

CHAPTER 3

THE CROWN'S TREATY BREACHES

3.1 INTRODUCTION

Counsel for the claimants made lengthy submissions incorporating a recital of the various Treaty breaches found by the Tribunal, together with extracts from the *Turangi Township Report 1995* supporting the findings. In addition, she included relevant extracts from the claimants' remedies evidence in respect of the various breaches. In this chapter we follow this pattern except for the inclusion of the claimants' remedies evidence. This is referred to in the next chapter along with the Crown evidence as to remedies.

3.2 BREACHES RELATED TO THE STATUTORY PUBLIC WORKS REGIME

3.2.1 Public Works Act 1928 and Turangi Township Act 1964

The Tribunal found that:

- (a) The claimants have been prejudicially affected by the provisions of the Public Works Act 1928 and the Turangi Township Act 1964, in that both Acts were and are fundamentally inconsistent with the basic guarantee given in article 2 of the Treaty of Waitangi that Maori could keep their land until such time as they wished to sell it at a price agreed with the Crown;
- (b) the Turangi Township Act 1964 permitted the Crown to acquire land compulsorily without direct consultation with the Maori landowners, thus contravening the Crown's duty to act in good faith and consult with its Treaty partner in respect of matters affecting Maori; and
- (c) the Turangi Township Act 1964 further breached the principles of the Treaty by excusing the Crown from the notice requirements of sections 22 and 23 of the Public Works Act 1928.¹

The Tribunal considered that the provisions were not merely inconsistent with the terms of the Treaty and relevant Treaty principles but they were tantamount to a unilateral abrogation of article 2. This was because they deprived the Maori owners of any protection of their Treaty rights under article 2.²

1. Waitangi Tribunal, *Turangi Township Report 1995*, Wellington, Brooker's Ltd, 1995, sec 16.7

2. *Ibid*

In commenting on the Turangi Township Act 1964, in particular we said that 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.³

3.2.2 Legislative provisions for return of surplus land

The Tribunal also found that the claimants were prejudicially affected by the omission of the Crown to make provision, when exercising its powers of compulsory acquisition under the Public Works Act 1928 and the Turangi Township Act 1964 over the claimants' land, for any such land no longer required for the public work for which it was taken to be returned to Maori ownership at the earliest possible opportunity, and with the least cost and inconvenience to those Maori owners and that such omission was inconsistent with the Crown's Treaty obligation under article 2 actively to protect Maori rangatiratanga over their ancestral land.⁴

3.2.3 Offer-back provisions of the Public Works Act 1981

It is convenient to consider at the same time the Tribunal's findings on the offer-back provisions of the Public Works Act 1981.

The Tribunal found that the claimants had been prejudicially affected by the offer-back provisions of sections 40, 41, and 42 of the Public Works Act 1981, which:

- (a) permitted the Crown, in certain circumstances, without consultation with former Maori landowners or their successors, not to offer surplus land back to such former owners;
- (b) permitted the Crown to retain the whole of the profit from the sale of such surplus land at current market value, whether sold back to the former Maori owners from whom the land was compulsorily taken or on-sold to a third party;
- (c) failed to require the Crown to make allowances for the circumstances surrounding the compulsory acquisition of the land from former Maori owners, including the need for the compulsory acquisition of the land or, if the use of the land was essential, whether it was necessary to acquire the freehold of the land;
- (d) permitted the Crown to offer to sell such surplus land at a price or on conditions which are manifestly in excess of the ability of the former Maori owners or their successors to meet;

3. *Turangi Township Report 1995*, sec 13.5.4

4. *Ibid*, sec 17.6

- (e) failed to require the Crown to have regard to the special circumstances of multiple Maori owners of such land and to seek to accommodate such circumstances; and
- (f) failed to permit the Crown to offer to sell the land to the wider hapu or tribal group to which the former Maori owners belong, if such owners are unable or unwilling to purchase surplus land offered to them by the Crown.

The Tribunal further found that the offer-back provisions of the Public Works Act 1981 are inconsistent with the Treaty obligation of the Crown to act reasonably and in good faith towards its Treaty partner and actively to protect the rangatiratanga of Ngati Turangitukua over their ancestral land.⁵

In the late 1970s the local people were faced with the wind-down phase of the Tongariro power development project. We noted in our report that lands no longer needed were transferred to the Department of Lands and Survey, and many sections in the town were disposed of. Once again, there was no participation by Ngati Turangitukua in this process. Some expected that these lands, which had not been used or were no longer required by the Ministry of Works, would be returned to them. When some offers to sell land back were made under the provisions of the Public Works Act 1981, local people were dismayed that the current market values of land taken from them in the late 1960s were beyond what they could afford. The issue of disposal of lands has compounded the sense of grievance.⁶

We next note two specific examples of the Crown's unjustified retention of land and the subsequent use of the offer-back procedures which prevented former Ngati Turangitukua owners regaining ownership of their land. The evidence as to the pony club and Turangitukua House graphically illustrated the problems facing former Maori owners when land was offered back at current market prices.

3.2.4 Pony club land

In the case of the pony club land, the Maori owners were paid \$21,965 for 120 acres (48.5ha), or \$183 per acre. In August 1973, 82 acres were declared surplus to the Tongariro power development's requirements. The Tribunal considered that the 82 acres (33.2ha) should then have been offered back. It was, however, proposed to transfer the 82 acres to the Department of Lands and Survey for \$39,000, or \$457.30 per acre, for the unimproved value. Instead of offering the land back, it was retained and transferred by the Crown to Landcorp in 1987. In 1994, Landcorp offered to sell to the former owners some 62 acres (25ha) for \$290,250, or \$4681.40 per acre. This compares with the \$183 per acre paid by the Crown to the Ngati Turangitukua owners in 1968.⁷

5. Ibid, sec 17.8

6. Ibid, sec 12.5

7. Ibid, secs 17.4.10, 17.7

3.2.5 Turangitukua House

The Turangitukua House property is three hectares (approximately 7.5 acres) in area. The Ministry of Works' project office was erected on this site, which was part of the Ohuanga North block of some 67 acres taken by the Crown in 1965. In November 1991, the Crown proposed to sell the three-hectare property to those thought by the Crown to be the previous owners or their representatives at the October 1990 Government valuation of \$450,000, of which \$275,000 was the land value. This amounted to \$36,666 per acre, which contrasts with the \$150 per acre paid to the owners by the Crown on the 1965 value. This was part of the industrial land which the Crown had undertaken to lease for 10 to 12 years and then return to the owners. The Crown failed to return the land.

In May 1993, the Crown made a formal offer to the trustees of Ohuanga 5B2C2 to sell the site for \$337,500, including goods and services tax. It is not known what proportion of this sum was for the land only. While it represented a considerable reduction on the earlier proposal to sell at \$450,000, it was clearly a price beyond the capacity of Maori owners of modest means to pay. In effect, it was an offer incapable of acceptance, as was the offer in respect of the pony club land.⁸

It also appeared from the evidence that, in a significant number of instances, surplus Crown properties were on-sold to third parties without first being offered back to the former owners or their successors. No evidence was called by the Crown as to the reasons for the former owners being bypassed.⁹

3.2.6 Compensation provisions in the Public Works Act 1928

The Tribunal also found that the Public Works Act 1928 failed adequately to recognise the relationship of Ngati Turangitukua to their ancestral land and to provide for adequate compensation for their loss of land, and that such failure was in breach of the Treaty obligation of the Crown adequately to recognise and protect the rangatiratanga of the claimants, who have thereby been prejudicially affected.¹⁰

The Tribunal was satisfied that the claimants received the compensation to which they were legally entitled under the Public Works Act then in force.¹¹ But as the finding indicates, the Tribunal concluded that the public works legislation was defective. The Tribunal considered that the relevant provisions afforded no appropriate recognition of the nature of Maori association with, and veneration for, their ancestral land. Nor did they recognise the Maori rights under article 2 of the Treaty which the Crown was under a duty to protect. The legislation did not allow for the fact that ancestral land was being taken compulsorily.

The Tribunal took into account the fact that the Crown was not obliged to build a construction town on the claimants' land. If it insisted on doing so, it need not have built a permanent town. If, for its own purposes, the Crown chose to dispossess the

8. *Turangi Township Report 1995*, secs 17.4.11, 17.7

9. *Ibid*, sec 17.7

10. *Ibid*, sec 19.7

11. *Ibid*, sec 19.5.5

claimants from their land, it was under a heavy obligation to compensate the Ngati Turangitukua people generously, and every effort should have been made to provide land in exchange. Suggestions from some owners that this might be done were rejected by the Crown. The Tribunal considered that the legislation was also defective in that it failed to take into account the fact that, by taking the land, it was effectively foreclosing on major farming operations which were steadily becoming more viable. In so doing, it seriously eroded the economic base of the community.¹²

The evidence also established that various whanau suffered losses which were not compensated for, in that no compensation was payable for the loss of a way of life that incorporated traditional aspects, and was particularly suited to large families with low incomes. We noted the experience of several families but considered they were not the only examples of owners not being left as well off as previously.¹³

3.3 BREACHES RELATED TO THE CROWN'S FAILURE TO PROTECT MAORI ARTICLE 2 RIGHTS

3.3.1 Crown's choice of township site

The Tribunal found that the Crown's policy decision to take the Maori-owned land at Turangi West for public works without first ensuring that no other land, in particular the Crown-owned Turangi East site, was available as an alternative was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga and that the claimants were thereby prejudicially affected.¹⁴

This Treaty breach by the Crown and the evidence supporting it has been considered in another context in chapter 2. We there indicate that the Crown elected to take the Ngati Turangitukua land compulsorily when a suitable site existed nearby which was already owned by the Crown and was available, had the Crown so chosen, as the site for the new township. In short, the Crown need not have taken the claimants' land.

3.3.2 Crown's failure to consider acquiring a leasehold interest in the township site

The Tribunal found that the Crown failed to give adequate consideration to the desirability, in the interest of protecting the rangatiratanga of Ngati Turangitukua owners over their land, of acquiring the leasehold instead of the freehold of the land taken for the township and the water supply reserve, that such failure was inconsistent with its Treaty obligation under article 2 actively to protect Maori rangatiratanga, and that the claimants were thereby prejudicially affected.¹⁵

12. Ibid, secs 19.6.8, 19.8.2

13. Ibid, sec 4.6

14. Ibid, sec 17.2.4

15. Ibid, sec 17.3.5

The day before Cabinet approved the proposals for the Turangi township, assembled owners were assured that the area of 200 acres required for the Industrial Area would be taken on temporary lease for 10 years. Apart from that land (which was eventually taken outright) it was made clear that the Crown intended to acquire the freehold. The available evidence indicated that Maori owners were given no choice in the matter. An important consideration appears to have been that the acquisition of the freehold was seen as necessary to ensure a permanent return for the Crown's expenditure. There was no evidence that the Crown considered what form of tenure would be in the best interests of the Maori owners and would best protect their rangatiratanga over their ancestral lands.¹⁶

3.3.3 Crown failure to honour undertaking to protect wahi tapu

The Tribunal found that the Crown failed in numerous instances to honour its undertakings to protect the wahi tapu of the Ngati Turangitukua people and, as a result, the Crown failed to act reasonably and in good faith towards its Treaty partners. Further, it failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty, and the claimants have been prejudicially affected thereby.¹⁷

Among the undertakings which Crown officials gave the Ngati Turangitukua people was an assurance that 'any sacred land would not be interfered with'. At a second meeting repeated assurances were given by a senior Ministry of Works official that wahi tapu would be respected and protected.¹⁸

In chapter 8 of our report, the Tribunal discussed a number of instances where wahi tapu were desecrated or destroyed. We confine our discussion here to two examples of the destruction of wahi tapu by the Crown. These are Te Puke a Ria and Nga Tuahu.

(1) *Te Puke a Ria*

The first concerns an old urupa called Te Puke a Ria, situated in what became part of the Industrial Area. It was a distinctive small hill rising some 17 metres above the surrounding land. The body of Ria lay buried on the summit. For years following the untimely death of her husband, Ria would climb to the top of the puke and call out and sing to her husband lying at Motiti, where he died. The hill was named for Ria. Arthur Grace told the Tribunal that Te Puke a Ria was a sacred place, cared for and respected by Ngati Turangitukua.

We were told by Ranginui Biddle of Ngati Hine, a hapu of Ngati Tuwharetoa, what happened. He was employed by a contractor who specialised in moving land with heavy machinery. He was working in the area close to the hill known as Te Puke a Ria. He approached the hill in his big D8 bulldozer. He then realised this was the place where our 'old kuia was buried'. Ranginui knew this place was 'very special'. He stopped his bulldozer and told his boss they should not be digging there because the

16. *Turangi Township Report 1995*, sec 17.3.2

17. *Ibid*, sec 4.11

18. *Ibid*, secs 4.7.3, 8.9.3

hill was an urupa. His boss told him the work had to go on. Everything had to be done quickly and on time. Ranginui refused to carry on with the destruction of the hill. He was instantly dismissed. Te Puke a Ria was flattened and the bones left somewhere on the industrial block. They have never been recovered. It appeared the Ministry had not imposed any obligation on the contractor to respect wahi tapu.¹⁹

(2) *Nga Tuahu*

In the early 1970s, some Ngati Turangitukua people discovered that tip operations had damaged several wahi tapu known as tuahu. Arthur Grace told the Tribunal that:

‘Tuahu’ is the name given to distinctive landmarks of our people. They are evenly-shaped conical hills built by the old people [ancestors]. Sometimes they are burial places, and at other times they are like altars. They were also used as places where the old people would bury something very special to them . . . They are very ancient, and very easy to recognise because of their shape. . . .

That place was very tapu. It had never been farmed for that reason. We all knew that the area was very special . . . Originally there were five tuahu . . .²⁰

We also learned from Mr Grace that the original site of the tip was a long way from the tuahu. There was an agreement with the Ministry that they would not do any digging in the area where the tuahu were located. When it was discovered that the diggers were working right where the tuahu were, one of the engineers, on request of Mrs Te Reiti Grace, intervened. By that time, there were three and a half tuahu left. But subsequently work must have been resumed as only three now remain. Mr Fearon Grace told the Maori Land Court in 1977 that the conical tuahu were used by tohunga for incantation to the gods. This indicated that only upoko ariki were buried there. The last burial, he said, could have been as many as 300 years ago.²¹

Arthur Grace told us that the desecration of their precious wahi tapu caused the people, particularly the old people, great distress. He added:

Those places are like important signposts to our history and mana. Many of the signposts have disappeared without trace. Other signposts are so changed as to be unreadable. We will never have the same access to our past as a result. . . .

When the Ministry of Works came to our area, we had kaumatua here who had great authority and many responsibilities. After the Ministry of Works took over, these people were reduced in status almost overnight because they no longer had any authority over what happened in our rohe. . . . This was very hard for those old people to accept and it affected them very badly.²²

In our chapter on wahi tapu we concluded as follows:

The desecration and destruction of wahi tapu was, in Maori terms, a significant part of the human cost of the construction of the Turangi township and the TPD [Tongariro

19. Ibid, secs 4.7.3, 8.1

20. Ibid, sec 4.7.3

21. Ibid; sec 8.3

22. Ibid, sec 8.9.4

power development]. When the Ministry of Works did respond, as in the case of the removal of bones from the urupa at Waiariki, it was only because there was no alternative. The Ministry was not proactive in efforts to protect wahi tapu. Local people had to make the effort to persuade the Ministry people to protect such sites. Their desecration and, in some cases, wholesale destruction symbolised the loss of rangatiratanga over their own lands experienced by Ngati Turangitukua.²³

3.3.4 Crown's failure to preserve an economic base for Ngati Turangitukua

The Tribunal found that the Crown, when deciding where the Tongariro power development's construction town should be sited, failed to give adequate consideration to the need to ensure that the Ngati Turangitukua hapu as a whole, and each whanau individually, was left in possession of as much of its land as possible. The Tribunal further found that, in deciding to construct a permanent township at Turangi, the Crown failed to ensure that it did so in such a way as would best preserve an economic base for Ngati Turangitukua and maintain their lifestyle and community. As a consequence, the Crown failed in its obligation actively to protect the rangatiratanga rights of Ngati Turangitukua under article 2 of the Treaty, and the owners were prejudicially affected thereby.²⁴

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

The situation was aggravated by the Crown failing to honour its undertaking that the maximum area it would need for the township was 1200 acres of which approximately 200 acres would be leased by the Crown and later returned to the Ngati Turangitukua owners. Thus, the maximum area of land to be permanently acquired was approximately 1000 acres, whereas the Crown, in fact, compulsorily acquired some 1665 acres.

But compounding all this was the fact that there was no compelling need for the Crown to have acquired any of the claimants' land. Either a permanent or a temporary township could have been conveniently constructed on nearby Crown-owned land.²⁵

Moreover, no consideration at all appeared to have been given by the Crown's town planners to the location of existing houses, to family relationships, or to the viability of the existing Ngati Turangitukua community related to Hirangi Marae.²⁶

23. *Turangi Township Report 1995*, sec 8.9.4

24. *Ibid*, sec 19.9

25. *Ibid*, sec 19.8.2

26. *Ibid*, sec 12.5

3.3.5 Crown's failure to mitigate the trauma and adverse social repercussions experienced by Ngati Turangitukua

The Tribunal found that the claimants were prejudicially affected by the failure of the Crown, as a result of inadequate consultation with Ngati Turangitukua people, to mitigate the trauma and adverse social repercussions which resulted from their activities in Turangi, and, as a consequence, the Crown failed actively to protect the rangatiratanga of its Treaty partner under article 2 of the Treaty.²⁷

In chapter 12 of our report, we considered at some length the evidence as to the impact on the Ngati Turangitukua people of the taking of their land and the construction of the new township upon it. After a lengthy discussion of the effect upon those who experienced the loss of, or removal from, their housing, we said:

Although we have focused on housing in this section, it is difficult to separate out this one issue from the many that impacted on Ngati Turangitukua families. This example illustrates the powerlessness that many felt then and still do. It also illustrates the failure of communication between local people and the Ministry of Works, and the general feeling of loss of control and disorientation. The immediate and often most painful impact on Ngati Turangitukua was the dislocation of households, the loss of lifestyle and livelihood, and the loss of the guarantee of a place on ancestral lands for their children. The pain of this loss is long term, and is being passed on to the next generation.²⁸

3.3.6 Failure of Crown to respect conservation values

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

The desecration and destruction of wahi tapu was cited in support of the Crown's failure to observe conservation values. In addition, evidence was given of pollution of streams and rivers in the area. As a result of the township development the Tokaanu River had changed its course, to its detriment. Various species of native fish have disappeared as a result of the diversion of the river.²⁹

3.4 CROWN TREATY BREACHES AS TO CONSULTATION

The Tribunal concluded that at no stage, whether during the discussions which preceded the Crown's decision to take the claimants' land, or during the

27. Ibid, sec 19.3.6

28. Ibid, sec 12.4.4

29. Ibid, sec 4.8.3

construction of the township, did the Crown fulfil its Treaty obligations to consult fully with Ngati Turangitukua. The Tribunal made two formal findings as follows:

3.4.1 Crown's failure to consult fully with owners before deciding to take their land

The Tribunal found that between March 1964, when the proposal to develop a township at Turangi was first mooted, and 21 September 1964, when the final plan was approved by Cabinet, the Crown failed in its obligation actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty. In particular, it found that the Crown failed to consult fully with the Maori owners of the land proposed to be taken before deciding to take the land for a township and, as a consequence, the owners were thereby prejudicially affected.³⁰

3.4.2 Crown's failure to consult fully with owners during township construction

The Tribunal found that the claimants were prejudicially affected by the failure of the Crown to keep Ngati Turangitukua people properly informed of its actions and intentions and by its failure to consult fully and effectively with those having mana whenua in the Turangi lands during the construction and development of the Turangi township. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.³¹

The claimants' allegations that the Crown failed adequately to consult with them prior to the final decision, to take their land for the proposed township was considered at length in chapter 18 of our 1995 report. In brief, the Crown held only two meetings with Ngati Turangitukua owners. The first, on 24 May 1964, while generally informative, was based on an out-of-date plan and left a number of unanswered questions. Maori owners present:

were expected to comprehend a large and complex hydroelectric power scheme as well as the prospect of a new and permanent town on their lands, and to reach agreement on this proposed development at one meeting in one day. . . . No opportunity was given to consider the possible costs to the local community.³²

The claimants appointed a liaison committee of 12 owners and the trust board secretary to consult further with the Crown. Apart from a very brief meeting with the liaison committee immediately after the 24 May meeting, the Crown did not meet again with the committee until after Cabinet had authorised the building of the new township. At no time during the almost four-month interval between the 24 May meeting and the second meeting on 20 September did Crown officials meet or consult with the owners.

30. *Turangi Township Report 1995*, sec 18.10

31. *Ibid*, sec 19.3.2

32. *Ibid*, sec 12.5

The second meeting on 20 September 1964 occurred only because Arthur Grace senior made representations to the Minister of Public Works. At the Sunday meeting, various matters of concern were raised. By then it was too late for any adjustments, other than relatively marginal ones, to be made to what had become, without the prior knowledge of the owners, the formal plan. The next day, Cabinet approved the acquisition of the freehold of about 900 acres and the leasehold of some 200 acres of Ngati Turangitukua land for the new Turangi township.³³

The evidence in support of our second finding concerning the Crown's failure to consult fully with owners during township construction, fell into several categories. Thus, the evidence of many witnesses testified to the failure of the Ministry of Works officials to treat the kaumatua and kuia with the consideration and respect due to them. The Ministry and its agents insisted on pursuing their large-scale operations without adequate consultation with, or notice to, the people whose property they sought to demolish and officials were often reluctant to agree to proposals put to them by the people.³⁴

In chapter 12 of our 1995 report, we recorded the impact of the Ministry of Works and its bulldozers on the tangata whenua. The evidence revealed, in many instances, an apparent absence of sympathy and respect for people who were attached to their ancestral land. There was little evidence of adequate consultation or, all too often, any effective consultation, especially with those obliged to vacate their homes. This resulted in claimants being uprooted from their homes, sometimes with no, or insufficient, prior notice.³⁵ While sole owners were listened to on occasions, there was a marked lack of consultation with those who held land in multiple ownership and a virtual absence of negotiation.³⁶

3.5 CROWN FAILURE TO HONOUR ASSURANCES AND UNDERTAKINGS

3.5.1 Introduction

The Tribunal made a composite finding covering six discrete categories of failure on the part of the Crown to honour assurances and undertakings given to Ngati Turangitukua on which they relied in giving their approval in principle to the Turangi township being developed on their ancestral lands. Some of the undertakings which the Crown failed to honour affected the people generally, while others appear to have affected relatively few owners.

3.5.2 Undertakings of the Crown

The Tribunal found that:

33. Ibid, sec 18.9

34. Ibid, sec 19.2.2

35. Ibid, sec 12.3.7

36. Ibid, sec 4.8.2

(1) Finding (a)

*(a) The Crown failed by a wide margin to honour its undertaking as to the amount of land to be taken for the township and it resiled from its undertaking that the industrial area would be leased and returned to its owners after 10 years.*³⁷

The amount of land: At no time in meetings with the Maori owners did the Crown indicate that the area to be taken for the town would exceed 1200 acres. The assurance given on 24 May 1964 was that the town area would be some 1050 to 1150 acres. At the meeting on 20 September 1964, the range of area stated was 1000 to 1200 acres. Because this was close to the previous assurance given, it 'would have reassured the Ngati Turangitukua owners that, in the nearly four months since they had previously consulted with the Crown, the area required for the town remained virtually the same'.³⁸

The area of land taken for the Turangi township and associated works was 1665 acres of freehold land. 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.³⁹

The Industrial Area would be leased and returned to its owners after 10 years: The notice of 8 May 1964 from the Ministry's project engineer and the secretary of the Tuwharetoa trust board calling the meeting of 24 May advised that this would be a leasehold area 'of some 2/300 acres' for the temporary erection of workshops and so forth during the construction stages, after which the area shall revert to the owners. At the 24 May meeting a Ministry official confirmed that the proposed Industrial Area would revert to the owners when the Ministry's work was completed.

At the next meeting of owners on 20 September 1964 the chief project engineer confirmed that the land shown on the plan that the Ministry were proposing to lease would be:

a temporary industrial area for only ten years, but there would be provision for further industrial development for private industrial installations. Ministry of Works would take the land on a leasehold basis. . . .⁴⁰

Later at the same meeting the project engineer again confirmed that the Industrial Area was 200 acres and it would 'all be taken under lease'. He added that private industry could take a temporary lease and negotiate something more permanent with the owners.

The following day Cabinet approved the construction of the Turangi township which included 'the lease of some 200 acres'.⁴¹

37. *Turangi Township Report 1995*, sec 4.11, where all six categories of the failure of the Crown to honour assurances and undertakings are set out as in the paragraphs (a) to (f) that are considered here.

38. *Ibid*, sec 4.3.1

39. *Ibid*

40. *Ibid*, sec 6.5

41. *Ibid*, sec 6.6

The Tribunal in chapter 6 related the lengthy and detailed process by which the Crown reversed its clear and unequivocal undertakings given in 1964 that the Industrial Area would be leased for a term of 10 years and then returned to Ngati Turangitukua owners. Instead, the freehold of the land was compulsorily taken on 20 September 1971 by proclamation signed by the Minister of Works. An important reason for the taking was to maximise the Crown's return from its expenditure in connection with the new town.⁴²

The Tribunal concluded that the owners of the industrial land taken compulsorily by the Crown did not freely agree to such taking.⁴³

(2) Finding (b)

(b) The Crown singularly failed in numerous instances to honour its undertaking to protect the wahi tapu.

This finding has been discussed earlier at section 3.3.3.

(3) Finding (c)

(c) The Crown failed in significant ways to act upon the high importance which it assured owners it placed on conservation values. As a consequence, the waterways and fishing are degraded and increased flooding has occurred.

This finding has been discussed earlier at section 3.3.6.

(4) Finding (d)

(d) The Crown failed to honour adequately its undertaking to work in a cooperative and friendly manner with owners affected by the Ministry's works and to negotiate and consult with individual owners on important issues.

At the first meeting with officials on 24 May 1964, the Ngati Turangitukua people were assured of the Government's wish to cooperate with the owners. At the second meeting in September the chief project officer stated that it was the Ministry's wish to arrange the programme 'as far as humanly possible so that there would be a minimum of upset to those affected'. He later reiterated the Ministry's anxiety not to upset anyone but pointed out they would be in 'one very big hurry. When things have to be done in a hurry sometimes mistakes are made and sometimes people are upset.'⁴⁴

In chapter 12 of our 1995 report, we relate in some detail a variety of instances where, in their great haste to accomplish the mission, the Ministry failed to work in a cooperative and friendly manner. We concluded that:

Great distress was caused to innocent and largely defenceless people . . . The legacy of bitterness towards the Ministry of Works, which remains to the present day, is living testimony to the failure on too many occasions of Ministry officials to act with

42. Ibid, 6.7–6.12, in particular, sec 6.12.5

43. Ibid, sec 4.3.3

44. Ibid, sec 4.7.2

understanding and in a helpful way towards people whose lives they were so seriously disturbing.⁴⁵

(5) Finding (e)

(e) The Crown failed in some cases to honour its undertaking that, if owners had to move, advance warning would be given and they would be fully compensated. In a few cases, the Crown failed to meet its undertaking to give owners prior rights of purchase when selling sections or to make sections available to returning members of Ngati Turangitukua. In a number of cases, the Crown failed to meet its undertakings that owners affected by the works would be left as well off as before.

Sections not available to returning members of Ngati Turangitukua: The Tribunal concluded that:

many younger generation Ngati Turangitukua will not be able to live on family blocks. When Ngati Turangitukua want to return to Turangi, they have to purchase houses in the town. Those who might have been entitled to house sites but were unable to meet the conditions for a Maori Affairs housing loan in the 1960s and build within six months lost any entitlement for themselves and their descendants. It is seldom expected in other instances that building a house follows immediately after the purchase of land. This sort of pressure put on Ngati Turangitukua by the Ministry of Works was unreasonable. The argument based on a perceived shortage of house sites is not well grounded, because there were areas taken in Turangi . . . which were not used for township purposes and were later offered for sale. There are vacant sections in Turangi even today.⁴⁶

Prior right of purchase of sections not given: The evidence of Raymond Wade and Jim Rawhiti was to this effect.⁴⁷

Advance warning of demolition not always given: Some Ngati Turangitukua families were taken by surprise by the sudden arrival of bulldozers; for example, Eru, Church, and Wade whanau.⁴⁸

(6) Finding (f)

(f) The Crown failed to make provision for water to be reticulated to residents in Hirangi Road and later excluded such residents from within the township boundary without consultation or their consent, thereby making it more difficult for such residents to be supplied with water.

The evidence which is the basis for this finding is detailed in the 1995 report.⁴⁹ The Tribunal considered that the Hirangi Road claimants had a legitimate grievance at the Crown's failure to provide them with reticulated water and, further, at the Crown's action in subsequently excluding their properties from the Turangi township and

45. *Turangi Township Report 1995*, sec 4.7.2

46. *Ibid*, sec 12.4.4

47. *Ibid*, sec 4.5.1

48. *Ibid*, secs 4.4.4, 12.3.3, 12.3.4

49. *Ibid*, sec 4.9.1

thereby making it less likely that water would be reticulated to them by the Taupo County Council.⁵⁰

As a result of the findings in the foregoing paragraphs (a) to (f) inclusive (sec 3.5.2(1)–(6)), the Tribunal found that the Crown failed to act reasonably and in good faith towards its Treaty partners and, further, failed actively to protect the rights of Ngati Turangitukua under article 2 of the Treaty and the claimants have been prejudicially affected thereby.

3.5.3 Crown's failure to honour its undertakings and owners' lack of informed consent

The Tribunal found that the taking of land for the Turangi township under the Public Works Act 1928 and the Turangi Township Act 1964 was, both in fact and in law, a compulsory acquisition. In particular, it found that:

- (a) the Crown failed in whole or in part to honour many of the undertakings that it gave to the Ngati Turangitukua owners, in reliance on the fulfilment of which the owners approved the Turangi township being developed on their ancestral land;
- (b) as a consequence, the owners' approval was undermined and negated; and
- (c) the owners did not give their informed consent or agreement to such non-fulfilment of the Crown's undertakings or to the subsequent taking of their land by the Crown pursuant to the said Acts.

As a result the Tribunal found that:

the Crown failed to act reasonably and in good faith towards its Treaty parties and, further, failed actively to protect the rights of Ngati Turangitukua under Article 2 of the Treaty, and the owners have been prejudicially affected thereby.⁵¹

The evidence discussed in chapter 4 of the 1995 report establishes that various important conditions, that is to say, undertakings or assurances, which the Crown represented would be fulfilled were not fulfilled. As a consequence, the Crown proceeded, not, as its counsel submitted, on the basis of 'agreement, informed consent and consensus', but on a basis which differed in many very material respects from that on which it had undertaken to the owners it would proceed. Far from agreeing, the claimants protested vigorously at the failure of the Crown to honour its undertakings, on which they had relied, and of which many were important inducements to the claimants' approval of the establishment of a town at Turangi. In such circumstances, it cannot be held that the owners were 'willing sellers' or that they gave informed consent to what the Crown actually did, as contrasted with what it had undertaken it would do.

50. Ibid

51. Ibid, sec 20.2.6

3.5.4 Crown failure to act in accordance with its duty of partnership

The Tribunal found that:

the claimants were prejudicially affected by the failure of the Ministry of Works, acting on behalf of the Crown, to deal with Ngati Turangitukua people during the construction of the Turangi township in a manner that paid them the respect due to their mana as tangata whenua. In particular, the Ministry failed to recognise and protect the sensibilities of kaumatua. As a consequence, the Crown acted inconsistently with its Treaty obligation to act reasonably towards its Treaty partner.⁵²

In chapter 12 of our report on the impact upon the people of the construction of the township we noted that Ngati Turangitukua were the ‘host community’. And that:

They were and are the tangata whenua. The claimants told us . . . that the Ministry of Works did not respect their mana and rangatiratanga . . . They had to adjust to the arrival of a large number of newcomers – people with different lifestyles – who came to live among them, and traditional social structures, leadership styles, and patterns of social control were stretched to breaking point. There were tensions between the newcomers and the host community, and there was social disruption within the host community itself. The elders of Ngati Tuwharetoa, both individually and collectively through the Tuwharetoa Maori Trust Board, strove to protect Maori interests. But everyone knew that the real power in the community had shifted to the Ministry of Works, which was backed by the Public Works Act 1928.⁵³

3.6 A CAUTIONARY NOTE

The foregoing references to the evidence relating to each of the Crown’s many and various Treaty breaches is necessarily very brief. Given the length of the 1995 report – some 400 pages – they can for the most part be illustrative only. A full appreciation of the impact of the Crown’s entry upon Ngati Turangitukua’s ancestral land, its compulsory acquisition and rapid transformation into a new township, and of the consequences for the hapu and its members, can only be gained by reading the report itself.

52. *Turangi Township Report 1995*, sec 19.2.3

53. *Ibid*, sec 12.5