveyed at the time or in places where the company proposed to begin surveying. There was a clear understanding between the company and the Crown that Maori were to retain their pa, cultivations, burial grounds, and native reserves.

We have found that the arbitration process was decided on and implemented by the Crown without consultation with Maori and without their informed consent. The Crown failed to devise a fair process for the arbitration or to determine whether this process was acceptable to Maori. The arbitration unfairly shifted the burden of proof to Maori instead of requiring the company to establish the validity of its claims. In setting a total compensation figure for the 67,000 acres of £1500, a figure which was based on the assessed value of the land in 1839 rather than in 1844, the Crown also deprived Maori of their right to sell their land only at a freely agreed price.

Shortly after Wakefield agreed to pay the £1500 compensation to Port Nicholson Maori, Spain and other Crown officials began seeking Maori assent to the release of their land. In February and March 1844, Maori from most of the pa within the Port Nicholson block signed deeds releasing their interests in the land set out in the schedule attached to each deed. However, the deeds specified that Maori were to retain their pa, cultivations, burial grounds, and native reserves. By this process, Port Nicholson Maori released their interests in some 67,000 acres of land, which was acquired by the New Zealand Company. Once Maori had signed the deeds of release, the external boundaries of the Port Nicholson block were surveyed. The block included the land which had been the subject of the 1839 deed of purchase, but the western boundary was extended to the west coast. Within this block were the 67,000 acres acquired by the company under the deeds of release, but it also included a very large area where there were no company sections surveyed or under survey. This unsurveyed land not included in the schedule to the deeds of release had never been sold by Maori.

In seeking Maori assent to the deeds of release, the Crown failed in several important respects to protect the interests of Maori. The Crown failed to ensure that Maori fully understood the nature and scope of the deeds of release. Crown officials also put undue pressure on Maori to sign the deeds by telling them that, if they did not accept the sum of money offered for signing the deeds, no higher offer would be made and the land would go to the Pakeha settlers without Maori consent. In addition, Maori rights to their pa, cultivations, burial grounds, and native reserves were not adequately protected. The surveying of Maori pa, cultivations, and burial grounds (which was essential if the reservation of this land for

EXECUTIVE SUMMARY

Maori was to be effective) was never completed. A tenth of the land acquired by the company should also have been set aside for Maori as native reserves ('tenths'). While the full quota of tenths was reserved in the town of Wellington, the provision of tenths in the country districts fell short by some 3090 acres.

Before the company could gain secure title to the land acquired under the deeds of release, the Crown first had to deal with Maori claims to Heretaunga (the Hutt Valley), where many company sections included in the schedule to the deeds were located. Ngati Rangatahi, who had participated in the conquest of Heretaunga from its former inhabitants, occupied the valley seasonally from the 1830s. Their occupation was under the mana of the Ngati Toa chiefs Te Rauparaha and Te Rangihaeata, to whom Ngati Rangatahi paid tribute. Ngati Rangatahi were absent from the valley at the time of the signing of the Port Nicholson deed of purchase in 1839, but they returned to Heretaunga in 1841. They were joined in the valley by Ngati Tama, who moved there as a result of settler intrusion on their land at Kaiwharawhara. Both groups were occupying land claimed by the New Zealand Company and its settlers. Crown officials considered that Ngati Rangatahi and Ngati Tama had no rights in Heretaunga, but the Crown was prepared to acknowledge the rights of Ngati Toa.

In February and March 1844, negotiations took place with Te Rauparaha and Te Rangihaeata for the release of their interests at Port Nicholson in exchange for the payment of compensation. While the chiefs were prepared to release their interests around the harbour, they initially refused to surrender Heretaunga. Te Rauparaha did not agree to accept payment and release Heretaunga until November 1844, while Te Rangihaeata did not consent to the release until March 1845. Te Rangihaeata's eventual agreement was conditional on the reservation of land for those Maori occupying Heretaunga. Ngati Rangatahi and Ngati Tama were becoming increasingly independent of Ngati Toa, and throughout 1845 they refused to leave the valley, despite Te Rauparaha's attempts to persuade them to do so.

In February 1846, Governor George Grey arrived in Wellington and quickly showed his determination to resolve the dispute, by force if necessary. He insisted that Ngati Tama and Ngati Rangatahi abandon their land in Heretaunga. Ngati Tama left in exchange for a promise of compensation, but Ngati Rangatahi were forced out of the valley under threat of attack by Grey's troops. The expulsion of Ngati Rangatahi from Heretaunga was followed by armed conflict in the valley, with the war subsequently moving north to Porirua. Ngati Rangatahi were never compensated for the loss of their land, and they never returned as a group to Heretaunga.

Our consideration of Ngati Toa's, Ngati Tama's, and Ngati Rangatahi's rights in relation to events in Heretaunga has led us to make several findings. We consider that the Crown failed adequately to recognise Ngati Toa's interests in the Port Nicholson block or adequately to compensate them for their loss of interests there. More particularly, the Crown failed to ensure that Ngati Toa gained an interest in the Port Nicholson tenths reserves (something which had been promised them by Spain), although we have noted that this finding cannot

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result in Ngati Toa now being included as beneficiaries in these reserves. With regard to Ngati Tama and Ngati Rangatahi, we have found that the Crown failed to recognise and protect their rights in Heretaunga. Ngati Tama were required to surrender their property in Heretaunga without a freely negotiated agreement and without adequate compensation. Ngati Rangatahi were forced out of Heretaunga, and their property in the valley was pillaged and burned. They received no compensation for their losses, nor was any land subsequently reserved for them in the valley.

In March 1845, Spain issued his final report on Port Nicholson. He awarded the company the land which was set out in the schedule attached to the deeds of release, but Maori pa, cultivations, burial grounds, and native reserves were excluded from the grant. Spain's award was the basis for a Crown grant to the company issued by Governor FitzRoy in July 1845. The area granted was 71,900 acres, minus 4010 acres of tenths reserves and an unknown area of pa, cultivations, and burial grounds. The company, however, rejected this grant, largely because it allowed Maori to retain their pa and cultivations on land purchased from the company by settlers. Rather than holding firm to the agreement earlier reached with Wakefield, which was that Maori pa, cultivations, burial grounds, and native reserves were to be excepted from any grant to the company, the Crown sought to accommodate the company.

Lieutenant-Colonel W A McCleverty was appointed to assist in settling the company's claims, and he proceeded to resolve the dispute by arranging 'exchanges', whereby Maori gave up their cultivations on sections purchased from the company by settlers in 'exchange' for other land which McCleverty reserved for them. 'Deeds of exchange' were signed by Maori at the main pa in the Port Nicholson block in 1847, but Maori were not given a free and unpressured choice as to whether they wished to relinquish their cultivations or as to the land which they would receive in exchange. Moreover, it was an exchange in name only. Almost all the land reserved for Maori by McCleverty was tenths reserve land (of which Port Nicholson Maori were already the beneficial owners); town belt land (which, as mentioned above, had never been purchased from Maori); or land outside the surveyed sections acquired by the company under the deeds of release (which Maori had never sold and which therefore still belonged to them). Port Nicholson Maori thus received no compensation for the surrender of their valuable cultivations. The land reserved for them by McCleverty amounted to an average of 21 acres per person, a land base which we have found to be completely inadequate for both their short- and long-term needs, and much of the land reserved for them was of poor quality.

The inadequacy of McCleverty's reserves should be seen in the light of the fact that, shortly after the reserves were set aside, Maori were deprived of their remaining land within the Port Nicholson block. In January 1848, Governor Grey issued a Crown grant to the New Zealand Company. Rather than covering only the area acquired under the deeds of release (some 67,000 acres), as FitzRoy's grant had done, Grey's Crown grant covered the whole of the Port Nicholson block, said to contain 209,247 acres. Maori retained only some 20,000

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acres of McCleverty and tenths reserves. Since Maori had released only 67,000 acres under the deeds of release, the 1848 Crown grant resulted in the acquisition by the company of roughly 120,000 acres which had never been purchased from Maori. Although this land was outside the areas where Maori had their principal settlements, it belonged by right of conquest to Te Atiawa, Taranaki, Ngati Ruanui, Ngati Tama, and Ngati Toa. These Maori never relinquished their rights to this land, nor were they ever paid for it. When the New Zealand Company collapsed in 1850, this land became vested in the Crown.

The land reserved for Maori by McCleverty was generally treated as being under the ownership and management of those Maori to whom the land was assigned. Individualisation of tenure under the Native Lands Act 1865 and subsequent legislation led to the sale over the following decades of almost all of the McCleverty reserve land. The remaining urban and rural tenths reserves, by contrast, came under Crown administration. We have found that these reserves were to be held in trust by the Crown for Maori having customary interests in the Port Nicholson block at 1840, and that such Maori were the beneficial owners of the tenths reserves. The tenths were considerably diminished by the McCleverty arrangements, by which the Crown assigned the bulk of the tenths land to the Maori of particular pa rather than holding them in trust for all Port Nicholson Maori. By 1873, just over 36 acres of urban tenths (out of an original 110 acres) and 975 acres of rural tenths (compared to 3900 acres reserved for Maori under the deeds of release) continued to be held in trust for Maori.

Between 1840 and 1882, the tenths reserves were managed in a rather ad hoc manner by a series of reserves commissioners. After an initial period of uncertainty about the purpose of the reserves, the Crown settled on a policy of using the remaining reserves as an endowment for the benefit of their Maori beneficial owners. However, in the period to 1882, the Crown failed to make adequate provision for the effective administration of the tenths and failed to pass legislation fully defining their legal status. Wellington Maori were rarely consulted about, or involved in, the management of the tenths reserves and received little benefit from the reserves in this period. There were long delays in renting the reserves so as to produce an income for Maori; much of the income from the reserves went to pay the salaries of the reserves commissioners; and it was not until the 1870s that particular beneficiaries of the reserves began to be identified and to receive rental payments. The beneficial owners of the urban tenths were not determined by the Native Land Court until 1888.

The most significant alienation of tenths reserves to take place after the McCleverty arrangements was the appropriation by the Crown of 23 acres of urban tenths for hospital, educational, and religious endowments in 1851 and 1853. This valuable land, in the main commercial districts of Thorndon and Te Aro, was taken by the Crown without the consent of the Maori beneficial owners of those reserves. Wellington Maori received little benefit from these endowments. Although they made considerable use of the hospital in its early years – and received free treatment there – their use of the hospital declined dramatically thereafter. There is no evidence of significant benefit accruing to Wellington Maori from the

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educational or religious endowments. They were not compensated for the appropriation of these tenths until 1877, and the compensation which was eventually paid was quite inadequate, being less than a quarter of the tenths' market value at the time that the compensation was assessed.

In addition to the appropriation of these 23 acres, another two acres of tenths reserves at Mount Cook were occupied by the military as a barracks in 1848, again without the consent of the beneficial owners, who received no rent from this land for 26 years. Finally, in 1874, the two acres were purchased by the Crown from the beneficial owners. The two largest pa in Wellington city, Te Aro and Pipitea, also passed out of Maori ownership. From the 1870s, Crown officials encouraged and facilitated the sale of land at these two pa, which had been reserved by McCleverty. Officials considered it desirable to remove Maori from the town, despite the evident importance of Maori retaining the ownership of land in the heart of the city in order to benefit from Wellington's growth and development.

The Wellington tenths were administered by the Public Trustee from 1882 until 1920, when they came under the administration of the Native Trustee (renamed the Maori Trustee in 1947). We consider that these trustees were not acting by or on behalf of the Crown in the performance of their statutory responsibilities as trustees for Maori reserve lands. Consequently, their acts or omissions in the performance of those responsibilities do not fall within the Tribunal's jurisdiction. The Tribunal does, however, have jurisdiction to consider legislation affecting reserves which was introduced during the period of trustee administration, and we have made findings in relation to the Native Reserves Act 1882, the Maori Reserved Land Act 1955, and the Maori Affairs Amendment Act 1967:

- ▶ The Native Reserves Act 1882 vested the Wellington tenths reserves in the Public Trustee without any consultation with the Maori beneficial owners of those reserves and made no provision for the active involvement of the beneficial owners in the administration of their lands.
- ▶ The Maori Reserved Land Act 1955 authorised the Maori Trustee compulsorily to acquire the 'uneconomic interests' (ie, interests worth £25 or less) of beneficial owners of Maori reserved land. These provisions were introduced without any consultation with the beneficial owners of the Wellington tenths, and there was no requirement that the trustee consult with and obtain the consent of such beneficial owners before acquiring their interests. These provisions were repealed in 1967.
- ▶ The Maori Affairs Amendment Act 1967 authorised the freeholding of Maori reserved land by the Maori Trustee. These provisions were introduced without any consultation with the beneficial owners of the Wellington tenths, and there was no requirement that the trustee consult with and obtain the consent of such beneficial owners before freeholding their land. Nor was there any requirement that other beneficial owners be given priority in acquiring the interest of any owner who wished to sell such an interest in Maori reserved land. These provisions remained in force until 1975.

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As well as the Wellington tenths reserves, the Public Trustee and Native or Maori Trustee also administered certain reserves in Palmerston North, purchased in 1866 and 1867 to replace tenths reserves at Lowry Bay which had been sold a few years earlier. The Maori of Waiwhetu Pa and their descendants became the beneficial owners of these Palmerston North reserves. These lands originally comprised some 71 acres but had been reduced to almost 37 acres by 1975 through a combination of public works acquisitions and sales under 1964 and 1967 legislation allowing the freeholding of these reserves. In 1917 and 1941, Palmerston North reserve land was compulsorily taken under the Public Works Acts 1908 and 1928 for a recreation ground and a technical high school. This land, some 20 acres in total, was taken without consultation with the Maori beneficial owners and without obtaining their consent.

The most important change affecting Wellington tenths and Palmerston North reserves during the period of trustee administration was the introduction of perpetually renewable leases for 21-year terms. This change to the legislative provisions governing the leasing of the reserves was introduced by a series of Acts passed between 1895 and 1917. These Acts provided for rent to be reviewed at the end of each 21-year term, at which time the lessee had an automatic right to renew the lease. Similar terms were imposed under the Maori Reserved Land Act 1955, which provided for a uniform leasing regime for all Maori reserves and set rents at a fixed percentage of the unimproved land value. These provisions were not changed until 1997, when an amendment to the 1955 Act provided for a move to market rents of Maori reserved land and gave the beneficial owners a right of first refusal to purchase a lease, should the lessee wish to sell.

The perpetual leasing regime was imposed without consultation with the beneficial owners of the Wellington tenths and Palmerston North reserves and without their consent. It effectively alienated Maori from their reserved land and restricted their ability to derive adequate benefit from the land. The imposition of a fixed-percentage rental formula over a 21-year term meant that the Maori beneficial owners received below-market rents, particularly in periods of high inflation. Rent could rise to reflect increased land values only once every 21 years, so rental income was eroded over the course of the lease term.

Substantial portions of Maori reserved land within the inquiry area were taken by the Crown for a variety of public works, including roads, railways, and public housing, but we have insufficient evidence about most of these takings and have therefore been unable to make findings on them. One significant public works taking was the acquisition of the Waiwhetu Pa reserve by the Hutt River Board in 1928. The reserve, of some 12 acres, was set aside by McCleverty in 1847 and was the only pa reserve that still remained intact in the 1920s, although Maori no longer lived there. The river board compulsorily acquired most of this reserve under the Public Works Act 1908, ostensibly for river protection purposes. It appears that the land was never in fact used for river protection, and that the real reason for its compulsory acquisition was to prevent the Maori owners from becoming the owners of the land

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fronting on to their pa reserve which was to be reclaimed as part of the Hutt River estuary reclamation. Although the river board was not an agent of the Crown, the Crown was responsible for the legislative provisions under which the board took the Waiwhetu Pa land, and those provisions failed to protect Maori rights to retain their land until they wished to sell it at a freely agreed price.

The reclamation which took place in front of the Waiwhetu Pa reserve was one of many reclamations around Wellington Harbour from the 1850s onwards. The harbour and its foreshore were of great importance to Maori, being abundant sources of food and playing a major role in trade and transport. The Tribunal considers that those Maori having rights in Wellington Harbour and its foreshore in 1840 were Te Atiawa, Ngati Tama, Taranaki, and Ngati Ruanui. The interests of these Maori in the harbour foreshore were prejudiced by the reclamation of substantial parts of that foreshore. Reclamation was in many cases carried out by the Crown and was in all cases authorised by the Crown. It had the effect of destroying much of the foreshore, thereby depriving Maori of an important source of food, a place for landing waka, and a link between the land and the sea. Prior to the 1980s, the Crown failed to consult with Maori or to compensate them for the loss of access to the foreshore and the destruction of their customary fisheries, which were specifically guaranteed to them under the Treaty. While reclamation was of great benefit to the growth and prosperity of Wellington, the ability of Maori to benefit from such prosperity had been greatly reduced by the loss of many of their valuable urban reserves.

Maori interests in the harbour were also prejudiced by pollution, which rendered much of the kai moana in the harbour unfit for human consumption and thus deprived Maori of their fisheries. We have insufficient evidence to assess the Crown's responsibility for this pollution. However, we have found that the Crown failed to make legislative provision for the involvement of Maori in the managing of the harbour and its resources until very recently, and we deplore this lack of provision during the period in which the harbour became seriously polluted. Under the Resource Management Act 1991, Maori values and the principles of the Treaty of Waitangi must now be taken into account when making decisions about resource management and there is greater provision for Maori to have input into resource management issues concerning the harbour. We consider, however, that the Act does not go far enough, in that it merely requires decision-makers to take into account the principles of the Treaty and does not ensure that persons exercising powers under the Act do so in a way that gives effect to and is consistent with the Treaty.

As noted above, from 1920 the Wellington tenths and Palmerston North reserves were managed on behalf of their beneficial owners by the Native or Maori Trustee. The Palmerston North and Wellington tenths reserves, in 1979 and 1985 respectively, were transferred to the administration of trusts established by the Maori Land Court to represent the interests of the beneficial owners of those reserves. The claim with which this inquiry began was brought on behalf of the Wellington Tenths Trust and Palmerston North Reserves Trust,

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which represent predominantly people of Te Atiawa affiliation. However, the inquiry subsequently widened to include other claims concerning the Port Nicholson block. These claims were brought on behalf of Ngati Toa, Ngati Tama, Ngati Rangatahi, Rangitane, Muaupoko, and Ngati Mutunga.

The Crown Treaty breaches in the Port Nicholson block identified in this report affected Te Atiawa, Ngati Toa, Ngati Tama, Ngati Rangatahi, Taranaki, and Ngati Ruanui. It will be for the members of these groups who are descended from people holding customary interests in the Port Nicholson block in the 1840s to determine who should represent them in negotiations with the Crown for the settlement of their claims. The question of whether only current beneficiaries of the Wellington Tenth Trust should benefit from any settlement of grievances affecting beneficial owners of the Wellington tenths reserves also needs to be resolved.

No Treaty breach findings have been made in relation to Rangitane and Muaupoko, because we consider that they lost their rights to land within the Port Nicholson block prior to the arrival of the Crown. Nevertheless, we consider that the long history of occupation of Te Whanganui a Tara and the surrounding area by these and related peoples should be recognised in a meaningful and public way by the Crown, local bodies, and other iwi.

We have recommended that, once the question of representation has been settled, the Maori groups affected by Treaty breach findings should enter into negotiations with the Crown. The Tribunal considers that such claimants are entitled to substantial compensation, including the return of appropriate Crown lands in Wellington city and its environs.