CHAPTER 19

FURTHER CROWN TREATY BREACHES

19.1 THE STATEMENT OF CLAIM: INTRODUCTION

In paragraph 5(3) of their statement of claim, the claimants allege that they have been prejudicially affected by certain acts or omissions on the part of the Crown. We note here each of those allegations, some of which have been considered in earlier chapters. Where we have elsewhere made findings which sufficiently cover a particular allegation or allegations, we record those findings. Others call for discussion in this chapter. We have grouped together allegations that cover similar matters. Thus, in paragraph 19.2, we list sub-subparagraphs (a) and (b) of paragraph 5(3) of the statement of claim. Successive sub-subparagraphs follow as indicated.

19.2 PARAGRAPH 5(3)(a)–(c)

19.2.1 Paragraph 5(3)(a), (b)

In paragraph 5(3), the claimants allege:

(a) failure on the part of the Crown to honour undertakings that were made to Maori land owners by the Ministry of Works which amounted to terms and conditions upon which those owners agreed to sell the initial 700 acres of land at Turangi;

(b) the compulsory acquisition by the Crown of more land than

(i) Maori land owners were told at the commencement of the Project (when their agreement to the Project proceeding was given) would be required; or

(ii) was strictly required for the purposes of the Project.

The various assurances and undertakings of the Crown are considered in chapter 4. The Tribunal's findings, which substantially uphold these claims, are recorded in paragraph 4.11.

19.2.2 Paragraph 5(3)(c)

Paragraph 5(3)(c) concerned the way in which Ministry of Works officials dealt with the tangata whenua during the construction of the Turangi township and, in particular, claimed that the traditional authority of kaumatua was undermined or ignored.

In chapter 12, the evidence of various witnesses such as Arthur Grace, John Asher, Hono Lord, Kahukuranui Te Rangi, Terewai Grace, Raymond Wade, Joe Eru, Taima Bell, and Dulcie Gardiner testified to the failure of the Ministry of Works to treat the kaumatua and kuia with the consideration and respect due to them, and to the gross indignities suffered by various of them at the hands of the Crown during the construction of the township. The Ministry and its agents insisted on pursuing their large-scale operations without adequate consultation with, or notice to, the people whose property they sought to demolish; scant or no regard was paid in many cases to wahi tapu of great spiritual value; and officials were often reluctant to agree to proposals put to them by the people. Twenty years on, the hurt and distress of the people at the treatment of their elders and others are still deeply felt.

19.2.3 Tribunal's finding relating to paragraph 5(3)(c)

The Tribunal finds that the claimants were prejudicially affected by the failure of the Ministry of Works, acting on behalf of the Crown, to deal with the Ngati Turangitukua people during the construction of the Turangi township in a manner that paid them the respect due to their mana as tangata whenua. In particular, the Ministry failed to recognise and protect the sensibilities of kaumatua. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.

19.3 PARAGRAPH 5(3)(d)–(g), (i)

19.3.1 Paragraph 5(3)(d), (i)

Paragraph 5(3)(d) and (i) alleges a failure on the part of the Crown to keep the Ngati Turangitukua people properly informed of the Crown's actions and intentions. Sub-subparagraph (i) of paragraph 5(3) of the statement of claim alleges a failure by the Crown to consult fully and effectively with those having mana whenua in the Turangi lands about any issue or at any stage since the commencement of the project.

It is proposed here to confine our consideration of these allegations to events subsequent to Cabinet's approval, on 21 September 1964, of the construction of the Turangi township. To the extent that these allegations relate to a failure by the Crown to consult fully with the tangata whenua up to the time the final approval for the development was given, the Tribunal's finding, made after a detailed consideration of the evidence, is recorded in paragraph 18.9. It upholds the claim.

To a considerable extent, these allegations about the failure to inform the claimants properly of the Crown's actions, and to consult fully and effectively with them, overlap with the preceding claim in sub-subparagraph (c) (see para 19.2.2). Again, chapter 12 (on the impact of the Ministry of Works' construction and related activities) demonstrates a failure on the part of the Crown to consult adequately with Ngati Turangitukua and to keep them properly informed. We refer also to where we have noted that there was a marked lack of consultation, particularly with multiple owners of land (see para 4.8.2). We noted there the statement of Crown consultant David Alexander that 'the Ministry was largely impervious to suggestions other than those it came up with itself'. See also our finding that the Crown failed to honour adequately its undertaking to work in a cooperative and friendly manner with owners affected by the Ministry's works and to negotiate and consult with individual owners on important issues (see para 4.11).

19.3.2 Tribunal's finding relating to paragraph 5(3)(d)

The Tribunal finds that the claimants were prejudicially affected by the failure of the Crown to keep Ngati Turangitukua people properly informed of its actions and intentions and by its failure to consult fully and effectively with those having mana whenua in the Turangi lands during the construction and development of the Turangi township. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.

19.3.3 Paragraph 5(3)(e)

Paragraph 5(3)(e) alleges a failure on the part of the Crown to protect Ngati Turangitukua people in the maintenance of their wahi tapu.

This is the subject of considerable discussion in chapter 8. We note here the final paragraph of that chapter, which encapsulates the conclusions reached by the Tribunal:

> **The desecration and destruction of wahi tapu was, in Maori terms, a significant part of the human cost of the construction of the Turangi township and the TPD. When the Ministry of Works did respond, as in the case of the removal of bones from the urupa at Waiariki, it was only because there was no alternative. The Ministry was not proactive in efforts to protect wahi tapu. Local people had to make the effort to persuade the Ministry people to protect such sites. Their desecration and, in some cases, wholesale destruction symbolised the loss of rangatiratanga over their own lands experienced by Ngati Turangitukua.**

In chapter 4, we upheld a complaint by the claimants that the Crown failed to honour its undertaking that their wahi tapu would be protected.We found that the Crown signally failed in numerous instances to honour its undertaking to protect the wahi tapu of the Ngati Turangitukua people and, as a result, the Crown failed to act reasonably and in good faith towards its Treaty partner. Further, it failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby (see para 4.11).

19.3.4 Paragraph 5(3)(f)

In paragraph 5(3)(f), the claimants allege:

> failure on the part of the Crown to provide a co-ordinated response to the claimants' grievances concerning the recontouring of land and the rerouting of streams in the area by the Ministry of Works, both of which have led to widespread flooding and pollution problems on land still in Maori ownership.

In chapter 4, we considered complaints that the Crown had failed to honour various undertakings. These concerned an assurance that there would be no pollution problems arising from the oxidation ponds (para 4.5.2); that conservation values were of high importance to the Ministry of Works (para 4.8.3); and that the flood relief measures planned would ensure that property owners would not be flooded (para 4.9.3).

After careful consideration, the Tribunal found that the Crown failed in significant ways to act upon the high importance which it assured owners it placed on conservation values (see para 4.11). As a consequence, the waterways and fishing are degraded and increased flooding has occurred. The Crown, therefore, failed to act reasonably and in good faith towards its Treaty partner and further failed to protect the rangatiratanga of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby.

19.3.5 Paragraph 5(3)(g)

Paragraph 5(3)(g) alleges:

> **failure on the part of the Crown to**
>
> **(i) anticipate;**
>
> **(ii) endeavour to minimise; or**
>
> **(iii) provide protection from the effects of**
>
> **the trauma and social repercussions for Ngati Turangitukua people resulting from the rapid expansion of population and change of lifestyle occasioned by the Project and the development of the Town.**

At the heart of this allegation is the failure of the Crown to consult adequately with, and encourage the active participation of, the local people in decision making. Right from the outset, the Crown, having decided that it wished to develop the township in its present site, did nothing to involve the claimants in considering the merits of an alternative site. Having consulted with the people at the 24 May 1964 meeting, the Crown, apart from announcing and discussing the final plan at the 20 September 1964 meeting, largely avoided involving the people in decisions which vitally affected them.

We accept the submission of claimant counsel that much of the trauma which undoubtedly occurred, and which even today is not yet dissipated, could have been avoided by better communication.

As we have noted in chapter 12, the construction of the TPD, including the township, proceeded without any social or environmental impact assessment. In the 1960s, the need for such an assessment was not adequately appreciated. There was not then, as there is now, a requirement for the careful assessment of the impact of a development on the physical and human aspects of the local environment. The process of environmental impact assessment and the audit of environmental impact reports became well established by the late 1970s. By the early 1980s, an increasing emphasis on social impact assessment had developed.

The Tribunal considers that it would be unrealistic to expect the Ministry of Works to have implemented such impact assessments before embarking on the Turangi township development in 1964. The perceived need for such procedures, which was soon to be recognised, had not crystallised at that time. This does not, however, excuse the low level of consultation by the Ministry with the Ngati Turangitukua people at all stages of the township development.

Evidence was given by Mary-Jane Rivers, a social assessment and social policy analyst (A25). She confirmed that the social effects of developments such as the Turangi township and the TPD were given less attention in the 1950s and 1960s than in the late 1970s and the 1980s. On the basis of her experience, Ms Rivers cited a number of principles which she has found to be inherent in the concept of meaningful participation by a local community. Among these principles are:

- **using culturally appropriate methods;**
- **being prepared to make changes in response to feedback;**
- **listening rather than promoting;**

- **respecting local knowledge and expertise; and**
- **ensuring that information about a proposal is accurate, honest, and presented clearly.**

In the brief summary of her evidence, Ms Rivers stressed that an integral part of assessing social effects is meaningful consultation between the developer and the host community, with the community participating in decision making. The Crown and its officials owed the claimants a Treaty duty to consult fully with them at all stages of the township development. Had the Crown done so, the claimants would have had an opportunity to make known their concerns and would have, or should have, been listened to, because true consultation is not a one-way procedure. As a consequence, while not all tension or trauma would have been avoided, the Tribunal considers that it would have been greatly reduced.

19.3.6 Tribunal's finding relating to paragraph 5(3)(g)

The Tribunal finds that the claimants were prejudicially affected by the failure of the Crown, as a result of inadequate consultation with Ngati Turangitukua people, to mitigate the trauma and adverse social repercussions which resulted from their activities in Turangi, and, as a consequence, the Crown failed actively to protect the rangatiratanga of its Treaty partner under article 2 of the Treaty.

19.4 PARAGRAPH 5(3)(h): THE 'ANCILLARY CLAIMS'

In paragraph 5(3)(h) of their statement of claim, the claimants allege that they have been prejudicially affected by the Crown's denial of responsibility for the many adverse consequences for Ngati Turangitukua people flowing from the project and the development of the town.

With the agreement of the claimants and the Crown, David Alexander was appointed as investigator from 29 October 1994 to inquire into a large number of issues on which the claimants held a grievance against the Crown. Many of these were specific to individual families or to particular pieces of family land. As noted in chapter 21, Mr Alexander reported that 25 of the 83 identified ancillary claims (30 percent) were wholly settled or were in negotiation as at 21 April 1995 (see para 21.7) (D11). He anticipates that some of the 27 claims not responded to at the time of his report will be settled. Others may settle after our report is published.

Given the somewhat fluid state of some of the ancillary claim grievances, the Tribunal thinks it inappropriate to make any finding on the paragraph 5(3)(h) claim at this stage. It is sufficient to note that some 25 claims are now recognised as being justified in whole or in part or are in negotiation, and others may well be settled. The Tribunal indicates in chapter 21 how it proposes the outstanding ancillary claims might be resolved (see para 21.8).

19.5 PARAGRAPH 5(3)(j)(i), (ii)

19.5.1 Introduction

In paragraph 5(3)(j) of their statement of claim, the claimants allege that they have been prejudicially affected by the failure on the part of the Crown:

> **(i) to provide proper or adequate information to land owners about the consequences of the compulsory acquisition of their land;**
>
> **(ii) to identify fully the land being acquired, and in respect of which land compensation was being paid in each case . . .**

19.5.2 Claimant counsel's submissions in support

In her submissions in support, claimant counsel referred to the lack of adequate notice given to the owners by the Crown and the Crown's failure to keep owners properly informed of its intentions. Ms Wainwright also invoked part 2 of undertaking 10. This concerned a complaint that the owners were not given specific information as to the deductions for the repayment of mortgages and rates which would be made from compensation payments. We have earlier stated that we are unaware of any evidence that the Crown gave any undertaking or assurance in respect of the deductions referred to (see para 4.6.2).

As we have seen, only two meetings were held by the Crown with the Ngati Turangitukua owners before town construction commenced. The minutes of the first meeting, on 24 May 1964, note that Dick Lynch advised the owners as to the procedure that would be followed in ascertaining the amount of compensation which would be paid. If agreement could not be reached, the Land Valuation Court would arbitrate (A7:182). Later, R E Tripe, described as the solicitor for the Maori owners, confirmed Lynch's description of the steps which had to be followed in fixing compensation (A7:183).

At the second meeting, on 20 September 1964, the minutes note that J E Cater, for the Maori Trustee, advised that where there was more than one owner the trustee 'becomes the statutory owner to obtain compensation'. He said that the trustee would listen to the wishes of the owners and would employ counsel (A7:86). Tripe also spoke and, among other matters, pointed out that the Crown would first have to obtain

valuations, but they could not do anything until the proclamation taking the land was made. He referred to valuers being engaged on behalf of the owners and the steps which would be taken and confirmed that only the Maori Trustee could represent multiple owners (A7:86).

Dick Lynch also spoke about compensation, which he said had been so ably explained by Cater and Tripe. Among other matters, he said that owners must expect a delay of three to four months before receiving any further contact on land values. The Department of Works, he said, would be able to do a great deal of work on the valuations during that time. He expressed his gratitude to Cater and Tripe, who he said had taken a great deal of work out of his hands (A7:88).

There is no record of the owners being told at either meeting of what deductions would be made from compensation payments, nor does it appear that they were so subsequently advised by the Crown.

Both meetings were lengthy and covered a wide variety of topics. It would have been difficult for the owners present to assimilate the mass of detail, and the minutes do not record that the owners themselves raised the question of deductions for arrears of rates and the repayment of mortgages.

19.5.3 Role of the Maori Trustee

In submissions in support of this claim, claimant counsel focused on the role of the Maori Trustee, who acted for the bulk of the landowners. She pointed out that this was not a matter of choice on their part but a statutory requirement, and suggested that the Maori Trustee seemed to have taken a reactive role, communicating with owners once compensation was received rather than discussing the situation with them beforehand. In addition, Ms Wainwright submitted that even if the trustee was doing a thorough job on behalf of the owners, the owners' frustration with the long delays was inevitable, because they were not kept informed as to what was going on.

19.5.4 Recapitulation of the role of the Maori Trustee

In chapter 14, we recorded the problems faced by the Maori Trustee in exercising his statutory responsibility to represent the many Ngati Turangitukua multiple owners. We briefly recapitulate here the more significant of those problems:

- **The Maori Trustee could not act on behalf of multiple owners until after a proclamation taking the land was gazetted (see para 14.3.4).**

- **There were approximately 80 titles affected by land takings or occupied for the Turangi township with effect from 1 October 1964.**

- **In addition, there were some 120 titles affected by the TPD (see para 14.3.5).**

- **Between 1965 and 1971, there were 12 separate proclamations taking land within the Turangi township area and numerous others relating to TPD works, roads, and river protection works and other TPD purposes (see para 14.3.5).**

- **The Maori Trustee appointed C I Patterson, a leading Wellington solicitor, to represent him in the compensation negotiations. In addition, the Tuwharetoa Maori Trust Board's solicitor, R E Tripe, and his successor, R T Feist, represented various individual owners. Other sole owners had their own solicitors (see para 14.3.4).**

- **The Ministry of Works issued its proclamations on the basis of Land Transfer Act titles, with no reference to Maori Land Court titles. As a consequence, the Maori Trustee had to do a great deal of preliminary work to ascertain the actual**

Maori lands affected by the proclamations and the Maori owners concerned (see para 14.3.5).

- **By December 1966, the Crown had completed its valuations and, by June 1967, the solicitor for the Maori Trustee had all the valuation reports for land taken in 1965 and 1966 (see para 14.3.6).**

- **The Maori Trustee sent out letters to all owners for whom he had an address on 28 July 1967, advising the amount that would be claimed for the land in which they had an interest. He advised that there would be negotiations with the Crown by the solicitors, with a view to reaching agreement. Failing agreement, proceedings would be issued in the Land Valuation Court (see para 14.3.6).**

- **On 23 February 1968, the Maori Trustee's solicitor lodged with the Crown a schedule of compensation claims for 40 separate titles, being all Maori lands in multiple ownership in the Turangi township for which proclamations had been gazetted in 1965 and 1966 (see para 14.3.8).**

- **Protracted negotiations followed. J E Cater, representing the Maori Trustee, later recorded that, at a meeting on 11 July 1968 between his solicitor C I Patterson, two Ministry of Works representatives, the trustee's valuers, and himself, 'it became obvious that there were fundamental differences between the valuers and there was such . . . rigidity on the part of Mr Lynch that further progress became almost impossible' (D12) (see para 14.3.8).**

- **Substantial agreement on all the Maori Trustee's claims on behalf of owners for compensation for land taken was eventually reached by the end of January 1969. Final payments followed. In a significant number of cases, advance payments had been made sometime earlier (see para 14.2.5).**

19.5.5 Status of the Maori Trustee in relation to the Crown

The claims in paragraph 5(3)(j)(i) and (ii) of the statement of claim relate in part to alleged acts or omissions on the part of the Maori Trustee. We note that the Maori Trustee was a corporation sole constituted under the Maori Trustee Act 1953. The question of his status in relation to the Crown was not argued before us, and accordingly we express no opinion on the question. The trustee was acting under a statutory requirement that he represent the owners of multiply owned Maori lands.

In exercising his statutory powers on behalf of the multiple owners, the Maori Trustee was handicapped by the constraints of the Public Works Act 1928 provisions as to compensation. He could not commence his duties until the Crown formally took

the land by proclamation. Much time was involved in ascertaining what land was encompassed in the various proclamations and who the owners were.

The Maori Trustee engaged an able and experienced solicitor to advise him on valuations and formulate the claims. Because of the confusion arising from the Crown's proclamations and, it appears, the rigidity of the Crown's representatives in negotiations, a lengthy period elapsed before agreement was reached and final payments could be made by the trustee. The Tribunal is satisfied that the claimants received the compensation to which they were legally entitled under the legislation then in force.

It is likely that many of the owners did not fully comprehend the complicated process which the Maori Trustee was required to follow on their behalf. It is also likely that the trustee did not, when sending the final payment to the owners, give them sufficient information as to the nature of the deductions, if any, made from the payments on account of rates arrears or mortgage commitments. While this is unfortunate, the Tribunal considers, on the evidence before it, that the Maori Trustee did all and perhaps more than might reasonably have been expected of him in ensuring that the owners received the compensation to which they were legally entitled. In the circumstances, we do not make any finding in respect of paragraph 5(3)(j)(i) and (ii) of the statement of claim.

19.6 PARAGRAPH 5(3)(j)(iii), (iv)

19.6.1 Introduction

We turn now to consider the remaining allegations in paragraph 5(3)(j)(iii) and (iv) of the statement of claim. These are related and will be considered together. They allege a failure by the Crown:

(iii) to value the land taken and the interests affected at their proper value; and

(iv) to compensate the owners adequately for what was being taken from them.

19.6.2 Claimant counsel's submissions

We consider first the specific matters advanced by claimant counsel in support of these allegations.

Counsel criticised the policy implicit in section 79 of the Public Works Act 1928 whereby the Crown did not recognise any legal liability to restore land to the condition it was in before the public work, but merely compensated for any diminution in the value of the land as a consequence of the public work (see para 14.1.2). Counsel claimed that this could result in an owner being left worse off, notwithstanding both the Crown's policy that an owner should be left no better or worse off than he or she was previously and the undertaking given by Crown representatives to Ngati Turangitukua that people would be left no worse off (B10:5).

19.6.3 Evidence of Stephanie McHugh

Crown historian Stephanie McHugh stated in evidence that the diminution in value principle was not generally used as a basis for settlement in the Turangi township claims. She pointed out that in three cases the Ministry agreed to settle on the basis that the Crown either returned or paid the cost of returning the land to its former state. Ms McHugh knew of only one situation where a claim was settled on the basis of diminution of value. That claim, of which she gave full details, was settled by the Maori Trustee after he abandoned his claim to recover the cost of full reinstatement and was in respect of damage arising from the extraction of metal from Waipapa 1J2B (B10:104–108).

Another complaint concerned the Ministry's policy in relation to the reimbursement of solicitors' and valuers' fees. Ms McHugh told us that the extent of the Crown's liability for the valuation fees incurred on the owners' behalf was only resolved after the threat of court action by the Maori Trustee. Even then, the Crown

would only agree to pay the scale fees for two valuers, rather than the actual fees charged by the three valuers and one forestry consultant engaged by the trustee on behalf of the owners. C I Patterson's legal fees were reimbursed in full. The Maori Trustee deducted the shortfall of some $2000 in valuation and forestry consultants' fees from moneys due to the owners, which he had retained on a contingency basis, and the balance of $6000 was distributed to the owners (B10:46, 60).

19.6.4 Tribunal's consideration concerning professional fees

The Tribunal considers that, unless there was no justification for the owners' representative engaging the services of a third valuer and a forestry consultant, the Crown should have reimbursed their fees in full. The Crown, after all, had taken the owners' land and hence put them to the expense of retaining the services of these experts. There was no evidence before us that the Maori Trustee acted irresponsibly in employing them or that their fees were excessive. The Tribunal considers that the Crown should have met their fees in full, instead of requiring the owners to pay them out of their compensation moneys.

19.6.5 Valuation of Arthur Grace's land

The third matter invoked by claimant counsel was a complaint by Arthur Grace about the valuation of his pine trees and a block of land which was prime residential land. The pine trees were valued as a shelter belt and the residential land was valued as farm land.

Ms McHugh stated in evidence, firstly, that as at 1 October 1964 the land was zoned rural; secondly, that the Crown's valuers had valued the land at a higher rate than had Mr Nathan (the owners' valuer); and thirdly, that, as the apparent result of a meeting in late March 1968, the Maori Trustee had raised his claim for those two blocks (B10:51).

The Tribunal observes that Mr Grace was advised by highly experienced and competent legal and valuation experts and we have no reason to believe that the decisions taken in relation to this land were, in their opinion, unreasonable.

19.6.6 Extraction of metal

The fourth matter related to the Ministry of Works' attitude to the extraction of metal. The Ministry followed a policy of not compensating owners for such extraction – a policy which was declared unlawful in *Ministry of Works and Development v Hura* [1979] 2 NZLR 279. Owners who had metal extracted from their land prior to this decision in 1979 were not compensated while those whose metal has been taken since have been. The injustice is manifest.

19.6.7 Compensation for hardship

Lastly, claimant counsel stated that, for most of the time when this land was being taken and compensation was being made, no provision existed for compensating owners deprived of their land for hardship. We have noted earlier the provisions introduced by section 6 of the Public Works Amendment Act 1970, which allowed for some modest recognition of hardship as an element in compensation for land taken under the Public Works Act 1928 (see para 14.2.7).

The Tribunal considers that these provisions were a belated recognition by the Crown that the compensation provisions hitherto in force were inadequate. However, in the Tribunal's opinion, they were inadequate in a number of other respects, which we now discuss.

19.6.8 Tribunal's conclusion relating to compensation provisions

As we have noted earlier, section 42(1) of the Public Works Act 1928 provided that every person having land taken for a public work is entitled to 'full compensation' (see para 14.1.1). A Government committee in 1969 interpreted this provision as requiring that an owner should be paid a sum of money which leaves her or him no better or worse off than previously. That is to say, no better or worse off financially. A later provision in section 29(1) of the Finance Act (No 3) 1944 stipulates that, in assessing compensation, 'no allowance shall be made on account of the taking of any land being compulsory' (see para 14.1.4).

The Tribunal considers that these provisions afford no appropriate recognition of the nature of Maori association with, and veneration for, Maori ancestral land. Nor do they recognise that Maori have rights under article 2 of the Treaty which the Crown is under a duty to protect. The Act fails to recognise that the expenditure of money does not fully compensate Maori who have been displaced from their ancestral land by the Crown.

Nor does the legislation allow for the fact that ancestral land is being taken compulsorily. As we have discussed earlier, the Crown was not obliged to build a construction town on the claimants' land and, if it insisted on doing so, it need not have built a permanent town (see para 17.7). If, for its own purposes, the Crown chose to disperse the claimants from their land, it was under a heavy obligation to compensate the Ngati Turangitukua people generously, and every effort should have been made to provide land in exchange. Suggestions from some owners that this might be done were rejected by the Ministry of Works.

The legislation is also defective in that it fails to take into account the fact that, in the circumstances of the present claim, it was effectively foreclosing on major farming operations which were steadily becoming more viable. In so doing, it seriously eroded the economic base of the community. The disparate valuation of separately owned blocks of land makes no allowance for this permanent deprivation. At the same time, the Crown insisted on deducting a share of the development mortgage debt over the land from the compensation payments made to many multiple owners. In at least one instance (the settlement on 30 November 1972), the Crown waived the recovery, but this appears to have been the exception rather than the rule. Had the land not been taken, that debt would presumably have been repaid out of income.

For these reasons, the Tribunal concludes that the Public Works Act 1928 failed to make adequate provision for the compensation of Maori owners deprived of their ancestral land as a consequence of its compulsory acquisition by the Crown.

19.7 TRIBUNAL'S FINDING RELATING TO ADEQUATE COMPENSATION

The Tribunal finds that the Public Works Act 1928 failed adequately to recognise the relationship of Ngati Turangitukua to their ancestral land and to provide for adequate compensation for their loss of land and that such failure is in breach of the Treaty obligation of the Crown adequately to recognise and protect the rangatiratanga of the claimants, who have thereby been prejudicially affected.

19.8 TRIBUNAL'S CONSIDERATION OF PARAGRAPH 5(3)(k), (m)

19.8.1 Paragraph 5(3)(k)

In paragraph 5(3)(k) of their statement of claim, the claimants allege a failure on the part of the Crown to use land for the purpose for which it was taken.

In support, claimant counsel referred to evidence which it was said demonstrated that the Crown failed to use some land for the purpose for which it was taken. Much of the evidence cited has already been canvassed in chapter 17, where the absence of offer back provisions in the Public Works Act 1928 is considered and findings are made (see paras 17.4, 17.6). Having regard to these findings, the Tribunal does not consider it necessary to make a further finding in relation to this particular allegation. We do, however, record that in some instances, for example, the Crescent Recreation Reserve (see para 17.4.8) and the pony club land (see para 17.4.10), the Crown has failed to use land for the purpose for which it was taken.

19.8.2 Paragraph 5(3)(m)

The last claim is paragraph 5(3)(m), in which it is said that the Crown failed to ensure that the whanau of Ngati Turangitukua retained sufficient land for their economic wellbeing and in order to maintain their lifestyle and community.

As we have noted earlier, one effect of the compulsory acquisition of the claimants' land was that major farming operations arising from the aggregated use of substantial areas of multiply owned land, which were steadily becoming more viable, were destroyed by the construction of the township on the land. The viability of the land left in the possession of Ngati Turangitukua has been adversely affected in part by its reduction in size, by the removal of topsoil and the failure to restore soil and pasture after gravel or pumice excavations, and by flooding problems.

In their closing submissions, Crown counsel referred to statements in the *Waiheke Island Report*, *Muriwhenua Fishing Report*, and *Ngai Tahu Report 1991* as to the Crown's Treaty obligation both to ensure that each tribe maintained a sufficient endowment for its foreseeable needs and to provide financial assistance to restore the tribes to a 'proper economic base' (C3:26–27).

Crown counsel submitted that, in the case of the Ngati Turangitukua owners, the Crown in the 1960s recognised their right to retain their land if they so wished. However, Crown counsel said that rights to land also include the right to sell and it was that right which was exercised, on the basis of informed consent, by the Ngati Turangitukua owners. The essence of the Crown's evidence, it was submitted, is that the people of the Turangi area were 'willing sellers' (C3:27).

The Tribunal has, however, rejected the Crown's contention that Ngati Turangitukua were willing sellers. At the 24 May 1964 meeting, the owners approved

in principle the proposal for the establishment of a town at Turangi 'along the lines outlined to the meeting'. This was a conditional approval only. But as the Tribunal found in paragraph 20.2.6, the taking of the township land by the Crown was, both in fact and in law, a compulsory acquisition. In particular, the Crown failed in whole or in part to honour many of its undertakings, in reliance on which the owners conditionally approved the township being developed at Turangi. As a consequence, their approval in principle was undermined and negated. They did not give their informed consent or agreement to such non-fulfilment of the Crown's undertakings or to the subsequent taking of their land. In short, they were not willing sellers.

Among the undertakings which the Crown failed to honour was an assurance that the maximum area needed for the township was 1200 acres, including a leasehold industrial area of approximately 200 acres. In fact, the land taken by proclamation was the substantially greater area of some 1665 acres, including the industrial area, which was not returned as promised (see para 13.6).

Moreover, the Crown submission overlooks the fact that there was no compelling need for the Crown to construct a permanent township at Turangi or, indeed, to construct a temporary township there. Either could have been constructed elsewhere on Crown-owned land. The Crown failed to give adequate consideration to adopting either of these alternatives but, had they done so, the Turangi landowners would have been left with much of their land intact. In addition, the Crown gave inadequate consideration to acquiring a leasehold interest only in the new township.

As we have noted earlier, no consideration at all appeared to have been given by the Crown's town planners to the location of existing houses, to family relationships, or to the viability of the existing Ngati Turangitukua community related to Hirangi Marae (para 12.5).

Had the Crown honoured its undertaking to take no more than 1000 acres on a freehold basis and to return the additional 200 acres required on a temporary basis for industrial purposes, and had it exercised more care and consideration in the planning of the town, the Ngati Turangitukua people would have been left with an appreciably greater area of land, which could have been put to economic use and which would have enabled more of them to maintain their lifestyle and community.

19.9 TRIBUNAL'S FINDING

The Tribunal finds that the Crown, when deciding where the TPD construction town should be sited, failed to give adequate consideration to the need to ensure that the Ngati Turangitukua hapu as a whole, and each whanau individually, was left in possession of as much of its land as possible. The Tribunal further finds that, in deciding to construct a permanent township at Turangi, the Crown failed to ensure that it did so in such a way as would best preserve an economic base for Ngati Turangitukua and maintain their lifestyle and community. As a consequence, the Crown failed in its obligation actively to protect the rangatiratanga rights of Ngati Turangitukua under article 2 of the Treaty, and the owners were prejudicially affected thereby.