

CHAPTER 4

UNDERTAKINGS AND ASSURANCES

4.1 DEFINITIONS OF UNDERTAKINGS AND ASSURANCES

The claimants stated that the Crown had failed to honour the undertakings made to them by the Ministry of Works, and that these undertakings amounted to terms and conditions upon which they as owners agreed to sell part of their land at Turangi. They pointed to a number of key representations or undertakings made by Crown officials on which they relied when, at the meeting of 24 May 1964, they approved the Crown proposal for the establishment of a town at Turangi ‘along the lines outlined to the meeting’(A7:184).

Crown counsel in opening noted that, at the first meeting with owners on 24 May 1964, certain assurances or ‘undertakings’ were given by the Crown (B1:6). Later in their submission, Crown counsel stated that:

The Crown gave assurances to Maori owners and these were relied upon by Maori in reaching their decision to agree to their land being acquired. Similarly, the Crown relied on the consent to such acquisition expressed by Maori. (B1:19)

In her closing submissions, Crown counsel, after referring to her discussion of Crown ‘undertakings’ in her opening address, reiterated that the Crown did not give formal undertakings as such. She continued:

Rather they were statements made by persons representing the Crown at initial meetings with Maori when information was being provided to Maori on what was proposed. Some statements changed over time as the proposals for Turangi village changed. The statements were in the nature of information which Maori would presumably rely on, although we note the preliminary nature of some meetings and in turn the Crown relied on statements made by Maori. The context was one of a joint exchange of information and opinions. (C3:35)

Crown counsel then proceeded to discuss various undertakings she had identified in her opening address.

Claimant counsel was critical of the foregoing submission by the Crown. Ms Wainwright submitted that if no statements were made by Crown officials to the Ngati Turangitukua owners upon which they could rely then they could not have known fully what they could rely on. Either the statements were provisional and could not be relied on, or they were full and intended to be relied on. We agree that the Crown cannot have it both ways.

Crown counsel did not inform us of the distinction between an ‘undertaking’ and a formal undertaking. Nor did she distinguish between ‘undertakings’ and the assurances which she said in her opening address were relied upon by Ngati Turangitukua.

‘Assurance’ is defined in the *Concise Oxford Dictionary* as a ‘formal guarantee; positive guarantee that [a] thing is true’, while ‘undertaking’ is defined as a ‘pledge, promise’. In the context of this claim, we consider that the terms ‘undertaking’ and ‘assurance’ are sufficiently close as to be interchangeable, and that their normal meanings are well understood, as defined above.

4.2 INTRODUCTION TO REVIEW OF THE UNDERTAKINGS

We now proceed to consider the various undertakings upon which the claimants say the Maori owners relied in agreeing to the project proceeding and upon which they rely in making their claim to the Tribunal. They are 20 in number. We will refer to them all, but, as will be seen, some are of considerable significance, while a few have little or no weight. The Tribunal notes that only two meetings were held between the Crown and the assembled Maori owners, one on 24 May 1964 and one on 20 September 1964. At the preliminary meeting held with three or four owners on 15 April 1964, Crown representatives did indicate the likely number of acres to be taken, but owners generally may well not have been aware of this.

4.3 UNDERTAKINGS 1–3

4.3.1 Undertaking 1: The amount of land to be taken was limited

The 8 May 1964 notice to owners of the meeting to be held on 24 May 1964 issued by Warren Gibson and Jack Asher referred to an area of some 800 acres freehold and a further

200 to 300 acres as a leasehold area for temporary workshops and so on (the industrial area), which would revert to the owners (B2(a):61).

At the meeting between the Crown and Ngati Turangitukua owners on 24 May 1964 (see para 3.4), owners were told by Dick Lynch that the Crown would not be taking any more land than was necessary (A7:182). John Bennion, for the Crown, discussed the likely number of sections and the population envisaged for the new town, along with various other related matters. He also discussed the industrial area to be on leasehold land (shown on the plan), which would revert to the owners. The record of the meeting does not indicate whether Bennion referred expressly to the number of acres involved for the town and the proposed industrial area. But, later in the meeting, Lynch is noted as saying that 'approximately 800 acres in all' would be required for the village site (A7:183). This was the area stipulated on the notice to owners of 8 May 1964, which also stipulated a 'further area of some 2/300 acres' for the industrial leasehold area (B2(a):61).

In addition, Bennion stated that the area of the oxidation ponds would be about 50 acres and that a half-mile buffer zone would be required (A7:181). The area involved was not given, nor was it stated that such a zone would be acquired by the Crown. No indication was given of the amount of land likely to be required for a water supply reserve, although the need for one was mentioned (A7:181).

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In approving the proposal for the new town, the owners did so in reliance on the Crown's statements that the township's area would be some 800 acres, with a further 200 to 300 acres leasehold for the industrial area and about 50 acres for the oxidation ponds. This constituted some 1050 to 1150 acres in all. It was not stated that the half-mile buffer zone adjacent to the oxidation ponds would be taken by the Crown.

No further information was given to the owners about the area for the new town until the second meeting between the Crown and Ngati Turangitukua owners on 20 September 1964 (A7:73–92) (see para 3.6). At that meeting, Gibson stated that:

- the land required for the industrial area would be leased;
- the water reserve proposed was coloured yellow on the plan;
- the Department of Internal Affairs was very interested in a fish hatchery on the Tokaanu River;

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- altogether, the oxidation ponds would require 58 acres and some buffer zone should be provided; and

- the actual area to be taken for the town would be about 1000 to 1200 acres.

We infer from this last statement that the areas indicated included the matters previously discussed, viz the oxidation ponds, the buffer zones, and the water supply reserve proposed to be included in the town. The range of area stated of 1000 to 1200 acres is close to the previous assurance given on 24 May 1964 that the town area would be some 1050 to 1150 acres. This would have reassured the Ngati Turangitukua owners that, in the nearly four months since they had previously been consulted by the Crown, the area required for the town remained virtually the same.

The area of land taken for the Turangi township and associated works was 1665 acres of freehold land (see para 13.6). This was a substantially greater area than the areas in the various undertakings or assurances given by the Crown, of which the maximum, including up to 200 acres leasehold, was 1200 acres. It is clear the Crown undertaking was not honoured.

4.3.2 Undertaking 2: The industrial area would be leased; Undertaking 3: The period for which the industrial area was to be leased was 10–12 years

We will consider undertakings 2 and 3, which are related, together.

In chapter 6, we deal in some detail with the seven-year saga of the Crown's reversal of its plain and unequivocal undertaking in 1964 that it would acquire a leasehold interest only in the industrial area, some 200 acres in extent. We note here the salient facts, but stress that they need to be read in the light of our detailed consideration of this topic in chapter 6.

- The notice calling the meeting of owners on 24 May 1964 stated there would be 'a further area of some 2/300 acres . . . as a leasehold industrial area which shall revert to the owners' (B2(a):61). That it would revert to the owners was confirmed by Bennion at the meeting (A7:181).
- At the next meeting of owners and the Crown, on 20 September 1964, Gibson stated that the land shown on the plan that the Ministry of Works was intending to lease would be a temporary industrial area for only 10 years (see para 6.5). The Ministry would take the land on a leasehold basis and develop it to a standard required by the county. Stated Gibson:

it was about 200 acres. . . . It will all be taken under lease. The private industrial development area however, can accept a limited temporary lease or go to the Maori owners and negotiate something more permanent. (A7:91)

- It is clear that at both the May and the September meetings, the owners were assured in quite categorical terms that the industrial area (by September

estimated to be about 200 acres) would be taken under lease for 10 years and then revert to the owners.

- Cabinet, on 21 September 1964, approved the construction of the Turangi township including ‘the lease of some 200 acres’ (A7:95).

- The Crown’s undertaking to the Ngati Turangitukua owners that it would lease the industrial area for a term and then return it was not honoured by the Crown. On the contrary, the land required for such purposes, amounting to some 189 acres, was taken compulsorily under the Public Works Act 1928.

As their counsel submitted, this is one of the claimants’ major grievances. However, Crown counsel, after a reference to some of the evidence, submitted that the end result was that, ‘although the land was acquired, it was acquired after a settlement had been agreed upon through negotiation’. In those circumstances, counsel submitted ‘that the Crown did in fact meet its “undertaking” regarding the leasehold land in that the “undertaking” was varied and that variation was by mutual agreement’ (C3:51).

We briefly note below the salient features of the protracted sequence of events over some seven years which finally led to the loss of the industrial land after strong and repeated rearguard action by and on behalf of the owners.

- At a meeting between the Crown and the Maori liaison committee held on 24 September 1964 to discuss Hirangi Marae land, Dick Lynch mentioned that a portion of the industrial land might need to be freehold. This came only four days after the 20 September meeting at which Gibson had given unqualified assurances that the industrial area would revert to the Maori owners after 10 years. The minutes of the meeting record no discussion of this surprising and sudden

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contradiction of the Crown's intentions (see para 6.5). Given the closeness in time, it may be that the change in policy was under consideration when Gibson gave his undertaking on 20 September. If so, he was less than frank in his statement to the assembled owners.

- In October 1964, Gibson, in response to a request from his head office, telephoned three owners and Jack Asher to ascertain whether they would agree to a Crown proposal 'to drop leaseholding of 200 acres for the industrial use' (A7:22). At the conclusion of the 24 September 1964 meeting, those present had appointed a subcommittee of the Maori liaison committee to work to resolve any problems that might arise in the construction of the town site. On the subcommittee were Pat Hura, Lang Grace, and Wally Ngahana (A7:59). Gibson spoke separately to Arthur Grace Snr and Jack Asher and subcommittee members Lang Grace and Pat Hura. The third member of the subcommittee, Wally Ngahana, was not consulted. Lang Grace and Pat Hura each indicated that they were prepared to sell. Jack Asher, who was not an owner, wished to consult with Pat Hura. Arthur Grace Snr, on the day of Gibson's telephone call, sent a telegram to the Minister of Works advising he would cooperate in the transfer of the freehold of the 200-acre industrial area but preferred an exchange for Crown land in the same locality (see para 6.8).

- There was no meeting of all the multiple owners of the 200 acres nor of the subcommittee or the owners' committee to consider this sudden reversal of policy. Of the three owners consulted, two were reported as being willing to sell. One of them, Pat Hura, told a meeting of owners on 3 March 1968 that when Gibson rang him in 1964 and asked whether the owners would agree to sell the

industrial area, he said he thought so, but that when it came to the final agreement it would be up to the owners (see para 6.10.3). They were not consulted. The third owner to be consulted, Arthur Grace Snr, gave a qualified approval seeking an exchange of land, which was not agreed to.

- By February 1965, the Ministry had established its intention to acquire 150 acres of freehold land in the industrial area on the basis of limited consultation with only a few owners. The proposal was not put to a meeting of owners.

- By early 1967, owners were expressing dissatisfaction with the increasing amounts of land being acquired by the Crown. The trust board's solicitor wrote to the Minister expressing concern about Crown proposals to acquire the freehold of the industrial area contrary to the Crown's undertakings at the two 1964 meetings of owners (see para 6.9).

- By early 1968, no resolution of the tenure of the industrial area had been reached. This, and other unresolved issues, had further raised the level of dissatisfaction among the Maori owners. A meeting of owners was held at Hirangi Marae on 3 March 1968, at which Gibson and other Ministry staff were present. Both Gibson and Lynch admitted they had not met with the local people since 20 September 1964 (see para 6.10.1).

- At this meeting, Gibson informed the owners that the Minister of Works had advised that there would be no alternative but that the industrial land 'be taken' (A8:31). Leasing was no longer an option. When asked whether the Minister might change his mind if there were a resolution of a different nature from the owners, Gibson responded that 'he could do' (A8:33) (see para 6.10.3).

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- At the end of the meeting, after the officials had left, the owners resolved that they would prefer that any negotiations on the industrial area, including a leasehold, should be conducted under the provisions of Part XXIII of the Maori Affairs Act 1953 (see para 6.10.5).

- Subsequently, in May 1968, the Minister of Works, after a meeting with a delegation of owners, refused to enter into negotiations under the Maori Affairs Act 1953 (see para 6.11). He decided that, of the three blocks in the industrial area, block 7 (being developed privately), in view of commitments given to the developers, would be taken compulsorily. This was duly done. The commitments referred to were given by Ministry of Works officials without any notice to or consultation with the Ngati Turangitukua owners. A second block, area 8, would not be taken and would revert to the owners. As to the third block, being the Ministry of Works' industrial area, the Minister said no decision would be made for the duration of the project and thereafter only 'in full prior consultation with the owners' (B3(a):22). Clearly, the Minister did not consider that the owners had earlier agreed to the Crown acquiring the freehold of the industrial area.

- The owners' representatives continued in their endeavours to persuade the Minister not to take the remaining industrial land under the Public Works Act 1928. Unfortunately, on various occasions, as noted in chapter 6, the Minister received highly misleading advice from certain of his officials. Five days after receiving a seriously flawed memorandum from the Commissioner of Works, the Minister, on 20 September 1971, signed the proclamation taking the industrial land occupied by the Ministry of Works (see paras 6.12.4–5). This was exactly

seven years after the owners were solemnly assured by the Ministry's project engineer that the land would be leased and returned to the owners.

- The main reasons given by the Minister were summarised by Crown consultant David Alexander as being:

All planning and development had been on the basis that the Crown would acquire the land and then later transfer it to other owners in a manner which assisted the retention of Turangi as a permanent township. (B3:36–37)

- The Minister's reasoning was incorrect. Were it true, it could only be on the basis that the Crown officials consistently and wrongly assured the owners at the two meetings in 1964 that the land would be leased and would revert to the owners after 10 years. In fact, a very important reason for taking the land was the maximisation of the Crown's return from its expenditure in connection with the new town (see para 6.12.5).

- It emerged soon after the Minister's proclamation taking the land was gazetted that the Order in Council taking the land might be invalid (see para 6.12.6). Legal proceedings were issued by trustees for the owners for a declaration that the proclamation was a nullity. A lengthy interview with the Prime Minister took place. As a result of further negotiations, the proceedings in respect of the proclamation, which affected some 101 acres, were withdrawn on payment of enhanced compensation. The owners were obliged to accept that the

Crown ultimately had the statutory power to exert its will. This it had done by its compulsory acquisition of the industrial land.

4.3.3 Tribunal's conclusion

The Tribunal considers that the owners of the industrial land taken compulsorily under the Public Works Act 1928 never freely agreed to such taking. They were not consulted on the taking of the private industrial area. They were finally, after seven years' struggle to persuade the Crown to honour its undertaking, compelled, under considerable duress, to accept the Crown's proclamation taking the industrial land occupied by the Ministry of Works. We are unable to accept Crown counsel's submissions that the Crown did in fact meet its 'undertaking', in that the 'undertaking' was varied and that variation was by mutual agreement. Such a contention is inconsistent with the factual evidence of what actually happened, which, given the Crown's stance, we have been obliged to consider in considerable detail in chapter 6.

4.4 UNDERTAKINGS 4-7

4.4.1 Undertaking 4: It might not be possible for the Crown to obtain European land

We agree with the concession of claimant counsel that undertaking 4 (that it might not be possible for the Crown to obtain European land) was more in the nature of a statement than an undertaking (C2:49). Accordingly, we do not consider it further in this context.

4.4.2 Undertaking 5: Alternative sites had been considered

Claimant counsel submitted that the alternative sites were not given proper weight and were not considered in the light of the Crown's Treaty obligation (C2:50). We have upheld this contention in chapter 17 and need not discuss the matter further here.

4.4.3 Undertaking 6: Standards of construction in the town would be to local body bylaw standards

John Bennion told the assembled owners on 24 May 1964 that the proposed Turangi township was expected to cost about £4 million. Accordingly, the Crown had to ensure a permanent return for this expenditure and to achieve this the township had to be built on freehold land. He added that the Government would not consider building to the standard envisaged on leasehold land. It was hoped that the township would be a normal county town in three or four years. Therefore, he said, standards of construction and buildings must be to local body bylaw standards (see para 3.4). Later on, he said that on the completion of the construction work as many of the houses would be sold on site as possible and the balance sold for removal.

In fact, the Ministry did erect some substandard houses, but it appears these were removed at the end of the project and the vacant sections offered for sale to the public. Reneti Church gave evidence of being shifted along, with her parents, out of the family house, which was close to the oxidation ponds. They were relocated by the Ministry of Works in a substandard house that the Ministry had placed on land taken from the Rawhiti family. It was not removed by the Crown until the Church family finally vacated it after some 16 years' occupancy, during which time Mr Church refused to pay any rent (para 12.3.6).

The evidence before the Tribunal suggests that the Taupo County Council was generally insistent that houses in the new township were to conform to county standards. We do not know whether any substandard houses erected by the Ministry remain. If so, we believe they would be relatively few in number and would have since been renovated to meet county requirements. While there was clearly some discomfort as a result of substandard houses being put in place, we are satisfied that the Crown's assurance that standards of construction in the town would be to local bylaw standards has been, if not wholly, then very substantially honoured.

4.4.4 Undertaking 7: If owners had to move, notice of advance warning would be given and they would be fully compensated

Claimant counsel referred us to Taima Bell's evidence of the experience of her grandfather Tewe Eru (C2:51–52). It appears that Eru's house was demolished on 29 October 1964 (see para 12.3.4). Two days earlier, a building supervisor, J W James, reported that he had discussed with Tewe Eru and his son, James Eru, the best way to dispose of the house and outbuildings. His report does not say when this discussion took place and whether the Erus were told when the house was to be demolished. Taima Bell gave the following account of what transpired:

I was told by Arthur Grace that my grandfather was still in the house when they came to bulldoze it down. I don't know why they had to bulldoze that house. It was only 21 years old. My grandfather was watching what was happening, standing there on the road with my little sister Josephine, another whangai who lived with my grandfather. He was crying, and his suitcase was there beside him. Arthur went and spoke to the men with the bulldozer, but they didn't listen and they drove a bulldozer into the back of the house right in front of my grandfather. They didn't even wait until he had left before knocking the house down. So Arthur picked up Josephine and my grandfather and took them away in his truck. All our turkeys and pigs and dogs and cats were let loose, running around. We had about 30 turkeys then. They were all just left to run away. My grandfather was taken to the marae to live, because there was nowhere else for him to go. He was moved from family to family, but he used to lock himself up in his room all the time. It was only a few months later that he died. (A14(2):2–3)

J W James, who was present when the demolition took place, referred to there being 'a bit of an upset during demolition with some members of the Eru family who thought that the old shack was going to be re-erected at the Pa'

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(B2(a):331). However, they were told a permit would not be granted for this and once this was explained 'they were quite happy' (B2(a):331).

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Claimant counsel referred to a further example when it appears no advance warning was given. Reneti Church was the youngest of nine children living with their parents on the family farm, part of which was to be used for the oxidation ponds (see para 12.3.6). She described how one day the bulldozers came in and bulldozed the fence line while they were at home. She was aged seven at the time and was told by her parents that this came as a complete surprise to them. The family's stock, which were grazing on the paddocks where the oxidation ponds were to be sited, went straight out on the road. 'We had to rush to get them back,' she said. Later, the Ministry of Works started digging the oxidation ponds, and soon after the family was moved out of the house: 'All of a sudden one day we had to move' (A15:1).

The family was moved out to a 'substandard' house on land which had been owned by the Rawhiti family. It was described by the Ministry as an ex-Atiamuri 800 square feet house. According to Reneti Church, there were about 12 of the family living there, 'and it was full of cockroaches' (A15:2).

In chapter 12, other accounts will be found both of occupants being taken by surprise by the sudden arrival of the bulldozers and of the lack of adequate consultation. One more example here must suffice (see also para 12.3.3). Raymond Wade told us that his mother was living right next door to the high school:

Her house was nearly bowled over by the bulldozers. They had actually already flattened the orchard, which was made up of about 15 trees. They were approaching the house while she was still inside. I don't think they knew she was inside. I don't think my mother could have been given notice that they were coming to demolish her house, because she was an educated woman and she would have taken steps to try and stop them. She certainly wouldn't have just sat there in the house. Anyway, when the bulldozers

came, she ran out of the house to stop them. She was in her forties, but very ill with asthma. She was very worried about her family home which she wanted to protect. The home had belonged to our great-grandmother, Paehoro Te Noni Hariata Kamekame Te Haeata Ipukai.

Although my mother stopped the bulldozers that day, a couple of years later the house was demolished anyway. (A20(2):1–2)

4.4.5 Tribunal's comment

While there were no doubt instances when the Ministry of Works did give adequate notice to owners who had to move, it is apparent from the evidence that they failed to do so on various occasions, notwithstanding their undertaking to the contrary. We consider the Ministry's undertaking that owners would be fully compensated later in chapter 19.

4.5 UNDERTAKINGS 8, 9, 17

4.5.1 Undertaking 8: Tuwharetoa people would be given prior right of purchase when selling sections and houses at the close of hydro-construction; Undertaking 17: Sections would be available to absentee members of a tribe returning to the area

Undertakings 8 and 17 are related and will be considered together. Claimant counsel submitted that, if these undertakings were honoured, they were not honoured consistently (C2:52, 72). A few instances only were cited by claimant counsel offàç