

AN OVERVIEW

21.1 INTRODUCTION

21.1.1 The Treaty of Waitangi ignored

Many claims before the Tribunal concern events in the last century. The Ngati Turangitukua claim, however, centres on relatively recent happenings in the 1960s, within living memory of many of the claimants. However, a common feature of many historical claims, and this near contemporary one, is that the Treaty of Waitangi was all but ignored by the Crown in its dealings with Maori. In this case, the Crown, in fulfilling its wish to construct the Turangi township on the claimants' ancestral land, had the unqualified backing of statutory powers to take the land compulsorily.

21.1.2 Draconian statutory powers of the Crown

These draconian statutory powers, many of which were exercised by the Crown in whole or in part, lay in the Public Works Act 1928 and the Turangi Township Act 1964. These Acts gave the Crown the power to take the claimants' land compulsorily for the establishment of a permanent Turangi township. This could be done without any notice to the owners or any right of objection by them; without any obligation to consult the owners; without the owners' consent; without any obligation to return land not required for the purpose for which it was taken; at a price negotiated with a statutory official on behalf of multiple owners rather than with the owners themselves; and on conditions laid down by legislation and not freely negotiated. The Crown could insist on taking the freehold of the land, irrespective of the preference of the owners. In addition, the Crown asserted the right, which was of dubious legality, to enter the claimants' lands with its bulldozers, without notice to or the consent of the owners, well before any proclamation taking the land had been gazetted. Against these powers, the Maori owners had no defence. It is not possible to reconcile these far-reaching powers with the Crown's Treaty obligation actively to protect the rangatiratanga of Maori in and over their land.

21.1.3 Grievous spiritual and material loss

Many of the Ngati Turangitukua people, who had a substantial part of their lands taken from them by the Crown for the purpose of building a permanent township at Turangi, suffered grievous spiritual and material loss, the scars of which remain today. Had the Crown been conscious of and had regard to its Treaty of Waitangi obligations, much of this could have been avoided.

21.2 MAJOR ISSUES

21.2.1 The choice of the township site

By late 1963, when it became clear the Tongariro power project should go ahead, four possible sites had been identified by Crown officials for a construction town to house the many workers involved. Two of these, those at Lake Rotoaira and Turangi West, were in Maori ownership and occupation, while two were on Crown-owned prison farm lands at Rangipo and Hautu (Turangi East). Lake Rotoaira was the least favoured site. Turangi East and Turangi West were thought suitable for either a permanent or a temporary construction town; Rangipo for a temporary construction town only. A temporary town was all that was needed to service the Tongariro power project, yet the Crown preferred to erect a permanent township. The claimants' land at Turangi West became the preferred site, with Turangi East the alternative. It was envisaged from the outset that, if a permanent town were to be constructed on the claimants' land, the land would be taken under the compulsory powers in the Public Works Act 1928. Had the Crown chosen to erect either a permanent or a temporary township at Turangi East (where there was plenty of Crown land available) or a temporary township at Rangipo, none of the claimants' land would have been needed for the town.

21.2.2 Crown insistence on acquiring the freehold

Apart from the approximately 200 acres of industrial land which the Crown undertook to lease and return to the owners, the Crown insisted on the need to acquire the freehold of the balance of the land, up to 1000 acres, which it required for the township. Ngati Turangitukua claimed that the Crown policy of taking Maori land for the establishment of the township without first ensuring that all practicable alternatives to purchasing the land, including taking a leasehold interest in the land required, had been exhausted was in breach of the Treaty. The claimants called evidence from an experienced valuer, who testified that, provided the terms of a lease are fair to both sides and are quite clear, leasehold tenure can be a very satisfactory form of occupation. He referred to a number of examples where substantial residential, commercial, industrial, and rural areas of land are occupied under leasehold tenure and have been for a long time. Among the examples he cited was one-fifth of the central business district of Rotorua city, which is occupied under 21-year leases. That area contains multi-storey office blocks, shops, large hotels, and motels. A further, quite substantial, area slightly to the south of the central business district is similarly occupied under leasehold. This land is used for warehousing, retail warehousing, and recreational purposes. The valuer clearly regarded leasehold as a viable option for the whole Turangi township. His evidence was not challenged by the Crown. We have upheld the Maori owners' claim.

21.2.3 Consultation over the Turangi West site

(1) First meeting with owners

The first meeting of Crown officials with Ngati Turangitukua owners took place on 24 May 1964. Proposals for the TPD and a new permanent township at Turangi were outlined over several hours. The township proposals were based on a plan which was out of date, but the current plan was not disclosed. The owners, many of whom were elderly, were asked to absorb a mass of information in relation to both the power development project and the township proposal. It is likely that many were confused or had difficulty in assimilating the detail or fully appreciating the implications for them and their lifestyle of such massive changes. The advantages to local Maori were stressed. Many undertakings were given as to what would and would not happen. The hope was expressed by Crown officials that Ngati Turangitukua would agree to having the township on their land. The people were told that if the town were to be built there, the land would be taken under the Public Works Act 1928. At the end of the meeting, those owners present resolved that the Crown proposal for the establishment of a town at Turangi was approved along the lines outlined to the meeting. They accepted the assurances given by the Crown that the owners would be reasonably and fairly compensated. A committee comprising 12 owners and Jack Asher, the secretary of the Tuwharetoa Maori Trust Board, was appointed to liaise with the Crown on matters of tribal importance.

The owners' desire to meet with Crown officials again was frustrated when Asher, on his own initiative, cancelled a meeting proposed for 14 June 1964. Virtually all discussions with Ministry of Works officials concerning the interests of owners took place between Ministry officials and Asher alone. It took a strong protest from a senior kaumatua of Ngati Turangitukua sent directly to the Minister of Works to secure a further meeting between owners and Crown officials. This was held on 20 September 1964.

(2) Second meeting with owners

By the time of this meeting, Crown officials would have been aware that a Cabinet decision was imminent. Nearly four months had elapsed since the only other meeting between the Crown and the owners. The second and final meeting before construction began took place on the day before Cabinet was to meet. While the owners were shown the latest plan and questions were answered and further assurances given, they were, in reality, faced with a *fait accompli*. No resolution was passed signifying the attitude of the owners.

(3) *Cabinet approval*

The next day, Cabinet approved the construction of the first three stages of the Tongariro power project and the compulsory taking of about 900 acres and the lease of some 200 acres of Ngati Turangitukua land for the Turangi township, with a view to the township becoming permanent.

(4) *Consultation grossly inadequate*

The level and extent of consultation by the Crown with the Maori owners, confined as it was to two meetings some four months apart, was grossly inadequate. Important decisions were made during this period without any input from the owners whose land was to be taken. By the time the second meeting took place, the critical decisions had been made.

21.2.4 The bulldozers arrive

By 1 October 1964, a mere 10 days after the Cabinet decision, the Ministry of Works' bulldozers were on site at Turangi. Their authority to enter the owners' land before proclamations formally taking it were gazetted was doubtful. Proclamations were issued intermittently between 1965 and 1980. From 1 October 1964, however, the bulldozers went to work. The next two years were traumatic for the Ngati Turangitukua community. Land was levelled, and a new town was formed and constructed almost literally under their feet. The gentle rural landscape was transformed almost overnight into an embryonic town. The pace was frenetic. Bulldozers took precedence over people in many instances. On occasion, the huge machines arrived at a house site, ready to bulldoze it, only to find the dwelling still occupied. Too often, the people had insufficient knowledge of what was happening. Some fought, not always successfully, to save their family homes. Others found themselves in crowded temporary accommodation. Wahi tapu were desecrated or obliterated. Crown contractors worked single-mindedly to meet tight – perhaps unrealistic – deadlines. The community was in a state of shock and deeply hurt. Kaumatua were largely ignored; the mana and rangatiratanga of the tangata whenua were trampled upon. With a few notable exceptions, Crown officials maintained their distance from the people and were largely impervious to suggestions from them. Consultation with the Maori landowners was sporadic and inadequate. The Crown held all the power and exercised it at will. It was to be 3½ years from the September 1964 meeting before the project engineer met again with the Ngati Turangitukua owners in March 1968. This meeting was arranged by the district officer of the Department of Maori Affairs because of the high level of dissatisfaction and frustration over various unresolved issues.

21.3 THE CROWN'S UNDERTAKINGS

21.3.1 Crown's failure to honour important undertakings

During the two meetings with the owners in 1964, Crown officials gave the people upwards of 20 undertakings or assurances. These concerned what the Crown would or would not do in relation to the proposed new town. Many of the undertakings arose from questions or expressions of apprehension by Ngati Turangitukua, who sought assurance on matters that concerned them. The undertakings and assurances given by the Crown were relied on by the people. They played a large part in persuading the people to give their approval in principle at the May 1964 meeting to the Crown proceeding with the construction of a town on their land. It was essential that the Crown should honour its undertakings. Unfortunately, the Crown failed in whole or in part to do so. Such failure undermined and negated the earlier approval in principle, which the people had given in reliance on those undertakings. There was an unacceptable gap between what the people were told the Crown would do and what the Crown actually did, and the owners did not give their informed consent or agreement to such non-fulfilment of the Crown's undertakings or to the taking of their land by the Crown.

21.3.2 Amount of land taken more than Ngati Turangitukua agreed to

Of critical concern to the Ngati Turangitukua owners was how much of their land the Crown required for the township. Although not precise, the Crown on various occasions assured the people that it would need between 800 and 1000 acres freehold and up to 200 acres leasehold for industrial purposes. The leasehold land, the owners were assured, would be returned to them after 10 to 12 years. In September 1964, Cabinet approved the Crown's acquisition of about 900 acres freehold and the lease of some 200 acres.

In December 1964, however, the Turangi Township Act 1964 authorised the Crown to take 1540 acres of Ngati Turangitukua land compulsorily. By April 1967, the Crown occupied 1766 acres and by 1974 a total of some 1642 acres had been compulsorily acquired for the township and for township purposes. A further 23 acres were taken in 1980. In all, the Crown acquired the freehold of 1665 acres of the claimants' ancestral land, despite having promised to take no more than 800 to 1000 acres freehold. It is a major grievance of the claimants that the Crown took between two-thirds and twice as much freehold land as it had assured owners it would take.

21.3.3 Assurance concerning industrial land not honoured

Repeated assurances by Crown officials that the land required for industrial purposes would be leased and returned after 10 to 12 years were not honoured by the Crown. Despite protracted protest and resistance by Ngati Turangitukua, the Crown insisted on compulsorily taking the freehold of some 186 acres occupied for the industrial area. The action of the Crown in resiling from its unequivocal undertakings to return this valuable land is also a major grievance of the claimants.

21.3.4 Other dishonoured undertakings

Other failures by the Crown to honour undertakings to Ngati Turangitukua in whole or in part include:

- the failure in numerous instances to protect the wahi tapu of the people (sacred taonga were desecrated or destroyed);
- the failure to honour the high importance the Crown assured owners it had for conservation values (as a consequence, the waterways and fishing were degraded and increased flooding has occurred);
- the failure to honour adequately the Crown's undertaking to work in a cooperative and friendly manner with owners affected by the Ministry of Works' operations and to negotiate and consult with individual owners on important issues; and
- the failure to make provision for water to be supplied to Ngati Turangitukua people living in Hirangi Road and the action of the Crown in later excluding residents from the Turangi township boundary without consultation or their consent.

21.4 FURTHER MAJOR ISSUES

21.4.1 Crown failure to respect the mana of Ngati Turangitukua

Crown officials dealt with the Ngati Turangitukua people during the construction of the township in a manner that failed to afford them the respect due to their mana as tangata whenua. In particular, Crown officials failed to recognise and protect the sensibilities of Ngati Turangitukua kaumatua.

A further consequence of the inadequate consultation with the Maori people was the failure of the Crown to mitigate the trauma and adverse social repercussions which resulted from its activities in Turangi. The bitterness and hurt live on to the present day.

21.4.2 Crown failure to preserve an economic base for Ngati Turangitukua

The Crown also failed, when deciding where the construction township should be sited, to give adequate consideration to the need to ensure that Ngati Turangitukua whanau, and the hapu as a whole, were left in possession of as much of their land as possible. As a consequence, the Crown failed to act in a way which would best preserve an economic base for Ngati Turangitukua and maintain their lifestyle and community.

21.4.3 Inadequate compensation

The compensation provisions of the Public Works Act 1928 governed the amount the Crown was liable to pay for the land it took from Ngati Turangitukua. These provisions were restrictive in nature and were made even more so by certain rules for determining compensation imposed by the Finance Act (No 3) 1944. This wartime measure was still in force when compensation was fixed for the land taken for the Turangi township in the late 1960s and early 1970s.

The Tribunal believes that in most, if not all, cases the compensation paid to owners was generally in accordance with the legislative provisions then in force. However, we do not consider those provisions resulted in Ngati Turangitukua owners being fairly and fully compensated for the compulsory taking of their land. The basic defect was that the legislation failed to recognise adequately the relationship of Ngati Turangitukua to their ancestral land and to provide adequate compensation for the loss of that land. We have identified a number of defects in the legislation. Here we mention only some.

A basic premise of the compensation provisions was that every owner should be paid a sum of money which left her or him no better or worse off than previously. That is to say, no better or worse off financially. This made no allowance for personal hardship, particularly in being unable to afford alternative housing. Some modest recognition of hardship as an element of compensation was introduced in 1970, but this was too late for Ngati Turangitukua claimants.

No allowance could be made for the fact that the land was taken compulsorily. This ignored the nature of Maori association with and veneration for their ancestral land. The Crown was not obliged to build a construction town on the claimants' land; it had

suitable land of its own nearby. If, as occurred, it chose to remove the claimants from their land, it was under a heavy obligation to compensate them generously and every effort should have been made to provide land in exchange. The Crown rejected suggestions from some owners that this might be done.

Nor did the compensation provisions allow for the fact that in this case it was effectively foreclosing on major farming operations which were steadily becoming more viable. As a result, the economic base of the community was seriously eroded. The disparate valuation of separately owned blocks of land made no allowance for this permanent deprivation.

21.4.4 Absence of legislative provisions for the return of surplus land

There was no provision in the Public Works Act 1928 or the Turangi Township Act 1964 for land no longer required for public works to be returned to Maori ownership. The Tribunal considers that the Crown should have been obliged to return such surplus land at the earliest possible opportunity and with the least cost and inconvenience to the Maori owners. Instead, an appreciable number of properties which should have been returned have been sold off by the Crown.

The Public Works Act 1981, which repealed the 1928 Act, does have offer back provisions. These, of course, were not applicable to Ngati Turangitukua owners until 1981. The Tribunal considers that these provisions, while welcome, are inadequate to meet the circumstances of Maori and the Tribunal recommends legislative changes designed to assist in meeting the Crown's Treaty obligation to protect Maori rangatiratanga over such land.

21.5 CONCLUSION

In chapter 22, the Tribunal records 13 findings of breaches of Treaty principles by the Crown. Most stem from a failure actively to protect the rangatiratanga of Ngati Turangitukua over their ancestral land. A few relate to a lack of good faith and reasonableness on the part of the Crown towards its Treaty partner. Some relate to serious defects in the legislation invoked by the Crown as the source of its authority to enter and compulsorily take the claimants' land. Others relate to Crown policies or practices and Crown acts or omissions to protect and respect the rangatiratanga of Ngati Turangitukua. At the heart of the claim lies the failure of the Crown to honour many of the undertakings and assurances it gave to the owners, which formed the basis of the approval in principle they gave to the construction of a township on their land. This failure effectively vitiated such approval.

As a result, the Crown took up to double the amount of land that it had undertaken to take and valuable industrial land was not returned after 10 to 12 years as promised. Compensation was inadequate; the economic base of the people was seriously eroded; irreplaceable wahi tapu have been destroyed or desecrated; waterways and fisheries are degraded and flooding has occurred; and the lack of adequate consultation with the tangata whenua and the failure to respect the mana of the people throughout the whole distressing experience has increased their level of alienation.

We note that the Tribunal granted urgency to the hearing of this claim because of the claimants' concern that the Crown and its agencies were engaged in selling Crown properties within the claim area at Turangi. It is regretted that, through circumstances beyond its control, the hearings were delayed and the Tribunal has not been able to report sooner on the claimants' grievances.

21.6 REMEDIES

Clearly the claimants are entitled to be compensated for the losses and injury they have suffered. The return of Crown land would, no doubt, be a central element in such compensation. In addition, on 23 August 1994, the claimants gave notice of their application for the resumption under the Treaty of Waitangi Act 1975 of land covered by this claim and vested in or transferred to a State-owned enterprise under the State-Owned Enterprises Act 1986.

21.7 ANCILLARY CLAIMS

During the hearing, there emerged numerous grievances of individual claimants which required further investigation and discussion between the parties affected and the Crown. Accordingly, the Tribunal proposed, and the Crown and claimants agreed, that these 'ancillary claims' should be directly addressed by the Crown or the other agencies involved in the hope that they might be resolved. By agreement, David Alexander was appointed as investigator to identify the particulars of the grievances, refer them to the appropriate agencies for their response, and facilitate a resolution, where this was possible. The Tribunal expresses its appreciation of the Crown's making Mr Alexander's services available. They have resulted in worthwhile progress being made towards the settling of various of the individual grievances.

Mr Alexander's final report, dated 21 April 1995, has been filed with the Tribunal (D11). He advises that the process followed has been partially successful in that 25 of the 83 ancillary claims (30 percent) have been wholly or partly settled or are in

negotiation. It is anticipated that some of the 27 claims not responded to at the time of his report will be settled. Others, he considers, may be settled after the Tribunal reports its findings.

There is clearly a need for Mr Alexander's useful work to be followed up. It may well be that some of the outstanding grievances can be now be settled in the light of this report without further intervention by the Tribunal, while others may be withdrawn.

21.8 A NEGOTIATED SETTLEMENT?

Prior to the final submissions of claimant and Crown counsel in October 1994, the Tribunal advised the parties that the claimants' application for the resumption of land vested in State-owned enterprises in the claim area and the question of remedies generally would need to await the Tribunal's report on its findings of fact and any Treaty breaches. Accordingly, no submissions were made by counsel on the question of remedies.

The Tribunal believes that, in the interest of facilitating an early settlement on the question of remedies, it would be appropriate for the claimants and the Crown to enter into direct negotiations at this stage. Any such negotiations would need to encompass outstanding ancillary claims as well as wider claims and should include the application in respect of land vested in State-owned enterprises in the area. Should this proposal be acceptable to the claimants and the Crown, the Tribunal is hopeful that a settlement satisfactory to both parties will be reached without undue delay. If at any stage the parties are unable to reach agreement on the whole or any part of the matters in issue, the Tribunal would be amenable, on the application of the claimants, to setting a date for hearing the parties on the question of remedies and for making appropriate recommendations.

Alternatively, if either party prefers not to enter into direct negotiations with the other at this stage, leave is reserved to the claimants to apply to the Tribunal to set a date to hear the parties on the question of remedies and to make appropriate recommendations.

We conclude by noting that in the next chapter we make certain recommendations relating to the Public Works Act 1981.