

CHAPTER 18

CROWN TREATY BREACHES AS TO CONSULTATION

18.1 INTRODUCTION

In this chapter, we consider whether the Crown met its Treaty obligation to consult fully with Ngati Turangitukua owners prior to Cabinet approving the Crown's acquisition of the claimants' land for the Turangi township.

Crown counsel submitted that adequate consultation by the Crown in fact took place with the Ngati Turangitukua owners before it compulsorily acquired their land for the township (C3:21). Claimant counsel, however, submitted that such consultation as took place was inadequate and not in conformity with the Crown's Treaty obligations (C2:26).

Crown counsel acknowledged that no provision was made in the Public Works Act 1928 or the Turangi Township Act 1964 for any public consultation or objection procedures. Nor was there any provision for private consultation with the Maori owners. Crown counsel also accepted that, in this claim, consultation is a key element in the duty to act reasonably and in good faith in the exercise of kawanatanga, so as to ensure the willing participation of the tangata whenua in that exercise of kawanatanga by the Crown. It was said that consultation between partners in a claim such as this is vital to the Treaty itself and to the spirit of the Treaty. It was further submitted that the Crown's duty to consult was, like its other duties, bounded by what is reasonably practicable in the circumstances. It was the Crown's contention that adequate consultation with the owners in fact took place and that the discussion enabled the Crown to proceed with the acquisitions on the basis of agreement, informed consent, and consensus (C3:26). This evidence was reviewed in some detail by Crown counsel. We now consider it.

18.2 1955 MEETING AT HIRANGI MARAE

Crown counsel first referred to a meeting at Hirangi Marae on 11 October 1955. This was described as a preliminary meeting to seek Tuwharetoa support for the storage of water in Lake Rotoaira (C3:15). Counsel claimed that approximately 100 landowners of Ngati Turangitukua were present. It was further claimed that it was against this context of initial knowledge that later meetings occurred. We would note from our discussion in chapter 2 that:

- The meeting was of the owners of Lake Rotoaira, of whom only some of the 100 Maori present were of Ngati Turangitukua. Several other hapu have interests in Lake Rotoaira and at least two have marae on the lakeshore (see para 2.3.4).**
- The meeting was not concerned with the taking of land at Turangi.**
- The resolution passed at this meeting of Lake Rotoaira owners, while expressing sympathy with the proposals outlined, felt that, as there were no concrete plans available in connection with the use of the lake for the hydroelectric purpose proposed, the matter should be deferred for further consideration at some future date (see para 2.3.4).**
- The meeting, which was principally concerned with the possible raising of the level of Lake Rotoaira, was of no direct relevance to the events which took place in Turangi some nine years later.**

18.3 1964 CORRESPONDENCE AND MEETINGS

18.3.1 Jack Asher's role

Counsel then turned to consider the consultation with Ngati Turangitukua. The first step in this consultation was said to be a letter from Jack A Asher, the secretary of the Tuwharetoa Maori Trust Board, to the Prime Minister and Minister of Electricity dated 24 March 1964 (C3:17). In this letter, Asher, writing on trust board letterhead, said Tuwharetoa 'feel we should give extended support regarding the upper Tongariro River hydro project' (B2(a):51). Crown consultant David Alexander, after referring to this letter, commented that it was to be the start of a close working relationship between Ministry of Works officials and Asher over the next nine months

(B2:14). He further noted that because Asher usually wrote on trust board letterhead he would have given the impression to Ministry of Works officials that he was speaking on the board's behalf. Mr Alexander also stated that Asher was an owner of township site land, the secretary of the Lake Rotoaira Trust, and the local riding member (and past chairman) of the Taupo County Council, 'so the possibility that he was continuing or even mixing his various roles, cannot be excluded' (B2:15). The Tribunal notes:

- **Jack Asher was not an owner of township site land. His son, John Takakopiri Asher, said in evidence that his mother was Ngati Turangitukua of the Pourini family. He did not claim his father Jack was also of Ngati Turangitukua (A12(1):1). John Asher's sister Ringakapo (Nan) Payne in evidence said that her father Jack was Ngati Pikiāo and Ngati Pukenga (A12(4):1). We accept the submission of claimant counsel in reply that:**

any interest in the land around Turangi that Mr Asher had, he had through marriage. He was a man essentially without manawhenua in these lands . . . who had reached some prominence within Pakeha – designed organisations such as councils, boards and committees. He was also clearly in favour of the project going ahead. (C9:4)

- **The Tribunal considers that it is difficult to determine with certainty in what capacity Jack Asher was speaking in his dealings with the Crown officials. He was not speaking as an owner. Nor, it appears, was he speaking with the**

authority of the trust board. John

Asher told us in evidence:

The Ministry of Works met with the Ngati Tuwharetoa Trust Board in February and March of 1964 in the Trust Board offices at Tokaanu. I was present at those meetings. The Ministry of Works explained the ramifications of the scheme, and asked if the Trust Board would help them to see it through. The Trust Board was very wary about that. The Ministry of Works wanted the Trust Board to act as liaison between the Ministry of Works and the Ngati Turangitukua people and others in the district, but the Trust Board was unwilling to adopt that role. They very firmly said 'no'. They were aware that there were too many pitfalls for them in such a role, because the Public Works Act provided the Ministry of Works with power to ride roughshod over people, and the Trust Board did not want to be implicated in that sort of thing. (A12(1):2)

• Jack Asher had previously been the chairman of the Taupo County Council and in 1964 he was still a member of the council. It appears most likely that he was speaking primarily as a member of the Taupo County Council. It is clear from the evidence that he was an enthusiastic supporter of the development of the township in the riding he represented.

18.3.2 15 April 1964 meeting

On 15 April 1964, a meeting was held in the trust board's offices in Tokaanu. Present were Jack Asher, his son John, Arthur Grace, Lang Grace, and Hepi Te Heuheu, together with officials from the Ministry of Works and the Departments of Maori Affairs and Electricity. John Asher was in due course to succeed his father as the trust board secretary. He appears to have mistaken the dates of the meetings he attended with the Ministry of Works and the Tuwharetoa Maori Trust Board. The first such meeting was, it appears, on 15 April 1964. Preliminary discussions were held but it was in no sense a consultation with owners, only three or four of whom were present. The Ministry of Works officials sought an unequivocal undertaking by somebody present that there would be no objections once the notice of intention to take the land was advertised. 'They were informed that this would be a matter for the Maori owners' (B2(a):54). Clearly, those present had no authority to bind the Ngati Turangitukua owners. Accordingly, a special meeting of owners was to be arranged by Jack Asher.

18.3.3 24 April 1964 letter from Jack Asher to the Ministry of Works

Crown counsel next referred to a letter of 24 April 1964 to the Ministry of Works which Jack Asher wrote on trust board letterhead. In it, he suggested that a valuable area at Turangi lying between the Turangi to Tokaanu highway and the western bank of the Tongariro River might be made available by the owners (A7:203). It seems very doubtful that in making this suggestion Asher had consulted the owners. As Crown counsel later noted, at a meeting of Ngati Turangitukua owners on their own, they made it clear that they wished the above land to remain in their ownership because '[the] locality is a residential area owned by certain families, some of whom have already built their homes thereon [with] more to follow' (A7:145).

18.3.4 7 May 1964 meeting

The next meeting took place on 7 May 1964 at the trust board's offices. Present were three trust board representatives, Ministry of Works and other Crown officials, and Taupo County Council representatives. No owners were represented. No decisions were made at the meeting, which was chaired by Warren Gibson. At the meeting, Jack Asher is reported as saying that 'most landowners were prepared to negotiate with the Department but some could prove difficult' (A7:190). The next day, G J McKellar from the Department of Maori Affairs recorded that the Maori Affairs Board:

Would fall into line with the proposal but would prefer the MOW to negotiate with the owners and lessee and to reach agreement as to price . . .

. . . I appealed to Mr Gibson not to exercise any legal power under the Public Works Act but if this was exercised then the Maori Trust[ee] would then act for the owners. (B2(a):59)

On 12 May, in Gibson's absence, a member of his staff sent a telegram to head office advising that 'Mr Asher does not expect any trouble in persuading his people to sell the land at Turangi we require'. He added that the main objector was A Grace Jnr but that Asher did not expect to have too much difficulty with him.

Crown counsel cited Asher's conclusion that the meeting 'was very well attended, and all grounds [were] more or less fully discussed with a good

deal of satisfaction' (B2(a):60). Conspicuous by their absence from the meeting were any representatives of the owners as such. Asher, who appears to have played a prominent part, was not himself an owner. His authority to appear to be speaking on the owners' behalf is not known. Even if one or more of the three trust board representatives happened to be Ngati Turangitukua owners, they were there on behalf of the trust board, not the owners. They had no authority to bind other owners to alienate land except at a properly constituted meeting of owners under Part XXIII of the Maori Affairs Act 1953 then in force.

18.3.5 8 May 1964 notice to Maori owners

Following the 7 May meeting, a notice dated 8 May 1964 signed by A W Gibson, the project engineer, and J A Asher, as the secretary for the Tuwharetoa Trust Board, was sent to the Maori owners of the blocks which were to be affected by the construction of the Turangi township and the TPD (see para 3.3). It advised that the inception meeting between the Maori owners and the Electricity Department would be held at the Tuwharetoa Maori Trust Board Hall in Tokaanu on 24 May 1964. Among other matters, it referred to various stages in the proposals for the Tongariro River hydro scheme. The first stage was said to be the preparation of a permanent town with an area of some 800 acres freehold and a further area of 200 to 300 acres leasehold for the temporary erection of workshops and so on during the construction stages, 'after which the area shall revert to the owners'. It added that 'possibly part of this area will be declared a permanent industrial area for future erection of factories' (B2(a):61).

18.3.6 12 May 1964 letter from Asher to Gibson

On 12 May 1964, Asher took the trouble to write to Gibson advising that the previous Sunday he was present at an informal meeting with:

some of [the] owners . . . more or less as a sounding out or preliminary to the 24th inst. On the whole I consider it was most successful with a strong inclination to meet your needs regarding the Turangi town site. (B2(a):62)

We do not know how many owners were present, but no Crown officials were there.

Asher's anxiety to cooperate with and encourage Gibson is again evident from this correspondence.

18.3.7 24 May 1964 meeting

On 24 May 1964, the first meeting took place between Ngati Tuwharetoa and Crown officials. It was held at the Tuwharetoa Maori Trust Board Hall in Tokaanu. There was no separate meeting of landowners under Part XXIII of the Maori Affairs Act 1953 to consider the alienation of the Ngati Turangitukua land. Crown counsel submitted that this meeting could be described as the next stage in the process of consultation. It was not, however, the next stage of consultation by the Crown with the owners. This was to be the first time that Ngati Tuwharetoa generally would hear from the Crown what it proposed and the first opportunity that the Ngati Turangitukua owners would have to question and discuss the proposals. During the lengthy meeting, a wide variety of matters were raised and discussed.

(1) *The Tongariro power development project*

The discussion, which was led by Gibson, first dealt at some length with the proposed Tongariro power development project (A7:177–179). Gibson gave details of the various stages the development would take and the effect it would have on Tuwharetoa land and rivers in the area. Reference was made to previous hydro development work in various parts of the country. Estimated starting and completion dates for the various phases of the scheme were explained. Details of the various railways, highways, and access roads needed to serve the development work and proposals for the upgrading of State highways in the area, including the Rangipo to National Park State highway and SH1, were given. Topographical details, which involved a description of mountains and rainfall in relation to the proposed power project, were discussed.

(2) *Three stages of development*

Gibson then proceeded to explain the three proposed stages of the development (A7:179–180). The first was to be the western diversion, which was designed to channel additional water into Lake Taupo, resulting in Waikato River power stations having an enhanced generating capacity. The lengths and routes of the proposed tunnels and aqueducts were outlined. Then followed details of stage 2, which involved the Tokaanu power project; stage 3, the Moawhango diversion project; stage 4, the Rangipo power project; and stage 5, the Kaimanawa power project.

(3) *Construction of the township*

After this lengthy and quite detailed discussion of the TPD, Gibson outlined the proposals for the construction of a township on the claimants' land at Turangi West. A principal objective of the Crown officials present was to obtain the consent of the Maori owners to the construction of a new permanent township on their land. While there was some fluidity about some aspects, a number of assurances or undertakings were made to the owners (these were discussed in detail in chapter 4). Some matters were presented in such a way as to appear non-negotiable. It was, for instance, made clear that the freehold of some 800 acres required for residential and commercial purposes would have to be acquired. By contrast, it was said that the further area of 200 to 300 acres for the industrial area would be taken on leasehold and later revert to the owners.

(4) *Plan of the township*

At the time of this meeting, a revised draft plan of the township had superseded an earlier plan. But it was the earlier plan, and not the then current plan, which was shown to the owners at the meeting. The up-to-date plan was not revealed. It showed additional land required between Hirangi Road, the Tongariro River, and the realigned SH1 and SH41. A shift in the location of the industrial area was also envisaged (B2:14–15). The actual plan was not shown to the owners until the second and last meeting with them on Sunday 20 September 1964, the day before Cabinet approved the project. Neither plan could be located by Crown consultant David Alexander.

(5) *Sites considered for the township*

Earlier in the 24 May meeting, Gibson gave details of the four sites considered suitable for the proposed township: the Lake Rotoaira site, the Rangipo Prison Farm, the Hautu Prison Farm (Turangi East), and the Turangi village (Turangi West). He advised that the Turangi West site was the most favoured and the one most likely to remain a township (A7:180). Lynch later reiterated Bennion's remarks on the desirability of the Turangi West site.

Towards the end of this meeting, Dick Lynch emphasised that an early decision on whether or not the owners would be prepared to sell was required. If there were any serious objection, it was said, the Crown would have to select one of the alternative town sites which were being considered (A7:183). As we have recorded in chapter 12, several claimants who attended the meeting stated in evidence that they were told Rangipo would be the alternative site if the owners did not agree to Turangi West. Ministry of Works officials made a persuasive case for the town proceeding at Turangi West and the impression was given that if the Ministry had to build at Rangipo it would be only a temporary town, which would be removed at the conclusion of the project (see para 12.2.2). While the reference to Rangipo is not recorded in the minutes of the meeting, we have no reason to doubt the recollections of Bill Asher, Arthur Grace, and Terewai Grace, each of whom heard it spoken of as the alternative site. The minutes do not purport to be a verbatim account of all that the Crown officials or the others present at the meeting said.

(6) Resolution passed

At the end of the meeting, a resolution was passed unanimously approving the Crown's proposal for the establishment of a town at Turangi 'along the lines outlined to the meeting' and accepting the assurance given that the owners would be reasonably and fairly compensated (A7:84). In addition, a committee comprising some 13 members was appointed to confer without delay with the Ministry of Works on any matters of tribal importance. We note that the resolution passed by the owners accepting the proposal 'along the lines outlined to the meeting' was based on an already superseded plan.

18.3.8 Tribunal's comment on 24 May 1964 meeting

The Tribunal is left with a very real doubt that, at the end of this meeting extending over many hours, the people, especially the older people, were able to absorb all the detail or to appreciate fully the implications for them of what was proposed. As noted earlier, they were expected to follow much technical detail about the five-stage Tongariro power project in addition to the proposals for the new town. It is likely that many failed to appreciate the magnitude of change involved and the implications of the township proposals. This is apparent from the evidence referred to earlier (see para 12.2.4). While no doubt acting in good faith at the time, we believe that the Crown officials, who by now had a strong conviction that a permanent township should be developed at Turangi West, did all they could to persuade the people to agree and held out assurances which were intended to overcome their doubts and concerns. At the same time, they warned that, should the owners not approve the Crown's proposals, a temporary township only would be built at Rangipo, the inference being that Ngati Turangitukua would miss out on the advantages of a permanent town.

18.3.9 24 May 1964 liaison committee meeting

Immediately after the termination of this meeting of owners, the newly appointed liaison committee met. Also present were two solicitors for the Maori owners and two officials of the Ministry of Works. Most of the time was spent considering how much land should be retained for the Hirangi Marae area. It was agreed that this and other matters raised should be referred to a full meeting of owners. A separate meeting of Ngati Turangitukua for this purpose was arranged for 31 May 1964 (see para 3.4).

18.3.10 31 May 1964 meeting

At the 31 May meeting, the owners agreed to offer the Crown 30 acres of the marae site's 50 acres, subject to valuations being prepared as a basis for negotiation. Resolutions were passed on other matters, and the meeting agreed that these should be put to a meeting to which Dick Lynch and other officials would be invited. This meeting was to have been held at Hirangi on 14 June 1964, but it did not take place (see para 3.5).

18.3.11 Correspondence relating to the cancelled 14 June 1964 meeting

On 14 August 1964, Arthur Grace Snr wrote to the Minister of Works. His opening paragraph signified some impatience with the Minister's department. It said:

Owing to the numerous criticisms and complaints that are continuously being received by your Department over the above scheme, it is to be presumed that your Departmental Officers have not found the time at present to meet the Maori owners of the Turangi lands that are required for the new Hydro township for the purpose of finalising the take over of the actual area required and location for the site. (A7:144–145)

Arthur Grace Snr advised the Minister of the discussion at the owners' meeting on 31 May 1964 concerning the proposed sale of the 30 acres of the marae site and he also detailed the other important matters which the owners wished to discuss with Lynch and the officials at the meeting proposed for 14 June 1964 (see para 3.5). He noted that this meeting did not take place, as he understood it, because it did not fit in with Lynch's programme, and the owners were still waiting for the meeting to occur (A7:144–145).

It seems that Arthur Grace Snr was unaware that the meeting did not take place because it was cancelled by Jack Asher. In a letter of 2 June 1964 to Lynch, Asher, who had been in contact with R E Tripe, the Tuwharetoa Maori Trust Board's solicitor, indicated that it would not be possible for the Maori owners of Hirangi Marae to have the valuation proposed in time for the meeting. He went on to say:

Confidentially I prefer that any discussions along these lines are better deferred as it is just possible it could conflict with the general principle adopted at the meeting of the 24 [May] . . .

At the present junction I feel that the matters of any negotiations where valuations are entered upon would be somewhat dangerous . . . (A7:150)

18.3.12 Failure of communication

The Tribunal concludes that there was a failure of communication between Jack Asher, who appears to have acted unilaterally and on a confidential basis, and Arthur Grace Snr and other Ngati Turangitukua owners. It is difficult to escape the conclusion that, during this critical period when important decisions were being made by the Ministry of Works, not only about the proposed new town but also about the larger Tongariro power project, the Ministry officials avoided consulting the owners. Instead, they preferred to deal with Jack Asher, as the secretary of the Tuwharetoa Maori Trust Board and a Taupo County Council riding member, as their liaison person to deal with the owners. But we were told by Jack Asher's son John, his successor as the trust board's secretary, that the board had no wish to take on that role. In effect, Jack Asher was acting on his own.

18.3.13 18 June 1964 meeting between Asher and Lynch

Instead of the proposed meeting with the owners taking place, Jack Asher and Dick Lynch met on their own on 18 June 1964 despite the fact that the 13-member liaison committee had been appointed on 24 May for the very purpose of discussing matters of importance to Ngati Turangitukua owners (A7:154). At this meeting, Asher appears to have raised various matters which the owners at their meeting on 31 May had expressed anxiety to discuss with Lynch and other officials. Lynch recorded his attitude to these various issues in a memorandum attached to his 23 June 1964 report to the Commissioner of Works; he was favourable to some and not to others (A7:155–157). These matters were passed to the Ministry's planners on 23 June 1964, and their letter dated 17 August 1964 was sent to the District Commissioner of Works at Wanganui on 24 August 1964 (A7:148–149). Some of the owners' proposals were agreed to in whole or in part, while others were rejected. None of the owners had been consulted on any of these matters.

18.3.14 Secret negotiations

The Tribunal has no evidence that Asher or any Crown official reported the outcome of the 18 June meeting to the owners or the owners' liaison committee. Had this been done, Arthur Grace Snr would not have written in the way he did to the Minister of Works on 14 August. There, he raised a number of the matters of concern from the 31 May meeting. Secret negotiations of the kind which took place between Asher and Lynch fall far short of consultation with the owners. Grace's sense of exasperation at the delays in the Crown meeting with the owners is entirely understandable. It was not shared by Asher, however, whose attitude is clearly revealed in a letter dated 26 August 1964. Writing on his personal notepaper to Lynch, he confirmed the date for a proposed meeting with the owners and then said:

Some complaints have reached the Hon Mr Allen at Wellington making some cheap suggestion at the prolonged delay of such a meeting. Your Dept already have had too much criticism to handle which has considerably delay [sic] the general lay out. I am contacting over phone the Hon Minister tomorrow morning in order he can be assured the complaints are groundless. (A7:118)

This letter reveals Asher to be very much a partisan and on the defensive. The reference to the 'cheap suggestion at the prolonged delay of such a meeting' is no doubt a reference to Grace's letter to the Minister of Works. Asher may or may not have realised that the reason for Grace

writing to the Minister was because he, Jack Asher, had failed to consult with the liaison committee of which he was a member. He evidently preferred to negotiate independently with Ministry officials. If, as he suggested he would, he advised the Minister that the complaints were ‘groundless’, he could not have failed to mislead the Minister. Ngati Turangitukua had been waiting since 31 May for a meeting with Crown officials. That it had not taken place was the responsibility of Asher, who took matters into his own hands unknown to the owners he purported to represent.

18.4 FURTHER CORRESPONDENCE IN 1964

18.4.1 The Minister’s response to the 14 August 1964 letter

Arthur Grace Snr’s letter of 14 August 1964, which reached the Minister’s office on 18 August, resulted in a flurry of activity. The Minister responded by telegram on 20 August, advising that:

- the Government had been working on the basis of the motion passed at the 24 May meeting;

- the suggestion in Grace's letter that compensation should be settled before the land was taken 'envisages long delay' and was unacceptable – under those circumstances, there would be no alternative but to build the town on Crown land elsewhere (A7:134); and

- he would discuss the matters in Wellington on 24 August.

The Tribunal observes that the delay involved would have been tolerated. It also indicates that the Crown did own land suitable for a town.

18.4.2 Arthur Grace Snr's responses

Arthur Grace Snr replied to the Minister's telegram by telegram the next day, noting that:

- the Minister appeared unaware of what transpired at the meeting of owners on 31 May, minutes of which were recorded in his letter of 14 August; and

- if the actual siting and location were now finalised, the owners should be taken more into the Ministry's confidence by disclosing the information at a final meeting at Turangi (A7:134).

In a second telegram, dated 24 August, Grace informed the Minister that it was most essential that the Ministry officials should meet the owners at Turangi to tidy up the various questions raised at the 24 and 31 May meetings, ‘thus leaving no misunderstanding’ (A7:135). The Minister replied by telegram, advising that his officials were only too happy to disclose to owners the plans being prepared for the new town and the early meeting would be arranged. He stressed that it was vital for the continuing employment of the Mangakino workers and the prosecution of the power scheme that work on the construction town should commence as soon as the Government approved the scheme. The Minister did not address any of the points in Grace’s letter.

18.4.3 The Commissioner of Works’ correspondence

Following this spate of telegrams on 26 August, G J Hallewell, on behalf of the Commissioner of Works, Mr Gilkison, in turn sent a telegram to Gibson containing the full text of Grace’s 14 August letter and the ensuing telegrams (A7:130–135). In this telegram, Hallewell said that:

- a meeting should be arranged with Asher in the chair ‘if possible but certainly with his knowledge and to his direction if possible’; and
- a meeting between the special committee (the Ngati Turangitukua owners’ liaison committee), Gibson, and Lynch, representing the Ministry, would meet all requirements (A7:130).

Meanwhile, on the same day, other telegrams were being sent. One was from Hallewell at head office to the Commissioner of Works in person at Hamilton (A7:128). It advised that:

- Asher had informed Gibson that the Ministry should not deal with ‘Mr Arthur Grace and his faction separately’; and
- Asher considered that the only ones who needed to be at the meeting were the elders forming the committee to consider ‘exceptions and requirements in the area’ (A7:128).

Also on the same day, Gibson advised his head office that Asher had told him of his intention to inform the Minister personally that 'no urgency is required in finalising matters with the owners'. He further suggested a meeting with the principal owners on 20 September. Gibson proposed to have Lynch visit 'important individuals separately to give some reassurances' (A7:129).

18.4.4 Crown counsel's submissions on this further correspondence

Crown counsel stated in their closing submission on the consultation issue that, between 14 June 1964 (presumably a reference to the 18 June 1964 meeting between Asher and Lynch) and the next large meeting on 20 September 1964, the planning for the township proceeded, with the liaison committee continuing to meet (C3:22). Counsel appears to be under the impression that these meetings of the 'liaison committee' were meetings of the Ngati Turangitukua liaison committee appointed at the meeting on 24 May 1964. Reference to Crown counsel's chronology of meetings in appendix 1 of their submissions shows that four meetings of the 'Liaison Committee between MOW and Taupo County Council not referred to in evidence' were held on 31 July 1964 and on 3, 4, and 6 August 1964 (C3(app 1):2). There is nothing to suggest that any Ngati Turangitukua owners were present at these meetings or had any knowledge of what transpired at them.

Crown counsel also stated (presumably as evidence of continuing consultation) that, prior to the meeting of 20 September 1964, Arthur Grace Snr had met with Lynch on 1 September (C3:22). This was no doubt an attempt to repair the Crown officials' failure to consult with the Ngati Turangitukua owners for some months and was also in response to the directive from Gibson (noted above) that important individuals should be visited separately to give some reassurances.

18.5 20 SEPTEMBER 1964 MEETING

18.5.1 Notice to owners

A notice dated 28 August 1964 over the name of A W Gibson, project engineer, was posted to some 53 Ngati Turangitukua owners (A7:120). The list was provided by Jack Asher, who advised that it would cover the main

families (A7:118). The notice announced that a meeting would be held in the Tuwharetoa Maori Trust Board Hall at Tokaanu on Sunday 20 September 1964 for the purpose of advising of the progress of the Tongariro hydro scheme and the proposed Turangi township. This was to be the first occasion in almost four months that the owners were to be consulted by Crown officials and informed of what, by now, was virtually a *fait accompli*.

18.5.2 Two venues for the meeting

The meeting, which began at 11 am in the trust board hall, did not get off to a good start. It was chaired by Asher in his capacity as secretary of the trust board. Some Maori owners were present, along with two solicitors for the owners and Ministry of Works and Department of Maori Affairs officials. However, most of the owners were assembled at Hirangi Marae at Turangi (some kilometres away) because it had been decided at a meeting of Maori elders the previous Sunday that ‘all matters concerning the Turangi Township should be decided there’ (A7:76).

Gibson was called on to address the meeting and proceeded to discuss roading, the creation of new lakes, the creation of canals and dams, and other matters associated with the power scheme. At one point, Asher reminded Gibson that there was a standing committee of owners’ representatives which could be approached from time to time. ‘They would like to be consulted,’ he said (A7:74). This is somewhat ironic, given Asher’s earlier failure to facilitate a meeting between the committee and the Crown.

18.5.3 Calls for meeting to reconvene at Hirangi Marae

When Gibson started to discuss proposals for the township, Arthur Grace Snr advised him that the owners were waiting at Hirangi Marae to decide on all matters concerning the township.

Gibson thanked the members of Ngati Turangitukua ‘very much’ but suggested that he run through the Turangi details first and consider a move a little later on. He was obviously disinclined to accommodate the owners’ wishes to move at that time to the marae (A7:76).

Shortly thereafter, John Grace remonstrated, saying that he thought the matter 'should be discussed at the marae . . . in fairness to the people who had been so kind to assemble there' (A7:76). Gibson assured the gathering that 'he was there to do whatever the Tuwharetoa people wanted' but immediately contradicted himself by suggesting that perhaps a further half hour should be given to considering the town plan before moving to Turangi. Fearon Grace then intervened. He thought the meeting should be moved to Turangi Pa (Hirangi Marae). At this stage, Asher said he thought they should hear Gibson's explanations and then move to Turangi. Arthur Grace Snr thought the meeting should move in a quarter of an hour. Gibson proceeded with his explanation of the Turangi township in the absence of the Maori elders and owners, who were kept waiting at the marae. Only after he had completed what he wanted to say and answered questions from the floor did the gathering adjourn for lunch and thereafter re-assemble at Hirangi Marae in the presence of the owners.

Claimant counsel submitted that the attitude displayed by Gibson towards the Ngati Turangitukua people did not augur well for the future. She suggested that the best construction that could be placed on his conduct was that he was impolite and ignorant as to Maori protocol. At worst, this was a deliberate slight to the Ngati Turangitukua owners and elders, showing them from the beginning who was boss and whose preferences counted. The Tribunal is not disposed to dissent from this analysis.

18.5.4 The meeting at Hirangi Marae

When the meeting finally reconvened at Hirangi Marae, a variety of matters were discussed. Assurances were given that Dick Lynch and John Bennion would be available the next week to discuss any matters with individual owners. Assurances were also given on conservation matters, the leasing of the industrial block, the water supply, relief from flooding, the protection of wahi tapu, and the likely area to be taken. These, and other related matters, have been considered in chapter 4.

The next day, Monday 21 September 1964, Cabinet approved the construction of the first three stages of the TPD and the acquisition of the freehold of about 900 acres and the leasehold of some 200 acres of Maori land for the construction of the Turangi township with a view to its continuing existence as a permanent town (A7:95).

18.6 24 SEPTEMBER 1964 MEETING

On 24 September 1964, another meeting was held at Tokaanu (A7:55–59). This meeting was notable in that it involved two Crown officials, Bennion and Lynch, and the Ngati Turangitukua liaison committee established at the 24 May 1964 meeting. It was the only meeting of the committee with Crown officials since the very brief meeting immediately following its appointment, although it had been expressly formed to hold discussions with Ministry of Works officials on township matters. Some other owners also attended the meeting. Jack Asher was not present owing to illness. His son John was appointed secretary for the meeting.

Considerable discussion centred around the amount of land to be sold from the marae area. A subcommittee was appointed to discuss further the possibility of some four or so acres being retained for an urupa at Hirangi out of the 31 acres previously agreed on for sale to the Crown. Then, in the latter stages of the meeting, Lynch said that it was possible the Crown would want to freehold a portion of the industrial site proposed to be leased (and so approved by Cabinet only three days earlier) for use by private industry. He said that the proposal must be given some thought by the committee, ‘however not at present but at a later date’ (A7:58) (see para 6.6).

There was no discussion on this topic and no further meeting took place with this committee.

18.7 CROWN COUNSEL ON CONSULTATION

In summary, Crown counsel submitted that the discussions which the Crown conducted with the landowners of the Turangi area constituted ‘consultation’, whether that procedure is understood in common law terms or in Treaty terms. As this Tribunal is concerned with claimed breaches of Treaty obligations by the Crown, we will confine our consideration to whether such ‘consultation’ met the Crown’s Treaty obligations to consult with the owners. As indicated earlier, the Crown’s obligation is to have full discussion with the owners of any Maori land it wishes to acquire (see para 15.2.3). This is accepted by the Crown.

As we have noted earlier (see para 18.2), Crown counsel went on to submit that the process of 'consultation' enabled the Crown to proceed with the acquisitions on the basis of agreement, informed consent, and consensus. The Crown further contended that this enabled the Maori owners to proceed on the basis of undertakings by the Crown that full compensation, as allowed for by the statutory regime of the Public Works Act 1928, would in fact be fair compensation. This last submission is considered in chapter 19.

18.8 TRIBUNAL'S CONSIDERATION OF CONSULTATION CONDUCTED BY THE CROWN

18.8.1 Salient points noted

We now consider whether, in the light of the evidence, Crown consultations up to and including the meeting of 20 September 1984, which preceded by one day Cabinet's approval of the Turangi township development, met the Crown's Treaty obligation of full consultation with the Ngati Turangitukua owners of the land proposed to be taken.

The lengthy discussion of this question has been occasioned in part by the strong and insistent submissions of Crown counsel that the necessary consultation did take place. We now note the salient matters previously referred to in this chapter:

- The preliminary meeting on 11 October 1955 sought Tuwharetoa support for the storage of water in Lake Rotoaira. Members of several hapu, including Ngati Turangitukua, were present. No commitment was made to support the proposal, although sympathy was expressed. The meeting was not concerned with the taking of land at Turangi (see para 18.2).
- The Crown invoked a letter of 24 March 1964 from Jack Asher, the secretary of the Tuwharetoa Maori Trust Board, to the Prime Minister expressing the support of Tuwharetoa for the proposed hydro project as the first step in consultation with the claimants, Ngati Turangitukua, a hapu of Ngati Tuwharetoa (see para 18.3.1).

Because of the dominant role that Jack Asher played in the discussions with the Crown, we note here the main aspects of his recorded involvement:

- **Asher was not an owner of township site land at Turangi and had no mandate to speak for the owners. Nevertheless, as Crown consultant David Alexander correctly observed, this was the start of a close working relationship between Ministry of Works officials and Asher (see para 18.3.1).**

- **On 24 April 1964, Asher wrote to the Ministry of Works on trust board letterhead suggesting that additional land might be made available by the owners. He had no authority to do this and the suggestion was later countermanded at the owners' meeting when it was brought to their notice (see para 18.3.3).**

- **On 12 May 1964, Asher wrote to Gibson to advise him that he had held an informal meeting with 'some' owners, which he considered 'most successful' because it showed 'a strong inclination to meet your needs regarding the Turangi town site'. By this time, it had become evident to the Crown that Asher, as a member of the Taupo County Council as well as the secretary of the trust board, was a strong supporter of its proposals (see para 18.3.6).**

- **At their meeting on 31 May 1964, the owners sought to discuss a number of important issues with the Crown officials and a meeting with them was proposed for 14 June 1964 (see para 18.3.10).**

- **In a letter of 2 June 1964 to Dick Lynch, Asher, after saying a valuation relating only to one proposed item for discussion was not available, gave confidential reasons why in his opinion the meeting should not take place. No meeting was held (see para 18.3.11).**

- **Asher had no authority from the owners or their liaison committee to write as he did on 2 June 1964, nor did he disclose to them that he had done so (see para 18.3.12).**

- **As a result, Arthur Grace Snr felt it necessary in August 1964 to write on behalf of the owners directly to the Minister of Works, complaining**

of the lack of consultation by the Crown and asking that it be remedied (see para 18.3.11).

- When Asher learned of Grace's letter to the Minister, he wrote to Lynch confirming a meeting between the owners and Crown on 20 September 1964 and referring to complaints to the Minister 'making some cheap suggestion at the prolonged delay of such a meeting' (see para 18.3.14).

- On 26 August 1964, Asher advised Gibson that he intended to advise the Minister personally that no urgency was required in finalising matters with the owners. There is nothing to suggest that he was acting either on behalf of or in the interests of the owners in so doing.

18.8.2 Tribunal's conclusion concerning Jack Asher's role

The conclusion is inescapable that in relying principally on Jack Asher, as the Crown officials chose to do, they were not effectively consulting with the Ngati Turangitukua owners. Asher appeared to have his own agenda and sought to do all he could to ensure the project for a new permanent township at Turangi went ahead. Only Arthur Grace Snr's direct intervention with the Minister ensured that a further meeting between the owners and the Crown took place.

18.8.3