

CHAPTER 14

THE ASSESSMENT OF COMPENSATION

14.1 STATUTORY PROVISIONS

14.1.1 Section 42(1) of the Public Works Act 1928

The procedures for making and determining claims for compensation were set out in Part III of the Public Works Act 1928, which provided at section 42(1):

Every person having any estate or interest in any lands taken under this Act for any public works, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the Minister or local authority, as the case may be, by whose authority such works may be executed or power exercised.

14.1.2 Crown's position on compensation

An interdepartmental committee which, in 1969, had produced a report on cases of hardship arising from Public Works Act land acquisitions set out the Crown's position on compensation: 'The general principle is that the owner should be paid a sum of money which, together with the land he retains, should leave him no better or no worse off than he was previously' (B10:5). This same report set out an interpretation of section 42(1) of the Public Works Act 1928:

(i) The Value of the property

As compensation must be assessed on the current market value, the amount is agreed on the basis of valuations made by registered valuers for either side, ie the claimant and the Crown.

(ii) Injury

This must be injury to land. If the taking of the property is deemed to have a permanent injurious effect on the balance of the land, injury is assessed by registered

valuers who value the property before the work commences and again after it was completed. Betterment is also assessed on 'before and after' valuations.

If the injury is temporary or physical it is generally classified as 'damage'. The compensation payable is either the amount needed to restore the property to its previous condition or the value of the property whichever is less.

(iii) Disturbance

This section presents difficulty in defining 'full compensation'. It should allow for all actual monetary losses of a non-recurring nature occasioned by dispossession due to the public work. Items include legal costs of negotiating, legal costs and stamp duty in buying a similar property, valuation costs, removal costs, forced sale of stock at a loss, the use of land for stock-piling, and interest upon compensation. These costs must be unavoidably and reasonably incurred. (B10:5)

A Ministry of Works directive to district land purchase officers in 1968 had reminded them that items under the heading 'Disturbance' had to be set out in detail: 'These are generally described as the unavoidable out of pocket expenses or loss actually or reasonably incurred by the landowners as a direct consequent [sic] of the taking of the land' (B10(a): doc 2).

14.1.3 Assessment of compensation under the Public Works Act 1928

The manner in which compensation was to be assessed was originally set out in sections 79 and 80 of the Public Works Act 1928. By 1964 these provisions had been replaced by section 29 of the Finance Act (No 3) 1944, which was to be read together with and deemed part of the Public Works Act as the principal Act.

14.1.4 Section 29(1) of the Finance Act (No 3) 1944

Section 29(1) of the Finance Act (No 3) 1944 laid down the rules for determining compensation under the Public Works Act 1928 (the principal Act):

- (a) No allowance shall be made on account of the taking of any land being compulsory:**
- (b) The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller on the specified date might be expected to realize:**

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Provided that the provisions of this paragraph shall not affect the assessment of compensation for any matter which is not directly based on the value of the land and in respect of which a right to compensation is conferred under the principal Act or any other Act:

- (c) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority:**

- (d) Where the value of the land taken for any public work has on or before the specified date been increased or reduced by the work or the prospect of the work or by the existence or prospect of any more comprehensive public work or scheme of development or reconstruction of which the work forms part and concerning which a notice is in force under the next succeeding subsection at the time of the taking of the land, the amount of that increase or reduction shall not be taken into account:**

- (e) The Court shall take into account by way of deduction from the total amount of compensation that would otherwise be awarded on any claim in respect of a public work (whether for land taken or injuriously affected or otherwise) any increase in the value of any land of the claimant that is injuriously affected, or in the value of any other land in which the claimant has an interest, caused before the specified date or likely to be caused thereafter by the work or the prospect of the work or by the existence or prospect of any more comprehensive public work or scheme of development or reconstruction of which the work forms part and concerning which a notice is in force under the next succeeding subsection at the time of the taking of the land or, as the case may be, at the time of the commencement of the execution of the work or the portion thereof that causes the damage.**

The ‘specified date’ was either the date of publication of a proclamation notice in the *New Zealand Gazette* or the date of entry on the land, whichever was the earlier.

14.1.5 Taupo County Council zoning

For compensation purposes, the earliest date of entry by the Ministry of Works on the Turangi township lands was 1 October 1964. The value of lands to be taken had to be the market value as of that specified date. However, an immediate problem arose in relation to the status of the Taupo County Council's zoning of the Turangi township lands and how this would affect land values. Much of it had been zoned rural, adjacent to some residential areas, in the district scheme, which had become operative on 4 September 1964. On 29 September 1964, the council resolved, under section 29 of the Town and Country Planning Act 1953:

to modify the Taupo County District Scheme, Tongariro Riding Section, by substituting, in place of the operative zoning and ordinances for the Turangi locality, the zoning and ordinances necessary to make provision for public works as required by the Minister of Works in a notice given under Sections 21A and 38(13) of the Act, dated 28 September 1964 and further resolves that public notification of this intention be forthwith given pursuant to Section 30A(1A) of the Act. (B10(c): doc 33)

The proposed scheme changes were publicly notified in October 1964 and some objections were received, but not all had been heard by the end of 1965. On 9 November 1965, the Ministry of Works' district land purchase officer, Dick Lynch, wrote to the district officer of the Department of Maori Affairs, J E Cater, about the basis for valuation assessments:

I have been informed that claims are being formulated on the basis of the proposed zoning changes for Turangi as recommended for public notification by Taupo County Council on 29 September 1964. The Crown will contest any claim not based on values in conformity with the plan which became operative on 4 September 1964. If the owners are in fact proposing to claim on the basis of the new Plan I suggest that the validity of this approach be legally decided *before* claims are formulated. This could save much time and wasted effort. [Emphasis added.] (B10(a): doc 4)

A legal opinion was sought by the Maori Trustee and produced in July 1966. The issue was the status of the Taupo County Council's 29 September 1964 resolution, which predated the 1 October 1964 and subsequent dates of entry, and whether it was a finite step with some statutory force or merely the first stage of a process. The legal advice, given after consultation with a valuer, Mr Nathan, was that it was not in the interests of the Maori owners 'to advance the rather tenuous argument' of claiming a legal status for the zoning changes proposed in the 29 September resolution.

14.2 THE INVOLVEMENT OF THE MAORI TRUSTEE

14.2.1 Statutory provision for the Maori Trustee's involvement

The Maori Trustee was involved in the process of assessing compensation on the Turangi township and TPD lands as a consequence of section 6 of the Public Works Amendment Act 1962. This provision repealed sections 104, 105, and 106 of the Public Works Act 1928 and substituted a new section 104. The new section bestowed on the Maori Trustee the obligation to negotiate compensation where any Maori land in multiple ownership is taken under the Public Works Act 'for any public work, or is injuriously affected thereby, or suffers any damage from the exercise of the powers given by this Act'. Any Maori land vested in a single owner was excluded unless that owner specifically requested the Maori Trustee to negotiate on her or his behalf. Maori lands in multiple ownership which were already vested in trustees or in a

Maori incorporation were also excluded, but trustees or bodies corporate could ask the Maori Trustee to act as an agent for them.

None of the Turangi township lands were vested in trustees. Most of the area was under the control of the Board of Maori Affairs under Part XXIV of the Maori Affairs Act 1953, and was either leasehold or still being developed in the Tokaanu development scheme. There were, however, several small blocks owned by individuals, and some of these were dealt with by the Maori Trustee. The Tuwharetoa Maori Trust Board instructed its solicitor to look after the interests of individuals who might otherwise be unrepresented, but some individual owners negotiated through their own solicitors. In practice, the Maori Trust Office ended up with by far the greatest load in negotiating compensation for lands taken and/or occupied by the Ministry of Works under the Turangi Township Act 1964. In addition, the Maori Trustee also negotiated compensation for many of the blocks taken or affected by the TPD. The work was mainly carried out by the Maori Trust Office of the Department of Maori Affairs in Wanganui, under the direction of J E Cater. The details of the negotiation process and the relationship of the Maori Trustee, Department of Maori Affairs, and Board of Maori Affairs are outlined in para 14.3.

14.2.2 Form of compensation

Compensation was usually paid in money. However, in section 99 of the Public Works Act 1928, there was provision for the Governor-General to grant any Crown land in satisfaction of compensation payable under the Act, provided such land did not exceed the value of the land taken or the sum payable in compensation.

14.2.3 Procedure for claiming compensation

Once land had been proclaimed as taken by the Crown and a notice to this effect had been published in the *New Zealand Gazette*, the landowner(s) had five years within which to lodge a claim in writing with the Ministry of Works for compensation. If the land was not actually taken but suffered some damage because of the public work, claims had to be lodged within 12 months of the completion of the work, or the relevant portion of it (s 45). However, section 63 of the Statutes Amendment Act 1939 authorised the Supreme Court to extend this period to up to five years in respect of land injuriously affected. Once a claim was made, the Ministry of Works made an offer, which could be subject to further negotiation before agreement was reached. If no agreement were reached, the matter could be taken to the Land Valuation Court (s 54).

14.2.4 Interest rate on compensation

The interest rate on compensation moneys was assessed by the Ministry of Works at 5 percent from the date of entry and appears to have been added to all compensation payments. On 29 January 1969, counsel for the Maori Trustee claimed interest at a rate of 5 percent up to 6 February 1967 and thereafter at 6 percent, in accordance with a recent decision of the Land Valuation Court (B10(a): doc 5).

Any rates or mortgages outstanding on land taken could be deducted from compensation moneys. The Crown became liable for rates from the agreed date of entry, but outstanding rates before that date were deducted and paid by the Maori Trustee, or a solicitor acting for a sole owner, on the basis of information supplied by the Taupo County Council (B10(a): doc 5). Section 94 of the Public Works Act 1928 provided that compensation money, on the application of the mortgagee, could be assigned in payment of a mortgage. The authority to pay interest and deduct charges such as outstanding rates, mortgages, insurance premiums, and so on was contained in a Cabinet approval dated 19 January 1949 (B10(a): doc 1).

14.2.5 Ministry of Works policy on compensation

There was no statutory prohibition on negotiating compensation prior to entry or proclamation. In Turangi, entry predated the formal notice of proclamation in every case. In some cases, the land was occupied but not taken, although it was subject to claims for compensation for damage and requirements for restoration, rental for use, and so on. It was Ministry of Works policy to delay the negotiation of compensation until after proclamation (in the case of lands taken) or the completion of the construction work (for the assessment of damage or injurious affection, or betterment, and disturbance).

The question of delay in the making of compensation payments provoked a resolution urging that all land taken under the Public Works Act 1928 be paid for before work commenced being put to the headquarters of the National Party. In January 1967, the Minister of Works, P B Allen, responded. After noting that Ministry of Works policy was ‘to deal promptly with payments’ and that in approximately 2000 transactions per year there were very few complaints, the Minister commented:

The suggestion contained in the resolution is one which cannot be adopted in those instances which often occur where a portion of a property is required for a public work and the effect of the completion of the work cannot be foreseen before work commences. In these instances the assessment of compensation is deferred at the request of the land owner until the work is completed and the full extent of the loss or damage can be properly estimated.

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In the situation where it is necessary to commence work before compensation can be assessed, I arranged with the Commissioner of Works that land owners in appropriate cases should receive advance payments of compensation when their loss occurs, with full rights preserved for the final amount to be arranged by agreement or assessed in accordance with the provisions of the Public Works Act. (B10(a): doc 2)

14.2.6 Compensation payment procedure

In July 1966, Dick Lynch advised the Maori Trustee that he would recommend advance payments on the Turangi township lands of up to 90 percent of the Government valuation: 'It is left to you to make specific application in respect of each title' (B10(a): doc 4). By the end of August 1966, the Maori Trustee had lodged the relevant claims for blocks gazetted in 1965, and advance payment for some blocks was made by the Ministry of Works to the trustee on 18 October 1966. On other blocks, more information was requested and supplied, and another advance payment was made on 27 January 1967. On 23 February 1967, an advance payment was made on the Grace farm lease. Final settlement of the first group of claims was made in August 1968, when payment was made to the Maori Trustee for distribution to the beneficial owners of lands in multiple ownership. Some sole owners of small sections had had their claims settled earlier.

Some claims dragged on into the early 1970s before final settlement. Once payment was received by the Maori Trustee, the money was distributed to the owners by way of credit on individual beneficiary cards and it was paid out in the same way that other moneys were disbursed from the Maori Trust Office.

14.2.7 Additional compensation

Section 6 of the Public Works Amendment Act 1970 introduced the concept of ‘additional compensation’ to provide a solatium of \$500 for the owner of any residential land taken containing a dwelling. In addition, a grant of up to \$1000 or a loan over \$1000 could be made if, solely through want of means and age or infirmity, a person entitled to compensation were unable to establish themselves suitably in another residence of comparable standard (B10(a): doc 2). By 1970, however, most of the Turangi compensation claims had been settled and this provision came too late to benefit any local people who had been dispossessed from their homes.

14.2.8 Review of outstanding Ministry of Works commitments in 1967

In a review of outstanding commitments in his district for the Commissioner of Works in September 1967, Lynch put those Turangi township land takings with the date of entry of 1 October 1964 at the top of his list:

Approx 80 titles affected.

Early delays in survey work and general job pressure.

Dept ready to negotiate since December 1966. Owners valuations believed now finalised but MT [Maori Trustee] seeking further instructions from owners. (B10(a): doc 2)

There were also other areas occupied from 1965 on, both in the Turangi township area and in the TPD (another 120 titles), which needed to be dealt with but for which compensation could not be assessed until the land was vacated by the Crown and restoration work was completed. This made a total of some 200 Maori titles involved with the Turangi township and the TPD. In addition, there were only

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five claims under negotiation which involved 'European owners and [miscellaneous] claims' (B10(a): doc 2). In the report accompanying this list, Lynch commented:

Perhaps the most troublesome problems involve Maori land, where multiple ownership, plus the restrictive conditions under which the Maori Trustee operates, contribute to the sometimes lengthy delays between commitment and settlement. (B10(a): doc 2)

In the next section, we consider how the Maori Trustee and the solicitors acting for the owners proceeded with their onerous and protracted task of negotiating compensation with the Ministry of Works.

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14.3 COMPENSATION FOR LANDS TAKEN IN 1965 AND 1966

14.3.1 Standard procedure

The standard procedure before negotiating compensation for lands taken by proclamation under the Public Works Act 1928 was for the Ministry of Works to compile information on the value of the land taken and make the first offer. Each block had to be assessed individually (see fig 35). A survey would possibly have been made for the preparation of the proclamation plan, but other title details would also need to be checked. The Ministry of Works appointed a valuer, either the Valuation Department or a private valuer, or both. When the valuers' reports were in, along with engineering reports indicating the nature of the work done on the land or on any adjacent lands which were not taken but which were occupied, modified, or otherwise affected in any way, the district land purchase officer was in a position to make an offer of compensation. Meanwhile the owner (or owners), or a representative acting as agent, had to lodge a claim for compensation with the Ministry of Works. Normally, a separate valuation would be commissioned on the owner's behalf, as well as title details and any other relevant information. Once this was put together and lodged with the Ministry of Works, negotiations began. The Maori Trustee had statutory responsibility under the Public Works Amendment Act 1962 to act on behalf of the owners of Maori land in multiple ownership. Sole owners of Maori blocks were, in many cases, represented by other solicitors, but they all worked closely together to represent the interests of the Maori owners of the Turangi township lands within the limitations of the Public Works Act 1928 and related legislation.

14.3.2 Valuers appointed

On 13 October 1964, Dick Lynch asked J Morgan of Bernie Coombes and Wilson of Palmerston North to act for the Ministry of Works ‘in valuing the various properties comprising the new Turangi Township Area’ (B10(a): doc 10). On 14 January 1965, Lynch also asked the Valuation Department in Hamilton to provide special valuations for compensation purposes, noting that the Ministry had ‘engaged the services also of a private valuer Mr J Morgan . . . with whom any information and data may be exchanged’ (B10(b): doc 10). The Hamilton manager of the Valuation Department sought clarification of the extent of the area likely to be required by the new town and the TPD. At this stage, the schedule provided included only those blocks included in the 1965 *New Zealand Gazette* notices of proclamation taking lands for the Turangi township.

The manager was concerned that his valuer:

will be faced with piecemeal valuation over a long period of time as your Turangi project develops, and during that time land characteristics will alter and valuations based on original state, and conditions ruling as at date of proclamation, will become more difficult to assess. (B10(b): doc 10)

The District Commissioner of Works in Wanganui responded prophetically on

22 April 1965:

If only I was in a position to define the areas in question at this stage many problems would be solved. Unfortunately the construction authorities cannot supply this data. . . .

I can well appreciate the difficulties . . . fortunately the aerial photographs will help to establish conditions prior to entry. Like you, I am not at all happy with the way construction is outpacing land definition, and I foresee endless complications.

Please be assured of our cooperation in what promises to be a rather sticky problem for all concerned. (B10(b): doc 10)

J E Cater, who was also responsible for Maori Trust Office administration in his district, was concerned about dealing piecemeal with lands to be taken. He wrote to

the District Commissioner of Works on 10 December 1965 about the Turangi township lands:

As you know, the areas occupied by the Crown have not yet all been the subject of proclamations. In addition, some areas other than those originally contemplated have been occupied. Beyond that again, we understand that certain areas will be needed for future purposes.

It is going to be very difficult if we are going to wait for proclamations before valuations are made.

So that we will not be prejudiced in our claims, it would be appreciated if you would agree that our cost of valuing all land included in the Turangi Township Act and also all land included in the plan you showed us as outlining the areas likely to be taken in the future, can be accepted as a normal charge against the project. (B10(b): doc 10)

Dick Lynch replied that, as the Ministry of Works' district land purchase officer, he had 'no authority to accede to your request' and suggested that it would be 'pointless' to obtain valuations for blocks which might not be taken (B10(b): doc 10). At this stage, only some of the lands in the Turangi township area had been proclaimed as taken. More proclamations were issued in 1966. The oxidation ponds area had been entered in February 1965 but the blocks affected were not proclaimed until 1968.

14.3.3 Payment of professional fees

The payment of legal and valuation fees was an issue that remained throughout the negotiations. The Ministry of Works' position was expressed in a memorandum to district land purchase officers in September 1967:

There are many occasions when the Crown is prepared to meet out-of-pocket costs unavoidably incurred by a land-owner as a consequence of the acquisition of his property for a public work. It is not an obligation of the Crown to meet excessive

demands, or to pay in full the actual fees charged by professional consultants for services to their clients. This is supported by Land Valuation Court decisions and judgments. (B10(a): doc 2)

When pressed for clarification of the Ministry's policy on the payment of professional fees, Lynch wrote to the Tuwharetoa Maori Trust Board's solicitor on 17 May 1968 setting this out:

Legal: A reasonable contribution towards legal fees, appropriate to the circumstances of each case, will be made.

Valuation: As for legal fees providing such fees were reasonably incurred and that the valuation report was properly prepared and the details were freely made available to the Crown in negotiations.

Note: Costs and fees based on the higher scales appropriate to Court proceedings are not admissible in negotiated settlements. (B10(a): doc 5)

When pressed further, Lynch replied on 29 May:

With regard to valuation fees, my instructions are that before payment of valuation fees can be approved, it is necessary that the Land Purchase Officer should know not only that a valuation was made, but that it was properly prepared, presented and used in negotiations, and that details were freely made available to the Crown in reaching a settlement. Any valuation made solely and confidentially for the benefit of the Claimant is considered to be his property and liability. (B10(a): doc 5)

14.3.4 Role of the Maori Trustee

The Maori Trustee had a statutory responsibility to negotiate compensation for Maori land in multiple ownership but the trustee could not act until after a proclamation taking the land was published in the *New Zealand Gazette*. The trustee appointed C I Patterson, of the Wellington legal firm Watts Patterson, to represent him in the Turangi township land compensation negotiations. The Tuwharetoa Maori Trust Board was concerned that all Maori owners should have adequate legal representation and asked the board's solicitor, R E Tripe, of the Wellington firm Hadfield Peacock and Tripe, to undertake this task. (After Tripe's death, Russell

Feist, who had become a partner in the same firm, took over the role of solicitor for the board in 1967 and inherited the Turangi township land compensation negotiations.) On 22 September 1965, Tripe wrote to Dick Lynch explaining who was representing whom in these negotiations:

The Tuwharetoa Trust Board, acting for the owners, has instructed the writer to represent all owners who do not specifically instruct other Counsel. This general instruction was given to us for the protection of Maori owners in general, who look to the Board to secure their representation.

In addition to the above we have received specific instructions from many owners, but a number of others have relied on the Board to instruct us.

Apart from those of our clients who own interest in severalty, there are a good many who own land in multiple ownership, and these also wish us to safeguard their interests, notwithstanding that they have to be represented in terms of the legislation, by the Maori Trustee. We approached the Maori Trustee some little time ago with regard to this aspect of the matter, and he has arranged with Mr Patterson that, in those cases in which the writer's clients have an interest in multiple ownership, Mr Patterson shall act in conjunction with the writer as Counsel in any negotiations for settlement or in the prosecution of any claims.

In consequence of the above arrangement settlement proposals should be referred to the writer as well as to Mr Patterson except in cases where the writer can indicate to you that he has no interested clients.

Mr A G Horsley of Wanganui acts for a number of owners . . . He has promised to write to us giving a list of the owners concerned . . .

We rang Mr Corry of Le Pyne & Co, Taupo, this morning and he confirms he acts for Mr Arthur Grace Senior and Mr Fearon Grace. He appears to have no other specific instructions at the moment.

Both Mr Horsley and Mr Corry are adopting the valuers whom we have instructed . . . Since the same valuers are acting not only for owners in severalty, but also for the multiple owners represented by the Maori Trustee, it may be some little time before the valuations are to hand.

The Tuwharetoa Trust Board has instructed us to employ Messrs Corby, Ashworth and Nathan to value on behalf of all Maori owners in severalty, and has undertaken responsibility for valuation fees in the first instance, subject to recouping itself out of compensation moneys. We have accordingly instructed these valuers to value all interest in severalty at the same time that they are valuing multiple interests for the Maori Trustee, who has also instructed them. It is these arrangements which have been adopted by Messrs Horsley and Corry but we should like you to note that their instructions do not include the valuation of the leasehold interest of Mr Arthur Grace Junior, which Mr Horsley arranged separately. (B10(a): doc 4)

Tripe also offered to contact the solicitor for two other individual Maori owners to suggest that they join with these arrangements. Tripe considered that this

would 'enable us to fulfil our responsibilities to the owners in general as a result of our instructions from the Tuwharetoa Trust Board' (B10(a): doc 4).

Lynch's response to Tripe's letter was to write to J E Cater on 8 November 1965 for clarification in procedures:

My instructions require that negotiations in all cases of Maori land in multiple ownership must be conducted with the Maori Trustee, for whom I understand Mr Patterson will be acting in this matter. Would you kindly advise whether any variation in our normal procedure of negotiating through you is proposed. (B10(a): doc 4)

The response from the Maori Trust Office in Wanganui on 30 November 1965 was:

I confirm that negotiations in all cases of Maori land in multiple ownership must be conducted with the Maori Trustee. The Maori Trustee will take the necessary steps to ensure that Mr Tripe is informed of progress in the appropriate cases. (B10(a): doc 4)

A perusal of the Maori Trustee's files suggests that Cater worked closely with Tripe, his successor Feist, and the Tuwharetoa Maori Trust Board. Patterson, acting for the Maori Trustee, also maintained regular contact with the Wellington-based solicitor for the trust board.

14.3.5 Block description problems

A great deal of preliminary work had to be done by the Maori Trust Office. When a proclamation to take land was published in the *New Zealand Gazette*, it included a schedule of the blocks to be taken and gave a reference to a plan on which the area of land affected was shown. Many of these proclamations listed only the parent block, or part of it, and did not give the full title descriptions held in the Maori Land Court's records. For example, the following description was included in the schedule of a proclamation published in the *Gazette* in 1966:

All that piece of land containing 16 acres 2 roods 8.5 perches situated in Block X, Puketi Survey District, Wellington RD, being part Waipapa 1F; as the same is more particularly delineated on the plan marked MOW 20675 (SO, 26596) deposited in the office of the Minister of Works at Wellington, and thereon coloured orange.¹

The records in the Maori Land Court for Waipapa 1F (see fig 16) would have shown, when the plan was compared to the court titles, that the parent block had been partitioned and only part of it was being taken, but that the part coloured orange comprised (A6:3):

Waipapa	1F3A2	6 acres	2 roods	24 perches	1 owner
Waipapa	1F3B2A	0 acres	1 rood	0 perches	1 owner
Waipapa	1F3B2B1	0 acres	1 rood	0 perches	2
owners					
Part Waipapa	1F3B2B3B	16 acres	2 roods	8.5 perches	35 owners

In such a case, the statutory requirement was that the Maori Trustee, having searched the court records, would find that her or his authority only included the part owned by the multiple owners. The sole owners of the house sites could request the trustee to act for them or each could choose to be represented separately by a solicitor.

Tripe, who was acting for a number of sole owners, had already complained politely about the difficulty he was having in interpreting the 1965 *Gazette* notices. He wrote to Lynch in September 1965:

This arises from the fact that many of the descriptions do not coincide in area with the Maori Land Court search notes, and are stated with reference to a number of Survey Office and Ministry of Works plans. You were kind enough to say that you would endeavour to arrange for the supply to us of copies of the plans in question and we should be most grateful if you would do this at your earliest convenience.

We should also be grateful if you could refer us to any future Proclamations as soon as they issue, and, if they also contain similar oblique references to the descriptions of the land, we should be most grateful if you could obtain us copies of the plans in question. (B10(a): doc 4)

Without a copy of the relevant plan, neither solicitor nor owners could know for certain what land was being taken just by reading the 'oblique references to the descriptions of the land' in a *Gazette* notice of proclamation.

The work of the Maori Trustee was unnecessarily prolonged by the Ministry of Works' continuing habit of describing lands taken by proclamation without reference to Maori Land Court titles, including the relevant block references:

In dealing with these matters the Maori Trustee has found that the Ministry of Works does not issue proclamations on the basis of Maori Land Court titles, their gazettings being based on the Land Transfer Titles. Consequently considerable research has been found necessary to ascertain the actual Maori lands affected by the proclamation. In some cases the partitions have resulted in sole ownerships in which cases the Maori Trustee has been obliged not to act for the sole owner unless requested to do so. Consequential adjustments were necessary to obtain valuations of the partitioned areas. Some expedition has been required in these matters because claims

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have to be lodged within five years of the land being taken or one year from the execution of the works for damages. (D12)

By the time this comment was written in late 1971 as part of a general review of Maori Trustee negotiations over the Turangi township lands and the TPD, there had been 12 separate proclamations taking land within the area described in the Second Schedule to the Turangi Township Act, and numerous others related to TPD works, roads, river protection works, and miscellaneous purposes, such as a 'Post Office Repeater Station'. In addition, there were numerous notices of entry for pumice or metal extraction, workers' camps, a rubbish tip, construction work areas, a water supply intake, a reservoir and pipelines, stopbanks, and so on. Each title in a block, including every partition, had to be inspected and reported on individually, valuations had to be obtained, and title details and ownership lists had to be checked. As noted earlier, there were over 200 Maori titles affected by the construction of the Turangi township and the TPD, and the Maori Trustee was involved with the compensation for a large number of them.

14.3.6 Valuations received for land taken between 1965 and 1966

By June 1967, Patterson had received the valuation reports for all the Maori blocks in multiple ownership taken by proclamation during 1965 and 1966. Subsequently, Cater sent out a form letter to owners on 28 July 1967 informing them of the amount the Maori Trustee had been advised to claim and explaining the procedures to be followed (B10(c): doc 21).

14.3.7 Concern over additional areas required

By late 1967, there was concern among owners about the additional areas required by the Ministry of Works. Cater decided to organise a meeting on 3 March 1968 with Ministry of Works officials present to answer questions. Much of this meeting was taken up with a discussion of the controversial proposed taking of the industrial area and water supply reserve (see para 6.10). However, Lynch also took the opportunity to outline the negotiation process so far and also to lay some blame for the delays on the Maori Trustee:

In the first place the surveys necessary to complete the legal actions took us quite a lot longer than we had anticipated and that was one reason why as yet no finality has been reached. In the second place I can say it wasn't until Thursday of this week that I received the formal statements of claim from the Maori Trustee and statements of claims from the solicitor who represents most of the sole owners. So far I have had no opportunity of checking those with my own valuation advice which I might say has been in my hands for over twelve months. So I think you will concede that all the delay has not been due to the Crown's attitude. In all cases where land has been taken and where requests have been made by the proper authorities for advance payments these have been readily made. I think I can qualify that by saying that in one case we had to decline it because the owner concerned had not vacated the land. But other than that there has been no case where an advance payment has been refused. If you haven't had those advances then I can only say it is not the fault of the government. (B10(a): doc 21)

14.3.8 Compensation negotiations

On 23 February 1968, Patterson lodged a schedule of compensation claims with the Ministry of Works for 40 separate titles, all Maori lands in multiple ownership in the Turangi township, which were included in the *Gazette* notices published on 1 April and 15 July 1965 and 25 August and 26 September 1966. The accompanying letter stated, among other things:

As all these claims are necessarily inter-related, the Maori Trustee is not prepared to settle some of them only leaving others to go to Court. If we are unable to reach a

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settlement of the lot, we would be willing to give consideration to the selection of test cases by agreement between us and to defer consideration of the other cases until we have the results of those hearings. Naturally if we are unable to reach agreement before litigation of any of the claims, the Maori Trustee will desire to review all the claims in the light of the litigation. Accordingly this letter and the schedule are put forward as a proposal for settlement for a global sum of \$189,948.00, being the total of the amounts shown in the schedule, made without prejudice. (B10(a): doc 5)

On 28 February 1968, Feist lodged a schedule of compensation claims with the Ministry of Works for 14 separate titles, many of them residential sections of less than one acre and all owned by individual Maori; a total of 13 names were listed. The accompanying letter stated that the claims totalled \$49,260 and the offer to settle for this sum was made subject to the same conditions as were made by Patterson (B10(a): doc 5).

The Ministry of Works did not accept all the Maori Trustee's claims and further negotiations occurred over several months before a revised schedule was submitted on 11 December 1968 for 14 titles (B10(a): doc 5). Substantial agreement on all the Maori Trustee's claims for compensation for land taken was reached by the end of January 1969.

Some indication of the nature of the negotiations over compensation can be derived from the following extracts from an account of a meeting compiled by Cater:

On 11 July 1968 I attended a meeting in the office of Mr Patterson, solicitor of Wellington, at which were present Messrs Lynch and Morgan (representing Ministry of Works), Mr Nathan (Valuer), Mr Patterson and myself. The objective was to try and obtain finality on those blocks for which compensation had not been finally determined.

The argument relating to Waipapa 1F3B2B3B revolved around a deduction from 2 acres which Mr Lynch said had been excluded from the proclamation and enabled the owners to have 2 sections fronting a tarsealed highway available for connection to all township services available for sale. After some haggling as to the value to be placed upon the sections it was finally decided that a sum of \$5,150 be accepted in settlement.

It was soon obvious that there were fundamental differences between the valuers and there was such an element of rigidity on the part of Mr Lynch that further progress became almost impossible . . .

The claims in respect of Waipapa 1E2B5A and 1E2B5B were linked by the Crown and related to an adjoining piece of similar area which had already been settled. Much of the argument turned upon the zoning and the valuation set by Mr Nathan on the basis of deferment for a period of 6 years. Because it was impossible to get Mr Lynch to move on this point Mr Patterson considered that there was not much point in having any further negotiations. This upset Mr Lynch quite considerably, who took the view that Mr Patterson was merely trying to break up the meeting. However, this was not the case. It was finally agreed that these two blocks should be left for further consideration.

Mr Lynch was not prepared to make any move in respect of Waipapa 1E1B or 1E1D. He insisted that because of settlement of adjoining blocks he could not agree to payment on an acreage basis of any more than was paid for these other blocks. Mr Nathan tried to explain that the configuration, shape and areas of blocks affected the number of sections that could be obtained, their cost of development, and consequently their ultimate value. This was brushed aside by Mr Lynch and Mr Morgan, who insisted that their settlements already made must be taken into account as 'comparable sales'.

The final break came on Waipapa 1E2B4 where Mr Nathan was invited to provide his evidence of comparable sale to decide a price of \$2,100 as against a Crown valuation of \$1,700. At this stage Mr Nathan produced his comparable sales but Mr Lynch argued that circumstances of the sales were set and he would not accept them. There were some heated remarks at this stage concerning Mr Lynch's inflexibility and it was suggested that he was not prepared to negotiate at all but his idea of negotiation was our acceptance of his valuation.

It was fairly obvious that Mr Lynch's method of valuation was on a 'comparable value per acre', whereas in each case Mr Nathan had inspected the land, drawn up what he considered to be a reasonable form of subdivision and valued accordingly.

Although Mr Patterson suggested to Mr Lynch that the only thing was litigation it was decided that we would not press for the moment but would leave Mr Lynch to chew his attitude over in the hope that he would make further approaches to us. However, my personal view is that we should avoid litigation right up to the last ditch, and Mr Patterson in private conversation with me afterwards inclined to agree.

In the event of any approaches or suggestions from Mr Lynch the matter is to be referred to me personally to deal with. Our outward attitude must be that we are quite prepared to litigate but we should not push this to the stage where Mr Lynch makes no further effort to settle. (D12)

14.4 AGREEMENT REACHED

14.4.1 Length of time for final settlement

Agreement was eventually reached, after protracted negotiations, on the compensation to be paid to owners. It is likely, however, that many of the owners did

not fully comprehend the process that was being carried through by the Maori Trustee on their behalf. As well, the time lapse between the Ministry of Works entering the land and the eventual final payment by the Maori Trust Office was at least three years for most blocks, and some owners had to wait four years for final settlement. In the case of the blocks taken for the oxidation ponds, it was seven years.

14.4.2 Maori Trustee's continuing work

The Maori Trustee's task was by no means complete with the settlements made by 1969 (fig 36). In September 1971, R C J Mainwaring, of the Maori Trust Office in Wanganui, summed up the large amount of work that still remained to be done in carrying out the obligations of the Maori Trustee in relation to the Turangi township and the TPD:

- (a) Claims for compensation for lands already proclaimed and valued but not satisfied.
- (b) Payment of valuation fees for cases already settled.
- (c) The assessment of the value of metal and pumice taken and the establishment of a claim therefor.
- (d) The limiting of proclamations affecting lands required for the establishment of Turangi Township, the principle being that the Ministry of Works are not to take lands outside those originally proclaimed for the said Township.
- (e) Claims for loss of revenue of [Tokaanu] Development [scheme] lands. The principle involved here is that land in production has been occupied by Ministry of Works without payment, whether or not the lands are eventually returned. An assessment has been made but no payment received.

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- (f) The breaches of the covenants of the lease taken over by the Crown from A L Grace, the Crown merely replacing Grace as lessee and being therefore responsible for compliance with the covenants of the lease. The Board of Maori Affairs has a responsibility to the owners in the same manner as for any other Part XXIV/53 lease.**
- (g) Claims for compensation for lands proclaimed but not yet valued.**
- (h) Claims for lands not taken by proclamation, but entered, used, restored, and regrassed.**
- (i) Inspection of lands entered so as to establish state of the land prior to entry and eventual proclamation. Who is to pay for these inspections? Ministry of Works has affirmed that no regard will be had for these costs unless and until the proclamations issue, and then only if the Maori Trustee's valuations are seen by them.**
- (j) Claims for injurious affection and/or loss of revenue of Part XXIV/53 leaseholds, such as L R Grace, A L Grace, Mrs Grace and Mrs Church.**
- (k) Claims for Maori lands affected by the tailrace. Also to be considered in this category are the leases of L R Grace and Mrs Church. (D12)**

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In September 1971, a file note concerning a discussion in the head office of the Department of Maori Affairs reviewed the Maori Trustee's work to date, and the difficulties he faced in carrying out his task at Turangi:

It was agreed that the present position relating to the Turangi Power Project [sic] and the land taking had become considerably confused and most complex. While the matters of the first taking had, to some extent, been resolved there was still a considerable number of matters at large which needed clearing up and, of course, there is the very great difficulty of the balance of the land to be taken. In addition of course, is the known owners' objection to the proclamation of land and the fact that the Ministry of Works is sitting on areas but not proclaiming them, neither is any rental being paid.

It was decided that the present position is inadequate and that the Maori Trustee is the object of unfavourable comment because of his inability to do anything pending the taking of the land. Therefore it was agreed that the District Officer should immediately make common cause with the Tuwharetoa Trust Board and any other local committee to the end that we would all work in concert using the Trust Board's solicitor, Mr Feist, and have actions taken either in the name of the Maori Trustee by Mr Feist or by trustees appointed for the purpose in terms of Section 438 of the Maori Affairs Act 1953. The object of the exercise is to ensure that the Maori owners do not lose out because of the problem of multiple ownership and also that no actions are taken by the Department [of Maori Affairs] or the Maori Trustee which will in any way prejudice the intentions or wishes of the owners vis-a-vis the Ministry of Works.

It was agreed that we will be involved in considerable clerical work both in the Court and on the Maori Trustee section because it will be necessary for us to provide secretarial services to call meetings and service meetings until such time as the whole matter is cleaned up. This of course also applies to the complications arising from the exchanges and the River Protection problems. However, it was agreed that while considerable extra strain will be thrown on this office in getting this scheme going, in the long run we will benefit because the pressure on the office will diminish by avoiding references to Head Office and by having some of our functions taken over either by the Trust Board or trustees. For this reason we must accept temporarily an increase in the volume of work requiring to be done. (D12)

14.5 REPEAL OF MAORI TRUSTEE'S STATUTORY POWERS

The statutory powers given to the Maori Trustee by section 6 of the Public Works Amendment Act 1962 were repealed by section 12(8) of the Maori Purposes Act 1974. Maori owners of land held in multiple ownership could now decide how they would represent their interests. The usual alternatives were the appointment by the Maori Land Court of either trustees under section 438 of the Maori Affairs Act 1953 or

agents under section 73 of the Maori Affairs Amendment Act 1974. However, by 1974 the Maori Trustee had completed most of the negotiations on compensation in the Turangi township. In any case, Cater had already moved towards this position by working in with the Tuwharetoa Maori Trust Board and its solicitor Russell Feist and by encouraging the appointment of trustees by the Maori Land Court under section 438 of the Maori Affairs Act to negotiate on later takings, such as the water supply reserve. It is difficult to understand why the Crown persisted until 1974 in requiring the owners to be represented by the Maori Trustee.

14.6 TRIBUNAL'S CONCLUSIONS

The Tribunal concludes that both the statutory compensation provisions in force at the time and the current administrative procedures left much to be desired.

- The legislative provisions were strictly defined and rigid in nature. Although section 42 of the Public Works Act 1928 recognised the entitlement of owners to 'full compensation' for the involuntary loss of their land, the code introduced by section 29(1) of the Finance Act (No 3) 1944 (a war-time provision) was restrictive in nature. It was not until the Public Works Act was amended in 1970 that the Crown recognised that some allowance for hardship

should be made to dispossessed owners obliged to find alternative accommodation – too late for the Ngati Turangitukua people. Nor was there any recognition of the effect of compulsory acquisition on Maori rangatiratanga over their ancestral land.

- The administrative procedures adopted by the Ministry of Works were often cumbersome and inflexible. Entry on land and the exclusion of owners could and did precede by years the actual taking of land by proclamation in the *New Zealand Gazette*.

- Only the Maori Trustee could act for multiple owners, but he had no jurisdiction until such time as the proclamation was gazetted.

- The payment of compensation in advance did something to mitigate the hardship to owners of the long delays in receiving the balance of their compensation payments.

- The Ministry of Works rarely supplied title references to the properties taken which reflected the Maori title in Maori Land Court records, thereby

adding greatly to the work of the Maori Trustee and his legal advisers and the time involved in processing compensation claims.

14.7 TREATY IMPLICATIONS

In chapter 19, we consider various claims by Ngati Turangitukua owners of Treaty breaches on the part of the Crown in respect of the compensation provisions and practices (see paras 19.5–6).

References

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1. *New Zealand Gazette*, 1966, p 1487