

Waitara Endowments – Supplementary Report



NEW PLYMOUTH DISTRICT COUNCIL

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April 2003

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Summary

Key points and issues in this supplementary report are:

1. As stated in the draft Waitara Endowments Report, the rateable value of the Waitara endowments land is estimated at circa \$7 Million.
2. Council's rental properties in Waitara give stakeholders a poor return on capital. This is because of the perpetual Glasgow leases, which drive down the value of the land and have a very low (5.5-6%) earnings rate. The loss of the Waitara endowments through freeholding or return to hapu, the New Plymouth District Council (NPDC) would no longer have access to annual income of \$230,000; however, under the auspices of the Waitara Harbour Act 1940, that income is tagged. It must be put into a reserve fund for purposes related to the land such as bridging, flood works and property improvements. If the endowments ceased to exist, these works would have to be funded out of the general fund. Giving a net impact of \$460,000 of rate demands.
3. In 1989, the NPDC adopted a policy of freeholding. Some lessees may have bought leases since 1989, on the assumption that they would be allowed to freehold. Council may be open to legal challenge if this could be proved.
4. It should be noted that all tangata whenua submissions wanted the land returned unencumbered. It is recommended that if land were returned it be returned unconditionally it would then be up to lessees and hapu to negotiate any freeholding.
5. Submissions received during the previous round of hearings claimed that Waitara land would increase in value if freeholding were allowed. Closer examination has found that this is a difficult assumption to test, as there are many factors influencing land values such as supply and demand, and finance available to lessees. Therefore this is not recommended as a consideration for council's decision making.
6. Some submissions said that rent paid on the leases should be taken into account when determining freeholding prices. This report does not recommend that this be a consideration, as the rental is akin to paying interest on a mortgage and not payment of the principle. Freeholding prices are determined by reference to market value. Anything less than fair market value would attract gift duty.
7. Submissions from tangata whenua emphasise the enormous significance of Waitara, and the impact that the loss of this land had on local hapu. While the NPDC is not a party to the Treaty settlement process, the special significance of this particular piece of land to tangata whenua is acknowledged.
8. Under the Local Government Act 2002 the NPDC must take social, economic, cultural and environmental issues into account in the decision making. Council's decision on whether or not the land is returned to hapu will ultimately be a balancing act. The issues relating to these four factors are:

Environmental - the environment will not be affected by a change of ownership of the land. The Resource Management Act and the council's district plan ensure that the land is protected from the negative effects of development.

Social. The Waitara land issue is potentially socially divisive. Freeholding the land would have social benefit, as homeowners would feel more secure about their property. However, freeholding may perpetuate the sense of grievance that was evident in so many tangata whenua submissions. In the long term this would have a cost to the wider community.

Any return of land to hapu could potentially create a grievance between tangata whenua and leaseholders, particularly if the hapu decided to not freehold land.

Economic. Selling the land would benefit the council and community by generating cash. This is a disincentive to return the land to hapu at no cost.

Cultural. The return of land would give hapu a base for cultural growth. It would benefit the NPDC by strengthening iwi relationships.

All factors need to be weighed up in the council's decision. On balance it does not appear to be possible to find a solution that will meet the interests of all parties.

9. To return the land to hapu and ensure that any legal and gift duty issues are addressed it is necessary to pass special local legislation. This would require the active support of parliament.

Background

In February 2003 the New Plymouth District Council received and heard submissions on its Waitara Endowments Interim Report. Following those hearings councillors submitted a number of issues for officers to address. This report is the result of an information gathering exercise that involved staff in the corporate policy, property, business advisory, and finance departments. We also sought advice from legal, taxation, and valuation professionals.

At this stage of the process the council has no preferred option. Under section 77 of the Local Government Act the council is required when making a decision to consider all reasonably practical options. Therefore, this report considers issues relating to amongst other options, freeholding to lessees and returning of land to tangata whenua. This, however, should not be taken as meaning that no other options are being considered.

There are three broad options under consideration.

1. Allowing freeholding;
2. Returning land to tangata whenua;
3. Retaining the current situation, or;
4. A combination of 1 & 2 above.

Land Disposal

One issue requiring clarification was how freeholding would work and what obligations council had to lessees.

What types of lease are there?

There are two types of Glasgow Leases involving Council owned Waitara land; however there are several variations of those lease types.

- 1 Waitara Harbour Trust registered leases with perpetual rights of renewal
 - a) 21 year residential leases
 - b) 21 year residential leases with 7 year rent reviews
 - c) 21 year commercial leases
 - d) 21 year commercial leases with 7 year rent reviews
 - e) 21 year rural lease (1 only)
 - f) 21 year recreational leases
 - g) 10 year residential leases
 - h) 10 year commercial/industrial leases
- 2 Waitara Borough registered leases with perpetual rights of renewal
 - a) 21 year residential leases
 - b) 21 year commercial leases
 - c) 5 year commercial leases

Rentals are collected mainly at 5.5 per cent of unimproved value for residential land and 6% for commercial land. They are all Glasgow Leases, with perpetual rights of renewal. The Public Bodies Leases Act 1969 governs the process of setting the rentals. Under the LG Act

2002, the NPDC will no longer have authority to lease under this act. However, under section 303 of the LGA 2002 existing leases will continue.

There are four informal grazing leases. If there were to be a change ownership of the land the NPDC would have to consult with those grazing leaseholders on how they would be affected. Most are for five-year terms, with one option of renewal for a further one-year term.

What is the value of different types of land?

	Number of properties	Area (Hectares) ¹	Rent \$000	Rateable Land Value \$000
Waitara Harbour Trust:				
Commercial	39	2.1	33	696
Industrial	17	8.5	19	444
Residential	526	40.2	182	3,815
Rural	1	25.3	5	156
Recreation	3	34.8	0	281
TOTAL	586	110.9	239	5,392
Waitara Borough Lease				
Commercial	5	.2	2	32
Industrial	2	.4	2	44
Residential	183	13.3	65	1,432
TOTAL	188	13.5	67	1,508

Endowment Land

The way council would dispose of land is largely dependent on the status of the land. Depending on whether or not reserve land is taken into the equation, between 13 and 15 hectares of the council's Waitara land is endowment land. The process of land disposal for endowments is set out in the Local Government Act 2002. The Act comes into force on 1 July 2003. Under section 140 of this act, the council can sell or exchange the land and use the proceeds for a purpose identified under section 141. Unlike the previous Local Government Act, there is no longer an obligation to purchase other lands to replace those that are sold.

One option raised in the interim report and the hearings, was returning title to hapu of Te Atiawa. The Act does not specifically allow returning of endowment land. Our legal advisors have said that if the council decided that it wished to return endowment land to hapu, the

¹ This excludes 52 acres of reserve land, which we don't derive income from.

Council would have to initiate special legislation to do so. (The grounds on which the Council could make this decision are discussed elsewhere in this report). This would clear any Trustee obligations associated with endowment properties.

There are some restrictions on how the sale proceeds are used. S. 141 stipulates that sale proceeds must be used for a purpose consistent with the purpose of the endowment. In this case it would be section 9 of the Waitara Harbour Act 1940.

- (1) All moneys received by the Council in respect of any lands hereby vested in the Corporation shall be placed to the credit of a separate account and, after payment thereout of the costs and expenses of collecting, receiving, and administering the same and any costs incurred in connection with the promotion and passing of this Act, and the maintenance and improvement of such lands, shall be applied in and towards the following purposes:-
 - (a) The prevention of erosion by the Waitara River within the Borough of Waitara, with power to construct and maintain works within and outside the said borough for such purpose:
 - (b) The maintenance and reconstruction of any bridge over the Waitara River within the said borough:
 - (c) The payment of interest and principal on the loans heretofore raised in connection with any such bridge:
 - (d) The payment of the costs and charges incurred by the Council in complying with the provisions of section six of this Act:
 - (e) The payment of a retiring-allowance of [two hundred dollars] per annum to the Secretary and Harbourmaster of the Board for a term of four years.

The simplest way to clear these obligations is to pass special legislation. There is also the issue surrounding who would be the beneficiary of sale proceeds. We have sought legal advice on this issue to clarify who is entitled monies from land sales.

In the case of general municipal endowments, it is likely that adding money to the council's general fund would fit with that purpose. In other cases where the endowments vested in local authorities for a specific purpose such as Library funding, there may be some obligation to use sale proceeds for a specific purpose. The most comprehensive way to deal with this obligation is to pass local legislation legalising the use of funds for another purpose.

Furthermore, the council's Long Term Council Community Plan (LTCCP) must include a statement of intent to sell or exchange endowment land and statement of how council will use the proceeds. Before a sale can take place council must have adopted a LTCCP. This may delay the final decision because the council will not be adopting the LTCCP until 2004 and consultation would be required as part of that process. This could potentially delay the final decision, but some kind of interim decision could be made.

Please see the attached process diagram for an explanation of the sale process.

Parks

Other land could be defined as parks. Section 138 of the Act, defines parks as those pieces of land that are used as parks but are not gazetted as reserves. The Ranfurly and the Marine

Parks are examples of this type of land. The council must consult on any proposal to sell or transfer this land.

Please see attached process diagram for an explanation of the sale process.

Fee Simple Land

Any land that council does not hold for endowment purposes, ‘parks’ or reserves is classed as fee simple land. The process of disposing of this land is through the consultation process as outlined in the Local Government Act 2002. This would mean a proposal and submission process, and inclusion of the issue in the council’s Long Term Council Community Plan consultation programme. However, the trustee obligations under section 9 of the Waitara Harbour Act 1940, would still apply and ultimately it would appear that special legislation would be required to deal with those obligations.

Land held under the Reserves Act 1977

Some of the land concerned is land held under the Reserves Act 1977. Most of this land is located in the Norman Street and Clifton Park areas, and is not used for residential purposes. To dispose of land under the Reserves Act 1977, a local authority must first revoke the reserve status of the land. This process would involve:

- publicly notifying the proposed revocation, specifying the purpose of the revocation;
- consideration of objections to the proposal;
- ministerial approval;
- council resolution;
- forwarding of resolution and objections to the Minister of Conservation.

Prior to giving permission for the reserve status to be revoked, the Minister of Conservation must consider all objections. The minister can receive submissions and make inquiries about the proposal. Only after doing this can the Minister consent to the proposal.

As former Crown land, the land would then revert back to Crown ownership and be disposed of under the Land Act 1948. However, it should be noted that section 25 (3) of the Reserves Act 1977 provides that if the land was Maori land prior to its ownership by the Crown, the Minister must offer the land back to the former owners on such terms and conditions as he/she thinks fit.

Please see attached process diagram for an explanation of the sale process.

What promises has the council made about freeholding land?

Although the lease documents do not grant lessees any right of freeholding, the question remains whether council gave lessees any assurances of freeholding.

There is some evidence that council communication with lessees could have given the impression that freeholding was likely. In June 1989, the North Taranaki District Council sent a letter to lessees saying that the council was considering freeholding. Included was a

survey form asking whether they wished to freehold. They were also told that the council was likely to:

- use the expenditure to develop land and buildings for Waitara;
- freehold at current land value;
- consider deferred payments, although it was noted that this would defeat the purpose of freeholding.

Additionally there was a NPDC resolution of 11 December 1989, which has not been rescinded. It said:

That having considered the report of the Property Officer that the former North Taranaki District Council had invited the lessees of its 800 leasehold properties in Waitara to consider freeholding, and noting that there was a significant number interested in negotiating to purchase, the following action be taken:-

*a) **The Council adopt a policy of permitting the owners of leasehold property in Waitara to purchase the freehold of those properties;***

b) The sale price be determined by way of a special valuation;

c) Prior to the application of any funds derived from the sale of leasehold properties an investigation be undertaken to determine the most satisfactory use of the capital, and one which will provide the greatest benefit to Waitara;

d) Any sale of leasehold property in Waitara be preferably by way of settlement in full on transfer of title, provided that opportunity shall be given for sales to be by way of deferred payment the detail for which shall be determined by the Administration and Finance Committee;

e) The foregoing proposed action be referred to the Waitara Community Board for comment.

The Waitara Community Board agreed with the resolution and recommended that the proceeds be used to the betterment of the Waitara Ward and that the money be invested and only the income from the investments be spent. In today's climate it is unlikely that this is policy would be followed because after restructuring the policy has been to put all council's funds in one pool.

Some lessees could well argue that they brought their property based on this assumption. Two further letters were sent to lessees. In 1994, Mayor Stewart wrote to lessees that the land was private land and it was the Crown's responsibility to settle Treaty issues. In 1997, Mayor Stewart told lessees that the council was still committed to the Land Vesting Bill, which would allow the lessees to freehold. A perusal of the individual files for leases did not uncover any promises to individual lessees that the land would be freeholded, however, some verbal assurances may have been given.

Are there any discussions on file about how freeholding might work?

Yes. In 1989, the NPDC contracted Landcorp to carry out an assessment of the process required for freeholding. They recommended the following course of action:

1. Calculation of the lessee/lessor interest in the land.
2. An instalment system of payments and a limited freeholding time period.
3. Valuation New Zealand would complete a valuation of the properties before an offer to lessees was made.
4. If land were sold at full market value then the cost of survey, valuation etc, would be borne by the council. If the lessee's interest was to be taken into account then the cost could be apportioned.
5. GST would be charged on all sale prices. (Residential land is deemed to be inclusive of GST, commercial/other is exclusive)
6. Special legislation to be passed to allow council to free up use of funds.

Financing Freeholding

Many lessee submissions said that they had trouble securing finance for their properties. As they had a number of mortgages to leaseholders and because they are a local bank where it was easier to get a response on policy issues, we asked the TSB what their policy on freehold land was and whether mortgage opportunities differed between freehold and leasehold land. They replied that the mortgages themselves did not differ, but the security value did. They said:

“From a lenders perspective, the value available to secure a loan advance is restricted to the value of the improvements i.e.: buildings only, consequently the level of lending that the bank will advance is less than that against a property of a similar value but of a freehold nature.”²

The bank will lend up to 75% of registered valuation of the lessee's interest in the registered valuation of lessee improvements in land and buildings or 75% of buildings based on rateable value.

Freeholding and its Effect

Effect of Freeholding on property values and development

Many submissions claimed that the properties would increase in value if they were made freehold. Prior to freeholding any estimate of how much, if at all, property values would appreciate after freeholding would be based on best guesses. This is because there are a number of opposing influences.

On the positive side, it would be reasonable to assume that the market places value in the fact a freehold property is owned, as is evidenced by the premium paid for in the costs of owning property over renting it. This will be to some degree the result of the ability to make improvements to the property (which is not usually the case for rental properties) the possibility of capital gains and security of occupancy. Waitara lessees can, however, make improvements to their properties and have a high degree of security over their occupancy

² P Gerrard to R Willan 9 April 2003

rights, so it is uncertain whether these properties would appreciate, due to these factors, once freehold.

Freeholding might be a financially advantageous if lessees obtain the land at below market rates. If this were the case, once the properties enter the general property market, it would be expected that values would go up. However, a factor in determining price will be the lessor's interest. In other cases where the New Plymouth District Council has freeholded land, the value of the land was set at the lessor's interest in the land, which is the ongoing rental capacity rather than the full freehold value. However, the declining market values in Waitara may mean that the market value is less than a figure based on a capitalisation of interest. With residential rents set at around 5.5% of the land's value, the lessor's interest is likely to be less than market valuation. Therefore it may be simpler to base the freeholding price on the market valuation of the freehold and this would suggest that the properties would be unlikely to appreciate dramatically.

The main factor against properties appreciating once freehold is that the lease costs are relatively cheap – around 5.5% for residential over the review period. This makes leasing the land slightly cheaper paying prevailing mortgage rates (around 6.5 – 7%) for freeholding it. Taken on its own, this factor may mean that the increase in land value is negligible.

The table below shows how little the properties have increased. Once inflation, which for this period was 21.7 percent is factored in, the leasehold land has actually decreased in value over time. A study of lease valuations between 1986 and 1993 shows that between 1986 and 1993 the average rental at time of renewal fluctuated from \$1107 (1987) to a low of \$329 (1991). The most recent figures show that the average rental for the 780 properties currently leased is \$405. A sample of 13 leasehold properties shows how little the properties have appreciated.

Valuation Ref	1992 valn.	govt.	1993 Lease Renewal valn.	2001 Valuation	Govt	% Appreciation 1993-2001
11561/134	5300		5100	5500		8
11561/135	5300		5100	5500		8
11561/325	7900		7800	8500		10.25
11571/274	7900		7500	8500		13.3
11571/275	7900		7500	8500		13.3
11571/298	7900		7600	8500		11.8
11571/305	7900		7600	8500		11.8
11571/307	7900		7600	8500		11.8
11571/315	7900		7600	8500		11.8
11571/316	7900		7600	8500		11.8
11571/317	7900		7600	8500		11.8
11571/320	7900		7600	8500		11.8
11571/321	7900		7600	8500		11.8

Another factor that will influence the market is demand. Regardless of whether or not lessees are financially better off freeholding or leaseholding, the freehold sections are *perceived* as more desirable. However, the relative price increase is likely to take some time to filter through. Below is a rough estimate of what could happen to individual properties:

	Leasehold	Freehold
Value of improvements	100,000	100,000
Value of Property	107,000	120,000
Land Value	7000	20,000

Another factor is the comparatively low valuations, which might result in low mortgage debt. In the past, various mortgage-lending institutions have offered to assist freeholding by taking into account the potential market value increase. Valuation advice suggests that if the offer to freehold were ongoing, then the freeholding package would be more attractive.

To assume that properties would rise in value is, on balance, highly speculative and dependent on a number of market factors. It is not therefore recommended as a consideration for decision-making within this process.

Incorporating Lessees' Interest

A major determinant of whether the lessees' freehold will be the price. Some submissions argued that the council should take into account the lessee's interest when determining a sale price. This is not considered appropriate. Put simply "a lease is a lease". The leases do not include capital payments to warrant a calculation of reversionary interest. This is akin to only the interest and not the capital having been paid on the mortgage. For this reason it is not recommended that the rent paid historically by lessees be taken into account when determining a freehold price.

Transfer to hapu and the lease status

The current leases are a contract entered into in good faith between lessees and the NPDC. If the land were vested Te Atiawa, the current leases would remain. This is standard practice for transfers of land with leases on it.

In reality very little would change for lessees. One difference would be that Te Atiawa would not be able to use a lease under the Public Bodies Leases Act 1969. However, they would be able to use 21-year Glasgow leases. If the council decided to vest land in hapu it would need a legal opinion on the legal authority of any new lease.

Returning Land to Original Owners

If the land were handed back to tangata whenua, given that NPDC is unable to facilitate a Treaty settlement, on what grounds would we be doing so?

There are three reasons why the NPDC could decide to return to land.

1. The first ground for returning this land is strategic. An existing council strategic setting (Iwi Relationships) has the objective of "*New Plymouth District will be a community where the special relationship with the Tangata Whenua is strengthened and valued.*" This is one of council's five strategic issues. It is evident from the submissions received from tangata whenua that they would view the return of council's Waitara endowments as going a long way toward meeting this objective.

2. The second ground for returning land relates to the provisions of the Local Government Act 2002, where councils must consider the social, economic, environmental and cultural impacts of their actions. In this case the issues can broadly be thought of as:

Environmental Impact

The environment impact of a change in land ownership is minimal, because regardless of who owns the land the environment remains protected, by the Resource Management Act, and the District Plan.

Economic Impact

The main economic consideration is the relative value of any cash received from land sales and rent, and the potential cost of foregoing these sources of income. The Council must take into consideration, its financial obligations. Section 101 of the LGA 2002 says:

- (1) A local authority must manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community.
- (2) A local authority must make adequate and effective provision in its long-term council community plan and in its annual plan (where applicable) to meet the expenditure needs of the local authority identified in that long-term council community plan and annual plan.
- (3) The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—
 - (a) in relation to each activity to be funded,—
 - (i) the community outcomes to which the activity primarily contributes; and
 - (ii) the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and
 - (iii) the period in or over which those benefits are expected to occur; and
 - (iv) the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and
 - (v) the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and
 - (b) the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the community.

The issue here is whether the NPDC believes that it can return land at no cost without compromising these responsibilities.

Social Impact

The council will need to balance any impact on lessees, with the impact on Te Atiawa. Socially, both freeholding and returning land to tangata whenua will have consequences, as both options will affect how people relate to each other in Waitara. The lessees pointed out this would improve their quality of life because they would have a more secure form of land ownership. While freeholding would benefit the lessees, the evidence received in submissions suggests that this would also perpetuate

the sense of injustice amongst tangata whenua. Returning the land to hapu may create resentment from leaseholders.

Cultural Impact

From a cultural perspective, the terms of any return of land to Te Atiawa could achieve a strong positive cultural impact. It would create a base for cultural growth amongst hapu.

Balancing Objectives

Under section 14 (2) of the LGA 02 the NPDC must resolve any conflicts between these principles in a fair, open and democratic manner. Therefore if after having consulted and considered all the issues, the NPDC decided that on balance the social and cultural benefits of returning land to hapu out weighed the costs of not freeholding and foregoing income, then the council could decide to return the land. It would then need to find the most appropriate way to do so. It may also decide that on balance the most appropriate course was to freehold the land, or it may decide that it wanted to retain the status quo.

3. The third ground for returning the land would be that by doing this the council would also be demonstrating a strong sense of justice. There is little credible doubt that agents of the Crown treated a group of citizens of this area, i.e. affected hapu, wrongfully and illegally. As the Waitara Endowments Interim Report points out this has been acknowledged by the Crown for many years. In 1927 the Sim Commission recognised that the land should never have been taken:

Both the Taranaki wars ought to be treated we think as having arisen out of the Waitara purchase and judged accordingly. The Government was wrong declaring war against the Natives for the purpose of establishing the supposed rights of the Crown under that purchase. It was, as Dr Featherston called it an unjust and unholy war and the second war only a resumption of the original conflict. Although the Natives who took part in the second Taranaki war were engaged in rebellion within the meaning of the New Zealand Settlements Act 1863, we think under the circumstances, they ought not to have been punished by the confiscation of any of their lands.³

In 1996, the Waitangi Tribunal's Report confirmed this position. The NPDC is, as a result of history, the only body that can return parts of the Pekapeka Block.

Financial Implications of Returning Land

This section of the report demonstrates the current financial position of the endowments. It also deals with the financial implications of returning land to hapu. It is clear from the data that the land is a grossly under-performing asset. The council does not get a lot of income on the land once the costs are taken out. It is difficult to estimate how much the land could net the NPDC. The revenue from sale of land would be dependent on how the market demand for the properties, and other factors such as the cost freeholding, which would vary on whether the land was sold as one block or individually.

³ RDB, p. 52465

Current Financial Data

Waitara Harbour Trust

Number of properties:	586 (approx)
Total Hectares:	110.9 (approx)
Annual Rental:	\$280,000 inclusive of GST for residential, exclusive of GST for non-residential

Actual and Budget Comparisons				
	2001 Actual \$000	2002 Actual \$000	2003 Budget \$000	2004 Forecast \$000
Operating costs inc. Overheads	102	92	92	125 ⁴
Maintenance/programmes ⁵	46	106	166	71
Total	148	198	258	196
Rental income	271	235	280	280
Net Transferred to Reserve⁶	123	37	22	84

In the event that council no-longer holds these properties, the impacts on the Council's current annual budget is estimated at,

Loss of Rental Income:	\$280,000
Decrease in Costs	<u>\$100,000</u>
Net	\$180,000

The net income can only be applied to the purposes in the Waitara Harbour Act 1940, or transferred to the reserve for application in future years. This has no impact on Council's rates requirements other than the balance of costs (\$36,000), which would still be incurred unless there is some savings in those support activities. Council would no longer administer 586 properties.

Waitara Borough Leases

Number of Properties	188 (approx)
Total Hectares	13.5
Annual Rental	\$76,000 inclusive of GST for residential, exclusive of GST for non-residential

Actual and Budget Comparisons							
	2001 Actual \$000	2002 Actual \$000	2003 Actual \$000	2004 Actual \$000			

⁴ Includes financing charge of \$36,000 - new

⁵ Dependent on needs at the time

⁶ Under the Waitara Harbour Act, any net surplus must be retained and applied to the maintenance of the properties or else forwarded to the TRC.

Operating costs inc. Overheads	21	25	34	34
Rental Income	74	65	76	76
Total	53	40	42	42

In the event that Council no longer holds these properties the impact on the Council's budget is estimated at:

Loss of Rental Income:	\$76,000
Decrease in Costs	<u>\$26,000</u>
Net	\$50,000

This would be a net decrease in Council's overall funding requirements by \$50,000 that would need to be funded by rates. Council would no longer administer 188 properties and would give up \$1 million of assets.

Effect on Council Finances

Operating

Waitara leases revenue	\$356000
Estimate of expenditure on managing Waitara leases	\$126000

Net Income **\$230000**

Financial Position

As the Waitara Endowments Interim Report Points out, the rateable value of council's land is around \$7 Million. If the land were sold this would decrease once the cost of freeholding was taken out. Costs would be valuations, conveyance, and any other consultancy work. This could potentially be expensive. Where titles are being transferred to the same owner a \$138 flat fee for first title, then \$5 each subsequent title. (This could be as much as \$110,400, which is a \$138 cost for each of the 800 properties). This does not include legal fees, of around \$1000 per property, depending on title searching required, which could be up to \$800,000 (\$500 if every property was sold individually). This a potential cost of \$510,000. However, the council would normally to pass this cost on to lessees. If all properties were transferred to one vendor the cost would be approximately \$1000 for all properties.⁷

A return of land to Te Atiawa would also involve one-off activities incurred in transferring the properties to another party such as:

- Informing and liaison with lessees
- Costs associated with changing lessor and registering with Linz.
- GST and gift duties. Any sale of commercial land usually has a GST component. If land, to avoid GST the council would have to return the land as an unconditional gift. Gift duties are more complex, it appears that the only way to avoid them is pass a special Act of Parliament to deal with the issue. Gift duties are currently 25% on any gift over \$27,000. Given a potential fair market value as noted above of \$4.36

⁷ Figures supplied by Govett Quilliam

million, gift duty could be up to \$1.1 million. This would have to be cash funded by NPDC.

How would the rates be affected by transferring land to Te Atiawa?

It is unlikely that transferring land to Te Atiawa would affect rates. In the case of the leased lands the lessees are responsible for paying the rates and this may continue. Maori land that is not rated tends to be land that is of little value, and not land that is earning income. It is likely that if the land ownership changed then the situation would remain.

Effect on leases

There would be no change to the rights of leaseholders because land transfers include leases. It could be possible to actually improve the position of leaseholders by requiring that Te Atiawa allow leaseholders to a freehold as a condition of returning land to tangata whenua. Te Atiawa, and the appropriate hapu, could be allowed to keep the proceeds of the freeholding under such an arrangement.

Other Issues

The following are some other issues specific to Waitara lands that councillors raised.

What is the risk of litigation?

The NPDC needs to ensure that its decision making process withstands legal scrutiny. Given the contentious nature of this issue, there is a high risk of litigation. This can be mitigated by ensuring that the decision making process is through, logical and reasonable. The Council must ensure that there is no element of predetermination. The Council also need to demonstrate that its decision was made in accordance with the law.

The land concerned is not a strategic asset (vital to the council's continued operation), but the decision to alienate the land is a significant decision and therefore it requires a high level of consultation. We sought legal advice on the steps the council would need to make to ensure that its decision making processes would stand scrutiny. The decision making process must comply with sections 77, 78, 80, 81 and 82 of the Local Government Act 2002. These can be summarised as:

Section 77

- Identification of reasonably practical options
- Consideration of the relationship between Maori and their land
- Consider the benefits and costs of each option in relation to future social, economic and cultural well-beings of the district
- The extent to which community outcomes will be prompted by each option
- The impact of each option on the Council's capacity to meet its statutory responsibilities.
- Any other relevant matters

Section 78

- Council to consider the views and preferences of those likely to be affected by the decision
- Views of those affected are given due consideration

Section 79

- Council must make judgements about how the level of consultation required, and;
- The extent to which the different options are identified and assessed
- The degree to which benefits and costs are to be quantified
- The extent and detail of information to be considered
- The extent and nature of any written record to be kept.
- Have regard to the principles of local government, the councils, resources, the range of options and the views of other persons

Section 81

- Council must provide opportunities for Maori to participate in the decision making process.

Section 82

- Council is required to ensure that it has processes in place for consulting with Maori

Other Requirements

In addition to the consultation requirements the council must ensure that any decision on the change of ownership of the land is legal. The previous section on land disposal explains the process required for freeholding. If the land were returned to hapu, it is likely that the Council would have to promote special legislation to allow this transfer to take place.

Can any legal action be taken by tangata whenua against NPDC for loss of the proceeds of leaseholding? Could any agreement include a waiver on compensation money?

No. Tangata whenua can make a claim to the Crown for the loss of income from the land as a result of confiscation.

What vehicle/entity would be appropriate for returning land or money to Te Atiawa?

The Te Ture Whenua Act 1993 gives many options for returning the land, including vesting in hapu and iwi trusts. Part 12 of this Act sets out the different types of trusts that can be set up by the Maori Land Court (MLC). It has been included as an appendix to this report. Given that the area covered by the land would probably make the most sense to return land to hapu with interests in Waitara. The MLC is able to undertake the procedures of setting up a Trust. One option is the benefit of returning land to a trust. This would be advantageous to both parties because it would reduce gift duties and taxes. This is an issue that would require further working through with affected hapu.

It is recommended that if the NPDC decides to return land and that it negotiates with tangata whenua to get an agreement regarding the concept and principles of a transfer and a trust. The MLC would then use its process to determine title to the land and who is entitled to be a beneficiary of the Trust. Land would remain in trust for the beneficiaries until the court had determined the rightful owners.

Will any transfer of land to Te Atiawa by the NPDC affect Quantum offered by the Office of Treaty Settlements?

No it will not. The Office of Treaty Settlements has confirmed that any return of land to Te Atiawa by the NPDC outside of the Treaty Settlements process will not affect the amount of redress offered to Te Atiawa by way of Treaty settlement.

Relationship of Department of Conservation and the Taranaki Regional Council to the land

Under the provisions of the Reserves Act 1977, the Department of Conservation, and the general public have a role to play in disposal of reserve lands.

The Taranaki Regional Council has indicated that as the benefactor of surplus funds under the Waitara Harbour Board Act 1940, it has an interest in the proceeds of freeholding and any surplus funds presently held by NPDC. It is acknowledged that any discussions on transfer of the land would require consultation with the Regional Council.

What is the basis for not allowing lessees to remove improvements on surrender of leases?

There is no legal basis for requiring that lessees keep the improvements on the land. However, council has tended to encourage this because it ensures that it is easier to negotiate a new lease, if there is a house on the land. It is recommended that this practice cease.

What information can we find out about the demographic profile of Waitara?

Please see the attached appendix for further information.

What does Pekapeka mean?

It is fair to say that the definition of Pekapeka is dependent on personal perspectives. For some, it may mean specifically Te Teira's block. For others it represents the confiscation of the whole Waitara area. While the events associated with this land are of enormous significance, the exact meaning of "Pekapeka" is a side issue, because the council can only determine the future of land it owns.

Other Examples of Leasehold Land

Other Councils

Staff put out a general query via email to see what other councils had done in terms of freeholding their land, to see if any issues had arisen in regard to tangata whenua land issues. We received several replies.

Dunedin City Council

- The Dunedin City Council received its endowments from private benefactors in the 1840s.
- It plans to sell its endowments to leaseholders and reinvest the proceeds in high yielding investment properties.

Tauranga District Council

- The Tauranga District Council recently sold former harbour board endowments that it inherited in the 1989 harbour board restructuring.
- Land was mainly commercial lease.
- Mostly sold to lessees.
- No tangata whenua objections to the sale.
- Tauranga is also a district where land was confiscated but this did not form part of the decision making process.

Whakatane District Council

- Whakatane District Council had a large number of harbour endowment lands that were commercial and industrial properties on perpetual leases,
- Previously owned by the harbour board and transferred to the Whakatane District Council in 1976 when the council took over the harbour functions.
- Rented at 5% of the unimproved value - below normally prevailing market rents.
- Rent is reviewed only every 14 years.
- Given that the properties did not generate a lot income this council decided to sell surplus properties to lessees.

Wanganui District Council

- Wanganui has considerable harbour endowments, to fund river improvements, and flood protection etc.
- Receive around \$350,000 per year from these endowments and consider them to be a vital piece of their district's infrastructure.
- Recognises that there are claims from local hapu over this land.
- Have agreed that they will endeavour to include some of these properties in Office of Treaty Settlements Land Bank for the Wanganui Region. Whilst they haven't meet with the Office of Treaty Settlements, they believe that the lack of land available for Treaty settlement in their district makes this a realistic option.

Other Examples

The Grey Institute Trust (New Plymouth)

- Concerns three and a half hectares of former railway land.
- This was offered back to the owners from whom the land was taken from under the Public Works Act 1981- the Grey Institute Trust.
- Trust found that it had building restrictions.
- Offered to give land back to Ngati Te Whiti.
- Land had leases were on a one-year basis.
- The vesting of the land in Ngati Te Whiti did not affect in any way the terms of the lease.
- Land was vested in a charitable trust. The trust is to undertake the following roles:

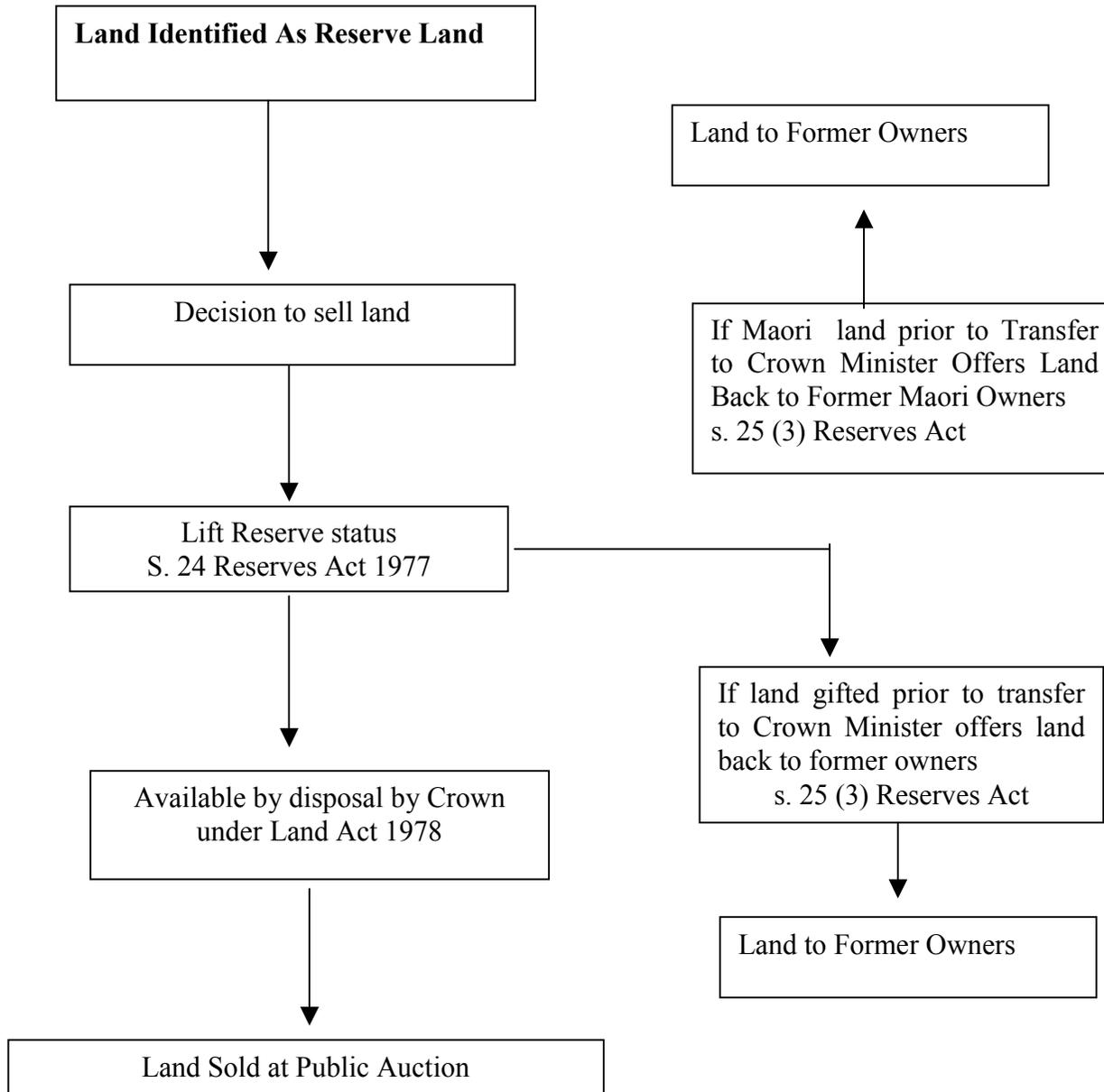
West Coast Leases (South Taranaki)

- In this instance the landowner did not change, it remained in Paranihi Ki Waitotara (PKW) ownership.
- Lease conditions were similar to Waitara, mainly 21-year perpetual leases on 4-5 % rental of the unimproved land value.
- Freeholding was permitted as long as owners agreed to it.
- No obligation to purchase other land once it was alienated because PKW are private landlords.
- Under Maori Reserved Land Amendment Acts of 1997 and 1998 changed the basis of the leases. New legislation brought in changes that brought in market rents with 7-year rent reviews.
- Land is now vulnerable to economic conditions such as supply and demand. This accounts for the recent rent rise experienced by lessees in South Taranaki as land prices have increased.
- Both lessee and lessor have first right of refusal of each other's interest.
- To compensate for these changing conditions, the Crown offered a one off compensation payment to lessees and lessors.

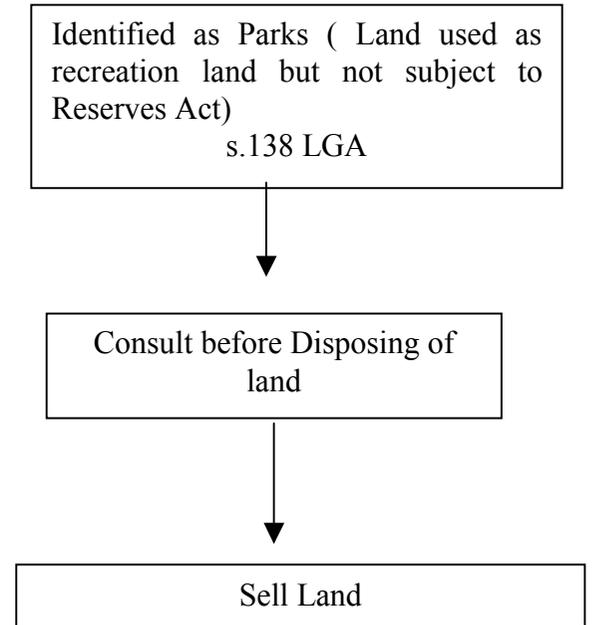
Appendix 1 – Land Sale Process Diagrams

Reserve Land

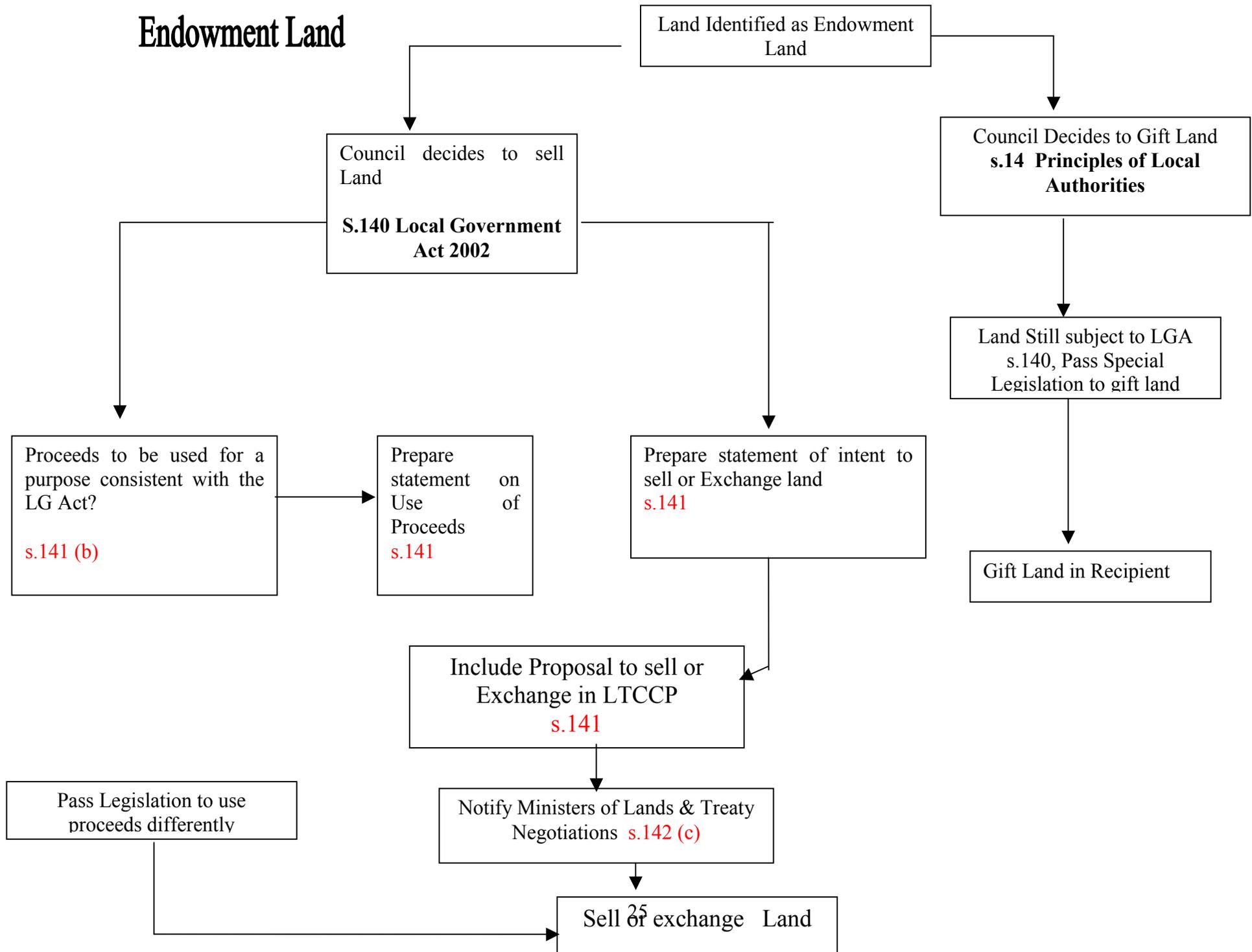
Land Identified as Endowment Land



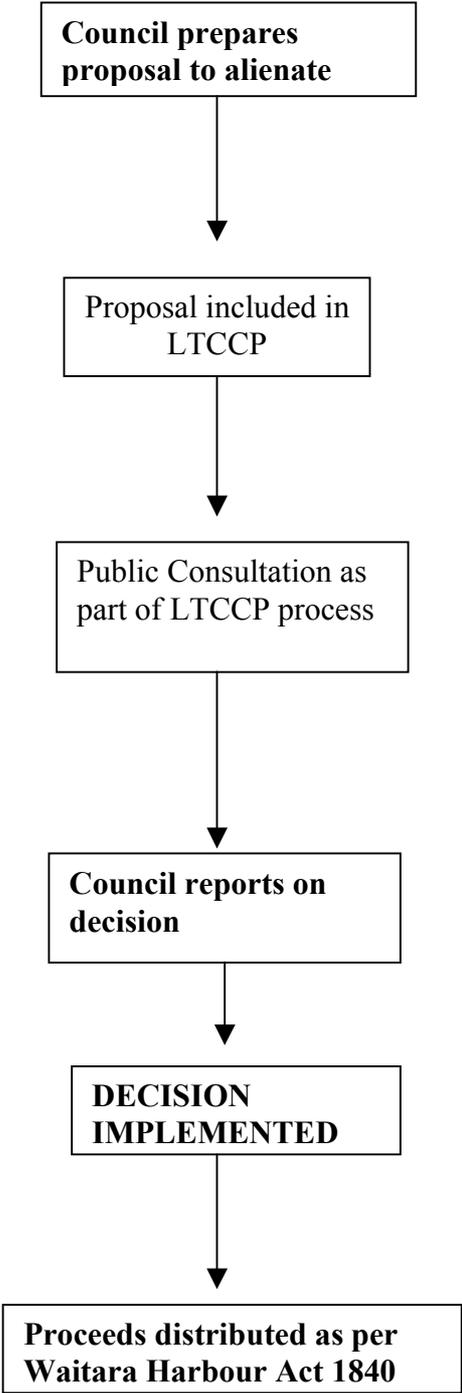
Parks Land



Endowment Land



Fee Simple Land Alienation



Appendix 2 – Demographic Profile (not available online –request email copy)

This powerpoint document is not available on online. To request an copy to be e-mailed to you [please e- mail](mailto:willanr@npdc.govt.nz) your request to willanr@npdc.govt.nz

**Appendix 3 – Waitara Harbour 1840 (Please note this Online Copy is
unformatted copy from a database)**

WAITARA HARBOUR ACT 1940

1940 No 6 (Local and Personal)

An Act to provide for the Dissolution of the Waitara Harbour Board and to make certain Incidental Provisions.

[6 December 1940

Contents

(List of Sections)

1. Short Title and commencement
2. Interpretation
3. Special Act
4. Dissolution of Waitara Harbour Board
5. Assets and liabilities of Board transferred to Waitara Borough
6. Waitara Borough Council to maintain harbour lights
7. Foreshore endowments vested in New Plymouth Harbour Board (Repealed)
8. Registration of title
9. Application of revenue from endowments
10. Abolition of the harbour district (Repealed)
11. Rating areas of New Plymouth Harbour Board amended (Repealed)
12. Amendment of constitution of New Plymouth Harbour Board (Repealed)
13. Repeals

SCHEDULES

SCHEDULE 1

SCHEDULE 2 (Repealed)

SCHEDULE 3

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:-

1. Short Title and commencement-

This Act may be cited as the Waitara Harbour Act 1940, and shall come into force on the first day of April, nineteen hundred and forty-one.

2. Interpretation-

In this Act, unless the context otherwise requires,-

``Board" means the Waitara Harbour Board constituted under the [Harbours Act 1950]:

History

The reference to the Harbours Act 1950 was substituted, as from 15 October 1950, for a reference to the Harbours Act 1923 pursuant to s 269 Harbours Act 1950 (1950 No 34).

``Corporation" means the corporation of the Borough of Waitara:

``Council" means the Waitara Borough Council.

3. Special Act-

This Act shall be deemed to be a special Act within the meaning of the [Harbours Act 1950].

History

The reference to the Harbours Act 1950 was substituted, as from 15 October 1950, for a reference to the Harbours Act 1923 pursuant to s 269 Harbours Act 1950 (1950 No 34).

The term ``Special act" was omitted from the Harbours Act 1950, as from 1 December 1961, by s 2 Harbours Amendment Act 1961 (1961 No 114).

4. Dissolution of Waitara Harbour Board-

The Waitara Harbour Board is hereby dissolved.

5. Assets and liabilities of Board transferred to Waitara Borough-

(1) With the exception of the lands described in Schedule 1 hereto, all property, real and personal, belonging to the Board is hereby vested in the Corporation for municipal purposes subject to the provisions of section nine hereof.

(2) All rents, dues, and other moneys whatsoever payable to the Board shall become payable to the Council.

(3) All proceedings pending by or against the Board may be carried on or prosecuted by or against the Corporation.

(4) All debts, liabilities, or engagements of the Board shall become debts, liabilities, or engagements of the Corporation.

6. Waitara Borough Council to maintain harbour lights-

(1) The Council shall in respect of the Waitara Harbour and the approaches thereto, as and when required by the [Minister of Transport], erect lights, lay down buoys and beacons, and replace, remove, or discontinue any harbour light, signal, buoy, beacon, or other sea-mark, or make any variation in the character of the same or in the mode of exhibiting the same.

(2) If the Council fails or neglects to comply with such requisition within a reasonable period after receiving the same, the [Minister of Transport] may take all such steps and do all such acts as may be necessary to give effect to such requisition, and the cost and charges of so doing shall be a debt due from the Council to the Crown, and may be recovered accordingly.

History

The references to the ``Minister of Transport" were substituted for references to the ``Minister of Marine" by s 6(2)(a) Ministry of Transport Amendment Act 1972.

7. Foreshore endowments vested in New Plymouth Harbour Board (Repealed)-

History

Section 7 was repealed, as from 24 October 1952, by s 10 Local Legislation Act 1952 (1952 No 68).

[Click here to see the historical text. 06 Dec 1940 to 23 Oct 1952.](#)

8. Registration of title-

In respect of any real property vested in the Corporation and the [Taranaki Harbour Board] respectively pursuant to sections five and seven hereof the following provisions shall apply:-

(a) It shall be the duty of the District Land Registrar or the Registrar of Deeds, as the case may be, on application by the Council or the [Taranaki Harbour Board], and without payment of any fee, to register the Corporation or the [Taranaki Harbour Board], as the case may be, as the proprietor thereof:

(b) No stamp duty under the [Stamp and Cheque Duties Act 1971], shall be payable in respect of the vesting of such real property in the Corporation or the [Taranaki Harbour Board].

History

The reference to the Stamp Duties Act 1923 was substituted, as from 1 January 1955, by a reference to the Stamp Duties Act 1954 pursuant to s 175(1) Stamp Duties Act 1954 (1954 No 52). That reference was substituted, as from 1 January 1972, by a reference to the Stamp and Cheque Duties Act 1971 pursuant to s 101(1) Stamp and Cheque Duties Act 1971 (1971 No 51).

The references to the "Taranaki Harbour Board" were substituted, as from 2 September 1950, for references to the "New Plymouth Harbour Board" pursuant to s 4(1) Taranaki Harbour Board Act 1954 (1954 No 3 (L)).

9. Application of revenue from endowments-

(1) All moneys received by the Council in respect of any lands hereby vested in the Corporation shall be placed to the credit of a separate account and, after payment thereof of the costs and expenses of collecting, receiving, and administering the same and any costs incurred in connection with the promotion and passing of this Act, and the maintenance and improvement of such lands, shall be applied in and towards the following purposes:-

(a) The prevention of erosion by the Waitara River within the Borough of Waitara, with power to construct and maintain works within and outside the said borough for such purpose:

(b) The maintenance and reconstruction of any bridge over the Waitara River within the said borough:

(c) The payment of interest and principal on the loans heretofore raised in connection with any such bridge:

(d) The payment of the costs and charges incurred by the Council in complying with the provisions of section six of this Act:

(e) The payment of a retiring-allowance of [two hundred dollars] per annum to the Secretary and Harbourmaster of the Board for a term of four years.

(2) The Governor-General in Council may at any time after the first day of April, nineteen hundred and sixty-one, and from time to time thereafter, if it appears that there are surplus moneys in the separate account which may not be required by the Council for the purposes set out in the last preceding subsection, appoint any person or persons to be a Commission under the Commissions of Inquiry Act 1908, to determine whether the whole or any part of those moneys is required by the Council for the purposes set out in the last preceding subsection. If the Commission determines that the whole or any part of the surplus moneys is not so required by the Council, the surplus moneys, or so much thereof as the

Commission shall determine, shall be paid by the Council out of the separate account to the New Plymouth Harbour Board for general harbour purposes.

(3) The costs of any such inquiry, or such part thereof as may be fixed by the Commission, may be paid out of the separate account.

(4) The Council and the New Plymouth Harbour Board may from time to time after the first day of April, nineteen hundred and sixty-one, agree upon the amount of any surplus moneys which may be available and not required by the Council for the purposes set out in subsection one of this section, and the Council may with the consent of the Governor-General in Council pay such amount to the New Plymouth Harbour Board for general harbour purposes.

Editorial Note

See s 3 Reserves and Other Lands Disposal Act 1969 (1969 No 131) as to exchange of certain land subject to this Act for certain recreation reserve and stopped street.

History

The reference to "two hundred dollars" was substituted, as from 10 July 1967, for a reference to "one hundred pounds" pursuant to s 7(1) Decimal Currency Act 1964 (1964 No 27).

10. Abolition of the harbour district (Repealed)-

History

Section 10 was repealed, as from 21 October 1955, by s 10(1) Taranaki Harbour Board Empowering Act 1955 (1955 No 6(L)).

[Click here to see the historical text.](#) 06 Dec 1940 to 20 Oct 1955.

11. Rating areas of New Plymouth Harbour Board amended (Repealed)-

History

Section 11 was repealed, as from 21 October 1955, by s 10(1) Taranaki Harbour Board Empowering Act 1955 (1955 No 6(L)).

[Click here to see the historical text.](#) 06 Dec 1940 to 20 Oct 1955.

12. Amendment of constitution of New Plymouth Harbour Board (Repealed)-

History

Section 12 was repealed, as from 22 October 1948, by s 2(5) Harbours Amendment Act 1948 (1948 No 18).

[Click here to see the historical text.](#) 06 Dec 1940 to 20 Oct 1955.

13. Repeals-

The enactments mentioned in Schedule 3 hereto are hereby repealed.

SCHEDULES

SCHEDULE 1

FIRSTLY, all that area in the Taranaki Land District containing approximately twenty-nine (29) acres, known as A 2 of Part A, Waitara West District, Block I, Paritutu Survey District, being part of the land included in certificate of title, Volume 110, folio 148, bounded towards the west by A 1 Part A, towards the north generally by the low-water mark of the sea to the Waitara River; towards the north-east by the said river to the training-wall on the left bank of the Waitara River; thence by the said training-wall to high-water mark; thence towards the south generally by the high-water mark of the sea to the point of commencement.

Secondly, all that piece of land in the Waitara East District, Block I, Waitara Survey District, situated between high-water mark and low-water mark and extending from the east bank of the Waitara River to the Waihi Stream.

SCHEDULE 2 (Repealed)

History

Schedule 2 was repealed, as from 21 October 1955, by s 10(1) Taranaki Harbour Board Empowering Act 1955 (1955 No 6(L)).

[Click here to see the historical text. 06 Dec 1940 to 20 Oct 1955.](#)

SCHEDULE 3

1879, No 12 (Local)-The Waitara Harbour Board Land and Borrowing Act 1879.

1881, No 7 (Local)-The Waitara Harbour Board Loan Act 1881.

1883, No 13 (Local)-The Waitara Harbour Board Loan Act 1883.

1904, No 15 (Local)-The Waitara Harbour Board Foreshore Endowment Act 1904.

1907, No 17 (Local)-The Waitara Harbour District and Empowering Act 1907.

1910, No 18 (Local)-The Waitara Harbour Board and Borough Empowering Act 1910.

1914, No 17 (Local)-The Waitara Harbour Board Empowering Act 1914.

1915, No 68-The Reserves and other Lands Disposal and Public Bodies Empowering Act 1915: Section 46.

History

The reference to the Harbours Act 1923 was repealed, as from 22 October 1948, by s 2 Harbours Amendment Act 1948 (1948 No 18).

Appendix 4 – Part 12 Te Ture Whenua Act

To view this act please click on this link:

<http://rangi.knowledge-basket.co.nz/gpacts/public/text/1993/an/004.html>