

CHAPTER 13

RATES

13.1 INTRODUCTION

The Rongowhakaata and Te Aitanga a Mahaki claimants allege that some of their land was compulsorily sold or taken from Maori management for a period of time to cover rates arrears, as was allowed for in the rating legislation. However, neither the claimants nor the Crown supplied us with full details of land at Turanga affected by rates arrears. We are therefore unable to make particular findings in relation to SOI25 on rating issues, nor to answer the key question of how much Maori land was lost in Turanga, either temporarily or permanently, due to rates.

For the sake of completeness, we provide a brief background to the rating of Maori land, and an even briefer narrative of the sales and receiverships we were made aware of, with the arguments of the parties set out, and a commentary by the Tribunal.¹ This is followed by a separate section on the claim of Robert Kotuku Cookson and his late wife, Huinga Jane Cookson, into the rates charged against Karaka 16A under the Rating Powers Act 1988. Mr and Mrs Cookson argued that a larger area of land should have been assessed as constituting a meeting place, and therefore should have been exempted from rating, than was assessed and exempted.

13.2 MAORI AND RATING LAW – A BRIEF BACKGROUND

Early rating legislation was concerned with raising revenue for the construction of roads. Maori land was exempt from much of the early rating legislation. In general, until 1893, only Maori land that was occupied by a non-Maori was liable for rates, which were usually borne by the occupier – usually a Pakeha lessee. Increasingly, however, local authorities were charged with funding their own local public works. This meant that they were ever anxious for Maori to contribute rates revenue, especially in areas with significant Maori populations. Local authorities regularly complained to central Government that, even when Maori were

1. For a full discussion of the rating legislation and Maori land, see Tom Bennion, *Maori and Rating Law*, Waitangi Tribunal Rangahaua Whanui Series 1997. See also the evidence of Robert Hayes to the Hauraki Tribunal (Wai 686 ROI, doc R15).

liable for rates, it was very difficult to get Maori to pay them, especially on multiply owned land (ie, land owned by many owners as tenants in common, often with undefined shares).²

Local authorities pressured Government to spread the burden of rates equally on Maori and non-Maori. Conversely, the Maori (and some Pakeha) members of Parliament argued that the imposition of rates on Maori was unfair. These arguments took several broad approaches. One common argument was that Maori had already contributed to local and national infrastructure by originally selling land cheaply to the Crown, and that they had not requested many of the roads and railways which were said to have increased the value of their land and which they were being rated for.³ Moreover, due to title difficulties, it was, as Ngata maintained in 1927, very difficult for Maori to utilise their land, make it productive, and therefore capable of attracting rates.⁴

In recognition of the particular problems facing Maori in the use of their land, the rating legislation exempted customary Maori land (if not occupied by a European) from rating at all times. It did not allow the sale of other Maori land to cover rating debts until 1893 (usually such sales required the consent of the Native Minister). In addition, the Native Minister could exempt Maori land from rates if its owners were particularly poor. Freehold Maori land, on the other hand was expected to be rated in the same way as general freehold land. From 1893, Crown granted Maori land could be sold to cover rating debts, or be placed in receivership and leased until the rating debt was fully paid.

The Native Land Rating Act 1924 marked a new phase in the rating of Maori land. It followed many of the recommendations of a Government committee that had met earlier in the year to consider ‘this most difficult and thorny question’.⁵ The committee concluded that ‘the only solution of the Native rating problem must be bound up with the profitable occupation of Native lands’, and strongly recommended that the Native Land Court be used to determine, on an individual basis, what Maori lands were to be rated and how to recover those rates.⁶ Under section 4 of the 1924 Act, aside from customary land, all Maori land was liable for rates, with the specific exceptions of land on which an urupa, a meeting house, or a church was situated (all exceptions not exceeding five acres).

Rating legislation in the second half of the twentieth century was concerned with bringing ‘unproductive’ Maori land into production, and therefore making it able to bear rates.⁷ Under the Rating Act 1967, the Maori Land Court could consider the alienation of a block of freehold

2. Evidence of Robert Hayes (Wai 686 RO1, doc R15), p19

3. Ibid, pp11, 18, 23. See, for example, the NZPD, speeches of Henare Tomoana, Hone Mohi Tawhai, and Major Te Wheoro in 1882; Hone Heke and Mahuta Te Wherowhero in 1904; and Maui Pomare in 1924.

4. Ibid, pp25, 27

5. Prime Minister Coates (Wai 686 RO1, doc R15, p22)

6. Ibid, pp21–22

7. Tom Bennion, *Maori and Rating Law*, Waitangi Tribunal Rangahaua Whanui Series, 1997, pp71–72. See, for example, the recommendations of the Pritchard–Waetford committee and the debate that ensued in Parliament and led to the consequent Maori Affairs Amendment Act 1967.

Maori land in order to promote its 'effective and profitable use'.⁸ This provision was repealed by the Maori Purposes Act 1970.

The Rating Powers Act 1988 was intended to consolidate the rating power of different types of local authorities. The exemptions of up to five acres (2.03ha) for meeting houses, marae, and urupa were retained. The exemption of customary land from rating also remained, and the power to sell Maori land for rating debt was removed.⁹

An important new piece of rating legislation was passed in 2002 in the form of the Local Government (Rating) Act 2002. We note that no submissions were heard on this legislation in the Turanga inquiry, as hearings finished prior to the introduction of the Act.

Like previous legislation, the 2002 Act stated that Maori freehold land was liable for rates in the same way that general land was. The Act provided for owners to be listed as ratepayers, for trustees to be charged for rates on rateable Maori freehold land, and for those using Maori freehold land in multiple ownership to be charged accordingly (ss92–94).

Maori land could be exempted from rates under certain conditions. First, the Governor General, by Order in Council, could exempt Maori freehold land, on the recommendation of the Maori Land Court. The local authority of the land in question had to consent (s116).

The Act did provide for a number of non-rateable categories. This was a general list, rather than a specifically Maori one. Land not exceeding two hectares that was used as a cemetery, burial ground, crematorium, or Maori burial ground was classified non-rateable, as was Maori customary land. Land used for a marae or meeting place or upon which a meeting house was erected (if less than two hectares) was also non-rateable (sch 1, cls10–13).

13.3 RATES – A CAUSE OF THE LOSS OF MAORI LAND AT TURANGA ?

We were provided with only a limited number of examples of the effect of rating in Turanga. We do not know if the examples given are the only blocks of Maori land at Turanga that were affected by rates arrears, or, if not, how representative they are of the effect of rates as a whole.

The following Te Aitanga a Mahaki lands were sold either by arrangement or, in one case, compulsorily, owing to rates.

- ▶ Two interests in Waiohiharore A2B were sold by the owners in September 1914 because their interests were of 'no use to the owners', and because they had a rates debt of £15 2s 9d.
- ▶ In September 1916, the Poututu B5 block was sold to the Wi Pere trust (whose lands completely surrounded Poututu B5). The block owed rates and, it was said, 'could not be used in its current state'.¹⁰

8. Ibid, p72

9. Ibid, p73

10. Document A18, p346

- ▶ A charging order was made in favour of the Gisborne Borough Council over Waiohiharore B block (11 acres four perches) in May 1926 because of unpaid rates amounting to £61 13s. The block was subsequently vested in the Native Trustee for sale, as the owners did not object to its sale – ‘the land with its heavy rates is a burden to them’.¹¹
- ▶ In 1927, the Waiohiharore A3, A4A, and A4B blocks also had charging orders over them in favour of the Gisborne Borough Council for over £100 in total. The land was leased to a European who was responsible for paying the rates. But the lessee had died, leaving his financial affairs in disarray. The block was sold, with the new owner paying the outstanding rates.¹²

The following information is available for Rongowhakaata blocks:

- ▶ Eighteen charging orders were granted to two local authorities (the Cook County Council and the Gisborne Harbour Board) for rates arrears for the two-acre 16-perch Aohuna A1 block.¹³ The cumulative total owed from 1932 to 1950 was £29 16s 6d. In 1953, the Maori Land Court appointed the local county clerk to act as a receiver.
- ▶ Similar orders were made for the Aohuna D4A2 and D4B blocks. The blocks were leased to generate an income for rates.
- ▶ Four subdivisions of Paokahu 3 block were put into rates receivership in 1933.¹⁴ They were leased to Ernest Harden in 1934, for a term of 21 years. The amount owing for all four blocks at 1936 was £21 18s 11d. The Tairāwhiti Maori Land Board paid this amount from the rents received, plus an additional £49 that was also found owing. After two years, the rent had paid the accrued debts. The lease then continued for the full 21-year period.¹⁵

13.4 THE CROWN'S CASE

The Crown submitted two arguments. First, that the imposition of rates was not the major factor in terms of the sale of Maori land. The sale of Maori land under the Rating Act 1925, counsel argued, was a very rare step and the jurisdiction was only exercised after significant procedural requirements were fulfilled. Furthermore, no evidence had been presented that suggested that such a power was exercised in Turanga.¹⁶ Secondly, counsel argued that it was legitimate to enter into a lease agreement that required the lessee to pay off rates arrears, when

11. Document A18, pp 345–346

12. *Ibid*, pp 346–347

13. Document A11, pp 34–36. There is confusion in document A11 as to whether this refers to Aohuna A1 or A2.

14. The four blocks – 3A (6 acres 2 roods 31 perches, with two owners), 3B (20 acres 13 perches, with three owners), 3D (33 acres 1 rood 35 perches, with 10 owners), and 3H (48 acres 2 roods 7 perches, with 53 owners) – had not been leased in the 1920s and 1930s when the rest of the Paokahu 3 subdivisions were, and subsequently had not been paying any rates.

15. Document A11, p 36; doc A14, pp 4, 27–28

16. Document H14 (25), pp 10–11

the lease was for longer than was required to pay the debt. The owners were not prejudiced because they resumed charge of the land when the receivership ended. The Treaty guarantee of property was therefore kept.¹⁷

13.5 THE CLAIMANTS' CASE

Claimant counsel submitted two arguments. First, the rating of Maori coupled with the system of fragmented land holdings, was a contributing factor in the sale of Maori land.¹⁸ The sale of interests in Waiohingarore A2B in 1914, Poututu B5 in 1916, and Waiohingarore B2 in 1927 were cited as examples of this.¹⁹ Secondly, counsel argued that the appointment of rates receivers to lease Maori land in order to recover rates arrears removed control and management of Maori land out of the hands of the owners.²⁰

13.6 TRIBUNAL ANALYSIS AND FINDINGS

As we outlined in the introduction, this Tribunal is unable to make specific findings in relation to rating claims, as insufficient evidence was presented. There are, however, four things that we can state. First, we consider that Maori land should bear a fair share of the district's rates burden. Secondly, we are aware of the crippling effect on production and utility on Maori land as a result of the fragmentation of title and fractionation of ownership. Thirdly, no taking can be justified for non-payment but receivership is understandable. Finally, we note that the issue of rates takings was not a big one in Turanga.

13.7 RATES – THE COOKSON CLAIM

We turn now to the specific claim filed by Robert Kotuku Cookson. This claim relates to a piece of land, Te Karaka 16A. This land contained the home of Mr Cookson and his late wife, Huinga Jane Cookson, and their whanau. It comprised 2.7351 hectares.²¹

In 1992, Mr and Mrs Cookson applied to the Maori Land Court for the land known as Te Karaka 16A to be set aside as a Maori reservation. Mr Cookson explained later why this land was set aside: 'We decided to set the land aside as a meeting place for our whanau and uri.

17. Ibid, p8

18. Document H2, p150; see also doc H3, p75

19. Document A18, pp345-346

20. Document H3, p75

21. Document E13, para 48

A place where they could always find sanctuary and peace within their ancestral homeland. A place where we could keep the ahi ka (home fires) burning.²²

On 2 October 1992, the Maori Land Court made a recommendation, pursuant to section 439 of the Maori Affairs Act 1953, that Te Karaka 16A be set aside as a Maori reservation.²³ On 3 December 1992, the *New Zealand Gazette* recorded that the land was now set apart as a Maori reservation ‘for the purpose of a meeting place for the common use and benefit of the whanau of Robert Kotuku Cookson and Huinga Jane Cookson and their descendants’.²⁴

By setting aside Te Karaka 16A as a Maori reservation for the purposes of a meeting place, Mr and Mrs Cookson believed that this land would be exempt from rates. The basis for this understanding was that the Rating Powers Act 1988 exempts certain categories of land, including land not exceeding 2.03 hectares in any one instance ‘set apart and used for the purposes of a marae or meeting place under section 439 of the Maori Affairs Act 1953 or any corresponding provision’ (sch 1, pt 2, cl 14(a)).

The Gisborne District Council, however, did not accept that Te Karaka 16A was exempt from rates and continued to levy them on the block. Since Mr and Mrs Cookson refused to pay these rates, the Gisborne District Council brought proceedings to recover \$2271.64, being the rates for Te Karaka 16A for the years ending 30 June 1994 and 30 June 1995.²⁵

The initial claim filed by the council was for \$2719.31, later reduced to the above figure.²⁶ A valuer from Valuation New Zealand, Mr Craig, determined that a portion of 4000 square metres (0.4 hectares of a 2.7-hectare title) should be regarded *actually* as being used as a meeting place, for the purposes of clause 14(a) of part 2 of the first schedule to the Rating Powers Act.²⁷ As a result, the rates for this 4000 square metre area were subtracted from the original claim.

In his affidavit, filed in support of the district council proceedings, Mr Craig explained why only 4000 square metres of the title was treated as non-rateable. Mr Craig recalled meeting with Mr Cookson on or about 26 February 1996 to discuss the designation of ‘a Maori reservation for the purposes of a meeting place’ under section 439 of the Maori Affairs Act 1953, and the effect of that designation on the rateability of a property.²⁸ According to Mr Craig, Mr Cookson indicated that the cottage built in 1984 was now used as a meeting place, and that the dwelling built in 1966 was Mr Cookson’s place of private residence. On the basis that the cottage built in 1984 was used as a meeting place, Mr Craig set about determining the

22. Document E13, para 65

23. *Ibid*, para 70

24. *New Zealand Gazette*, 3 December 1992, no 197, p 4392 (doc E13(a)(c))

25. *Gisborne District Council v Cookson* unreported, 1 August 1996, District Court, Gisborne, NP10/96 (doc E13(a)(f), p1)

26. *Ibid*, pp1–2

27. *Ibid*, p2

28. *Gisborne District Council v Cookson* unreported, 26 September 1996, District Court, Gisborne, NP10/96 (doc E13(a)(g), p1)

curtilage that should attach to this building. Mr Craig assessed an area of 4000 square metres, or one acre, as attaching to the land.²⁹

Notices of the new valuations were sent out to Mr and Mrs Cookson at the end of February 1996. These notices set out a specific period in which Mr and Mrs Cookson could object to the apportionment made pursuant to section 202 of the Rating Powers Act. According to Mr Craig, and no evidence was presented to dispute this point, Mr and Mrs Cookson did not file an objection to this apportionment.³⁰ Following the reassessment by Mr Craig, the district council reduced its claim as we have seen by \$447.67 to \$2271.64. The Cooksons made no payment.

The council's claim for rates arrears was heard before Judge Holderness in the District Court at Gisborne on 27 March 1997. Mr and Mrs Cookson argued that no part of Te Karaka 16A was rateable pursuant to section 6 of the Rating Powers Act and clauses 14 and 15 of part 2 of the first schedule to that Act.

For completeness, we note that one of the council's arguments was that the Maori Land Court had made an error in recommending that Te Karaka 16A be set aside as a Maori reservation and that this error was continued when the notice was published by Te Puni Kokiri in the *New Zealand Gazette*. This argument was that section 439(6) of the Maori Affairs Act 1953 provided that no land could be set apart as a Maori reservation while it was subject to a mortgage or a charge. It was the council's evidence that, when the Maori Land Court made this recommendation on 2 October 1992, Te Karaka 16A was subject to a mortgage to the Bank of New Zealand. By the time this mortgage was discharged on 27 May 1994, the land had been made subject to a charge for rates arrears. The reservation should therefore have never been set aside.

In a written decision, the District Court indicated to the council that it doubted whether the court had jurisdiction to review the recommendation of the Maori Land Court in establishing the Maori reservation. Judge Holderness was not prepared to go further than observing that on the evidence presented, the setting apart of the land as a Maori reservation may have been contrary to section 439(6) of the 1953 Act.

As to the issue of the reduced area of exemption, Mr Cookson explained to the court that the land is 'papa tipu' and that he and his wife do not regard themselves as 'owners' of the land but merely as custodians for future generations for the period of their lives. Mr and Mrs Cookson submitted that the whole of the land should be exempt from rates on the premise that they do not derive any economic benefit from the land and that it provides a meeting place for their mokopuna so that their whanau may strengthen and flourish. Judge Holderness recorded and affirmed Mr Cookson's explanation:

29. Ibid, p2

30. Ibid, pp4-5

Mr Cookson explained that in reality the land is ‘whenua rahui’ and that its value is in sustaining members of the defendants’ whanau, now and in the years to come. I have not the slightest reason to doubt what Mr Cookson emphasised namely, that the land will continue to be a place for members of the whanau (and their descendants) to gather, to talk and to receive sustenance for each other and from the land.³¹

The Cooksons argued that Valuation New Zealand had no understanding of these matters and even less right to impose arbitrary limitations. The District Court did not uphold the Cooksons’ arguments. Instead, the judge held that, in the absence of any objection by the defendants to the Valuer-General or the Land Valuation Tribunal, the Valuation New Zealand assessment must stand. Accordingly, the court entered judgment for the council in the sum of \$2271.64.

We begin by recording that, in this claim, it is not open to the Waitangi Tribunal to sit as a review or appeal court in respect of the judgment of the District Court in the case of the Cooksons’ land. The judgment obtained by the Gisborne District Court in 1997 is a valid judgment, legally enforceable in the normal way. We are given to understand that an appeal was lodged against that judgment, but the appeal has yet to be heard. The options available to this Tribunal in dealing with the Cooksons’ claim are therefore extremely limited, and frankly we are somewhat surprised that the time spent by counsel in prosecuting the claim was not more profitably spent in prosecuting the appeal.

We do, however, record that Mr Cookson vehemently denied before us that he had any conversation with Mr Craig of Valuation New Zealand which would have provided a basis for reducing the rating exemption on Te Karaka 16A to 4000 square metres. For the record, we produce in full the transcript of the exchange between the Tribunal and Mr Cookson in this regard.

Tribunal: I see that if you look at paragraph 4 they say that Mr Cookson identified the dwelling built in 1996 as being his own residence with the 1984 cottage as being the meeting place. That appears to have been the basis for the division. Do you want to comment about that Mr Cookson?

Cookson: No, that never happened. . . .

Tribunal: Did Mr Craig ask you which of those houses was the meeting house?

Cookson: No.

Tribunal: You’re quite sure of that?

Cookson: Yes. I’ve always told him that the reserve is the whole land as set out by the Court, and I’ve stuck to that, that’s the reserve.

31. *Gisborne District Council v Cookson* unreported, 27 March 1997, District Court, Gisborne, NP10/96 (doc E13(a)(j), p12)

Tribunal: Did you discuss the two houses at all?

Cookson: No.

Tribunal: You're quite sure of that?

Cookson: Yes.³²

It appears that Mr Cookson was not legally represented before the District Court, and it may have been that his lack of familiarity with legal process led to these matters not being properly traversed before the court. In any event, if there was a genuine dispute between Mr Craig and Mr Cookson over whether there was a proper basis for the reduction in exemption area, and if there was not an opportunity to properly traverse these matters before the District Court, then it is at least possible that a court more fully appraised of the facts and background would have decided the matter differently. These matters may be of some relevance on appeal.

We would also note that matters such as these are of the highest racial and cultural sensitivity. These matters go to the differing approaches of Maori and non-Maori to land and family. That is not to say that matters of land and family are not of great importance to all cultures in New Zealand. It is rather that the enduring relationship between land and kin group in traditional Maori society leads, even today, to the strong desire amongst whanau and hapu to establish cultural facilities which celebrate that connection. These desires may be less pressing among other cultures in New Zealand.

A broad and unquibbling approach to the Rating Powers Act suggests that there are two competing but not irreconcilable considerations at play here. The purpose of the law appears to be to recognise and support the provision of genuine cultural facilities to strengthen whanau, hapu, and iwi while discouraging attempts to utilise clause 14(a) as a mere rates dodge.

For what it is worth, Mr Cookson impressed us as a man who held his beliefs and principles firmly and honestly. We observe that Mr Cookson may be better served by applying to the Maori Land Court under section 338(5) of the Te Ture Whenua Maori Act 1993. Under this section, a reservation can be reduced in size on the recommendation of the Maori Land Court, so that some of the land originally reserved can be excluded from the reservation. If Te Karaka 16A were regazetted as a reservation which did not exceed two hectares, then it would be exempt from all future rates pursuant to part 1 of schedule 1 of the Local Government (Rating) Act 2002. However, beyond these general observations, it is unnecessary and inappropriate for us to go.

32. Transcript 4.23, pp194-195

