Waitara Endowments Interim Report

(Draft)

Waitara late 1960s (Taranaki Museum Negative LN1210)

1.1..1 November 2002

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2 INTRODUCTION

2.1 The Land

This report covers an issue that has caused much vexation for the New Plymouth District Council (NPDC) and the people of the Waitara area. It concerns approximately 179.71 hectares, (442 acres) of endowment land in the Waitara Township.[1] The land value of these sections is estimated to be around $7 Million. As of June 2002 there were:

- 164.194 hectares of former harbour lease land in Waitara,
- 15 .517 hectares of former borough lease land.

Of this land:

- Nearly 40.9 hectares is used by the council primarily for parks and public health purposes,
- 32 hectares is land that is not leased on a formal basis, it includes vacant land and land under informal grazing leases. This is land that could be considered for disposal, although it may be that other land used as parks and reserves may also be available for disposal.

While most debate has been focused on residential sections, only 54.156 hectares, 13.461 hectares of borough lease land and 40.695 hectares of harbour trust is used for this purpose. The rest of the leased land is used for other purposes, 11.501 hectares of harbour trust land is industrial lease, 2.511 hectares is commercial lease, 84.195 hectares are used for recreation reserves and there is also a 25.293-hectare rural property. Of the borough endowments, 0.222 hectares are used for commercial purposes, 0.368 for industrial purposes and 1.467 hectares for recreation reserves.

[1] Endowment land is land gifted to a local authority for funding purposes.

2.2 Summary

Report Brief

The author was not given a formal brief regarding issues to be covered in the report. During the submission phase of the NPDC's Annual and Long Term Strategic Plan, the council received four submissions on its land in Waitara. The submissions were from a variety of groups. One submission was from the Taranaki Health Promotion Unit who pointed out that the council owned confiscated land and was in a unique position to transfer land to local hapū and begin "meaningful dialogue" about the use and return of land.[2] The council also received a submission from Rusty Kane of New Plymouth, on behalf of the People's Choice Party. The submission is a collection of letters sent to Mr Kane, in response to a letter published in the *Waitara Angle.* Some letters are from leaseholders supporting freeholding; others are from those opposed to freeholding.[3] Mr Ray Watembach of Waitara sent a submission supporting the return of the harbour trust leases to hapū.[4] Donna Eriwata of Waitara, on behalf of Otaraua Hapu Management Committee, sent a submission (she had previously submitted on this issue). Ms Eriwata asked for a breakdown of the harbour trust account and an education package detailing the history of the land.[5]

At a meeting of the council on 29-30 May 2002, the New Plymouth District Council resolved to make a decision on the future of the Waitara Leases after the completion of an interim report. In a preliminary report to council, Ian Baker, Property Manager, suggested that the report consist of:

- research on land history;
- review of legal opinions;
- a report to address the following issues:
    - history;

[2] Submission no. 122

[3] Submission no. 123

[4] Submission no. 154

[5] Submission no. 199. Ms Eriwata also asked for the council to oppose Harry Duynhoven's sponsorship of the New Plymouth Land Vesting Bill. However, Mr Duynhoven actually sponsors the Bill on behalf of the NPDC

- governance;
- legal;
- financial;
- policy.[6]

This report is the interim report to council. It covers the history of the land, governance issues, some legal issues and financial considerations. As the author is not legally qualified the report does not cover a review of legal opinions. However, the research raised a number of legal issues regarding land disposal and the Public Works Act 1981 and consequently the council sought a legal opinion, which is referred to in the report.

This report will be presented to council and following receipt by council and public release a consultation process will begin. On completion of consultation, community views will be incorporated into an appendix of the report. A final report will be presented to the council following this process.

This report serves two purposes. First, it is a discussion document, intended to facilitate the first phase of consultation with concerned parties. It raises issues and questions for parties to elaborate, debate, respond to and add their perspective. Counter argument is expected and encouraged. Second, it is also intended as a tool to inform the council and interested members of the public about the history of the land concerned.

Main Issues

Seven issues are paramount to the decision on the future of the Waitara endowments. The first issue is that around half of the endowments are on the Pekapeka block. Pekapeka is clearly a place of enormous significance for local iwi and hapū, because negotiations for purchasing this land began the Taranaki War of the 1860s and after the war tangata whenua lost most of their tribal lands by confiscation. It is likely that tangata whenua will also be able to provide the own explanation of what this land means to them.

[6] Property Manager Report to Council 29- 30 May 2002.

The second issue is how the Crown and local authorities acquired the land. Council's title to the Waitara endowments is derived from the Crown's confiscation of Maori land in 1865. Upon assuming title the Crown gifted land to local authorities. Although the Crown gifted land for several different reasons and over a period of time, there is a direct link between the confiscation and the endowments because the Waitara Harbour Board and Waitara Borough Council were gifted most of them directly from the Crown. In 1996, the Waitangi Tribunal upheld long held Maori Treaty claims on confiscations and impact. At the time of writing the Crown and Te Atiawa were still negotiating a Treaty settlement based on the Tribunal's findings.

This raises a third issue, what does this mean for the NPDC? Local authorities have enjoyed the benefits of a rental income from the confiscated land for over 130 years. While it appears that they may have accepted title in good faith, tangata whenua tend to view council's retention of the land as a perpetuation of Treaty breaches. Analysis of the NPDC's Treaty of Waitangi obligations, legal responsibilities and strategic aim to improve its relationship with tangata whenua demonstrate that it must take Maori concerns into account when deciding the future ownership the Waitara endowment, even though council is legally barred from negotiating a Treaty settlement, because of the limitations of the local government and the current legal definition of "the Crown", which excludes local government from Treaty settlements. Within the parameters of the law council is also able transfer land to whomever it pleases. By it must also sure that the land dealt with in a fiscally responsible manner.

It is evident that the transfer of endowment land to Te Atiawa would go a long way toward strengthening the relationship between council and tangata whenua. However, there is a fourth issue to take into account. Legally, council land is private land. Crown policy means that private land is not included in a Treaty settlement. This does not, however, prevent council from selling the land to the Crown and the Crown then using the land in a settlement package. It would require an exception to Crown policy. This would benefit the NPDC, as it would improve its relationship with iwi and generate revenue from land sales (provided it is not required to purchase other land). Additionally it would place the obligation for settling the Treaty breach in

the hands of central government, the only party legally able to settle Treaty claims. Crown policy is not to purchase private land for Treaty settlement process, but given the significance of this land it may well be that this could be an exception to the rule.

The possibility of transferring land raises a fifth issue - the difficulties of treaty negotiations. Treaty settlements are made between the Crown and Iwi. Although the people approve the mandate of their negotiators, this can often be a difficult process as can reaching an agreement with Crown negotiators. Reaching agreement on the final shape of the settlement can be a time consuming process. The timing of a Te Atiawa settlement may be important to council's decision making, because it will obviously effect the financial position of the Iwi.

A sixth issue is that portions of the endowments are occupied by leaseholders who own the improvements on their properties and have a perpetual right of renewal on their leases. While it actually makes little difference who lessees pay their rent to and even though the NPDC is under no obligation to do so, many lessees want to buy the freehold interest, (unimproved land value), in their properties. If council decides that it wishes to sell its Waitara endowments, should lessees be offered land? Council is also obligated to listen to their issues and concerns. As people who have built their homes on the endowments, lessees undoubtedly have considerable attachment to the land. If the council decides to do something to strengthen iwi relationships by transferring land, how does it do so without creating a whole new set of problems?

The seventh issue is that there has been little consultation with the wider community. Discussion has tended to focus on the lessees and tangata whenua. Some consultation is required with the community to determine their views.

Given the issues above, it appears that no solution will fully satisfy all sections of the community. It may well be that the solution involves transferring some land to lessees and some to Te Atiawa or the Crown, which would go part way towards satisfying both lessees and tangata whenua. Consequently, the final chapter of this report outlines a range of options for dealing with the endowments.

Pekapeka & the Harbour Trust – Points of Clarification

The land has been referred to as the Pekapeka Block leasehold lands, after a dispute over land on the west bank of the Waitara River that the Government tried to purchase during the 1860s. However, the use of Pekapeka Block in relation to the council's land in Waitara confuses the issue because the endowments are actually located both inside and outside this block. It is impossible to refer to only land within the Pekapeka Block when discussing the history of the endowments. For this reason the report does not refer to the land as Pekapeka Block, except when it refers specifically to the Pekapeka Block purchase.

Another point of confusion is that parties tend to refer to the land as harbour trust land, when in fact the endowments the New Plymouth District Council (NPDC) holds are both harbour trust and borough endowments. Through local body legislation the NPDC inherited land on 21-year perpetual leases originally granted to the Waitara Harbour Board (WHB) to be used as an endowment for harbour purposes. Furthermore, the Waitara Borough Council (WBC) also received Crown land in the late nineteenth and early twentieth centuries for municipal endowments. There are also various other endowments in the Waitara area that the New Plymouth District Council leases. For purposes of completeness all these endowments have been covered in this report. Generally the report will refer to these lands as Waitara endowment lands.

Sources

This report has drawn on written sources at this stage so as to try and make an independent assessment of the evidence. At this stage, the missing element in this report of is the perspective of the Waitara people. This report should not be taken as the only source of information. It is a draft report. It is important that given the use of sources in this report that there is consultation with the various groups involved and their perspectives presented to council before a final report is complied.

3 SEEDS OF CONFLICT - LAND HISTORY 1840 - 1860

Introduction

This chapter explains the seeds of conflict over the land from an historian's point of view.[7] There are several main issues here. Firstly, it is generally accepted by most authorities on New Zealand history and the Crown that the attempted purchase of Waitara, land confiscation, the Crown's compensation procedures and the process leading up to the creation of the township were inherently flawed. In accepting this principle the NPDC, can be assured that it will be concurring with official and historical views that have been held for most of the twentieth century. This chapter outlines the views of some of New Zealand's leading historians and those of two commissions of inquiry, the Sim Commission and the Waitangi Tribunal, which surveyed the history of Waitara and the Taranaki Wars and both concluded that the Crown acted wrongly.

3.1 The Pekapeka Block

Hapu & History

One key issue that the NPDC will need to establish is the significance of the Pekapeka Block to Te Atiawa. This is something that only Te Atiawa can properly establish, and while this report transverses the historical significance of the land, it cannot speak for Te Atiawa. It is likely that when Te Atiawa put their standpoint to council, they will be able to fully explain the significance of the land to them. It is likely that Te Atiawa will be able to offer another perspective, and it is important that these views be heard and taken into account.

Waitara has long been an area of Maori settlement and it is within the tribal area (rohe) of Te Atiawa. The area is named after the river, which was called Whaitara nui a Ngarue in commemoration of the journey of Whare Matangi to find is father, Ngarue.[8] Waitara is rich in historic sites. A few examples of local historic sites are Manukorihi Pa (site of Owae Marae), Pukekohatu Pa site and urupa, Aorangi Pa site, the remains of Kerepapaka Pa and Pukekohe

[7] For an understanding of the pre European history of the area readers should consult Iwi Historians

[8] Suzanne Woodley, " Rohutu" Waitangi Tribunal, Wai 142, Doc M2, Wellington, 1995, p.4

Park, which is the old colonial military camp dating back to the Taranaki war. The NPDC's proposed district plan shows many archaeological sites within the boundaries of the township. Some of these sites are on the NPDC's endowments. Many of these places are associated with the land wars of the 1860s. It is a dispute over the ownership of Waitara that began the New Zealand Wars, a series of wars that radically changed the political landscape of the nation and dramatically altered the relationship between Maori and the Crown. Historians James Belich and Keith Sinclair have written extensively on the wars and their consequences. For further information readers should consult their work. [9]

Pekapeka 'Purchase'

The attempted purchase of an area known as the Pekapeka Block is often referred to as the Waitara Purchase. This term is misleading, as the Crown did not complete its purchase of the Pekapeka block and later declared the purchase invalid. Instead, the Pekapeka Block was actually alienated from Maori ownership in 1865 as part of the large-scale Taranaki confiscation of Maori land.

Another common misconception is that land was confiscated for rebellion against the Crown and that this confiscation was justified. As far back as 1927, commissions of inquiry have found that that land was unfairly confiscated, because Maori who did not rebel also lost land. The New Zealand Settlements Act 1863 allowed the Crown to confiscate a whole district and then compensate loyal Maori within the confiscation district. As this report shows there is great doubt about whether or not those people were adequately compensated. To some extent the loyal rebel distinction is immaterial, because as this report will demonstrate, there is doubt about whether Taranaki Maori were in rebellion at all.

The Crown now accepts that it acted wrongly in trying to purchase the Pekapeka Block and confiscating Te Atiawa lands. Consequently, the Te Atiawa Treaty of Waitangi settlement will include compensation for Crown actions in regard to the Pekapeka Block, the Taranaki War(s)

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[9] James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict,* Auckland 1986, Keith Sinclair, *The Origins of the Maori Wars,* 2nd Edition, Wellington, 1961

and wholesale confiscation of their tribal estate. This section of this report provides background on the history and issues concerning the relationship between Waitara Maori and the Crown up to confiscation of the land. The reason that this report discusses these issues is that local authorities gained title to endowments as a direct result of confiscation.

The 1840s – European Settlement and Early Land Purchase

Conflict between the Crown and Maori over Waitara dates back to the 1840s and is related to the settlement of New Plymouth. During the 1840s, the New Zealand Company, a private land development company, headed by Colonel Wakefield, acquired land in Taranaki for settlement. By 1839, Wakefield claimed to have purchased 20 million acres in the region. However, the company's initial 'purchases' lacked proper investigation, consultation and discussion and it seems that not all local Maori agreed to sell.[10]

The legality of subsequent New Zealand Company purchases is also questionable because they occurred after the signing of the Treaty of Waitangi. The Treaty gave the Crown the sole right to purchase Maori lands, but on 15 February 1840, Colonel Wakefield arranged the sale of further lands at New Plymouth despite appearing to have been aware of the terms of the Treaty. This sale was known as the Nga Motu purchase and it included the New Plymouth area, the coastal strip and Waitara. [11] This purchase included land occupied by Maori, as an early survey of this plan shows at least two Pa sites in the Waitara area, one at Manukorihi and one in the approximate area of Pukekohe Park.[12]

The Crown Investigates the Nga Motu Purchase

At the Treaty signing, Governor Hobson promised to investigate early pre-Treaty land purchases and to return any land unjustly alienated by private purchasers to Maori owners. He declared all previous purchases null and void pending investigation by a commissioner. Despite being aware of this, in 1840, the New Zealand Company planned the New Plymouth settlement and

[10] Waitangi Tribunal, *Taranaki Report*, Wellington, 1996, p.27

[11] Ibid, p.23

[12] First Survey of the Waitara River Mouth area by FA Carrington between 1840 - 1846

rural sections in an area that included Waitara. The first settlers arrived in 1841 and by 1843, 3000 people lived in New Plymouth.[13]

In 1844, land commissioner William Spain investigated the company's 1839 and 1840 purchases. Although, the New Zealand Company withdrew its claim on the 1839 purchase, Spain upheld the Nga Motu purchase, despite considerable evidence of Maori protest. However, Governor FitzRoy rejected Spain's recommendation and in 1844, the Crown, Maori and settlers reached an agreement regarding land boundaries. They agreed that European settlement would be restricted to an area known as the FitzRoy Block, which approximates to the present city area. This agreement failed to satisfy the settler population who wanted more land for farming and by 1845, despite Maori opposition, the Crown, under Governor Grey, 'purported to acquire five blocks, amounting in all to over 27,000 acres (11730 hectares), during 1847 and 1848'.[14]

Wiremu Kingi Te Rangitake - early opposition to land sale at Waitara

Waitara Maori resisted attempts to survey land at Waitara from as early as 1843.[15] Disputes over the land escalated in 1844, when Kirikumara offered Waitara for sale. However, the Crown refused the offer because it was mindful of the fact that Wiremu Kingi and his supporters opposed the sale. Kingi was the most vocal opponent of land sales at Waitara. According to many sources he was the leading rangatira (chief) of the area from the mid 1840s.[16] During the mid 1820s Kingi and many of his hapū had moved to Waikanae as part of a migration of Te Atiawa following war with Waikato. The move brought Kingi into contact with missionaries and settlers. At Queen Charlotte Sound in 1839, he sold land to the New Zealand Company, although questions have arisen over this, 'sale'. As Ann Parsonson says, at this point Te Atiawa's knowledge of Pakeha was limited and, 'clearly it had never occurred to Kingi or the other chiefs that these pieces of paper might make them guests on their own lands, for such written transactions, involving vast tracts, were quite outside their experience.'[17] He soon

[13] Waitangi Tribunal, p.26

[14] Ibid. p.29

[15] Giselle Byrnes, *Boundary Makers: Land Surveying and The Colonisation of New Zealand,* Wellington 2001, p.108

[16] This was certainly contention of Octavious Hadfield, a missionary who when knew Kingi and his people. Other sources such as Civil Commissioner Parris say that Kingi was a lesser chief than Teira.

[17] Parsonson, Ann 'Te Rangitake, Wiremu Kingi" – 1882. Dictionary of New Biography undated 19 July 2002, Url: http:/www.dnzb.govt.nz

became aware that sale involved alienation of tribal lands and he became an opponent of sales of his hapū's lands.

While living at Waikanae, Kingi maintained links with his people and land at Waitara and was adamant that this land was not for sale. At a meeting in Taranaki in 1847 Kingi made his authority over the Pekapeka area clear when he:

> announced his intention to resettle his people on their customary lands at Waitara, adding that no sale could be concluded there without his sanction and presence because many were absent and all, 'however low in rank', had an interest in the land. Kingi also rejected the Governor's proposal; that he be settled in a model village on the north bank of the river.[18]

Kingi's actions show that he saw his people's authority in Waitara as paramount. Although he was later portrayed as such, Kingi was not always anti-government. He had previously allied himself to government forces in Wellington.[19] However, this should not be taken as an indication that he would have been willing to support land sales at Waitara.

Kingi had considerable support amongst his people. In 1848, he returned to Waitara bringing 587 other Te Atiawa people with him. They occupied the area at the river mouth, where the town is today, trading with and working for settlers in the area. Their return was undoubtedly a response to concerns about land purchases, but also part of a long-term plan to occupy ancestral lands and take advantage of the opportunities for trade that European settlement had brought. However, settler and tribal politics divided Te Atiawa:

> the situation to which Te Rangitake returned was an unhappy one. For the next 11 years government land purchase agents, desperately anxious to buy land for the New Plymouth settlement, assiduously cultivated those chiefs they thought most likely to be land-sellers (the 'friendlies' as the settlers called them), while referring with disdain or hostility to those chiefs who appeared 'obstructive'. As early as 1849 Te Rangitake was goaded by a settler to remark that he 'wished there was no land at all that he might hear no more about it'. The unrelenting pressure to sell created constant unrest among Te Ati Awa, and disputes of whatever origin tended to end in offers of land to the government[20]

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[18] Waitangi Tribunal, p43

[19] Grey, Memorandum, *Appendices to the Journal of the House of Representatives*, (AJHR), E No.2. 1863. This was common practice, as in effect the Crown became another potential ally just like another iwi or hapū would.

[20] Parsonson NZDB

Ultimately it was an offer of land to the Government that led Kingi into war.

The 1850s - Continued Resistance to Land Sale

During the 1850s the issue of Kingi's people's rights to their land at Waitara was debated at length. The Crown considered further offers from Kirikumara to purchase Waitara and settlers placed considerable pressure on the Crown to purchase this land, but the Crown was reluctant to do so. In 1857, Kirikumara and Pokikake Te Teira both offered to sell the lands at Waitara, but the Crown refused these offers because Wiremu Kingi opposed the sale.

3.2 1860 – 1863 - War in Taranaki

Gore Browne Promises Not to Buy Disputed Land

The actions of Governor Gore Browne and his officials in late 1859 and early 1860 lead to the outbreak of war in North Taranaki. On 8 March 1859, the Governor visited New Plymouth. At a public meeting he pledged not to buy disputed land or allow land to be sold without owner's consent. He also said that he would not allow non-owners to interfere in the sale of land.[21] When Te Teira offered to sell the Governor land at Waitara during the meeting, Kingi said, "Listen, Governor. Notwithstanding [Te] Teira's offer I will not permit the sale of Waitara to the Pakeha. Waitara is in my hands I will not give it up".[22] It would have appeared to those present that given the Governor's stated policy of not buying disputed land Waitara would remain in Maori hands. However, the Governor soon made arrangements to purchase a piece of land from Te Teira, despite the fact that he knew Kingi did not want to sell and his public statement that he would not purchase disputed land.

In 1859, Pekapeka was under Maori customary title where an individual's land interest was not separate from those of their hapū. Individual members of a hapū could not sell land. There was clearly considerable misunderstanding about what Te Teira's offer meant.[23] In its investigation of

[21] Waitangi Tribunal, p.68

[22] Teira and Retimana to Browne, 15 March 1859, *AJHR* 1860, E-3, p.4

[23] In fact in 1863, Teira admitted that there were others who had an interest in the block.

this issue, the Waitangi Tribunal decided that it was impossible for Te Teira to offer a piece of land because:

> [t]here was no part Te Teira could call his own, so the description he gave could not have been his own land. It was more likely a description of the whole block…in which he was one of many with an unpartitioned interest. We think it is actually doubtful that Te Teira intended to offer the whole block, but consider he was speaking only for his undivided interest. Three days later he sent a letter to the Governor suggesting he was selling an undefined interest in the block and that it was not necessarily large.[24]

In fact Te Teira's letter states that the size of the land was only enough for three or four tents to sit on, which suggests that he did not intend to sell the whole Pekapeka Block.[25]

Purchase Negotiations

In early 1860, Gore Browne moved toward buying Te Teira's 'individual share'. This differed from the Crown's previous practice of buying whole blocks of multiple owned Maori land from hapu. Waitara was a test case for a new policy of, 'divide and purchase'. According to Parsonson:

> [t]he government, in spite of denials, had been considering for some time a policy of buying up the claims of small groups as they came forward, rather than waiting for all claimants to agree on a sale. This was seen as the only way to break the 'deadlock' in Taranaki. So far, however, it had not attempted to separate the claims of sellers from those of non-sellers, and to conclude and survey a purchase based only on those claims offered. This is what the government contemplated at Waitara. In the document recording Te Teira's receipt of an instalment of £100 in November 1859, the Governor declared 'that if the assertion of any man is true who states that he has a portion of the land situated within the boundaries recited in this document, and he does not wish his portion to be sold (that is his own strip of cultivation ground), it may be distinctly marked off and his portion left to him.'[26]

Kingi and his supporters maintained that it was for the community to decide to sell the land not individuals. As the Tribunal points out:

> [b]oth in terms of Maori law and in terms of providing an economic unit for European settlement, 'Teira's piece' was a figment of the imagination. It was impossible to cut it out. The land was jointly occupied by Te Teira, Kingi, and others. Kingi had separate pa on the land surrounded by numerous kainga [villages]. Near to the pa was a patchwork pattern of cultivations, in which, in the usual Maori way, families held several small plots

[24] Waitangi Tribunal, p.69

[25] Ibid

[26] Parsonson, NZDB

> throughout a horticultural mosaic, none of which constituted a sizeable, sellable unit. Kingi's 'pieces' and Te Teira's 'pieces' were intertwined. Beyond the cultivations, all was held in common. So strange was this notion of individual pieces that there was no Maori word for it. Officials used 'pihi', a transliteration of 'pieces'.[27]

Gore Browne was initially opposed to buying disputed land. In 1856 he sought advice from the Board of Native Affairs on who had rights to sell land. The board found that there was no individual right to sell land independent of hapū rights. In the early part of his term Gore Browne was concerned about the rate of land alienation and implemented measures to deal with this problem. As one historian points out:

> [h]is Maori policy had three goals: to buy surplus Maori land rapidly; to place under trust sufficient land for all future Maori needs and clothe with Crown title the land that Maori vendors kept for themselves; to establish local self-government and courts in Maori districts to replace beleaguered tribal authority.[28]

However, Gore Browne's insistence that individual Maori could sell pieces of Waitara land is what he is best remembered for. By 1859, frustrated with the slow rate of land purchase, caused by what he saw as interference from non-owners, Gore Browne began a new policy of purchasing parts of land from some of the owners of a block.

The Crown's new policy of purchasing pieces of land soon became well known. When Te Teira complained that other owners would not mark out pieces of land and expressed his concerns about the time it was taking to confirm the sale, the Crown purchase agent reassured him consent would be given to purchase his land, provided his piece did not encroach on anyone else's land. Kingi was told that, "[t]he Governor has consented to his [Te Teira's] word, that is, as regards his own individual piece, not that which belongs to other persons. The Governor's rule is, for each man to have the word (or say) as regards his own land; that of a man with no claim will not be listened to."[29] Kingi continued to protest and told Gore Browne that:

> I will not agree to our bedroom being sold (I mean Waitara here), for this bed belongs to all of us; and do not you be in haste to give the money… If you give the money secretly, you will get no land for it. You may insist, but I will never agree to it … All I have to say to you, O Governor, is that none of this land will be given to you, never, never, till I die. I have heard it is said that I am to be imprisoned because of this land. I am very sad

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[27] Waitangi Tribunal, p.70

[28] Dalton, B. J. 'Browne, Thomas Robert Gore 1807 - 1887'. *Dictionary of New Zealand Biography*, updated 19 July 2002 URL: http://www.dnzb.govt.nz/

[29] Waitangi Tribunal p.71

> because of this word. Why is it? You should remember that the Maories [sic] and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.[30]

As the Tribunal points out:

> [t]he correspondence went to the core of the Waitara problem. The Governor would break tribal opposition to land sales by promoting the right of individuals or individual whanau to sell their 'piece' of land in defiance of rangatira responsible for the collective interests of all. Maori tenure recognised individual whanau rights of occupation and use centred on kainga, cultivations, and resource sites, but any admission of strangers that might prejudice the integrity of the group, as might occur on the sale of part, required communal sanction at a hapu or even wider level. [31]

Kingi certainly had a right to have a say in any sale of Pekapeka because he was required to look after the interests of his people and because he lived on the land.

Officials kept on insisting that Kingi demonstrate his individual interests in the block. However, because of the nature of land tenure he was unable to do so. When asked to:

> Kingi refused to point out his 'piece'. He could not have done otherwise…rangatira were not merely the leaders of the people - they were the people. They were inclined to use 'I' where others would use 'the people' or 'we'. They owned everything and yet might claim nothing personally. They were entitled to be first and yet might put the least within the tribe ahead of themselves. [32]

Throughout the next few weeks, Kingi continued to reiterate that he was not prepared to allow a sale of Pekapeka and pointed out that the Governor had previously promised to avoid buying disputed lands. Gore Browne's failure to grasp Kingi's point of view may be attributable to officials' unfamiliarity with the Maori land tenure system, but previous Crown actions suggest that officials were aware of Maori land concepts prior to 1860. By this time, the Crown had twenty years experience of purchasing land from Maori where it had used customary title as the basis of negotiating land sale. The Governor was also bound by law to recognise customary practice because in 1847, the Supreme Court decided that Maori customary interests could not be extinguished without Maori consent.[33] This suggests that Gore Browne was either ill advised or

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[30] E No.3 *AJHR* 1863

[31] Ibid

[32] Ibid, p.72

[33] R v Symonds [1847] NZPCC 387. This was later rejected in 1877 by *Wi Parata v Bishop of Wellington*. However from an historical perspective it is useful to establish what the legal situation was in 1860 and clearly, the courts had recognised aboriginal title.

ignored advice to not purchase Pekapeka. Certainly the views and actions of two officials, Parris, the District Land Commissioner, Donald McLean, Native Secretary and Land Purchase Commissioner. Alan Ward argues that:

> McLean clearly carries the responsibility for permitting Browne to accept the offer of land at Waitara from Te Teira and to set aside Wiremu Kingi's objections to the sale on behalf of Te Ati Awa. Previously, if established leaders like Kingi had intervened, he had backed off, leaving the purchase uncompleted. He had acknowledged in 1856, and even after war broke out in Taranaki in 1860, that senior rangatira did have 'a right of seigniority or mana' in such transactions. But he argued that Kingi had lost the right when he and other Te Ati Awa had fled the land in the 1830s after the attack by Waikato tribes. This is specious, because the Waikato tribes had not followed up conquest by occupation and Te Ati Awa had begun to reoccupy, under Kingi's leadership, soon after British annexation.[34]

According to Parris:

> The Crown purchase agent [Parris]…purveyed the view that Kingi had no possessory interest in the land, omitting to advise the Governor that Kingi and some 200 of his followers lived there. It is clear that the agent knew of this, because he had earlier claimed that Kingi had returned to live at Waitara only with Te Teira's permission. This opinion was spuriously based on advice that, on his return from Cook Strait, Kingi had waited on Te Teira before occupying the land. In fact, however, Te Teira had accompanied Kingi. Kingi was returning to his father's pa and cultivations and had no need to seek Te Teira's permission to settle there. The point, however, is that the agent obviously knew of Kingi's residence on the land, but he reported only that Kingi was simply dictating 'authority over [the] land'. Accordingly, the Governor was to assume that the question was whether Kingi had the right to exercise a chiefly veto, when that was not the question because Kingi had an interest in possession. [35]

Parris believed that Te Teira's claim was stronger because:

> he believed that Kingi and Te Ati Awa on their return from Waikanae in 1848 had asked permission of Taripa Raru, Te Teira's father, to build a pa on the south side of the Waitara River. He stated that on several occasions Kingi had 'admitted unreservedly' that the land belonged to Te Teira's party but had said he would oppose the sale of it. [36]

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[34] Ward, Alan, 'McLean, Donald 1820 - 1877', *Dictionary of New Zealand Biography*, updated 19 July 2002 URL: http://www.dnzb.govt.nz/

[35] Waitangi Tribunal, p.72

[36] Church, Ian, 'Parris, Robert Reid 1816? - 1904', *Dictionary of New Zealand Biography*, updated 19 July 2002 URL: http://www.dnzb.govt.nz/

This argument is controversial. In conversations with Parris, Te Teira does seem to have put across this view. Kingi's alleged admission of Te Teira's rights to the land is probably a misinterpretation of Kingi's position. A record of a meeting between Parris and Kingi shows how Parris could have got this impression. The records say:

> Q [Parris]: Does the land belong to Teira and party?
> A: [Kingi] Yes; the land is theirs, but I will not let them sell it.
> Q: Why will you oppose their selling that which is their own?
> A: Because I do not wish for the land to be disturbed; and although they have floated it, I will not let them sell it.
> Q: Shew [sic] me the justness or correctness of your opposition?
> A: It is enough, Parris, their bellies are full with the sight of the money you have promised them, but don't give it to them; if you do, I won't let you have the land, but will take it and cultivate it myself. [37]

This conversation could also be interpreted as an acknowledgement of Te Teira's rights to the land as a member of the hapū and a statement that the hapū did not want the land sold. In a re-examination of the record of this meeting, George Grey gave a translation, which had Kingi saying that he believes that the land belongs to Te Teira along with everyone else within the hapū.[38] Other sources dispute the position that Te Teira had great influence. For example, when asked to give evidence on the Waitara case the missionary Octavius Hadfield said that Te Teira and his father were ordinary free men of the tribe and not leading chiefs as Parris suggested. [39]

Some of the problems can be put down to the personal agendas of some of the officials. As land purchase agent, Parris was not perhaps as impartial as he should have been. Firstly, he had been involved in land disputes between hapū and individuals. Secondly, he had lost land when FitzRoy dismissed Spain's award of land. Thirdly, he traded with Kingi and his hapū and it seems that Kingi owed him money.[40] Furthermore, he was under pressure to purchase Waitara from settlers who had lost land after the FitzRoy award.

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[37] E- No. .3 *AJHR* 1860, Waitangi Tribunal pp.73-74

[38] *E2* No.16 Dispatch to Duke of Newcastle, *AJHR* 1863

[39] E 2 no.4 *AJHR*, 1860

[40] Sinclair, The *Origins of The Maori Wars*, 2nd Edition, 1961, Wellington, pp.160-161

Why did Te Teira want to sell land? Sinclair points out that Te Teira had been offering to sell land at Waitara since 1857 and that even though Gore Browne was unaware of his offer, Parris and McLean were aware before the 1859 meeting that he would offer to sell Waitara.[41] Some historians have suggested that Te Teira sold land as a form of revenge. Ann Parsonson says that Te Teira is said to have offered the Crown land as a form of revenge against Kingi who sheltered a girl who had refused to marry a nephew of his.[42] It may also have simply been an attempt to wrestle tribal authority from Kingi.

Sovereignty

Ultimately the purchase negotiations became a sovereignty issue. The Governor and his officials believed Kingi's resistance to sale was about sovereignty rather than property rights. During this period, non-sellers were said to be in a land league that was subverting the Queen's sovereignty. In April 1860, a group of petitioners including, Cutfield, the Provincial Superintendent, and various members of prominent settler families, asked the Governor not to make peace with Kingi on the grounds that it would compromise the Queen's sovereignty.[43] In November 1860 a group of 'colonists' in London passed a similar resolution[44] Belich believes that the Waitara issue became as much about a show of power to cripple Maori independence as it was about land purchase.[45] The Crown argued that Kingi had no right to oppose the sale of Pekapeka. One historian has explained this as:

> [t]he official view was that Te Rangitake had no real claims; no 'personal' claims to the land in question (proved, it was assumed, by his failure to point them out); that the 19 people who signed the deed had the right to dispose of their 'own' land without consulting any chief; that Te Rangitake himself should properly have been living on the north bank of the river; and that he disputed the sale solely because he was carrying out the policy of the 'Taranaki and Waikato Land Leagues'. In effect, the 'leagues' were no more than agreements not to sell tribal land. However, it was asserted that they challenged the Queen's sovereignty and threatened the use of force against Maori who wished to sell; that the government could not allow either chiefs or leagues to browbeat individual Maori owners to whom the Treaty of Waitangi had guaranteed the rights of British subjects,

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[41] Sinclair, pp. 150-152

[42] Parsonson, "The Pursuit of Mana", in W.H. (ed) The Oxford History of New Zealand, Wellington, 1981, pp.151 - 152

[43] Cutfield and others, 25 April 1860, IA 1 1860/2059, *Raupatu Document Bank,* (RDB) pp.5087- 5095

[44] Resolutions passed at a meeting of Colonists, November 1860 IA 1 1861/134, *RDB* pp. 50720-50722

[45] Belich, p.73 – 84

> including the sale of their individual land rights. Governor Browne appears to have sincerely believed these arguments.[46]

These views are also represented in the individual positions of many officials. One opponent of Kingi's was C.W. Richmond, local M.P. and colonial treasurer. As Keith Sinclair points out:

> Richmond wrote of Kingi, who was living on his tribal land at Waitara, that his attitude was one 'of pure hostility to the interests of the settlement of which he has been occupying a part of the destined site'. A more specifically settler point of view would be hard to conceive.
> Richmond was present, with the Governor and McLean, at the fateful meeting in New Plymouth in 1859, at which Te Teira offered to sell part of this land to the government. The acceptance of this offer and attempts to survey the land led directly to the New Zealand wars of the 1860s. As acting premier in Stafford's absence Richmond cannot escape all criticism; he was under heavy family pressure to open up disputed lands and did nothing to restrain proceedings. Nor did he feel that an error had been made. He vigorously defended the government's actions. He believed that Wiremu Kingi had no rights, as a chief, to prevent the sale of the land and that he was acting as leader of a land league, aiming to veto land sales. No such league existed. [47]

The fact that Kingi had occupancy rights should have been obvious. McLean, Parris and Richmond were well aware that Kingi lived on the land. Gore Browne was also aware of the fact having visited Kingi at his Pa on the block on 19 March 1859.[48]

Furthermore, Kingi also had hereditary claims to the block. Parris failed to investigate these claims. As land purchaser he was required to study whakapapa and determine rights to land. He did not do this when investigating rights to Waitara. Once war broke out he produced a whakapapa based on the claims of Te Teira's family. Keith Sinclair, who made a comprehensive study of Te Atiawa whakapapa, claimed this was inaccurate and that Te Teira and Kingi had similar hereditary claims.[49] Kingi, however had assumed chiefly rank because of his leadership at Waikanae and during the migration.[50] It is likely that tangata whenua would be able to explain these claims in better detail.

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[46] Parsonson, NZDB

[47] Sinclair, Keith. 'Richmond, Christopher William 1821 - 1895'. *Dictionary of New Zealand Biography*, updated 19 July 2002 URL: http://www.dnzb.govt.nz/

[48] Sinclair, *The Origins*… p.168

[49] Ibid, p.172-173. He also points out that many "rebels" of the land wars appear in whakapapa which links them to their land.

[50] Keith Sorrenson pers. Comm., August 2002

Other Opposition

Although he was the most vocal opponent, Maori opposition to land sales was not restricted to Kingi alone. The Pekapeka 'purchase' appears to have been opposed by the majority of Maori living in the area. According to the missionary Hadfield, there were several hapū who had interests in the Waitara area, and pointed out that, "[t]here are only ten or twelve persons who, having any valid claims, have consented to the sale of the land. There are eighty or ninety, perhaps a hundred others who have never consented to it."[51]

While the Governor's actions received widespread support from the settler community and officials, not all Pakeha supported this argument. One prominent supporter of Kingi's rights was the missionary Hadfield. Hadfield was brought before the bar at the House of Representatives in 1860, to explain his opposition to the 'purchase'. When asked who was the acknowledged Chief at Waitara, Hadfield said that he had no hesitation in saying that Kingi was that person.[52] In his view, Kingi had right to speak on behalf of his people and oppose land sales. Put another way, what the Crown had ignored was Kingi's people's rights as property owners, occupiers and Treaty partners to retain their lands for as long as they chose to possess them. It is well-known that, 'the government had to defend itself from fierce criticism in pamphlets by the missionary Octavius Hadfield (*One of England's little wars,* 1860) and by the former chief justice, William Martin (*The Taranaki Question,* 1860).' Martin was criticised for his position. In his defence he highlighted the official's use of sensational statements. He wrote:

> I saw that the proceedings at Waitara tended directly to defeat the work to which the honour of the crown is pledged and also, that a large body of the Queen's subjects, entitled to the protection of law, were deeply interested in questions which the Colonial government was attempting to dispose of by force and not by law…I have all along endeavoured to estimate the proceedings at the Waitara with reference to their bearings on ourselves, I see none more painful than this: - that a government, which has allowed language of the most violent and mischievous kind, put forth in every variety of form by one class of the Queen's subjects against the other, to pass wholly unchecked, should attempt to prohibit a temperate and guarded discussion of matters which not only the colony, but the people of England and the Crown of England are concerned and should confine its prohibition to one side only of the question.[53]

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[51] E – no.4 *AJHR* 1860 p.3

[52] Ibid

[53] William Martin to Colonial Secretary, 9 March 1861, IA 1, 1861/482, *RDB*, p. 50726-50733

Isaac Featherston, superintendent of Wellington province criticised the Waitara policy in a speech to the house on 7 August 1860[54] and opposition politician William Fox also denounced the 'purchase'.[55]

Perhaps the most prophetic statement came from a man whom the Government denounced as a madman. Little is known about the man himself but on 22 February 1860, a petitioner, William Turner, expressed his surprise at the government's determination to force the purchase through. He pointed out that Kingi and his people had a collective right to Waitara and the only proper way to extinguish this was via a full meeting of Maori owners and a thorough investigation of title. Turner also points out that such a departure from custom was directly opposed to the terms of the Treaty. He said that settler perceptions were that a show of force would lead to acquisition of land by a much quicker method than purchase. Turner claimed the Government's policy was, "a good native here, means one who offers his own or other land for sale, - a bad native one who declines to sell his own land – and does not think he has any right to sell the interests of others".[56] However, despite opposition, on the whole the political climate was one where Gore Browne received widespread support.

Failure to Investigate Ownership

Ultimately, whether or not Kingi was the leading spokesperson for the tribe or whether he was living in Waitara at anyone else's bequest, is perhaps immaterial. The real issue is that Kingi was living on the block and Te Teira and the other willing sellers, represented only 19 of the 200 or so people who lived in Pa on the Pekapeka Block. It appears that officials chose not to recognise this. Proper investigation of title would have revealed the truth and would have shown that the land was occupied and cultivated.

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[54] Hamer, David. 'Featherston, Isaac Earl 1813 - 1876', *Dictionary of New Zealand Biography*, updated 19 July 2002 URL: http://www.dnzb.govt.nz/

[55] Dalziel, Raewyn & Keith Sinclair. 'Fox, William 1812? - 1893', *Dictionary of New Zealand Biography*, updated 19 July 2002 URL: http://www.dnzb.govt.nz/

[56] *RDB, p*. 50743

Conflict

On 25 January 1860, the Governor issued instructions that the survey would begin and on completion of the survey the military would occupy the land. If the survey was interrupted the military would take immediate possession of the land and the survey would be completed under military protection. On 20 February 1860, an unarmed party of Kingi's supporters stopped a survey of the Pekapeka Block. In response the Crown offered Kingi an ultimatum that unless he desisted the military would be called in to settle the issue. Kingi's reply illustrates his confusion with the Crown's change in policy:

> [y]ou say that we have been guilty of rebellion against the Queen, but we consider we have not, because the Governor has said he will not entertain offers of land which are disputed. The Governor has also said, that it is not right for one man to sell the land to the Europeans, but that all the people should consent. You are now disregarding the good law of the Governor and adopting a bad law. This is my word to you. I have no desire for evil, but on the contrary, have great love for the Europeans and Maories. Listen; my love is this, you and Parris put a stop to your proceedings, that your love for the Europeans and the Maories may be true. I have heard that you are coming to Waitara with soldiers and therefore I know that you are angry with me. Is this your love for me, to bring soldiers to Waitara? This is not love; it is anger. I do not wish for anger; all that I want is the land. All the Governors and the Europeans have heard my word, which is, that I will hold the land. That is all. Write to me. Peace be with you.[57]

The Crown declared martial law. The issue is that at this stage no Maori had taken up arms against the Crown. It is worth quoting the Tribunal report to illustrate the issues:

> The Maori text of the proclamation read:
>
> HE PANUITANGA. Na Te Kawana, Colonel Thomas Gore Browne, Tino Rangatira, aha, aha, na te Kawana o tenei Koroni o Niu Tireni tenei Panuitanga. Ko te mea, meake ka timata nga Hoia o Te Kuini ta ratou mahi ki nga Maori i Taranaki, e tutu ana, e whawhai ana ki to te Kuini mana - Na, ko ahau tenei ko Te Kawana, te panui te whakapuaki nui nei i tenei kupu, Ko te Ture whaw[h]ai kia puta inaianei ki Taranaki, hei Ture tuturu tae noa ki te wa ka panuitia te whakarerenga.
>
> Of some interest is the use of 'tino rangatira' for 'governor', an awkward slip of the pen, because 'tino rangatiratanga' was precisely that which the Treaty of Waitangi had guaranteed to Maori.
> The English translation of the operative clause was:
>
> Whereas Active Military operations are about to be undertaken by the Queen's Force against Natives in the Province of Taranaki, in arms against Her Majesty's Sovereign Authority, Now I, the Governor, do hereby PROCLAIM and DECLARE that MARTIAL

[57] Kingi to Murray, 20 February 1860, BPP, vol. 12, p.9

> LAW will be exercised throughout the said Province from publication hereof . . . until the relief of the said district from Martial Law by public Proclamation.
>
> It should be noted that, as a matter of law, a formal proclamation of martial law is not necessary for the exercise of martial law powers. The exercise of power by the military may be undertaken whenever a state of war in fact exists. In this case, the proclamation has more the character of a notice of Crown attack. The statement that Maori were 'in arms against Her Majesty's Sovereign Authority' is singularly unsupported by the evidence.
>
> The Maori text, however, especially reads as a declaration of war. Maori were accustomed to settling the rules of war prior to battle and 'martial law' had been rendered as 'Ko te Ture whawhai kia puta inaianei ki Taranaki', so that the document proclaimed 'the law of fighting now introduced to Taranaki'. Indicative of Maori expectations was the consequential withdrawal of women and children from the disputed area. [58]

Clearly from Kingi's perspective the Crown was about to start a war against his people.

Four days later Te Teira and his supporters signed a purchase deed for the Pekapeka Block. The translation of that deed says:

> Know all men there present of this twenty fourth day of February in the year of our lord one thousand eight hundred and sixty 1860, we, the Native Chiefs and Peoples of New Zealand, whose names are written hereunder, in consideration of the sum of six hundred pounds… paid to us by Mr Parris, on the behalf of the Queen Victoria (and hereby acknowledge the receipt of the money) all and individually and this document in the agreement, hereby, [s]ell, [c]onvey and [g]ive up to Queen Victoria and her descendents the Kings and Queens who may succeed her and her assigns, all that [b]lock of land called Pekapeka.
>
> The boundaries commence on the beach at Okatiki thence inland in a straight line to Te Kohia to the main road leading to the Mamaku thence in a northerly direction by the Cart road to Pukeruru thence descending to Maungahakaia, thence seaward to Opatito to the White Pine tree which stands there, continuing thence to Arakauere thence northwards to Pukekohe to the flat inland of the Pa. Arriving at the cliff to the dug fence at Matawhitu, thence in a northerly direction to the Waitara River, thence seawards in that River to Iti Mouttu [??] on the beach thence in a southerly direction, continuing on the Beach until it reached Okatiki the commencing point. And all the Rights and Appurtenances of that land and the rights, title [c]laim, [p]ortion and [d]emand of all and each of us who are interested in that land and that land everything belonging to it to be permanently for the Queen and assigns for ever.
>
> And in token of this conveyance we have hereunto signed names.[59]

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[58] Waitangi Tribunal, p.76

[59] Taranaki Deed 15

The names of the 19 sellers are attached to the deed. Interestingly, the deed and a translation of the included in the *AJHR* (*Appendices to the Journal of the House Representatives*) of 1860, differ slightly. The *AJHR* version uses the name 'Onatiki' rather than Ohatiki and has slightly different wording in the last sentence.

Consequently, relations between the Crown and Kingi deteriorated even further. The Crown attempted to legitimise its actions by:

> [circulating] a manifesto asserting the correctness of [its] position and that the mana of the land was not with Kingi, that Browne had accepted Te Teira's title on the condition that it was undisputed, that an investigation showed it was 'not disputed by anyone', and that, since Te Teira had received payment, the land was now Crown land and Kingi would not be permitted to interfere with it.[60]

Further attempts at negotiating with Kingi failed. Troops landed in Waitara on 4 March and on 6 March 1860, they occupied a pa after the people had evacuated and Te Teira's people destroyed Kingi's Pa at Kuhikhi. Kingi and his people built a Pa at Te Kohia on 15 March and on 16 March 1860 they uprooted survey pegs. The next day the Crown's troops opened fire on Te Kohia. This was the start of the North Taranaki war, which lasted for three years and led to further wars in the North Island and ultimately resulted in the confiscation of most of the remaining Maori land in Taranaki.

Issues

The events that triggered the Taranaki War of 1860 centre on the Crown's attempted purchase of Pekapeka Block. The dispute over the Pekapeka Block can be attributed to three factors.

1. The Crown and Taranaki settlers wanted more land for settlement. Waitara, as an area of fertile cleared land, was particularly desirable and there was considerable pressure on Crown officials to open up the district for settlement. Settlers were frustrated at the lack of inroads made toward alienating Maori title. By retaining land Maori retained political power and autonomy. By 1860, Pakeha had been in the district for some time, but there were very clear distinctions between what was Maori land and what was European land.

[60] Waitangi Tribunal, p.77

There were large areas of Maori land in the district where Maori customary law prevailed.

2. Maori title did not allow individuals to sell pieces of land. As Kawharu points out, according to Maori systems of land tenure, an individual's title to land rarely stood apart from that of the tribe.[61] As he says:

> [a]n individual and those he represented had reasonable freedom in the use of their land but none at all to alienate it without the consent of the subtribe or tribe. Even a paramount chief of great mana would not normally flout this principle.[62]

   By agreeing to purchase Teira's "piece", without a general tribal meeting, the Governor ignored this. Government policy of the day acknowledged customary tenure and stipulated that the Crown must buy land according to indigenous methods of land alienation. In previous transactions Government officers had acknowledged chiefly authority and the rights of the whole community. This practice was in line with English law, which protects both the rights of owners of multiply owned land and says that the Crown must extinguish native title in a manner according to aboriginal custom. The Waitara "purchase" was a change to that, probably brought about by settler pressure to purchase land.

3. Immediately prior to commencing purchase negotiations, Gore Browne, promised a gathering of Maori and settlers that he would not buy disputed land. Kingi took this promise at face value and in good faith. However, the Crown ignored Wiremu Kingi's repeated protests against the sale of Waitara and purchased land from Te Teira regardless.

Other issues are:

1. Since the arrival of the first settlers Waitara was considered a desirable site for settlement.

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[61] Kawharu, IH, *Maori Land Tenure,* New York, 1977, p.59

[62] Kawharu p.62

2. In early 1860 prior the war, Maori occupied Waitara; there were Pa sites and cultivations on the block.

3. Maori response to land purchase was varied, some such as Kirikumara and Te Teira wanted to sell land, others like Kingi did not. By 1860, Kingi had opposed the sale of Waitara for nearly 15 years.

4. The Governor later changed his policy and accepted Te Teira's offer to sell land, despite the fact that he was well aware that Kingi did not want to sell.

5. At some point the Crown seems to have interpreted Te Teira's offer as an offer to sell the whole of the Pekapeka Block, rather than his lesser interest in hapū land.

6. By March 1860, the Crown viewed Kingi's people's claim to the block as inferior to that of Te Teira's and this appears to have been used as further justification for launching an attack against him and his supporters. This again was a new policy with regard to chiefs.

7. Kingi acted in self-defence. The Taranaki Report illustrates the defensive strategy and points out that Kingi's people escaped from his Pa unhurt and that Kingi's defensive strategy served to reinforce his grievance and draw allies into the dispute. [63] Clearly, Kingi's strategy worked. The conflict widened to involve other Taranaki hapū and Maori from, Waikato, Hauraki, Tauranga, Gisborne, Hawkes Bay, and the Bay of Plenty.

8. It is unclear why Te Teira wanted to sell the land, nor is it clear why he agreed to sell the whole block. He was literate and must have been aware of the terms of the purchase deed. The Tribunal has summated that it may have been that Te Teira was using typical Maori imagery where one describes the whole of a tribal area to define

[63] Waitangi Tribunal, p.78

one's land interests and that the Crown may have interpreted this as an offer to purchase the whole block rather than as an offer to have an interest in the block.[64]

9. The Crown did not properly investigate customary claims/ownership of land as had previously been the practice. If it had done so it would have found that many people lived on the land. Parris, as the land purchase agent was responsible for doing so, but even though he had met with Kingi at Waitara he did not tell Gore Browne that Kingi had occupation rights. Another problem was that as Governor and land purchaser, Gore Browne was in position where he was judge and jury of his own actions.

10. The Crown escalated tribal grievances to the point that war broke out. At the recent Tribunal hearings the Crown accepted that it committed an injustice, "Crown counsel accepted in this claim that the Waitara purchase and the wars constituted an injustice and were therefore in breach of the principles of the Treaty of Waitangi." [65]

[64] Ibid, p.69

[65] Ibid, p.83. It should be noted that at Sim commission 1927 the Crown also accepted that it had acted wrongly over the Waitara Purchase.

4 CONFISCATION & COMPENSATION

Introduction

For iwi and hapu, the aftermath of the wars proved at least as devastating as the wars themselves. In 1865, the Crown confiscated most of Taranaki under the New Zealand Settlements Act 1863. On the one hand this was a consequence of miscommunication between the Crown and Maori, which sparked a resumption of the war. On the other hand it was also in line with the Government's belief that war with Taranaki and Waikato was inevitable. On 6 April 1863, the new Governor, George Grey, admitted that Gore Browne had been wrong to purchase Pekapeka and declared the purchase invalid. However, Grey's announcement of his intentions was delayed as he sought the views of government ministers. The Ministers didn't receive notification of his position until 22 April 1863 and, "they in turn delayed a fortnight further before doing anything."[66] This was to prove a very costly mistake and the Government soon found itself at war with Taranaki iwi again.

1861- An Uneasy Truce

Fighting continued until 18 March 1861 when Wiremu Tamehana of Ngati Haua negotiated a peace settlement pending an investigation of the 'Waitara purchase'. On 3 April 1861, Governor Grey came to Taranaki to finalise the peace terms. It was agreed that there would be an investigation into the Pekapeka Block purchase and Te Atiawa would return plunder from settlers. The terms of the ceasefire and Kingi's response were as follows:

> Te Atiawa, … would submit to the Queen's authority...not all Waikato felt bound, nor did all Te Atiawa agree, Kingi himself declining to sign at that time. Other Taranaki hapu were not involved.
> Later, Kingi wrote to the Governor to say that he 'consented to the peace', and then, as if to prove the integrity of his word, he left Taranaki to take up residence with Rewi Maniapoto at Kihikihi, where he remained for some two years. The cease-fire was maintained for over two years and **there is no record that Kingi or his followers ever returned to arms once their consent to the peace terms had been given**. [Emphasis added]

[66] Waitangi Tribunal, p.89

> Following the peace agreement, Pekapeka remained occupied by the military, pending an inquiry, while by way of set-off, the hapu of central Taranaki, assisted by Ngati Ruanui from the south, held on to Omata and Tataraimaka. Although not party to the peace terms, they abided the arrangement and New Plymouth was not attacked.[67]

It seemed that peace had been achieved. The state of ceasefire remained until 1863, when Governor Grey investigated the Pekapeka purchase.

The Pekapeka Purchase is abandoned

In 1863, Grey noted that Maori wanted an inquiry into the affair and he went to Taranaki to investigate the Pekapeka purchase because he was facing intense Maori opposition. Many influential Maori had said that they would not support any war that arose out of the Waitara issue. Abandoning the purchase appears to have been a Government attempt to gain Maori allies.

In April 1863, Grey decided to abandon the purchase. Grey announced his decision to the Duke of Newcastle and said:

> Your Grace; I know that we are both to stand at the bar of [h]istory, when our conduct to the Native race of this country will be judged by impartial historians, and that is our duty to set a good example for all time, in such a most important affair. I ought to advise Your Grace, without thinking of the personal consequences which may result to myself, that my settled conviction is, that the Natives are in the main right in their allegations regarding the Waitara Purchase, and that it ought not to be gone on with.[68]

Grey abandoned the purchase for several reasons:

1. He claimed that Kingi's resistance to the purchase was a "struggle for house and home" and was a last resort to prevent large-scale loss of land. He also noted that one consequence of the Waitara purchase was that Maori believed a new system of taking lands by alienating individual shares was to be established and that they needed to band together to prevent all losing land.

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[67] Waitangi Tribunal, p.87

[68] Grey to Newcastle, 24 April 1863, E no.2, no.1, *AJHR* 1863

2. Unlike Parris and Gore Browne in 1860, Grey acknowledged that Kingi had lived on the land: "this block of 980 acres [364 hectares] of land now appears to have been inhabited, at the time Te Teira understood to sell it, by William King [Kingi] and between two hundred and three hundred of his people."[69] Grey emphasised that the people had been driven from settlements, which they had occupied for many years and that they believed that Pekapeka had been forcibly taken by the officers of the Queen. He found that there had been no proper investigation of title to the Pekapeka Block. He noted that Te Teira admitted that others had claims to the block and that 200 of Kingi's people had been living on the land in a number of Pa at the river mouth and that Kingi had cultivations on the Pekapeka Block in 1860. The Governor also cited evidence of military personnel who had been involved in the initial push into Waitara, and a statement by chief surveyor FA Carrington who said that in the visits he had had to Waitara during 1860 the land had 60 to 120 acres of cultivations on it.[70] Grey asked his ministers:

> Even if Taylor's [Te Teira's] title were good and there was some flaw in the title of [Kingi's] people (which however is generally denied by the Natives) was it a wise or becoming thing and a proper subject to risk a war upon, to allow Her Majesty to avail herself of a flaw in the titles to land of some of her subjects, to purchase from another of her subjects the lands they claimed, although they had occupied them in piece for twelve years, had built houses on them and had cultivations on them?[71]

Grey didn't think it was good practice to do so. He also cited a statement by Te Teira that said that tribes had all agreed to live together at Waitara following Kingi's suggestion.

3. Grey also admitted that resistance to the sale had been largely passive and until the armed attack only women were involved in resisting the troops and said that Kingi's people argued that they did not take up arms against the Crown. This was a virtual admission of the Crown's responsibility for the war.[72]

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[69] E No.2 Enclosure, no. 8., *AJHR,* 1863. The block was actually bigger than Teira's initial estimate of 600 acres.

[70] Carrington to Buckley E, No.2, Enclosure no. 12 *AJHR* 1863

[71] E no.2, Enclosure No.4 *AJHR* 1863

[72] E No.2 Enclosure No. 8, *AJHR* 1863

4. He recommended that the Government support the people's return to Waitara because:

> The original occupants of the land are likely soon to return there and quietly to occupy it. If they do we must either turn them off by force, or leave them in possession, they having taken repossession of the land against the will of the government. If the first of these occurs, a general war will probably take place. If the second occurs, the Government will be placed in a position which weakens its authority and influence.[73]

The Governor claimed that the Crown should avoid a costly war by returning Waitara.

5. He also noted that the attack on Kingi was excessive because his people had not committed any crime and many had fought for the Crown in other wars.

6. Te Teira admitted that others had claims to the block. He also confirmed that the purchase had never been completed and that he had only received £100.

While Grey claimed that he had discovered new facts, they were in fact well known. As has been shown above it was known in 1860 that Kingi and his people were living on the land. Hadfield and others had pointed out that the purchase had not been properly investigated and it seems that in 1860, Grey himself had acknowledged that Kingi had lived on the block.[74] It appears that Grey was attempting to prevent war in Taranaki, whilst actively preparing for the Government invasion of the Waikato.

Reserves

The other issue was reserves where the Pa sites were located. Te Teira said that he had never intended to sell the sites of Pa that people were living on and he wanted a 200-acre reserve in the block. He claimed that he had wanted his land marked out because there were other claims belonging there. Parris claimed that Te Teira had never told him that he had wanted a reserve, but said that Maori would have received reserves along the foreshore and some town allotments.

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[73] E no.2 , No.1*AJHR* 1863

[74] Sinclair, *The Origin,* p. 262

Rather than a reserve, the town was to be at the river mouth.[75] Grey believed that the Government could not justify that position because:

> There is also nothing to show that the Government in its anxiety to form a township at the mouth of the Waitara, was justified, or could legally, without the wishes of the native villages being consulted, determine to change such a reserve into town sections with water-frontage.[76]

The ministers admitted that if it had been known that there were Pa on the block at the time of the purchase they would have been excluded from the deed, as was the accepted land purchase practice of the day. They recommended a tribal reserve around the Pa and an investigation into the remainder of the block.[77]

Finding on Kingi's Rights

Grey claimed that, "[Te] Teira now states that [Kingi] and these people occupied this land under a valid tribal arrangement, which would appear to be a statement of such a nature that no person could sell the land without [Kingi] and these people being consenting parties to the sale."[78] However, his interpretation of the Kingi's role differs from that of the Waitangi Tribunal. While the Tribunal report says that Kingi was the leading chief of Te Atiawa, Grey still held that Te Teira was principal chief and that Kingi had settled there at his bidding. In his dealings with the Governor, Te Teira said that originally Kingi had wanted to return to Waitara on the North bank. However, after fearing an attack from Waikato a tribal decision had been made to settle on the south bank, with the permission of Te Teira's father. Grey acknowledged Kingi's rights were as those of an occupier and not those of someone who had authority over the land.[79]

The Governor publicly acknowledged that Kingi had pointed out that the land was owned jointly in 1860. He blamed Parris for failing to recognise this and said that the Land Commissioner's "determination to take the land by force and his ignorance of the Maori language, which made

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[75] E no.2 Enclosure 4, *AJHR* 1863

[76] E No.2, Enclosure no.6, *AJHR* 1863

[77] Alfred Dommett, E No.2, Enclosure No. 7, *AJHR* 1863

[78] E.no.2 Enclosure No.1, *AJHR,* 1863

[79] E no.2 Enclosure No.13, *AJHR,* 1863

him pervert what [Kingi] said".[80] The key misinterpretation was Kingi's assertion that Te Teira had an interest in the land, which had been interpreted as Kingi admitting that the land was Te Teira's. He also believed that translations of the Crown's positions had lead to a misinterpretation. While this kind of misunderstanding probably contributed to the conflict, it could also simply have been that in 1863, it suited Gore Browne and his officials to elevate Te Teira's position. Kingi, it was argued, was told that the survey was about surveying the Queen's land, when actually it was about an investigation into the claims on the block. However, in 1860, officials consistently maintained that Te Teira's title was good and there was never any indication of a further investigation into the issue. Grey concurred with Kingi's right to resist sale by saying that:

> [b]y the treaty of Waitangi, the chiefs and tribes of New Zealand, and the respective families and individuals thereof, were guaranteed the full exclusive, and undisturbed possession of their lands and estates, forests and fisheries, and other properties, which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession.[81]

Yet in effect, much of the discussion of 1860 had focused specifically on Kingi's insistence that he was responsible for deciding the future of the land and ways to crush that resistance.

Not all supported the Governor's decision that Kingi had a right to oppose the sale. Civil Commissioner Parris maintained that Waitara people had gone inland at the time of the purchase and Kingi had no cultivations on the land.[82]

Furthermore, while Alfred Dommett and his ministers agreed with Grey and his decision to abandon the purchase, they qualified their view by saying that Wiremu Kingi did not have a right to prevent the sale for Te Teira's interests. They told Grey that it was important to retain the position:

> that one native should not by force prevent another from selling land belonging to the latter. [Kingi's] pretension to prevent Te Teira selling his own land would virtually be

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[80] Further Papers Relative to The Waitara, Enclosure to Despatch no.139 *AJHR,* 1863

[81] Enclosure to Despatch no. 139, E 2A, *AJHR,* 1863

[82] FD Bell, 12 April 1863, Enclosure to Dispatch no. 139, E 2A, *AJHR,* 1863

> admitted, unless it be decided that Te Teira has no individual property right within the block.[83]

In fact, according Maori custom, Te Teira did not have an individual property right over and above those of his hapū. Contemporary thinking failed to acknowledge this even though this had been well known to many Government officials. Despite the Minister's concerns, the Government prepared a statement that the purchase was to be abandoned and that the Omata and Tataraimaka blocks would be reoccupied.

Omata and Tataraimaka

In early April 1863, prior to announcing that it would renounce the Pekapeka Purchase, government troops reoccupied the Omata and Tataraimaka Blocks. Grey saw this as a way of justifying abandonment of Waitara. On 22 April 1863 he said:

> If we had not peaceably entered into possession of the European lands at Omata and Tataraimaka, it would have been difficult to have abandoned the intention of purchasing the lands at the Waitara, however objectionable in many respects it might have been to make that purchase, because it might have been said (however unjustly) that the abandonment of our intentions to make such a purchase was a sort of bribe to the natives to induce them to allow us peaceably to occupy our own territories. Now that we have taken peaceable possession of the Omata and Tataraimaka blocks, this objection to abandoning the intended purchase of lands at Waitara no longer exits.[84]

However, the Governor was remiss in not conveying his intentions to Maori. Maori viewed the reoccupation of the two blocks as an act of aggression. There is wealth of evidence to support this. A 1925 account by Hori Teira, puts the resumption of war down to a series of events. He said that in 1862, Maori resolved to retain Tataraimaka and not sell any more land because the Crown had not returned Waitara.[85] It is clear that, "at all times, Maori were unaware of anything other than the military activities south of New Plymouth. At Taiporohenui, they debated the Government's breach of the truce by the reoccupation of Omata and Tataraimaka and the trespass of troops on the Maori land between. They appear to have decided to respond"[86]. On 4 May 1863:

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[83] Enclosure No.4 Dispatch No.1, E No. 2, *AJHR,* 1863

[84] Enclosure No.8 22 April 1863, E No. 2, *AJHR,* 1863

[85] Hori Teira, 6 /11/1925 *RDB* p. 19584. Hori Teira claimed to be one of only four Maori still alive from this period

[86] Waitangi Tribunal, p.89

> a month after the military had reoccupied Tataraimaka, a military escort was ambushed on Maori land at Oakura, between Omata and Tataraimaka, and nine soldiers were killed. The ambush…was against soldiers on Maori land. It could be said, in Maori terms, that the soldiers were in error, for they were caught where they should not have been, and that their trespass was a provocation…Even before the war, Maori had become acutely conscious of the need to maintain boundaries where Europeans were concerned, and to enforce recognition of their ownership, they had imposed a toll on Europeans crossing the area.[87]

Some have alleged that the Governor may have been the actual target of the ambush. Whilst in New Plymouth, Grey rode along the beach each morning, but on the day of the ambush, 4 May he did not do so. Grey is said to have been unsettled by this event and it may have hardened his attitude toward Taranaki Maori.[88]

The Governor did not issue an official proclamation of his position on Pekapeka until 11 May 1863. The troops were not withdrawn from Waitara until 13 May 1863. The Proclamation was in a *Gazette* dated 15 May 1863. The proclamation said:

> Whereas an engagement for the purchase of a certain tract of land at the Waitara, commonly known as Teira's block, was entered into by the [G]overnment of New Zealand in the year [1859] but the said purchase has never been completed:
>
> And whereas circumstances connected with the said purchase unknown to the Government at the time of the sale of the said land have lately transpired which make it advisable that the said purchase of the said block is abandoned, and all claim to the same on the part of the Government is henceforth renounced.[89]

These delays ultimately lead to the confiscation of Pekapeka because Maori were unaware of the Crown's decision to return Pekapeka. Only after the Oakura ambush did the ministers announce:

> That circumstances connected with the purchase of Waitara having come to light which made it, in the opinion of Government, inadvisable to complete the purchase, the government are willing and ready to restore the Waitara to its former owners, and to publish a general amnesty for all former offences; on condition that those engaged in the late insurrection should absolutely separate themselves from the Southern tribes and leave the punishment of the late murders entirely in the hands of the Governor.[and if they did not obey]: the whole of their own land at Waitara will be declared forfeited in like manner as the territory between Omata and Tataraimaka.[90]

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[87] Waitangi Tribunal, p.89

[88] Edmund Bohan, "*To Be a Hero", a biography of Sir George Grey*, 1998 p.213

[89] *New Zealand Gazette* (NZG), 15 May 1863, p.179

[90] *E No.2,* Enclosure no.4 *AHJR* 1863

The Crown then used the Oakura issue to claim that Maori had started new hostilities and to justify land confiscation that included the Pekapeka Block. The point here is the communication of the Crown's position. The Crown's view was that after the Oakura Ambush a second war had begun. However, Maori, because they were unaware of moves to declare the Pekapeka purchase invalid, saw the Crown's occupation of the other blocks as a breach of the terms of the truce and a resumption of the first war. FD Bell received a letter from Tamati Ngamoke claiming that; "had you hastened to give up Waitara at the time you and I were writing, all would have been well." At a meeting on 6 May 1863, supporters of the Maori King told Grey, "the late murders at Tataraimaka were committed on account of Waitara. Waitara is the true root of the evil."[91] A dispatch from Grey quotes the Taranaki Herald:

> Poara of Mataiawa, who is in town to-day (May 16), says, that as Waitara was the cause of the murders last week, they (the people of Mataiawa) shall join their friends the Taranakis, if the Governor attack them. He says that though they had all along asked for Waitara to be given up to them and, it was only when the Governor heard of the murders that his heart stood still and he said, 'Ah! I must give up Waitara.[92]

Grey partly recognised the link between the reoccupation and the ambush. This was brought up by Grey's superior, the Duke of Newcastle who told him, "it would have been better if the reoccupation of the Tataraimaka Block and the abandonment of the Waitara Block had been effected at one and the same time". The Waitangi Tribunal argued that these events forced Maori into a situation where an attack on the Crown was inevitable and:

> [s]ubsequently, if Maori were in rebellion against the Crown, it was only because the Government itself had created a situation where that must inevitably have been so, as a matter of fact, and had then passed legislation to ensure that it was so, as a matter of law. Even in the strict terms of the statute, however, it appears most hapu had not been in rebellion at all at the time their lands were taken.[93]

It is for this reason that many Maori, historians and politicians have seen the confiscation as unjustified.

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[91] E No.2 No. 6A *AJHR,* 1863

[92] E.no.2, Enclosure No.2 , *AJHR,* 1863

[93] Waitangi Tribunal, p.9

Confiscation

Once the soldiers were killed, Grey claimed that there was no way to prevent a war. Although he admitted that he was partly to blame in delaying the announcement of his Waitara decision, he blamed Waikato Maori for wanting a war at all costs and said they were holding Kingi forcibly so he could not agree to peace. Even before the ambush, Grey had felt that the return of Waitara was unlikely to have been enough to stop war. He told the Duke of Newcastle:

> The country is in such a state that the Governor by no means feels confident that this act will quiet the minds of many of the native population. On the contrary he thinks that it may now be impossible to avoid some collision with them: but he believes it would at once win many over to the side of the government: that if a contest must come, that the closest scrutiny instituted into the conduct of the government, either in England or this colony, would result in an admission that every possible precaution had been taken to avoid such as contest, and to prevent the horrors of war falling in this colony, and that it was therefore clear that war with the natives was evident and unavoidable necessity, which the European race must meet with that resolution, fortitude and energy, which they have never failed to exhibit in a cause of undoubted justice.[94]

Even though he was aware of the Maori viewpoint, Grey refused to acknowledge any links between Waitara and the Oakura ambush. He said that the murders were wholly unprovoked and he made it clear that those who supported the rebellion would have their land confiscated.[95]

The Crown first discussed confiscation in 1861. Even before the Oakura Ambush the provincial superintendent had favoured confiscation to pay for the war. There was a general belief amongst settlers and the Government that only confiscation would achieve permanent peace, as it would facilitate military settlement of the area. Moves to confiscate land occurred concurrently with the Government plans to settle large numbers of military settlers and:

> [I]n both Taranaki and Waikato, resistance to military invasion was regarded as sufficient cause for confiscating land, and the threat of confiscation was made after military invasions or occupations had begun. Land was also confiscated on the ground in both places before its taking was made legal. Thus, notice of the terms for granting land between Omata and Tataraimaka to military settlers was published on 6 July 1863and settlement followed soon after, but the land had not been legally confiscated because no enabling legislation was then in place.[96]

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[94] E.no.2, Enclosure no.1, *AJHR* 1863

[95] E, no.2, Enclosure no.6b, *AJHR* 1863

[96] Waitangi Tribunal, p.109

The Government needed to pass legislation to legitimise its occupation of land in Taranaki and it did so under the New Zealand Settlements Act 1863.

New Zealand Settlements Act 1863

According its preamble the purpose of the New Zealand Settlements Act 1863 was:

> WHEREAS the Northern Island of the Colony of New Zealand has from time to time been subject to insurrections amongst the evil-disposed persons of the Native race to the great injury alarm and intimidation of Her Majesty's peaceable subjects of both races and involving great losses of life and expenditure of money in their suppression And Whereas many outrages upon lives and property have recently been committed and such outrages are still threatened and of almost daily occurrence And Whereas a large number of the Inhabitants of several districts of the Colony have entered into combinations and taken up arms with the object of attempting the extermination or expulsion of the European settlers and are now engaged in open rebellion against Her Majesty's authority And Whereas it is necessary that some adequate provision should be made for the permanent protection and security of the well-disposed Inhabitants of both races for the prevention of future insurrection or rebellion and for the establishment and maintenance of Her Majesty's authority and of Law and Order throughout the Colony And Whereas the best and most effectual means of attaining those ends would be by the introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the Country.[97]

The Act appears to have been passed to facilitate settlement, though in reality its primary purpose was confiscation of Maori land. The potential impact on Maori was not lost on either Members of Parliament (M.P.s) or other Pakeha commentators. Some said that the Act was contrary to the Treaty.[98] On closer examination, the content of the Act illustrates why it was so controversial. The Act was set up to facilitate security against 'evil-disposed' Maori who where in rebellion against the Crown. It stipulates that:

> [f]or the purposes of such settlement the Governor in Council may from time to time reserve or take any Land within such District and such Land shall be deemed to be Crown Land freed and discharged from all Title Interest or Claim of any person whomsoever as soon as the Governor in Council shall have declared that such land is required for the purposes of this Act and is subject to the provisions thereof.[99]

This meant the Crown could take land within a proclaimed district regardless of Maori claims. Although the Act included provision for 'loyal' Maori and 'surrendered rebels' to receive compensation, their land within a proclaimed settlement district was still confiscated. If the

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[97] Preamble New Zealand Settlements Act 1863

[98] See Chapter 5 of the Taranaki Report for details of the debate.

[99] NZ Settlements Act 1863

Governor believed that Maori in a district had been in rebellion since 1 January 1863 he could declare their lands subject to the Act. The Governor could then set out places in the district for settlement. The land would become Crown land free from claims of other parties. Maori who had land taken would be compensated except those:

> (1) [w]ho since the 1st January 1863 have been engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand or-
> (2) Who shall have adhered to aided assisted or comforted any such persons as aforesaid or-
> (3) Who shall have counselled advised induced enticed persuaded or conspired with any other person to make or levy war against Her Majesty or to carry arms against Her Majesty's Forces in New Zealand or to join with or assist any such persons as are before mentioned in Sub-Sections (1) and (2) or-
> (4) Who in furtherance or in execution of the designs of any such persons as aforesaid shall have been either as principal or accessory concerned in any outrage against person or property or-
> (5) Who on being required by the Governor by proclamation to that effect in the *Government Gazette* to deliver up the arms in their possession shall refuse or neglect to comply with such demand after a certain day to be specified in such proclamation.[100]

The Act provided for a Compensation Court to be set up so Maori who were not in rebellion to be compensated for having lost land.[101] The loyal/rebel distinction is crucial as this is what defined the right to land. However, given that from the Maori perspective the war was begun when the Crown reoccupied Omata and Tataraimaka, which placed the responsibility of the war in the Crown's court, it is debatable whether any Maori were actually in rebellion. Therefore it is questionable whether the Crown should have confiscated any land.

Furthermore, the 1863 Settlement Act was but one of several set up to facilitate confiscation of Maori land:

> [t]he New Zealand Settlements Bill set out Grey's confiscation ideas, the Loan Bill adapted Dommett's Financial plans and the Suppression of Rebellion Bill suspended habeas corpus. Grey had wanted something similar to the English Suppression of Disturbance Act 1833, but Whitaker based his Bill on the harsher Irish Act of 1798. [102]

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[99] Ibid

[101] An amendment to the Act in 1865 set out greater provisions for compensation court procedures.

[102] Edmund Bohan, "*To Be a Hero", a biography of Sir George Grey*, 1998 p.216

Land confiscation had precedents in other British colonies, such as Ireland and South Africa. In practice the new legislation proved to be a very effective method of alienating land. The problem was though that the Treaty guaranteed Maori customary rights to land until they chose to alienate them. This Act significantly overwrote that guarantee. This was a very serious issue and that fact that it sparked considerable debate in parliament suggests that the Act's implications were not clear to many of the country's lawmakers.

The Confiscation in Practice

Edmund Bohan, points out that even prior to coming to Taranaki Grey had resolved to take back Omata & Tataraimaka.[103] In his biography of George Grey he says that Grey had a political agenda in his repudiation of the purchase, which was to discredit his political opponents, Stafford and Gore Browne. He conceptualises the abandonment of the purchase as:

> there also began the curious episode of the 'new facts' about Waitara. First Fredric Carrington and Lieutenant Bates announced that Wiremu Kingi had, after all, set up Pa on the disputed Waitara lands, while Teira at last admitted that Wiremu Kingi had been living under tribal agreements on those lands. He agreed that others had legitimate claims to them too and complained that he had received only part of the purchase money. Grey declared ingenuously that all this was, indeed, news to him and in the light of new facts he would give Waitara back to Kingi. Bell expressed astonishment, but few others were surprised: every one of these 'facts' was already in the public records. The kindest judgment is that both Grey and Bell were simultaneously afflicted with curious form of amnesia. The harsh truth, however, was that they were deliberately trying to settle the Waitara problem by further discrediting Browne and the Stafford government so that they could concentrate on smashing Waikato[104]

Following the resumption of the war and outbreak of war in Waikato, the Governor further legalised confiscation policies and practices, which led to victory by legislation rather than by military conquest. On 26 October 1864, the Governor issued a proclamation requiring all Maori in rebellion to surrender by 10 December. The proclamation also stipulated that, 'surrendered rebels', would be pardoned once they had taken an oath of allegiance and surrendered lands that the Governor might require. On 17 December 1864, the Government announced its intention to take Maori land for settlements and roads. On 30 January 1865, it declared the Taranaki area a confiscation district available for settlement.[105] The Waitara south block was taken on 30 January

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[103] Ibid, p. 210.

[104] Ibid

[105] *New Zealand Gazette* (NZG), 1864, p.461

1865.[106] This included the west side of the Waitara Township. On 2 September 1865, an area known as the Ngatiawa Coast, which included the north bank of the river, was also declared confiscated.[107] On that same date notice was issued that the war had ended and that Maori, not in rebellion, who surrendered and wished to live peacefully would be given Crown grants to land.[108]

By 1865, the Crown had confiscated 1,278,080 acres (517221 hectares) from Taranaki Maori.[109] The Sim Commission said that the confiscation of Taranaki land amounted to 462,000 acres (186965 hectares) once reserves were returned.[110] This was an attempt to take into account the land handed back as compensation. The Waitangi Tribunal believed that in effect, when forced purchases were taken into account, this figure was closer to 1,922,200 acres (777888 hectares).[111]

Compensation

As a result of confiscation, Waitara had effectively been alienated from Maori and made available for military settlement. Maori became squatters on Crown land. To remain on the land, they needed to have reserves made for them. The Crown set up a Compensation Court to hear compensation claims of loyal Maori and surrendered rebels. Loyal Maori were given three months from 4 April 1865 to declare their land interests for compensation. Maori were given two months to apply for a hearing once a Court date was fixed. Although the Court granted Taranaki Maori just over 250,000 acres (101171 hectares) of reserves in individual land grants, in practice hapū lost land regardless of whether they fought or not. Wiremu Kingi, who was not a party to the Oakura Ambush and who had not fought in the war since the truce of 1861, lost the Pekapeka Block where his people had Pa and cultivations and does not seem to have received reserves.[112]

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[106] *NZG*, 1865, p.16

[107] *NZG,* 1865, p.266

[108] Ibid

[109] D 13, *AJHR* 1865

[110] Waitangi Tribunal, p. 14

[111] Ibid, p.15

[112] Although he did not fight in the Taranaki War, Kingi does appear to have been involved in an incident in March 1863, where he led a party that demolished a government printing press and took the staff prisoner. Pool, Ian. 'Dadelszen, Edward John von 1845 - 1922'. *Dictionary of New Zealand Biography*, updated 19 July 2002, URL: http://www.dnzb.govt.nz/

It has become evident that there were also problems with the compensation process. It is not clear how many Maori received notification. Nor was it possible, based on the evidence, for the Waitangi Tribunal to decide whether all valid claimants had their cases investigated properly. The Tribunal said that:

> [t]he process presented many problems. It is known that some Maori who were entitled to claim never did, Wiremu Kingi among them for Waitara South, and it is likely that there were large numbers in that category. The statutory process was also muddied by conflicting proclamations and, presumably, by the way in which they were relayed to Maori. The 'peace proclamation' of September 1865, for example, promised that the Governor would restore lands and commissioners would 'put the natives who may desire it upon their lands at once'. It was unclear whether this would come as a matter of course or whether claims were still required. Further, while the rules did not show that rebels might need to signify an interest, the loyals' shares could not be calculated unless the total shares of all were known. Evidence as to ownership was thus anecdotal and thin and the court generally worked on the assumption, which it could not properly have drawn, that the admitted claimants and those whose claims were rejected represented the total hapu population.[113]

Waitara claims were heard in New Plymouth from 1 June to 12 July 1866. Of those claims submitted, "238 claims were rejected as being from absentees, 149 were disallowed for the non-appearance of the claimants and other claimants were divided into loyals and rebels on the evidence of one or two witnesses."[114] However, the proceedings were halted when settlement was reached between claimants and the court. The Waitangi Tribunal explains that:

> Some historians have argued that an out-of-court settlement was reached to avoid embarrassing findings on the ownership of Pekapeka and thus on the cause of the war. In support, they have cited the senior judge of the Compensation Court, who admitted to the Native Land Laws Commission in 1890 that the court was 'so much struck with the facts elicited in evidence' that it adjourned and 'made a communication to mutual friends that some of the Ministers ought to be sent down and prevent judgment being given'. The Native Minister came, a further adjournment was allowed, a settlement was agreed and at the end of the week there was, as the judge put it, 'no appearance of anybody, so there was no judgment'.
>
> It is also of interest to note those who were not among the claimants. Like many others, Wiremu Kingi did not participate in the court's proceedings. Te Teira was present, but Kingi and his people remained in the upper Waitara Valley, where they had taken residence with Ngati Maru. He is not included among the names for Waitara South, where he lived, but his name appears as a rebel on the lists for Ngati Awa Coast. We are aware of no evidence that Kingi was involved in the second war or in any fighting on or after 1 January 1863, the date from which rebellion was deemed to have commenced.

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[113] Waitangi Tribunal, p.141

[114] Ibid p.147

> We also know of no evidence that Kingi received a piece of land. The line from Wiremu Kingi is not known and no persons appearing before us claimed him as their forebear. His descendants were left landless. [115]

The reserves were the remainder of land left in the area after settlers had selected the most fertile land. The Tribunal says of the land returned:

> In Waitara East and Waitara West, 125 town sections and 50 town sections were set aside respectively, for a total of 44 acres…Of the rural and town sections, about 6000 acres were awarded to individuals for varying sized shares and Crown grants were issued for them. By 1880, about 3350 acres of the Crown grants had been sold. The balance appears to have been held by the Crown to satisfy any further claims. …In brief, there was not the full inquiry by the court that the New Zealand Settlements Act required; the amount of land to which the loyals were entitled, based upon the number of loyals, the owners as a whole and the total area, was not assessed because it was simply settled that Maori would take what remained; comparative values were not used; the basis for determining the unequal entitlements was not given; there were no safeguards against the alienation of such lands as were Crown granted; it is not known whether the balance that was not Crown granted eventually reached Maori hands; the personal acquisition of interests by the native agent was contrary to regulations in that he also had the duty of buying for the Crown; and Wiremu Kingi and his followers were left out, but it is doubtful they were rebels in terms of the Act. No proper inquiry as to loyals or rebels was ever made. [116]

In fact the Sim Commission found that in some cases those who appeared as rebels on one list were granted land in other parts of the country. For instance, a 1927 review by W. H. Skinner at the lands office in New Plymouth in 1927, found that Wi Karerewa and Ramaka Te Amai of Puketapu hapu, both received grants in Waitara South after having been declared rebels in Ngatiawa Blocks.[117]

In 1880, in response to Maori protest, the Government set up the West Coast Commission to inquire into the compensation process. An initial commission made some findings on the reserves and a subsequent second commission was set up to create the reserves. The commission set aside reserves, but they proved problematic and inadequate. The Waitangi Tribunal claimed that even though its purpose was supposedly to assist Maori, the commission was limited in scope, and lacked independence (the commissioner's being closely linked to government).

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[115] Ibid, pp. 147 -148. Parsonson's biography of Kingi mentions that he never took up lands set aside for him at Waitara.

[116] Ibid, p.148

[117] *RDB,* p. 19303

Another problem was that the reserves individualised title and set up a perpetual lease system, which made land purchase easier and also took land from Maori control. Furthermore the Waitangi Tribunal cited that:

> [t]he prejudice lay mainly in settling the centre without inquiring into the legal or moral basis for so doing; in contributing to the Parihaka invasion by not providing the reserves that could and should have been provided beforehand; in giving less land of good quality than should have been returned; in failing properly to inquire into the land needs of Maori, especially in the north; in punishing certain hapu for supporting Te Whiti by reducing their land awards; in individualising titles; and in denying the authority of Maori to manage their lands themselves. As a consequence, Maori suffered grievous and irreparable loss.[118]

The commission, like the Compensation Court, failed to offer anything realistic in terms of compensation. It compounded the impact of confiscation.

Reserves in Waitara Town

Heather Bauchop's report for the Waitangi Tribunal notes that in Waitara Maori could choose one town section to the Crown's nine and that Crown grants for them were not issued until the 1880s.[119] A study of a selection of these sections from records held in the Maori Land Court sheds some light on the type of land given back and the process. Most sections were 1 rood (0.1 hectares). The majority of Crown grants to these sections were made under the New Zealand Settlements Act 1863 and New Zealand Settlements Continuation Act 1865. They were granted in June or July 1872 and backdated to 16 September 1867.

The Government also used the Compensation Court to impose a policy of individualising Maori title to land. This undermined hapū title and put Maori landowners under even greater pressure to alienate. The allotments were usually given to one person and often to a woman possibly because women were less likely to have fought in the war and perhaps therefore more acceptable to the Compensation Court as "loyalists". The Waitara town sections were also less likely to have alienation restrictions on them than the West Coast Settlement Reserves, which could only be leased. While it was the owners' prerogative to do what they liked with the land, the fact that

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[118] Waitangi Tribunal, p.257

[119] Heather Bauchop, "The Aftermath Of Confiscation" Waitangi Tribunal 1993, p. 94

the land was not returned to hapū control but to individual owners instead, meant that they faced considerable pressure to alienate and many of these sections were later sold. While most sales appear to have been with consent of owners, the Maori Trustee made some compulsory sales because owners had become untraceable and the properties had run up noxious weeds or rates charges. These problems may be the result of granting the land to women owners, who were perhaps more likely to move away or change their name upon marriage, making it hard to trace their successors and pass on land shares. Further research would be required to confirm this supposition.

In effect what the Waitara hapū ended up with was something akin to Parris' proposal of foreshore reserves for canoe landings, town sections, and a series of cultivations. According to the records of the Maori Land Court, aside from the Rohutu, Pukekohatu and Manukorihi blocks, little of the Waitara township land granted to Maori by the Compensation Court remains as Maori freehold land. The town sections still remaining are:

Table 1: Maori Freehold Sections in Waitara 2002

Section	Owners	Area
Waitara East Town section 1 block 27	5	0.1011 hectares
Waitara East Town section 3 block 27	5	0.1011 hectares
Waitara East Town section 4 block 3	4	0.1011 hectares
Waitara East Town section 4 block 27	5	0.1011 hectares
Waitara East Town section 6 block 16	1	0.1011 hectares
Waitara East Town section 6 block 27	5	0.1011 hectares
Waitara East Town section 8 block 2	1	0.1011 hectares

Issues

1. In 1863, Governor Grey declared the Pekapeka 'purchase' invalid, because title to the land had not been properly investigated. The grounds for this was the 'discovery' that Kingi and 200 people had been living at the river mouth in 1860 and cultivating parts of the Pekapeka block. Grey acknowledged the Maori view that the resistance to the

purchase was a fight for, 'house and home', and that until the Crown fired shots at Kingi's Pa, resistance had been peaceful.

2. Governor Grey and his Ministers neglected to communicate this decision to Maori in good time. At the same time they reoccupied lands held by Maori as hostage for Pekapeka, which Maori interpreted as a resumption of the war. This provoked the Oakura Ambush, which in turn provoked the resumption of war and ultimately led to the decision to confiscate Taranaki lands.

3. The Compensation Court process following confiscation appears to have been inadequate.

4. The first official inquiry found there were inadequacies and recommended compensation in 1927. This process also proved inadequate. The Taranaki iwi's statement of claim before the Waitangi Tribunal described the 1927 compensation award as unsatisfactory for the following reasons:
    - the Crown did not consult with hapū or iwi over the proposed compensation award.;
    - the Crown did not adjust the recommended payment between 1927 and 1944 to take account of inflation and in spite of 14 years of Maori raising concerns about the amount of compensation awarded;
    - once the payment began in 1944 there were no provisions for review of the payment and it was not inflation adjusted. In its 1996 report the Tribunal concurred that compensation had been inadequate and that, "[it] would place little weight on moneys [sic] previously paid for these claims. At best, they served to save face for the Government's wrongs, but only fleetingly, for the sincerity of the Government's desire for atonement has depreciated in proportion to the growth of inflation;"[120]

[120] Waitangi Tribunal, p.314

5 TOWN DEVELOPMENT & GROWTH

Introduction

In addition to the original processes that lead to confiscation, subsequent Crown actions and policies meant that the local hapu and iwi experienced further injustices that ultimately lead to a sense of grievance and bitterness. Crown policies entangled the Waitara community and local authorities in this grievance because the Crown gifted a significant portion of land in Waitara to local authorities. As this report shows Crown policy and legislation has also ensured that this land as local authority land cannot be used in a Treaty settlement and also that the NPDC cannot negotiate a settlement without being open to legal challenge.

When Waitara was surveyed after confiscation it was renamed Raleigh. The new town was to have schools, churches and local authorities. In 1876, the Waitara Harbour Board, (WHB) and the Raleigh Town Board, (RTB), acquired endowment land from the Crown for harbour improvement and municipal development respectively. During the next 70 years further land was added to these endowments as the local authorities sought land for funding purposes. Some endowments became reserves and the Crown acquired others for public works. Lessees have developed most of the endowment sections for housing, but some of the land is used for industrial and grazing purposes.

The Waitara Harbour Board was disestablished in 1940, because New Plymouth became the preferred port for Taranaki and the local authorities in the area decided to concentrate their resources at that port. As a result, the WHB's land was vested in the Waitara Borough Council (WBC). It was intended to fund the council's planned river works programme and assist with loan repayment for building a bridge over the Waitara River. Since then, the WBC used harbour endowment revenue primarily for flood prevention and section development.

During the late 1980s local government underwent massive restructuring. The NPDC acquired title to this land as a result of local government restructuring. In 1986, title to the Waitara

endowments was transferred from the WBC to the North Taranaki District Council by way of an Order in Council. In 1989, another Order in Council incorporated the North Taranaki District Council and three other local authorities into the New Plymouth District Council. The amalgamation included the vesting of all property of former local authorities in the New Plymouth District Council.

On amalgamation the NPDC took over the leases and carried on the arrangements set by the previous two local authorities. The NPDC currently leases the endowments to Waitara residents, mostly on 21-year perpetually renewable leases. Leaseholders have wanted to freehold their land for nearly as long as the sections have been in existence.[121] Throughout the twentieth century, local bodies and local M.P.s received requests from leaseholders asking to buy their land. The records from the nineteenth century have not survived, so it is not possible to say whether the first lessees wanted to freehold their properties.

Lessees believe that the leasehold title restricts town development and the value of their properties. In 1992 in response to pressure from lessees, the NPDC took steps to pass legislation that would allow leaseholders to freehold their property and rid the NPDC of the necessity to buy further endowments when they sold land. The then Minister of Justice, Douglas Graham, refused to consent to the New Plymouth Land Vesting Bill 1992 being passed until the Treaty issues were resolved because it affected land that was of special significance to tangata whenua - the Pekapeka Block where the New Zealand Wars of the 1860s began. The Bill remains deferred until these issues are resolved. This chapter discusses these events in detail.

This section of the report covers these events and is based on documentary evidence in the council's files. Given that Pekapeka has been occupied for centuries, tangata whenua would be able to point out other spiritual and cultural issues associated with the land and tell their story about what has happened. It is also likely that leaseholders will be given an opportunity to present their views to council.

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[121] The Waitara Borough Council files contain numerous letters from residents wanting to freehold their properties.

5.1 Settlement and Sales

As well as confiscating Maori land, the New Zealand Settlements Act 1863 enabled the Governor to set up military settlement towns, to survey the towns and to let or sell sections and farms within the settlement area. An 1865 amendment to the Act set out the power to reserve lands. Money from the sales was to be used to pay for the Taranaki War and:

> [t]he Governor [could] reserve portions of any of the land taken under the said 'New Zealand Settlements Act 1863' for the several purposes for which reserves may be made under the twelfth section of 'The Waste Lands Act 1858' and may make grants thereof under 'The Public Reserves Act 1854' or otherwise as the case may require.[122]

This was what enabled the Government to vest reserves in the WHB and WBC.

Waitara Township grew rapidly in the post confiscation period. Almost immediately after confiscating the land the Crown began making plans to construct a town settlement at Waitara or Raleigh, as the town was known in its early days. District Surveyor F.A. Carrington surveyed Waitara during 1865 and 1866. From the outset it seemed that Waitara needed port facilities. Carrington noted that:

> After several examinations of the ground at Waitara and taking into consideration the nature and capabilities of the river for small craft and steamers of light draught and the value of surrounding Country – I have designed a plan, which I consider suitable for the locality. – I have also widened the wharf ground under Manu Kori [sic] Pa, where no doubt small vessels will moor as there is ample water at low tide to keep them afloat.[123]

He also noted that any bridge over the river needed to be big enough for vessels to pass underneath it.

Survey of the township was completed in June 1866 and the first European land purchase took place on 30 November 1867. The Crown sold 108 sections of the 196 allotments offered for sale at the time. In 1868, it sold a further 21 suburban sections. Town allotments were priced according to location; corner lots with River frontage were £30, other corner lots £20, intermediate lots £15and all other lots £10.[124]

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[122] New Zealand Settlements Continuance Act 1865

[123] Carrington to Commissioner Crown Lands, New Plymouth, July 1865, LS- NP 1 1, National Archives Wellington

[124] *NZG* 1867, p.72

The Compensation Court gave some town sections to Maori. Maori were granted town allotments on 4 February 1867, but the Crown grants for these lands were not finalised until 1872.[125]

All military settlers were given a town allotment. [126] The Crown also appears to have given land to former New Zealand Company settlers who had had their claims to land overturned by Spain and Fitzroy. The Lands Department's book of allotments and associated correspondence shows a number of sections allocated to settlers at no charge.[127] The Crown, under the provisions of the Land Orders and Scrip Act (Taranaki) 1866, set out provisions whereby, persons entitled could select land within the township.[128] After all the awards were provided for the remainder of land was then offered for sale to the public.

By 1881, there were 185 settlers living in Raleigh. The new town had roads, waterways, schools, churches, an institute, a jail, a library, wharves and a stockyard.[129] This growth is largely attributable to the fact that Waitara was the main industrial port during this period because there was no natural port in New Plymouth.[130] The port was primarily for servicing the farming industry. Initially most of the vessels transported meat from freezing works, but in 1899 the port was gazetted for the shipment of dairy goods.

5.2 Reserves and Endowments

During the early days of the township the Government made reserves for government purposes such as school sites and recreation grounds. In 1871, Sections 10 and 12, Block 44, Town of Waitara West, were set-aside as sites for a post office and customhouse. A parcel near the West Quay, section 5-10 and 12 block 20, Town of Waitara East and the area now known as Pukekohe

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[125] *NZG* 1867, p.71, MLC Block order files

[126] *RDB,* p.5190

[127] LS – NP 1 1, National Archives, Wellington

[128] *NZG*, 1867, p.72

[129] Suzanne Cross, Muru Me Te Raupatu: Confiscation, Compensation and Settlement in North Taranaki 1863- 1880, MA Thesis, Auckland 1993

[130] Ibid

Park, was also set aside for general government purposes. [131] Pukekohe Park is now administered by NPDC, but owned by the Department of Conservation. Section 5 block 43 was set-aside as a school site in the west township.[132] As part of the development of Raleigh/Waitara, the Crown gifted also local authorities endowment lands and reserves. The purpose of these lands was to provide community amenities, such as parks and to help fund the development of others such as bridges and the library.

Moves to acquire land for harbour endowments also followed soon after land confiscation. In 1869, the Crown granted 1800 acres (728 hectares) of land to the Provincial Superintendent. This was under the auspices of the Public Reserves Act 1854, which provided that the Governor General could dispose of foreshore and reclaimed land to any other person as 'thought fit'. [133] This was mainly foreshore land including, "the sea between high and low water mark, starting at the west bank of the Waitara River along to Hongihongi south of New Plymouth and including land on the west bank of the River".[134] Parsonson notes that this was, "at a point opposite to the termination of the northern side of Mc Naughton Street in the Town of Raleigh". The purpose of this was to vest land for a breakwater or works for shipping in the area.[135]

Harbour Endowments

Unallocated or unsold sections were declared, 'waste lands', of the Crown. However it is perhaps worth noting that in spite of complaints about inadequate compensation no consideration was given to the interests of tangata whenua and no thought given to allocating these 'waste lands' as reserves for them. Much of this unallocated land was later vested in local authorities.

[131] *NZG* 1871, p.182

[132] *NZG* 1871, p.128

[133] Parsonson Submission, p.11

[134] Parsonson Submission, p.5

[135] Parsonson Submission, p.11

1876 - Land Vested in the Harbour Board for a Signal Station

On 28 February 1876, the Secretary of Crown Lands reserved a site for a signal station, on land that in 1860 had been one of the pa sites where local Maori were living. During the wars it had been used as a site for a blockhouse for troops.

The land was on the west riverbank and was two roods and 35 perches (approximately 0.2 hectares) and known as block 119, Town of Waitara West.[136] The land was near the river mouth, bordering Grey Street (now Centennial Ave). In 1876, the land was on the river foreshore, but later reclamation in the 1900s meant it soon no longer fronted the foreshore. The signal station remained on this site until the closure of the harbour. In 1910, the site was included in the harbour trust endowments under the Waitara Harbour Board and Waitara Borough Empowering Act. See Map 1 for a visual picture of the endowment's locations.

1876 - The First Endowments

The Waitara Harbour Board acquired title to the first of its endowments by way of a gift of land from the Crown. In October 1876, H.A. Atkinson, the secretary for Crown lands, made land in Waitara available for public purposes under the New Zealand Settlements Act 1863.[137] The land was to be used for an endowment, which the harbour board could lease to fund harbour works. Map 2 shows these endowments. This endowment consisted of 100 town sections. Sixty sections were in Waitara West and forty in Waitara East. The description of the land was:

- blocks, 6, 12, 18, 23 - 25, 32- 34, 41and 42, Town of Waitara East;
- sections, 1, 3, 5, 7, 9and 11 of block 35, Town of Waitara East;
- sections, 1 – 12, block 43, Town of Waitara East;
- Sections, 1, 3, 5, 7, 9and 11, block 44, Town of Waitara East;
- blocks, 1 – 3, 5, 7, 9, 10 –18, 108, 109, 25-27, 36 - 38, and 45 - 47, Town of Waitara West;
- sections 1-12, block 55, Town of Waitara West.

[136] *NZG,* 1876, p.167

[137] Ibid, p. 735

The total area was 25 acres and 28.52 perches (10.3 hectares). Each section was approximately one rood (¼ acre, 0.1 hectares).

1879 – River Front Land Acquired

The Waitara Harbour Board was established in 1877 and it appears that the board ran into financial difficulty almost immediately, because of the need to build a bridge across the river.[138] In 1879, land on the river foreshore was acquired for harbour purposes (specifically the building of a bridge) under the Reserves Act 1877 and the Public Reserves Amendment Act 1878. The land area acquired was 25 acres, 0 roods, 25 perches (10.1 hectares). This allowed the Crown to issue warrants, 138 and 139 to create a harbour board title to foreshore land. The land included in these warrants was West Quay and East Quay. Between 1879 and 1891, the river changed course and because of accretion the area became 26 acres, 3 roods 12 perches (10.7 hectares).[139] The Reserve and Other Lands Disposal and Public Bodies Empowering Acts of 1915 legalised the accretion and removed a wharf restriction on the land. It also vested a specific area on West Quay as a wharf under the Harbours Act 1908. Much of that area is still used as a wharf. The bridge across the river was built, but as will be shown later in this chapter, it was soon replaced by another wider bridge. The locations of these endowments are shown on Map 3.

1904 – Seafront Land Acquired

The Waitara Harbour Board remained short of funds and it argued that it needed revenue to carry out port works. On 27 September 1900, the board asked the Department of Lands and Survey for further land for endowments. Map 5 shows this acquisition. The request included:

- pastoral land in the Upper Waitara District - 8574 acres;
- section 71 Block 7 Urenui (no area given);
- section 14 Block 5 Waitara East (129 acres);
- section 136 Block 1 Waitara West (92 acres);
- foreshore from Waitara to Onaero (no area given).

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[138] Marine Registers, National Archives, Wellington

[139] Marine Secretary to Ivor Prichard 16 February 1940, M3/2/10, National Archives, Wellington

This request was not granted. In 1904, the WHB asked for transfer of foreshore land from the New Plymouth Harbour Board as far north as the end of the Waihi Stream. However, the Crown wanted to protect the foreshore and therefore only gave the WHB the area it required for harbour works.[140] This land acquisition, under the auspices of the Waitara Harbour Board Foreshore Endowment Act 1904, vested land along the seafront in the harbour board. This land was:

- 70 acres of part A, known as part A² of block 1 Paritutu Survey District (this land had formerly been granted to the New Plymouth Harbour Board);
- 18 acres, part A³, block 1 Paritutu Survey District;
- 11 acres, part A^4 block 1 Paritutu Survey District.

This land was mostly reclaimed land at the Waitara river mouth.

1910 – Waitara Harbour Board and Borough Empowering Act

The Waitara Harbour Board and Borough Empowering Act 1910 vested former New Plymouth Harbour Board land in the Waitara Harbour Board. This land was

- 5 acres (2.02 hectares) at East Beach, on the western side of the Rohutu block (section 15);
- 136 acres (55 hectares), comprising section 136 Block Paritutu Survey District and part of Reserve A, land on the foreshore;
- 129 acres (52 hectares), section, 14 Block 1, Waitara Survey District;
- 2 acres 2 roods, (1.01 hectares) in block 1, on the eastern side of Rohutu block;
- 1 acres, 2 roods, 35 perches, (0.6 hectares) which was block 119, known as the pilot station;
- foreshore from the east bank of the Waitara River to the Waihi Stream.

[140] Marine Secretary to Harbour Board Secretary, 2 August 1905, M3/2/10, National Archives, Wellington

The Waitara Borough Council also acquired an interest in the Harbour Board endowments through this 1910 Act. The Act stipulated that the WHB was to pay the WBC half the rents from the endowments. The purpose of this was to help the borough council pay for building and maintaining a bridge across the river. The bridge was made of prefabricated steel and concrete in Scotland and assembled in Waitara at a cost of £10,500. It opened in 1913.[141] As the photograph below shows, this was a second bridge, which was built next to the original bridge.

The other half of the revenue was to be held in trust for the maintenance of the banks and the improvement of the navigation of the Waitara River. Most of this land is used as a foreshore reserve, but under the terms of the 1910 Act section 14 and part of section 15 have leased to and developed by the Airedale (Waitara Links) Golf Club.

1940 - Waitara Harbour Board Act

By the 1930s, it was obvious that Waitara was not going to be the main regional port for Taranaki. In 1939, the local bodies responsible for the WHB included; Taranaki County Council, Inglewood County Council, Clifton County Council, Stratford County Council, Whangamomana County Council and the Waitara Borough Council. They proposed that the harbour districts of Taranaki be merged into the New Plymouth Harbour District.[142] Although fishermen and powerboats continued to use the river mouth, the WHB was disestablished and commercial port operations at Waitara ceased in 1941.

The reorganisation of the WHB's assets was controversial. Legislation was required to disestablish the board and distribute its assets. The WBC was keen to use rent monies from harbour lands for river protection purposes and argued that it should assume outright ownership of the endowments. The various counties objected to the borough's proposal on the grounds that it was unfair to divert harbour monies into municipal purposes and that the money should continue to be used for harbour purposes. They claimed that:

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[141] Taranaki Museum, Photograph File Number C.3.30

[142] The local bodies owned the harbour board jointly as the Waitara Harbour District area took in their districts. Seems to have taken into account these counties.

> [t]he assets of the Waitara Harbour Board belong to the Waitara Harbour District as a whole and not to a small part of that District…The assets in question are held by the Waitara Harbour Board … in trust for harbour purposes and there is no justification for their diversion to the municipal purposes of the Waitara Borough.[143]

The New Plymouth Harbour Board did not object to monies from the land being used for river protection but did not want the revenue used for Waitara municipal purposes either, because the counties had a greater share of the interests in the WHB.

In 1939, the parliamentary Local Bills Select Committee heard arguments for and against the borough council acquiring title. The counties argued that the purpose for which some of the land was acquired, (navigation purposes), was no longer applicable given that there was to be no port. They said that rental for these sections should be given to the New Plymouth Harbour Board and that the WBC should only be allowed to retain a recreation area known as Seaside Park.[144] They also suggested that New Plymouth Harbour Board pay the borough money for the bridge loan. The WBC's review of the legislation affecting the endowment land said that there were no grounds for arguing that the purpose of the endowments had failed and that, therefore it could retain those lands to pay for river works. The counties maintained that even taking that into account there would still be surplus money from the endowment rentals. The records that remain show no input from either tangata whenua or the wider community on the future of the endowments.

A compromise was reached and provisions in the Waitara Harbour Act 1940 ensured the WBC could use endowment rent money for river protection and the bridge loan. The Act also disestablished the WHB. At this time the Waitara Harbour Board had the following land in trust as endowments for harbour improvements:

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[143] Statement in opposition to [the Waitara Harbour] Bill on behalf of the following Counties as constituent bodies of the Waitara Harbour District, [undated], Taranaki County Council, Closed File 230, Taranaki Harbours Board, Amalgamation of Waitara Harbour Board

[144] Land on the western foreshore acquired in 1910.

Table 2: Harbour Trust Land Holdings 1940

Purpose	Acquired by	Area
River foreshore on the East side	1904 Foreshore Vesting Act	15 acres
River foreshore adjoining above piece.	1904 Foreshore Vesting Act	3 ¾ acres
Grazing land adjoining the eastern boundary of Waitara Borough.	Original Harbour Endowment Land 1876 Gazette	29 acres,
Other grazing land in Waitara East.	Original Endowment – 1876	6 1.2 acres
River foreshore on the West side from Nelson Street to the River Mouth. (Brookes Terrace River Frontage).	1904 Foreshore Vesting Act	11 ½ acres
Wharf and warehouse at West Quay.	Gazetted 1871	1-½ acres
Miscellaneous sections in Waitara East.	1876 Endowment	3 ¾ acres
Vacant land in Waitara West.	Various	77 ¾ acres
Tasman Sea foreshore and adjoining land on West side of the River.	Held in trust for general harbour purposes – 1910 Act	191 acres
Tasman Sea foreshore and adjoining land on the east side of the River.	Held in trust for general harbour purposes – 1910 Act	145 ¾ acres
Section 11 Block 36 Waitara East	Not on any trust	¼ acre
The total area was 485 ¾ acres [194 hectares] and the total annual rent was just over £1381.		

The 1940 Act vested the foreshore between the high and low water marks on East and West Beaches in the New Plymouth Harbour Board. Section five of the 1940 Act vested most of the remaining harbour board land in the Waitara Borough Council. The Act sets out the following provisions for the application of revenue from the endowments vested in the WBC.

> (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 there out 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.[145]

The harbour trust endowments continue to be governed by this 1940 Act.

1960s - Further Issues Arise

In 1961, the Taranaki Harbour Board began preparing to review the endowment account, in light of section nine of the Waitara Harbour Act 1940, which provided for a review of the rental account and a transfer of funds to the New Plymouth Harbour Board if the borough council no longer needed the money. [146] Because of extensive improvements carried out on the endowment properties the WBC had no surplus money. According to the council, this was a justifiable expense because in order to generate money from rentals it was advisable and legal under section nine of the Waitara Harbour Act to spend money on the land to improve the properties. The Town Clerk noted that, "it is desirable that a great deal of this former harbour board land should be developed with roads, services and leased on long term leases for housing development."[147] The borough's legal advisors cited the Municipal Corporations Act 1954, which said that:

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[145] Harbour Board Act 1940

[146] Secretary Taranaki Harbour Board to Town Clerk, 17 May, 1961, Waitara Borough Council File, 11/1, Harbour Trust General

[147] Counsel to Town Clerk, 14 September 1962, Waitara Borough Council File, Legal Opinions & By Laws 1940 - 1982

> The council may subdivide or resubdivide … "any other land vested in it and not held upon Trust for any particular purpose other than housing" into suitable building allotments and may construct thereon streets, service lanes and access ways and such other public works as may be deemed necessary for the use, convenience enjoyment of the land for residential purposes and may provide services and develop the land as building allotments.[148]

While lessees made improvements to their individual properties, the WBC was to develop and improve the infrastructure and this would in turn generate more rent monies, as the value of land would increase. Harbour improvements would be funded out of surplus monies left over from land improvements. Based on this defence, the endowments remained in the council's hands.

Municipal Reserves

The Municipal authorities also received grants of land from the Crown. These endowments have been administered and leased in the same way as the harbour trust reserves. However, they are not subject to the harbour trust and therefore the rent from these reserves has been dealt with differently and is simply added to the district fund.

1876 – Grant to Raleigh Town Board

At the same time as the harbour board got title to reserves in Waitara, the predecessor to the WBC, the Raleigh Town Board (RTB) got title to endowments for municipal purposes. Some of this land is located on the west side of the river on Mould Street and near the Pukekohatu Block and the rest of the land is on the east side of the river; most of it is now known as Clifton Park. The land is shown on Map 4. The titles of the reserves were:

- blocks 48, 49 and 50, Town of Waitara East;
- sections, 1,3,5,7,9 and 11, block 51, Town of Waitara East;
- blocks 52 and 53, Town of Waitara East;
- sections, 1,3,5,7,9, of block 54, Town of Waitara East;
- block 55, Town of Waitara East;
- sections, 1,3,5,7,9 and 13 of block 56, Town of Waitara East;
- blocks, 56, 57, 66, 67, 68and 113, 114, Town of Waitara West.

[148] Ibid

1877 - Manukorihi Park is acquired

Originally Manukorihi Park was a Crown Reserve.[149] On March 20 1877, the Chairman of the Town Board wrote to the Commissioner Crown Lands and requested that the reserve be made into a town recreation reserve and the council acquired title.[150] Originally the land area had been 44 acres, 2 roods, (18 hectares) but by 1910 the area was 49 acres, 2 roods, (20 hectares) because of accretion as the changing course of the river added more land to the property.

The park is a reserve under the Reserves Act 1977. Subsequent land acquisitions expanded the park's area. Although the details are not clear it appears that the council acquired further land from the adjacent land from the estate of W.A. Joll in 1957. The borough council also acquired 3.9 hectares of the estate in 1985.[151] This was land that had been cut off by the extension of the state highway and had proved to be of little use for any other purpose because it had no legal frontage. It was incorporated into the Manukorihi Park. The additional land was declared a recreation reserve on 29 March 1984.[152] Some land was swapped with National Roads Board in 1985, for the state highway.

The park is mentioned in the Te Atiawa Heads of Agreement for the iwi's Treaty settlement, which says, "the reclassified Manukorihi Recreation Reserve will become an historic reserve to be called Ngangana Pa Historic Reserve."[153] It is not clear why the Crown was able to make this decision on NPDC land.

1885 - Land Acquired for Town Board Funds

In 1885, land was acquired for recreation purposes under the Plans of Towns Regulations Act 1875. This Act stipulated that if there were not enough reserves in a town, land could be declared a reserve and vested in municipal authorities. Sections 1- 4 block 102, Town of

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[149] *NZG*, 1874, p.7

[150] Marine Department Register 1877, National Archives, Wellington

[151] Brownlie and Gorringe to Town Clerk, 4 October 1984, Waitara Borough Council File, Purchase of Land WA Joll: Recreation Reserve November 1982- October 1984. *NZG* 1985, p.1166

[152] *NZG*, 1984, p.945

[153] Heads of Agreement, http://www.executive.govt.nz/96-99/minister/graham/te_atiawa/02.html#crown

Waitara West and sections 1-4 block 40, Town of Waitara East were vested as endowments in the Raleigh town board for funding purposes.[154]

1891 Land Acquired for Recreation Purposes

In 1891, the Raleigh Town Board acquired a further 18 acres (7.2 hectares) of Crown land for recreation reserves under the auspices of the Land Act 1885. The land was Waitara East Town Blocks 11,and 58 (3 acres 3 roods each) and Waitara West Blocks 19, 20, 21and 28.[155] These lands were declared recreation reserves as of 2 January 1891 and were vested in the Waitara Borough Council in trust as recreation reserve under Reserves and Domains Act 1908.

The New Plymouth District Council has incorporated the land on the west side of the river out of this recreation reserve with Harbour Trust land to form Ranfurly Park and it now also includes some stopped roads. In 1959, the council closed streets around Mc Naughten and Stafford Streets to form a park. In 1968, the Town Clerk proposed that some of the recreation reserve land on the corner of Norman and Cracroft Streets be exchanged for harbour trust land. It was argued that this would make more sense from a zoning point of view. The Reserves and other Lands Disposal Act 1969 was passed to allow the council to exchange one type of reserve for another. Blocks 28, 29and 30 Waitara West became Section 1 Block 135 Town of Waitara West. An area of 19.8 acres (8.01 hectares) blocks, 19, 20 and 21 became recreation reserve.[156]

Many of the recreation reserve sections are used for grazing. Some of the grazing was allowed at no charge in exchange for the lessee clearing the ground and maintaining the area. At Browne Road and Hume Street the council's parks department administers grazing and it has been suggested by council staff that the land should be zoned residential to fit with the purpose of the harbour trust.

The remainder of the western endowments were subdivided and are now used for housing and industrial sections. To allow this land to be used for other purposes the reserve status was

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[154] *NZG,* 1885, p. 97

[155] *NZG* 1891, p.3

[156] Town Clerk to Commissioner Crown Lands, 21 August 1968, Waitara Borough Council 11/1

revoked on 1 October 1942.[157] In 1943 sections 4,6,8, 10 – 14 and part sections 1-3, 5,7and 9, block 91, Town of Waitara West land were designated for housing purposes.[158] This land has now been developed into a residential subdivision.

The land on the east side of the river (part of block 58) is used for Waitara (Airedale) Golf course and also incorporates unformed parts of Harris and Sarten Streets. Since 1951, this land has been extensively improved by the golf club, which have cleared, planted and drained most of this land.[159]

1909 Library Endowment

In 1879, the Government resolved that block 116 Town of Waitara West should be temporarily reserved for a library and a mechanics institute.[160] In 1909 this land was vested in the WBC as an endowment for library purposes, under the auspices of the Waitara Borough Reserves Vesting Act 1909, which meant it could be leased for rents for library funds. The land acquired for this was sections 5 – 10 & 12 of block 20, Town of Waitara East and sections 10 & 12, block 44, Town of Waitara West, 2 roods and 2 roods 35.5 perches of block 116, Town of Waitara West, a total area of 3 acres, 3 roods and 35.5 perches (1.5 hectares). At some point land in sections 1 and 3-8, block 31 and sections, 5-7, Block 32, Town of Waitara West were added to the endowment. It appears that some of the Library endowment was freeholded and these additional blocks were purchased to replace land that had been sold. In 1946, the WBC resolved to sell lots 6,8, 10 and 12 to the housing department.[161] Only lots, 5, 7 and 9 in block 20 Town of Waitara East remain in council ownership. The plan below shows the library endowments in block 20 that have been sold:

The Act contained provisions for rental from these properties to be used for the purchase of library books and facilities. Unfortunately the lack of surviving records means that it is unclear

[157] *NZG,* 1942, p. 2420

[158] *NZG*, 1943, p. 271

[159] R Mathus to Property Officer NPDC, 30 September 2002

[160] National Archives Register, LS 82/ 2553

[161] Minutes of the Works Committee 4 July 1946, Committee Minute Book, p.163

why it was though necessary to have specially set up library endowments. The funds were supposed to be kept in a separate account, but this does not appear to be the current practice as the rent is simply added to the NPDC's general fund.

1954 –Part Block 85 Transferred to Council

On 20 December 1954, the Archbishop of Wellington sold sections 1-4 block 84, Town of Waitara West to the WBC. The land was vested in the WBC in 1954 pursuant to section 168 of the Municipal Corporations Act 1933. This land was on the corner of Whitaker and Cracroft Streets, opposite central school.[162] The North Taranaki District Council's records show that sections 6,8, 10 and 12 were also acquired at some point.[163] This land is still owned by NPDC and the War Memorial Hall is situated on the land.

5.3 Later Developments within Endowment Lands

Later developments with the endowment lands reflect attempts to continue to make the endowments work and to provide extra amenities where necessary. This included land acquired by the Crown for schools, housing and roads. More recently local authority reorganisation and legislation has seen the lands pass from the hands of the WBC to the NPDC and the Taranaki Regional Council.

While today the leased land is less desirable than freehold sections, historically it was very popular and the borough council was unable to keep up with the demand for housing sections. The sections appear to have been popular because they were a cheap form of housing. In October 1958, the Town Clerk of the Waitara Borough Council noted to one perspective lessee, that "the council experiences difficulty in keeping abreast of the demand and at the present time no sections are available, but some 60 sections will become available in the next three to four months".[164] Potential lessees were allocated sections according to a ballot system and

[162] CT 50/245

[163] CT 58/242

[164] Town Clerk to BL Faulkner, 15 October 1958, Waitara Borough Council, File 10/2, Reserves Borough, 1957-1970

unsuccessful applicants were put on a waiting list. As an attempt to cope with the demand during the late 1950s, the Waitara Borough Council drew up substantial development plans for the Raleigh Street area, which included the closing of roads and development of new sections.

The Harbour Trust leases and the municipal leases are 21-year perpetual leases governed by the Public Bodies Leases Act 1969. The exception is the foreshore leases, which are leases on short-term lease under the Public Bodies Leases Act 1969. The council's land is used for a variety of purposes other than housing. Most land adjoining the foreshore is in a large marine park area. Other land is used for industrial sections. Commercial companies such as, Affco Freezing Works, Duncan and Davies Nursery Business, a Subaru assembly plant, the Waitara Hotel and various small businesses have all used leasehold land. Local residents use some of the land for grazing and some is recreation reserve administered by the NPDC.[165] Various sports clubs and cultural groups have also used the reserves and parks from time to time.

Use of Funds for River Protection

The council's harbour trust account monies are still used for river protection purposes because the Waitara River continues to be susceptible to flooding. On average the Waitara River has a major flood every 4.4 years.[166] The New Plymouth District Council still carries out river protection work; in the late 1990s extensive protection work was paid for out of money from the harbour trust account. Recently, storm water improvements have been carried out to prevent flooding in the town as well as upgrading the wharf and foreshore upkeep. This has all been funded from the Waitara harbour trust account.[167] It is likely that if there were no longer any harbour endowments, river protection would have to be funded by another means, maybe by a rate rise for the district.

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[165] In 1968, some of recreation reserve land was exchange for some of the harbour trust's land. The purpose was to improve planning in the area. This was 19.8 acres in total.

[166] Dr. J Gibbs, Strategic Options For The training Moles at the Waitara River Mouth, Tai Haururu, New Plymouth District, November 1996, NPDC File A602001 2 Vol.3, p. 1

[167] Steve Corlett, Property Officer, Pers. Com., 19 July, 2002

Public works and the development of amenities

During the twentieth century the endowments were depleted as a result of public works takings for various amenities such as schools and housing. This section of the report examines these acquisitions.

The funds generated should have been used to purchase more land, as per section nine of the Waitara Harbour Act 1940. However, it appears that the WBC did not do so. In 1958, the borough's solicitor noted that the Crown had taken land for housing and that compensation had been paid into the district fund, but no land had been purchased. Much of the land purchased for housing was the subsequently sold to tenants. This was a failure on the part of the WBC to comply with the terms of the harbour trust as it reduced the endowments and any chances of a possible funds surplus.

Land for Housing

During the later half of the Twentieth Century, the Crown acquired land in the Waitara area for public works, mainly for schools and housing. A report from the Commissioner of Works said that the Government took leasehold land because there was little freehold land available in Waitara for public works:

> [f]rom the policy point of view it is clear that many reserves set apart for the purposes of the community should now be used for housing purposes. The difficulties of getting title have in most cases resulted in these areas being by-passed in the development of the town although they have become desirable from a residential point of view.
>
> So long as adequate provision is made for recreation and other public amenities, it seems better that these areas should be devoted to housing than that they should lie idle and force development further afield. In some places, such as Waitara, the reserves comprise such a large proportion of the available building area that there is little left without encroaching on farming land[168]

In the early 1940s, the Crown acquired sections 1- 4, block 104 Town of Waitara West, sections 4,6,8and 10-15 and parts of sections 1,2,3,5,7 and 9 of Block 91 Town of Waitara West for housing. The Local Legislation Act 1944 authorized a payment to the Waitara Borough Council

[168] Commissioner of Works to Under Secretary 10 March 1949, LS 30/228/84, National Archives, Wellington

of $780 for developing these sections for housing purposes.[169] On 2 October 1941, the Crown acquired sections 1, 2and 3 block 102, Waitara East (3 roods) under section 156 Municipal Corporations Act 1933 for State Housing. [170]

In 1948, the Crown took sections 1 –12 block 49, Town of Waitara East for housing purposes. This land was the block bordered by Sarten, Richmond, Ihaia and Mace Streets. [171] Also in 1948, it acquired 1 acre 1.66 perches of sections 1-4 Block 38, Town of Waitara East for £199 for state housing.[172] Not all requests from the housing department to purchase land were adhered to. In 1950, the WBC refused to sell nine vacant sections in Waitara East.[173]

In 1960 the crown acquired 1 rood 1 perch for state housing, section 1 block 14. Another 3.8 roods were acquired in 1962 for state housing in the Broadway and Cracroft Street areas. Sections included were, section 8, Block 13, Town of Waitara West, Sections 7 and 9 Town of Waitara West, sections 1 and 3, block 13, Town of Waitara West and section 9, block 13, Town of Waitara West. Most of this was land gazetted in 1876, for harbour improvements, however, 28 perches of section 2,3and 4 block 8, Town of Waitara West are included in the acquisition.[174] This appears to be land granted by the Crown to the superintendent of Taranaki for river navigation purposes.[175]

By the early 1970s Waitara faced a housing crisis. The district supervisor of works wrote to the council requesting sections for sale in the area. [176] The council offered land for sale and in a letter to the Minister of Housing said that:

> council have for a number of years made available approximately 30 leasehold sections each year for residential purposes and this number had met with demand…The Council

[169] State Advances Corporation to Town Clerk, 14 November 1973, Waitara Borough Council, File 11/2, Harbour & Borough Leases

[170] Solicitor State Advances Corp to Under Secretary, 2 October 1941, LS 30/228/84, National Archives, Wellington

[171] Waitara Borough Council Minute Book, 1947, p.32

[172] Waitara Borough Council Minute Book, 1947, p.9

[173] Waitara Borough Council Minute Book, 1950, p. 191

[174] *NZG* 1962, p. 501

[175] DOSILI Map 1992, Commissioned by council for Land Vesting Bill, (Held by NPDC)

[176] District Supervisor to Town Clerk, 24 May 1973, Waitara Borough Council File, 11/2, Harbour Trust, Harbour and Borough Leases, 1973 - 1983

> has however a waiting list containing 73 names of persons wishing to build dwellings on its leasehold land and undoubtedly when the thirty sections are advertised for lease…there will be a further demand…The land leased by the Council is Trust land and normally sufficient income is available to service the sections but the council over the last three years has had to meet considerable costs on a flood control scheme and maintenance to the Waitara River. Income from the trust endowments is to be spent for this purpose with a consequence that sufficient monies are not available to develop residential leasehold sections from the Trust Account. [177]

To develop the leasehold sections the council asked for a loan of $40,000 to develop housing sections on the endowments. The Minister approved the loan. In 1978, the Housing Corporation bought a further 0.8 hectares for $1300 in the Broadway and Browne Street area for housing.[178] The land was sections2, 4, 6, 8 and 10 block 14 Town of Waitara West. In 1978, the Crown took further land for housing, part of block 121, sections 2 and 4 block 8 and section 4, block 23 all in the Town of Waitara West.

Land for a Maternity Hospital Site

The Reserves and Other Lands Disposal Act 1941, vested some of the borough reserve acquired in 1885 in the Taranaki Hospital Board. The land area was 1 acre and 1 perch being sections part of section 1,2,3 and 4 Block 40 Town of Waitara East. This land is now part of the Office of Treaty Settlement's land bank.

Land for Schools

In 1953, sections 2, 4, 6, 8, 10and 12 of block 41and all of block 42, Town of Waitara East were vested in the Crown for the Waitara East School. This was a total of 5 acres 1 rood 25.32 perches (2.02 hectares) of former harbour trust land.[179] In 1960, 1 acre and 2 roods a section of Broadway was closed and added to the Waitara Central school site. This was in blocks 117 & 118, Town of Waitara West.[180] In 1973, the Crown asked for 1504 square metres on Carey Street for a school ground and school house. However, the Council was not prepared to sell land unless the Crown met the cost of the works. This was agreed and in August 1977, the Crown

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[177] Town Clerk to Minister of Housing, 30 August 1973, Waitara Borough Council, File 11/2, Harbour & Borough Leases

[178] *NZG,* 1978, p.3280

[179] *NZG* 1953, p. 1433

[180] *NZG,* 1960, p. 277

purchased part of sections 10 and 12, block 32 Town of Waitara East for $2060.[181] This land was 1504 square metres. It also acquired 3526 square metres from block 64 Town of Waitara East for additional land for a school site.[182]

Acquisition of Manukorihi Park

In 1981, the Crown acquired part of Manukorihi Park (1.2 hectares) for the Waitara by-pass. The Ministry of Works offered compensation by way of payment to the reserves account or by way of making land of an equivalent value available to the WBC.[183] It is not clear from the council's files whether this happened. In 1984, 20-metre reserve strip along the riverbank was vested in the Crown.[184]

Transfer of Title to NPDC

During the late 1980s there was extensive local government reorganisation. First, the Waitara Borough was amalgamated with Taranaki County. Under an Order in Council of 28 July 1986, the property of both local authorities was vested in the new North Taranaki District Council.[185] The Waitara Endowments were included in this transfer. The leases remained the same. Second, in 1989, the New Plymouth City Council, North Taranaki District Council, Inglewood District Council and the Clifton County Council were merged into the New Plymouth District Council. An Order in Council of 9 June 1989 vested all property in the NPDC.[186] Once, again, although title to the land changed the Waitara leases remained the same. In 1992, the NPDC drafted legislation to facilitate the sale of land to lessees. The New Plymouth Land Vesting Bill focused on provisions to avoid obligations under the Local Government Act to repurchase other lands to replace endowments that are sold. This will be explained in more detail in subsequent parts of the report.

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[181] District Commissioner of Works to Town Clerk 24 August 1977, Waitara Borough Council File 11/2, Borough and Harbour Reserves

[182] Ibid

[183] Ministry of Works to Town Clerk, 30 October 1981, Waitara Borough Council File 10/1 Reserves General 1960 - 1986

[184] Town Clerk to Commissioner Crown Lands, 15 June 1984, Waitara Borough Council File 10/1 Reserves General 1960 - 1986

[185] *NZG* 1986, pp.2699 - 2707

[186] *NZG* 1989, p.2445

Transfer of West and East Quay to Taranaki Regional Council

On 2 July 1992, the Taranaki Regional Council (TRC) wrote to the NPDC asking for the Waitara River stop banks to be transferred to the regional council, who were the body responsible for looking after the flood protection in the area. The TRC argued that this would make for more integrated flood protection management in the lower Waitara River area.[187] A legal opinion from council's solicitors said that it was impossible to separate the council's title to the stop banks and the adjoining land.[188] Consequently the TRC acquired the adjacent land as well as the stop banks.

Accompanying the request for land was a massive flood protection scheme. Te Runanga O Te Atiawa raised an objection to the scheme, saying that the scheme would not prevent flooding on the south side of the riverbank, and it ran the risk of flooding urupa in the area and destroying the natural habitat. The Waitara Community Board, in considering this objection, noted it had faith in the TRC's ability to protect the land from flooding.[189] In 1993, a development for the urupa area was proposed along with a joint working party with the TRC and iwi representatives. The council's property manager, and representatives of the Department of Survey and Land Information met with representatives of Te Runanga O Te Atiawa on 28 March 1994 to discuss the proposal to vest land in the TRC.

On 6 April 1994, the council considered a request to transfer land to landowners who lost property. However the Property Manager noted that it was unable to transfer the land because of an understanding between council and Te Atiawa not to transfer any land until issues between the NPDC and Te Atiawa concerning the harbour trust land had been resolved.[190]

The NPDC's land was acquired under the land acquisition provisions of the Public Works Act 1981. Land was vested in the TRC on 3 and 23 June 1994. [191] On 13 July 1994, the Taranaki

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[187] General Manager, TRC to General Manager, NPDC, 2 July 1992 NPDC File W73/30/08, Stormwater and Flood Protection.

[188] Govett Qulliam to Property Officer 1 December 1992, NPDC File W73/30/08, Stormwater and Flood Protection

[189] Minutes of a Special meeting of the Waitara Community Board, 25 January 1993, NPDC File W73/30/08, Stormwater and Flood Protection

[190] Property Officer to District Manager Department of Survey and Land Information, 6 July 1994 NPDC File W73/30/08, Stormwater and Flood Protection

[191] *NZG,* 1994 p.2095, *NZG,* 9 June 1994, p. 1918

Regional Council took possession of the land on West and East Quay. The purpose of the transfer was for soil and river control purposes. The regional council also has title to the riverbed for soil and river control. On March 16 2001, the purpose of the reserve was changed from soil conservation and river control to soil conservation, river control and recreation reserve.[192]

5.4 Continuing Maori Protest

Maori Protest & Attempted Redress– Post 1865

The inadequacy of the Compensation Court process added further to the harm already created by confiscation. It is impossible to determine who should have got compensation, but maybe this is a moot point. There is ample evidence of Maori protest at the process and its consequences. Kingi, for example, is said to have composed a lament for his land at Waitara:

> Grieved am I for my seaward land,
> Pekapeka looms in the distance,
> My beloved home.
> Kaiwaka appears vividly, my seaward land.
> Kohia stands prominent, my seaward land.
> O, tribe, cease from war
> I have finished.[193]

In 1878, Rewi Maniapoto asked Grey to give him back Waitara and that he would then consider allowing the Crown to build a settlement there.[194] From 1872 – 1930, the Crown received 262 petitions from Taranaki Maori complaining about confiscation and other matters. In 1914, Tipene Warihi and others petitioned the Crown for the return of lands at Waitara and Tikorangi. The petition alleges that parts of the Otaraua and Ngatirahiri tribes were loyal subjects of the Queen. It notes that they were told that their lands would not be taken without compensation. They complained that they were now landless having not received any land. No recommendation was made on the petition because it was a question of policy.[195] Poara Hopere and 82 others raised the issue again in 1916. This petition was turned down on the grounds that

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[192] *NZG*, 2001, p.2929

[193] *RDB,* p.18567

[194] *RDB,* p. 18566

[195] *RDB,* pp.1093- 1099

Fisher, the Under Secretary of the Native Department, believed that the hapu had got adequate reserves.[196]

The first official investigation into the confiscation was the Sim Commission's investigation of 1927. That commission found:

> 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. [197]

It said of the Pekapeka block:

> [w]hen martial law was proclaimed in Taranaki, they reported, Te Rangitake and his people were not in rebellion against the Queen's sovereignty…the Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence. In their eyes the fight was not against the Queen's sovereignty, but a struggle for house and home.[198]

As the Waitangi Tribunal later pointed out, the Sim Commission found that:

> [w]ith regard to the Taranaki confiscations…being obliged to consider whether in all the circumstances the confiscations 'exceeded in quantity what was fair and just',…[and] in all the circumstances every acre that was taken in Taranaki exceeded in quantity what was fair and just…More particularly, the commission concluded that, 'in the circumstances, [Taranaki Maori] ought not to have been punished by the confiscation of any of their lands'…it was only in Taranaki that such a finding was forthcoming…the commission concluded that the Government wrongly declared war against the Maori in Taranaki in order to establish 'supposed rights' under the Waitara transactions. Then, through the armed occupation of Tataraimaka, the Government effectively declared war against Taranaki Maori once more. At all material times, it considered, Maori were forced into a position from which they could not retreat.[199]

The Sim Commission recommended that some compensation be paid to Taranaki Maori. However, it found that it was difficult to ascertain the extent of the value of the land lost.

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[196] *RDB,* pp.1155-1156

[197] *RDB,* p. 52465

[198] Parsonson, NZDB

[199] Waitangi Tribunal, pp.296 - 299

Taranaki Maori believed the compensation was inadequate because the Crown should have made payment to hapū rather than to the Taranaki Maori Trust Board who eventually received a $5000 annual payment. They never regarded the Sim award as a full and final settlement.[200] There were many problems with the payment and the inadequacy of compensation resulted in continuing Maori protest. As the Tribunal says, the commission's finding caused considerable confusion:

> the commission concentrated upon the 'wrong done' instead of the compensation for actual loss because of the amounts likely to be involved and because governments were unlikely to accept such findings. It also appears to us, however, that the commission was actually leaving the compensation for the capital loss for another occasion. That is certainly how it appeared to Maori. While the Government came to see the annuity as a settlement for the land confiscation, Maori continued to see it as 'a permanent acknowledgment of a wrong'. Indeed, Maori petitions for the capital loss began arriving at Parliament within a few years.
>
> Of course, as compensation for a capital loss, the annuity was extremely low. Based on an annual interest rate of 5 percent, £5000 per annum implied a capital loss of only £100,000. As Sir Apirana Ngata noted, it was equal to the subsidy approved for the National Museum in 1928. Neither was it considered that the annual payments might need to be backdated with compound interest added. [201]

Compensation payments did not begin until 1944. Delays were partly caused by protracted discussion about what Maori were entitled to and funding problems during the depression and World War Two. Maori continued to press for compensation. One example is a petition from Hoani Hakaraia Teuawiri President of Maramatanga Christian Society and 2338 others in 1940. The petition refers to the proclamation of the Governor and says that, "it is most probable that had the return of land at Waitara been made prior to the establishment of the soldiers at Tataraimaka there would never have been a second Taranaki war."[202] The petition asked for return of lands in Waitara, but recognised that the most likely recompense was monetary compensation. The petition also asked for a tribunal inquiry with a view to ascertaining compensation for the land. The Minister of Lands and Survey simply referred petitioners back

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[200] Wai 143 statement of claim

[201] Waitangi Tribunal, p.296

[202] Letter from Maramatangi Christian Society (inc.) – Kehu, Maraku Secretary – Hoani Hakaria President - Petition for Return of land at Waitara, ABWN 6095 W5021 7/925, National Archives, Wellington

to the Sim Commission report, but appeared to overlook the requests in the petitions about compensation.[203]

Recent Issues

Prior to the 1990s there is very little in the council files that refers to Maori interests and the Waitara leases. This is surprising given the history of the land and that the Pukekohatu, Manukorihi and Rohutu blocks of Maori land are nearby.

Urupa at Rohutu

One exception is a letter from Ray Watemburg [Watembach]. His letter highlights the following matter:

> [o]n the East side of the river mouth is an ancient burial ground – Yes, you know it - Te Rohutu. Now this place is the most historic in all Taranaki. It was occupied many years by the Maruiwi – the people that were here before the fleet of Maoris arrived. However the warlike people from Tokomaru canoe defeated the Maruiwi at Te Rohutu and for many hundreds of years this place was used as a burial ground. It was so important that in fact many chiefs were carried over a hundred miles to be buried there.[204]

Mr Watemburg proposed that part or all of the area be set aside and a memorial placed on the site to commemorate the Maruiwi. He said that the proposal would have the support of both Pakeha and Maori residents.[205] It is not clear if this refers to the Rohutu block or to the east beach in general. It may well be that there are burial grounds on the foreshore, as this was a common Maori practice.[206]

The files have no other discussion of this issue. A report to the Waitangi Tribunal by Suzanne Woodley on the Rohutu block states that tangata whenua evidence presented to the Tribunal said that the Rohutu area was a burial ground.[207] She also notes that a portion of the Rohutu block has been included in section 15 Town of Waitara East and that this may include a portion of the urupa. The rest of section 15 is accretion land that became dry land after the erection of training

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[203] Ibid

[204] Ray Watemburg to Councilors, 23 September 1960, Waitara Borough Council, File 11/1 Harbour Trust General.

[205] Ibid

[206] The author is aware that when Papamoa Beach for example, was investigated for subdivision and substantial urupa were found.

[207] Suzanne Woodley, "Rohutu", Wai 143 Doc M2, Waitangi Tribunal, Wellington 1995 p.2

walls at the river mouth in the 1900s. Both pieces of the block were vested in the WHB in 1910 under the Waitara Harbour Board and Borough Empowering Act. It would be beneficial for the council to seek advice from tangata whenua on whether there are any burial grounds on the harbour endowments and if so, to ask them on how best to deal with the land. The district plan says that there is wâhi tapu on the Rohutu block and given that the locations of the site on the land is indicative only it may well be that the urupa extends as far as section 15.[208] If urupa evidence is found the NPDC might consider transferring all or part of section 15 to owners of the adjacent Rohutu block.

Manukorihi Intermediate School

There is one instance in the WBC records of concern about Maori land alienation. In 1964, the WBC wrote to the secretary of the education board expressing concern about acquisition of Manukorihi Pa site for the intermediate school.[209] The reason the council objected was because the Pa trustees had previously submitted a housing plan for the land and it was considered too valuable for use as a school site.[210]

The Crown and Legislation

From a Treaty perspective, there are issues regarding the Crown's role as a Treaty partner in passing legislation to allow local authorities to acquire land. As this report shows, the Waitangi Tribunal is of the view that the Crown's acquisition of Taranaki in 1865 was a Treaty breach. The Crown did not raise Treaty issues in regard to Waitara land until the early 1990s when the Minister of Treaty Negotiations prevented parliament from ratifying the New Plymouth Land Vesting Bill 1992. Before then there was no discussion of Treaty issues and by passing legislation to facilitate local authority ownership of confiscated land in 1863, 1865, 1879, 1904, 1909 and 1910, the Crown ignored possible Treaty issues with Waitara lands.

This report shows that the Crown confiscated Waitara Maori land and that there was considerable Maori protest in response. The Crown was aware of this Treaty breach for most of

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[208] Proposed New Plymouth District Plan Volume III, map 41

[209] Town Clerk to Secretary Education Board, 16 October 1964, Waitara Borough Council File 10/2, Reserves Borough, 1957 - 1970

[210] Waitara Borough Council Minute Book 1959 –1964, p.980

the twentieth century. By 1940, the Crown had reviewed the Sim Commission Report, but little thought was given to using surplus unoccupied endowment land for settlement.[211] The WBC could have been compensated for loss of land. Albeit with the benefit of hindsight, an argument could be made that in 1940, when the Crown passed the Waitara Harbour Act, at least 77 acres (31 hectares) was vacant land that could conceivably have been used to cover compensation matters raised by the Sim Commission. The Crown could have compensated the WBC who could then have acquired endowments elsewhere.

The Foreshore

Another Treaty issue is the Crown's assumption of title to the foreshore. According to English common law the foreshore, (land between high and low watermark), is the property of the Crown. When purchasing Maori land, the Crown tended to assume that title to the land stopped at high-water mark. While Maori denied that they had ever willingly given up their customary interests to the foreshore. According to Maori customary law, title to the foreshore is held in the same manner as title to other land, i.e. descent, conquest, or gift and the foreshore is not separate from the rest of the land. Many Maori and lawyers have argued that in order for the Crown to acquire title to the foreshore, it would first have to extinguish Maori customary title.

Te Atiawa, in opposing the 1992 Land Vesting Bill, disputed the alienation of the foreshore. Historian Ann Parsonson gave evidence to the select committee on Te Atiawa's behalf. She said that Te Atiawa intended to challenge the Crown's right to grant title to the foreshore during its Waitangi Tribunal hearing and that the grant of land to the Superintendent of Taranaki Province in 1869:

> was made (as far as is known) without consultation with them, and without any attempt to protect their rights. It was one of those Crown acts…, which the iwi could never have imagined would occur at the time the Treaty was signed in 1840. It amounted to an arbitrary exercise of power over areas which had always been of crucial importance to the iwi.[212]

[211] Waitangi Tribunal, p.295

[212] Anne Parsonson, Te Atiawa, Submission, 1992

This, along with the confiscation, is an issue that the Crown will have to address in its settlement with Te Atiawa. As the next chapter will show the NPDC, as it has considered the future of its Waitara endowments, has become caught up in these issues.

6 RECONSIDERATION OF ENDOWMENT LANDS

6.1 Freeholding Issues

Freeholding

It is possible for endowment land to be sold, but if this happens, the local authority is legally required to purchase further land to replace the land that is sold. Instead of purchasing others lands, for the most part the WBC tended to exchange land. For example, in 1947 the WBC recommended that council sell sections 1-4, block 81, Waitara West to Borthwicks freezing works.[213] Borthwicks offered some land in exchange.[214] In 1959 the WBC exchanged land with New Zealand Railways. It wanted to use railways land in Grey Street for pensioner housing. Council resolved to acquire three sections (7, 8 and 9 block 13 east) in Gold Street from a Mrs Ngatai for this purpose and offer her a portion of closed street near High Street East.[215]

Inevitably though some land was sold, but where this happened other land seems to have been purchased as a replacement. For example, in 1945, council sold harbour trust sections 9 –12 in block 24 Waitara East, but purchased sections 6,9 and 8 in block 16 Waitara East from the Maori Land Board. In 1950 when considerable hand had been acquired by the housing department, the WBC brought block 37 Waitara East.[216] The policy of selling land appears to have changed and by 1951, the WBC was refusing to sell harbour trust land to the education board on policy grounds.[217] Maps 5 and 6 show the location of two major land sales, to Subaru and Borthwicks freezing works.

When the WBC freeholded land, aside from the requirement to purchase more land, there was also the terms of the harbour trust to contend with. In 1967, the borough's solicitor examined the

[213] Waitara Borough Council Minute Book 1947, p.67, Waitara Borough Council Minute Book 1950 p.196

[214] Ibid p.230

[215] Waitara Borough Council Minute Book 1959, p.586

[216] Waitara Borough Council Minute Book 1950, p.191

[217] Ibid p.216

freeholding issue. He thought that selling the land would create problems as he considered the Taranaki Harbour Board the ultimate beneficiary under the terms of the Waitara Harbour Board Act 1940. This Act stipulated that surplus rental money must be paid to the board. He argued that if the new land purchased was undeveloped, the borough would have to do something to improve the nature of the land. Rents would consequently be lower and theoretically the harbour board would have even less hope of receiving surplus rent money.[218]

6.2 Common Objectives – Different Perspectives

In recent years the harbour leases have become an increasingly divisive issue for the people of Waitara. Lessees argue that the leasehold tenure inhibits development of what is already a very economically depressed area. It is difficult to make generalisations about the lessee position, as it appears that many leaseholders are also Maori. Maori names appear in the lease correspondence and the Department of Maori Affairs was sometimes involved in collecting rates and rent. It is impossible for this author to say whether these were from local hapū or not.[219] Secondly, a large portion of the leases are for industrial purposes and given that business often rent their premises it is not known if they would be as willing as residential lessees to freehold. This is an issue for further consideration during public consultation.

Te Atiawa submissions, given before a select committee set up to consider the New Plymouth Land Vesting Bill, show that Taranaki Maori do not make much distinction between public works acquisitions and confiscation because the impact of both was so similar. In June 2002, the Iwi Forum said: "the key issue is that all land should be given back if found to be taken in breach of the Treaty of Waitangi. The Iwi Forum supports tangata whenua revisiting the alienation of their land. Tangata whenua stand right on the positions of 160 years ago."[220]

Lessees wanting to freehold and tangata whenua wanting the land returned have different perspectives, but from this author's position as an outsider, they share some common objectives.

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[218] A Hurley to Town Clerk, 1 March 1967, Waitara Borough Council, File 10/5A, Reserves, Borough Leases, 1963 - 1978

[219] During the 1960s and 1970s, some Maori tenants took out loans to with the Department of Maori Affairs to pay rent on the leasehold sections.

[220] Minutes of Iwi Forum 25 June 2002

First, both have a desire to build a better town and future for themselves and their children. Second, they share a sense of frustration that the future of the land remains undetermined. Third, it is fair to say that both sides of the debate see the NPDC and the Crown as largely responsible for the situation. When council deliberates over the future of this land, it will be imperative that it consults widely with all groups concerned to get an accurate picture of their concerns and to get some idea of the range of options they may be able to offer for dealing with the land in future.

The New Plymouth District Land Vesting Bill

Successive amalgamations of local authorities in the region meant that the Waitara Borough became part of the North Taranaki District Council and then the New Plymouth District Council. As the previous section points out, the lands were transferred by order in council, but according to the certificates of title, the North Taranaki District Council acquired title to the borough and harbour endowments on 4 December 1986 and the New Plymouth District Council on 20 January 1992. There has long been a desire amongst lessees to freehold their properties, which seems to date from the 1970s. In 1977, the WBC received a petition from 300 residents asking to freehold their land. In 1988, the North Taranaki District Council resolved to investigate whether council should develop a policy on freeholding the leases. In February 1989, the Waitara Ratepayers Association wrote to the North Taranaki District Council asking that it take action to enable freeholding of the land. Council resolved to freehold the land and in 1989, asked leaseholders if they wanted to freehold their land. The results were as follows:

- 391 people responded;
- 295 of those who responded wanted to freehold their properties;
- 73 people did not want to freehold;
- 200 were not interested in purchasing by way of deferred payment;
- 122 were interested in a deferred payment;
- 193 were interested in freeholding within the next 12 months.

Council recommended that the lessees be permitted to freehold and that the sale price be determined by way of special valuation and that it investigate the best way to benefit the

community. There is no discussion of how this would actually be used to benefit the community, although it was considered that the proceeds should be invested and only the income from the investments would be spent.[221] The NPDC's property division believe that the North Taranaki District Council wanted to use the funds from freeholding to buy a single property investment, such as a commercial property in Wellington.[222]

Although it is clear that in 1989, when it first seriously considered freeholding, the NPDC took extensive steps to consider the views of lessees, it is not clear how much work was done to consider the effect of freeholding on the wider community. There is no evidence of consultation with tangata whenua until Te Atiawa raised an objection in 1992. The NPDC acknowledged that the revenue was put towards street works, reserves, footpaths, flood protection and other works, which benefit the town of Waitara. It was not clear wherever it was considered how the loss of that income would affect the town. It was, however, considered that the land sale would net the NPDC 3- 3.5 million dollars.[223] It was also considered that freeholding would reduce the council's administration costs, boost the desirability of Waitara Town and make properties more marketable. Public notification appears to have begun with the local bills process, whereby a copy of the local bill was placed in the District Court and the council offices in New Plymouth and Waitara.

In May 1990, the Waitara Community Board resolved to repeal the Waitara Harbour Act 1940 and vest the land in the council. Also under consideration for sale was land used for reserves, town improvements, library endowments, general purposes and other land that the council owned. It was envisaged that the sale of all council land would be considered as one package once the endowment land was cleared of obligations to purchase replacement land. [224]

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[221] District Secretary to Administrative Services Manager, NPDC File, A32/10/07/1 vol. 1

[222] Dick Schofield Property Officer, pers.com, 17 October 2002

[223] Property Officer to Policy Committee, 23 November 1989 NPDC File, A32/10/07/1 vol. 1

[224] Administrative Services Manager to District Secretary, 6 June 1990, NPDC File, A32/10/07/1 vol. 1

The Waitara Community Board also resolved to determine policy for use of the money derived from sale of the harbour trust leases.[225] There was consensus that the money from freeholding should be used to benefit the Waitara Community. However, it was soon clear that the money from the harbour trust land sales could not be used for community purposes. In August 1990 the council's Property Officer realised that section 230 (4) of the Local Government Act 1974 says that if any land held in endowment is sold, council must purchase other land to replace it. Therefore, the council sought options for freeing the land from endowment trust obligations.

Resolve to Pass Local Legislation

The only way to clear the obligation to purchase other land was to pass local legislation. On 8 April 1991, the NPDC resolved to initiate local legislation and to arrange a special valuation to determine the sale price of the land. A draft Bill was drawn up and a statement published in the *Daily News* notifying the public of council's intentions. Copies of the Bill were made available at the civic centre, the Waitara Service Centre and the New Plymouth District Courthouse. Copies were sent to M.P.s for New Plymouth, King Country, Western Maori and Taranaki. John Armstrong, who was then M.P. for New Plymouth, introduced the Bill to the house on 17 June 1992.[226] When the Bill was introduced John Armstrong noted that he had discussed it with the M.P. for Western Maori who had lent his support. This appears to have been the extent of consultation with Maori. The next step was to review the Bill before the local government select committee.

Te Atiawa Objections

On 18 June 1992, Grant Knuckey on behalf of Te Atiawa Tribal Council wrote to the Mayor and noted their opposition to the Bill on the grounds that title to the land originated from confiscation. He also noted the Sim Commission's finding that the Crown should not have confiscated the land of Taranaki iwi. The Mayor's response was that "all protocol has been carefully observed and considered seriously including the provisions of the Treaty of Waitangi.

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[225] Minutes of Waitara Community Board Special Meeting 26 June 1990, NPDC File, A32/10/07/1 vol. 1

[226] The M.P. for the Waitara area was in fact Jim Bolger, but as he was Prime Minister at the time, he handed the responsibility over to Armstrong. The Bill remained the responsibility of the M.P. for New Plymouth.

The land involved is not Crown land".[227] It is not clear exactly what this statement meant as the NPDC's files do not show any consideration of the Treaty before this point. The Mayor suggested that the tribal council raise their concerns with the select committee.

On 18 June 1992, Phillip Green, counsel for the Taranaki Treaty of Waitangi claims, wrote to the Mayor and said that the land was subject to Treaty claims and that Te Atiawa was expecting a decision from the Waitangi Tribunal. He sought a view from council as to whether it would cease promoting the Bill in light of these circumstances.[228] The Mayor directed Mr Green to the select committee submission process.[229]

On 6 July 1992, Grant Knuckey wrote to the council and said that:

> [t]he New Plymouth District Council has received the said land referred to by way of gift and not by any purchase, the said land after 127 years of use by local bodies and councils should have to be handed back to Te Atiawa. I note the Mayor's reference that the land is not Crown. It is well known to us the Pekapeka Block is the root cause, which led the way to the land wars of 1860 and the proclamation declaring military operation against native[s] in the province of Taranaki by Thomas Gore Browne. Te Atiawa is only seeking fair justice for actions against us that we believe were unjust. It is with this a further request is made to have the New Plymouth District Council's (land vesting) Bill [s]et aside until all matters have been heard relating to our claim. [230]

From the tribal council's perspective the NPDC should set aside the Bill until the completion of the Waitangi Tribunal hearings, as it was felt that it might prejudice a Treaty settlement. However, the council saw this issue quite differently; the Mayor's reply was:

> Council policy has been debated publicly at length on this matter and states that the New Plymouth District Council will not take sides in regard to Treaty of Waitangi land claims. Because council must represent the interests of all citizens it is important that policy be accepted and reinforced. To protect the interests of all citizens such claims must be settled by the tribunal. That is the appropriate legal arena.[231]

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[227] Mayor to Grant Knuckey 19 June 1992, NPDC File, A32/10/07/1 vol.2

[228] PD Green to Mayor 18 June 1992, NPDC File, A32/10/07/1 vol.2

[229] Mayor to PD Green, 23 June 1992 NPDC File, A32/10/07/1 vol.2

[230] Grant Knuckey to Mayor and Councilors, 06 July 1992, NPDC File, A32/10/07/1 vol.2

[231] Mayor to Grant Knuckey, 9 July 1992, NPDC File, A32/10/07/1 vol.2

The Mayor acknowledged that there was a need to discuss the issue with Te Atiawa. After all Maori were citizens as well and council did have to consider their interests. She went on to say that:

> The question of possible sale of land covered by The (Land Vesting) Bill is another issue entirely… For that reason I would encourage your council to meet either informally or formally with appropriate Council elected representatives and senior management at the first available opportunity. That is the arena where your very real concerns can be acknowledged appropriately. I extend such an invitation for your people to meet with us as soon as possible.[232]

The tribal council expressed a willingness to meet and discuss the issues.

Meanwhile, the select committee hearing was scheduled for 18 August 1992. There were a number of responses from government departments to the Bill. The Department of Lands and Survey pointed out that some of the land would include foreshore, which would become vested in the Crown under the provisions of the Foreshore and Seabed Endowment Revesting Act 1991, which required that title to the foreshore be vested in the Crown. This area was excluded from the vesting Bill.

Tribal Council's Submission

The Te Atiawa Tribal Council made an extensive submission to the Local Affairs Select Committee.[233] It covered Treaty breaches arising out of the confiscation. In addition to historical and whakapapa evidence, the submission included evidence from valuer Stuart Locke, a former Professor of Property Studies at Massey University. Locke noted that the potential loss of income from rental to Te Atiawa was in the millions of dollars. Te Atiawa argued that all they had left were marae and urupa and that the endowment land should be returned to build a resource base for marae and iwi. They asked that the Bill be put aside until their Treaty claim was heard or a direct settlement was negotiated or, that the Crown purchase the land from the council.[234]

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[232] Ibid

[233] Taranaki Muru Me Te Raupatu Te Atiawa: Parihaka, Evidence Given to the Parliamentary Select Committee, 22 October 1992

[234] Ibid

Minister Of Justice's Submission

On 3 November 1992, the Minister of Justice, Douglas Graham wrote to John Armstrong MP outlining the Government's concerns about the Bill. He noted that:

> The government considers that enactment of the bill, before Taranaki settlement is reached - given the very poignant history of this land – would not only jeopardise the chances of a Taranaki settlement but would be viewed by a number of significant tribes as a calculated offence by the Crown to all Maori.
>
> These obstacles might be overcome, however, if local Maori concerns over the Bill were to be resolved through discussions with the New Plymouth District Council…I would therefore be grateful if you could covey to the district council the government's support for such discussions and if you could keep me informed of progress.[235]

Council staff, Grant Knuckey and Moki White of Te Atiawa discussed the Minister's letter. They resolved to enter into discussions. The issues for discussion were:

- council to recognise the wrong done by confiscation of the Waitara area;
- the need for negotiation over returning the land;
- areas of land currently used for recreation purposes adjoining the river and the sea, which could be returned to Te Atiawa. (The council expressed an interest in renting the reserves from the iwi);
- a return of a portion of the leasehold land to provide a long term income for the iwi;
- discussion of the effect of transferring the land on rates as it was thought likely that this would increase rates in the area, (although this would happen whoever council sold the land to);
- the council acknowledged that Te Atiawa believed in the spiritual nature of the land and council believed that Te Atiawa need to weigh this up against freeholding options;
- discussion on the desire of the lessees to freehold and the fact that many of the lessees were Te Atiawa.

In November 1992, a meeting of the council's strategy committee resolved that:

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[235] Minister of Justice to John Armstrong 3 November 1992, NPDC File, A32/10/07/1 vol.2

> having considered the report of the General Manager on the status of the New Plymouth District Council (Land Vesting) Bill, in particular the need to address unresolved Maori land issues and as recommended by him, a sub-committee be appointed consisting of Her Worship the Mayor together with Crs Armstrong, Beeby, Gundesen and Wilkinson, the General Manager and appropriate staff, for the purposes of entering into negotiations and discussion with the Te Atiawa Tribal Council on various land issues.

On 17 December 1992, a group of Te Atiawa met with the General Manager and the Mayor. The iwi group outlined the history of Waitara and emphasised the need for well thought out discussion on the issues as they affected all people in the area. They resolved to have a meeting early the following year at Owae Marae for discussion and, "at the conclusion of the meeting the need for education and slowly working for an acceptable solution was the objective of both parties".[236]

The council sought legal advice. Legal counsel's opinion was that the Crown should meet the cost of any land that the council might offer Te Atiawa. Counsel also advised that:

> [t]o do otherwise seems to potentially foist upon the District Council an obligation to meet a claim, which should properly be meet by the Crown. Such a course of action would raise a further problem – that is the legality of the District Council giving money or monies worth to a group outside the parameters of the Local Government Act. To do so would raise issues of *ultra vires* and undoubtedly subject the District Council to enquiry by the Audit Office.[237]

There was considerable uncertainty about council being able to offer land to Te Atiawa. Counsel offered two solutions; firstly, "decline to negotiate and wait for the Waitangi tribunal to resolve the matter (solution may be years away); or [secondly] negotiate, resolve and confirm in legislation".[238] Counsel suggested that the council seek a meeting with the Minister of Treaty Negotiations and his advisors.

On 26 May 1993, the Mayor, Cr Beeby, Gundesen and Wilkenson, John Armstrong and the Minster of Justice met to discuss the issue. The councillors asked questions about council's role was in resolving the issues. The notes from this meeting say:

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[236] Memo to Sub-committee 18 December 1992, NPDC File, A32/10/07/1 vol.2

[237] Govett Quilliam to NPDC, 21 January 1993, NPDC File, A32/10/07/1 vol.2

[238] Ibid

> The Minister's response was that the Crown and only the Crown is responsible for obligations under the Treaty of Waitangi. The Waitara land…is not available for settling Maori claims arising out of the conflict and confiscation in the Waitara area. The Crown Law office has advised the minister that there is no evidence of any residual trust in favour of the Crown in respect of the land. The land is land owned on a private basis by the New Plymouth District Council. Only the Crown is bound by the Treaty and therefore only Crown assets can be used as compensation or in any form of settlement. There must be no loss to the council in settling this matter. The minister's objective was to encourage consultation between the people of Te Atiawa and the District Council to see if the issue could be resolved. He had no intention whatever of the Council being an agent for the Crown or to make any payment in compensation on behalf of the crown. [239]

However, the Minister did not rule out the possibility of council coming up with a gesture acknowledging the wrong of the confiscation. He believed that the gesture should be symbolic rather than material. He did not rule out the possibility of the council handing back land if they chose to do so and added that if the council wanted to set aside land in trust for Te Atiawa it would be the responsibility of the Crown to recompense the council for any loss. [240]

Symbolic Return

On 29 May 1993 the sub-committee and Acting General Manager visited Owae Marae to discuss the issue. At this forum people were asked to comment. There appears to have been a general willingness amongst those on the marae to talk about their concerns and a belief that the land was confiscated land and that it should be returned to Te Atiawa. The council explained that they were in a difficult position, but had good will to do something about this issue. There seems to have been a willingness on the council's behalf to make some sort of gesture by returning the land to Te Atiawa. One idea floated was to return the land to Te Atiawa by way of a symbolic transfer and immediately following that transfer Te Atiawa would return control of the land to the council. In a letter dated 3 July 1993, the General Manager wrote to Mr Knuckey and conveyed that position. Following further meetings the council passed a resolution:

> [t]hat having considered the report of the Council's negotiation sub- committee on further discussions with the Te Atiawa Tribal Council on the matter of reaching an agreement on land matters which may enable the New Plymouth District Council (land vesting) Bill to

[239] Minutes of a meeting with the Hon. Doug Graham, Minister of Justice, Regarding Consultation, Wednesday 26 May 1993

[240] Ibid

proceed through parliament and as recommended by the negotiating sub-committee following a meeting with the tribal council on 9 December 1993, the following action be taken: -

a) The following principles be adopted to enable further discussions with Te Atiawa towards enabling passage of the New Plymouth District Council Bill: -
   i) The individual rights of settled people on the land under consideration, be they leaseholders or freeholders, be preserved absolutely;
   ii) Any lessee so concerned who wishes to freehold shall be allowed to do so;
   iii) Consideration shall be given to the development of land transfer proposals whereby vacant land may be transferred from the Council to the crown for subsequent restoration to Te Atiawa;
   iv) Similar proposals shall be developed with regard to the sharing of revenue from leasehold properties or the freeholding of them;
   v) There shall be no cost or loss to the Council in the transferring of ownership of any of the land in question or arising from the sharing of any revenue, i.e. any compensation to Te Atiawa shall be meet entirely by the Crown;
b) With regard to the appointment of a joint working party to proceed with this matter the present sub-committee be authorized to Act in that capacity;

c) The sub-committee be authorized to continue working within the principles stated above towards achieving settlement of the land issues and progress with the Bill.

In January 1994, the Mayor wrote to leaseholders advising them of the state of negotiations and of the council's desire to preserve their rights. This and council's resolution above appear to have lead to a breakdown in communication between the council and the tribal council somewhere around June 1994. Following a letter stating the council's position the Te Atiawa Iwi authority did not make any more suggestions that council meet with the Iwi. This suggests that Te Atiawa Tribal Council did not support the proposition.[241]

Some issues came to light regarding Te Atiawa representation. The council received notification that two bodies represented Te Atiawa, the Tribal Council and the Te Atiawa Rununga. A letter to Doug Graham from Jim Bailey of the rununga points out that there were two bodies representing Te Atiawa. This was spilt along hapū lines, and that despite attempts to unify the two groups this had not happened. The council resolved to continue discussing the issue with the tribal council despite the fact that they were now aware of two Te Atiawa bodies. The rununga were concerned that the council was only speaking to one group and asked that they be included

[241] This has been confirmed to the author by Mr Knuckey

in any future discussion. It appears that once relations with the tribal council broke down, the NPDC continued discussions with the rununga.

1995 – The Land Vesting Bill is Set Aside

The NPDC remained concerned about leaseholders and attempted to ascertain whether freeholding could take place even though negotiations with Te Atiawa had broken down.[242] The council wrote to Doug Graham, detailing the negotiations and saying that they believed they had reached a stalemate because they had been unable to arrange any further meetings with Te Atiawa. Council sought the Minister's support for the Bill. Meanwhile, lessees continued to ask about freeholding. The Minister refused to support the Bill and tried to encourage further discussion between the council and Te Atiawa. On 6 January 1995, he wrote to the council and stated that:

> I have been asked by the Government to advise you that the Government remains concerned that if the Crown, in its role as legislator, were to support the enactment of the bill, it could be seen to be in breach of its duty under the Treaty of Waitangi to act in good faith towards its Treaty partner. The Government is therefore, not prepared to support the bill at this stage particularly in light of the importance to Taranaki Maori of the area covered by the bill, and given that Government support of the bill could prejudice the crown in any future Treaty of Waitangi Negotiations with Taranaki Maori

He stressed that the Government's policy was not to allow private land to be used for settlements. According to the *Daily News*, Grant Knuckey suggested that this was an opportunity for the Council to look at selling the land to the Crown.[243]

Once again the council considered freeholding the land and circulated a newsletter to all lessees informing them that they wanted to allow freeholding. Despite the Minister's position and aside from a meeting with representatives of Te Runanga O Te Atiawa in February 1995, there does not appear to have been any further formal discussion between the council and the iwi.

By the end of 1995, council's position was that the Bill should lie on the table. It was kept before the house, but the clerk of the house noted that the council did not wish to pass the Bill

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[242] There is no record of further discussions on file

[243] *Daily News*, 26 January 1995

while land issues were still being resolved. Te Rununga o Te Atiawa wrote to the Minister of Internal Affairs regarding this issue and claimed that there had been no proper consultation and that the Iwi would be opposing the Bill.

The Crown's position was that it would be prejudicial to sell leasehold properties before the release of the Waitangi Tribunal's report. Doug Graham believed that the claimants wanted to enter into discussions following the release of the report and that, "a decision by the Council to sell the leasehold properties would undoubtedly exacerbate the current situation and may well harm the longer term prospects of a satisfactory resolution of this issue".[244] The Bill has been put aside ever since this time.

1998 - The Office of Treaty Settlements visits the Council

In 1998, the Iwi Liaison Committee met with representatives from the Office of Treaty Settlements (OTS). OTS officials said that the Crown had very little land available for Treaty settlements in Taranaki, (the Heads of Agreement for settlement between Te Atiawa and the Crown offers to return only around 20 hectares, but there may be other commercial properties in the OTS land bank), and they asked if there was land that the council could sell to the Crown.[245] The committee saw this as an opportunity to deal with the deadlock that the settlement process had imposed on the Waitara leases. The property manager recommended that lessees be given a once only opportunity to freehold and that the land that wasn't freeholded would be sold to the Crown. He argued that this would be a win/win situation for all parties. (This does appear to assume that not all lessees would want to freehold). In November 1998, the General Manager wrote to the Director of the Office of Treaty Settlements and suggested that subject to the necessary changes in legislation and the need to investigate freeholding options, the council might be prepared to offer the Crown its Waitara leasehold lands.

[244] Douglas Graham to Claire Stewart, 24 February 1995, NPDC File A32/10/07/1, vol.3

[245] For further information on the Heads of Agreement see, http://www.executive.govt.nz/96-99/minister/graham/te_atiawa/02.html#crown

2000 - A New Minister

In August 2000, a delegation from the NPDC met with the new Minister of Treaty Settlements, Margaret Wilson to discuss the New Plymouth Land Vesting Bill. Ms Wilson was willing to progress the Bill through parliament and see what happened. However on 1 September 2000, after having spoken to officials about the Bill, she asked that nothing be done until she spoke with Te Atiawa.

This appears to be where the matter rests. Currently, the Bill remains before the Local Government and Environment Select Committee awaiting submission and debate. However, at a recent meeting of the Iwi Liaison Sub-Committee it was resolved that the Bill not be advanced until all issues were dealt with.[246] Council subsequently adopted this request.

The Crown's Position

The Crown's insistence on the NPDC negotiating with Te Atiawa, yet stipulating that it would not buy the land for Treaty settlement, puts the NPDC in a very difficult position. The council by virtue of its statutory role was unable to negotiate a Treaty settlement. Yet it seemed that anything less than using the land for a Treaty settlement would not satisfy Te Atiawa. This meant that any negotiations were perhaps bound to fail.

Lessee Issues

Most of the Waitara lease land is used in one way or another; either for housing, recreation purposes, or grazing. In 2000, there were only 12 residential sites and one industrial site vacant in Waitara. Furthermore, problems with fill on the vacant residential sites means that they would need to be checked for safety before they could be built on. Demand for lease land is minimal and many lessees fear that they may never be able to sell their leases even if they wanted to. Lessee interests have also been voiced both in the media and in the submissions process. Common themes are:

- a desire to freehold land;

[246] Council Resolution 16 July 2002

- that the leasehold makes it difficult to borrow money and develop the property;

- that the lease properties are hard to sell because they are less desirable than other properties in the Waitara area. Free holding would generate more land sales and make it easier for those that wanted to sell their properties. This may also increase the demand for vacant land;

- NPDC insists on the lessees retaining buildings and other improvements on the land. This means that even though they may own improvements, the lessees are not able to shift houses onto other land that they may own;

- that the land should not be used to settle Treaty grievances;

- many lease holders feel that real estate agents had deceived then into believing that they would be able to freehold their property. The NPDC may have generated this perception by publicly speaking about looking at free holding;

- Waitara is a low socio-economic area; many lessees might not be able to afford to buy their lands immediately and would prefer a deferred payment system that could be incorporated into their leases;

- a general sense of frustration regarding the length of time to deal with the issue. One resident said that in view of the fact that the land was private land and not available for a Treaty settlement, 'it seems quite ridiculous that the NPDC has not moved on this matter. The two main reasons appear to be blatant political pressure and Political Correctness [sic]! And just remember too, just how long these matters take when they are not on 'hold'.[247] (Although it appears that much the cause of the delay was the position of OTS).

[247] DM Musker, *Waitara Angle,* 2 May 2002

- Not all lessees will share the above views. It is difficult to generalise on the lessee position. The author understands that many of the leaseholders are Te Atiawa. It may well be that moves to freehold may see those Te Atiawa lessees torn between their individual interests and those of hapū and iwi.

- Other Lessees support Te Atiawa. One lessee, Margaret Smith, at a recent meeting said: "I live on one of these leasehold sections in Waitara. I want the NPDC to resolve this injustice and return these sections to the rightful owners - Te Atiawa. I want to pay my lease to Te Atiawa not to a council that is benefiting from stolen goods."[248]

- Another issue is that legally, when a person takes out a lease, he or she cannot expect to buy the freehold of that property. Although they may have some expectation to do so, this is not a right.

Other Lease Issues

There have been a few problems associated with the administration of leases. The 21-year leases are susceptible to price fluctuations. For example, leases were high during the, "Think Big", years when Waitara land values rose dramatically. More recently, because of the town's declining economy, the value of the land has dropped, yet lessees still pay rentals set when land values were high. To combat this problem council introduced seven-yearly rent reviews in the early 1990s.

Zoning is also another issue affecting leases. Many endowments on the foreshore are on 10-year leases without right of renewal. In 1994, a group of residents asked for review of their lease, as they wanted a perpetual renewal. Before allowing this, the council's property division consulted the Department of Conservation (DOC) and the council's planning and parks management divisions. DOC said that the area was one of ecological importance with wading bird species, the adjacent reefs were an important seafood resource and that the area was geologically

[248] Margaret Smith, *Daily News,* 14 June 2002

important. DOC pointed out that the properties were within a coastal protection zone and it suggested that the land be declared a recreation reserve. Consequently, the land remained on short-term lease and was reclassified as a recreation reserve. It is the author's understanding that these leases are not being renewed and the lessee's homes will be removed from the land once the leases expire. This demonstrates that in ecologically valuable areas the use of the land can change. This raises the question of whether the same thing can be done for culturally valuable areas?

On occasion the council and lessees have differed about the amount of rent paid. The Airedale Golf Links on the foreshore is one example. The club feels that the new market rent is too high especially in light of its extensive improvements to the property at its expense. It also argued that Urenui and Fitzroy pay rent on unimproved value and the Waitara club is paying on improved value. The club pointed out that they were unable to freehold and could not subdivide to meet rates costs. Consequently, the golf club has refused to pay the new market rental. The NPDC and the golf club are currently negotiating a rental based on a recent valuation.

On the whole residential lessees pay their rent. According to a 1997 report, debtors over $500 made up a mere 0.013 % of the total. However, commercial ventures have suffered due to economic downturn. Many commercial leases were set during the boom years of the 1980s and some have not been able to meet their rent payments. Even regular rent reviews failed to save some businesses. Demand for these commercial properties is low and in some cases businesses went bankrupt and the official assignee was unable to sell the leases. Some commercial properties such as the former Waitara Hotel remain unused.

6.3 The Leases Today

Income

The leases remain a source of income for the council, which it then uses to fund improvements to the sections and to prevent flooding in the town. Although the Taranaki Regional Council is responsible for flood protection in the region, future work will be required particularly on the

river mouth. The current rental of the properties, including borough leases is around $320,000.[249] If the leases ceased to exist, the NPDC or the Taranaki Regional Council would have to fund this through some other means. The most likely of these will be via a general rate rise, but some of the profits of freeholding could be used to offset any rate rise.

[249] Figures supplied from property office

7 ISSUES & OPTIONS

The history of the endowments, as covered in the previous chapters, highlights numerous issues that are relevant to deciding the future of the endowments. The chapter begins by discussing those issues and then moves on the outlining some options for the future of the endowments.

7.1 The Treaty of Waitangi

As the Waitara endowments are on the very piece of confiscated land that began the wars of the 1860s, there are a number of Treaty issues. The accepted interpretation of the Pekapeka 'sale' is that the Government was wrong to try and acquire the land. The Crown has publicly admitted this several times, first when Governor Grey reviewed his predecessor's actions in 1863, second when the Sim Commission of 1927 released its findings and third during the Waitangi Tribunal's Taranaki hearings. Several prominent historians have supported this position, first Keith Sinclair in his 1963 review of the New Zealand wars, *The Origins of The Maori Wars,* more recently, James Belich in, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict and* Ann Parsonson in her background research for the Taranaki Waitangi Tribunal hearings. Most recently, the Waitangi Tribunal, as part of its role in investigating Treaty claims, found that the 'purchase', the Taranaki war and land confiscation were Treaty breaches.

There are many reasons why the Crown's actions were deemed Treaty breaches. However, to explain these one must first explain the content of the Treaty of Waitangi. The Treaty is the most debated document in New Zealand/Aotearoa. There are two versions of the Treaty one in English and one in Maori. They are not literal translations of each other. In terms of international law the correct version of the Treaty is the Maori one.[250] A key issue is the use of the word kawanatanga (governance) in the Maori version and sovereignty in the English version. These are two different concepts. Governance suggests something less than a full cession of sovereignty and consequently there is much debate about whether Maori ceded sovereignty or not. Another major point of difference between the two texts is the use of the "undisturbed

[250] In fact as Orange points out that in 1840, the English version was often thought of as a translation of the Maori one. Orange p.85

possession" of property in the English version, emphasising ownership and property rights and "rangatiratanga" in the Maori version, which emphasises power and authority. Although there are problems with the different versions, both contain elements whereby Maori gave the Crown rights to govern and to develop British settlement, while the Crown guaranteed Maori full protection of their interests and status, and full citizenship rights. The Treaty of Waitangi Act 1975 gives the two versions as follows:

Maori Version

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON,
Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.
Ko nga Rangatira o te wakaminenga.][251]

English Version

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

[251] First Schedule Treaty of Waitangi Act 1975

> Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.
> Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.
> [Here follow signatures, dates, etc][252]

Article One

The first Article establishes the parameters for the Crown to pass legislation and act in the interests of its subjects. The first Article gave the Crown powers to make laws and govern. In return Maori were guaranteed the Crown's protection.

Article Two

Article Two sets out rights to property in the English version and gave chiefs autonomy over their domains in the Maori version. Although there are obvious differences in the two versions, the implication in both versions is that Maori were to retain their land for as long as they chose to and the Crown would protect this right. Article Two also gave the Crown pre-emption with land purchasing, which was interpreted as exclusive rights of land purchase.

Article Three

The third Article gives Maori British citizenship and the rights and privileges associated with this citizenship.

Article Four

At the Treaty signing at Waitangi, a verbal agreement was given to ensure religious freedom. This is some times referred to as Article Four. It was not included in the written version signed on 6 February 1840 or the Treaty of Waitangi Act 1975.[253] The Waitangi Tribunal has pointed out that this was a recognition of Maori custom. It said the "so called fourth article" was:

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[252] Ibid

[253] Orange, *The Treaty of Waitangi*, Wellington, 1997, p.53

> a verbal promise by William Hobson at the Waitangi ceremony that 'the several faiths of England, of the Wesleyans, of Rome, and also Maori custom, shall be alike protected by him'. Hobson made this promise in response to an intervention from the Catholic bishop Pompallier, who wanted a guarantee that there would be freedom of religion, and one from William Colenso, who asked for the protection of Maori custom. In the Maori translation of Hobson's promise, Maori custom was rendered as 'ritenga'.[254]

Treaty Breaches

The reasons why the Crown has accepted a Treaty breach in relation to the Pekapeka Block 'sale', the outbreak of war, confiscation and compensation are:

1. Under both English law and Maori customary law, the Crown was obliged to recognise Maori systems of land tenure. The Treaty recognised Maori title and the requirement to extinguish that title. The English version of Article Two of the Treaty guarantees Maori possession of lands, estates, forests and fisheries for as long as "chiefs and tribes" choose to possess them and the Maori version guaranteed rangatiratanga. This suggests that the right to retain their land was at the discretion of Maori and it was up to Kingi and his people to agree to a sale of land. By attempting to extinguish title to Pekapeka without following the normal processes of getting chiefly and hapū agreement, the Crown was not adhering to Article Two of the Treaty. Although officials portrayed Kingi as anti government, the dispute was really about the disregarding of the rights of the Waitara people.

2. The Waitangi Tribunal also said that this was an issue of rangatiratanga, which is guaranteed in Article One of the Maori version of the Treaty:

> While the focus was on the land question alone, at heart was a people's right to autonomy and their right to have their most important lands clearly reserved, as a turangawaewae, before any acquisitions began.
> The positing of the issue as a question of whose authority would prevail was an error. When peoples meet, the authority of each is to be respected, and the question is how, in the interests of peace, respective authorities are to be reconciled.

[254] Waitangi Tribunal *Radio Spectrum Report* (taken from Electronic version)

> The issue was not solely the maintenance of custom, be it that of the British or Maori, because the modification of the customs of both may be necessary for effective conciliation.
> The separate authority of governance and rangatiratanga was acknowledged in the Treaty of Waitangi, and the need to develop protocols for their mediation should have been foreseen.
> Fundamental to the Crown's assumption of the right to govern was its concomitant undertaking to protect Maori interests. The lesson of Waitara and Waitotara would appear to be that, without clear constitutional or other legal requirements, promises are too easily forgotten.[255]

3. Article Three grants Maori the Queen's protection and the rights and privileges of British citizenship. It could be argued that rather than sending in troops, the Crown should have protected Kingi's rights and privileges. It could also be said that the rights and privileges of citizenship should have guaranteed Kingi a full investigation of the Pekapeka Block title.[256] Furthermore, one could assume that the rights and privileges of British citizenship should have protected Kingi and his people from having their unarmed resistance met with a declaration of martial law and ultimately an armed attack. The Crown's response of going to war against its citizens seems to this author to be an extreme reaction to political protest. The Sovereign's duty should be to protect subjects, not attack them.

4. The Waitara 'purchase' and the later confiscations under the New Zealand Settlements Act 1863 overrode Treaty guarantees concerning the retention of lands in Maori customary ownership for as long as they chose to retain that land as provided for in Article Two.

5. Attempts to compensate for this breach were also inadequate. These issues of fairness, justice and equity relate to Article Three, the rights and privileges of citizenship. The original Compensation Court process and the West Coast Reserves Commission has been found to have serious flaws and provoked considerable Maori protest. The loss to Maori can be further illustrated when one considers that under the Taranaki Settlers Relief Act

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[255] Waitangi Tribunal p.81-82

[256] For further discussion and Treaty texts see, Orange, *The Treaty of Waitangi*, Wellington, 1997

1860, settlers who did not fight were compensated for loss of property during the war. It is reasonable to suppose that Maori who did not fight should have had similar treatment. [257] Later attempts at compensation, (the result of official findings in 1927) was also inadequate. It took until 1944 before any compensation started being paid and there have been some serious criticisms of this.

Therefore, it can generally be accepted that the events leading up to the Crown's gift of land for the Waitara endowments damaged the relationship between Maori and the Crown. Maori are still awaiting redress for the Crown's Treaty breach.

7.2 Local Authorities and the Treaty Waitangi

As Chapter Five has shown, the NPDC, by virtue of having significant holdings in the area under Treaty claim, has become involved in the Treaty settlement process. In the local context a major issue is, what does this mean for the council as inheritor of confiscated land? Secondly, what does this mean for the local community? There is much debate about the Treaty obligations of local government. This section of the report discusses the various arguments related to local body Treaty obligations. Lack of clear direction form the Crown means that this is an area of law that is open to much debate and interpretation.

Local Government Act 1974

To consider council's Treaty obligations, one must first look at the functions of local government. Section 37 K of the Local Government Act 1974 (LGA) defines the purposes of the local government as:

> to provide, at the appropriate levels of local government,—
>
> (a) Recognition of the existence of different communities in New Zealand:
> (b) Recognition of the identities and values of those communities:
> (c) Definition and enforcement of appropriate rights within those communities:
> (d) Scope for communities to make choices between different kinds of local public facilities and services:
> (e) For the operation of trading undertakings of local authorities on a competitively neutral basis:

[257] Wai 143 statement of claim

(f) For the delivery of appropriate facilities and services on behalf of central government:
(g) Recognition of communities of interest:
(h) For the efficient and effective exercise of the functions, duties, and powers of the components of local government:
(i) For the effective participation of local persons in local government.

The Act infers that council has some Treaty responsibilities. Iwi and hapū are communities of interest whom council should consult and take into account when making decisions, but the Act does not bind local government to incorporate the Treaty into its operations. A discussion paper on the Treaty and local government, says the Act requires local government to take in account Treaty principles and points out in reference to clauses (a), (b) and (g) that, "[if] so inclined an individual council can interpret these provisions so as to include the Treaty, [but] there is no obligation to do so".[258] Therefore, the extent to which local authorities apply the Treaty in decision making has tended to be dependent on how they have interpreted section 37K.

Definition of "the Crown" –Points of Debate

The tangata whenua/local government Treaty relationship is largely dependent on to what extent local authorities can be said to be part of the Crown and one of the main points of difference between Maori, the Crown and local authorities is whether or not local authorities have a role as Treaty partners. In its 1999 publication about the settlement process, the Office of Treaty Settlements (OTS), the body responsible for settling Treaty claims, defines 'the Crown' as, " a convenient way of referring to the executive branch of government. It includes the Governor General, Cabinet, government departments and officials."[259] Therefore, many local authorities and the Crown, have argued that local authorities are not part of the Crown or Treaty partners. Others see the local authorities as having the same powers as the Crown to take and administer land. They argue that because the Crown has deferred powers to local authorities, they are Treaty partners and that the Treaty of Waitangi should bind local authorities.

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[258] "Local Government & The Treaty", Cities Project Issue 1, p.10

[259] Office of Treaty Settlements, *Healing the Past, Building A Future: A Guide to Treaty Of Waitangi Claims and Direct Negotiation with the Crown*, Wellington, 1999, p.48

To what extent are local authorities part of the Crown? This question continues to be debated. The arguments against local authorities being part of the Crown centre on the fact that they have a degree of autonomy from central government. Although local authorities are subject to central government review and their functions prescribed by statute, local authorities are not generally subject to the direction of central government and are funded separately. Some sections of government consider local authorities to be outside of the realm of Treaty relationships; a Ministry of Environment report, for example, stated that, "local authorities are not part of the Crown for the purposes of the Treaty of Waitangi and they are not generally considered to be the Treaty partner in place of the Crown in the local context."[260]

However, the separation of local government for the Crown is not accepted by all and "as the legal rights and powers of local government are created by an act of Parliament, [l]ocal [g]overnment is, in effect, part of Government", it is often argued that local government is part of the Crown.[261] In many circumstances local authorities could arguably have Treaty obligations. For example, central government has delegated extensive powers to local authorities for land and resource management purposes. This has created a view that, "councils [are] very much a part of the Crown. From the viewpoint of most iwi and hapū, local government agencies derive their role and authority from a kawanatanga basis under Article [One] of the Treaty".[262] Consequently, many Maori groups see local government as part of the Crown and have argued that local government is a Treaty partner.

The Crown has often delegated powers to local authorities that significantly impact on Maori. Taking land for public works is a good example of this. Primarily because of perceived difficulties of negotiating with owners of multiply owned Maori land, local authorities have tended to take land by compulsory acquisition rather than by negotiation with owners.[263] This raises issues of associated Treaty obligations. The Government has been slow to require those

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[260] Ibid, p.10

[261] Local Government and the Treaty, Cities Project, Issue 1, p.6

[262] Chen & Palmer, *He Waka Tarua – Local Government and the Treaty of Waitangi,* Wellington 1999, p.65

[263] The Waitangi Tribunal has numerous claims of this nature. For further discussion of the role of public works acquisitions procedures, see Cathy Marr, Public Works Takings of Maori Land, 1840 – 1981, Wellington 1997

local authorities to consider the principles of consultation, partnership, options and active protection of Maori interests. Should the Crown make provisions for local authorities to respect Treaty requirements? While this issue remains one of great debate, it appears that increasingly legislation is requiring local authorities to have regard to Treaty issues.

Current Legislative Trends – The RMA and Local Government Bill

Since the creation of the Waitangi Tribunal in 1975, a lot of new legislation has included references to the Treaty and requirements for local government to consult with and have regard to tangata whenua viewpoints. Specifically the Resource Management Act 1991, (RMA), sets out provisions for consultation with Iwi and hapū about resource management issues. In exercising powers under the RMA, local authorities must take into account kaitiakitanga, or stewardship, that Maori exercise over resources. Section eight of the RMA stipulates that consent authorities must take in account the principles of the Treaty of Waitangi. What are Treaty principles? The phrase, 'Treaty principles', has often been used vaguely. Many organisations speak of having regard to Treaty principles, but many New Zealanders would struggle to explain what these Treaty principles are. There are many interpretations of the principles of the Treaty and that the Treaty should be reduced to principles at all is debatable. However, principles have to often be used to try to define how the Treaty can be practically applied in the modern context. The courts constructed the principles as a guide for Crown and Maori interaction. Waitangi Tribunal lists the principles as:

- the principle of partnership;
- the principle of the exchange of the right to make laws for the protection of Maori interests;
- the principle of active protection of Maori interests;
- the principle of consultation; and
- the principle of options. [264]

[264] Waitangi Tribunal Website, http://www.waitangi-tribunal.govt.nz/about/treatyofwaitangi/principles.asp. Other interpretations of Treaty principles can be found in Maori Council v Attorney General [1987] 1 NZLR 641 "SOE Case", many of the crown's documents regarding settlement and Crown action also offer interpretations of Treaty principles.

Both parties must have regard to the other's needs, rights and interests. However, as will be shown below, even though the RMA mentions 'Treaty principles', there is little in the current legislative to framework to compel local authorities to consider the Treaty of Waitangi.

Perhaps the most important piece of legislation concerning the relationship between Maori and local government is the Local Government Bill 2002 currently before the House of Representatives. This Bill attempts to facilitate greater Maori participation in decision-making processes. It says that local authority decision making processes must take into account the relationship of Maori, their culture and traditions associated with land, water, sites wâhi tapu, flora, fauna and other toanga. Local authorities must also:

> (a) establish and maintain processes to provide opportunities for Maori to contribute to the local authority's decision making; and;
> (b) consider ways it which it may foster the development of Maori capacity to contribute to the local authority's decision-making; and;
> (c) provide relevant information to Maori for the purposes of paragraphs (a) and (b).[265]

When carrying out consultation local authorities must have in place appropriate process for consulting Maori.

Limitations of Treaty Obligations

While it is good practice for local authorities to consider the Treaty when making decisions, there is currently no statutory obligation for them to do so. The issue of whether the current legislation goes far enough towards fulfilling local government's Treaty obligations continues to be debated. There has been much criticism of the RMA in particular. Many see section eight as a token reference to the Treaty. The Waitangi Tribunal has been critical of the RMA because it does not bind local authorities to act according to Treaty principles. In its *Nga Wha* and *Te Whanganui A Orotu* Reports the Tribunal said:

> the Crown has not, in delegating extensive powers to local and regional authorities under the Act, ensured that its Treaty duty of protection of Maori interests will be implemented. On the contrary, it appears that in promoting this legislation, the Crown has been at pains to ensure the decision-makers are not required to act in conformity with and apply Treaty

[265] Local Government Bill 2002, section 63 (1)

> principles. They may do so, but they are not obliged to do so. For this reason we believe the 1991 Act to be fatally flawed.[266]

The Tribunal then goes on to say:

> We repeat here our finding that the Resource Management Act is inconsistent with the principles of the Treaty in that it omits any provision, which ensures that persons exercising functions and powers under the Act are required to act in conformity with the principles of the Treaty of Waitangi.[267]

This demonstrates the problems that many advocates for greater recognition for the Treaty have with the RMA. This situation may change in amendments to the Act and it remains to be seen whether in practice the Local Government Bill 2002, will mean that there is more obligation for local authorities to act in accordance with the spirit of the Treaty.

The other limitation on local government is that it is not currently considered a party to the Treaty settlement process. Two parties signed the Treaty of Waitangi, representatives of the British Crown and Maori. Treaty settlement policy says that the Crown (exclusive of local government) and Maori are the only Treaty partners and that local authority land is private land. The Crown cannot use local authority land to settle Treaty breaches nor can a local authority settle a Treaty breach. Nor does the Local Government Act 1974 stipulate that settling Treaty grievances is a function of local government. Under the current legislation, local authorities are only empowered to do things set out under the Local Government Act 1974, any other action are deemed *ultra vires* – illegal and it appears that negotiating a Treaty settlement would fall into that category. This is of course a legal position.

Compensation for a Treaty settlement usually takes the following forms:

- Crown apology;
- monetary compensation;
- cultural redress – i.e. name changes of various landmarks;
- return of Crown land.

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[266] Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, Wellington 1995, p.158. See also Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993,* Wellington, 1993 p. 154

[267] Ibid

More often than not, claimants receive monetary compensation instead of land, because in many areas there is little Crown land available for Treaty settlement purposes. Land is categorised into two different types. The first category is land used in the settlement for cultural redress, this is usually historically significant pieces of land such as a Pa site, and is usually DOC owned land. The Crown returns this land at no cost. The other type of land used in the settlement is commercial property. In this case the land is given to claimants at market valuation and counted as part of the total quantum settlement. So claimants that received more land would get less cash as part of their settlement.[268]

Most importantly for local authorities, private land cannot become part of a settlement. The Treaty of Waitangi Amendment Act 1993, which amended section 6 of the Treaty of Waitangi Act 1975, is relevant. The amendment provides that the Tribunal:

> shall not recommend--
> - (a) The return to Maori ownership of any private land; or
> - (b) The acquisition by the Crown of any private land.

It defines private land as:

> any land, or interest in land, held by a person other than--
> - (a) The Crown; or
> - (b) A Crown entity within the meaning of the Public Finance Act 1989.

The Waitangi Tribunal considered the implications of this Act when it considered whether it could make findings on some harbour board lease lands in the Napier Harbour that had been inherited by the Napier City Council. The Tribunal concluded that local authorities could not be seen to be the Crown or Crown entities:

> By its words, the amendment also squarely applies to local authorities such as the Port of Napier Ltd and the other local authorities to which parts of Te Whanganui-a-Orotu have passed. None of these local authorities are agencies of the Crown as defined in the Public Finance Act 1989.

Furthermore, the report places the Treaty responsibility for the transfer of the harbour reserves to local authorities squarely on the Crown's shoulders.

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[268] For further details see Office of Treaty Settlements, Healing the Past, Building A Future: A Guide to Treaty Of Waitangi Claims and Direct Negotiation with the Crown, Wellington, 1999

> If the Crown elected to transfer to local bodies for no or inadequate consideration land that to its knowledge was the subject of a claim, it must accept the consequence of a potential liability for monetary compensation to the claimants.

So, while the local authority was the beneficiary of Crown actions, and current legislation, the Crown as perpetrator is required to compensate for the grievance. In effect this protects Treaty claimants as it prevents the Crown from avoiding it's responsibilities, simply because it no longer owns the land concerned.

While it is commonly understood that the Tribunal cannot make recommendations in relation to private land, what is not often known is that the Tribunal can receive claims that concern private land. The Taranaki claims are a good example. All of Taranaki is under Treaty claim, even though most of the region is private land – why? The reason is that past actions of the Crown, in particular in passing legislation to allow confiscation of the land, did not protect the property rights (Article Two) or citizenship rights (Article Three) of Taranaki iwi. As far as council is concerned it is conceivable that Maori could claim against their actions, but only in as far they relate to the Crown's responsibility for passing legislation enabling council to act in a certain way. For example, Maori could claim against the Crown for vesting land in the WHB in 1876, because the land had been acquired by confiscation. It would appear then that any legal responsibility for grievances suffered as a result of the NPDC receiving the harbour endowments rest with the Crown and very strong arguments could be made that the Crown should provide compensation to undo this grievance.

Treaty Issues in the Local Context

How does the Treaty relate to the Waitara endowments? Legislation goes someway to establishing a Treaty relationship between Maori and local authorities but lack of clarity means that this relationship remains open to much debate. The current situation is a good example of the implications of this. The NPDC is entangled in a situation where it is involved in a Treaty breach of the Crown, but legislation and Crown policy have meant that the NPDC has no effective means of remedying the breach. In failing to define the Treaty role of local government the Crown has failed in its Treaty responsibilities. Ultimately the situation has been damaging

for the community and has created a history of bitterness from both tangata whenua and lessees toward the NPDC.

The limitations of local government in the Treaty settlement process arise out of legal convention. Although the local authorities currently have no formal role in the Treaty settlement process there remains the issue of good will between them and Maori communities. Local authorities have responsibilities to all communities of interest, which means that it could have an informal role in the Treaty settlement process. The responsibility rests with the Crown to settle the Taranaki Treaty claims. The settlement package must be developed in a manner that meets all interests in the community and provides for fruitful future relationships. The NPDC could have a role in helping to facilitate this. It cannot settle a Treaty breach; but it can assist iwi and hapū in other ways. Through its function as local advocate, council could assist the process by pressing the Crown to facilitate a timely Treaty settlement. The LGA requires the NPDC to take into account communities of interests and council does have an obligation to deal fairly, act in good faith and develop a good working relationship with tangata whenua. Advocating a timely and sustainable Treaty settlement would be one way to strengthen this relationship.

This report has outlined how the Crown involved local authorities in the Waitara region in continuing a Treaty breach. The Crown failed to adequately compensate Maori for this breach and required local authorities to use confiscated lands to provide for community purposes. The NPDC's continued occupation of the land in question undoubtedly compounds the Treaty grievance. This situation created a very difficult position for local authorities. By legislation they are required to provide for and take into account the interests of the various communities in the district, but they are unable to fully address Treaty grievances. If the Crown does not obligate local authorities to meet Treaty requirements then the Treaty responsibility remains with the Crown. This suggests that the Crown should assist local authorities by taking action to ensure that they are not continuing a Treaty breach.

The Crown must settle with Te Atiawa and the Pekapeka, 'purchase', will be a component of the settlement. Whilst the Crown's Heads of Agreement includes numerous properties in the New

Plymouth District for its land bank package, it includes only 0.3680 hectares of land within the Pekapeka block boundaries. This is a teacher's residence in Cracroft Street that was originally part of the harbour endowments vested in the WHB in 1876. The land bank includes other properties with in the Waitara Township; these are mainly railway land and school sites, totalling just over 12 hectares.[269]

Given this situation and the fact that the Waitara endowments have perpetuated the original breach created by confiscation it would appear that the most sensible solution would be for the Crown to purchase surplus council land in Waitara. This places the onus to deal with the grievance back with the agency that set up the grievance. It is unlikely that the Crown would consider purchasing land that was leased and it would probably want to ensure that lessee interests were protected, but it may consider purchasing vacant land or land that lessees did not wish to freehold. Should the council wish to investigate selling the land to the Crown, it is recommended that discussion be held with the Crown and Te Atiawa to ascertain the viability of this option.

7.3 Moral & Strategic Issues

Given the circumstances of confiscation it is very easy see why many people believe that the council is in receipt of stolen lands. It appears that council's title is legally defensible despite the obvious issues of justice that that confiscation raises. Legally, section six of the New Zealand Settlements Act 1866, validated irregularities concerning the acquisition of confiscated land and in 1950 the Crown passed the Limitation Act. Section 7A (1) of the Limitation Act limits criminal claims against wrongful acquisition of customary land to 12 years after the original acquisition of land. Legal opinion suggests that to conclusively prove that this was the case, litigants would be required to demonstrate that when it acquired title, the council, or its predecessor, knew that the property was stolen or dishonestly obtained.[270] Regardless of the dubious method of the Crown's acquisition of title, an argument could be made that when the council acquired title to endowments it did so in good faith.

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[269] Heads of Agreement

[270] Govett Quilliam to NPDC, 17 September 2002

Legal issues are not the only relevant ones. It is recognised that tangata whenua will be able to offer a different perspective on the issue. Regardless of the legality, vesting land in local authorities still amounted to and reinforced the forced alienation of land. As this report also points out there other 'moral' issues and issues of justice and fairness, which suggest that council should seriously consider the return of land.

What moral issues does the NPDC's occupation and use of its Waitara Endowments raise? While the NPDC is not criminally liable for acquiring the endowments, it can still take into account iwi and hapū grievances when deciding how to dispose of land. Given the conclusions of the Crown, the Waitangi Tribunal and independent historians regarding the 'purchase', war and confiscation, it would be difficult to ignore the significance of the land in question and the grievances that Maori have suffered as a result of confiscation. Aside for the requirements to take in account their views under local government legislation, there are moral and strategic arguments that suggest that it would be wise for council to consider tangata whenua grievances.

In addition to legal issues of governance and land title, there moral issues regarding the Waitara leases. It is clear that to some sections of the community, council's title to the leasehold land is unpalatable and that even though council's actions may be legal they believe the council's title is morally untenable. This situation has undoubtedly been damaging to council's relationship with the community. Additionally, the council has obligations to lessees as ratepayers and needs to ensure that their rights are protected and that in attempting to strengthen its relationship with tangata whenua it does not harm its relationship with other sectors of the community.

Iwi/Hapū Relationships

The NPDC's Long Term Strategic Plan defines iwi relationships as a major strategic issue. According to the plan:

> [t]angata [w]henua, as the first people of the district, hold a special place in the district's past, present and future. The New Plymouth District Council acknowledges this status in making iwi relationships one of the five strategic issues of this plan.
>
> The history of European settlement in Taranaki saw control of land transferred from Maori to European through normal exchange, disputed exchange and confiscation. Issues

> resulting from this continue to impact on the relationship between [t]angata [w]henua and subsequent settlers. The New Plymouth District, as a community, will continue to address these issues over the life of this Long Term Strategic Plan.
>
> The council has already set up an Iwi Liaison Sub-Committee so that [t]angata [w]henua views can be considered and discussed when making significant decisions on the district's future. Having Iwi relationships as a strategic issue means that every significant council decision making process will have to answer the question – "What does this mean for Iwi relationships?"
>
> Objective:
> New Plymouth District will be a community where the special relationship with [t]angata [w]henua is strengthened and valued.

Obviously this objective needs to be taken into consideration when dealing with the future of the council's Waitara Endowments.

The council has also identified land issues as a significant part of its relationship with Iwi. What is not clear is how this works in practice. Council have benefited from confiscation via Crown grants of land. Historically council has given little consideration to Treaty issues and the effect that its title to endowments has had on its relationship with tangata whenua. It is widely known that regardless of the legal distinction many people, from all walks of life, make little distinction between local and central government. Even if it appears that there may not be any legal grounds for offering the land back, does the significance of the land and the need for council to consider iwi relationships as a strategic issue warrant the council investigating means of assisting the transfer of the land to Te Atiawa?

Consultation with tangata whenua is required to ascertain their views on this issue. Current legislative trends regarding public consultation and the council's objectives regarding iwi relationships, suggest that if there is a willingness from both parties to do so, some sort of joint working party should be set up to discuss strategies for the future. The working party should have a broad membership that includes the NPDC, Waitara Community Board, iwi and hapū representatives, kaumatua, legal experts and other community groups, including the lessees. Hui with Te Atiawa would also be beneficial. It would be a good idea for the hui to take place in Waitara.

Lessee Relationships

Consultation is required to determine the lessee point of view. Lessees have made considerable improvements to their properties and obviously they wish to protect their improvements. Although used in a different context, Drs Ralph and Ngatata Loves' statement that the spirit of the Treaty was that "it was considered the resolution of one injustice should not create another," is relevant here and the protection of lessee interests is another consideration for the district council.[271] Lessees entered into their lease agreements in good faith and this needs to be recognised. This suggests that if there is any change in lessor, the current leases should be allowed to run their course, or if a lessee were willing to do so, the improvements would be sold to a new lessor at market valuation.

Another issue is that many lessees say that they were duped into believing that they could freehold their property. This may have been true, but there is also an obligation for buyers to fully investigate claims of estate agents before purchasing a property. The issues related to the leases are quite significant and well known in the community and certainly in the last decade it should have been well known that the council would not move with any speed toward freeholding. As 'buyers' of leases there is a certain degree of "buyer beware" obligation on potential lessees to investigate all aspects of the property and some responsibility must lie with lessees to verify the council's intentions regarding freeholding. During the late 1980s and the early 1990s the council signalled to the lessees that it was considering freeholding, creating the impression that lessees would soon be able to purchase land. There may be some grounds for legal advice on whether council's earlier discussions about freeholding place any obligations on the NPDC.

Consultation with lessees is required to hear their concerns and to try and find suggestions from them about the future of the land. It may be difficult to generalise on the lessee position because as previously stated; many lessees may be Te Atiawa and may have a different perspective than non-Te Atiawa lessees.

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[271] Dr. Ngatata Love, Submission D-7, Taranaki Muru Me Te Raupatu Te Atiawa: Parihaka, Evidence Given to the Parliamentary Select Committee, 22 October 1992, p.7

7.4 Land Disposal

If there is to be a change of land ownership there is a process of land disposal set down by statute that council must follow. Several pieces of legislation concerning land disposal are applicable. This section discusses them.

The Public Works Act 1981

One issue that has been considered is whether the PWA 1981 applies. On 26 March 1999 NPDC's Property Manager, Ian Baker noted that an offer back under the Public Works Act 1981, might be required. The Public Works Act (PWA) governs the acquisition and disposal of land acquired for a public work. Under section 40 local authorities are required to offer land back when land is not required for a public work.[272] In practice, this usually means that the land is offered to the immediate successor in title to the person from whom it was acquired. However section 41 of the Public Works Act 1981 provides for in the case of former Maori land for land to be offered back to Maori descendents.

According to legal opinion the Waitara endowments are not public works. Council has considered the question of whether there was any need to offer the endowments back under the Public Works Act 1981 in the past. In June 1995, the council's solicitor wrote to the Department of Lands and Survey asking for their policy on offer back obligations under the Public Works Act in relation to the harbour board leases. The department's officer noted that although the endowments did not appear to be public works, it may well have been that there was a moral obligation to it investigate an offer back. [273] As the land was not acquired specifically for a public work and it is not clear whether the PWA would actually apply, the author sought a legal opinion to clarify these matters. The opinion said that the land had been acquired for a general work rather than for a specific public works objective. Based on current case law, the opinion said that if the land had not been acquired specifically for a public work, the Public Works Act 1981 offer

[272] The Public Works Act says that: "For the purposes of this section, the term ``successor", in relation to any person, means the person who would have been entitled to the land under the will or intestacy of that person had he owned the land at the date of his death; and, in any case where part of a person's land was acquired or taken, includes the successor in title of that person." Public Works Act 1981 s. 40 (5)

[273] Department of Lands and Survey to Govett Quilliam 23 June 1995, NPDC File, A32/10/07/1

back provisions did not apply. This suggests that the correct procedure for disposing of land would be under the provisions of the Local Government Act 1974. Counsel also suggested that the NPDC seek a declaratory judgement of the High Court to confirm that the Public Works Act 1981 does not apply, prior to freeholding land. This would allow the council to sell or transfer the land to whomever it chose with certainty that that it was not going to be open to legal challenge.[274]

The legal position is clear, but it raises issues regarding moral obligations. It seems clear that in cases where the Crown legitimately acquires private interests for public works, there is an offer back requirement. In this case the alienation from private hands was via means of confiscation, which the Crown has admitted was unjustified. However, as far as Maori interests are concerned, the current legal situation has resulted in less opportunity for redress in the form of a return of land by the Crown than would have happened if the land had simply been taken under public works legislation. This suggests that there is a moral obligation to consult and consider the return of at least some of the land. Again the Treaty responsibility lies with the Crown for having set up this legal situation, because there is no legal obligation for council to return land. However, it questionable whether it is in the NPDC's best interests to be seen to be compounding the grievance.

The Local Government Act 1974

The Act setting out provisions for the sale and exchange of council lands is the Local Government Act 1974. The Act is quite clear about what to do with land held as an endowment. It says that when endowment land held in trust is sold or exchanged, the council must purchase other lands to compensate. Although certain restrictions apply to land acquired under the Reserves Act 1977, the Public Works Acts, and land prohibited by trust from sale, there does not appear to be any restriction as far as the Waitara endowments are concerned. In fact, there is currently no legal impediment to freeholding. The reason that council has been reluctant to do so is because it would have had to purchase land elsewhere. Section 230 (4) of the LGA says:

[274] Govett Quilliam to NPDC, 17 September 2002

> Where any land so sold or exchanged was at the time of the sale or exchange vested in the council in trust or as an endowment for any purpose or purposes, whether by or pursuant to any Act or any deed of trust or otherwise howsoever, then, notwithstanding anything in the instrument creating the trust or endowment, but subject to subsection (8)(d) of this section, all money received by the council upon the sale or exchange shall as soon as practicable be applied in or towards the purchase of other land to be held for the same purposes as the land so sold or exchanged or in accordance with subsection (5) of this section.[275]

The New Plymouth Land Vesting Bill sought to get rid of restrictions and free up the sale proceeds so that they could be used to assist community projects. The current situation means that council would have to purchase other land to replace land that it disposed of.

Sale Process

The Local Government Act provides for public consultation and a resolution by a full council meeting before land is sold and when council make a resolution to sell land at least 14 days public notice is required. The courts have interpreted this as saying that the council must have an open mind about selling the land and give fair hearing to objectors. As the Brooker's legal reports say, "that fortifies the view that the full council has to consider the point of principle, i.e. whether the land should be sold at all." It has long been the policy of the district council that when it considers the sale of its Waitara endowments it should first have a phase of public consultation.

Sales of Land to Lessees

Although in most cases public notice must be given on sales of endowment land, section 230, (2) says that, when lessees wish to buy their land for housing purposes public notice of a council resolution to sell the land is not necessary. However, the council must still pass the resolution to sell the land. In the case of leased lands, the land should not be sold for a price that is less than the unimproved value of the land plus the value of improvements not formerly made or purchased by the lessee. Prior to the Land Vesting Bill, Landcorp issued a document outlining the freeholding process.

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[275] Section 230 Local Government Act

Local Government Bill 2002

One of the most significant changes likely to take place is the proposed Local Government Bill. Section 127 of this Bill sets out restrictions on disposal of land but it does allow local authorities to sell land. Rather than being required to repurchase land, the endowment can be sold and the money used for the purposes identified by the local body. This suggests that the provisions of the New Plymouth Land Vesting Bill may become redundant, because, if the Local Government Bill is passed, there may be no obligation to repurchase land. However, some legal opinion would be required to determine the implications for the New Plymouth Land Vesting Bill if the Local Government Bill were passed in its current form.

The Bill includes some restrictions on land sale. A lengthy public consultation process is required before land can be sold. Local authorities cannot sell endowments unless they have attempted to identify the donor of the property and provided them with an opportunity to comment on the intended sale. In this case the donor is the Crown. As endowment land it is not subject to public works offer back provisions and it is not council practice to offer land back to the Crown, council are able to sell the land to whomever they chose.[276]

To sell the land the long-term council community plan must include the council's intention to sell and include the use to which proceeds of sale would be applied. The long-term plan must also have been adopted.

The Local Government Bill also requires a high degree of public consultation for significant decisions. It is likely that a decision to transfer land assets in Waitara would be classified as a significant decision, which would require a great deal of public consultation. The Bill sets out procedures and guidelines for consultation and planning in regard to significant issues. The principles for decision-making are:

- open and clear process;
- identification of community outcomes and consideration of community views;

[276] Property Officers pers. Com. Wayne Smith, Knight Frank, Property Report and Recommendations to Council on Section 390 Town of Inglewood, 28/01/02

- consider the relationship of Maori and their culture in making significant decisions relating to land;
- assess whether benefits in terms of environmental, social, economic and cultural well-being of the community are sustainable;
- weigh up the financial and non financial benefits of a decision;
- identification of any inconsistency with plans required by the Bill.

The Bill also stipulates that local authorities must make opportunities for Maori to contribute to the decision making process and provides for extensive public consultation, where all interested parties must be provided with information and all views of the community listened to. Every person must be given an opportunity to make written submissions and the council must explain the reasons for its decisions to all those who make submissions. This suggests that an extensive public consultation phase would be required before the council could sell its Waitara endowments.

Reserves

Land held under the Reserves Act 1977 is dealt with differently than land held under the Public Works Act 1981 and the LGA even though reserves could be classified as a public work. Recreation reserves are usually only sold in the following circumstances:

1. where a reserve is surplus to requirements under the Reserves Act 1977 and sale will benefit purchase of other reserves or enhance existing reserves;
2. the community benefit is better met by the council holding land for other purposes;
3. one group in the community uses that land exclusively and that situation is unlikely to change.

Each case is obviously viewed in terms of its individual merits. Probably the most applicable scenario in Waitara's case if the NPDC wished to dispose of land would be 1.

The sale process may vary, but before council can sell land, reserve land must have its status revoked under section 25 of the Reserves Act. In the case of other reserves owned by local authorities, the land must be disposed of in accordance with regulations specified by the Minister

of Conservation. Often these provisions have included sale and application of funds to purchase other reserves or to improve current reserves. Sale proceeds are put into the local authority's general fund, or an equivalent sum put into the reserves account for purchase of reserves or improvements to existing reserves. In the case of Crown reserves administered by a local authority, the two parties usually share sale process in an effort to pay for costs and to encourage local authorities to rationalise their reserve holdings.[277]

7.5 Financial Issues

One of the most salient questions for the New Plymouth District Council in considering the future of the land is what are the financial issues involved? The loss of the Waitara lease land to anyone will be the loss of an asset. The disposal of any asset obviously has financial implications for the council. Essentially the financial issues are:

- value of the land;
- the amount of rent received;
- administration costs;
- money from sale of the land;
- financial obligations to the Taranaki Regional Council;
- potential rate rises.

Land Value

The total land value (unimproved) of Waitara lease land is $7,146,000. This is the interest that the New Plymouth District Council has in the land. Factoring in the lessees' improvements on the land, the capital value of the land is over $54,000,000. [278]

Rent

The total annual rent received in Waitara is $318,889.86, which is much less than the rates that the NPDC receives on the same land. Rent for quarter acre sections can vary from around $250

[277] Local Government New Zealand & Department of Conservation, *Reserves Act Guide*, Wellington, 1999, Chapter 9

[278] Figures supplied by financial services department NPDC.

per annum to around $750 per annum. The rent from these properties means that ratepayers pay a lower level of rates than they would if the leases did not exist.

While rates are put into a single account, the harbour & borough lease lands have separate accounts. Although the library endowment rentals are supposed to be in a separate account, this has not been done. Once administrative costs are taken out of the equation there is very little money left in the Harbour Trust Account. A break down of these accounts is given below

Table 3: Harbour Trust Expenditure – 2001 –2002 Financial Year

Waitara Harbour Trust	
Income	$235,146
Operating Costs	
Standard Costing	$30,576
Financial Services	$9,900
Corporate Services	$5,364
Community Assets	$3,384
	$49,224
Property Costs	
Consultants (legal & valuation)	$2,192
Maintenance (lawns, weeds, rubbish removal)	$25,248
Rates (NPDC - paying rates to itself on land it uses)	$15,254
	$42,694
Harbour/Land Improvements	
Community Assets – Roading	$36,000
Community Assets - Storm Water	$60,000
Community Assets – Parks	$10,000
	$106,000
Surplus - Harbour Trust	**$37,227**

Table 4: Borough Reserve Account 2001 – 2002 Financial Year

Waitara Borough Reserves	
Income	**$65,207**
Operating Costs	
Standard Costings	$7,524
Financial Services	$2,871
Corporate Services	$513
Community Assets	$310
Property Costs	**$11,218**
Rates	$2,179
Ground Maintenance	$4,009
Consultants	$13
	$6,201
Surplus	**$60,190**

Surpluses from the Harbour Trust Account are channelled into harbour improvements in the Waitara area and primarily used for river protection and harbour improvements. Surpluses from the borough reserves are added to the district council's general pool of funds.

Rates

One substantial difference between the leasehold properties and rented properties is that leaseholders pay rates on the unimproved value of their properties. The Council receives just over $618,000 in rates from its Waitara leases per annum. Rates are set according to land value and the council charges an additional $200 per rateable property, which is incorporated in the general rate charge. Rates are then pooled into a single bucket for the entire district. This means that funding is allocated according to district wide priority. It also means that it is difficult to track exactly how rates from the Waitara properties are spent, but it means that if a major work is required in a district the ratepayers of that district are not hit with a substantial rate

rise to compensate, the cost is shared by all ratepayers in the New Plymouth area. If the Waitara leases were phased out, the NPDC may have charge the district more rates to compensate for the $300,000 drop in revenue. This would amount to a 1% rate rise, but would be partly offset by the drop in administrative costs and the possibility of off setting some of the cost with the profits from freeholding.[279]

It may be that if the harbour trust ceased to exist the Taranaki Regional Council (TRC) may have to take over most of the river protection work. The TRC's funding policy for this is that; 'river control schemes are funded by separate rates over the community benefiting from the protection. Advice, minor river works and flood response benefit the wider community and as such are funded from general funds.'[280] Given this policy it may well be that the TRC rate for Waitara would increase.

7.6 Consequences of Freeholding

Another issue for consideration is the consequences of freeholding. As discussed this will probably have flow on effect on rates. There are also some other important considerations. Some thought needs to be given to what this will mean for the development of Waitara, as many have argued that freeholding will boost the town's economy. Another issue is the implications of freeholding endowments held as parks and reserves. Transfers of ownership raise issues of public access and these would need to be worked through if title to the parks was to change.

7.7 Community Objectives

It is very difficult to make any assumptions on the views of the community until they have had adequate opportunity to present their case, as only the community can speak on its behalf. In practice there is likely to be considerable overlap between, lessees, tangata whenua, and the rest of the community. This section is intended merely to flag some possible issues and it is clear that public consultation is required.

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[279] Pers. Com. Rory Palmer, Corporate Planning and Policy Manager NPDC, 17 October 2002

[280] Taranaki Regional Council, Annual Plan p.42

Tangata Whenua

It is well known that tangata whenua want the Pekapeka block returned. Given that individuals now privately own most of the land, the return of the whole block is impossible. However, it may still be possible to return some land to Maori ownership. This requires the Crown and Council to recognise that Crown policy and legislation denied Maori any return of the Waitara endowment land via either the courts or, its current state as private land, via the Treaty settlement process. However, the decision on the future of the endowments should not merely be about legal issues. The moral and ethical issues involved and the council's strategic aims to improve its relationship with tangata whenua may well mean that the NPDC decides to investigate returning land to tangata whenua. As council cannot settle a Treaty breach and the Crown cannot use council land for settlement, the easiest way to do this is to sell the land to the Crown. This is dependent of course on a willingness on the Crown's part to purchase the land.

Another way to facilitate the return of land is for council to adopt a policy of offering surplus properties and/or land not wanted for freeholding to Te Atiawa. This assumes that settlement will be timely, which may not be the case. This option is less desirable than selling to the Crown for that reason. If the Crown assumed title to the land, in the interim between sale and settlement council could manage and administer the property in much the same manner as it does with Crown owned reserves.

Returning the land will help build an economic base for tangata whenua. Ownership of the land has the potential to generate employment through property administration and using the land. Obviously rentals would also generate income. There are also other ways of achieving this aim. The NPDC wants to use the funds from land sale for community development. There is no reason that some of these funds could not be used for projects to help build Te Atiawa's economic base.

A priority for this section of the community is gaining recognition for the wrong of confiscation and the continuing grievances that it created; this is achievable. Although there may be flaws in the process, a Treaty settlement should theoretically go a long way toward giving these concerns

adequate recognition. Public acknowledgement by the NPDC of grievances created since 1860 would also go some way toward achieving this aim.

Lessees

Whatever decision council makes it will also need to consider how lessees fit into the equation. It is very difficult to generalise about the lessee perspective. According to earlier surveys many lessees want to freehold their land because this gives them greater security of tenure. It needs be ascertained whether this is still the case. There is no impediment to council selling land to lessees. This could be done quite easily. Some negotiations would obviously be required on purchase price, but this is standard practice and the NPDC has the expertise and contacts to be able to facilitate the process.

Waitara Community

More consultation is required to determine the views of the community, as these have not ascertained in the past. Waitara residents have benefited from the harbour trust and municipal endowments, as money from these endowments has been spent in the community to develop flood protection and to do other infrastructure projects such as the current the stormwater upgrade and street development.

The Waitara Community (and probably ratepayers throughout the district), undoubtedly want a resolution of this issue. They are also likely to want a solution that helps the economic growth and future of the town, something that many believe that the current situation is hampering. Another consideration is that if the endowments change hands there could be a rate rise, which will affect all ratepayers in the New Plymouth District. The community will obviously want to ensure that they benefit from a rate rise.

Little consideration of the position of the community has been given in previous discussion of the issue. Surveys on the freeholding issues have tended to only consider lessees. More recently consultation has been limited to lessees and Te Atiawa. The wider community does have an interest as ratepayers and as users of facilities.

New Plymouth District Council

Ideally the NPDC needs to find a solution that builds and protects it relationships with different sectors within the community. The position that the NPDC finds itself in has largely been caused by actions of the Crown. At the Crown's insistence it tried to deal with tangata whenua concerns, but was unable to come up with a solution, because, as a result of Crown policy it was unable to take any practical steps to remedy the grievances.

Finding a solution that is likely to satisfy all sectors of the community is unlikely to be possible. However, steps like selling vacant or council used land to the Crown for use in a Treaty settlement would go some way towards allowing some land to be returned to tangata whenua, without the NPDC doing anything outside its jurisdiction. Council would also get funds from the sale to use. This would require a change in the Crown's policy and NPDC maybe forced to consider other alternatives such as selling land to Te Atiawa, even if this means council retaining some land until Te Atiawa are in position to purchase. The NPDC could also consider freeholding to any lessee that wanted to do so. Land that lessees did not want to freehold would then have to be considered separately.

The Crown

The Crown wants to settle its Treaty claims with Te Atiawa and ideally that settlement should be durable. It also wants to build good relations with iwi involved in the settlement and the NPDC. It also needs to build a good relationship with the NPDC. Given the historical and cultural significance of the Waitara endowments, a settlement that included this land may be more robust than one that did not.

7.8 Conclusions

At this stage of the interim report it is difficult to make more than a few definitive conclusions without consulting with the community. The report is intended to provoke discussion and offer clarification on the history of the land from an historian's point of view. Debate and counterargument is welcome and expected.

A variety of findings and research indicate that Crown confiscation was unjustified. Wiremu Kingi acted in self-defence and furthermore it was the Crown who first threatened military action and fired the first shot. The issue of responsibility for the resumption of the war in 1863 is more controversial, but it is fair to say that the war was provoked by the Crown's delay in returning Waitara. The Crown has accepted responsibility for its actions and the Te Atiawa Treaty settlement will include:

> [a Crown] apology to Te Atiawa will cover the Waitara Purchase, the subsequent wars, land confiscation, reserve lands and perpetual leases, Parihaka and the cumulative impact of these events on Te Atiawa. [281]

Secondly, it is clear that the Waitara Harbour Board's and the Waitara Borough Council's title to their endowments gifted by the Crown in 1876 were derived from the confiscation. It appears that most subsequent endowments came out of surplus lands not taken up by settlers and they were derived from confiscation. Local authorities could be said to have received title in good faith from the Crown, even though the Crown's title to the land was in the first place dubious and the NPDC's continuing possession of the land has caused an enduring grievance. Through a series of local authority amalgamations, the NPDC has been the ultimate benefactor of the Crown's confiscation policy. This has benefited the community, through lower rates, land for parks, and cheap housing. For that reason a decision on freeholding must include some consideration of the community's position.

Thirdly, council has an obligation to provide for the community in decision making over the future of its endowments. This includes providing facilities and services for Maori, and working towards achieving a relationship with that community now and in the future. It is good practice for council to use Treaty principles as a benchmark for its dealings with tangata whenua, as this ensures that their viewpoints are given as much weight as other sectors of the community. That said council must bear in mind that because of the way that the council acquired them, the Waitara leases are linked to an issue that has been a source of grievance for tangata whenua of Waitara for over 140 years. Although the Crown has placed local authorities in a difficult position by not providing any clarity on the relationship between local government and the

[281] Heads of Agreement, http://www.executive.govt.nz/96-99/minister/graham/te_atiawa/02.html#crown

Treaty, the NPDC does have some measure of Treaty responsibility. The LGA may provide little scope for recognising the Treaty, but more recent legal trends suggest that local government will increasingly be required to take into account the Treaty of Waitangi in making decisions and this trend needs to be taken into account.

The decision on the future of the Waitara endowment land will ultimately come to down to a balancing act. The council will have to weigh up:

- lessee expectations;
- the history and significance of the land to tangata whenua;
- legal limitations regarding the council's role as a private landowner and its inability to settle Treaty claims;
- the position of the Office of Treaty Settlements – whether or not it will consider purchasing any land; or take other steps to remedy the situation;
- strategic issues in the council's Long Term Strategic Plan regarding the need to recognise Iwi concerns and to built constructive working relationships, with iwi and hapū;
- moral arguments regarding the council's use of confiscated land;
- community concerns;
- funding issues relating to loss of income from rent from the land;
- the fact that not all land and is leased as residential sections .

There are undoubtedly ways and means of facilitating a workable solution, although it seems unlikely that there will be one solution that will please all parties. It is also likely the Waitara Community can offer some valuable suggestions about what could be done. It is hoped that further discussions will bring to light some of these suggestions.

It is recommended that the council undertake consultation with the community to ascertain and clarify their views on this issue and to ask the community for possible suggestions on the future of the land.

Options

There is a range of options that could be considered for the future of this land. They are noted in the table below. They include the status and various combinations of different types of land transfer. Advantages and disadvantages are considered. The list of options should not be regarded as exhaustive and it is likely that others may come up with further options. The options section of the final report may in fact look very different once all interested parties add their views on the advantages and disadvantages of each option.

Table 5: Options

Options	Advantages	Disadvantages
Do nothing – allow present situation to continue.	No perceived advantage.	Nobody gains anything. Would not do anything to strengthen the relationship between iwi and council. Unlikely to satisfy lessees either. Still not clear if freeholding would be permitted in the future
Allow freeholding and sale of land on the open market of the remainder.	Would allow lessees to get security of tenure. Places the role of settling Treaty grievances on the shoulders of those who confiscated the land - the Crown. Te Atiawa could buy land on the open market with Treaty settlement money. Avoids the Crown & Council both compensating for loss of use of land. NPDC may be able to play an advocacy role and lobby government for adequate and timely settlement of claims. Avoids the NPDC getting	Iwi and hapū may argue that land was gifted and therefore why should the council receive money for it? Likely that many lessees would freehold, options for Te Atiawa to purchase land might be limited to only the less desirable land. Assumes that compensation is adequate to allow purchase. This might not be the case. Assumes that OTS mandating process is successful and settlement is timely. Settlement with Crown is likely to be at Iwi level and may believe that hapū should

	involved with mandating issues, i.e. who to return land to. Would lessen risk of council seen to be favouring one group over another. Property office believes that other than lessees there would be little competition for surplus land.	receive land or compensation. Possibly time consuming. Indications are that a Te Atiawa settlement may be some time away. Rate rise likely.
Sell land to the Crown. **Crown policy is not to purchase local authority land, but it may consider this is a special circumstance.**	Allows return of land as part of the Treaty Settlement process. Return of land may strengthen relationship between Iwi and NPDC. Places responsibility for settling Treaty breach on Crown. Utilises vacant land. Avoids 'double settlement' – i.e. the Crown & Council both compensating for loss of use of land. Creates an economic base and employment opportunities.	Settlement may be some time away. Crown settles with Iwi bodies. Is a controversial measure and many Maori don't agree with this policy. May need to explore how this would work in practice. Not acceptable to lessees wanting to freehold. Would need to gauge general support for return of this land, as it may not be the best land. Crown unlikely to want to be involved in leased lands. May mean that only the less desirable land is available. It is not clear whether, the Crown would categorise the land commercial or cultural property. It may be that this land is commercial property and the market valuable of the land would be quantified and Te Atiawa would receive less cash as a consequence.
Sell land to the Crown, but concurrently allow freeholding.	Allows return of land as part of the Treaty Settlement process. Places responsibility for settling Treaty breach on Crown. Utilises vacant land.	Settlement may be some time away. Crown settles with Iwi bodies. Is a controversial measure and many Maori don't agree with this policy. May need to

	Avoids 'double settlement' – i.e. the Crown & Council both compensating for loss of use of land Creates an economic base and employment opportunities. Goes some way to satisfying both lessees and Te Atiawa.	explore how this would work in practice. Would need to gauge general support for return of this land, as it may not be the best land. Crown unlikely to want to be involved in leased lands. May mean that only the less desirable land is available. It is not clear whether, the Crown would categorise the land commercial or cultural property. It may be that this land is commercial property and the market valuable of the land would be quantified and Te Atiawa would receive less cash as a consequence.
Allow freeholding. Give Lessees first right of refusal. Give Te Atiawa second right of refusal to purchase the remainder. **Offer Te Atiawa the vacant and surplus land.**	Helps facilitate resumption of land. Goes some way to acknowledging grievances and strengthens relationships with tangata whenua. Protects lessees whilst giving Te Atiawa land purchase options. Property Office believes that other than lessees there would be little competition for surplus land. Avoids Crown & Council both compensating for loss of use of land Develops economic base and employment opportunities.	Issues of price. Would need to determine whether Te Atiawa should pay market valuation. Would need to establish if Te Atiawa were in a position to be able to buy the land. Mandating issues. There are many hapū and iwi representative groupings, all with claims to representation, this places council in a difficult position. May simply have to offer land to all who claim an interest. May need to justify reason for giving Te Atiawa preference over other groups and individuals.
Allow no free holding. Wholesale transfer of all land to Te Atiawa.	Satisfies Iwi grievances. Returns confiscated land to Iwi. Has the potential to create an	Would require some protection for existing lessees. Likely to be opposition from

Continue with existing leases. Current leases would run their course or be bought out. Iwi and leaseholders would have to negotiate any future freeholding options.	economic base for local Maori through land use and rental. Potential employment opportunities with lease and land management. May be opportunities for strengthening NPDC relationships with Iwi, as council could assist with advice over management of leases reserves etc. Employment opportunities created through lease administration.	leaseholders. Could create new grievances. Administration costs of leases are large. Iwi would be required to spend money on lease administration. Would require negotiation on future of public access to reserves etc. Likely to be a politically sensitive issue. Price is likely to be an issue. There are arguments regarding council not having paid for the land in the first place. Would require work to determine whether or not land should be returned at no cost or a nominal cost. Mandating issues who should NPDC be offering to back – many different interest groups, would require broad and ongoing consultation to find out. Possibly elements of "double dipping". The Crown should compensate for confiscation and transferring land to local authorities. Transferring land at no cost would mean land issues are settled twice. Advisable to seek advice from OTS.
Cultural Redress Option This is similar to the return of title to Mt Taranaki. This option symbolically returns the endowments to Te Atiawa who then returns the land to the District Council.	Acknowledges grievances. Protects lessee interest.	Unlikely to be a popular option with Iwi as land is culturally significant. Mt Taranaki decision was not supported by all hapū and the ownership of the mountain was a significant part of the Taranaki Treaty of Waitangi claims.
Vesting Other Lands in Te Atiawa	Gives significant land holding to Te Atiawa in close proximately	Land is not on Pekapeka Block

There are other lands in this area such as Manukorihi Park, which are located close to Manukorihi Pa, which could be vested in Te Atiawa.	to Pa. Possible rental income options with lease back to NPDC. Very little management costs.	Issue of whom to return land remains. Unlikely to generate the same levels of income that leasing the harbour and borough endowments would have.

In addition to the decision of what to do with the land, there is the question of how the sale proceeds are used.

Using sale proceeds There is considerable scope for the council to be creative with the money it receives from any freeholding, provided that it is cleared from any obligation to repurchase land or offer money to the TRC (as per the 1940 Act). The income from sale of the land could be used for community development purposes. This may mean looking at options such as an investment (maybe land, commercial building, maybe financial investment, education scholarships) to generate money for a community trust or something similar. This could be done singularly or in conjunction with land return.	Direct benefits for all people of Waitara. Opportunities for the community to have considerable say in how they want to use the money.	May mean no return of land. Possibly some legal issues regarding the need to give money to the regional council.

Preliminary Recommendations

Although this is an interim report the author would like to make the following recommendations.

1. That the views of the tangata whenua, lessees and the Waitara community be ascertained, via the submission and public consultation processes and that the NPDC hold a hearing prior to determining its decision and that all parties be given an opportunity to speak at the hearing. Submissions on the report will be included as an appendix to the final report.

2. That the NPDC ascertain the Crown's current position, regarding the potential for purchasing any of the Waitara Endowments.

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APPENDIX 1 - MAPS

M1

M2

m3

m4

M5

APPENDIX 2 - TIMELINE

1820s – migration of some of Te Atiawa to Waikanae.

1839 – Wakefield attempts to purchase Taranaki region.

6 February 1840– Treaty of Waitangi signed.

14 February 1840– Wakefield attempts to buy further land at Nga Motu.

1844 – Commissioner Spain investigates early purchases. Outcome is that settlement restricted to FitzRoy block.

1845 – 1848 – Governor Grey purchases more land in North Taranaki

1848 – Wiremu Kingi returns to Waitara

1857 – Offer of Waitara land for sale is turned down

8 March 1859 – Gore Browne promises not to buy disputed land. Te Teira offers Waitara. Kingi refuses to consent.

Early 1860 – Gore Browne and Te Teira negotiate for land purchase.

25 January 1860 – Gore Browne issues instructions that survey will begin

20 February 1860 – Kingi's supporters stop the survey

24 February 1860 – Te Teira and 18 others sell Pekapeka Block to the Crown

4 March 1860 – Troops landed at Waitara

15-16 March 1860 – Kingi's supporters uproot the survey pegs

17 March 1860 – Troops open fire on Kingi's Pa at Te Kohia. Taranaki War begins.

18 April 1861 – truce called pending an investigation of Pekapeka Purchase.

24 April 1863 – Governor Grey abandons Pekapeka Purchase

4 May 1863 – Oakura Ambush

11 May 1863 – Public announcement of Pekapeka decision

30 January 1865 - Taranaki declared a confiscation district. Waitara South confiscated.

2 September 1865 – Ngatiawa Coast confiscated

1 June – 12 July 1866 – Compensation Court hears Waitara claims

June 1866 – Raleigh Township Surveyed

28 February 1876 – land reserved as a pilot station.

October 1876 - Crown grants to WHB & WBC from endowments under the New Zealand Settlements Act 1863 and the New Zealand Settlements continuance Acts 1865.

1879 – land granted in trust to the WHB under the Waitara Harbour Board Land and Borrowing Act.

1885 – land reserved as an endowment for town board funds.

1891 – land reserved for Recreation purposes

1904 – land vested in WHB as an endowment in trust of Harbour purposes

1909 – land vested in Mayor and councillors for a library endowment

1910 – land vested WHB for endowment under the Waitara Harbour Board and Borough Empowering Act

1915 – land vested as a wharf

1927 – Sim commission finds that Taranaki Maori should not have had land confiscated.

1940 – All WHB transferred to WBC under the Waitara Harbour Act

1950s and 1960s - stopped Roads added to the endowments. Crown takes land for housing and other public works.

1970s – more land acquired for housing and school sites

28 July 1986 – land is transferred to North Taranaki District council

9 June 1989 – land is transferred to NPDC.

1989 – survey of leaseholders showed majority in favour of freeholding.

1990 – Council begins investigating Freeholding

April 1991 – Council resolves to initiate local legislation to free up funds from freeholding

June/July 1992 – Te Atiawa raises objections to the Bill.

22 October 1992 – Te Atiawa makes submission to Select Committee

3 November 1992 – Minister of Justice refuses consent to the Bill. Negotiation begins with Te Atiawa.

29 May 1993 – Meeting at Owae Marae

June 1994- River banks vested in the TRC

1995 – Bill set aside pending resolution of issues

1998 – land offered for sale to Crown. Offer rejected on policy grounds.