

## Appendix 5

### Multiple Ownership—Some Resource Management Implications

Following the Crown's purchases of the Waipoua No 2 blocks, 691a Or 30p remain Maori land in multiple ownership. Before considering the implications of the Resource Management Act 1991, it is important to understand how multiple ownership came about.

In 1876 the Native Land Court awarded the whole of Waipoua No 2 block to ten people, who were entered on the title as individual, absolute owners. The court deliberately misrepresented their status on the title. The land was intended to be a native reserve held by these ten people, by agreement among those beneficially entitled, in a representative capacity only. Subsequently, some of the "owners" exercised their *legal* rights as individual owners, partitioning and selling their interests. For those who did not sell, upon the death of an "owner", the family could apply to the Native Land Court for succession orders, which in most cases resulted in the deceased's interests being passed on to the children. In some cases, however, the deceased owner's family did not wish to succeed to the interest, preferring to leave it in their tupuna's name in order to avoid further fragmentation of the interest in the land and to prevent its possible sale. This intentional omission to succeed to interests, however, was in some instances thwarted by the Crown intervening, applying to the Native Land Court for succession orders, and once vested in those found to be beneficially entitled, purchasing the interests from them.

Our examination of the evidence in relation to Waipoua No 2 has revealed a reluctance on the part of descendants of owners to succeed to their tupuna's interests for these reasons. We are aware that this is a common practice throughout Tai Tokerau, which explains the prevalence of the names of deceased owners being left on titles.

This prevalence of multiple ownership and lack of succession to interests, presents difficulties for those, such as local authorities and neighbours, who are required to notify landowners in respect of resource management matters. By s353 Resource Management Act, *notice or consent*:

shall be deemed to have been served or obtained ... on or from all the owners of Maori land if it has been served on or obtained from such owner or owners as have been nominated for the purpose ... by the secretary of the appropriate iwi authority or ... the Registrar of the Maori Land Court.

This provision denies the right of an owner of Maori land to be informed of resource management matters which may affect the land or the owner's enjoyment of it. The owner will only be informed if nominated as being a person who should be informed, either by "the appropriate iwi authority" or the registrar of the Maori Land Court.

Disregarding for a moment the denial of a right of ownership, there are some practical difficulties with this provision. First, an owner may be living some distance from the land, which is very common with Maori owners on account of there being few employment opportunities in places like Waipoua. For this reason the owner is unlikely to be known to "the appropriate iwi authority". Secondly, it is unlikely, unless the owner has had reason to appear in the Maori Land Court and still be at the address given at that time, that the registrar will have information as to an owner's whereabouts. Thirdly, if an owner is deceased without a succession order having been obtained, the registrar will not be aware of this fact and nor will anyone know who the beneficiaries of the interest would be.

These are just some of the practical difficulties, although by s37 of the Act there is a very practical solution: the local authority may waive compliance with the notice requirement!

We are most concerned that the Crown should pass into law such a discriminatory provision, especially when it is the Crown itself which is the author of the problem it is attempting to address. Having denied the Maori customary title to their land and imposed individual ownership, it now denies the rights of individual ownership by reposing in "the appropriate iwi authority" or registrar of the Maori Land Court the primary right of ownership, that is, the owner (who could indeed reside on the land) has no *prima facie* right to be informed of matters affecting the land or the owner's enjoyment of it.

The Crown has identified a problem with multiply-owned Maori land in relation to resource management matters and has provided a solution, the "iwi authority", which is assumed to be a traditional concept.

To provide what is thought to be a "Maori" solution suggests an assumption that it is a Maori problem. It is not. It is a Crown problem.

The multiple ownership of Maori land, and its on-going fragmentation, is the direct result of the individualisation of title. The Crown has submitted that, as was their right under article 3 of the Treaty, the Maori chose to have titles to their land issued in individual names. It was argued that it was a "voluntary arrangement" whereby ten names were entered on the title to Waipoua No 2. We have examined previously the Native Land Court's "determination" in 1876. The evidence is conclusive that it was not intended by the Maori that the named individuals should have absolute ownership but should be in a representative capacity only. There were many more than these ten people entitled to "ownership". Had they

chosen individual title, with the absolute rights that conferred, then they all would have been included on the title. The court awarded the block to these ten "owners" in order to facilitate its alienation. As undersecretary for native affairs, Lewis, said in 1891:

the whole object of appointing a court for the ascertainment of Native title was to enable alienation for settlement. Unless this object is attained the court serves no good purpose, and the Natives would be better without it, as, in my opinion, fairer Native occupation would be had under the Maoris' own customs and usages without any intervention whatever from outside. (A19:64)

This statement accurately summarises the position. Waipoua No 2 was intended, and recorded by the court, as a "native reserve". There was no intention to alienate this block, but rather to retain it for the benefit of the hapu as a whole. By conferring absolute ownership on the few, the court excluded the many, and ensured its alienation. The descendants of the few, through successions in the court, comprise the multiple ownership of the little of the now fragmented block that remains in Maori ownership.

The problems which have arisen through multiple ownership are many, including difficulties in the land's utilisation. In town planning terms, it also explains lack of past Maori involvement. In the context of the Resource Management Act, we have demonstrated that the problem remains unresolved in relation to notice of applications under s353. There are other problems under the Act which we have not considered, such as time constraints for lodging objections, the costs involved in consulting numerous owners etc. They all serve to continue to exclude Maori from the resource management process, as it affects their land specifically, as was the case in previous legislation. The problem was brought about in the first place by the Crown's denial to Maori of their customary land tenure. The Crown's "Maori" solution in s353 as to notice to owners of Maori land withholds rights from Maori which are enjoyed by Her Majesty's other subjects in New Zealand.

We emphasise that the problems arising from the multiple ownership of Maori land are not the responsibility of Maori. The procedural provisions of the Resource Management Act require amendment so that Maori are not disadvantaged and effectively excluded from the resource management process.

In our review of s353 of the Act we have touched upon a problem which has not only been at the root of the lack of Maori involvement in town planning in the past on account of the multiple ownership of land, but has also been the cause of many other problems to Maori through the destruction of their social structure. The reference to "iwi authorities" in the Act is a road to nowhere, as, since the repeal of the Runanga Iwi Act 1990, there is uncertainty as to what constitutes an "iwi authority".

In our view there is an urgent need for amendment to the Resource Management Act 1991 in order to overcome problems such as those in relation to s353 "iwi authorities" and the time limits throughout the Act. Whilst there are discretions on territorial authorities such as waiving or extending time limits in s37, we consider there is an obligation upon the Crown to accept responsibility for the problem it has itself brought about.