

STATUTORY FRAMEWORK: THE POWERS OF THE CROWN

13.1 INTRODUCTION

In this chapter, we set out the statutory framework within which the Crown was required to operate in carrying out public works. In particular, we discuss the provisions relevant to the taking of land for the Turangi township. The principal legislation was the Public Works Act 1928 ('the 1928 Act'). After 4 December 1964, the Turangi Township Act, a special Act within the meaning of section 18 of the 1928 Act, came into effect and provided, in section 11, powers to take or otherwise acquire land 'for the purpose of a permanent town'. We note that the 1928 Act was repealed and replaced by the Public Works Act 1981.

The Ministry of Works entered the land which became the Turangi township long before any formal proclamations taking the land were issued. The earliest date of entry accepted for the purpose of assessing compensation was 1 October 1964. The first of a series of *New Zealand Gazette* notices proclaiming lands taken did not appear until 1 April 1965 and notices continued to appear periodically up to 1980. Most of these (at least 17) proclaimed land taken under either section 11 of the Turangi Township Act 1964 or the 1928 Act.

We now consider the relevant provisions of the 1928 Act and the Turangi Township Act, and the extent to which these statutes authorised the entry on, and the subsequent taking of, the claimants' land for public works by a series of proclamations.

13.2 CROWN POWERS OF LAND ACQUISITION

13.2.1 Possible options

There were a number of options available to the Minister of Works for the acquisition of land. The powers of the Crown to acquire land for any public work were set out in the 1928 Act. Section 11 empowered the Minister of Works to take land required 'for a Government work'. Section 32 authorised the Minister to enter into an agreement to take the land of any person required for a public work without complying with the notification provisions of section 22 or to purchase, take, or lease any such land upon such terms and conditions as he or she thought fit. The Minister then had several choices. He or she could:

- take the land by proclamation under section 11;

- take the land by proclamation pursuant to an agreement under section 32 without complying with the provisions of section 22; or
- purchase or lease the land on terms agreed with the owner pursuant to section 32.

Although, as we have seen, discussions were held with the owners, this did not result in individual agreements with the owners to sell the land. The Minister's representatives made it clear from the outset that the Crown wished to acquire some 800 acres freehold by taking it by proclamation and some 200 acres of industrial land by leasing it from the owners for 10 to 12 years and then returning it.

13.2.2 Public notification

The usual procedures for taking land by proclamation were set out in sections 22 and 23 of the 1928 Act. Section 22(1) provided for public notification of an intention to take land for a public work. The plans of the land affected, including a survey of the land to be acquired, 'together with the names of the owners and occupiers of such lands, so far as they can be ascertained', had to be made available for public inspection. A notice of intention to take had to be published in the *New Zealand Gazette*:

and to be twice publicly notified stating the place where such plan is open for inspection, with a general description of the works proposed to be executed and of the lands required to be taken.

The notice was also required to state that there was a period of 40 days from first publication within which any 'well-grounded objections' could be lodged in writing. A copy of the notice and description was to be served on 'the said owners and occupiers, and any other person having an interest in the land so far as they can be ascertained'. If any objections were received, the objector could be heard before 'the Minister [of

Works] or some person appointed by him', if it were a Government work, or before a local authority, if it were a local work.

In section 22(3), there was a discriminatory provision which excluded many Maori landowners from this process:

The provisions of this section requiring the names of the owners and occupiers of the land to be shown on the plan thereof, and requiring copies of the notice and description referred to in this section to be served upon the said owners and occupiers and upon all other persons having an interest in the land, shall have no application to any Native [Maori] who is an owner or occupier of the land or has an interest therein unless his title to the land is registered under the Land Transfer Act, 1915. Entry on the Provisional Register shall not be deemed to be registration within the meaning of this subsection.

Section 22(4) made provision for the publication of a notice of intention in the *Kahiti*, the Maori-language *Gazette*, 'but no proceedings for the taking of land shall be invalidated by any failure to conform to the requirements of this subsection'. Under section 47 of the Finance Act 1931, publication of such a notice in the *Gazette* was deemed to be equivalent to publication in the *Kahiti*.

If no objection to the taking of the land was lodged, or if objections had been heard and considered, and it was still thought 'expedient that the proposed works should be executed, and that no private injury will be done thereby for which due compensation is not provided in this Act' (s 23), a proclamation taking the land was prepared. The proclamation, accompanied by a survey plan certified on behalf of the Surveyor-General and approved by the Governor-General, was to be published in the *Gazette* and thereafter the land vested absolutely in the Crown.

The procedures set out in sections 22 and 23 providing for the public notification of intention and objections were, however, not applicable in situations excluded specifically by section 10(1) of the 1928 Act. Among those situations excluded were

takings of land for water power works or purposes, or takings of native land for any public work.

‘Native land’ in this context refers to what is now called Maori customary land, that is, Maori land which does not have a title by a process of investigation by the Maori Land Court. There was no Maori customary land in the proposed Turangi township in 1964.

The power to take land for ‘water-power . . . works or purposes’ was provided in section 276 of the 1928 Act, which also prescribed the same procedures for takings as section 254 provided for takings for defence purposes. As a result, land could be taken by proclamation for the construction of a hydroelectric power scheme without public notification or any provision for lodging objections. When the proclamation was gazetted, the land vested in the Crown.

13.2.3 Section 11 of the Turangi Township Act 1964

Section 11 of the Turangi Township Act 1964 made special provision enabling the Crown to take or acquire land as for a public work under the 1928 Act for the purposes of a township. Section 11 provided:

(1) The Governor-General is hereby empowered to take or otherwise acquire as for a public work under the Public Works Act 1928 such land within those areas of the Turangi Township described in the Second Schedule to this Act as may in the opinion of the Minister of Works be required for the establishment or development of the township.

(2) Any land that is taken or acquired pursuant to this section shall be taken or acquired in the manner prescribed by the Public Works Act 1928 for the taking or acquisition of land for water power purposes.

(3) This Act shall be deemed to be a special Act within the meaning of section 18 of the Public Works Act 1928.

(4) Any land taken or acquired pursuant to this section may be developed by the Minister of Works for the purpose of a permanent town to the extent considered desirable by him and any such land may be declared Crown land subject to the Land Act 1948 or may be dealt with in accordance with the provisions of the Public Works Act 1928.

It will be noted that subsection (4) was not specific about the conditions for taking land for the Turangi township. The terms were vague in that land taken would be ‘developed by the Minister of Works for the purpose of a permanent town to the extent considered desirable by him’. Any land acquired could be dealt with under the Public Works Act 1928 or declared Crown land under the Land Act 1948. The area affected by the First and Second Schedules to the Turangi Township Act is shown in figure 32.

Briefly summarised, the Crown's power to take the claimants' land for establishing and developing the Turangi township derived from section 11 of the Turangi Township Act 1964. The land so taken was to be taken in the way prescribed by the Public Works Act 1928 for taking land for hydro power purposes. As a consequence, the Crown was under no legal obligation to notify the owners of its intention to take the land, nor did the owners have the normal rights of objection conferred by section 22 of the 1928 Act.

Other Government departments could also acquire land, but only by negotiation. If land was required to be taken, this was arranged by the Ministry of Works on behalf of the department involved.

An alternative to the taking of land by proclamation was to negotiate its purchase. As already noted, there was provision in section 32 of the 1928 Act for the Crown to enter into an agreement or contract to take or to purchase or lease land for public works. However, the Ministry of Works, in practice, normally took Maori lands by proclamation, especially blocks in multiple ownership, when such lands were required for public works. It was usually considered that negotiations with Maori owners under the Maori Affairs Act 1953, and the subsequent confirmation of sale by the Maori Land Court, introduced unnecessary delays into the procedure, which justified the use of the 1928 Act for a faster solution. On the other hand, the Department of Lands and Survey, which also purchased Maori land, had to work within the Maori Affairs Act and Maori Land Court procedures.

13.3 CROWN ENTRY ON LAND

13.3.1 Section 311 of the Public Works Act 1928

Section 311 of the Public Works Act 1928 defines the powers of the Crown as to the utilisation of water power. Section 311(1) states:

(1) The Governor-General may by Order in Council from time to time authorize the Minister for the time being charged with the administration of the Electricity Act 1945 to—

- (a) Erect, construct, provide, and use such works, appliances and conveniences as may be necessary in connection with the utilization of water-power for the generation and storage of electrical energy, and with the transmission, use, supply, and sale of electrical energy when so generated;**
- (b) Use electrical energy when so generated in the construction, working, or maintenance of any public work, or for the smelting, reduction, manufacture, or development of ores, metals, or other substances;**
- (c) Raise or lower the level of any lake, river, or stream, and impound or divert the waters thereof;**
- (d) Construct tunnels under private land, or aqueducts and flumes over the same, erect poles thereon, and carry wires over or along any such land, without being bound to acquire the same, and with right of way to and along all such works and erections;**
- (e) Supply and sell electrical energy, and recover moneys due for the same.**

There is no provision in this or in any other section of the 1928 Act expressly authorising entry on private land for water power works or purposes, although, as indicated later, such power may reasonably be implied.

The day after Cabinet approved the construction of the TPD on 21 September 1964, the Ministry of Works advised the Department of Maori Affairs in Wanganui that a temporary camp was to be set up within two days on a site on Tokaanu development scheme lands to the south of the Public Works depot on SH1. For the purpose of assessing compensation under the 1928 Act, the first official date of entry for many blocks in the Turangi township was established as 1 October 1964. By November 1966, the Crown had acquired title to most of the land required for the township. The process of taking the land by proclamation has been outlined in the preceding section. As noted below, the land was entered in the Turangi township long before any proclamation under the 1928 Act was issued. The Ministry of Works' authority to enter was ostensibly based on the Order in Council quoted earlier, which was issued in 1958 under section 311 of the 1928 Act.¹

13.3.2 Ministry of Works instructions

The Ministry of Works had produced a set of instructions in 1954 covering entry on any land not owned by the Crown for any purpose related to a public work, whether or not that land would subsequently be acquired (B2(a):106–112). These instructions covered the Crown’s entry on the claimants’ land on 1 October 1964. They were reviewed in 1965 (B2(a):113–122) and 1969 (B2(a):123–132). Briefly, no Ministry of Works officer could enter any land without proper authority confirmed by the District Commissioner of Works, and appropriate notice was to be given to the landowner(s):

Whatever the Department’s legal rights may be, whether given by statute, order in council or otherwise, they must not be exercised negligently or officiously or in such a manner as to cause unnecessary annoyance or inconvenience to landowners and occupiers or unnecessary damage to property.

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It should always be borne in mind that the Department may be prejudiced in all its dealings with a landowner if he is treated discourteously or without proper consideration when entry is first made on his land for survey purposes. Claimants make the most of such points in compensation claims.

. . . the acquisition of the site before work commences is the general policy of the Public Works Act. Moreover, acquisition of land before construction is commenced affords the Crown’s assets greater protection and avoids possible causes of complaint by the landowners.

However, it is sometimes necessary or desirable to operate under provisions in the Public Works Act and other Acts that authorise entry on land for the construction of

certain public works before title is acquired or without title ever being taken. (B2(a):107–108)

The 1954 instructions covered provisions in the 1928 Act for various types of works. The relevant provision for the Turangi township and the TPD was:

(j) Water-power Development (Hydro-electric Works)

An order in council under section 311 of the Public Works Act is a prerequisite to the exercise by the Minister in charge of the State Hydro-electric Department of the powers conferred by that section, some of which may be exercised without ever acquiring the land.

There is implied authority to enter upon the land required for the exercise of those powers and there is no legal requirement of notice. Courtesy notice must, however, be given by officers of this Department when carrying out any work as agent for the State Hydro-electric Department. (B2(a):110)

A similarly worded section appeared in both the 1965 and the 1969 instructions, except that in 1969 the reference to section 311 of the Public Works Act 1928 was replaced by section 11 of the Electricity Act 1968 (B2(a):119, 129).

13.3.3 Tribunal's comment

It will be noted that the Ministry of Works assumed, in the absence of any express authority, that there was an implied authority for the Crown to enter land for the exercise of powers conferred under section 311 of the Public Works Act 1928. We agree that such power may reasonably be inferred but a critical question in this claim is whether a power of entry on the claimants' land can be inferred for the purpose of constructing a permanent town. Again, it may be the case that the 'works' which the Minister can construct pursuant to section 311 may extend to the construction of a temporary town to facilitate the work involved in the hydroelectric project. The Tribunal is not, however, convinced that the scope of section 311 is sufficiently wide as to encompass the construction of a permanent town and the sale of commercial, industrial, and residential sections as part of such a project. Accordingly, there must be very real doubt that the Ministry of Works had any power to enter the claimants' land for this purpose prior to the gazetting of the necessary proclamations in conformity with the provisions of section 11 of the Turangi Township Act 1964. However, claimant counsel accepted that the Order in Council made under section 311 provided the authority for the taking of, and entry on, Turangi land, as did Crown counsel. Accordingly, the extent of the implied authority to enter land under section 311 was not argued. For this reason, we reach no definite conclusion on the matter.

It is clear that the Crown had decided before its first entry on the claimants' land in October 1964 that Turangi would be built as a permanent town. The draft memorandum seeking Cabinet approval for the construction of the Turangi township was approved by the Minister of Works, P B Allen, on 26 August 1964 (B2(a):93–97). This approval included a recommendation that 'The town be constructed to permanent standards with a view to continuing existence as a permanent town' (B2(a):97). This recommendation was duly approved by Cabinet on 21 September 1964 (A7:95).

On 2 October 1964, the Minister of Works wrote to John Grace and advised that:

As regards the planning and layout of the township at Turangi, I can assure you that it is my intention to have a model town constructed on a permanent basis rather than the customary temporary village. This matter is at present in the hands of the Commissioner of Works, whose town planning officers are now working on a town plan which will provide all features usually associated with a normal town of that size, including full services and amenities, recreation areas, etc. The emphasis throughout will be placed upon aesthetic values and provision will be made for future development of the town to follow the initial pattern. (B2(a):313)

It was apparently only after Turangi lands had been entered and site development work had commenced in October 1964 that it was appreciated that it might be unlawful to use the provisions of sections 276 and 311 of the 1928 Act for entering and taking land for water power purposes when the real intention was to develop and sell land for a permanent town. On 27 October 1964, the Commissioner of Works wrote to the Minister of Works indicating that, since no notice of intention was required, proclamations taking Turangi lands could be prepared immediately for lands which did not require survey:

You will be aware that as part of the proposal to establish the new hydro town of Turangi on a permanent basis, it is proposed to take from the Maori owners under the powers conferred by sections 311 and 274 of the Public Works Act such land as is required for the town. These sections do not require the issue of a notice of intention calling for objections so that a Proclamation taking those areas which do not need a survey can issue almost immediately.

However, I have been concerned with the taking of all this land for the development of water power without any right of objection being given (even though the representatives of the Maoris generally have agreed with [the] taking proceeding) because the Department intends to sell land with the least possible delay to private individuals to be used for the construction of private homes, shops, offices etc.

These proposals could be attacked by any of the dissentient Maori owners (and there are sure to be some) on the grounds that it is an abuse of the provisions of the Public Works Act to take land for development of water power and then sell it privately.

There is power under section 30 of the Finance Act (No 2) 1945 to take land for development and after improving and developing it for industrial, commercial or residential purposes, to lease it for long term or to declare it Crown land so that it can be sold. This power could be operated in this case but it would be necessary to issue a Notice of Intention and to call for and formally hear objections. This would take at least three or four months and work must proceed immediately. Moreover it is almost

impossible to define the boundary between the land required for the workers on the hydro job and the sites to be sold for shops, offices, etc.

In the circumstances the best course seems to be to add a clause to the Turangi Township Bill empowering the taking of all the land required for the permanent township without the issuing of any Notice of Intention and the disposal of that part of such land required for commercial or residential purposes after it has been developed to a sufficient extent. (B2(a):197)

We observe that neither section 311 nor section 274 of the 1928 Act referred to in the first paragraph of this letter conferred authority on the Crown to take land by proclamation. Section 274 is apparently a misprint for section 276.

The Minister agreed with the commissioner's proposal, and section 11 was included in the Turangi Township Act 1964, which was originally intended only to provide for local government in the new town. As noted above (see para 13.1), the Crown's powers to take the claimants' land for the Turangi township derived from section 11 of the Turangi Township Act, not from the 1928 Act. But section 11 provided that the land was to be taken in the way prescribed by the 1928 Act for water power purposes. Neither section 311 nor section 276 of the 1928 Act authorised the taking or, indeed, the entry on the claimants' land for the construction of a permanent town. Moreover, while section 11 of the Turangi Township Act 1964 clearly authorised the taking of the claimants' land for this purpose, it did not authorise any entry on such land prior to the land being taken by proclamation, when of course, such land vested in the Crown. The first of a series of proclamations taking lands under section 11 of the Turangi Township Act 1964 was published on 1 April 1965² and notices continued to appear periodically up to 1980.

It appears, therefore, that the entry of the Ministry of Works on claimants' land from October 1964 and prior to the gazetting of the necessary proclamations between 1965 and 1971 was without statutory authority.

13.4 WAS NOTICE OF ENTRY BY THE CROWN REQUIRED?

13.4.1 Implications of section 10(3) of the Public Works Act 1928

As noted earlier, the Ministry of Works, in both its 1954 and its later instructions to staff concerning entry on any land not owned by the Crown for water power development, stated that there was no legal requirement of notice but that courtesy notice must be given. The Ministry no doubt had in mind that section 10(1) of the Public Works Act 1928 expressly stated that sections 22 and 23 (which provided for prior notice to landowners of, and objections by landowners to, a proposed taking of their land) did not apply to takings for water power works or purposes. In 1955 section 10 was amended by adding subsection (3), which provided that where authority is given (as is implied under section 311) to enter land and construct a public work before the land has been taken, and no other provision is made as to the giving of notice of entry, the Minister shall, where practicable, give to the owner or occupier reasonable notice of the intention to enter such land and, if so required by the owner or occupier, show her or his authority to do so. This provision was in force in 1964 and would appear to require the Minister 'where practicable' to give notice of intended entry to the owner or occupier. It may be that the Ministry considered that section 10(3) did not apply because of the exemption from the notice and objection provisions in section 22 conferred by section 10(1). The provision was not referred to by counsel and we have not reached a concluded opinion, but a 'fair, large and liberal'

construction in terms of section 5(j) of the Acts Interpretation Act 1924 would indicate that section 10(3) applied to entry on claimants' land, assuming that the Crown had a right of entry prior to taking the land under section 11 of the Turangi Township Act 1964, which is highly questionable.

13.4.2 Notification of claimants

During the first year or so of site development in Turangi, the Ministry of Works relied on verbal notification of entry. However, in several claimant submissions to the Tribunal, it was alleged that the first local people knew of the entry was when a bulldozer arrived. Such specific allegations are reviewed in chapter 12. John Asher, who was a member of the Tuwharetoa Maori Trust Board in 1964 and was later its secretary for many years, provided a retrospective view of the relations between the Ministry of Works and the local people. He described how Ministry officials, including the project engineer, Warren Gibson, held meetings at the trust board's offices in Tokaanu in early 1964:

The Ministry of Works explained the ramifications of the scheme, and asked if the Trust Board would help them 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.

The Ministry of Works then went to the Maori Trustee in Wanganui to serve their notices on the owners. (A12(1):2)

13.4.3 The Ministry of Works' notification procedure

In November 1965, Gibson issued his own circular to senior officers about entry on land for the Tongariro power development. By this stage, most of the Turangi

township lands had been entered and taken and these instructions applied more specifically to entry on land for power project construction. In the weeks following Cabinet's approval of the TPD on 21 September 1964, most of the notifications of entry were given verbally by the Wanganui district land purchase officer, Dick Lynch (B2:59). By the end of 1965, the notification procedures were set out more specifically in Gibson's circular, with model 'courtesy letters' included to advise when land was to be entered for survey and investigation purposes, for construction work, or to be taken by the Crown. It was not considered necessary to advise all Maori owners, because many lived away from the Turangi district and the Department of Maori Affairs was unable to supply complete lists of names and addresses. In April 1966, Lynch, after discussion with various parties concerned, set out the following notification procedures:

- (1) Courtesy notices to be sent to
 - (a) Secretary Tuwharetoa Trust Board (Mr Asher)
 - (b) Members of Tribal Liaison Committee (Mr L R Grace; Mr P Hura; Mr W Ngahana)
 - (c) Department of Maori Affairs Wanganui
 - (d) Occupier of the land (if any) with the request that the PE [Project Engineer] be advised of any principal owner to whom a copy of the notice should be sent.
- (2) Plans, illustrating the probable extent of the Department's operations relative to land title boundaries, to be posted up at the [Tuwharetoa] Trust Board Office Tokaanu and at Hirangi Pa. (B2(a):144)

While the notification procedures were an improvement on previous practices, the Crown was under no legal obligation to comply. Moreover, by the time they were eventually established, most of the claimants' land had already been entered and subsequently taken. In the rush of the first year or two of construction of the Turangi township, many local people did not have a clear picture of which lands were going to be affected until the bulldozers arrived on site. Figure 33 shows the sequence of entry

on Turangi township lands over the period from the last week of September 1964 to January 1966. In this short period of 16 months, the Turangi landscape was transformed by the bulldozers of the Ministry of Works and its contractors. The engineering work on the ground proceeded far ahead of the legal and clerical work required to complete the procedures for Crown proclamations taking the land or to begin negotiations on the assessment of compensation for Ngati Turangitukua owners.

13.5 THE TURANGI TOWNSHIP ACT 1964

13.5.1 Introduction to Parliament

The Turangi Township Bill was introduced to Parliament on 5 November 1964 by the Minister of Internal Affairs, D C Seath, who explained:

Sir, this Bill provides for special arrangements for the administration of the new township at Turangi during the construction period of the Tongariro power project. These special arrangements are necessary because of the speed of construction of the new town and because of the fact that all the work of subdivision and construction will be carried out by the Ministry of Works on behalf of the Crown. In normal circumstances the Ministry of Works remains responsible for the administration of local services within its construction towns. In most cases they are of a temporary nature and are removed after construction is completed. In this case two special circumstances apply. Firstly, the new town is being built in the midst of an existing community, and that is an important point. Secondly, although the town will serve as the construction town for the power project, it is being built to very high standards with the idea of its being retained as a permanent town on completion of the construction

work. In such circumstances special arrangements are necessary to enable the Crown and local authority – in this case the Taupo County Council – to work in very close liaison during the construction period so that there will be a smooth transition to full local control at the completion of construction work.³

The Bill was principally concerned with issues of local government, and provided for the establishment of a Turangi liaison committee to administer, in association with the Taupo County Council, an area described in the First Schedule. Clause 11 of the Bill empowered the Crown to take land within areas specified in the Second Schedule (fig 32). In his introduction, Seath stated: The Bill also confers power on the Crown to take under the Public Works Act 1938 [sic] any of the land required for the establishment of that part of the township which it will develop. The land may be taken in the same manner as for water power purposes – that is, without giving notice of intention to take the land. The need for the provision arises because the town is to be developed to permanent instead of the usual temporary standards.⁴

13.5.2 Debate on the Turangi Township Bill

The Bill went through the committee stage on 25 November 1964. Much of the debate focused on the form of the town administration, the representation of residents on the liaison committee, and the standards of housing and amenities. In his introduction, Seath noted that the Bill ‘has been discussed with the Taupo County Council [which] is generally acceptable to it’.⁵

Having summarised the first 10 clauses of the Bill, which were concerned with local government matters, Seath explained the Crown powers relating to the compulsory acquisition of land:

Clause 11 empowers the Governor-General to take or otherwise acquire land under the Public Works Act 1928 in that part of the township which is to be developed by the Ministry of Works. Land for water-power purposes may be taken without notice of intention under the Public Works Act, but it cannot be taken for that purpose and then disposed of almost immediately. Some of the land taken in this case will need to be sold for residential, commercial, and industrial purposes as soon as it can be developed for those purposes, and so, as the land is essentially being acquired for the purposes of the Tongariro power project, the clause authorises the taking of the land without notice of intention in the same way as land may be taken for water-power purposes. A substantial part of the area required is Maori land. I understand that the Ministry of Works has kept the representatives of the Tuwharetoa people fully informed and has had a number of discussions with them. The land is being taken with the general agreement of the Maori people.⁶

The debate ended with Seath responding to the various questions asked about the earlier clauses of the Bill:

Reference has been made to clause 11, which gives special power to take or acquire land under the Public Works Act 1928 for the purposes of the township. The town is to be established on a permanent basis and the build-up to the maximum population will be a gradual process. However, it is essential that the business and residential sites should be made available to private interests as soon as possible after the construction of the town commences. The Crown cannot, under the terms of the Public Works Act 1928, acquire land and then dispose of it immediately it has been developed, and that is why this special provision is being made in clause 11.⁷

On 26 November 1964, urgency was granted for the Turangi Township Bill. The following day, the Bill was given a third reading with no amendment or opposition.⁸ On 4 December 1964, the Turangi Township Act passed into law.

13.5.3 Turangi liaison committee

The Turangi Township Act 1964 gave the proposed new town a special status which was outside existing local government for the time being. Local administration was to be carried out by a ‘Turangi Liaison Committee’ of 12 members, as described in section 5(2) of the Act:

- (a) The Chairman of the [Taupo County] Council;**
- (b) Two members of the Council to be appointed by the Council, being members representing the riding of the county in which the township is included . . .**
- (c) Three persons, being electors of the county having a residential qualification in respect of an address in the township, to be appointed by the Council;**
- (d) Two persons to be appointed by the Minister of Works on the nomination of a welfare association recognised by him as being representative of the persons engaged on the [Tongariro Power] Development;**
- (e) Two persons being officers of the Ministry of Works residing in the township to be appointed by the Minister of Works;**
- (f) The engineer in charge of the Development;**
- (g) The officer of the Public Service holding the office of District Electrical Engineer at Hamilton of the New Zealand Electricity Department.**

Committee members were appointed for a term of three years, could be re-appointed, and could elect their own chairman.

During the debate in the House, the question of Maori representation on the liaison committee was raised. The Minister of Works, P B Allen, commented:

I hope there will be one Maori, or even two or three Maoris, appointed from those people who are nominated according to the provisions in the clause, because Maoris have had a long and happy association with the area.⁹

In spite of these comments from the Minister, and comments from several other members, no amendment was proposed to make specific provision for Maori representation or otherwise ensure participation by local Maori in the work of the Turangi liaison committee. However, as noted in chapter 12 (see para 12.5), some Ngati Turangitukua served on the committee by virtue of their membership of the Taupo County Council.

The functions of the liaison committee were set out in section 8 of the Act. Some of those functions were:

- to combine the interests of various sections of the township community so as to facilitate the eventual administration of the town by the Taupo County Council;**
- to advise and make recommendations to the council and the Minister of Works on the administration of the town; and**
- to advise and make recommendations to the council on the planning of the countryside in the vicinity of the town.**

By section 12, the Turangi Township Act 1964 had an expiry date of 31 March 1975.

13.5.4 Consultation with Maori over the Turangi Township Act 1964

There does not appear to have been any consultation with Maori owners of Turangi lands about the contents of the Turangi Township Act 1964. An early version of the Bill had been sent to Jack Asher but this did not include section 11. Asher wrote to the Minister of Internal Affairs on 12 October 1964 expressing a desire to have capable Maori representatives appointed to the proposed Turangi liaison committee and suggesting possible candidates (B2(a):195). Although this letter included some references to the discussion of land requirements with Gibson, it predates the Commissioner of Works' memorandum to his Minister on 27 October 1964 suggesting that a separate clause be added to the Turangi Township Bill empowering the Crown to take land without notice of intention and dispose of it for commercial or residential purposes. The Minister of Internal Affairs regarded Asher's letter to him as 'confirmation that you have no serious objection to the provisions of the Bill' (B2(a):196). Asher had also indicated in his letter that he had just been discharged from an Auckland hospital and he gave an Auckland address, so it is likely that he was not in a position to consult widely.

In short, the Turangi Township Act 1964 provided for a form of local government for a township on Maori land, without any specific representation of Maori owners, and, in section 11, empowered the Crown to take by proclamation, without notice or any right of objection, an area of 1540 acres described in the Second Schedule (considerably greater than any figures mentioned in meetings with Ngati Tuwharetoa) and then dispose of it for the purpose of a permanent town – which the Ministry of Works had already begun to build anyway.

In Turangi, land was entered by the Ministry of Works long before it was proclaimed as taken. This was presumably done under the dubious provisions of the 1958 Order in Council under section 311 of the Public Works Act 1928 in order to construct a permanent town. The land in Turangi contained within the area described in the Second Schedule to the Turangi Township Act was taken over the period 1965 to 1971 under section 11 of the Act. Other Maori lands were taken within the area described in the First Schedule to the Act. Some, in the area of the Tokaanu Power Station and the tailrace down to Maunganamu, were 'taken for the generation of electricity'.¹⁰ The water supply reserve was taken 'for a water work'.¹¹ Between 1964 and 1974, a substantial area of Ngati Turangitukua lands had been acquired by the Crown (fig 34). Within this area, only in the Tokaanu swamp lands exchange was land exchanged for land.

13.6 AREAS TAKEN BY PROCLAMATION

We set out here the areas of the claimants' land taken by proclamation for the purpose of construction of the Turangi township.

No	Acres	Locality	Year
1	803	Township	1965–71¹²
2	79	Oxidation ponds	1968¹³
3	27	Private industrial area	1969¹⁴
4	101	MOW industrial area	1971¹⁵
5	539	Water supply reserve	1974¹⁶
6	93	Tailrace	1974¹⁷
7	23	State Highway 41 between township and tailrace	1980¹⁸
TOTAL:	1665 acres		

We note that, of the 539 acres taken for the water supply reserve, 480 acres were outside the boundaries given in the First Schedule to the Turangi Township Act 1964. They are included here because the water supply reserve was needed to service the township. The 93 acres for the tailrace were inside the First Schedule boundaries. The remainder has not been included because the tailrace was part of the Tongariro power project rather than the township.

The total industrial area was larger than the figures for numbers 3 and 4 above indicate, because part of this area was taken in 1965 for the township (see fig 18). The total area occupied for the industrial area has been calculated by the Tribunal as being approximately 189 acres.

13.7 SUMMARY

We now summarise the statutory powers of the Crown under the Public Works Act 1928 and the Turangi Township Act 1964 which related to the compulsory acquisition of the claimants' land at Turangi.

(1) Powers of land acquisition

The claimants' land could be taken for the establishment or development of the Turangi township:

- without any notice to the owners;**
- without any right of objection by the owners;**
- without any consultation with the owners; and**
- without the consent of the owners.**

(2) Crown entry on land

We summarise here the main points relating to the Crown's entry on land:

- Under section 311 of the Public Works Act 1928, an Order in Council may authorise the Minister of Electricity to erect, construct, and provide works in connection with the utilisation of water power for the generation of electricity.**
- There is no statutory provision expressly authorising entry on private land for these and related purposes.**
- An implied power of entry for such purposes may be inferred for such purposes, which may well extend to the construction of a temporary town to facilitate such work, but it is very questionable whether such implied power extends to the construction of a permanent town.**
- To the extent that such entry on private land is authorised by section 311 of the Public Works Act 1928, it may be effected before any proclamation taking the land is promulgated by the Crown.**

- Because of doubts held by the Crown as to its legal rights to enter the claimants' land for the purposes of constructing a permanent town before it was compulsorily acquired by proclamation, section 11 of the Turangi Township Act 1964 was enacted.

- Section 11 of the Turangi Township Act 1964 authorised the compulsory acquisition of the claimants' land for the construction of a permanent town but did not authorise entry on such land prior to such acquisition by proclamation, at which time the land vested in the Crown.

- The first of a series of proclamations taking lands under section 11 of the Turangi Township Act 1964 was published on 1 April 1965 and notices appeared periodically thereafter up to 1980.

- It appears likely that the entry of the Ministry of Works on claimants' land from October 1964 and prior to the gazetting of the necessary proclamations taking the land between 1965 and 1971 was without statutory authority.

References

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1. *New Zealand Gazette*, 1958, p 1436
 2. *Ibid*, 1965, p 436
 3. NZPD, 1964, vol 341, pp 3207–3208
 4. *Ibid*, p 3208
 5. *Ibid*, p 3804
 6. *Ibid*, p 3806
 7. *Ibid*, pp 3819–3820
 8. *Ibid*, pp 3836, 3858
 9. *Ibid*, p 3817

10. *New Zealand Gazette*, 1974, p 414
11. *Ibid*, pp 2132–2133
12. *Ibid*, 1965, pp 436, 1125; 1966, pp 1333, 1487, 1779; 1967, pp 1417, 2114; 1968, p 1744; 1969, pp 1198, 1605; 1971, pp 286, 391
13. *Ibid*, 1968, p 605
14. *Ibid*, 1969, p 1465
15. *Ibid*, 1971, p 1959
16. *Ibid*, 1974, pp 2132–2133
17. *Ibid*, p 414
18. *Ibid*, 1980, p 3751