

CHAPTER 16

CROWN LEGISLATION AND THE TREATY

16.1 PRELIMINARY

Before turning to a consideration of the Public Works Act 1928 and the Turangi Township Act 1964 in relation to the Treaty and Treaty principles, it is necessary to consider a number of preliminary matters raised by counsel.

In the introduction to their closing submissions, Crown counsel referred, among other matters, to what was called the ‘factual matrix’, which, it was said, called for a ‘contextual understanding’. Linked to this submission was a discussion of expert evidence and the onus of proof. We consider each of these submissions.

16.1.1 The factual matrix: a contextual understanding

After noting that the relevant legislation and the statutory role of the Maori Trustee had been discussed in earlier submissions, Crown counsel said:

The Crown witnesses, Mr David Alexander and Ms Stephanie McHugh, told the story of what actually happened, as distilled from the contemporaneous documentation. Our concern in bringing that evidence was that the actions of the Crown and Tuwharetoa and their reactions to one another should not be judged in the light of modern values and practices, nor in the light of today’s statutory regime, but in the light of the values and practices of that time as far as possible. There must, then, be a critical assessment of all the evidence, and in that respect, evidence created during or close to the events concerned is most important if an event is to be understood in the context of its time. (C3:5)

The Tribunal has some difficulty in accepting this submission as it stands.

- The submission suggests that the two Crown witnesses alone told the story of what actually happened, as detailed from the contemporaneous documentation.

This overlooks the substantial report by John Koning (A1) and the extensive supporting documentation commissioned by the Tribunal and accepted without question by counsel for both the claimants and the Crown.

- The contemporary documentation relied on included the files of the project engineer and his staff. Only selected extracts from these files, which must have been extensive and very relevant, were produced, rather than the complete files.**
- The submission wrongly assumes that what was reduced to writing at the time constitutes a complete record of all the relevant events. The official documents relied on are almost completely silent about the misery, pain, and anguish which the Ministry of Works caused to many people. There is little official documentation, for instance, about the destruction or defilement by the Crown of wahi tapu, including urupa, or the sudden arrival, without notice, of a bulldozer ready to demolish a house still occupied by its owner (see para 12.3.4).**
- The submission appears to be based on the premise that incomplete written documentation is superior to the evidence of those claimant witnesses who were actually present at critical meetings, or who personally experienced or witnessed the havoc and confusion caused by Ministry of Works operations, and their effect on elderly kuia and koroua and their families.**
- The Tribunal was greatly assisted by the extensive evidence of both Mr Alexander and Ms McHugh. However, reference to the very lengthy documentation adduced by Mr Alexander revealed important matters relating to the industrial area on which Mr Alexander had not commented. These are noted in our subsequent discussion of the industrial leasehold question.**
- The Crown argues that the actions and reactions of the Crown and Ngati Turangitukua should not be judged in the light of modern values and practices,**

nor in the light of today's statutory regime, but in the light of the values and practices of the time as far as possible. We are uncertain to what values and practices the Crown is here referring. We do know that for the decade 1964 to 1974, with which this claim is chiefly concerned, the Crown paid little regard to its Treaty obligations in relation to the compulsory acquisition of Maori land. We cannot believe that we are being asked to accept the values and practices evidenced by such neglect as the appropriate standard by which to judge the actions of the Crown and its officials. Moreover, if today's statutory regime or current Crown practices in any particular instance reflect some concern for Treaty principles, is it not relevant to ask why they could not or should not have done so earlier – in this case a mere 30 years ago?

- In paragraph 13 of their submission, Crown counsel contended that the Tribunal should accept the Crown's evidence as the best evidence of how events were understood at the time they occurred. In paragraph 14, they stated that this approach was most relevant in terms of the 'valuations' placed on land taken under the Public Works Act 1928. It was also said to be relevant in terms of the 'value' that was placed on land and taonga by those who were involved in discussions with the Crown in Turangi (C3:5).**
- In reply to the Crown's closing submissions, Ms Wainwright accepted that some allowance must be made for the effluxion of time in relation to valuation evidence (C9:2). Given subsequent inflation, this is obvious. But Ms Wainwright strongly objected to any suggested analogy between value and valuation in the context of Maori taonga. The taonga at issue in this claim, namely, land and wahi tapu, she said, have an intrinsic value which does not change in the way**

that money does. On behalf of the claimants, she completely rejected the implication that there has been some sort of revisionism going on whereby their land and wahi tapu were less valuable to the tangata whenua in the 1960s than they are today (C9:2).

We accept Ms Wainwright's rejection of this hypothesis, because the hypothesis lacks any evidential base. Indeed, it runs counter to the strong and convincing evidence of various claimants, who spoke of their concern, and of the concern of those now deceased, at the time of the destruction and desecration of their wahi tapu. It is also inconsistent with the depth of concern that existed when it became apparent that the Crown was expropriating considerably more land than it had earlier assured the Ngati Turangitukua people it would be taking.

We turn to the second, and related, introductory Crown submission.

16.1.2 Expert evidence and the onus of proof

The Crown's first submission as to onus of proof is that when a claim is made to the Waitangi Tribunal alleging breaches of Treaty principles it is for the claimants to establish the breach (C3:6). This, in effect, calls for the application of the onus of proof on a plaintiff in civil proceedings in courts of law. However, the Tribunal is not a court of law. It has the powers of a commission of inquiry and has the unique power to regulate its procedure by adopting such aspects of te kawa o te marae and tikanga as it thinks appropriate in any particular case. Moreover, the Tribunal may commission research or authorise a claimant to commission research at the Tribunal's expense on any matters relating to a claim before it. It may receive any report resulting from such commissions in evidence. This practice is frequently followed, as it was in this inquiry. As well, the Tribunal may conduct its own investigations.

The Crown, as a party to the proceedings before the Tribunal, is obliged to furnish the Tribunal with evidence of all relevant matters within its control, or to which it has access, which it is reasonably able to provide. As a Treaty partner obliged to act reasonably and with the utmost good faith towards Maori claimants, it can do no less. It is not uncommon for the Crown, in the honourable discharge of its duty as a Treaty partner, to provide highly relevant information which is of material assistance to the Tribunal and which, on occasion, assists in substantiating the claim before the Tribunal.

We consider it unhelpful to suggest that either the claimants or the Tribunal should be bound by court rules of civil procedure as to the burden of proof. The Tribunal's mandate is to ascertain the truth of what happened in any particular matter before it. In so doing, it must ensure, as far as possible, that both parties, the claimants and the Crown, do all they reasonably can to assist the Tribunal to achieve this outcome. When all the evidence is in, the Tribunal must then decide on the totality of the relevant evidence before it the extent to which, if at all, the claims before it are made out. It is then appropriate to do so on the balance of probability.

16.1.3 Contemporaneous documentation and traditional evidence

Crown counsel further submitted, by way of amplification of its 'factual matrix' argument, that the most reliable evidence in this case is to be found in the contemporaneous documentation (C3:6). It appears that the Crown may here be contrasting what is sometimes described as traditional evidence with contemporaneous documentation. Traditional evidence is evidence relating to past events, often of a century or more ago, the account of which has been transmitted orally from generation to generation. It is well known that such accounts are likely to undergo interpretation and re-interpretation.¹ In the present case, however, we are concerned chiefly with the evidence of claimants, many of whom personally participated in various of the events.

In reply, Ms Wainwright emphasised that:

- in terms of the historiographical argument, which is what the Crown is tendering, the general view is that all recasting of history, whether the source of information is recollection or documents, involves an element of interpretation and re-interpretation;**
- the documents which the Crown's historians viewed in this case did not provide a complete record of everything that happened;**
- the documents do not speak for themselves;**

- the documents have been interpreted by the historians, and it is this interpretation that they related to the Tribunal in evidence;
- similarly, the claimants lived through a period some years ago which they have now interpreted for the Tribunal in the light of their subsequent experience; and
- the two exercises are completely analogous and there is no distinction to be made between them in terms of their reliability and the extent to which the Tribunal should now proceed on them as reflecting a true position (C9:2).

The Tribunal agrees with all the foregoing submissions of Ms Wainwright, save for the last, which denies any distinction in any instance between the two types of evidence. There will be some instances of conflict or apparent conflict between the two types of evidence. In an appreciable number of cases, these differences arise from the different perceptions and values of local Maori and the officials dealing with them. The result may be that in some instances each group is talking past the other. In such cases, the Tribunal must decide what weight it should give to the apparently conflicting views, while accepting that the perceptions and perspectives may differ, and it must decide which version it should accept and whether it should accept it in whole or in part. Broadly, however, the Tribunal believes, after hearing over 20 Ngati Turangitukua witnesses, that the circumstances attending the conversion of their ancestral lands into an embryonic township over a frenzied year or so of intensive bulldozing and associated activities are indelibly imprinted on the memories of those who were subjected to and lived through it. We would not denigrate such evidence simply because it was not recorded in writing at the time by either the Crown or those immediately affected.

We now proceed to consider the Ngati Turangitukua claim that certain statutes are in breach of the Treaty of Waitangi.

16.2 THE PUBLIC WORKS ACT 1928, THE TURANGI TOWNSHIP ACT 1964, AND THE TREATY

We consider here the Crown's powers relating to the entry on and the taking of the claimants' land under the Public Works Act 1928 and the Turangi Township Act 1964 in terms of the Treaty and Treaty principles. In chapter 17, we will consider the offer back provisions relating to the return of land taken by the Crown. These were not enacted until the passage of the Public Works Act 1981. In chapter 19, we consider the compensation provisions.

16.3 SUBMISSIONS OF CLAIMANT COUNSEL

Ms Wainwright drew our attention to certain features of the Public Works Act 1928 and the Turangi Township Act 1964 which operated in relation to the entry on and the taking of land at Turangi and to which exception was taken. These are briefly noted later (see para 16.6).

Claimant counsel referred to a recent comment by the Privy Council in *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 on the principles of the Treaty of Waitangi, with references to the Treaty of Waitangi Act 1975 and the State-Owned Enterprises Act 1986 (C2:8–9). We quote the passage cited, together with the two following sentences:

Foremost among . . . [the] ‘principles’ [of the Treaty] are the obligations which the Crown undertook of protecting and preserving Maori property, including the Maori language as part of taonga, in return for being recognised as the legitimate government of the whole nation by Maori. The Treaty refers to this obligation in the English text as amounting to a guarantee by the Crown. This emphasises the solemn nature of the Crown’s obligation. It does not however mean that the obligation is absolute and unqualified. This would be inconsistent with the Crown’s other responsibilities as the government of New Zealand and the relationship between Maori and the Crown. This relationship the Treaty envisages should be founded on reasonableness, mutual co-operation and trust. It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting taonga to go beyond taking such action as is reasonable in the prevailing circumstances. While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time.

Ms Wainwright takes issue with some observations of the Tribunal in the *Te Maunga Railways Land Report*, in which, after referring to the foregoing passage by the Privy Council, the Tribunal said:

there may be circumstances when the compulsory taking of land for a public purpose (kawanatanga) constitutes a more significant public interest for both Maori and Pakeha than the guarantee to Maori of tino rangatiratanga . . . ²

Claimant counsel asked what is left of the Treaty guarantees if they can be unilaterally set to one side by the government of the day if to do so seems expedient (C2:9). Ms Wainwright submitted that if there is in any instance ‘a more significant public interest for both Maori and Pakeha than the guarantee to Maori of rangatiratanga’, that interest should be one which Maori landowners should be able to recognise. In such circumstances, she submitted, the appropriate course was for the Crown to seek Maori agreement to the use of the land in the furtherance of that public interest.

Ms Wainwright went on to submit that if it were reluctantly conceded that there might be instances where the Crown’s kawanatanga and interest in taking land compulsorily might sometimes legitimately outweigh rangatiratanga interests in retaining the land, it would be incumbent upon the Crown to show in any particular case that the very highest public interest was being served (C2:10). We note that this test is similar to the test proposed by this Tribunal in our discussion of Treaty principles (see para 15.2.1(3)), where it is said that if the Crown is ever to be justified in exercising its power to govern in a manner which is inconsistent with and overrides the fundamental rights guaranteed to Maori in article 2, it should be only in exceptional circumstances and as a last resort in the national interest.

16.4 CROWN COUNSEL'S SUBMISSIONS

16.4.1 Authority of the Crown to govern and legislate

Crown counsel also cited from the foregoing passage of the Privy Council judgment. They submitted that from this affirmation of the authority of the Crown to govern, as recognised within the context of the Treaty, flows the corollary that the Crown 'had all the authority needed to legislate in terms of the Public Works Act 1928 and the Turangi Township Act 1964' (C3:3). Together, it was said, those Acts mandated the taking of Ngati Turangitukua land for public works, namely, developments for electricity generation, and for the establishment of the township associated with those works.

This submission lacks nothing in boldness but we believe that it contains a major fallacy. It does not follow that, because under the Treaty the Crown has authority to govern, such authority is unqualified. Plainly it is not. It is limited by, and subject to, the provisions of article 2. To determine whether the Crown 'had all the authority needed to legislate in terms of the Public Works Act 1928 and the Turangi Township Act 1964', it is necessary to determine whether these provisions can be reconciled with the guarantee in article 2. This involves a consideration of the various features of the legislation referred to earlier (see para 14.6) to which exception has been taken by

claimant counsel. We will consider these features shortly in the light of the relevant principles which we have articulated in the previous chapter on Treaty principles.

16.4.2 Hierarchy of interests in natural resources

Crown counsel cited from the *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* that there is a hierarchy of interests in natural resources based on the twin concepts of *kawanatanga* and *tino rangatiratanga*, and quoted a passage from the report that ‘First in the hierarchy comes the Crown’s obligation or duty to control and manage those resources . . . in the wider public interest’.³

The relevance of this citation in the present context is not readily apparent, because this claim is concerned with the very different circumstance of legislation empowering the compulsory expropriation of ancestral land by the Crown. This is of markedly graver consequence than the exercise of control or management in the public interest of resources which remain in the ownership of the *tangata whenua*. We have earlier made this point when discussing Treaty principles in chapter 15.

16.4.3 *Orakei Report 1987*

Crown counsel submitted that the Tribunal has, on occasion, acknowledged the general public benefit of taking land and referred to the Tribunal’s *Orakei Report 1987* at page 166 (C3:29). Counsel stated that the Tribunal there noted that the Crown’s exercise of its sovereignty in taking land for defence purposes was seen as intended to secure peace and good order for the nation, as being for the benefit of all citizens, and therefore as being ‘not inconsistent with the principles of the Treaty’ (C3:29–30).

We pause here to observe that the Orakei Tribunal did not, as Crown counsel contended, accept the foregoing proposition, but qualified it as being ‘arguable’. Moreover, the Tribunal went on to say immediately after the passage cited by Crown counsel:

For reasons which follow we do not find it necessary to decide this issue. It may be that, should a similar need arise today, having regard to Maori sensibilities to the involuntary loss of their land, the Crown might seek to lease rather than acquire ownership of the land. Any such lease could be for the estimated time of the works with a right of renewal for the full term of the works relating to defence.⁴

Crown counsel was, however, correct in stating that in the same report the Orakei Tribunal held that the Crown acted inconsistently with Treaty principles in compulsorily acquiring the Ngati Whatua papakainga against their wish and without their consent.⁵

Crown counsel next submitted that in both the *Mohaka River Report 1992* at page 70 and the *Ngati Rangiteaorere Claim Report 1990* at page 48 the respective Tribunals found that, where compulsory acquisition for public works of general public benefit was undertaken by the Crown without adequate consultation and negotiation with the Maori owners, the Crown infringed rights of tino rangatiratanga and thereby breached its Treaty duties (C3:30).

So far as we are aware, the question of whether the compulsory acquisition of land for roading purposes under the public works legislation constituted a Treaty breach was not argued in the Mohaka River claim and no recommendations were made in respect of such a taking. Nor was such compulsory acquisition the subject of argument in the Ngati Rangiteaorere claim and, for that reason, the Tribunal refrained from making a finding in its report. Nevertheless, it thought it appropriate to make some observations. In the course of its discussion, it noted that kawanatanga did not involve taking control or rangatiratanga from Maori. It said:

Had Maori been told in 1840 that kawanatanga would mean the limiting and eventual loss of rangatiratanga over their lands, they would not have signed the Treaty. Indeed some who feared that this might happen did refuse to sign.⁶

After noting various statements by the Tribunals in the *Report of the Waitangi Tribunal on the Motunui–Waitara Claim* of 1983 at page 16; the *Report of the Waitangi Tribunal on the Manukau Claim* of 1985 at page 90; the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* of 1988 at page 195; and the *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, also of 1988, the Tribunal went on to say in the *Ngati Rangiteaorere Claim Report*:

If we apply these principles to the claim before us, we must express doubt whether the Crown could properly assert its kawanatanga over Ngati Rangiteaorere's rangatiratanga – by compulsorily acquiring their land for roads. In any case, the Crown failed to carry out the necessary pre-requisites. It failed to consult Ngati Rangiteaorere in the first instance about the need for a public road; and it failed to negotiate genuinely with them to purchase the land. The Crown therefore had no right to proceed to compulsory acquisition. It was clearly in breach of article 2 of the Treaty, which provided no sanction for compulsory purchase of land, either in the English or the Maori text. And it infringed Ngati Rangiteaorere's rangatiratanga which included the right to control entry to as well as ownership of their land.⁷

This Tribunal is unable to reconcile what was said by earlier Tribunals in the Mohaka River and Ngati Rangiteaorere reports with Crown counsel's submission that it follows from the findings in those two reports:

that where compulsory acquisition under the Public Works Act for the general benefit was pursued by way of the correct procedures and appropriate compensation measures, infringement of tino rangatiratanga does not arise. (C3:30)

As we have indicated, the question was not argued in either the Mohaka River or the Ngati Rangiteaorere claim. In the latter case, the Tribunal did, however, express doubt whether the Crown could properly assert its kawanatanga over the claimants' rangatiratanga by compulsorily acquiring their land for roads. Neither report supports the Crown's proposition.

16.4.4 The Crown's article 1 right, Ngati Turangitukua's article 3 obligation

Crown counsel further submitted that:

on the basis of the Crown's right to govern, the acquisition of Ngati Turangitukua land by the Crown from Ngati Turangitukua as provided for by the Public Works Act was an exercise of the Crown's right of governance under Article 1 and of Ngati Turangitukua's obligations of citizenship under Article III, provided the Crown acted reasonably and in good faith. (C3:30)

This submission makes no reference to the Crown guarantee of Maori rangatiratanga contained in article 2, nor does it explain how the compulsory acquisition of Ngati Turangitukua land by the Crown can be characterised as Ngati Turangitukua exercising their obligation of citizenship under article 3. The statement appears to postulate that, in some unexplained way, the claimants were obliged by article 3 to consent to, or acquiesce in, the compulsory acquisition of their land. The Tribunal is unable to sustain such a proposition, nor can this be reconciled with the right guaranteed to Maori under article 2.

16.4.5 *Te Maunga Railways Land Report*

Crown counsel next referred to the statement on page 50 of the *Te Maunga Railways Land Report* that 'on the face of it a Crown right of compulsory acquisition of land cuts right across the guarantee of Maori rangatiratanga'.

They further contended that the Te Maunga Tribunal acknowledged that both article 1 and article 3 authorise the Crown's acquisition of Maori lands for public works when it stated at page 67 that 'there has been no suggestion that Maori land should not be used, if needed, for public purposes, or for public benefit'. The next sentence, not quoted by Crown counsel, reads 'the sticking point has been the compulsory acquisition of the freehold title when something less than freehold would have served equally well'.⁸ This places the statement quoted by the Crown in a different perspective.

The Crown sought to rely on the foregoing statement from the Te Maunga report for the proposition that the Tribunal in that case was accepting that the guarantee of tino rangatiratanga under article 2 is subservient to the cession of sovereignty. Reading the report as a whole, we do not believe the Te Maunga Tribunal intended to convey that impression. Rather, it placed strong emphasis on the need for a mutually agreeable solution to be reached and for the Crown to refrain from seeking to acquire the freehold title to Maori land.

For our part, this Tribunal reiterates that, for the reasons given in paragraph 15.2.1, if the Crown is ever to be justified in exercising its power to govern in a manner which is inconsistent with and overrides the fundamental rights guaranteed to Maori in article 2, it should be only in exceptional circumstances and as a last resort in the national interest.

16.5 ARE THE PUBLIC WORKS ACT 1928 AND THE TURANGI TOWNSHIP ACT 1964 INCONSISTENT WITH TREATY PRINCIPLES?

16.5.1 Claimants' contentions

The claimants, in paragraph 5(1) of their statement of claim (see app I), contend firstly that the Public Works Act 1928 and the Turangi Township Act 1964 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. Secondly, they contend that the Turangi Township Act 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 the Treaty partner in respect of matters affecting Maori. Thirdly, they contend that the Turangi Township Act further breached the principles of the Treaty by excusing the Ministry of Works from the notice requirements of sections 22 and 23 of the Public Works Act 1928.

16.5.2 Crown counsel's contentions

Crown counsel, however, contend that where compulsory acquisition under the Public Works Act 1928 for the general public benefit was pursued by the Crown by way of the correct procedures and appropriate compensation measures, infringement of tino rangatiratanga does not arise (C3:30). They further contend, on the basis of the Crown's right to govern, that the acquisition by the Crown of Ngati Turangitukua land was an exercise of the Crown's right of governance under article 1 and of Ngati Turangitukua's obligation of citizenship under article 3, provided that the Crown acted reasonably and in good faith (C3:30).

Crown counsel purported to find authority for the first of these propositions in the Mohaka River and Ngati Rangiteaorere reports and for the second in the Te Maunga report. For reasons which we have discussed above (see paras 16.4.3, 16.4.5), we do not accept either of these propositions as being soundly based.

16.5.3 Tribunal's comment

In chapter 15, we articulated the relevant Treaty principles and, in particular, what we see as the overriding principle applicable in this case. That is, that the cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga. The confirmation and guarantee of rangatiratanga in article 2 necessarily qualifies or limits the authority of the Crown to govern. In addition, under article 2, the chiefs gave to the Crown a pre-emptive right to purchase such lands as they might be disposed to sell at such prices as may be agreed upon.

Statutory powers giving the Crown a right to ride rough-shod over the solemn rights guaranteed to Maori by article 2 could be justified only, as we have earlier indicated, in exceptional circumstances and as a last resort in the national interest.

16.6 RELEVANT STATUTORY PROVISIONS

16.6.1 Draconian provisions

The draconian provisions of the Public Works Act 1928 and the Turangi Township Act 1964, which we discussed in chapters 13 and 14, included the right of the Crown to take the claimants' land compulsorily for the establishment or development of the Turangi township:

- without any notice to the owners;**

- without any right of objection by the owners;
- without any obligation to consult with the owners;
- without the consent of the owners;
- without any obligation to return any land not required or no longer required for the purpose for which it was taken;
- at a price negotiated with a statutory official acting on behalf of the multiple owners rather than with the owners themselves;
- on pre-ordained mandatory conditions upon which payment of compensation for the land taken would be made; and
- with insistence on the freehold of the land being taken, irrespective of the preference of the owners.

In this particular claim, if counsel for the claimants and the Crown respectively are correct, the Crown also had the right to enter the claimants' land, without notice to or the consent of the owners, and operate bulldozers to demolish buildings, change the contour of the land, and construct roads and buildings thereon, before any Order in Council taking the land has been proclaimed and gazetted. Whether or not the Crown had such rights, which is arguable, it did so enter and carry out such operations on claimants' land well before the necessary Orders in Council were made and gazetted.

16.6.2 Modification effected by the Public Works Act 1981

We are mindful of the fact that the Public Works Act 1981 has effected some modification of the powers of the Crown to acquire land compulsorily. But as the Tribunal in the *Te Maunga Railways Land Report* has noted in its discussion of past and present public works legislation, the most significant omission of the 1981 Act is the failure to acknowledge in any way the Crown's obligations and responsibilities towards Maori as a partner under the Treaty of Waitangi.⁹ The same omission is present in the Public Works Act 1928 and the Turangi Township Act 1964.

16.6.3 Tribunal's conclusion

This Tribunal has had the advantage of considerable argument from both counsel for the claimants and counsel for the Crown on whether the provisions of the Public Works Act 1928 and the Turangi Township Act 1964, pursuant to which the Crown compulsorily acquired the claimants' land for the township, were compatible with the Treaty and Treaty principles. The various statutory powers exercised by the Crown were in respect of ancestral lands of the Ngati Turangitukua hapu of the Tuwharetoa people. The Tribunal considers that they are not merely inconsistent with the terms of the Treaty and relevant Treaty principles; they are tantamount to a unilateral abrogation of article 2 in that they deprive the Maori owners of any protection of their Treaty rights under article 2. Far from actively protecting the Maori owners' right not to be deprived of their land without their consent and at an agreed price, they have been denied such protection by the powers vested in the Crown in the Public Works Act 1928 and the Turangi Township Act 1964.

16.7 TRIBUNAL'S FINDING

The Tribunal finds 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.**

References

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1. Judith Binney, 'Pakeha Written Texts, Maori Oral Narratives: Two Forms of Telling History', *New Zealand Journal of History*, vol 21, no 1, 1987, p 17
 2. Waitangi Tribunal, *Te Maunga Railways Land Report*, Wellington, Brooker's Ltd, 1994, p 71
 3. Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies*, Wellington, Brooker and Friend Ltd, 1990, p 42
 4. Waitangi Tribunal, *Orakei Report 1987*, 1st ed, Wellington, Department of Justice: Waitangi Tribunal Division, 1987, p 166
 5. Ibid, p 162
 6. Waitangi Tribunal, *Ngati Rangiteaorere Claim Report 1990*, Wellington, Brooker and Friend Ltd, 1990, p 46
 7. Ibid, pp 47-48
 8. *Te Maunga Railways Land Report*, p 67
 9. Ibid, p 56